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SITTING DAYS—2007

<table>
<thead>
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</thead>
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<td>September</td>
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<td>October</td>
<td>15, 16, 17, 18, 22, 23, 24, 25</td>
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<td>November</td>
<td>5, 6, 7, 8, 12, 13, 14, 15, 26, 27, 28, 29</td>
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<td>December</td>
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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—NINTH 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. Eric Abetz  
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 Stephen Parry and Julian John James McGauran  
Nationalists 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  
Family First Party Whip—Senator Steve Fielding  

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

<table>
<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
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(1) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. Santo Santoro, 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.
(6) Chosen by the Parliament of South Australia to fill a casual vacancy vice Jeannie Margaret Ferris, died in office.
(7) Chosen by the Parliament of South Australia to fill a casual vacancy vice Hon. Amanda Eloise Vanstone, 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
<table>
<thead>
<tr>
<th>Minister Role</th>
<th>Minister Name</th>
</tr>
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<tbody>
<tr>
<td>Prime Minister</td>
<td>The Hon. John Winston Howard MP</td>
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<td>Deputy Prime Minister</td>
<td>The Hon. Mark Anthony James Vaile MP</td>
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<td>Minister for Trade</td>
<td>The Hon. Warren Errol Truss MP</td>
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<td>Minister for Defence</td>
<td>The Hon. Dr Brendan John Nelson MP</td>
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<td>Minister for Foreign Affairs</td>
<td>The Hon. Alexander John Gosse Downer MP</td>
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<tr>
<td>Minister for Health and Ageing and Leader of the House</td>
<td>The Hon. Anthony John Abbott MP</td>
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<tr>
<td>Attorney-General</td>
<td>The Hon. Philip Maxwell Ruddock MP</td>
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<tr>
<td>Minister for Finance and Administration, Leader of the Government in the Senate and Vice-President of the Executive Council</td>
<td>Senator the Hon. Nicholas Hugh Minchin</td>
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<td>Minister for Agriculture, Fisheries and Forestry and Deputy Leader of the House</td>
<td>The Hon. Peter John McGauran MP</td>
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<td>The Hon. Kevin James Andrews MP</td>
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<td>Minister for Education, Science and Training and Minister Assisting the Prime Minister for Women’s Issues</td>
<td>The Hon. Julie Isabel Bishop MP</td>
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<tr>
<td>Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs</td>
<td>The Hon. Malcolm Thomas Brough MP</td>
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<tr>
<td>Minister for Industry, Tourism and Resources</td>
<td>The Hon. Ian Elgin Macfarlane MP</td>
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<td>Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
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<tr>
<td>Minister for Communications, Information Technology and the Arts and Deputy Leader of the Government in the Senate</td>
<td>Senator the Hon. Helen Lloyd Coonan</td>
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<td>Minister for the Environment and Water Resources</td>
<td>The Hon. Malcolm Bligh Turnbull MP</td>
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<td>Minister for Human Services</td>
<td>Senator the Hon. Christopher Martin Ellison</td>
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</table>

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

Minister for Fisheries, Forestry and Conservation and Manager of Government Business in the Senate
Minister for Small Business and Tourism
Minister for Local Government, Territories and Roads
Minister for Revenue and Assistant Treasurer
Minister for Workforce Participation
Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence
Special Minister of State
Minister for Ageing
Minister for Vocational and Further Education
Minister for the Arts and Sport
Minister for Community Services
Minister for Justice and Customs
Assistant Minister for Immigration and Citizenship
Assistant Minister for the Environment and Water Resources
Parliamentary Secretary to the Prime Minister
Parliamentary Secretary to the Minister for Transport and Regional Services
Parliamentary Secretary to the Treasurer
Parliamentary Secretary to the Minister for Finance and Administration
Parliamentary Secretary to the Minister for Industry, Tourism and Resources
Parliamentary Secretary to the Minister for Foreign Affairs
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry
Parliamentary Secretary to the Minister for Education, Science and Training
Parliamentary Secretary to the Minister for Defence
Parliamentary Secretary to the Minister for Health and Ageing

Senator the Hon. Eric Abetz
The Hon. Frances Esther Bailey MP
The Hon. James Eric Lloyd MP
The Hon. Peter Craig Dutton MP
The Hon. Dr Sharman Nancy Stone MP
The Hon. Bruce Frederick Billson MP
The Hon. Gary Roy Nairn MP
The Hon. Christopher Maurice Pyne MP
The Hon. Andrew John Robb MP
Senator the Hon. George Henry Brandis SC
Senator the Hon. Nigel Gregory Scullion
Senator the Hon. David Albert Lloyd Johnston
The Hon. Teresa Gambaro MP
The Hon. John Kenneth Cobb MP
The Hon. Anthony David Hawthorn Smith MP
The Hon. De-Anne Margaret Kelly MP
The Hon. Christopher John Pearce MP
Senator the Hon. Richard Mansell Colbeck
The Hon. Robert Charles Baldwin MP
The Hon. Gregory Andrew Hunt MP
The Hon. Sussan Penelope Ley MP
The Hon. Patrick Francis Farmer MP
The Hon. Peter John Lindsay MP
Senator the Hon. Brett John Mason
SHADOW MINISTRY

Leader of the Opposition
Kevin Michael Rudd MP

Deputy Leader of the Opposition, Shadow Minister for Employment and Industrial Relations and Shadow Minister for Social Inclusion
Julia Eileen Gillard MP

Leader of the Opposition in the Senate and Shadow Minister for National Development, Resources and Energy
Senator Christopher Vaughan Evans

Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology
Senator Stephen Michael Conroy

Shadow Minister for Infrastructure and Water and Manager of Opposition Business in the House
Anthony Norman Albanese MP

Shadow Minister for Homeland Security, Shadow Minister for Justice and Customs and Shadow Minister for Territories
The Hon. Archibald Ronald Bevis MP

Shadow Assistant Treasurer and Shadow Minister for Revenue and Competition Policy
Christopher Eyles Bowen MP

Shadow Minister for Immigration, Integration and Citizenship
Anthony Stephen Burke MP

Shadow Minister for Industry and Shadow Minister for Innovation, Science and Research
Senator Kim John Carr

Shadow Minister for Trade and Shadow Minister for Regional Development
The Hon. Simon Findlay Crean MP

Shadow Minister for Service Economy, Small Business and Independent Contractors
Craig Anthony Emerson MP

Shadow Minister for Multicultural Affairs, Shadow Minister for Urban Development and Shadow Minister for Consumer Affairs
Laurence Donald Thomas Ferguson MP

Shadow Minister for Transport, Roads and Tourism
Martin John Ferguson MP

Shadow Minister for Defence
Joel Andrew Fitzgibbon MP

Shadow Minister for Climate Change, Environment and Heritage and Shadow Minister for the Arts
Peter Robert Garrett MP

Shadow Minister for Veterans’ Affairs, Shadow Minister for Defence Science and Personnel and Shadow Special Minister of State
Alan Peter Griffin MP

Shadow Attorney-General and Manager of Opposition Business in the Senate
Senator Joseph William Ludwig

Shadow Minister for Sport and Recreation, Shadow Minister for Health Promotion and Shadow Minister for Local Government
Senator Kate Alexandra Lundy

Shadow Minister for Families and Community Services and Shadow Minister for Indigenous Affairs and Reconciliation
Jennifer Louise Macklin MP

Shadow Minister for Foreign Affairs
Robert Bruce McClelland MP

Shadow Minister for Ageing, Disabilities and Carers
Senator Jan Elizabeth McLucas
Shadow Minister for Federal/State Relations,
Shadow Minister for International Development
Assistance and Deputy Manager of Opposition
Business in the House
Robert Francis McMullan MP

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

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

Shadow Minister for Health
Nicola Louise Roxon MP

Shadow Minister for Superannuation and Inter-
generational 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 Af-
fairs
Anthony Michael Byrne MP

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

Shadow Parliamentary Secretary for Environment
and Heritage
Jennie George MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

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

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

Shadow Parliamentary Secretary for Industry and
Innovation
Bernard Fernando Ripoll MP

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

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

THURSDAY, 14 JUNE

Chamber
Pétitions—
Mary River: Proposed Dams ................................................................. 1
Notices—
Presentation .......................................................................................... 1
Business—
Rearrangement.......................................................................................... 2
Rearrangement.......................................................................................... 2
Committees—
Standing Committees—Meetings.......................................................... 2
Notices—
Postponement .......................................................................................... 2
Postponement .......................................................................................... 3
Business—
Rearrangement.......................................................................................... 3
Lobbying and Ministerial Accountability Bill 2007—
First Reading .......................................................................................... 5
Second Reading ......................................................................................... 5
Committees—
Community Affairs Committee—Reference ........................................ 7
Public Interest Disclosures Bill 2007—
First Reading .......................................................................................... 7
Second Reading ......................................................................................... 7
Paid Maternity Leave .................................................................................. 11
Global Fund to Fight AIDS, Tuberculosis and Malaria ......................... 12
Renewable Energy ...................................................................................... 13
Committees—
Community Affairs Committee—Meeting ......................................... 14
Ethiopia: Prisoners of Conscience .......................................................... 14
Budget—
Consideration by Estimates Committees—Additional Information .......... 14
Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007 .... 14
Financial Sector Legislation Amendment (Restructures) Bill 2007 .......... 14
First Reading ......................................................................................... 15
Second Reading ......................................................................................... 15
Business—
Rearrangement.......................................................................................... 19
Consideration of Legislation .................................................................... 19
Schools Assistance (Learning Together—Achievement Through Choice and
Second Reading ......................................................................................... 28
In Committee .......................................................................................... 48
Workplace Relations Amendment (A Stronger Safety Net) Bill 2007—
Report of Employment, Workplace Relations and Education Committee ....... 50
Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007—
Report of Employment, Workplace Relations and Education Committee ....... 50
Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2007—
Second Reading ......................................................................................... 51
<table>
<thead>
<tr>
<th>BILL</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Fisheries and Forestry Legislation Amendment (2007 Measures No. 1) Bill 2007—</td>
<td>51</td>
</tr>
<tr>
<td>Second Reading</td>
<td>51</td>
</tr>
<tr>
<td>Third Reading</td>
<td>51</td>
</tr>
<tr>
<td>Governance Review Implementation (Science Research Agencies) Bill 2007—</td>
<td>51</td>
</tr>
<tr>
<td>Second Reading</td>
<td>51</td>
</tr>
<tr>
<td>Third Reading</td>
<td>55</td>
</tr>
<tr>
<td>Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Bill 2007—</td>
<td>55</td>
</tr>
<tr>
<td>Second Reading</td>
<td>55</td>
</tr>
<tr>
<td>Third Reading</td>
<td>55</td>
</tr>
<tr>
<td>Migration Amendment (Statutory Agency) Bill 2007—</td>
<td>55</td>
</tr>
<tr>
<td>Second Reading</td>
<td>55</td>
</tr>
<tr>
<td>Third Reading</td>
<td>55</td>
</tr>
<tr>
<td>Veterans’ Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007—</td>
<td>55</td>
</tr>
<tr>
<td>Second Reading</td>
<td>62</td>
</tr>
<tr>
<td>Third Reading</td>
<td>62</td>
</tr>
<tr>
<td>Australian Wine and Brandy Corporation Amendment Bill (No. 1) 2007—</td>
<td>62</td>
</tr>
<tr>
<td>Second Reading</td>
<td>64</td>
</tr>
<tr>
<td>In Committee</td>
<td>65</td>
</tr>
<tr>
<td>Third Reading</td>
<td>65</td>
</tr>
<tr>
<td>Liquid Fuel Emergency Amendment Bill 2007—</td>
<td>66</td>
</tr>
<tr>
<td>Second Reading</td>
<td>66</td>
</tr>
<tr>
<td>Third Reading</td>
<td>66</td>
</tr>
<tr>
<td>Business—</td>
<td>66</td>
</tr>
<tr>
<td>Rearrangement</td>
<td></td>
</tr>
<tr>
<td>Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Bill 2007—</td>
<td>66</td>
</tr>
<tr>
<td>Second Reading</td>
<td>70</td>
</tr>
<tr>
<td>In Committee</td>
<td>71</td>
</tr>
<tr>
<td>Third Reading</td>
<td>71</td>
</tr>
<tr>
<td>Defence Force (Home Loans Assistance) Amendment Bill 2007—</td>
<td>71</td>
</tr>
<tr>
<td>Second Reading</td>
<td>72</td>
</tr>
<tr>
<td>Third Reading</td>
<td>72</td>
</tr>
<tr>
<td>Ministerial Arrangements—</td>
<td>72</td>
</tr>
<tr>
<td>Questions Without Notice—</td>
<td></td>
</tr>
<tr>
<td>Liberal Party</td>
<td>72</td>
</tr>
<tr>
<td>Assistance to Families</td>
<td>73</td>
</tr>
<tr>
<td>Liberal Party</td>
<td>74</td>
</tr>
<tr>
<td>Workplace Relations</td>
<td>75</td>
</tr>
<tr>
<td>Liberal Party</td>
<td>76</td>
</tr>
<tr>
<td>Budget 2007-08</td>
<td>78</td>
</tr>
<tr>
<td>Workplace Relations</td>
<td>79</td>
</tr>
<tr>
<td>Queensland: Local Government</td>
<td>80</td>
</tr>
<tr>
<td>Broadband</td>
<td>81</td>
</tr>
<tr>
<td>Water</td>
<td>82</td>
</tr>
<tr>
<td>Broadband</td>
<td>83</td>
</tr>
<tr>
<td>Broadband</td>
<td>84</td>
</tr>
<tr>
<td>Nuclear Energy</td>
<td>85</td>
</tr>
</tbody>
</table>
CONTENTS—continued

Questions Without Notice: Additional Answers—
  Liberal Party.................................................................................................................. 86
Questions Without Notice: Take Note Of Answers—
  Liberal Party .................................................................................................................. 87
  Water .......................................................................................................................... 93
Committees—
  Reports: Government Responses................................................................................ 94
  Foreign Affairs, Defence and Trade References Committee—Report: Government
    Response..................................................................................................................... 132
  Legal and Constitutional References Committee—Report: Government Response .. 133
Auditor-General’s Reports—
  Report No. 44 of 2006-07 ................................................................................................. 135
Committees—
  Membership..................................................................................................................... 135
Pregnancy Counselling (Truth in Advertising) Bill 2006—
  Second Reading ............................................................................................................... 136
Documents—
  Commonwealth Grants Commission............................................................................... 164
  Migration Act 1958: Section 486O.................................................................................. 165
  Australian Livestock Export Corporation........................................................................ 165
  Australian Political Exchange Council........................................................................... 166
  Consideration.................................................................................................................... 167
Committees—
  Environment, Communications, Information Technology and the Arts Committee—
    Report ......................................................................................................................... 169
    Consideration................................................................................................................ 171
Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007............. 171
Corporations (Fees) Amendment Bill 2007 ........................................................................ 171
Corporations (Review Fees) Amendment Bill 2007 ............................................................ 171
Families, Community Services and Indigenous Affairs Legislation Amendment
  (Child Care and Other 2007 Budget Measures) Bill 2007 .............................................. 171
Migration (Sponsorship Fees) Bill 2007—
  First Reading .................................................................................................................. 171
  Second Reading ............................................................................................................. 171
Schools Assistance (Learning Together—Achievement Through Choice and
  In Committee .................................................................................................................. 177
  Third Reading ................................................................................................................ 179
Business—
  Rearrangement............................................................................................................... 179
Evidence Amendment (Journalists’ Privilege) Bill 2007—
  Second Reading ............................................................................................................. 179
  In Committee.................................................................................................................. 196
  Third Reading ................................................................................................................ 199
Food Standards Australia New Zealand Amendment Bill 2007—
  Second Reading ............................................................................................................. 199
  In Committee—88A Second Review ............................................................................. 226
Adjournment—
  Middle East ................................................................................................................... 228
  Anti-Corruption Commission......................................................................................... 230
CONTENTS—continued

Pregnancy Counselling (Truth in Advertising) Bill 2006 ................................................. 233
Documents—
Tabling .................................................................................................................................. 235
Questions On Notice
Civil Aviation Safety Authority: Chief Executive Officer—(Question No. 2653) ........... 237
Civil Aviation Safety Authority—(Question No. 2666) ....................................................... 238
Civil Aviation Safety Authority—(Question No. 2699) ........................................................ 239
Airservices Australia: Solomon Islands—(Question No. 2802) ......................................... 240
Civil Aviation Safety Authority: Chief Executive Officer—(Question No. 2832) ........... 240
Qantas—(Question No. 2860) .............................................................................................. 241
Defence Headquarters Joint Operations Command—(Question No. 2867) .................. 242
Veterans’ Affairs: Servicewomen—(Question No. 2966) .................................................... 245
Australian Defence Force: Personnel—(Question No. 3045) ........................................ 246
Australia Post—(Question No. 3046) .................................................................................. 246
Australian Defence Force—(Question No. 3094) .............................................................. 247
Travel Allowance—(Question No. 3130) ............................................................................ 251
Aged Care—(Question No. 3136) ....................................................................................... 252
Taxation—(Question No. 3169) .......................................................................................... 252
Research and Development Tax Concession—(Question No. 3175) ......................... 252
Research and Development Tax Concession—(Question No. 3176) ......................... 253
Research and Development Tax Concession—(Question No. 3177) ......................... 253
Esperance Coast Road Upgrade Project—(Question No. 3196) ........................................ 254
Smartcard—(Question No. 3200) ..................................................................................... 256
Thursday, 14 June 2007

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

PETITIONS

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

Mary River: Proposed Dams
To the Honourable the President and Members of the Senate in Parliament assembled. The Petition of the undersigned draws to the attention of the Senate that the dams proposed to be built by the Queensland State Government at Traveston crossing on the Mary River and Wyaralong in the Logan River catchment, will have a significant impact on matters of national environmental significance and as a result will trigger the Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act 1999.

The petitioners note that according to section 87 of the EPBC Act 1999 the Environment Minister decides which assessment approach to assess the relevant impacts of the action. Because of the significant impact the proposed dams will have on matters of national and environmental significance, we call on the Federal Environment Minister to undertake an assessment by inquiry (section 87(1)(e) of the EPBC Act 1999).

by Senator Bartlett (from 30 citizens)
Petition received.

NOTICES

Presentation

Senator Fielding to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to protect competitive markets by prohibiting predatory pricing. Trade Practices Amendment (Predatory Pricing) Bill 2007.

Senator Milne to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the use of a nuclear by-product, polonium-210, sourced from the Russian Federation (Russia) in the murder of Alexander Litvinenko,

(ii) that Russia supplies nuclear materials to Iran,

(iii) that Russia is in talks with the military regime in Myanmar with a view to supplying nuclear materials to that regime, and

(iv) that, following attacks on freedom of the press and the murders of several journalists in Russia, the Committee to Protect Journalists rates Russia as the third most dangerous country in the world for journalists, after Iraq and Afghanistan; and

(b) calls on the Government not to sell uranium to Russia.

Senator O’Brien to move on the next day of sitting:

That the Wheat Marketing Amendment Bill 2007 be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 7 August 2007.

Senator Bob Brown to move on 19 June 2007:

That the Senate congratulates the Dalai Lama for his dignity, compassion and forbearance during his popular visit to Australia.

Senator Nettle to move on 18 June 2007:

That the following bill be introduced: A Bill for an Act to recognise refugees of climate change induced environmental disasters, and for related purposes. Migration (Climate Refugees) Amendment Bill 2007.

Senator SIEWERT (Western Australia) (9.32 am)—Pursuant to standing order 78, I give notice of my intention to withdraw on the next day of sitting business of the Senate notice of motion No. 1 standing in my name for today for the disallowance of the Southern and Eastern Scalefish and Shark Fishery (non-quota species) Total Allowable Catch (2007 Fishing Year) Determination (cited as 2007 SESSFD2), made under section 15 of

BUSINESS

Rearrangement

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (9.33 am)—I move:

That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

No. 5 Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2007.

No. 6 Agriculture, Fisheries and Forestry Legislation Amendment (2007 Measures No. 1) Bill 2007.

No. 7 Governance Review Implementation (Science Research Agencies) Bill 2007.

No. 8 Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Bill 2007.

No. 9 Migration Amendment (Statutory Agency) Bill 2007.


No. 11 Australian Wine and Brandy Corporation Amendment Bill (No. 1) 2007.

No. 12 Liquid Fuel Emergency Amendment Bill 2007.


Question agreed to.

Rearrangement

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (9.34 am)—I move:

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

(a) general business order of the day no. 80 (Pregnancy Counselling (Truth in Advertising) Bill 2006); and

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

Question agreed to.

COMMITTEES

Standing Committees

Meetings

Senator PARRY (Tasmania) (9.34 am)—by leave—I move:

That:

(a) the Community Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Friday, 15 June 2007, from 9.30 am, to take evidence for the committee’s inquiry into the provisions of the National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2007;

(b) the Rural and Regional Affairs and Transport Committee be authorised to hold a public meeting during the sitting of the Senate on Friday, 15 June 2007, from 10 am, to take evidence for the committee’s inquiry into the provisions of the Fisheries Legislation Amendment Bill 2007 and the Fisheries Levy Amendment Bill 2007; and

(c) the Parliamentary Standing Committee on Public Works be authorised to hold a public meeting during the sitting of the Senate on Friday, 15 June 2007, from 9.30 am, to take evidence for the committee’s inquiry into the fit-out of new leased premises for the Department of Health and Ageing, Sirius Building, Woden Town Centre, ACT, and the rationalisation of ADF facilities at RMAF Butterworth, Malaysia.

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 20 June 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 21 June 2007.

General business notice of motion no. 791 standing in the name of Senator Milne for today, relating to Colombia and human rights, postponed till 19 June 2007.

General business notice of motion no. 792 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, proposing the introduction of the Peace and Non-Violence Commission Bill 2007, postponed till 18 June 2007.

General business notice of motion no. 799 standing in the name of Senator Bartlett for today, relating to the Legal and Constitutional Affairs Committee report

Postponement

Senator Nettle (New South Wales) (9.35 am)—by leave—I move:

That general business notice of motion no. 810 standing in her name for today, relating to Israel and Palestine, be postponed till the next day of sitting.

Question agreed to.

BUSINESS

Rearrangement

Senator Abetz (Tasmania—Manager of Government Business in the Senate) (9.35 am)—I move:

That:

1. On Thursday, 14 June 2007:
   (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to 11.40 pm;
   (b) the routine of business from 12.45 pm till not later than 2 pm, and from 7.30 pm shall be government business only;
   (c) divisions may take place after 4.30 pm; and
   (d) the question for the adjournment of the Senate shall be proposed at 11 pm.

2. The Senate shall sit on Friday, 15 June 2007 and that:
   (a) the hours of meeting shall be 9.30 am to 4.10 pm;
   (b) the routine of business shall be:
      (i) notices of motion, and
      (ii) government business only; and
   (c) the question for the adjournment of the Senate shall be proposed at 3.30 pm.

3. On Tuesday, 19 June 2007:
   (a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to adjournment;
   (b) the routine of business from 7.30 pm shall be government business only; and
   (c) the question for the adjournment of the Senate shall be proposed at 10 pm.

4. On Thursday, 21 June 2007:
   (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
   (b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall not be proceeded with;
   (c) the routine of business from 12.45 pm till not later than 2 pm, and from not later than 4.30 pm shall be government business only;
   (d) divisions may take place after 4.30 pm; and
   (e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed below, including any messages from the House of Representatives:
Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007
Aged Care Amendment (Residential Care) Bill 2007
Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2007
Agriculture, Fisheries and Forestry Legislation Amendment (2007 Measures No. 1) Bill 2007
Appropriation (Parliamentary Departments) Bill (No. 1) 2007-2008
Appropriation Bill (No. 1) 2007-2008
Appropriation Bill (No. 2) 2007-2008
Appropriation Bill (No. 5) 2006-2007
Appropriation Bill (No. 6) 2006-2007
Australian Centre for International Agricultural Research Amendment Bill 2007
Australian Wine and Brandy Corporation Amendment Bill (No. 1) 2007
Communications Legislation Amendment (Content Services) Bill 2007
Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007
Corporations (Fees) Amendment Bill 2007
Corporations (Review Fees) Amendment Bill 2007
Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Bill 2007
Evidence Amendment (Journalists’ Privilege) Bill 2007
Families, Community Services and Indigenous Affairs Legislation Amendment (Child Care and Other 2007 Budget Measures) Bill 2007
Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Bill 2007
Financial Sector Legislation Amendment (Restructures) Bill 2007
Fisheries Legislation Amendment Bill 2007
Fisheries Levy Amendment Bill 2007
Food Standards Australia New Zealand Amendment Bill 2007
Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007
Forestry Marketing and Research and Development Services Bill 2007
Governance Review Implementation (Science Research Agencies) Bill 2007
Great Barrier Reef Marine Park Amendment Bill 2007
Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007
Migration (Sponsorship Fees) Bill 2007
Migration Amendment (Statutory Agency) Bill 2007
National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2007
Native Title Amendment (Technical Amendments) Bill 2007
Social Security Amendment (Apprenticeship Wage Top-Up for Australian Apprentices) Bill 2007
Tax Laws Amendment (Simplified GST Accounting) Bill 2007
Veterans’ Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007
Wheat Marketing Amendment Bill 2007


Question agreed to.

LOBBYING AND MINISTERIAL ACCOUNTABILITY BILL 2007

First Reading

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.36 am)—I move:

That the following bill be introduced:

A Bill for an Act to provide for the disclosure of lobbying activities intended to inform and influence members of Parliament and ministers, to make unlawful the holding and trading of shares by ministers, to regulate the post-ministerial employment of ministers and ministerial advisers, and for related purposes.

Question agreed to.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.37 am)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.37 am)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This bill aims to restore the public’s trust and confidence in the government and its Ministers and to ensure that openness, honesty and integrity form the basis of dealings between Members of Parliament and lobbyists.

In 2007, two government Ministers and one shadow Minister have resigned over issues of wrongdoing and impropriety. Former Minister for Ageing, Senator Santo Santoro, failed to disclose more than 70 share interests to the Senate or, it appears, to the Prime Minister, raising legitimate concerns about conflicts of interest with his portfolio. Four federal Liberal MPs are currently under investigation for potential electoral fraud.

There is a lack of accountability and transparency that must be addressed.

Currently accountability rests on a code of conduct issued by the Prime Minister. This is not a system the public can have confidence in—it must be put on a legislative footing.

This bill will restore confidence in government accountability by:

• Requiring Ministers to divest themselves of all shares or move them to a blind trust within 28 days of becoming a Minister;
• Requiring the public registration and regulation of lobbyists;
• Placing limits on the post-separation employment of Ministers for up to two years after leaving the Parliament.

Lobbying

The problem of influence pedalling in politics must be addressed, particularly in light of numerous scandals in Western Australia, Queensland and my home state of Tasmania.

There is no denying that lobbying is an important part of the democratic process, but it needs to be regulated to ensure openness and accountability. The existing clauses in the Ministerial Code of Conduct are demonstrably insufficient.

The register of lobbyists introduced by the Hawke Labor government could have been improved but
it was abolished by the Howard government in 1996.
To ensure lobbying activities are open and transparent, this bill will create a public register of lobbyists and regulate the industry.
The bill will require:
• all paid lobbyists to be registered and to lodge detailed information with the Commonwealth Public Service Commissioner; lobbyists to file a quarterly return of lobbying activity, with details about who they met and the purpose of the meeting;
• the Public Service Commissioner to maintain a Register of Lobbying Activity that is open for public inspection in hard copy and on the internet;
• penalties to apply for failure to abide by the lobbying laws and the Australian Crime Commission to investigate offences.
Members of the public or those lobbying in a volunteer capacity will not be covered by the laws, but the definition of lobbyists is broadly drafted to cover law firms, public relations companies and former politicians as well as professional lobbyists.

**Divestiture of Shares**
Many Ministers may hold shares and investments on appointment to office. The government has tried to limit the perception that conflicts of interest may arise from this situation by requiring Ministers, through the Code of Conduct, to divest any investments that might relate to their portfolio or move such shares to blind trusts.
Clearly that approach hasn’t worked. Any shareholding and share trading while performing Ministerial responsibilities can no longer be accepted.

Defining whether share holding and share trading are or are not related to a portfolio is often an arbitrary decision. And Cabinet decisions impact on a wide range of issues which could affect the value of a broad range of share holdings.
That is why The Greens have decided to require all shareholding by any Minister to be banned.

The inarguable fact is that Ministers should be free from conflicts of interest, both real and potential. Therefore this bill requires all Ministers divest themselves of all shares, options, futures, debentures, stocks, bonds or any like security within 28 days of taking office.

**Post-separation employment of Ministers**
Increasingly Ministerial office is a doorway to a career in big business. Too often a Minister will retire from Parliament only to take up a consultancy with a corporation directly related to their former portfolio.
Currently there is no mechanism to prevent Ministers and their advisers leaving parliament and becoming lobbyists or advisors to companies with a direct interest in matters relating to their former portfolio.
The advantage inherent in this practice distorts the lobbying process to benefit the interests of organisations with large budgets who can afford to ‘buy’ this level of influence.
The possibility and perception of inappropriate influence over future government decisions is not sustainable. It must end.
The bill will close the ‘revolving door’ between government and business.

The United States, Canada and the United Kingdom have all placed limits on the employment Government Ministers or Secretaries can undertake upon leaving office and Australia should do the same.

The bill will legislate for a two year ban on Ministers or their advisers ‘switching sides’ to represent or work for any organisation which had significant dealings with their former portfolio.
Exceptions will be allowed for charitable work and in some cases work for an international organisation, but strict penalties will apply for breaches of the law.
For too long government decisions have been influenced by lobbying and big money. For too long Ministerial responsibility has been a doorway to largesse.
For too long the public has had to endure scandal after scandal.
This must end.
The Greens believe openness, honesty and integrity are vital to a healthy democracy and the Lobbying and Ministerial Accountability Bill will ensure these values are better upheld in the Australian Parliament.
I recommend the bill to all Senators.

Senator BOB BROWN—I seek leave to continue my remarks later.
Leave granted; debate adjourned.

COMMITTEES
Community Affairs Committee
Reference
Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (9.38 am)—by leave—I move the motion as amended:
That the following matters be referred to the Community Affairs Committee for inquiry and report by 13 September 2007:
(a) the cost of living pressures on older Australians, both pensioners and self-funded retirees, including:
(i) the impact of recent movements in the price of essentials, such as petrol and food,
(ii) the costs of running household utilities, such as gas and electricity, and
(iii) the cost of receiving adequate dental care;
(b) the impact of these cost pressures on the living standards of older Australians and their ability to participate in the community;
(c) the impact of these cost pressures on older Australians and their families, including caring for their grandchildren and social isolation;
(d) the adequacy of current tax, superannuation, pension and concession arrangements for older Australians to meet these costs; and
(e) review the impact of government policies and assistance introduced across all portfolio areas over the past 10 years which have had an impact on the cost of living for older Australians.
Question agreed to.

PUBLIC INTEREST DISCLOSURES BILL 2007
First Reading
Senator MURRAY (Western Australia) (9.39 am)—I move:
That the following bill be introduced:
A Bill for an Act to encourage and facilitate the disclosure of information in the public interest, by protecting public officials and others who make disclosures, and for related purposes.
Question agreed to.

Senator MURRAY (Western Australia) (9.39 am)—I move:
That this bill may proceed without formalities and be now read a first time.
Question agreed to.

Bill read a first time.

Second Reading
Senator MURRAY (Western Australia) (9.40 am)—I move:
That this bill be now read a second time.
I seek leave to table an explanatory memorandum relating to the bill and to have the second reading speech incorporated in Hansard.
Leave granted.

The speech read as follows—
The Public Interest Disclosures Bill 2007 replaces the Public Interest Disclosure (Protection of Whistleblowers) Bill 2002. It will encourage and facilitate the disclosure of information in the public interest, by protecting public officials and others who make disclosures, and for related purposes.
This Bill has three key objectives: First, to create a framework that facilitates the disclosure of information in the public interest. Second, to create a framework that ensures disclosures in the public interest are properly dealt with. Third, to provide practical protection (including relief from legal
liability) for people who disclose information in the public interest.

The purpose of the Bill is to create an effective and transparent framework through which genuine public interest disclosures (commonly known as whistle blowing) are managed. In this way the legislation follows the life-cycle of a disclosure from initial reporting to appropriate people, through the life of the investigation and ultimately to the appropriate resolution of the issue.

It is important to note that the term ‘whistle blowing’ is not defined or used within this Bill. This is to emphasise that the focus should not be upon the person providing information (who may do so for a variety of reasons) but rather on the disclosure itself. This shift is designed to place primacy on addressing the issue raised rather than the person who raised it. This does not imply a lack of protection for those who raise the issue – quite the reverse.

With varying degrees of success, since the 1990s Australian governments at the State, Territory and Commonwealth level have sought to deal with the issue of public sector whistle blowing, and to deal with the way in which genuine public interest disclosures can be used to make public administration more effective and accountable to the Australian people. The Commonwealth public disclosure legislation has been particularly weak. This Bill creates a new framework which learns from the drafting and implementation successes and shortcomings of previous legislative frameworks at the Commonwealth, State and Territory level. This process, while not being aligned with, is indebted to the authors of the issues paper ‘Public Interest Disclosure Legislation in Australia: Towards the Next Generation’ put together by Dr AJ Brown and the State, Territory and Commonwealth Ombudsman offices. My work with Sinead Clifford and my meetings with Dr Brown and others have been particularly useful.

The initial version of the paper delivered by Dr Brown and Professor McMillan at the ‘Vital Issues’ Seminar of the Commonwealth Parliamentary Library ‘Do I Dare? Whistleblowing Laws in Australia’ Australian Parliament House, Canberra, 16 August 2006, was the prompt for this Bill. The paper systematically worked through the existing legislative frameworks in Australia and proposes best practice standards. It revealed that while there is much to be proud of within the existing framework no one piece of legislation is without its flaws.

The Public Interest Disclosures Bill 2007 is intended to be a next generation piece of legislation that deals solely with the issue of whistle blowing within the public administrative arena. It provides an effective framework which emphasises a tailored risk management strategy which will not only provide the most effective protection for genuine disclosures but also demand a clear and well set out strategy for the handling of complaints within Commonwealth public agencies for the better resolution of administrative misconduct.

Public administration and public accountability can ever only be as good as the frameworks which support them. Openness, rigour and the need for constant revision is required within public bodies to ensure they live up to the vision for which they were created: serving the Australian people.

This is not always an easy job. Remaining accountable for the wide array of services provided by the government requires a powerful range of tools to ensure that the public service remains productive and efficient. Some of the tools employed are obvious – competitive entry standards, and competitive wages and conditions. Others are more complex – such as requiring employees to keep official secrets in the public interest or requiring security clearances for certain tasks to ensure that people are trustworthy.

However, between these two levels lies a critical third level, a level which works with the others to ensure that proper procedures are followed and that maladministration, of whatever type, is uncovered. This third level is dangerously underdeveloped in Australia. This underdevelopment is bad for public administration, bad for the Australian people and bad for public officials who are twice betrayed – first by the failures these officials see within the public service and second when they themselves are punished for reporting the problems they see.

Allan Robert Kessing was one such person. In March this year Mr Kessing was convicted under the Commonwealth Crimes Act of leaking Cus-
toms reports on drug offences and security breaches at Sydney Airport. Prior to the leak the reports had not been acted upon - one had been buried for two years and was never even seen by Ministers or senior bureaucrats. Following the leak the Australian Government appointed Sir John Wheeler to conduct a review on airport security operations which resulted in an exposure of serious problems, and an extra $200m expenditure to improve aviation security. For exposing a real and immediate danger to Australians at large the system branded Allan Robert Kessing a criminal.

This highly perverse outcome occurred for two reasons – Australia does not have a proper disclosure framework in place, and the federal law states that keeping secrets is more important than the public interest.

Australia is currently missing the glue which holds together the different strands of the public service – the mechanism which not only protects people brave enough to come forward, but encourages them to come forward; the mechanism which recognises that the earlier problems are identified, the earlier solutions are found; the mechanism that ensures that those who abuse the power given to them, or who are delinquent in their duty, are uncovered and dealt with. That mechanism is this Bill, a comprehensive framework that ensures that a robust process and appropriate support exists for public officials making public interest disclosures.

I and the Australian Democrats have long been committed to and concerned with the issue of whistleblower protection in Australia. In 2001 I introduced the Public Interest Disclosure Bill 2001. Following a report on that bill by the Senate Finance and Public Administration legislation Committee, in 2002 I introduced the Public Interest Disclosure (Protection of Whistleblowers) Bill 2002 to accommodate the recommendations of that Committee.

Now, five years later, building on experience with similar legislation elsewhere, I am urging the Parliament to again look long and hard at the issue of disclosures in the public interest and at this new and reformulated Bill.

The legislation speaks to the real needs of public sector workers. When we talk of ‘implementing risk management strategies’ we are really talking about ensuring that these peoples’ worlds are not turned upside-down and that the responsibility for assisting them resides with senior people who not only have the ability to make a difference, but are required by law to act expeditiously, fairly, and in the public interest.

When we talk of protection from ‘detrimental action’ what we are really talking about is ensuring that if a person is bullied or intimidated or sacked because they reported wrongdoing then this has to be fully investigated, and that damages incurred can be recovered through meaningful legal and practical options.

This Bill is an opportunity to ensure that we provide that missing glue in public administration for the benefit of all Australians. Although the Public Interest Disclosures Bill 2007 might be seen as a sophisticated piece of legislation, it is realistic, enforceable and sufficiently flexible to provide the Australian people with the tools they need to retain confidence and pride in their public officials.

As a framework it allows public officials to make disclosures in the knowledge that these disclosures will be investigated and that they will be protected from legal liability. The types of disclosures covered are defined under ‘public interest information’ and cover matters such as improper conduct, serious breaches of the APS Code of Conduct, actions which are contrary to the Financial Management Act, misuse of public resources, or actions or omissions which imperil the security of the Commonwealth. It expressly excludes issues of private grievance and disagreements over policy.

In essence this Bill allows public sector officials to expose important mistakes and oversights which may otherwise never see the light of day.

In order to encourage and integrate a regime of candid disclosure and protection this Bill creates a robust framework whereby public sector officials know these options are open to them and that they are fully supported by senior officials as a means to ensure that problems are raised and solutions are found.

This is seen in the Bill through the creation of model procedures to deal with disclosures, to be
developed by the Commonwealth Ombudsman’s office and to be implemented by Commonwealth agencies. It also includes a range of options to inform public sector officials about their obligations and rights, such as a hotline that an official can call to receive advice. Public sector officials will also have choices open to them as to who they can make disclosures to, including a designated person within their agency who will be able to assist them.

This Bill also creates options after other options have been exhausted, for disclosures to senators and members of the Commonwealth Parliament or alternatively to journalists. However a number of criteria, which reflect best practice in Australia and the United Kingdom, are set out to ensure that this latter option is only exercised at appropriate times and in appropriate circumstances.

A disclosure may be made to a senator or member if under all the circumstances it is reasonable for the official to do so and the disclosure has already been made to a proper authority but to the knowledge of the official has not been acted upon within 6 months; or the disclosure was acted upon by the proper authority but it was not adequate or appropriate; or the disclosure concerns especially serious conduct, and exceptional circumstances exist to justify the making of the disclosure.

A public official may make a public interest disclosure to a journalist if they do not make the disclosure for the purposes of personal gain, whether economic or otherwise; and under all the circumstances it is reasonable for the official to do so and the disclosure has already been made to a proper authority but to the knowledge of the official has not been made within 6 months; or the disclosure has already been made to the proper authority or to the senator or member but to the knowledge of the public official the response was not adequate or appropriate; or the disclosure concerns especially serious conduct, and exceptional circumstances exist to justify the public official making the disclosure.

As soon as an official makes a disclosure, protective measures are implemented to support them. A risk assessment is conducted and integrated into each step of the process to minimise any impacts on the official making the disclosure. This is reinforced by the Bill’s confidentiality protections which are extended for both the public official making the disclosure and any other person who may be accused of misconduct.

The Bill also ensures that there are official mechanisms for officials to remain informed during the investigation process. The public official must be given a progress report 3 months after they made the disclosure. They also have the right to request progress reports at any time. When a decision is made regarding the disclosure the official must be told what the outcome was and the reason for the outcome. If the investigation is discontinued for any reason the worker must be informed of the reason why and also informed that the Commonwealth Ombudsman was notified that the investigation was halted. The Ombudsman then has the power to investigate this decision.

This Bill has also created powerful protections for public sector workers who make disclosures. The first line of defence lies with the head of the agency who is directly empowered to take all reasonable steps to ensure that their employees are protected from detrimental action and must take action if any victimisation occurs. If any detrimental action is suffered it must be reported to the Ombudsman for investigation. The Ombudsman then must take all reasonable steps to ensure that action is taken to remedy the situation, including utilising the unique legal options created in this Bill.

The legal options set out in this Bill are uniquely tailored to public interest disclosures and have been developed as best practice from both the Australian and United Kingdom experience. These legal options can be exercised by either the individual affected or by the Ombudsman.

Civil legal action can be taken by anyone who is affected by detrimental action. This victimisation can be suffered by the person themselves or their friends, relatives and colleagues and may even include a person who is wrongly targeted as the person who made the disclosure. Reflecting best practice, the evidential burden has been shifted to the defendant who must demonstrate that the detrimental action was not taken because a public interest disclosure had been made.
Similarly the Bill contains an injunction clause which is designed to ensure that action can be taken as soon as possible to stop this victimisation and stop the damages accruing at the first possible point.

While this legislation rigorously defends public sector officials it is not a naïve Bill. It has been carefully crafted to ensure that unworthy causes cannot be pursued in the name of good public administration and that there are sufficient safeguards to weed out the inappropriate use of the complaints procedures. This is seen through the powers of proper authorities to stop investigating trivial or vexatious matters or matters which do not have a sufficient evidential basis. Similarly if any person provides false or misleading information they could face significant fines or a maximum gaol time of two years. A review mechanism has also integrated review mechanisms to ensure that after three years the framework will be re-analysed so that it too can be refined and reviewed.

I have taken the time to develop this piece of legislation to ensure that federal public sector whistle blowing in Australia does not remain the burden it currently is on officials with a conscience and a genuine issue that needs disclosure. The Bill seeks to ensure that from the outset the potential risks to the individual are considered and integrated into each step of the process, and to know that at each step of the way the individual has a number of different options available to them. It intends that at each step of the way officials have a number of support networks to utilise, whether that be within their own agency, the disclosure hotline, or even the Ombudsman or Public Service Commissioner.

This framework is designed to recognise that genuine public sector whistleblowers do us all a favour when they disclose these problems and for that they should receive our unmitigated support not a gaol sentence. This is an essential Bill. It should be passed, in the public interest, and for the greater good.

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

Leave granted; debate adjourned.

**PAID MATERNITY LEAVE**

Senator NETTLE (New South Wales) (9.41 am)—I, and also on behalf of Senator Stott Despoja, move:

That the Senate—

(a) notes that Australia and the United States of America are the only two Organisation for Economic Co-operation and Development countries without a national paid maternity leave scheme;

(b) congratulates marie claire for its ‘Push It’ campaign calling for mandatory paid maternity leave; and

(c) calls on the Government to legislate for government-funded paid maternity leave.

Question put.

The Senate divided. [9.45 am]

(The Deputy President—Senator JJ Hogg)

Ayes......... 7

Noes......... 50

Majority....... 43

**AYES**

Allison, L.F. Brown, B.J. Murray, A.J.M. Siewert, R. *

**NOES**


**Paid Maternity Leave**

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Question put.

The Senate divided. [9.45 am]

(The Deputy President—Senator JJ Hogg)

Ayes......... 7

Noes......... 50

Majority....... 43

**AYES**


**NOES**

Question negatived.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.48 am)—by leave—Family First acknowledges that the issue of maternity leave is an important one not only for Australian mothers but for all women and Australian families. For this reason Family First believes it is important to have a full debate on paid maternity leave. It is more complex than a simple yes or no; we need a full debate before we make any decision on that.

GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.49 am)—I move:

That the Senate—

(a) notes that:

(i) the Global Fund to Fight AIDS, Tuberculosis and Malaria was established in 2002 to provide necessary funding for international programs to deal effectively with these diseases,

(ii) HIV/AIDS, tuberculosis (TB) and malaria are diseases that affect disproportionately more people who live in poverty, particularly in the Asia-Pacific region,

(iii) more than 6 million people die from these diseases each year, and despite rapid increases in treatment, only one-fifth of people with HIV who need anti-retroviral treatment are receiving it,

(iv) TB is a leading killer of people infected with HIV, however, with the proper treatment of TB, this can prolong the lives of people with HIV by years and at a very low cost,

(v) the Global Fund has received $US6.7 billion since its inception but reports that significantly more is required in order to adequately combat HIV/AIDS, TB and malaria,

(vi) Australia’s past contribution to the Global Fund totals $AUD55 million and in the 2007-08 Budget the Government indicated it would allocate a further $AUD45 million,

(vii) by 2010, Australia’s fair share of support for the Global Fund is calculated by RESULTS Australia and other international non-government organisations to be $AUD220 million per year, and

(viii) at the recently concluded G8 meeting, world leaders promised $US60 billion to fight HIV/AIDS, TB and malaria over the next few years, which includes a $US30 billion commitment from the United States of America to fight HIV/AIDS over a 5-year period;

(b) urges the Australian Government to support the G8’s commitment to the fight against HIV/AIDS, TB and malaria by realising its fair share of funding for the Global Fund; and

(c) urges the Australian Government to make a 4-year commitment to the Global Fund of $AUD640 million.

Question put.

The Senate divided. [9.51 am]

(The Deputy President—Senator JJ Hogg)

Ayes............. 7

Noes............. 50

Majority........... 43

AYES

Allison, L.F.  Brown, B.J.  Murray, A.J.M.  Siewert, R. *

Bartlett, A.J.J.  Milne, C.  Nettle, K.

CHAMBER
Question negatived.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.54 am)—by leave—Family First, and I am sure the other parties, agree that, in principle, AIDS, tuberculosis and malaria account for huge numbers of deaths each year and that we should be doing more, and we should also be increasing funding. But to put a dollar value on it and a motion that is either ‘yes’ or ‘no’ is ridiculous. That explains Family First’s position.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.55 am)—by leave—The very nature of that motion is its specificity, and the agreement globally made, which our country should be stepping up to, because it supported it, for the work required to turn around the scourge of these diseases. If Family First cannot get itself around that global agreement, then that is its responsibility. It should do its homework.

RENEWABLE ENERGY

Senator MILNE (Tasmania) (9.56 am)—I move:

That the Senate—
(a) notes that:
(i) renewable electricity generators face significant barriers to entry into the electricity market,
(ii) households selling electricity into the grid are typically paid low prices that do not fairly reflect the value of zero emission, distributed energy,
(iii) ‘feed-in’ tariffs have secured market incentives, driving an unprecedented expansion of the renewables industry in several European nations, and
(iv) policies such as feed-in tariffs and renewable energy targets are intended to foster emerging industries to ensure that deep cuts in greenhouse gas emissions can be achieved in the medium- and long-term; and
(b) calls on the Government to reject the recommendation of the Prime Ministerial Task Group on Emissions Trading that, ‘All Australian schemes that set mandatory targets for deployment of particular technologies should be wound up over time, and new ones forestalled’.

Question put.

The Senate divided. [9.57 am]

(The Deputy President—Senator JJ Hogg)

Ayes………… 8
Noes………… 50
Majority……… 42

AYES

Allison, L.F. Bartlett, A.J.J.
Brown, B.J. Fielding, S.
Milne, C. Murray, A.J.M.
Nettle, K. Siewert, R. *
That the Senate—
(a) notes:
(i) the imprisonment since November 2005 by the Ethiopian Government of members of the main opposition party, representatives of civic organisations and the banned free press, and
(ii) these prisoners are declared by Amnesty International to be prisoners of conscience; and
(b) urges the Government to make representations to the Ethiopian Government asking for the release of these prisoners of conscience, and to accept the results of the 2005 democratic election.

Question negatived.

Senator Bob Brown—Mr Deputy President, I ask that the Australian Greens support for that motion be recorded.

Senator Fielding—Mr Deputy President, I ask that Family First’s support for that motion be recorded.

The DEPUTY PRESIDENT—That will be done accordingly.

BUDGET
Consideration by Estimates Committees
Additional Information

Senator PARRY (Tasmania) (10.02 am)—On behalf of the Chair of the Senate Standing Committee on Community Affairs, I present additional information received by the committee relating to the hearings on the additional estimates for 2006-07 and the budget estimates for 2007-08.

ABORIGINAL LAND RIGHTS
(NORTHERN TERRITORY)
AMENDMENT (TOWNSHIP LEASING)
BILL 2007

FINANCIAL SECTOR LEGISLATION
AMENDMENT (RESTRUCTURES)
BILL 2007
HIGHER EDUCATION LEGISLATION AMENDMENT (2007 BUDGET MEASURES) BILL 2007

First Reading

Bills received from the House of Representatives.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (10.02 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 ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (10.03 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—

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT (TOWNSHIP LEASING) BILL 2007

The purpose of this Bill is to establish an office of Executive Director of Township Leasing to hold 99 year leases over townships on Aboriginal land in the Northern Territory.

In February 2005, the Northern Territory Government proposed that the Australian Government amend the Northern Territory Aboriginal Land Rights Act last year to enable Aboriginal people to have the same opportunities as other Australians living in towns.

Traditional owners of the town of Nguiu on the Tiwi Islands in the Northern Territory have in principle agreed to arrangements for a 99 year lease of the township. The formal grant will proceed once the statutory processes of the Land Rights Act have been completed.

A senior traditional owner of Nguiu said: “We will now be legally entitled to play a direct role in the administration and development of our town, now and into the future. We have not been in that position since Nguiu was first established nearly 100 years ago”.

Negotiations for other township leases are under way and it is expected that further leases will be agreed in the near future.

It was the Government’s understanding that the Northern Territory Government would establish an entity to hold township leases, issue sub-leases, collect rent and administer township leases. However, this has not yet occurred.

The Land Rights Act contains provisions allowing the Commonwealth to establish an entity to hold township leases. These provisions were inserted into the amendment bill last year to anticipate the possibility that a Northern Territory Government entity would not be in place when the first township lease was ready to be granted.

The Government is therefore acting to establish a mechanism through which the Commonwealth can hold and administer township leases. The Bill allows for the appointment by the Governor-General of an Executive Director of Township Leasing for a term of up to five years. The terms and conditions of the Executive Director would generally be set by the Remuneration Tribunal. The Bill allows for the termination of the appointment of the Executive Director by the Governor-General in certain circumstances.

The Bill provides that the Executive Director would be assisted by Departmental officers as well as consultants engaged by the Executive Director. The Bill also contains reporting requirements for the Executive Director.

It remains the Government’s view that township leases would best be administered by the North-
The amendments made to the Northern Territory Land Rights Act last year allow for the transfer of township leases from the Commonwealth to the Northern Territory. Accordingly, the Bill provides for the repeal of the provisions related to the Executive Director if and when township leases held by the Commonwealth are transferred to an entity established by the Northern Territory Government.

FINANCIAL SECTOR LEGISLATION AMENDMENT (RESTRUCTURES) BILL 2007
This Bill will facilitate the adoption of a non-operating holding company as the ultimate holding company of a financial group in Australia.

This Bill will provide greater flexibility for financial groups in choosing a corporate structure to manage their risk exposures and comply with prudential requirements. The Bill will also provide financial groups with the opportunity to improve their business efficiency and international competitiveness. As a result, the Bill further enhances prudential regulation of the financial sector in Australia to the benefit of both consumers and business.

Adopting a non-operating holding company at the head of a financial group can allow the group to more efficiently and effectively meet prudential requirements. This is because it enables the appropriate allocation of risk between prudentially and non-prudentially regulated businesses of a financial group through organising different types of activities into separate business lines. This can aid in partially quarantining risks in the various parts of a financial group, for example, through separating entrepreneurial investment activities from a group’s banking operations.

Since the Government’s reforms to the Banking Act in 1998, banking groups headed by a company which is an authorised deposit-taking institution have had the option of substituting a non-operating holding company at the top of the group. However, financial sector transfer, income tax and some corporate laws have acted as a disincentive to restructuring because they do not treat the restructuring as merely an internal rearrangement which in economic substance, it is.

The Bill amends the Financial Sector (Transfers of Business) Act 1999 by introducing a new part dealing with restructures.

An authorised deposit-taking institution, general insurer or life insurance company will be able to apply to the Minister for approval to restructure a group headed by one of these prudentially regulated entities. The Bill will provide the Minister with the power to approve and grant consequent relief from specific statutory restrictions in the Corporations Act which currently impede the adoption of a non-operating holding company structure. The relief will be set out in a restructure instrument issued by the Minister.

The Minister will also be provided with the power to approve the transfer of assets and liabilities between two bodies of a financial group to allow for the reorganisation of different types of activities into separate business lines. For example, such a reorganisation could allow a group to separate its banking and non-banking businesses.

Any relief allowed by the Bill will be limited to nominated specific restrictions in the Corporations Act and does not in any way relieve an entity from meeting its general obligations under that Act and other relevant legislation.

The Bill also makes consequential amendments to the consolidation membership rules, the franking rules and the capital gains tax regime in the income tax law. These amendments remove tax impediments that would otherwise discourage restructuring.

Full details of the measures in this Bill are outlined in the explanatory memorandum.

HIGHER EDUCATION LEGISLATION AMENDMENT (2007 BUDGET MEASURES) BILL 2007
The Bill amends the Higher Education Support Act 2003 (HESA) to provide for the Australian Government’s 2007-2008 Budget commitments.

This Bill will fundamentally reshape the higher education landscape. The era of universities being forced into a ‘one-size-fits-all’ model is now over. These reforms will allow more world class
universities to emerge and encourage excellence and specialisation in the sector.

This Bill will amend the Act to simplify university funding structures and give universities greater scope to adjust their student numbers and course mixes to respond to student demand and address skills needs.

It also provides for the creation of the new Diversity and Structural Adjustment Fund for universities. The Fund will give more support for structural reform and promote greater specialisation, diversity and responsiveness to local labour market needs.

Through the Fund, the Australian Government will allocate $209 million over four years to universities that can identify strategies to better meet student and employer demand. The Fund will particularly focus on addressing the capacity of universities to meet local labour market needs.

Institutions could use the funding to diversify, specialise their disciplines, build on existing dual sector activities, respond to local labour market needs, or provide learning and teaching enhancement projects. Priority will be given to universities in regional areas and smaller metropolitan universities which can demonstrate the greatest need for structural reform and the greatest input on local labour markets. $67 million in new funding will be provided to universities through the Diversity and Structural Adjustment Fund.

This Bill simplifies university funding structures and provides additional funding for key disciplines in areas of skills need. Funding for the Commonwealth Grant Scheme will be increased for particular disciplines and the number of clusters will be reduced from twelve to seven.

The revised cluster funding model addresses key pressure points identified by the sector in the recent review of the Higher Education Support Act 2003.

This Bill will deliver funding increases in 2008 for Mathematics and Statistics, Allied Health, Engineering, Science and Surveying, Clinical Psychology, Education, Nursing, Behavioural Science and Social Studies and Medicine, Dentistry and Veterinary Science.

Reflecting the higher salaries that business graduates expect to receive over a lifetime, the maximum student contribution for accounting, administration, economics and commerce units and the Commonwealth Grant Scheme subsidy will be aligned with law. It will be a decision for each institution as to whether it raises the student contribution for the disciplines. The change will affect students who commence studying at higher education providers in 2008. Students studying prior to this date will be able to continue under the existing arrangements until the end of 2012. Universities will be compensated during the transition period.

This Bill will also introduce three-year Commonwealth Grant Scheme funding agreements from 2009. Institutions that finalise a three-year agreement during 2007 will be able to take advantage of this arrangement from 2008. The new three-year terms replace the current one year terms and give Australian universities better scope to plan for the future and also cut down on administrative costs. The agreements will reflect improved requirements for governance, financial accountability, quality and data reporting.

This Bill will also provide for the relaxation of caps on Commonwealth supported places and domestic full fee paying undergraduate student places.

For Commonwealth supported places, Table A and B providers will be provided with full additional funding for over-enrolments of up to 5% of funding, up from the current discretionary allowance of 1%. There will be no penalties for over-enrolments above 5% and universities will receive the full amount of student contributions from all Commonwealth supported students they enrol. The current arrangements which guarantee that there will be no Commonwealth Grant Scheme funding penalties for universities which under-enrol by up to 1% of funding will be continued. Funding will automatically reduce for under-enrolments beyond the first 1% of funding. However, a new minimum funding guarantee will mean that there will be no Commonwealth Grant Scheme funding reductions for under-enrolments beyond 5% of funding.

This Bill removes the caps on the proportion of domestic full fee paying undergraduate places in
each course. Universities, however, will still be required to offer their Commonwealth supported places in a discipline cluster before offering full-fee places.

With unmet demand for a place at Australian universities at historically low levels, and further new Commonwealth supported places to be funded in 2008, the additional flexibility will mean that students who are able to complete a course will generally not be prevented from going to university by caps on places. Relaxing the caps on university places will allow universities greater flexibility to change their course mix and student numbers. The reforms will support greater diversity and specialisation in the sector and will encourage the emergence of more world class institutions.

Through this Bill, the Australian Government is also increasing the number of Commonwealth Scholarships available and extending their coverage. The number of existing Commonwealth Scholarships will be increased from around 8,500 to 12,000 at a cost of $91.4 million over four years. Two thousand of the new scholarships will be available to students who may not otherwise qualify for a higher education place, to study two-year associate degrees as a pathway to full degrees. This is over and above the additional Commonwealth Scholarships being provided to Indigenous students.

Participation rates for students in rural and regional areas have been largely unchanged over the last decade. These additional scholarships will provide more help to students who really need it.

The current administrative arrangements will also be changed to ensure that scholarships are offered before or at the same time students are offered a place. This will help students make better informed decisions about which offer to accept. Scholarship funding will now be paid directly to the student by the Australian Government.

The increased number of scholarships will help to build the nation’s skills base for the benefit of our future prosperity. This measure is further evidence of the Australian Government’s commitment to making the Higher Education sector more responsive to student demand by making a university degree even more accessible for students.

To improve higher education access for Indigenous people, the Australian Government has created a new access scholarship. $27.7 million will be provided annually for up to 1,000 Indigenous higher education students, particularly those who need to relocate from rural and remote areas, to receive a one-off payment of $4,000 to take up an undergraduate or enabling course. These students will also be eligible to receive Commonwealth Scholarships to assist them with their accommodation and education costs.

This Bill also provides an additional $77 million to universities over the next four years to improve teacher education programmes so that all three and four year bachelor degree teacher education students receive a minimum of 120 days in-school teaching experience, and meet new entry level teaching standards.

The Australian Government has made an unprecedented investment in higher education through the 2007-08 Budget package. This package builds on the Our Universities: Backing Australia’s Future package which provided an additional $11 billion to the sector over 10 years from 2004.

This Bill will promote a more diverse and internationally competitive sector, with both specialised and broader institutions. Together with the landmark ongoing $5 billion Higher Education Endowment Fund, provided from the 2006-2007 Budget surplus, this Bill will promote excellence and quality in Australian universities for years to come. It will provide a more flexible framework for universities to meet the needs of students and employers and additional funding to improve access to tertiary education. I commend the Bill to the Senate.

Debate (on motion by Senator Abetz) adjourned.

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

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

Senator PARRY (Tasmania) (10.04 am)—by leave—at the request of the Chair of the Senate Standing Committee on Employment, Workplace Relations and Education, I move:

That business of the Senate orders of the day nos 1 and 2, relating to the presentation of reports of the Employment, Workplace Relations and Education Committee on workplace relations bills, be postponed till a later hour.

Question agreed to.

Consideration of Legislation

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (10.05 am)—I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Tax Laws Amendment (Simplified GST Accounting) Bill 2007
Wheat Marketing Amendment Bill 2007

Senator O'BRIEN (Tasmania) (10.05 am)—The opposition does not support exempting the Wheat Marketing Amendment Bill 2007 from the cut-off so I therefore move:

Omit “Wheat Marketing Amendment Bill 2007”.

The reason that we demur on this issue is fairly simple. The government prepared a statement as to the reasons for exempting the Wheat Marketing Amendment Bill 2007 from the cut-off, and that statement essentially indicates that one of the issues in the bill is urgent—that is, the issue of extending the provision that was introduced into the wheat-marketing legislation last December to transfer the power of veto over bulk exports from AWB International to the Minister for Agriculture, Fisheries and Forestry, Mr McGauran. Frankly, that aspect of the bill is the least controversial of any of the provisions in the bill. This is a bill which, I was just informed, has only this morning been introduced into the House of Representatives. This is a bill which, I was informed by a variety of grower organisations, as of yesterday had not been seen by the grower community. This is a bill which introduces a number of measures relating to the powers of the minister to direct the Wheat Export Authority, as it will be known until October, to acquire and to provide information. This is a bill which deals in part with powers relating to the Wheat Export Authority. There are powers contained in the bill which as yet I have not seen—and, more importantly, which growers have not seen.

So we are being asked today to guarantee the passage of this bill in these sittings, a bill which at the time we are debating this motion has not been seen by either the opposition or those who are affected by it. The government have had months and months to deal with this issue. Quite frankly, they could have, at the beginning of this fortnight of sittings, introduced a bill which would have simply dealt with the extension of the existing power of the minister for agriculture to exercise the veto over applications for bulk exports. That was introduced by the government in December last year and it was not opposed by the opposition. But the government chose to introduce a sunset provision in that to expire on 30 June. What that aspect of the bill requires is a simple mechanism to change the date of the sunset provision—if that is what the government’s intention is. I would have thought it unlikely that the government would support—and certainly the opposition would not support—the return of the veto power to the AWB in any form. So I wonder why the government could not at a much earlier date have simply, as a stopgap measure, transferred the veto power to the
minister. As I said, there are a number of other provisions of significant interest to growers and their representative organisations in this bill. These provisions have not been seen by these organisations and have not been seen by the opposition. These provisions cannot be clearly understood until the words in the legislation are properly before us. Yet what the government are saying is, ‘We want to ram through a provision which allows for the standing orders of the Senate to be ignored to allow this legislation to be dealt with.’

Previously this morning the government moved a motion, which was carried, which requires that the Wheat Marketing Amendment Bill be passed in these current sittings. The Wheat Marketing Amendment Bill could be passed in these sittings quite properly, and the opposition would support it, if it only contained the provision relating to the veto power—that is, the continuation of the veto power residing with the minister rather than, as the legislation currently provides, having it revert to AWB International. The opposition indicated earlier this week that we would support such a provision and that we would expedite its passage through the parliament, on the basis that we did not believe it appropriate that the veto power revert to AWB International while other matters were worked out. In relation to the other provisions in the legislation, there is no urgency. There is no reason why those measures have to be carried. There is no reason why the changes to the power of the Wheat Export Authority need to be urgently carried. There is no reason why the Uhrig provisions, as I will call them in abbreviation, which the government are seeking to introduce to change the Wheat Export Authority to the Export Wheat Commission from 1 October, are urgent and need to be dealt with prior to the grower community, their representative organisations and indeed members of this parliament having the chance to give the legislation proper scrutiny.

Last night, at the annual dinner of the National Farmers Federation, the Prime Minister spoke about the issue of the wheat-marketing legislation. To quote him as best I can, he described the coalition as a broad church. On the issue of the wheat-marketing legislation he said that the pews were on the farthest sides of the church—in other words, the split in the coalition on this issue is massive. So the government’s intention in pushing through this legislation without proper scrutiny is to achieve one thing—that is, to silence the debate within the coalition party room about the issue of the wheat-marketing legislation. It is not surprising that the coalition has been massively divided on the issue of this legislation, because the grower community has been split down the middle in terms of the legislation and the arrangements which should apply to the marketing of wheat following the AWB wheat for weapons scandal and the Cole commission. Frankly, the fact is that AWB Ltd’s reputation as the manager of the single desk has been severely damaged—and Australia’s reputation as a trader of wheat has been severely damaged by AWB. It is not surprising that we need to do something about our international wheat-marketing arrangements.

The government commissioned the Ralph inquiry, which was essentially an inquiry to collect information from growers. That inquiry went around the country and took submissions. Unfortunately, we had growers prompted by AWB with a set form of words standing up at those inquiries and reading out the form of words to say they supported the retention of the current arrangements for the single desk. Fortunately, as I understand it, those growers, when asked questions, were unable to answer questions because they had been sent along simply to say a form of words, and they were not prepared to answer
questions. I think that is not an indictment of them but rather an indictment of the organisation which put them up to represent views which were ill-prepared and self-serving to the organisation that held the single desk.

Having gone down that path, we have seen the government claim that there has been a certain outcome reported to it by the Ralph inquiry. The significant thing is that the report from that inquiry has never been made public. Not one word of it has been put on a public record in any effective way. One has to wonder if the report was indeed the basis of the government’s consideration of this matter. Why couldn’t it have been made available to the growers, the community and the parliament? Public moneys have been expended to gather the information and that information ought to have been made available to the growers. There has been too much secrecy about the way that this government has managed our international wheat-marketing arrangements and reforms thereto. This is just another example.

What could happen if my amendment were carried—and I have no doubt Senator Abetz will oppose it—is that the government could take up the opposition’s offer and introduce a piece of legislation which simply dealt with the veto power. I say again on the public record that the opposition would give all assistance possible to ensure the expeditious passage of a simple piece of legislation that dealt with the only issue, according to the government, which necessitates the urgent passage of this legislation. It was the only reason recorded in the written statement that was tabled when this motion was moved. We are quite prepared to facilitate the passage of legislation that deals with the issue that in the eyes of the government is urgent. We are not sure that there would be great damage done if it were not carried until next session, but we are prepared—and have been since before the legislation was introduced—to facilitate the passage of a bill which would achieve just that.

But what we are faced with is a piece of legislation that says much more. It is legislation that has not been examined. I have given notice that I will move to have this legislation referred to the Senate Standing Committee on Rural and Regional Affairs and Transport for reporting in August. This would enable the organisations and the growers who are affected to understand what the legislation means. We could get some information, for example, as to what the cost implications of the legislation are for growers. Nothing that has been said so far has made it clear what the measures that the government is proposing to introduce will cost growers. All of that information could be properly dealt with, and we could deal with the matter expeditiously when parliament resumes in August. The opposition believes that that is the appropriate course.

Indeed, whilst I was at the National Farmers Federation dinner last night, I talked to some growers who could see no reason why those measures needed to be rushed through the parliament this week. They thought the best approach would be for there to be an opportunity to scrutinise the legislation through the committees of the parliament. It would give growers a chance to have a look at it before it became law. They would have a say on exactly what the provisions mean. They would also have an opportunity to understand what the cost implications of the legislation would be for growers. Given that the Wheat Export Authority, which is the subject of powers in the legislation, is funded by a levy on the export of wheat, which means a levy on wheat growers, they should have an understanding of and a say in what those implications are. If the legislation proceeds the way that the government has indicated it wants it to proceed, they will not
have their say and they will not have an opportunity to develop a proper understanding.

This will be rushed through and the only reason for that is to get it off the books for the government so that it ceases to be an issue that divides the government’s party room. A government that operates on that basis with scant regard for the interests of an important community like this—the wheat growers of Australia—is a government that has lost touch with the people it purports to represent. It is an arrogant government.

This is an important issue to growers. Given the margin that growers achieve on the wheat they grow, the costs that they face in exporting that wheat are critical to an understanding of whether they are going to make a profit or a loss—depending upon the season, of course. This is a critically important issue for them. In the past, when this sort of legislation has been brought forward, an opportunity has been provided for growers to have a proper say. In addition, an opportunity has been provided for a proper inquiry to be conducted by the committee, which operates on a bipartisan basis. My experience with it—going back to 1997—is that the legislation it considers has been properly examined. Proceedings have been conducted not on the basis of politics but on the basis of the issue before it.

In this case, what the government will do by passing this legislation and proceeding down the path it clearly intends to is deny the parliament, the public and the growers an opportunity to examine legislation and have a proper say about what the legislation actually says before the parliament is forced to pass it. I urge the Senate to support the amendment that I moved. In relation to the only issue in the bill that the government says is urgent, we would facilitate the passage of legislation that dealt only with that matter. I will continue to pursue that line throughout the entirety of the dealings with this bill if this amendment is defeated.

Senator SIEWERT (Western Australia) (10.21 am)—The Greens likewise are extremely concerned about the way that this bill is being rammed through this place. The only urgency with this bill is the fact that the government need to get it off the debating agenda for the coalition. That is what the sense of urgency is. They know there is no agreement within the coalition. If they let this debate continue over the break into August—guess what!—all the coalition members who are not happy are going to put up their heads again and the debate will go on within the coalition again. This is about rounding up all the members of the coalition and making sure that they are not there—that the backbenchers are not there—causing trouble over the winter break over the wheat-marketing strategy. That is what this is about. It is not about anything else. If they were truly concerned about the future of wheat marketing in this country they would allow significant analysis and debate over this particular piece of legislation. We have not even seen it yet.

Senator O’Brien—It is 40 pages!

Senator SIEWERT—Yes. As I understand it, it is to go to the Senate Standing Committee on Rural and Regional Affairs and Transport tomorrow for some farce of a process to look at a 40-page bill that has major ramifications for the way that we sell our wheat and for the farmers and growers of Australia. How could this government treat the growers and the farmers of this country with such contempt concerning such major changes after the scandal we have seen over wheat marketing and AWB? To ram this legislation through this place in such a manner is a perpetuation of the scandal. It is burying it in secrecy. As Senator O’Brien says, we have not seen the outcomes of the Ralph
process. I have had phone calls and emails from farmers saying they are not happy with the process that is being undertaken. They have concerns about the way this is being dealt with. I think that is the tip of the iceberg. This process is designed so that nobody will get to properly analyse this legislation. Such a major piece of legislation needs adequate time for this place to analyse it, for the community to analyse it and, in particular, for growers and farmers to sit down and look at it. We have had a major breakdown in the process in our wheat marketing with AWB. Now the government is rushing headlong into another process which could have the same result if we do not look at this legislation and any problems with it. If we do not have a full debate about what the government is proposing, we could end up with the same mess we are in now.

Last time there was actually a committee that travelled around Australia and looked at wheat-marketing measures—I might add that we still ended up with the mess that we are in now. So where are we going to end up if we ram this legislation through this place without any significant review? It is mind-bogglingly incredible that the government thinks that the community is going to wear having such a piece of legislation rammed through and put in place without any transparency or review.

The Greens will be supporting an amendment to deal just with the power of veto. I do not see why it cannot wait, but if growers are saying that is what they want to see—that they want to see some level of surety there—we will support an amendment to deal just with that. But we certainly do not think there is any reason for ramming this through other than the reason that I mentioned of closing down debate in the coalition. I might add that it will cause a great deal of discontent in the community to see the way the parliament is being treated with such contempt. We are not even being allowed to make any comment. For any inquiry that we have tomorrow, if that is what is going to happen, nobody will be able to look at a bill of 40 pages. We will not even be able to look at a bill of 40 pages, because we are stuck in here until 11 o’clock tonight dealing with other legislation. Then they expect people to start looking at it and reading it properly tomorrow! That is an absolutely ridiculous notion.

The Greens do not support the government’s move to exempt this from the standing orders. We will support an amendment whereby the power of veto is considered, but we certainly do not support this bill being treated in this manner and we do not support the contempt the government is showing for this place and, more importantly, the community and growers, who are not going to have a say in a piece of legislation that fundamentally affects them and their futures. The government is treating this community with contempt.

Senator BARTLETT (Queensland) (10.26 am)—The Democrats also support an amendment to ensure that the cut-off motion is not applied to the Wheat Marketing Amendment Bill 2007. We all know the politics behind the wheat-marketing issue and the legislation and differing views there. As Senator O’Brien said, it is not just a matter of a split within the government; there is a split within the grower community. That is fine; people are entitled to have differing views. But that in itself I think highlights how completely inappropriate it is to railroad through some very significant changes without any examination at all. This is not just a matter of extending the veto further—that is not something that the Democrats have a problem with as an interim measure. But we all know that that could have been done ages ago. What we simply have here is the fact that it took the government until right now to get their act together to figure out what they
were going to do. They could not get it together until right now and they are saying to us, ‘Well, we’ve left it till one minute to midnight to introduce legislation. It has got to be passed by midnight. So put it through.’ That would be acceptable if it just dealt with the veto, but, as Senator O’Brien and others have said, it does not. That is not just contemptible of the Senate; it is, even more concerning, contemptible of the growers, who are obviously directly affected by this and seriously concerned.

It is important to emphasise what the Senate is actually debating here. We are not debating the pros and cons of changes to the wheat-marketing arrangements; we are talking about the process by which the Senate deliberates on changes to that process and changes to those laws. We are not just forcing a vote on determining a political position. It is not just some motion expressing an opinion; we are talking about changing the law here that directly affects wheat growers throughout Australia.

The Senate and the public should be reminded of the whole purpose of the cut-off motion—standing order 111. The original genesis goes back to my Queensland Democrat predecessor, Michael Macklin, in the 1980s. It was not a specific attempt to constrain this government; it was brought in and supported by the then opposition coalition parties as an initiative of the Democrats to try to prevent precisely this sort of thing where governments, because they have control over the order of business in the Senate, would introduce legislation and then immediately try and bring on debate and force the Senate to deal with it straight away or force the Senate to go through the problematic process of actually forcibly adjourning it. So standing order 111 was put in place. It is an automatic procedure to ensure that legislation only just introduced cannot be brought on straight away for debate unless the Senate agrees. That was the whole purpose of it. It was specifically to prevent abuses like this where we have legislation being introduced one day and are immediately told, before anybody has even examined it, that we have got to agree to debate it straight away or within the next week.

That is clearly an abuse of Senate process. It is yet another example of this government’s misuse of its Senate majority and its willingness to pervert Senate process. As I said yesterday in relation to a different matter, the problem here is not just in relation to what it might mean for wheat growers if we pass legislation that is not properly scrutinised; it is what it means with the precedent it sets and the standards it sets in the way the Senate operates. We will have, apparently, a Senate committee inquiry of sorts tomorrow—or a hearing of some sort, perhaps—but any form of attempt to have even a half-rushed look at this legislation before debating it within the space of a week will simply bring the Senate committee process into disrepute. That is already a problem, as I flagged yesterday—people are becoming less and less interested in participating in Senate committee processes when they are so rushed that they believe they are a farce. So we are in this catch-22 situation where, even if we do try and look at it, we will be running the risk of discrediting the whole system by engaging in a process that cannot possibly do justice to the issue before us.

So this is a serious issue that goes beyond the merits of the various arguments about what happens with wheat marketing. It is about abuse of Senate process. This is precisely the thing I can recall warning about before the last election, clearly unsuccessfully—that there was a risk that the government could get control of the Senate and that, if they did, inevitably, as with any government, not just this one, they would abuse that power. Despite the Prime Minister’s prom-
ises after that eventuated, after the election, that he would not abuse that power, there is now a long list of abuses of that power. This is just another one. And it is quite a serious one, I might say.

Let me repeat, before I conclude, what is actually being put forward here by the government. It is that a piece of legislation that makes significant changes to wheat-marketing arrangements, far beyond just extending a bit further the existing veto power, is to be required to be debated within a week of the legislation appearing, within a week of anybody having a chance to look at it—not just us, the legislators, but, more importantly in many respects, the people who are directly affected. That is contemptuous of all wheat growers, whatever their perspective on what should happen with the single desk and everything else. It is a serious problem. It is a serious contempt of the Senate. It is a degrading of the parliamentary process. It is something that people really need to pay attention to because it is and should be a clear part of the issue at the upcoming election. We can all campaign on what we think should happen with the single desk. We can all campaign on workplace relations. We can all campaign on tax. We can all campaign on all those things. But the key issue beyond just who ends up getting in government is how the parliament is going to operate after the next election in scrutinising whoever gets into government. If we have a Senate that is perverted and degraded to the level that it has been dragged down to in the last couple of years—if that continues and becomes the norm for another three years after the next federal election—then I fear the public’s already very low esteem for politics and the parliament will be plunged down to perhaps irretrievable levels.

Going back to the particular motion before us, the Democrats do not believe the Wheat Marketing Amendment Bill should be exempted from the cut-off order, for the reasons I have stated. Any sort of spin that says the Senate is trying to hand powers back to AWB is simply misleading all speakers. I will add the Democrats’ commitment to this as well. We have indicated that we are quite prepared to support a very simple piece of legislation that extends the veto for a short period of time and does nothing else. But it is crucial that these other mechanisms that are in here are properly scrutinised. Let me repeat the point that we are looking at changing laws. And we all know that, once laws are changed, it is often quite difficult to then un-change them. Certain procedures get put in place, people adapt to what is put in place, for better or worse, and then you have to look at how you fix up any problems, even unintended consequences and problems that have not been thought through because it was rushed. We have all seen that time and time again. We have been dealing with legislation just this week. It is not politically contentious but we were just fixing stuff-ups because we rushed it through too quickly the time before. This is not just about politics and party positioning and that sort of thing. It is about doing our job properly, which is something I think we need to remind ourselves of occasionally—actually ensuring that the laws we pass do what we think they are going to do. The people who are most likely to know what the real effects are going to be are the people who work in this area, who live with it day in, day out, which is virtually none of us—I know there are a few wheat growers in the Senate, but virtually none of us. They have a better idea than anybody of what the effects of changes like this—

**Senator Sandy Macdonald**—And we’re very happy with them!

**Senator BARTLETT**—You are speaking for the entire wheat-growing community there, are you, Senator Macdonald?
Senator Sandy Macdonald—You’re saying none of you are happy; I’m saying we’re happy.

Senator Bartlett—that’s very good; we will take your word for the whole thing and railroad it through because you are happy with it. That sounds like good process to me—not! Anyway, the point is that it is as much about process as it is about what happens specifically and what people’s policy views are on the wheat industry. Senator Macdonald may have had an inside view on all of this, and looked at it in detail—and I am glad he is happy about it—but I think there are a full range of people we should hear from. The simple fact is that making significant extra changes without properly scrutinising, without properly consulting the full range of people who are affected, really presents some problems.

Senator Murray (Western Australia) (10.36 am)—I will not detain the Senate for long, but I want to speak to this issue because it is a vital matter for Western Australia, which, as everyone in this chamber knows, is by far the largest supplier of our export wheat market. Firstly, I indicate my very strong support for the veto extension whilst this matter is resolved and for that veto to remain in the hands of a government minister and not to be returned to AWB; and, secondly, I indicate my very strong support for this matter being properly considered by a Senate committee. I understand that the proposal of the Labor shadow minister is to excise the veto power consideration and get that done urgently, which I know our party would be interested in supporting, and then to have an opportunity to review the other matters.

I took the trouble to go to a couple of very large meetings of farmers in WA and I closely observed the attitudes and beliefs of those farmers. As is typical in very large meetings, those who spoke were those who had most courage or most conviction or the most public opinions, but those who did not speak—the vast, silent majority—needed careful appraisal. My considered opinion, as a student of politics and of the industry concerned, is that the vast majority do not want to retain a single desk and do not want to move to full deregulation; they want a regulated, licensed market where they have choice of export facility.

I also want to express my surprise at the government continuing to consider the absolutely contrary policy of a single desk in the wheat market. Liberalism, and I mean small ‘l’ liberalism, has at its heart a belief in the market. It has at its heart a belief in choice. It has at its heart a belief in free trade—governed, of course, by proper rules and regulations. That does not preclude careful licensing and control. Every day I hear the Prime Minister in question time going on endlessly about choice—choice of industrial agreements, choice in the marketplace and choice in every sector of our economy and society. That is the mark of a free society—that you do have choice—and to deny the farmers of Western Australia choice in who exports their product is a disgraceful approach to modern market economies. Members and senators ranging from the Australian Greens and the Australian Democrats through to numerous members of the Liberal Party and numerous members of the Labor Party support choice being available in this marketplace. I am deeply disappointed that the single desk is likely to be retained, but I recognise the political reality that time is needed whilst the matter is more fully worked out.

I put on the record my support for the efforts of Liberal senators such as Senator Judith Adams, members of the House of Representatives such as Mr Wilson Tuckey, and many others whom I will not name in seek-
ing to introduce true liberal values into this market, to do away with the single desk and to allow wheat exporters choice, even in a licensed and regulated fashion. In my view that would be the best way to go. I strongly urge that the Senate consider favourably Senator O’Brien’s suggestion, which is to deal with the veto extension expeditiously and to review the other matters carefully over time in a Senate committee.

I put on the record my very strong belief in an open market and my belief that the Western Australian wheat farmers should be allowed choice in the matter of who exports their product and not be forced into a single-desk situation. The situation is quite extraordinary given that those political and industrial forces driving it are mostly, in my view, domestic producers of wheat and operate in a completely open market. The domestic producers of wheat over in the eastern states who do operate in an open market are busy trying to tell our exporters that they have to operate in a closed market. It is the most extraordinary inconsistency, and I know that at the heart of the Liberal Party there is great dissension on this matter. My vote goes with those who want an open, modern market situation to prevail and not a closed anachronism, which is what the single desk is.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (10.42 am)—The government opposes this amendment. The issues that have been canvassed indicate that the current veto arrangement sunsets on 30 June. I do not think there is any objection that we need to deal with that. The other parts of the legislation are basically nuts and bolts and a degree of process in light of Uhrig and a few other issues. All of the speakers could not help themselves but refer to what I consider to be the ludicrous proposition that there is ongoing division in government ranks. If we were to accept that as the reason we do not want an inquiry—and I do not accept that that is the case—then it stands to reason that the Labor Party, Greens and Australian Democrats want an inquiry in order to see this alleged split continue to fester.

If you want to impute motives to our side, I suggest that you think about it because your own motives will be exposed as well. The very fact that you raise this as an issue exposes the fact that you are not interested in the true welfare of the wheat growers of this country but that you are trying desperately to get a crack in the government on this issue. Can I disappoint you all by indicating that there is no crack; we stand united on this issue for the reasons I have briefly outlined. I will not detain the Senate any further. We believe that this legislation should proceed and that is why we oppose the amendment.

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

The Senate divided. [10.49 am]

(The Acting Deputy President—Senator C Moore)

Ayes………… 31
Noes………… 33
Majority…… 2

A Y E S

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Carr, K.J.
Conroy, S.M. Crossin, P.M.
Faulkner, J.P. Fielding, S.
Forshaw, M.G. Hurley, A.
Hutchins, S.P. Kirk, L. *
Ludwig, J.W. Landy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. Milne, C.
Moore, C. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Ray, R.F. Sherry, N.J.
Siewert, R. Stephens, U.
Sterle, G. Webber, R.
Wortley, D.
Senator Stott Despoja did not vote, to compensate for the vacancy caused by the resignation of Senator Ian Campbell.

Question negatived.

The ACTING DEPUTY PRESIDENT (Senator Moore)—I note that it should be Prime Minister Howard.

Senator CARR—It probably would be. I noticed that on the list of bills here today there are a series of pieces of legislation being referred to, usually in the conventional form—that is, by a direct description of the bill, for instance: Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2007; Agriculture, Fisheries and Forestry Legislation Amendment (2007 Measures No. 1) Bill 2007; Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Bill 2007; and Migration Amendment (Statutory Agency) Bill 2007. These are bills that tell us what the legislation is about, whereas this particular bill, the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment (2007 Budget Measures) Bill 2007, has this Orwellian description attached to it, which is increasingly occurring in this department. It is supposed to be some symbol of modernity, but it reduces our legislative program to a propaganda sheet whereby the government seeks to insert a political message into the title of a piece of legislation. Frankly, this is a very retrograde step. I wish to draw to the attention of the chamber that this is happening increasingly within this department, whereby the brave new world has very much come to the Department of Education, Science and Training.

This bill amends provisions relating to the Investing in Our Schools Program and provides funds for other school programs—capital funds for non-government schools and the Literacy, Numeracy and Special Learning Needs Program. Investing in Our Schools provides small targeted capital grants directly to government schools as well as non-government schools. In her second reading speech on this bill, the minister, Ms Bishop, noted that the Investing in Our
Schools Program had proved to be very popular. She said the reason for that was that additional funds were to be appropriated. What she failed to mention was that for government schools this is the case, but not for the non-government schools, where there is in fact a new and lower cap that has been placed on the grants that any individual school may receive.

And, while the opposition supports in principle any moves to provide additional funding to schools, which of course this bill does and so we will support it, what needs to be appreciated is the dishonesty of the government’s message here and the way in which it presents this legislation. Of course, there should be a clear appreciation of the higher priority that Labor gives to the importance of education given the significance of education to our national prosperity and the continued security and social cohesion that education helps facilitate. Therefore, it is unfortunate that the minister failed to mention in her second reading speech that the effect of this particular piece of legislation was to lower the cap on grants through Investing in Our Schools for government schools. So the ceiling on grants will be lowered from $150,000 to $100,000. In other words, the government has shifted the goalposts mid-program. It has suddenly told government schools: ‘The application you were preparing for $150,000 in funding—scrap it. Write another one, reducing the amount by a third.’

When the program was announced as part of the coalition’s 2004 election commitments, the then minister for education, Brendan Nelson, indicated in a letter to school principals:

… the maximum amount an individual school community will receive is $150,000 over the next four years.

The same amount, the same specification, was included in the guidelines for the previous rounds of funding for this program, and the advice issued by the Department of Education, Science and Training on its website at that time said schools could apply for several projects up to a $150,000 limit over the life of the program. The guidelines for the second round however, which were released on 19 February this year, indicate that government schools are now only eligible for grants of $100,000. The government has reneged on its commitment as far as government schools are concerned. It has pulled the rug from under government schools despite the commitments it made at the last election. That is why I say there is dishonesty about the way this legislation comes before the parliament and the manner in which the minister has presented this bill.

Government schools that have already received a grant of less than $100,000 will only be able to receive a total of $100,000. It is only the schools that have been lucky enough to receive $150,000 to date—that is, those that have actually been able to bank the cheque—that are able to keep that more generous level of funding. If we compare that to non-government schools, we see that eligibility for grants completely uncapped. There are no restrictions. The sky is the limit. I understand that, in the most recent round of funding, 12 non-government schools received more than $1 million each. While a third of the funding that is available for non-government schools is capped at $75,000 per school—and again I stress that there is no absolute cap—the remaining two-thirds of the funding is for the non-government school sector.

There are quite clearly two sets of rules operating here. We have a situation where government schools have their maximum grant level slashed by one-third to just $100,000 while non-government schools are
able to apply for more than $1 million. The minister said that this has proven to be a popular program. I am not surprised that it was popular—if you were one of the 12 schools. Many schools have decided to take advantage of it, but there is no reason why there should be different sets of rules applying for the different sectors. I cannot see any reason at all. I look forward to the minister explaining why it is that such different levels of regulation operate.

If the government’s schools policies were based on fairness, if they were actually based on need, then surely the rules of this program would be the same across the two different sectors—the government sector and the non-government sector. Government schools, surely, would be able to apply for the $1 million grants, as well as the non-government schools. I understand that, for the non-government sector, funds are targeted to the needier schools, but there are at least as many needier schools in the government school system that might benefit from the generous amounts available through this program as there are in the non-government sector. In fact, it might well be argued that there are many more needy students in the government school system than there are in the non-government school system.

As I understand the situation, the government has been far from even-handed in its policy approach to school funding. It has failed dismally on the fairness test; it fails to fund all schools on the basis of need. I contrast this with Labor’s approach, which is predicated on a commitment to fund schools on the basis of fairness and need. My colleague Stephen Smith has made that proposition perfectly clear. Just two days ago Mr Smith, who is the shadow minister for education, made four very clear and unequivocal points about Labor’s new policy direction for schools. Along with Kevin Rudd, he made it clear that Australian voters can expect from a Labor government a policy based on the following principles: a fair investment should be made at all levels of education, including schools and schooling; funding for all schools should be on the basis of need and fairness; Labor will not cut funding to any school; and Labor will not disturb the current AGSRC indexation arrangements for schools funding. Those are the four clear commitments that have been made and they underlie Labor’s policy. We can be confident that, in terms of those principles, we will be able to provide a policy that genuinely recognises a needs basis for the funding of schools. While there are obviously further announcements to be made in the run-up to the forthcoming election, I am confident that, with the propositions that have been outlined, we will be able to demonstrate a much improved allocation of funding to ensure that fairness is the underlying principle of schools funding.

The Prime Minister has recently attacked me on schools-funding policy. He has effectively sought to put words in our mouths and verbal Labor on these matters. Quoting statements that I made in this chamber a few years ago, he said that Labor believes the school policy is an addition, not an alternative, in terms of providing reasonable access to quality schooling. What he failed to point out is that we support the establishment of non-government schools and we take the view that we need to ensure that there is additional choice for parents with regard to the provision of non-government school education to give all parents a choice as to where they send their children. But that choice has to be predicated on the assumption that there are high-quality government schools available to all children in this country. A genuine choice of a government school must be available to all families, rich or poor, whether they live in the country or the city. On that basis there can be the provision of genuine equality of opportunity. It is not a
fair and reasonable choice to run down government education—to undermine the quality of public education in this country—and then say that your choice is to go to a private school. That is not genuine choice at all. I am very concerned that the government’s approach on these questions does not provide adequate support to ensure the provision of high-quality public education in this country.

So I urge the government to appreciate that, if we are to provide genuine equality of opportunity in this country, that can only be addressed on the basis of genuine quality in the education provided to all children in this country, no matter where they live. I have a view on what our priorities should be for public education. Seventy per cent of Australians attend public schools in this country. That is the overwhelming majority of Australians. The principles that underlie our commitment to quality ought to be extended to that overwhelming majority. That should be a fundamental principle in the approach taken by the Commonwealth to the different sectors. Yet, quite clearly, you can see that that principle is not followed by this government in terms of this legislation. The principle is not worth the paper it is written on in terms of choice if it is not backed up by a fair policy administrative framework.

While supporting families in their choice of schooling, Labor not only recognises that most Australian children will attend public education but is also committed to ensuring that those families that enjoy the benefits of public education get access to an education of the highest quality. It is the responsibility of any government to guarantee that all children have such access. That is why we say that the Commonwealth government’s approach should be to cooperate and work with the states to ensure that that happens right across the Commonwealth. That is what our education revolution is all about: the provision of a national educational education system—at all levels—to make us the best in the world and to provide the children of this country with the best opportunities that can possibly be provided within the resources that this country has at its disposal.

Let us look at the principles outlined in this bill. The bill has provided additional funding to schools and therefore, of course, we support it. However, the bill reduces the amount of funding available to individual government schools through the Investing in Our Schools Program, and that is a matter of deep concern. It shifts the goalposts for government schools and it is not fair in that regard.

As I have indicated, this program finishes up in 2008. Now, in the year before it finishes, the guidelines the government has put forward for applications have changed. So the government is open to the charge that this program—which is essentially an ephemeral program—was no more than a political stunt announced at the last election, when commitments were made that have been reneged upon two-thirds of the way through this parliamentary term. This was not a cheap stunt: it will have cost $1.2 billion after four years—not an insignificant amount of money.

What concerns me, though, is that the government has sought to misuse this education funding in this way. It is therefore necessary to move a second reading amendment to draw attention to the approach that the government has taken. While the Senate should welcome the additional funding for the Investing in Our Schools Program, I would note that, when making the announcement, the minister was silent on the change of criteria for government schools halfway through the life of the program. The Senate should condemn the government for leaving many government schools ineligible to apply for additional funding by reducing
the funding cap from $150,000 to $100,000 and failing to guarantee the future of the Investing in Our Schools Program beyond the current funding round.

I now move the second reading amendment standing in my name, as circulated:

At the end of the motion, add “but, although the Senate welcomes the additional funding for rural, regional and remote non-government schools, it notes the continuing failure of the Government to immediately address the need for additional funding for needy rural, regional and remote government schools”.

**Senator ALLISON** (Victoria—Leader of the Australian Democrats) (11.12 am)—I also rise to speak on the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment (2007 Budget Measures) Bill 2007. The bill provides for extra funding of $50 million to increase the English as a second language program for humanitarian entrants and introduces a loading in the recurrent school-funding arrangements for regional and remote non-government schools of around $40 million.

The Australian Democrats will support this bill. We have said on many occasions, along with others in this chamber, that any additional funding to enhance the facilities of our schools is more than welcome. We particularly welcome the first measure in the bill, which provides more funding for intensive English language tuition for newly arrived migrant primary- and secondary-school-aged children.

Under Australia’s humanitarian program, more families from African countries are coming to Australia. In 2003-04 and 2004-05, 70 per cent of the 12,000 refugees invited here were from Africa. In 2005-06 that was 56 per cent.

Resettling populations from protracted conflict areas does bring with it particular challenges but Australia is able to meet those challenges. Many are leaving refugee camps in which they have lived for most, if not all, of their lives. These camps often house 70,000 to 80,000 people. The refugees arrive in a country that offers welfare payments, access to health care and, importantly, schooling for children. But it is by no means an easy adjustment that they face when they come here. Some of these difficulties are common to all refugees: displacement and alienation; men being unable to find work and losing their sense of worth; women finding themselves isolated; children challenging traditional limits; and prejudice and racism, both real and perceived. Many African refugees have spent extended periods in refugee camps, often for more than 15 years, and have not had access to adequate food, water, shelter or health care.

Many of these women and children are highly traumatised. Many women have lost husbands and often on multiple occasions have been brutalised and raped in their home countries, during flight and in the camps themselves. Many children and young people have known no other life than the refugee camp. They have grown up with very limited schooling—some with none at all. Their basic literacy skills are non-existent or very low. In 2005-06, 42 per cent of humanitarian arrivals were of school age with an average of only three years of education prior to their arrival. It is overwhelmingly obvious that we need to provide more support to these children and young people. We need to provide more support across all areas, including education and English language tuition.

In Australia, children whose schooling has been disrupted or whose schooling has been largely non-existent because of war, poverty and sickness are placed into classes according to their age and not their ability. They are already well behind the eight ball. Many will not have family or friends who are in a posi-
tion to help and support them and, for these students, added support to learn English is a good thing and it will go some way to ease the difficulty that these young people face. I certainly hope that this is not the full extent of the government’s effort to provide more support. I hope the government will show more compassion for vulnerable cases and consider extending the time period and the level of service available for settlement services. I hope it will introduce long-term service provisions for at-risk cases and I hope it will fund widespread community education about the circumstances from which these groups come. The government seems very keen on spending money on advertising; let’s see some of that go where it could do some good. Rather than scaremongering about refugees with HIV, the government should provide real information about the experiences of these people who were not lucky enough to be born into Australia’s predominantly safe environment.

Unfortunately, the Democrats have far less enthusiasm for the second element of this bill. We would be the first to say that there is a clear need for additional resources for education in rural and remote Australia—that is nothing new. This government and previous governments have struggled to provide equitable access to quality education and training in rural and remote locations, and that has been the case for many years. The reality is that schools and training facilities outside metropolitan areas have different needs and costs to those in the cities, and this applies equally to government and non-government schools and facilities. It is a great shame that the government has not recognised this—these institutions are affected by their location.

There is a mountain of evidence and information available about student participation and achievement levels in rural education. On average, the school performance of country students lags behind that of urban students. There is a gap of 11 points between the percentage of students in metro areas passing the year 3 writing benchmark test and their counterparts in rural areas. That gap pretty much stays the same across years 5 and 7, give or take a percentage. One in five students in rural schools is not meeting the writing benchmarks, and it is no better in reading and numeracy. Yes, the gap between kids in metropolitan schools and kids in rural schools is only seven points in year 3, but by year 5 the gap increases to 11 and 12 and stays there for year 7. Again, we are looking at one in five rural students not meeting the benchmarks, and the situation is even worse if you look at students from very remote schools. Here, the gap between the percentage of students from urban schools and the percentage of very remote schools meeting the year 7 reading benchmark is 38. That is a difference of 38 points. For writing, that figure is 33 points and for numeracy it is also 33 points. All of us in this place have questioned the benchmarking and testing that goes on in years 3, 5 and 7 as being useful in telling us what needs to be done, but here you have a very clear example of the differences between metropolitan, rural and remote, yet we only have a very partial response from this government to fix the problem.

According to the National report on schooling, country students are also far less likely to finish school than their metropolitan counterparts. Seventy per cent of students in metro areas complete year 12 and only 53 per cent from remote areas do so. Although students from remote areas make up around one-third of our school students, rural and remote students constitute only about 17 per cent of tertiary students in Australia. That is a disgrace. We know there are problems with attracting and retaining teachers in rural schools and that we need better pre-service
teacher preparation and ongoing support for those working in these country areas. Indeed, a HREOC report back in the year 2000 recommended that all teacher-training institutions should require undergraduates to study a module on teaching in rural and remote communities and should also offer students the option to undertake a fully funded practical placement in a rural and remote school. Now, you do not hear the Minister for Education, Science and Training talking about this when she goes on about performance pay for teachers being the way to lift results, and we see nothing in this bill to fix that problem or pick up on that recommendation made seven years ago.

There are disincentives affecting staff in rural and remote schools. The isolation; cost of travel; cost of living, including higher telephone, food and power costs, poor-quality and often expensive housing; and limited opportunities to participate in professional development, with resulting impacts on promotional opportunities, are some of the many difficulties. There have been suggestions that we should have a senior teacher outreach program to enhance the ongoing education and training of rural teachers and to provide for rural leadership, support and development—again, gone missing in this bill. Positive long-term incentives to increase and strengthen the rural education workforce and to encourage teachers to remain in rural areas, incentives similar to the incentives offered to country health professionals, are clearly needed. There has been talk about the need for more flexibility at a local level so that education facilities can be restructured to become more viable and relevant to their communities.

These issues and solutions are not unique to non-government schools. They are matters which apply across the spectrum of rural, regional and remote education and across early learning, primary and secondary education, vocational training and higher education. And they apply to both government and non-government schools—and that is the crux of the problem with the measures in this bill: once again the government’s anti public services bias is showing through. Yes, according to figures from the report on government services, 24 per cent of non-government school students attend schools in regional and remote areas. But 32 per cent of all government school students also attend schools in these areas. The public education system gets none of these incentives. Those 715,502 students get absolutely nothing in this legislation.

The government’s tired old refrain that public schools get more of the total combined federal and state money misses the point. This should not be about public versus private schools. It is about what schools need to meet the educational needs of their students. Of course, as we well know now, that is not a government priority. If it were, it would not be able to justify diverting hundreds of thousands of dollars to wealthy schools while other schools have demonstrably too few resources to do their job.

Australia is unique in the world when it comes to an open-ended public funded system for non-government schools that places no obligations on those schools for overall educational outcomes and that takes no account of the schools’ existing resources. The reality is that some schools need extra funding, whether that is because of remoteness, the nature of the students they service or the existing levels of their resources. And the children at those schools deserve those extra resources, whether they are at government or non-government schools.

It is time that we had some honesty in the debate about funding for schools. Let us do a national audit of all schools—government and non-government—so that we can see...
what schools need more resources and what schools do not need more. Let us see schools with the greatest need, including those with students who have extra educational and social needs, getting the greatest amount of funding. Let us see all schools required to meet the same rules and obligations when it comes to providing education to all—and that includes being subject to FOI and anti-discrimination legislation.

Unlike those in most other OECD countries, despite receiving public funding, our non-government schools can pick and choose. To be fair, many non-government schools do accept children with extra needs, but we all know of cases where children from disadvantaged backgrounds or children with learning difficulties or disabilities are turned away from some non-government schools. If these schools do not feel the ethical obligation to provide for these students, at the very least they should be contractually required to provide for them if they want to receive public funding. And let us see all schools subject to a curriculum that will provide their students with the skills they need for a modern world.

It is not acceptable to provide public funding to schools that do not allow their children access to computers or that refuse to teach sex education, for instance. Let us see all schools required to meet the same accountability and transparency standards for the public funds they receive. The Australian public deserves to know how public money is spent. Let us not be fooled by the government’s very narrow definition of choice, which is simply code for entrenching inequality between schools and giving more support to those who are already most advantaged.

Let us remember that free public education is at the core of providing equality of educational opportunity, and that participation in quality education reduces poverty and social exclusion and improves health, wealth and wellbeing. Societies where the gap between the haves and the have-nots is smaller are more cohesive, healthier and happier societies.

I also note that this piece of legislation is yet another variation to the hopelessly flawed SES funding model. We were all hoping that this year might have been the year when that model was properly reviewed and looked at and a new, more sensible model was introduced. But I see it is just more of the same tweaking around the edges to provide funding here and there. As I understand it, most of the schools that are subject to the SES model are exempt in one way or another from its rules. This is a disappointing piece of legislation to have to deal with in this place; with a stroke of a pen this money could have been going to government schools as well in remote areas, but it is not. Shame on the government for doing this.

Senator FIFIELD (Victoria) (11.27 am)—I also rise to speak on the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment (2007 Budget Measures) Bill 2007. This bill delivers on the promises made in the May 2007 federal budget and continues the government’s very strong record of investment in education. The bill provides funds for the English as a Second Language Program for new arrivals and expands government support for non-government schools in rural and regional Australia.

The government recognises the vital importance of recent immigrants learning English. The ability to communicate with people in the workforce and in the general community is an essential skill for integrating into Australian society. As a result, the government is increasing its funding for teaching English as a second language in our primary
and secondary schools. The coalition also recognises the challenges faced by schools in rural and regional Australia. Rural and regional schools face a number of costs that their counterparts in metropolitan Australia do not have to grapple with. Accordingly, the government has announced that a new funding loading will be applied to rural non-government schools, augmenting their initial federal funding by five per cent, 10 per cent or 20 per cent, according to their remoteness.

The government is proud of its record of support for non-government schools and for choice in education. The choice to educate children in non-government schools is one that is growing increasingly popular as parents are voting with their feet in what is a virtual referendum on the quality of Australian schools. In the last decade, enrolments at non-government schools have increased by approximately 20 per cent. Unfortunately, although Labor has indicated its support for the bulk of the federal budget this year, these funding policies are not really bipartisan.

We know that the Labor Party, perhaps because of the pressure they feel from the Australian Education Union, is, at best, ambivalent about federal support for independent and Catholic schools. Labor went to the last election with a hit list of schools whose funding would be slashed. They have spent the last 11 years in opposition complaining about the federal government’s support for choice in education. We know that the AEU, still using a Marxist critique, hate the idea that the federal government should facilitate choice. We know that the union movement will be bankrolling the Labor Party’s election campaign this year. We know that, for as long as the union movement holds the purse strings of the Labor Party, they retain their influence and dictate ALP policy. We have seen that expressed again in the papers this morning.

The new secretary of the ACTU has said that he wants a closer and more formal relationship with the Australian Labor Party. I would not have thought it was possible for there to be a closer and more formal relationship between the ACTU and the ALP than presently exists. But, apparently, it is possible for them to still get even closer. I do not know how that will manifest itself, but I will be waiting with bated breath to see what transpires. Already, the AEU has embarked on its regular dishonest advertising campaign, claiming that public schools are underfunded. The truth is that, whilst government schools enrol 67 per cent of all students, they receive 75 per cent of all public education funding. That is not a bad thing; it is a good thing. But it is not what you would believe to be the case if you watched the AEU’s deceptive advertising campaign. This is the sort of misleading and deceptive nonsense that we have come to expect from the unions and from Labor. But the Australian people see through it; they are not so easily fooled.

The AEU helped shape the Labor Party platform, as have other unions. Why wouldn’t they? They control 50 per cent of the votes on the floor of the ALP national conference—and it shows. When it comes to support for non-government schools, you cannot trust Labor. The Leader of the Opposition has been out there running around trumpeting the dumping of the Labor schools hit list, saying, ‘We hated private schools last election; we wanted to slash their funding, but we have now changed our mind, we now love them and want to support them by funding them.’ Mr Rudd has been out there saying, ‘The hit list policy has gone,’ promising that no private school will be worse off under Labor, Mr Rudd thinks that that will solve Labor’s problem. But not everyone is convinced by Mr Rudd.
I picked up yesterday’s Australian newspaper and saw that Bill Daniels, the head of the Independent Schools Council of Australia, wrote to Mr Stephen Smith, the shadow minister for education, to express his concern that the promises of funding from Mr Smith and Mr Rudd are:

… inconsistent with some of the statements in the ALP national platform—

the very platform that the antichoice Australian Education Union helped shape. What does the ALP national platform say on education? I went to the ALP’s website. When you click on the icon platform, this is what is on the ALP’s website—nothing. A month and a half after the national conference, the ALP have still not uploaded their national platform. I did try to assist the Senate on that issue, but I cannot because it is just not there on their website. The Australian, though, reports—courtesy of Mr Daniels, who has seen the relevant sections of the ALP platform—that it contains a clause to the effect:

… “income from private sources” will be taken into account when deciding how much money a school will receive …

We know what that means. That is code for private schools being defunded. If Labor won the next election, the schools hit list would be back. How do we know that? Because the ALP platform tells us that that would be the case. It is just another illustration of the old adage: don’t listen to what Labor say; look at what they do. They say they will not cut funding to independent schools, but their own platform suggests that that is just what they will do. Mr Daniels puts it best in his circular, when he writes:

… (Labor’s) policy, if implemented, would take us back to the dark old days when parents were penalised for their financial contribution to their children’s education.

That is the Labor way: a parent cares so much about their own child’s education that they want to put their own money towards it, and Labor thinks that should be penalised. We on this side of the chamber think it is a good thing that parents want to put money towards their child’s education. We encourage it and we support it. There is only one side of this chamber which can be trusted to support all schools—that is, the coalition.

In other areas of education funding, the 2007 federal budget maintains this government’s strong support for choice. The government will be increasing its support for children who do not meet literacy and numeracy benchmarks with an expanded voucher scheme. The National Literacy and Numeracy Vouchers program provides a $700 voucher to the families of students who are not meeting literacy and numeracy benchmarks. Testing conducted at years 3, 5 and 7 determines students’ progress in these areas, ensuring that those who are falling behind are identified. These vouchers provide parents with an opportunity to seek additional help for their children outside the school system in a $450 million program. Vouchers are a very sound vehicle for delivering public funding in order to achieve these objectives. They promote choice and they direct funding to those services which actually help individuals.

I have been an advocate for a more fundamental and widespread use of education vouchers. Some of Australia’s leading institutions have added their support for this concept. The Group of Eight universities recently came out in support of student vouchers as part of a more consumer driven system. Earlier this year the Australian Chamber of Commerce and Industry heavily featured vouchers for higher education in its education reform blueprint. I am pleased that the government has continued to expand its use of vouchers to deliver education funding, and I look forward to further developments in the use of vouchers. I must commend Senator
Birmingham on his first speech last night, in which he called for a comprehensive voucher system in the school sector. Under other proposals announced in the budget, the federal government has continued to intervene where state Labor governments have failed to deliver.

There are a few things which I must at this point take up in response to Senator Carr’s speech earlier. Senator Carr was making the allegation that this government has somehow dunned government schools and dunned independent schools in relation to the Investing in Our Schools Program. I should put on the record that the guidelines have not changed for the original amount of funding under the $1 billion plan that was announced at the 2004 election for government and non-government schools, except for the new allocation of funding announced by the Prime Minister earlier this year and the $40 million remaining from the previous allocation for state government schools. The original allocation provided was $700 million for government schools, for grants of up to $150,000; and $300 million for non-government schools—$100 million of this amount for grants of up to $75,000 and $200 million for larger grants. Program funding was brought forward, through legislation for state government schools, due to overwhelming demand. However, non-government schools will be able to receive funding as per the original guidelines through to 2008 as funding was not brought forward through legislation.

But the real outrage regarding the Investing in Our Schools Program is the approach of the state governments. It is bad enough that the state governments do not adequately fund their own state schools—that is why they are called state schools: because they are run, they are managed and they are funded predominantly by the states. Not only do the states not adequately fund them, but after we introduced this Investing in Our Schools Program the state Labor governments actually creamed administration fees off the top of the grants to schools. We have seen in Western Australia and New South Wales those governments actually take funds from schools administration fees of over 20 per cent. They have creamed 20 per cent off the top for administration. Queensland, South Australia and the Northern Territory also impose fees and charges on successful applications. It is an outrage. These states do not adequately fund their schools, the Commonwealth has to step into the breach to support them and then state governments cream the money off the top. It is an outrage.

Also in this budget we have done more for literacy and numeracy. We know that providing students with skills in literacy and numeracy is critical to their development. We as a federal government are not going to stand by whilst a provider driven state education system fails in its duty to properly prepare students with the skills they need. In addition to vouchers, which provide assistance to underperforming students, the government will be rewarding high-performing schools who improve their literacy and numeracy standards with $50,000 grants. Further, the government will reward teachers who undertake ongoing professional education to ensure that Australia’s children are taught by the highest quality professionals. The government also realise that not all teachers are created equal. We are seeking to reward outstanding teachers with performance pay. And in its typical fashion, following the lead of the AEU, the Labor Party is opposing the apparently radical idea that teachers who perform well should be financially rewarded for doing so. After years of claiming that teachers are underpaid, they are opposing a program of merit based pay. Labor’s shadow minister for education, Mr Smith, mused earlier this year that perform-
ance based pay for teachers was something that he supported in principle, but he was quickly smacked down by the AEU. I note Mr Smith has now adjusted his rhetoric following the dressing down he copped from AEU Federal President Pat Byrne and is now talking about rewarding teachers for things other than student performance.

The government is also acting where state governments have failed in providing support for technical education. The highly successful Australian technical colleges are being expanded with three additional centres to meet the strong demand. These Australian technical colleges have gone from being just an idea to reality in a very short space of time. In the 2004 election the establishment of 25 colleges was announced, and by the end of this year 21 colleges will be operating around Australia. The good news is that the Commonwealth’s effort in establishing these colleges has shamed the state governments into establishing their own technical colleges. Some 20 or 30 years ago the states, very unwisely, dismantled the old tech colleges that we had. We recognised that that was a mistake and we did something about it. Thankfully, as a result of what we have done, by 2009 there will be 70 technical schools around Australia. There are now 25 and the rest will be established by the states. So by 2009 there will be between 25,000 and 35,000 young Australians at technical colleges. That is what I call a real education revolution. This is not just about having a lathe or a pie warmer in every school, as Mr Rudd announced as his grand technical education revolution; this is about having 25,000 to 35,000 real students enrolled at 70 technical colleges around Australia. That is a real education revolution.

In addition, the federal government’s usage of vouchers to promote choice has been expanded to cover Australian apprentices with the new apprenticeship training voucher. First and second year apprentices in areas of skills shortage are eligible for vouchers to the value of $500 to defray the cost of their education. Those vouchers are in addition to the government’s $2,000 tax-free wage boost for young Australian apprentices. If Labor were doing their job and providing real choice for students—something which they are, belatedly, starting to do now that we have shamed them into introducing their own tech colleges—then some of these federal programs would be unnecessary.

Perhaps most importantly, the federal government will be encouraging the development of additional academically selective government schools as part of the next round of funding negotiations with the states. New South Wales does have a number of academically selective government high schools—something in the order of 17—Victoria has two and South Australia is in the process of establishing its first three. There is no reason why, because you lack the means, you should not be entitled to the best education possible. Unfortunately the state education systems, which have become so mono-chromatic, have not provided real choice and real variety in their own systems. That is something that the Commonwealth is going to endeavour to encourage the states to do in the next round of funding negotiations. I have to admit that the Victorian Labor government have reluctantly agreed to build an additional two selective entry schools after pressure from the Victorian state opposition, but that does not go far enough.

Academically selective schools do offer real opportunities to talented kids from disadvantaged backgrounds who lack the means, and I think the states need to realise the benefit of offering that sort of choice in the state sector. On the issue of education, we know where the coalition stands—this government supports choice, it supports excellence and it supports higher standards.
The real test though is for the Australian Labor Party. Will they toe the union line or will they support parents? Will they support choice? It is time for Labor to stop paying heed to special interest groups and to stand up for standards and choice. It is time for the Australian Labor Party, once and for all, to abandon the politics of envy.

Senator NETTLE (New South Wales) (11.45 am)—The Greens are always happy when the government spends more money on providing improved education services to those in need. The government would have us believe that this is what the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment (2007 Budget Measures) Bill 2007 does in both of its parts because it delivers more money for new migrants and refugee arrivals in the first half and in the second half it delivers more money to private schools. The Greens welcome the increase in money for the English as a Second Language—New Arrivals Program, which is very much needed, but we do not support the further increase in funding to private schools in this bill. I will move on to the reasons for that later.

First I want to talk about the English as a Second Language—New Arrivals Program component of this legislation. This bill doubles the amount of per capita funding for this particular program. It is a program that is designed to give intensive support to new migrants to Australia who come in either through the normal migration stream or through the humanitarian refugee intake. These are young migrants who need both the language skills and the basic learning skills necessary to integrate into further schooling, into further education or into the workplace. The Greens welcome this funding increase because we have long held the view that Australia can and should provide a welcoming environment for immigrants and refugees whom we accept and that part of the welcoming environment we provide must include adequate English language training for those who do not have English language skills.

Sadly, the funding increase in this bill is not part of, or combined with, the other necessary support for public education that is needed to ensure that the increased money into this program can work. So we see a situation where students go to intensive English language centres—like the one that I visited in Beverly Hills in Sydney on Friday—and are able to get fantastic support for the time that they are there. But the government’s funding limits the support they can receive to three terms. Then you see a situation where perhaps a 17-year-old young man from Sudan, who has come to Australia through our refugee program, has been put into this intensive English school but only for three terms. He is not able to get the English language skills that he needs to go on. Because the federal government has reduced the funding to other public education services, migrants cannot go on to a well-funded TAFE where they could do a course like the adult basic English course, which used to be much more accessible in TAFEs. Since the federal government has cut funding to TAFEs, we have seen a lot of TAFEs around the country getting rid of their adult basic English courses because they do not have the funding to continue to run those courses. What this means is that the benefits that are provided through the funding program that we are dealing with in this legislation—benefits that might enable a young Sudanese boy who comes to Australia to get three terms of intensive English language support—cannot be continued for him because there is no TAFE course available for him to attend so he can get the English language skills that he needs.
Three terms of intensive English language support does not provide you with the capacity to go out and get a job in the workplace. I will give an example of this. When I visited the school on Friday one of the teachers told me about the afternoon she had sat down in front of a computer with a number of young African men who had come to Australia as refugees. They were only allowed to spend three terms there, so they were looking at what they would do when they left. There was not a TAFE course available for them to go to, so she was trying to help them to find some employment. She went online to the Coles website because these boys wanted to register themselves to pack shelves at night in the local Coles supermarket. But three terms in this English language centre for African migrants who have never been in a formal schooling situation is not enough for these boys. It meant that they were not able to read the questions on the website about their work history. They needed to do this in order to register their names to pack shelves at the local Coles supermarket at night.

There needs to be an increase in the availability of options for students—not only what is provided through the increased funding available in this particular bill but ongoing assistance in order to ensure that they can find a place in the workplace and contribute to our society. If we do not do that and we continue operating as we are now, with more refugees coming in from Africa—many of them have never experienced formal schooling and they are currently only able to spend three terms at an intensive English language centre, and then there is not another further educational opportunity for them—those people will end up not being able to contribute to or engage with our society. Many of them will end up in our prisons. That is what we are already seeing happen. Young boys are coming through as refugees and going through the English language program, but, because there is not the ongoing support that they need to get a job, to get into TAFE or to go to a normal school, they are ending up in prison. That is not the way to run our immigration system. Accepting people as refugees and then not providing them with the support to gain the English language skills that they need means that they end up not being able to integrate within the broader community. They end up not being able to engage and instead find themselves in prison. That is, unfortunately, the pattern that we are seeing.

I met a young girl at the intensive English centre on Friday who was an asylum seeker trying to come to Australia. She was turned back by the Australian government and had spent the last couple of years in Lombok in Indonesia, where the Australian government pays to keep asylum seekers that they have turned away. She is one of a lucky few who have recently been accepted to come to Australia. But her brother was not so fortunate. He was on a boat trying to get to safety and drowned. He drowned as a result of trying to get protection—from the Australian government in this instance. This young girl was sitting in the reading class on Friday, making a real opportunity of the experience that she was given through the program for which funding is increased in this bill. But she needs more support than that.

The Greens would like to see the federal government increasing the amount of support that is available for this program, which is a very good program. They do that in this bill, but there is a need to ensure that students are able to spend longer in intensive language centres getting support and that there are other services like full-time school counsellors to help people, such as this young girl, who do not have the English language skills that they need to attend a normal school. She also has to deal with the trauma of having lost her younger brother who drowned while fleeing the Middle East on a boat trying to
get to safety. There needs to be an increase in the support available not just in relation to the programs but for school counsellors at intensive English language centres as well.

The intensive English language centre I visited cannot apply for support for infrastructure because of the way the government structures its funding for capital infrastructure at schools. Schools can apply for funding if they have a Parents and Citizens Association at the school. This school does not have that, because the parents are newly arrived migrants or refugees and they are trying to get on with their own lives. They are not in a position to spend a lot of time and effort setting up a P&C at a school where the kids will only go for three terms. The school is not able to have a functioning P&C that can write funding applications to get capital infrastructure from the federal government for their school. At the Beverly Hills school you see committed teachers who are doing fantastic work all through the week going in on the weekend to build a mound around the edge of the school right next to the railway line in King Georges Road, one of the busiest roads in Sydney, to stop the noise getting into the school. There is no capacity, through the way in which the federal government funds capital infrastructure at public schools, for them to apply through government mechanisms to get any support for such infrastructure. So the teachers have to come in on the weekend and build the mounds so that the students can continue with their work.

The Greens want to hear from the minister—and perhaps he can address these comments—whether negotiations have occurred with the state government about how this funding will be implemented. In New South Wales the state government contributes additional funding to these programs and to the funding of intensive English centres. We welcome the increase in the bill and we want to make sure that the response by the New South Wales government is not that it will reduce the funding it makes available to these intensive English centres. The Greens would like to see the state government follow the funding increase in this bill and also increase its component of funding for intensive English centres so that the schools can get the additional funds that they need to provide the quality education that they give students.

I will now turn to the second part of the bill, the increased funding to private schools, which the Greens do not support. It is very hard to keep track of the new and innovative ways the government dream up to give legislative expression to their preference for private schooling. Since they came to government they have tinkered so many times with the way the Commonwealth subsidises private schooling that it is no wonder that the public, the media and parliamentarians get confused about how it all works.

At the time the government introduced their socioeconomic status—SES—funding model they would have had us believe that it would clarify the process and bring some simplicity to the way in which the funding operated. But it does not do that. The mess of funding get-out clauses, of special cases and of cosy arrangements continues to proliferate. We have seen SES funded schools, then SES 'funding maintained' schools, then SES 'funding guaranteed' schools, then there were the Catholic 'funding guaranteed' schools and now, presumably, with what is proposed in this bill, there will be some SES Catholic 'funding guaranteed remote bonus' schools. It is hardly a simple system for people to understand.

The Greens want to hear from the minister—and perhaps he can address these comments—whether negotiations have occurred with the state government about how this funding will be implemented. In New South Wales the state government contributes additional funding to these programs and to the funding of intensive English centres. We welcome the increase in the bill and we want to make sure that the response by the New South Wales government is not that it will reduce the funding it makes available to these intensive English centres. The Greens would like to see the state government follow the funding increase in this bill and also increase its component of funding for intensive English centres so that the schools can get the additional funds that they need to provide the quality education that they give students.
with other private schools. On the other hand, there are some which are very well resourced and most would be better resourced than their local public school, as is the case across the country. But this bill does not contain any provisions for finding out how rich a school is before deciding that it needs more public money. It does not mean test the schools, which may be in receipt of large fees, generous bequests, endowments, earnings and other income streams. How do we know that the schools really need this money, given that there is no assessment done? How do we know that this will not be a foolish waste of taxpayers’ money—money which is urgently needed in other areas, like teaching English to new arrivals and to migrants? The answer is that we do not know. Even if we believe that there is a genuine need for some increased public subsidies to rural and remote private schools, which remains to be proven, we know that the area that needs government funding most is the public school system right across the board.

The Greens reject as bogus the argument that the Commonwealth is somehow responsible for private schools and the states are responsible for public schools. It is an argument that has no basis in law, in the Constitution, in history or in practice. Both levels of government choose to subsidise private schools, and both are significant contributors to public schools. The key point of departure between the Greens’ view and those of the Labor and the Liberal parties in this area is that both those parties are happy to allow much-needed public funding go to the wealthiest private schools while public schools suffer. Neither is prepared to stand up for the rights of public schools in this country. For example, the federal government does not impose an appropriate or an equitable level of accountability or responsibility to go along with this public subsidy to private schools.

Many, indeed the majority, of the remote and rural schools that will receive a boost from this bill are in fact majority publicly funded—that is, they receive most of their income from the government. Yet these schools do not have the same responsibility and accountability requirements. They are able to not adhere to antidiscrimination legislation. They are able to avoid the level of financial accountability and openness required of public schools. And they are allowed to teach content that simply would not pass muster in a public school. The Greens cannot support the extension of this subsidy to private schools with no means testing and no equivalent subsidy to public schools. I will be moving a second reading amendment to this piece of legislation, which I will forewarn. That Greens second reading amendment:

… condemns the Government for devising a funding system for non-government schools that:

(a) fails to take into account the relative wealth and income-raising capacities of each school;
(b) does not require an appropriate level of accountability and openness from non-government schools in exchange for the receipt of public monies;
(c) consistently favours non-government schools ahead of government schools;
(d) continues to allow non-government schools which are now largely publicly funded to discriminate against prospective students based on ability to pay fees;
(e) unfairly ties the funding of non-government schools to the cost of education provision in government schools;
(f) is formulated without any reference to its effect on the quality of school education as a whole . . .

The Greens’ policy seeks to end this ineffective approach to schools funding and instead establish a national scheme that would be guided by need, by fairness and by the basic principles of educational outcomes—and in
the spirit of cooperation with the states, rather than coercion. We do not propose a final blueprint for such a system. We propose instead a nationwide inquiry into the effectiveness and the equity of current arrangements with a view to introducing complementary legislation at state and federal levels to give life to a simpler, a fairer and a more effective funding system. I cannot say exactly what such a system would look like, but I can tell you what it would not look like. It would not allow remote public schools teaching the neediest children in the country to go begging whilst super-rich private schools in capital cities continued to receive government subsidies. It would not allow some schools to discriminate on the basis of wealth whilst receiving government funds. It would not dish out public money to schools without allowing open public scrutiny of the financial arrangements of those schools. And it would not allow public funding to support schools that promote discriminatory values and impose those values on the children in their schools.

The Greens want diversity and excellence in our school system. The Greens believe that it is not beyond the wit of Australians to construct such a system. And we believe that what we have now falls well short of that goal. I hope to see steps taken by both the major parties that address the influence that those components of the community with strong vested interests, through the churches and rich private schools, are having on the way in which public funding is being distributed to schools in this country. I want to see governments at the state level and at the federal level putting the priority on public education, making it the centre of the responsibility of the federal government to provide government funding to our public school system. We need to see, particularly in the lead-up to an election, a commitment from both the government and the opposition to invest in our public schools and to provide their much-needed support. We need to see a statement of support for the work that is done in our public schools. Let us see some value of the great work that is done. Let us see some acceptance of how much they are contributing to our society. That is what I would like to see. I would like to see both the government and the opposition talk about how much they value the work that is done in our fine public schools. (Time expired)

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.05 pm)—I thank all honourable senators for their contributions to this debate. In response to the inquiry you made of me, Senator Nettle, concerning consultations with state governments in relation to the implementation of this program, I am instructed that there have been and will continue to be consultations at a departmental level between the Commonwealth department and the state and territory departments. I hope that answers your inquiry.

May I say, though, in relation to Senator Nettle’s contribution, as to those of Senator Carr and Senator Allison, that it seems there are some on the left of politics who cannot grasp the notion that schools funding is not a zero-sum game. It is not as though every dollar given to a private school is a dollar taken from a government school. One of the hallmark achievements of the Howard government has been to increase, in absolute terms, Commonwealth support for both private and government schools in the course of the last 11 years. I do not have the figures readily at hand but, as Senator Carr, who I know takes a close interest in this matter, well knows, the extent of Commonwealth investment in both sectors of school education—government and private schooling—has massively expanded under the Howard government. How can it be, when there is a significant increase in the allocation of fund-
ing to both sectors, that one can imagine that this is a zero-sum game? In fact it is a win-win situation for schools education overall.

In summing up, may I say that the Australian government makes a substantial investment in education, providing approximately $33 billion to government and non-government schools over the period 2005-08 and delivering genuine choice for Australian parents. Funding for state government schools has risen by close to 70 per cent in real terms since 1996, while enrolments have risen just 1.2 per cent. That gives the lie to your proposition, Senator Carr, as it does to that of Senator Nettle and Senator Allison, that money paid to non-government schools is money taken from government schools. There has been a massive, 70 per cent increase in real terms since 1996. I do not hear you applauding that, Senator Carr, I am sorry to say. The enrolments, however, during that period of 70 per cent increase in funding have risen by only 1.2 per cent. It remains the fact that state schools enrol 67 per cent of students and receive 75 per cent of total public funding for schools.

State governments have primary responsibility for education in state government schools. They own-operate under the major source of funding for state government schools. While the Australian government supplements that funding as a percentage of the state investment, few people realise that if state governments increased their investment federal funding would increase automatically. There is a shared responsibility between the state and federal governments. State governments accredit and regulate non-government schools, while the Australian government provides the majority of public funding.

Through the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill 2007 to amend the Schools Assistance (Learning Together—Achievement through Choice and Opportunity) Act 2004, the Australian government continues its commitment to invest in young Australians in regional and remote areas to deliver stronger educational outcomes for all students regardless of where they live. The Australian government is providing an additional $121.1 million in funding over four years for regional and remote schools as part of the budget’s Realising Our Potential package for education. This funding will support students at more than 400 non-government rural and remote schools through a loading under the general recurrent grants program. The funding is being provided in recognition of the high cost of delivering educational services in regional and remote areas of Australia and the negative impact that this can have on student achievement levels. There is clear evidence that rural and remote students do not achieve as highly as their peers in metropolitan areas, and through this bill the Australian government is seeking to rectify this. In addition, two recent Australian government reports demonstrated significant inequity in access to education between regional and metropolitan students: the report Science, ICT and mathematics education in rural and regional Australia: the SiMERR national survey of 2006 and the report The impact of drought on secondary education access in regional and remote areas, also of 2006.

In levels of reading, writing and numeracy across all years in 2005, significantly more students in metropolitan and provincial locations met the benchmarks, relatively speaking, than did students in remote and very remote locations. I refer in particular to the National report on schooling in Australia 2005. National benchmark results: reading, writing and numeracy, years 3, 5 and 7, where Senator Carr, if he cares to interest himself in the matter, may find the statistics
that form the basis for that conclusion. International studies, such as the Program for International Student Assessment and the Trends in International Mathematics and Science Study, show that metropolitan students generally perform better than their regional counterparts. The Australian government recognises the unique hardships regional and remote schools face, and these funds will enable schools to target those areas that most seriously affect their capacity to enhance educational outcomes for their students. This additional funding will now be available for non-government schools and will allow them to direct resources to assist their most educationally disadvantaged students. Funding can be used towards improving the educational opportunities for students in these regions by attracting quality teachers, increasing staff retention rates or improving teacher access to professional development, thereby ensuring that students in regional and remote areas are able to achieve their potential.

Building on the success of the existing English as a Second Language—New Arrivals Program, the Australian government, through the second measure in this bill, will double the per capita amount of support for eligible humanitarian entrant students. The increased funding will flow through state and territory government and non-government education authorities. Increased funding for intensive English language tuition is aimed at promoting the successful settlement and integration of newly arrived humanitarian students in Australian primary and secondary schools. It does this by recognising that English proficiency is one of the best ways to improve educational outcomes and future employability and to smooth the pathway to broader participation in Australian society.

The second measure in the bill implements a humanitarian settlement initiative. The bill will provide increased per capita funding to assist with intensive English as a second language tuition for school students entering Australia under the humanitarian program. The Australian government has implemented this measure on the basis of evidence identified in the 2006 MCEETYA Schools Resourcing Taskforce discussion paper entitled ‘Funding for English as a second language for new arrival students’ and the whole-of-government strategy to improve settlement outcomes for humanitarian interests. The English as a Second Language—New Arrivals Program does not set out to fund the total cost of intensive English language tuition. It is provided to assist with the costs of this important support but recognises that all levels of government are partners in the successful settlement and integration of newly arrived migrants.

The Australian government’s increased contribution under the English as a Second Language—New Arrivals Program combines with other federal education funding, such as the general recurrent grants program and targeted funding for students with a language background other than English through the Literacy, Numeracy and Special Learning Needs Program, to form a substantial package of support for these students. The focus of Australia’s humanitarian migration program centres on those groups of international refugees who are in greatest need of resettlement, which has meant that they need much longer in the initial phase of intensive English language tuition and, as such, the increase in funding announced as part of this package is confined to this group of students.

The Howard government is committed to supporting a quality school education for all Australian children, whether they attend government or non-government schools and whether they attend schools in capital cities, provincial centres or regional and remote parts of Australia. The program and the initiatives that it is putting in place are helping
to create an Australian education system of high national standards, national consistency and quality so that all young people are prepared to meet the future demands of life and work. This bill reinforces the Howard government’s ongoing commitment to ensuring that Australian children are given the best opportunity to have a quality learning experience in the best possible environment. I commend the bill to the Senate.

Question put:

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

The Senate divided. [12.21 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes………… 33
Noes………… 36
Majority……… 3

AYES

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

NOES

Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Boswell, R.L.D.
Boyce, S. Brandis, G.H.
Calvert, P.H. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ferguson, A.B.
Fierravanti-Wells, C. Fifield, M.P.
Fisher, M.J. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Kemp, C.R.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J.J. * Minchin, N.H.
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Scullion, N.G. Troeth, J.M.
Trood, R.B. Watson, J.O.W.

Senator Stott Despoja did not vote, to compensate for the vacancy caused by the resignation of Senator Ian Campbell.

Question negatived.

The PRESIDENT—The question now is that the bill be read a second time.

Senator NETTLE (New South Wales) (12.24 pm)—I move:

At the end of the motion, add “but the Senate condemns the Government for devising a funding system for non-government schools that:

(a) fails to take into account the relative wealth and income-raising capacities of each school;

(b) does not require an appropriate level of accountability and openness from non-government schools in exchange for the receipt of public monies;

(c) consistently favours non-government schools ahead of government schools;

(d) continues to allow non-government schools which are now largely publicly funded to discriminate against prospective students based on ability to pay fees;

(e) unfairly ties the funding of non-government schools to the cost of education provision in government schools;

(f) is formulated without any reference to its effect on the quality of school education as a whole”.

CHAMBER
In Committee

Bill—by leave—taken as a whole.

Senator CARR (Victoria) (12.34 pm)—
The Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment (2007 Budget Measures) Bill 2007 is in many ways deceptively simple. We have already confirmed that the government has changed the guidelines with regard to the allocation of moneys, changing the ceiling for the amount of money that is available for non-government schools in this last tranche of money that is available under this program. However, what is of concern to me is not just the mechanism by which these changes are made—despite election commitments—but the uses to which the government has put the statistics. I see that the officials are leaving the chamber—and I have a question in this regard. At the Senate estimates committee an undertaking was given by officers of the department that information would be provided to the estimates committee, during those estimates hearings, on the claims that have been made about the increases in expenditure that the government has made for education purposes. It was revealed that the officers had prepared these statistics, which the minister had used for her claim that expenditure for government schools had increased by 70 per cent during the life of the government; and, as I recall it, the minister claimed that expenditure for the next quadrennium would increase from $33 billion to $42 billion. An undertaking was given to me, on behalf of the committee, that the department would provide a figure for the increase in expenditure for the non-government school sector. I ask the minister: where is this figure?

In doing so, I also take this opportunity to point out that Senator Brandis, who was the minister at the table, and who behaved courteously and appropriately, has made the point
to me that he has, since being a minister, followed the practice that he had when he was the chair of a committee. Since his recent appointment to being a minister he has not changed his attitude to the requirement that departments respond to questions appropriately and in a timely manner. So this is not a criticism I make of the minister who was at the table at the time of the estimates committee. I do, however, note the number of estimates questions to which this department has failed to respond on time. I also note the number of occasions on which estimates answers appear to have been so severely edited as to be nonsensical. So I ask a very simple proposition, put forward a very simple proposition: if the government—

Senator McGauran—You can’t ask a proposition!

Senator CARR—Is that the Einstein over there who wants to blurt something out again, is it? What, has a sheep got away from you again?

The TEMPORARY CHAIRMAN (Senator Moore)—Senator Carr!

Senator McGauran interjecting—

Senator CARR—Well, I put forward—

Senator McGauran interjecting—

The TEMPORARY CHAIRMAN—Senator McGauran, we are returning to the question.

Senator CARR—I put forward a very simple proposition: if the increase in expenditure by this government for government schools, on the government’s estimate, was 70 per cent, what was the figure for non-government schools? I ask the minister now: where is that figure?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.38 pm)—For the benefit of Senator Carr, the figure that is to be found must be an accurate figure. The department is working on obtaining that figure and I can say to Senator Carr that it is not a simple process. It requires some investigation. We are looking for the figure and, as soon as we have ascertained the figure and are satisfied with its veracity, we will give it to you.

Senator CARR (Victoria) (12.39 pm)—Minister, I appreciate the spirit in which you have just conveyed information from the officers. Again, I make the point that I am not directing my criticism at the officers or at the minister at the table. But, with the worldwide resources of this department, I find this incredible. A figure could be provided to the minister on the increase in government expenditure for government schools and she could use that figure in the House of Representatives and in numerous interviews and in other places. Claims could be made as to what the expenditure increase would be in the next quadrennium. Yet those figures are not available for the non-government sector. I find that a totally incredible proposition.

Furthermore, when an undertaking was given to us at an estimates committee that that information would be provided and it has not been, I find the explanation in those circumstances also incredible. We now have a situation where, two weeks later—I think I am right about that; I think it is two weeks—the department still cannot find the figure. This is extraordinary carelessness—that they cannot locate a figure of that type in that length of time. So I put it to you, Minister, that this is not acceptable. And I think that if you were in my place you would not disagree with that proposition.

The government wants this bill and, frankly, we would have no objections to it being passed. But I want that figure. I do not think it is unreasonable for me to seek a follow-up of that nature. The minister may well have the figure already on her desk. In fact, I would find it highly surprising if this figure
were not contained in some ministerial brief somewhere already. The minister should be aware that responding to this chamber is not an unreasonable request in these circumstances. This is not an extraordinary amount of work for the department to undertake. It is information that would be provided in the normal course of events. And, given the fact that the minister has sought to make such a political issue of the government’s expenditure on government schools and its claim of a 70 per cent increase, it is not an unreasonable proposition that this chamber be provided with the rest of the information about the government’s education programs.

We understand the nature of education funding in this country. We understand that, in terms of the AGSRC, the rates of indexation are considerably higher than inflation. And, from memory, they have gone around the seven-point mark, with inflation; they have been probably sometimes as much as three per cent above the inflation rate. We do understand the nature of the way that that index is put together—that increased expenditure in one sector leads to increased expenditure in another sector. And it is a profound irony that there could be an increase in expenditure of the type that the government speaks of and that automatically flows through to funding under the current SES system. So I think it is not an unreasonable proposition that this figure would be reasonably available.

Quite simply, we are standing by the proposition that there should be a needs based funding model. We have made the point again and again that under Labor no school will be worse off under our funding arrangements.

We have made the point that the government, which has undertaken a review of its SES funding arrangements, has sought to keep that review secret. The government has not even published what the submissions to that review were. To my recollection they were not even in double figures. Those submissions should have been made public. The government has not done that. We have called upon the government to provide additional support for public education in this country. So I think it is a reasonable proposition that, in those circumstances, the Senate should have the opportunity to appreciate what the level of increase in funding has been. Again, I ask the minister: when will this figure be available?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.44 pm)—I have given an answer on that and I do not think it is unreasonable to give the departmental officials time to ascertain the correct figure, a figure in which they can place confidence.

Progress reported.

WORKPLACE RELATIONS AMENDMENT (A STRONGER SAFETY NET) BILL 2007

Report of Employment, Workplace Relations and Education Committee

Senator TROETH (Victoria) (12.45 pm)—As the Chair of the Senate Standing Committee on Employment, Workplace Relations and Education, I present the report of the Committee on the provisions of the Workplace Relations Amendment (A Stronger Safety Net) Bill 2007 together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

WORKPLACE RELATIONS (RESTORING FAMILY WORK BALANCE) AMENDMENT BILL 2007

Report of Employment, Workplace Relations and Education Committee

Senator TROETH (Victoria) (12.45 pm)—As the Chair of the Senate Standing
Committee on Employment, Workplace Relations and Education, I present the report of the committee on the provisions of the Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007 together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) AMENDMENT BILL 2007**

**Second Reading**

Debate resumed from 12 June, on motion by Senator Scullion:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

**AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT (2007 MEASURES No. 1) BILL 2007**

**Second Reading**

Debate resumed from 12 June, on motion by Senator Scullion:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

**GOVERNANCE REVIEW IMPLEMENTATION (SCIENCE RESEARCH AGENCIES) BILL 2007**

**Second Reading**

Debate resumed from 12 June, on motion by Senator Scullion:

That this bill be now read a second time.

**Senator MARK BISHOP** (Western Australia) (12.47 pm)—The Governance Review Implementation (Science Research Agencies) Bill 2007 is part of a procession of legislation coming before parliament implementing the recommendations of the report of Mr John Uhrig. As we know from similar legislation considered recently, the Uhrig report recommended new governance arrangements for many government agencies. The simple purpose was to streamline accountability—that is a pretty straightforward management practice. It is also about efficiency and better defining roles, responsibilities and relationships. It is about gaining greater clarity and clearer lines of communication in organisations. Most importantly, it is about improving the relationship between government ministers and the bureaucracy. We support this legislation because all this is good governance. But it is more than just the relationship between government ministers and chief executives; it is also about relationships, lines of communication within organisations and lines of communication between organisations.

As we know, the Commonwealth has an incredible maze of organisations. First, there are the line departments, which are the principal sources of policy and program management. In most portfolios there is a swag of smaller agencies, and some of these are established by specific statute. The list is long and there is a huge variety under each source of authority. The summary developed by the Department of Finance and Administration is very informative. Roughly, there is a division between those covered by the Public Service Act and the Financial Management and Accountability Act and those which are not; however, most are covered by the respective acts. There is an inclination to bring as many agencies as possible into that framework for consistent governance and
accountability. There are other agencies which are not dependent on budgets and which are more commercially orientated, and they are accountable under the Commonwealth Authorities and Companies Act. They must be set up by legislation for a public purpose and they must be a body corporate and hold money on their own account. Slowly but surely we are now seeing a convergence of governance into these models.

There are, of course, a few anomalies. Parliamentary departments are a case in point, and there are some with historic origins which are politically difficult to tinker with. For example I refer to the Repatriation Commission, set up under the Veterans’ Entitlements Act. When considered against the principles of the Uhrig report and the government’s program, this does still remain an anachronism. The bill today addresses governance changes for the above reasons in CSIRO, the Australian Institute of Marine Science and the Australian Nuclear Science and Technology Organisation. The principal change is in the appointment of the CEO, except for ANSTO. Instead of the Governor-General being the appointing power, there has been a shift to the board of each agency. These agencies therefore retain boards with executive power. That is distinct and different to other agencies where boards have been abolished or have lost executive power in favour of a more advisory role. The distinguishing factor is the degree of dependence on the budget and the independence considered appropriate by government. CSIRO, for example, while partly budget funded, also has a growing commercial interest. This for many has been a serious bone of contention, because its governance structure should reflect the nature of its business. Likewise, the role of the minister might need to be circumscribed. In this case, the minister’s responsibilities, for example, for contracts and funding limits have been reduced. For a quasi-commercial organisation such as CSIRO, that is also appropriate.

I do not need to go further into the specifics here but say that this rationalisation does make sense. But, as I have noted before on similar legislation, accountability is more than organisational structures and lines of reporting. It is more than improving communication and having better role clarity. It is also more than performance contracts and agreements, such as ministerial statements or letters of expectation. More than anything, it is about behaviour. And governance in the private sector is no different.

Look at the great catastrophes of recent times—for example, HIH. No amount of corporate legislation can prevent that sort of corruption. It is true that sanctions are available and that they do have some teeth. But that is not much solace for all of those investors who lost so much. Seeing some of the crooks behind bars might offer some comfort, but not enough. It is likewise with government agencies. Good governance does not guarantee good performance. In almost every case, good performance comes from good people.

Government agencies need worthwhile managers. Sometimes, as we know, that creates a dilemma, especially for those agencies with high specialisation. That might be specialisation in the law, medicine, science and many areas of research and policy development. Finding a CEO who has that status as well as the experience and the technical skill and reputation is sometimes, indeed often, difficult. This is particularly the case for the three agencies which are the subject of this bill.

The most critical element of each organisation is the quality of the chief executive officer. It is about far more than managing an internal budget. It is about being a leader in science and research and having a high per-
sonal reputation in the research community. Budgets are not difficult to manage; building commerciality and winning revenue are. Acting and managing organisations such as these in the public interest is also a most critical element. These organisations have few, if any, real competitors except, perhaps, within the research area, which as we know is rich in highly specialised niche sectors.

ANSTO is essentially regulatory and AIMS is uniquely concerned with the protection of our marine environment. So there is considerable diversity in these organisations, for which good governance measures must be applied. Let us hope that the refinements of the different models being made in this bill work to their advantage.

Let me conclude by repeating the remark I made about accountability the last time I spoke on a similar bill, and let me repeat the point I have made about behaviour being the fundamental ingredient of governance. The irony should not be lost on us. Despite this wonderful emphasis on accountability, it is being introduced by a government whose behaviour is the antithesis of good governance. The Howard government is probably the least accountable government this country has seen for a long time. The contradiction is absolutely breathtaking. We could go on for hours about the litany of failed accountability, but it would take much too long. We see it here at question time every day. We see it in nonanswers to questions on notice. We see the parliament being treated with contempt by ministers who prefer to say that it is too hard to answer a question—or, alternatively and increasingly, questions are deliberately misconstrued. I could go on.

The great disappointment in this behaviour is that others see their leadership’s values at work and in an open manner. Monkeys do as monkeys see. The example being set for the values and future behaviour of government is a matter of ongoing concern. The behaviour of spin, cover up, deceit and misrepresentation is now becoming universal. No matter how good our governance structures appear to be on paper and in black and white, it matters little if the current decline in government standards continues unabated.

Senator CARR (Victoria) (12.57 pm)—As Senator Bishop has already indicated, the opposition is supporting the Governance Review Implementation (Science Research Agencies) Bill 2007. We do so because, as has clearly been indicated, it makes sense to have clearer lines of communication and responsibility. It is particularly appropriate that CSIRO, ANSTO and AIMS, the premier scientific bodies responsible for our national and international research effort, are given appropriate administrative support to ensure that they can fulfil their proper functions, especially considering the enormous contribution that they have made over time and that I believe they will continue to make in the future. They represent public research assets which are the envy of many other countries. Collectively, over an 80-year period, these agencies have undertaken research programs that have saved existing industries and created new industries. They are absolutely vital to our national innovations system and they have profound national importance. As part of a national innovations system, they provide this country with the resources it needs to meet some of the challenges we face with respect to the great questions of our time, such as the ageing of the population, climate change and globalisation. They provide this country with a huge capacity to support our manufacturing industries, to advance new manufacturing industries and to find new technologies that allow us to meet the challenges of the day. So the governance of these agencies is of considerable importance.

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In the case of AIMS, the legislation shifts the powers of governance towards the AIMS council, away from the minister. This is particularly important with regard to the appointment of a chief executive officer and the new power of the council to directly appoint the new CEO. Similarly, in terms of ANSTO and CSIRO, the legislation clarifies the relationship which exists between the CEO and the various boards or councils. Labor supports this legislation because it clarifies the financial responsibilities and the accountability of the boards of these organisations. They are very useful reforms.

I know from recent discussions with CSIRO that the project in contract management has been less than perfect. Contracts have been awarded on occasions to people in, I think, highly dubious circumstances. I have made these points at Senate estimates hearings. The Senate estimates process will still operate and provide us, as members of parliament, with an opportunity to pursue these matters. But, frankly, if these powers had been in place at the time of these events I have spoken about then there would have been a different response from those organisations. The fact that the minister failed in his duty of public accountability at the time is regrettable. So I look to the boards and the councils of these organisations to take up these new responsibilities with gusto. It will place greater importance upon the relationships between the minister and these boards. Frankly, a higher and more sophisticated response will be required as to the operation of these boards by way of direct line through to this parliament via the minister.

The employment of staff and the status of senior staff within these agencies ought to be the responsibility of these boards, but the responsibility for the general welfare of these organisations cannot be abrogated by the parliament. We have an ongoing responsibility to ensure that there is appropriate accountability through the estimates process and that the welfare of these agencies and councils is in fact protected. The prosperity of this country depends upon our capacity to remain competitive and productive and that, in my view, depends on our capacity to strengthen our national innovation system. That is precisely what the government has failed to do. It has failed to appreciate just how important these organisations are by not ensuring that that occurs. It has failed to ensure that their integration within the national innovation system is in fact upgraded and that there is a capacity for our scientists to contribute to public debate and genuine research effort to allow us to meet the challenges that lie ahead.
That is why Labor have proposed a comprehensive reform program for our national innovation system. We are committed to a comprehensive program to stimulate innovation, competitiveness and productivity in which these public research agencies will have a central role. Therefore, like Senator Bishop, I commend this legislation to the Senate.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.05 pm)—I thank Senator Bishop and Senator Carr for their contributions to the debate on the Governance Review Implementation (Science Research Agencies) Bill 2007. These amendments reflect the recommendations of the Uhrig review and align each agency’s governance arrangements with current best practice. This will ensure that administration of the recently announced government funding for AIMS, ANSTO and CSIRO for the next quadrennium—the largest ever research budget—will be efficient, effective and accountable. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

MIGRATION AMENDMENT (STATUTORY AGENCY) BILL 2007
Second Reading
Debate resumed from 13 June, on motion by Senator Colbeck:
That this bill be now read a second time.
Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (2007 MEASURES No. 1) BILL 2007
Second Reading
Debate resumed from 12 June, on motion by Senator Scullion:
That this bill be now read a second time.

Senator LUNDY (Australian Capital Territory) (1.08 pm)—The Labor Party supports the Veterans’ Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007. The bill proposes a range of mostly technical and housekeeping amendments to the Veterans’ Entitlements Act—or the VEA—the Military Rehabilitation and Compensation Act and the Income Tax Assessment Act. Its provisions seek to formalise current practice and policy, to better align the VEA with the Social Security Act, to correct some unintended or unfair consequences of legislative drafting and to improve the Department of Veterans’ Affairs administration.

An efficient administration ensures fair outcomes for veterans. These amendments touch upon the income and assets test, the tax treatment of veterans pensions and assets, bereavement payments, and eligibility criteria for assistance and compensation. There-
fore, while these are fairly minor amendments, they will affect a considerable number of veterans and it is important that we consider the full range of their effects. I want to mention a few salient amendments in the bill before discussing Labor’s position on the administration of veterans issues, reiterating some of the points put in the other place by my colleagues.

The bill amends the VEA to require the Repatriation Commission to provide written notification of income support pension decisions and other matters and make a written record of that determination—setting out its findings on questions of fact, evidence and reasons for its determination. The commission will also be required by law to provide a copy of the decision, findings and rights of appeal to the claimant except where that information is of a confidential nature. I am advised that this largely updates the VEA in line with existing practice.

In addition, the bill will ensure that additional one-off payments of family assistance under the Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004 are not counted as income under the act. This will bring the VEA into line with the Social Security Act, which exempts one-off payments to families from this income test. The bill expands the definition of ‘compensation affected payment’ to include supplementary benefits. This means that, in cases of overpayment, supplementary payments will be recoverable where primary payments are recoverable. This is in line with the provisions of the Social Security Act as well.

The bill will amend the bereavement payment provisions to ensure that, where a deceased person’s payments include the Defence Force income support allowance, the bereavement payment provided to the surviving partner or carer also includes that allowance. It will also amend the income and assets test for the service pension and income support supplement to allow for the application of the deprivation provision to be reversed in circumstances where an asset is disposed of for less than its full value but adequate consideration is later received.

Schedule 2 amends the Military Rehabilitation and Compensation Act 2004, broadening the definition of ‘service injury or disease’ to include those injuries or diseases contracted or aggravated as a consequence of medical treatment for an earlier service injury or disease and amending the onus of proof provisions to cover both persons claiming for the acceptance of liability and persons claiming for compensation. Schedule 5 clarifies the taxable status of Defence Force income support allowance payments in line with the tax treatment of the basic rate component of the ordinary age pension or the disability support pension. It must be remembered that veterans and ex-service personnel are often at their most vulnerable during the claims process, both emotionally and physically. Veterans and ex-service personnel deserve more. Constant improvement is necessary to ensure we have an effective operating system and administration which provide for the veterans community in a transparent and easily understandable way. For this reason, one of Labor’s six pillars for action on veterans affairs is to improve the operation of the department. This will be a key policy focus for a Labor government if elected later this year.

The Labor Party have spoken extensively in recent months about the need for improvement in the administration of the department. For example, we have raised the issue of improving the interface between Defence and the Department of Veterans’ Affairs to ensure a smoother transition from service to care, such as around record sharing. We have also expressed concern about
the department’s claim-processing times. Departmental figures obtained in February showed that 4,570 claims have exceeded the average time taken to process a claim. While efforts are being made to address these backlogs, these waiting times are clearly unacceptable and should not have occurred in the first place. These long waiting times are occurring against the background of a net national reduction of 12.5 per cent over the last two financial years of staff allocated to process compensation claims under the Veterans’ Entitlements Act. The 2007-08 budget shows that the government will reduce the department’s average staffing level for the third financial year in a row.

Labor have been willing to support the work of the government in veterans affairs where positive steps have been made to enhance the wellbeing and care of veterans. In the recent budget, Labor supported the government’s initiatives which include: $25,000 one-off ex gratia payments for Australian former prisoners of war in Europe or their surviving widows, a doubling of the funeral benefit under the Veterans’ Entitlements Act from $1,000 to $2,000, and catch-up payments for special intermediate rate disability pensioners. However these initiatives do not go far enough, and in fact many are catch-up initiatives. The catch-up payments for special intermediate rate disability pensioners addressed the considerable erosion of the value of those pensions over the term of the Howard government but did not insure against future erosion through indexation.

Recent enhancement funding for the gold card addressed its serious decline due to underfunding over the term of the Howard government. Veterans were not receiving the services they needed. Labor have been busy putting forward positive plans for veterans: the indexation of the above general rate pensions to both the CPI and the MTAWE indices; a commitment to provide additional resources to the suicide prevention service ASIST; and an undertaking to do a health study of the children of Vietnam veterans. We want to make sure that, in all things, veterans get a fair go. Labor support the bill and look forward to its implementation. I commend the bill to the Senate.

Senator MARK BISHOP (Western Australia) (1.15 pm)—The Veterans’ Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007 is a relatively simple housekeeping bill that does not require a lot of description or debate. It makes amendments to a number of acts involving veterans benefits. Its aim is to correct anomalies contained in those acts. This is necessary to avoid unforeseen matters cropping up. It only takes a few people to be affected unfairly for such amendments to become necessary. As such this bill is unobjectionable and is worthy of support.

It is worth reflecting, however, on this maze of legislation and the seeming inability to streamline it. This is particularly the case with veterans benefits. Such benefits originated far earlier than most of those in all other social security legislation. Veterans benefits were derived from the ravages on diggers, and their dependents, of World War I. They have always been distinct from social welfare payments. Inevitably, however, similarities between the two have been drawn. The separate origins of these benefits were forgotten by many. Indeed, some have wrongly suggested that the payment and the care of veterans should be transferred to what is now known as Centrelink. That will never happen, and nor should it. We have long preserved the veterans jurisdiction as a separate entity within government because of its unique status.

The history of veterans care and the public’s commitment to it is very important. The gradual move within and into the Defence
portfolio, however, is a far more positive one. As care shifts from World War II veterans to the general population of ex-service personnel, that move becomes even more sensible. Even now the separateness of veterans affairs and Defence may not be as logical as it once was. The artificial division in the provision of services often leads to inefficiencies. The quality of services delivered by two agencies to separate populations—dependent only on eligibility for war service benefits—is hard to justify now. We recognise the special status of those who served to defend us in the past, but the nature of modern service is quite different, as are the needs for support. The dual operation of disability compensation schemes has become a nightmare, and it is often unfair. The new act will remedy that in time. But it is something that should have been done 15 or 20 years ago.

The situation is likewise with income support benefits. Differences between the service pension and the age pension are recognised, but over the years they have been brought into line. However, as this bill shows, there are still differences which trip up legislative drafters. It is difficult to keep in synch different legislation that affects the same population. In policy terms, there is only one substantial difference between the age pension and the service pension, and that is that eligibility for the latter commences five years earlier. But this is also historic and there must be doubt now about the relevance of that distinction—except for it being a mark of status between the two categories: the aged pensioner at large and the aged veteran.

The origin of that five-year eligibility demarcation reflects the shortened life span of many ex-World War I diggers, who spent many years overseas suffering interminable bombardment. It was likewise for many in World War II, although it is not necessary to get into a debate as to who suffered more. The point is that the issue of longevity, as affected by war service today, is increasingly becoming a dubious proposition. If, in policy terms, it is a mark of respect or of service, then let us say so. But, if it is a reaction to reduced life expectation, as a general proposition it is now doubtful. The fit soldier syndrome is equally as relevant.

So the question becomes: why doesn’t the government get serious and avoid this legislative process every year? Why doesn’t it provide one age service pension through the act? Preserve the age differential by all means; but apart from that the differences are minimal. If we can do it for disability compensation between two very large agencies, why not between two others? The answer is that the social welfare bureaucracy would never agree. That is because of the long-standing ‘warfare’ between agencies. The traditional values and cultures clash regardless of the greater good. That is why we now have such a strong focus on whole-of-government endeavours.

Government is quite rightly trying to bring some of these things together. There are two telling illustrations of this serious dysfunction in policy between the bureaucratic behemoths. The first is the Defence Force Income Support Allowance, which was legislated two years ago now. The policy conflict there was that the veterans lobby wanted to exempt veterans disability pensions from the means test for the age pension and other Centrelink payments for which it was counted as income. The government agreed to that proposal. It could have been done by adding a single word to the Social Security Act. But the social security mindset could not accept veterans compensation payments being treated in this manner. Nor would they administer the exemption through their payment system. So the Department of Veterans’ Affairs had to build its own new system to pay a refund of the equivalent amount, which
social security had refused to deduct. This is mind-bogglingly stupid, but it is all on the public record and it all happened.

Again in the recent budget, a decision was made to pay a catch-up amount to T&PI veterans. Essentially, the government had agreed to the proposition that the value of the pension in isolation had declined over the years. Yet, having agreed to that, they chose to do nothing about the cause, which was a failure to index the whole pension—not just part of it—in line with other pensions. I bet this involved a social security objection to the indexation of a disability pension by a wage based index—that is, they stuck rigidly to a definitional difference in pension types between those which are economic and those which are non-economic. If I am not even close, perhaps the minister will advise me in his response. In policy terms, it makes little difference. As the government have clearly demonstrated, there is little policy consistency in this bill. Unfortunately, the government do not appear to care. So, instead of a better policy rationale between portfolios and legislation, we will have this legislative band-aid approach.

The same inane legislative fixes are produced budget after budget in the same area. These same amendment bills will keep coming before us, wasting the precious time of the parliament. Having said that, I will finish here and waste no more time. We support the bill but not the ridiculous process it represents. I ask the minister to respond to the issues that I have raised.

Senator McEWEN (South Australia) (1.24 pm)—I too wish to address a few comments to the Veterans’ Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007. As we have heard from previous speakers, the bill amends three acts: the Veterans’ Entitlements Act, the Income Tax Assessment Act and the Military Rehabilitation and Compensation Act. In the main, the proposed amendments repair inconsistencies between those acts and other legislation, particularly the Social Security Act. The bill before us also remedies unintentional consequences of previous legislation. Once again, we are here fixing mistakes that the government should never have made in the first place.

It is always disturbing to realise that legislation is flawed and even more so when that legislation is in the area of veterans affairs, because it affects people who have served in our defence forces. Currently, there are some 450,000 veterans and nearly 112,000 war widows. As we know, more than 100,000 Australians have died during the numerous conflicts in which our country has been involved. Many of those who were fortunate enough to return from active service did so suffering from physical and mental injuries. The lives of veterans and their families are, of course, significantly affected by their service. It is also a sad fact that every day the nation loses more of its World War II veterans. This fact was brought home to me recently when my father’s old battalion association advised me that they would be winding up next year. Anzac Day next year will be their last official function because there are not enough diggers left to maintain the activities of the association. I understand that it is not the only World War II battalion association going through that difficult process at the moment. So anything that we can do to make life better for our veterans—veterans of all wars—should be supported. The government should at least make an effort to ensure that future legislation avoids the neglect and mistakes that we areremedying today.

As senators on this side of the chamber have said previously, Labor supports the legislation. However, I would like to highlight a few matters in the bill. Currently, the Repa-
The Repatriation Commission is required to provide written notification of its decisions in relation to a number of claims and other matters, but the specific matters to be notified have not been prescribed in the Veterans' Entitlements Act. Any senator or member who has assisted veterans in pursuing claims through the Repatriation Commission, or in appealing the decisions of the commission, can attest to how such matters often involve significant distress for veterans and their families, particularly when veterans feel that the nation they served has failed them in the process of applying for compensation. The amendments before us will require the commission to include in its notification its findings on questions of fact, evidence and reasons for its determination. Importantly, the person who made the claim will be provided with a copy of this information. While that will not always make good the disappointment of an aggrieved complainant, hopefully it will go some way to providing some more confidence in the system in place.

In addition, the bill amends the bereavement payment provisions to ensure that, where a deceased person's payments include the Defence Force income support allowance, the surviving partner or carer also receives that allowance within their bereavement payment. This is an important step that needs to be taken to ensure that the partners and carers of veterans receive the financial support they require.

The Military Rehabilitation and Compensation Act 2004 sees a number of amendments in schedule 2 of this bill. One such change that I find encouraging is the broadening of the definition of 'service injury or disease'. The proposed amendment will allow for the inclusion of injuries or diseases contracted or aggravated as a consequence of medical treatment for an earlier service injury or disease. With such injuries and diseases now included in the MRCA's definition of service injury or disease, veterans who do develop these problems will, hopefully, be better protected and supported.

There are worthwhile things in this bill, and the previous senators have outlined some of those. I also acknowledge the recent increase in funeral benefits for eligible veterans under the VEA to $2,000. That is a good move. There has been some progress made on the important issue of compensation for our veterans, but there are still issues that the government needs to address. One of the government’s biggest failings in providing for Australia’s veterans is its refusal to introduce complete indexation of veterans’ pensions. By refusing to index their pensions, the government has made life very difficult for our veterans. The erosion of the standard of living suffered by veterans for more than 10 years is significant. For example, a veteran on the special rate disability pension has lost somewhere between $70 and $92 a fortnight over the last decade. If Labor’s indexation policy were adopted, our veterans would receive the compensation for their service that they so clearly deserve. Labor is committed to properly indexing these pensions in the same way that the age pension is indexed.

I am pleased to say that the government has finally paid some attention to the veterans community, which has lobbied hard on this issue, because—surprise, surprise—in the pre-election budget recently delivered, the government issued veterans in receipt of the special rate disability pension a one-off catch-up payment. That once-only payment will assist disadvantaged veterans temporarily, but it does not equate to all the income that veterans in receipt of the pension have missed out on. While Labor support the one-off payments, we want veterans’ pensions to be properly indexed. Veterans not only deserve this increase in their pension but need it to maintain an acceptable standard of liv-
ing. Hopefully the government will see this as the long-term problem that it really is and recognise that veterans and their families deserve to have the value of their payments maintained. They should not have to wait until an election budget is coming up for them to receive appropriate compensation.

Another example of the too little, too late method that the government prefers when it comes to compensating our veterans is the recently announced payment of $25,000 to former prisoners of war interned in Europe. You would think that no-one could argue that POWs deserve special consideration. I would suggest that most of our POWs endured conditions that are beyond the comprehension of anybody in this parliament. In 2001, former Australian POWs imprisoned in Japan were given a much overdue payment of $25,000. It was not until 2004, in the lead-up to a federal election, surprisingly, that the government finally made a payment to former Australian POWs imprisoned in Korea. Only this year has the budget allocated compensation to our POWs who were imprisoned in Europe. Previously the government argued that the conditions endured by those POWs did not warrant a compensation payment. It is a pretty mean and thankless government that could presume to apply a hierarchy of suffering to former Australian prisoners of war. The Howard government has had more than a decade to compensate these Australians for their suffering but, as I have said, it took an election year to see a change of heart from the government.

While we are supporting this bill, Labor will continue to monitor what the government is and is not doing for our veteran community. Another area of particular concern for Labor senators is the delays in processing claims handled by the Department of Veterans’ Affairs. The department’s 2005-06 annual report showed some startling figures in relation to the speed at which veterans’ claims are processed. Under the Military Rehabilitation and Compensation Act, the time taken to process new impairment claims had increased from 26 days to 130 days since 2004-05. Under the same act, the mean time taken to process primary injury claims had gone from 90 days to 146 days since 2004-05. These figures are disgraceful. It is outrageous that, at a time when our veterans need our support, they are left waiting months for a reply.

Labor senators pursued the matter of claims-processing times at last month’s budget estimates, and we will continue to pursue that matter, particularly in the light of the reduction in staffing numbers at the Department of Veterans’ Affairs which has been made to accommodate the budget restraints imposed on the department by the government—a government that continues to fail our veterans.

While I have the opportunity, I would like to commend the numerous veterans groups and organisations that are amongst the most tenacious advocates for their constituents and whose hard work has seen incremental advances for veterans such as those we see in this bill. But you have to ask, as more of our older veterans are dying or succumbing to the impact of their service related injuries and illnesses: who will continue to keep the government accountable for the responsibility we all have to our veterans community? You certainly would not want to rely on the government to do it—a government which increasingly governs according to the Prime Minister’s standing in the polls. You would not want to rely on the government to do the right thing of its own volition when it comes to protecting and caring for our veterans.

Question agreed to.

Bill read a second time.
Third Reading

Bill passed through its remaining stages without amendment or debate.

AUSTRALIAN WINE AND BRANDY CORPORATION AMENDMENT BILL (No. 1) 2007

Second Reading

Debate resumed from 12 June, on motion by Senator Scullion:

That this bill be now read a second time.

Senator MURRAY (Western Australia) (1.35 pm)—The Australian Wine and Brandy Corporation Amendment Bill (No. 1) 2007 amends the Australian Wine and Brandy Corporation Act 1980 to implement changes to the Australian Wine and Brandy Corporation’s governance arrangements in line with recommendations of the Uhrig review. In particular, the bill’s amendments propose to discontinue the appointment of government members to the Australian Wine and Brandy Corporation board.

The Australian Democrats support this bill but are taking the opportunity of this debate to point out that it could go much further. This bill does away with the procedure of appointing a government member to the board of the AWBC, which generally, but not always, is a good thing. Boards of authorities should in general be as free from government interference as possible, but there should be a transparent process for appointments on merit against set criteria. This bill does not in any way set out procedures for appointments on merit; it simply does away with the requirement that there be a government appointee to the board.

The criteria for the selection of someone to the AWBC board are set out in section 13 of the act. Although the amendment does away with a government member, the members are still appointed by the minister in writing and the criteria, set out in that section, are simply that they have must have knowledge of or experience in winemaking, grape growing, marketing, finance, administration or business management. This bill now adds knowledge of or experience in ‘government policy processes and public administration’.

The argument is that this will increase the transparency of the AWBC operations. I am not convinced, as the minister will still have the final say—it is up to him or her to sign off on appointments, and while the criteria cover a broad skills set they do not prevent the appointment of mates and the use of patronage. It is easy for the minister to simply appoint a person that he wants to the board—a mate. That is not an arms-length appointment on merit. And I am not persuaded that the role of the selection committee—which is made up of ministerially appointed members of the AWBC board—will make the appointments at arms length from the board or the minister.

I note that the committee must report to the minister and their report must be tabled in parliament. That too does not guarantee appointments on merit. It just means we get told of the decision, not that a fully transparent and accountable appointments on merit process took place. During the inquiry by the Senate Rural and Regional Affairs and Transport References Committee into the operation of the wine industry, which reported in October 2005, it became apparent that there is a great divide between the interests of winemakers and those of grape growers. Section 13 of the act specifically states that a person nominated for the board must have knowledge of or experience in wine-making, grape growing, marketing finance et cetera; however, it does not specify that there must be representatives from each of those areas. Therefore, you may have a board that does not have a representative from grape growers on it. I am sure that is not what is...
intended, but I do not see any safeguards to stop the board from being stacked with boffins or persons from a particular sector rather than those with practical experience.

For over a decade I and the Democrats have noted many times in this chamber that appointment on merit was extensively investigated by the Nolan committee, appointed by the United Kingdom parliament, which in 1995 set out the following principles to guide and inform the making of such appointments: a minister should not be involved in an appointment where he or she has a financial or personal interest; ministers must act within the law, including the safeguards against discrimination on grounds of gender or race; all public appointments should be governed by the overriding principle of appointment on merit; except in limited circumstances, political affiliation should not be a criterion for appointment; selection on merit should take account of the need to appoint boards that include a balance of skills and backgrounds; the basis on which members are appointed and how they are expected to fulfil their roles should be explicit; and the range of skills and backgrounds that are sought should be clearly specified.

The United Kingdom government fully accepted the committee’s recommendations at the time and have maintained those principles on appointments. The Office of the Commissioner for Public Appointments in the United Kingdom was created subsequent to the Nolan report, with a similar level of independence from the government to that of the Auditor-General, to provide an effective avenue of external scrutiny. The Democrats have used the Nolan committee’s recommendations in our persistent and long-term campaign for appointment-on-merit amendments in various items of legislation, because those Nolan recommendations are tried and tested. I would remind the chamber that we have moved those amendments more than 30 times, and more than 30 times the coalition government have rejected them because they prefer patronage to appointments on merit in many cases—not in all cases, I might add.

While I have the opportunity I want to cover a second matter concerning the wine industry. Whenever I speak to bills that deal with the Australian wine industry, I am reminded of my work on the Senate Rural and Regional Affairs and Transport References Committee and the work of other senators on that committee and the report into the operation of the wine-making industry, which reported in October 2005. In that report, the committee referred to the discussion of unconscionable conduct in the Senate Economics References Committee’s 2004 report The effectiveness of the Trade Practices Act 1974 in protecting small business. That report considered the evils of ‘unilateral variation’ clauses—contract conditions which allow one of the parties to vary the contract without further negotiation or without the other party’s agreement. During the Senate Economics References Committee’s inquiry, the ACCC itself voiced concern that unilateral clauses could be unreasonably exploited by the stronger party, and it was the recommendation of the ACCC, followed by the Senate economics committee in its March 2004 report, that unilateral variation clauses should be added to the list of matters which a court may have regard to in deciding whether conduct is unconscionable. I refer to the Trade Practices Act 1974, sections 51AC(3) and 51AC(4).

In the government’s response to the Senate economics committee it agreed to the need for the amendment. In the 2005 report into the operation of the wine-making industry, the rural and regional committee reiterated the sentiment of the Senate economics committee in recommendation 2. It stated:

The committee recommends that the Government should give priority to amending the Trade Prac-
tices Act 1974 to add ‘unilateral variation’ clauses in contracts to the list of matters which a court may have regard to in deciding whether conduct is unconscionable.

After the rural and regional committee’s report into the wine industry, I was heartened by the government’s response which stated:

The Government notes the Senate Economics References Committee, in its report on the effectiveness of the Trade Practices Act 1974 in protecting small business, recommended that section 51AC of the Trade Practices Act 1974 be amended to provide that unilateral variation clauses should be added to the list of matters which a court may have regard to in deciding whether conduct is unconscionable. The Government has accepted the Senate Economic References Committee’s recommendation in full and is progressing legislation for its implementation.

As Australians say, ‘Yeah, right!’ I am willing to work through things with the government to bring about good and effective outcomes for the Australian people, but I have to say I am losing all hope of the government ever amending section 51AC of the Trade Practices Act. I could understand it if it were adamantly opposed to the amendment, but the government has said it is willing to do it and it is progressing legislation. Years ago it said that.

This is a government that, in a ridiculous farce, can recall the entire parliament to change ‘a’ to ‘the’ in one piece of legislation, but when it comes to the Trade Practices Act and small business it moves with the speed of treacle. The government has said since 2005 that it would do something about section 51AC of the Trade Practices Act. It is now 2007. So even though the government accepts the recommendation made by two committees, and the amendment has the support of the ACCC, the progress is abysmally slow. You have to ask yourself why. I ask you that, Minister: why? Whatever the reason, it stinks.

Question agreed to.
Bill read a second time.

In Committee
Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia)
(1.44 pm)—by leave—I move amendments (1) and (2) on sheet 5268:

(1) Schedule 1, page 3 (after line 21), after item 4, insert:

4A After section 13

Insert:

I3A Procedures for merit selection of appointments under this Act

(1) The Minister must by writing determine a code of practice for selecting and appointing members of the Corporation that sets out, in addition to the requirements outlined in subsection 13(4) and the guidance outlined in section 29F, general principles on which the selection is to be made, including but not limited to:

(a) merit; and
(b) independent scrutiny of appointments; and
(c) probity; and
(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the Gazette.

(3) The Minister must review a code of practice determined under subsection (1) not later than every fifth anniversary after the code has been determined.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

(2) Schedule 1, page 3 (after line 25), after item 6, insert:
6A Paragraph 29B(a)

Repeal the paragraph, substitute:

(a) to select, consistent with the code of practice determined pursuant to subsection 13A(1), persons to be nominated for appointment as members of the Corporation referred to in paragraph 13(1)(c); and

Since I have motivated the amendment already in my speech in the second reading debate, I just move the amendment.

Senator O'BRIEN (Tasmania) (1.44 pm)—While Labor support the basis of Senator Murray's amendment, Labor do not support this amendment. Labor have already announced selection processes for government bodies such as the ABC board and our Fair Work Australia. The selection processes that Labor have announced demonstrate our commitment to the Nolan principles on which this amendment is based.

The Nolan principles which govern appointments in the UK require that appointments are merit based and that the process of appointment is independent and transparent. Labor and all the other parties have advocated merit based appointments, while this government has continued to be silent through its inaction. Labor believes that that issue of government appointment is essential to uphold public trust in government bodies. The establishment of a merit based selection process for government appointments is a safeguard but not a full protection against political appointments.

Labor notes the disintegration of constitutional conventions regarding responsible government under this Howard government. This is not an issue that can be fixed simply by inserting an amendment into this bill. There should be a proper consultation with relevant bodies on the government selection processes, as well as consideration of other aspects which should be included to make the appointment process more independent and transparent.

The Winemakers Federation of Australia have spoken to me about these amendments and feel that it would have been more appropriate had they been consulted about them. Without expressing a view on them, they thought that that would have been an appropriate course of action if the Democrats wanted their support in relation to these amendments.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.46 pm)—I note Senator O'Brien's comments on behalf of the opposition. The government also opposes these amendments. The government is satisfied that current processes are supporting Senate appointments to the AWBC board and sees no reason to accept the proposed amendments.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.48 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

LIQUID FUEL EMERGENCY AMENDMENT BILL 2007

Second Reading

Debate resumed from 12 June, on motion by Senator Scullion: That this bill be now read a second time.

Question agreed to.

Bill read a second time.
Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.49 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 14 (Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Bill 2007).

Question agreed to.

HEALTH INSURANCE AMENDMENT (INAPPROPRIATE AND PROHIBITED PRACTICES AND OTHER MEASURES) BILL 2007

Second Reading

Debate resumed from 10 May, on motion by Senator Coonan:

That this bill be now read a second time.

Senator KIRK (South Australia) (1.49 pm)—I seek leave to incorporate Senator McLucas’s speech.

Leave granted.

Senator McLUCAS (Queensland) (1.49 pm)—The incorporated speech read as follows—

I rise today to speak on the Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Bill 2007.

This Bill proposes to amend the Health Insurance Act 1973 to replace existing prohibitions on the payment of medical benefits for pathology and diagnostic imaging services.

The new provisions are aimed at:

• firstly, prohibiting certain practices in relation to the rendering of pathology and diagnostic imaging services, including prohibiting inducements and other relationships between requesters and providers of pathology services/diagnostic imaging services;
• secondly, preventing payments for pathology and diagnostic imaging services that do not benefit patients;
• and thirdly, encouraging fair competition between pathology and diagnostic imaging providers on the basis of quality of services provided, and cost to patients.

These new provisions represent a response to persistent long-term claims that a minority of providers, particularly within the pathology industry, were providing payments or other inducements to practitioners so that practitioners would refer patients to them. For example, pathology companies (and third parties acting for them) have allegedly been offering inflated rents, gifts, lump sum payments and staff to general practices to encourage referrals. There have also been some reports of doctors actively soliciting inducements, gifts and benefits.

While current sections 129AA (Bribery) and 129AAA (Prohibited practices in relation to the rendering of pathology services) of the Health Insurance Act contain a range of provisions addressing bribery, inducements, over-servicing and prohibited practices relating to the provision of pathology services, ongoing reports from within the pathology industry allege that these provisions are being circumvented by operators who are contravening the known intent of the legislation. The provisions have been ineffective in their deterrent and enforcement aspects, with the relevant agencies – Medicare Australia and the Director of Public Prosecutions – unable to successfully prosecute any alleged offenders.

Among the difficulties identified with the current provisions relating to pathology are that they are expressed very broadly; their scope is unclear; it is difficult to discharge the burden of proof; it is difficult to determine the preconditions for application of the relevant sanctions; and it is difficult to establish the facts necessary to apply the relevant sanctions. The sections also apply differentially to the requesters and providers of these services.

Notably, the current prohibitions relating to diagnostic imaging services contained in Division 3 of Part IIB do not carry any criminal or civil penalty sanctions.
This Bill repeals these sections and replaces them with a new Part MBA, which sets out new prohibitions relating to both pathology and diagnostic imaging services.

These changes arise from several thorough reviews of the operation of Commonwealth legislation for pathology arrangements under Medicare. The Department of Health and Ageing in 2002 undertook a review of Commonwealth legislation for pathology arrangements under Medicare, including the HIA. The final report was released in December 2002 and noted that the legislative arrangements for regulating pathology services needed updating and streamlining, particularly highlighting the area of offences and enforcement provisions.

In 2005, DoHA commissioned a further review, undertaken by Phillips Fox Lawyers, to specifically examine the pathology enforcement and offence provisions of the HIA. The review included extensive consultation with pathology providers, professional and peak industry groups, State and Federal Government agencies, consumer groups.

The Phillips Fox Review did not attempt to substantiate any of the allegations concerning inducements from service providers or claims that some medical practitioners were demanding payments from pathology providers; rather the authors accepted that ‘the frequency and consistency of claims made across the sector generates a high level of confidence that such conduct is, in fact, occurring’.

The Phillips Fox Review made 52 recommendations including the need for enforcement and offence provisions be redrafted to express more clearly the Government’s intent to prevent benefits and bribes between pathology providers and requesters of services, and to extend the application of provisions to create an enforcement framework that can be more effectively applied.

Minister Abbott accepted the bulk of the Phillips Fox report’s recommendations when he released the Government’s response to the Phillips Fox report on 2 June 2006.

It is clear from this background that the current legislation has proven ineffective in tackling persistent claims of over servicing and prohibited practices within the pathology sector particularly.

This is at great cost to Medicare and the health system more generally.

To put this into perspective – in 2005-06, 83 million Medicare funded pathology services were performed, with approximately 10 million Australians accessing these services. During the same period, approximately 15 million Medicare funded diagnostic imaging services such as X-rays, ultrasound, CT and MRI were performed, benefitting more than 6½ million Australians. This equates to expenditure in excess of $3.2 billion, representing approximately 30 per cent of total Medicare outlays in 2005-06.

While noting that it was impossible to quantify the level of inappropriate servicing in these sectors, the Explanatory Memorandum noted that a 0.5% reduction in Medicare funded pathology and diagnostic imaging services would result in a saving of approximately $16 million a year in inappropriate use of Medicare funding.

As my colleague the Shadow Minister for Health Nicola Roxon emphasised in the House, Labor knows how important it is to get the most out of the health dollar and will always support measures which will result in savings to Medicare and the health system more broadly. If this new regime manages to tackle even a fraction of inappropriate servicing by pathologists or diagnostic imaging services – then that will free up much-needed resources for other areas of the health system.

Detailed consideration

Turning now to the provisions of this Bill.


The major amendments are to the Health Insurance Act and involve the repeal of the current prohibited practices provisions for diagnostic imaging and pathology services and the insertion of a new Part IIBA, which contains the new civil penalty provisions and offences relating to re-
quests for both pathology and diagnostic imaging services.

New Part IIBA contains three Divisions:
Division 1 — Preliminary, which outlines procedural and definitional aspects related to the new Part, including the meaning of “requester” and “provider” for the purposes of Part IIBA.

For pathology services, a “requester” means: a practitioner (as defined in s 3(1) as a medical practitioner or dental practitioner; a person who employs, or engages under a contract for services, a practitioner; or a person who exercises control or direction over a practitioner (in his or her capacity as a practitioner).

For diagnostic imaging services, a “requester” means: a medical practitioner; if the service is of a kind specified in regulations made under section 16B — a dental practitioner, a chiropractor, a hysiotherapist, a podiatrist or an osteopath; or a person who employs, or engages under a contract for services, one of the people specified above.

A “provider” of a pathology service or diagnostic imaging service means a person who renders that kind of service; or a person who carries on a business of rendering that kind of service.

New section 23DZZIF describes what is, and is not, a permitted benefit. The new provisions are aimed at preventing the payment of inappropriate and unethical benefits in any form — including money, property or services — from a provider to a requester, either directly or indirectly, but are not intended to capture or prohibit legitimate commercial transactions. Amongst other matters, this section deals with what is permitted in cases where a service requester (such as a General Practitioner) owns, or part owns, a pathology or diagnostic imaging service provider, or where a requester and a provider share premises.

New Division 2 of Part IIBA contains civil penalty provisions that are entirely new provisions for the HIA and are imposed where a court is satisfied on the balance of probabilities that the relevant person, a requester or provider, has contravened the relevant provisions. The maximum penalty under the civil penalty provisions are 600 penalty units ($66,000) for an individual (including executive officers of corporations) and 6,000 penalty units ($660,000) for a corporation.

Under Division 2:
• A service requester must not ask for or accept a pathology or diagnostic imaging service-related benefit (other than a permitted benefit) from a provider or a person connected to a provider.
• A service provider must not offer or provide such a benefit to a requester or a person connected to a requester.
• A service provider must not make a pathology or diagnostic imaging service-related threat to a requester or a person connected to a requester.
• The provisions may also be contravened by a requester or provider if they know that a person connected to him or her has asked for, accepted, offered or provided such a benefit or made such a threat and they fail to report the person within 30 days to the Medicare Australia CEO.

New Division 3 of Part IIBA contains the criminal offences. Many of the elements of the offences are similar to the civil penalty provisions, but it is necessary to prove beyond reasonable doubt certain levels of intention and/or knowledge on the part of the persons involved in the making or receiving of requests or benefits or the making of threats. The maximum penalty for a Division 3 offence is 5 years imprisonment (or 300 penalty units by virtue of subsection 4B(2) of the Crimes Act 1914).

Under new section 23DZZIQ, there are two sets of offences: firstly, where a requester asks for or accepts a prohibited benefit and secondly, where a requester knows that another person has asked for or accepted a prohibited benefit and has not reported this to the Medicare Australia CEO.

These offences are mirrored in new section 23DZZIR which deal with people who offer or provide prohibited benefits. New section 23DZZIS provides that a person also commits an offence if the person threatens a second person, intending that the threat will induce a requester of pathology or diagnostic imaging services to request services from a particular provider.
Notably, this Bill makes explicit reference to Executive Officer liability in a number of the new provisions. The elements required for executive officer liability mirror those in other Commonwealth legislation such as section 54B of the Therapeutic Goods Act 1989.

Items 39 to 84 of the Bill amend various elements of Part VB of the Health Insurance Act, which deals with the Medicare Participation Review Committee (MPRC). Currently, in cases where persons have been convicted of HIA pathology-related offences or are considered to have contravened the prohibitions relating to diagnostic imaging services, the MPRC may take a range of actions, including making services provided by that person ineligible for Medicare payments. The Bill amends Part VB so that the jurisdiction of the MPRC applies on conviction of a Part IIBA offences or a court giving an order for a civil penalty.

Item 85 inserts a new Part VIA – Civil Penalties (new sections 125A-125H) which outlines some of the details about civil penalties, including Federal Court powers and clarifying the relationship between civil penalties proceedings and criminal proceedings under the HIA.

The Bill makes a large number of consequential and other amendments to the Health Insurance Act, arising from the introduction of this new regime. I do not propose to go through these in detail today.

Schedule 1 also amends the Medicare Australia Act 1973 and the Veterans’ Entitlements Act 1986.

The Medicare Australia Act contains certain powers that allows ‘authorised officers’ to require the production of information or conduct searches where there are reasonable grounds for believing Medicare-related offences have been committed. Items 98-109 of Schedule 1 amend the Act for these powers to apply to situations were it is suspected that a civil penalty provision under the HIA has been contravened.

Schedule 1 substitutes a new definition of approved pathology practitioner in subsection 93E(9) of the Veterans’ Entitlements Act, to reflect amendments to the Health Insurance Act.

Schedule 2 makes some minor procedural amendments to the Health Insurance Act and the Health Insurance (Pathology Services) Regulations 1989.

According to the Government, these changes have been the subject of extensive consultation with pathology providers, professional and peak industry groups, State and Federal Government agencies and consumer groups.

Media reports suggest that the Australian Medical Association (AMA) believes that there are already sufficient regulatory mechanisms in place to address inappropriate interactions between requesters and providers of pathology services. However, representatives of the Royal College of Pathologists of Australasia and the Australian Association of Pathology Practices (AAPP) have expressed support for the measures contained in this Bill.

In line with stakeholder support, Labor supports this legislation because we are confident that the new provisions will prove more effective than the current enforcement and offence provisions of the HIA in tackling prohibited inducements and other relationships between requesters and providers of pathology services and diagnostic imaging services.

Labor understands that over-servicing and prohibited practices in the pathology and diagnostic imaging sectors – or indeed in any sector – serves to undermine the whole system, and casts a shadow over the good work done by the vast majority of providers who are doing the right thing. It is not fair that the majority of providers who are doing the right thing should face commercial losses simply because they comply with the spirit of the legislation while their competitors do not.

Labor supports legislative frameworks that encourage fair competition between providers of pathology and diagnostic imaging services on the basis of quality of service provided, and cost to patients, rather than inducements and other relationships.

Performing unnecessary procedures is not just deceitful, it is wasteful and costly. Costly to Medicare and costly to the broader health system.

Labor is committed to the universal provision of quality health care for all Australians. Just as past
Labor governments built Medicare, Labor believes that Medicare should be retained, defended and strengthened. Labor knows that Medicare is the cornerstone of our health system, and obviously does not support the abuse of Medicare. Labor supports this legislation because we believe that Medicare must be protected from inappropriate use by deceitful service providers.

In conclusion, as I said at the outset, Labor will be supporting the bill.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (1.51 pm)—by leave—At the request of Senator Allison, I move amendments (1) and (2) on sheet 5280:

(1) Schedule 1, page 3 (after line 17), after item 4, insert:

4A Paragraph 10AA(7) (definition of spouse)
Repeal the definition, substitute:

spouse, in relation to a person, includes:

(a) a person who is legally married to, and is not living, on a permanent basis, separately and apart from, that person; and

(b) another person, who although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person; and

(c) a person in an interdependency relationship as defined in section 10AAA.

(2) Schedule 1, page 3 (after line 17), after item 4, insert:

4B After section 10AA
Insert:

10AAA Interdependency relationship

(1) Two persons (whether or not related by family) have an interdependency relationship under this section if:

(a) they have a close personal relationship; and

(b) they live together; and

(c) one or each of them provides the other with financial support; and

(d) one or each of them provides the other with domestic support and personal care.

(2) In addition, 2 persons (whether or not related by family) also have an interdependency relationship under this section if:

(a) they have a close personal relationship; and

(b) they do not satisfy one or more of the requirements of an interdependency relationship mentioned in paragraphs (1)(b), (c) and (d); and

(c) the reason they do not satisfy those requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability.

(3) The regulations may specify:

(a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an interdependency relationship under this section; and

(b) circumstances in which 2 persons have, or do not have, an interdependency relationship under this section.

As the parliamentary secretary knows, this question was well motivated the other day on another bill and therefore I do not propose to motivate it further. The parliamentary secretary, and no doubt the Labor opposition, understands the arguments.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.51 pm)—I simply say
that the other day I articulated the argument for why the government is opposing similar amendments, and that argument stands.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.52 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

DEFENCE FORCE (HOME LOANS ASSISTANCE) AMENDMENT BILL 2007

Second Reading

Debate resumed from 12 June, on motion by Senator Scullion:

That this bill be now read a second time.

Senator KIRK (South Australia) (1.53 pm)—I seek leave to incorporate Senator Bishop’s speech.

Leave granted.

Senator MARK BISHOP (Western Australia) (1.53 pm)—The incorporated speech read as follows—

It’s a disgrace that the precious time of the Parliament should be wasted on legislation such as this.

In fact, I have to ask why such provisions in Acts are such that they require such amendment in the first place.

I would’ve thought that in this day and age, once a scheme had been legislated, sunset clauses on such routine matters would have been done away with long ago.

There are simply better ways of doing things.

This bill extends—yet again—the provisions of the Act for the operation of the Defence Home Owner Scheme.

What’s more, this is the second such extension.

And again we have the same reason.

The government is constipated and can’t get its act together.

Mr Acting Deputy President, this is not rocket science.

It’s a simple program for ADF personnel.

It’s been in operation for 16 years.

But as we noted at the last time this matter was debated, it’s now quite inadequate.

It’s also very unfair.

The review has also been years in gestation.

That’s now apparently finished ... yet it seems to be shrouded in secrecy, like everything else.

The Minister, though, has indicated in the recent budget that a new scheme Is coming.

If the indications are right, it looks promising.

The proposed increase in subsidy benefit levels is overdue, but will be welcome.

The ability to shop around between lenders is also a promising change.

Whether this removes the anomaly in benefits between those who purchase their own house and those who rent, is an equation we’ve not seen.

I will curtail my remarks in the interests of time, but let me make two points.

First, the delay in getting this new scheme drawn-up and legislated is unforgivable.

It seems to be like everything else ... way over time.

When materiel is the issue, it affects capability.

But here it affects people.

Our sense is that the concern for people-values in Defence and the ADF is improving. Slowly.

That’s good.

But wouldn’t it have been nice to have seen some swifter action here?

Second, we know that the biggest bugbear for ADF families is the constant postings across Australia.

So I wonder at schemes such as this and how they can be tailored to match that phenomenon.
If we’d had access to the review we might have been enlightened a little.
But the attitude seems to be that we in parliament get what we are given.
No room for discussion or consideration.
I just hope that ADF people were considered a little bit more than we have been.
We support the Bill.

Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

Sitting suspended from 1.54 pm to 2.00 pm

MINISTERIAL ARRANGEMENTS
Senator MINCHIN (South Australia—Leader of the Government in the Senate) (2.00 pm)—I wish to inform the Senate that Senator Chris Ellison will be absent from question time today as he is visiting the flood affected areas of New South Wales. During his absence Senator Brandis will take questions relating to the portfolios of Health and Ageing and Human Services and Senator Johnston will take questions relating to the portfolios of Defence, Veterans’ Affairs and Immigration and Citizenship.

QUESTIONS WITHOUT NOTICE
Liberal Party
Senator CHRIS EVANS (2.00 pm)—My question is directed to Senator Minchin, representing the Prime Minister. I refer the minister to answers he provided yesterday and to the Prime Minister’s press conference held a few minutes ago, which failed to clarify who paid the full cost of the Liberal Party fundraiser at Kirribilli House. Can the minister assure the Senate that no part of the bill for food and drink supplied for the event? If not, how was the Liberal Party’s share calculated?

Senator MINCHIN—I can only repeat what I have said over the last two days in this place. Senator Evans obviously watched the Prime Minister’s press conference, as I did. As the Prime Minister confirmed then, the Liberal Party was billed for and did pay the full cost for the function attended by all 225 guests. I suspect that what Senator Evans is referring to is a story today by Samantha Maiden in the Australian which had a suggestion—I think the words were, ‘It appears that’—

Senator Sterle interjecting—

The PRESIDENT—Order! Senator Sterle.

Senator MINCHIN—She said in her article:
… it appears the Liberal Party did not pay for all the attendees, with the Prime Minister confirming reimbursement was sought for ‘additional’ guests.
That is not correct. As the Prime Minister just said in his press conference, the function was attended by 225 people, including the Liberal Party’s federal council delegates, a range of business observers and some others who were neither council delegates nor business observers. Of course, the Prime Minister is entitled to invite people to his official residence. There was a total of 225 people there in a variety of capacities. The total cost of food, beverages and casual staff et cetera for hosting those people—all 225—was $5,186.69. The Liberal Party paid that amount in full.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I thank the minister for his answer. I refer him, though, to the Prime Minister’s comments that there was some sort of calculation of an equivalent rate when he spoke at his press conference today. I take the minister’s advice that the
total cost for the whole event and for all guests was paid by the Liberal Party. I ask him: how did he manage to organise such a great deal such that the total cost of alcohol was $6.50 a head? Were you only providing a VB and a pie or in fact did you get a particularly spectacular rate? It seems to any Australian who looks at it that this is a curiously inexpensive function—entertaining 225 people at such a low cost.

Senator MINCHIN—Senator Evans talks about an equivalent rate. The Prime Minister, in response to assertions that the actual amount paid for the actual cost of the function at Kirribilli was too low, made the point that he had looked at costs of functions at Kirribilli and the Lodge of a similar kind and noted to himself that the costs were broadly similar on a per capita basis to the cost of the function held at Kirribilli. I was not there, so I do not know whether they were drinking cask wine or what the quality of the beverages consumed was. It might have been cask wine—I do not know. Nevertheless, they are the actual costs. People have made comparisons on this basis, but, when you compare it to having a function at a hotel or something like that, obviously the hotel puts in a profit margin and an imputed rent for the premises and the Prime Minister has made it abundantly clear that there is no imputed rent for the premises because it is his official residence. (Time expired)

Assistance to Families

Senator KEMP (2.05 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. Unlike the previous question, it is a serious question. I refer the minister to ABS data released yesterday on the substantial assistance that the government provides to Australian families. Will the minister please detail for the Senate the assistance that low- and middle-income families are receiving from the government and how much better off those families are? Also, is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Kemp for his very serious question and his ongoing interest in the welfare of all Australians. As Senator Kemp has said, there was a very interesting Bureau of Statistics report released recently which the Australian newspaper, to its credit, summarised on its front page today. It is interesting because, contrary to the rhetoric we hear often from the Labor Party and the trade union movement, it is this Liberal and National Party government that best looks after low- and middle-income families in this country.

What the figures in the ABS report show is that the benefits of the good economic management Australia has had for 11 years are flowing through to all Australians. The best welfare policy that any government can have is to put people into jobs. With our industrial relations reforms, we now have an extraordinarily low unemployment rate of just 4.2 per cent. On top of that, our very well designed tax and welfare policies are ensuring that Australian families get the support they deserve.

What the ABS figures do is calculate the value to families of both financial assistance through things like FTB and pensions and non-financial assistance such as health and education support from the Australian government. The figures show that low- and middle-income families are the big beneficiaries of our tax benefit payments and the cuts we continue to deliver in income tax. The average family pays around $360 in tax each week but receives $375 back from the government in a range of ways. In other words, the average family is not paying any net tax at all; it is receiving $15 net a week from the government. In fact, only the top 40 per cent of households pay any net tax; 60 per cent of
households pay no net tax at all. The ABS survey uses data from 2003-04 showing that in the five years up to then real incomes rose by 8.9 per cent and the value of government services rose by an additional 7.2 per cent. In that time, taxes, including the GST, only rose 2.7 per cent. So Australian families are getting further ahead under our government. Since 2003-04, the government, of course, has continued to cut income tax, increase childcare benefits, cut superannuation taxes and further reform welfare. I think if you were to do this survey today, just three years later, the picture would be even better.

A part of the ABS survey not reported in the Australian was very interesting data on income equality. Of course, the usual refrain from the Labor Party and its fellow travellers is that the rich are getting richer and the poor are getting poorer under our government. The ABS data confirms that that is nonsense. All sectors of society are getting ahead under our government. Indeed, income inequality has decreased under our government. Appendix 5 of the survey shows the distribution of income across sectors of society. It shows that between 1998 and 2003 the shares of national income received by the bottom quintile, the next bottom quintile and the middle quintile of households have all increased. Their share of national income has increased for those low- and middle-income quintiles. The income share of the top 40 per cent has actually decreased under our government.

The Labor Party of way back, of old, I think used to be able to claim that it was the one that represented the battlers of Australia. It gave up that tag a very long time ago when it got captured by the union bosses, 80 per cent of them sitting over there, and also by the green extremists, bringing people like Peter Garrett into the parliament. It is a captured party. It is this side of politics that can claim to act for all Australians. The ABS survey demonstrates that it is the Liberal and National parties who are looking after ordinary Australians.

Liberal Party

Senator WONG (2.09 pm)—My question is to Senator Minchin, the Minister representing the Prime Minister. I refer the minister to his previous answers in this place, in which he stated:
The decision to hold that function was made taking into account previous advice from the Department of Prime Minister and Cabinet ...
Can the minister confirm that he has read this advice? Can the minister indicate who sought the advice? Was this advice sought prior to or after the cocktail party at Kirribilli House? When was the advice provided and, in particular, does this advice specifically canvass the use of Kirribilli House for a Liberal Party function on 1 June 2007?

Senator MINCHIN—There are some very specific questions there which I may need to seek confirmation of answers to, because I do not want to mislead the Senate in any way at all. Senator Wong, presumably, was also watching the Prime Minister’s press conference. He said there—and I am recollecting what he said in that press conference—that oral advice was sought by the Prime Minister’s office of the Department of the Prime Minister and Cabinet prior to the Kirribilli function as to the appropriateness of the Prime Minister inviting delegates of the Liberal Party and business observers to Kirribilli on the basis of the Liberal Party paying the additional costs—that is, costs, over the fixed costs of running Kirribilli, of hosting that function. He said that the advice given to the Prime Minister’s office by PM&C was that it would be appropriate if it was not of itself a fundraising function and if the Liberal Party paid the additional costs of hosting that function at Kirribilli. That is as the Prime Minister reported it in his press
conference. That is what I relay to the Senate in response to Senator Wong’s question. I will look again at Senator Wong’s question in the Hansard. If there is any further information that I should provide to the Senate in relation to her questions, I will do so at the earliest opportunity.

Senator Wong—Mr President, I ask a supplementary question. I refer the minister to his answer earlier this week in which he, in relation to the advice, indicated that he would not mislead the Senate in reporting that advice. I infer from that, through you, Mr President, that the minister has read the advice. I again ask the minister to table the advice. I note on previous occasions he has refused to do so. Minister, isn’t it the case that, if this advice absolved the government of any wrongdoing in its use of a taxpayer funded residence for Liberal Party fundraising purposes, you would table it? Why don’t you table the advice in the Senate on this occasion?

Senator Ian Macdonald—Mr President, would you explain to Senator Wong that questions should be asked through the President and not directly to the minister?

The President—I do believe the senator did on one occasion during the supplementary question refer it through me. It is, unfortunately, a habit that some senators are getting into, Senator Macdonald, on both sides of the chamber—that is, not directing their answers or questions through the chair. It is a timely reminder for all of us, I think.

Senator Minchin—As the Minister representing the Prime Minister in this place, I act on advice and I report faithfully and honestly the advice provided to me. As to the tabling of advice, as Senator Wong would know, it is the practice of all governments, both present and past, not to table internal advice. We are not proposing to table the advice. We continue to point out to people like Senator Wong that this was not a fundraising function. The Prime Minister, as the Prime Minister, invited, as he is able to—as former Prime Ministers Keating, Hawke and others have—guests to his official residence. These were Liberal Party people, yes. These were business observers to the Federal Council of the Liberal Party, yes. All the additional costs of that function were paid for by the Liberal Party.

Workplace Relations

Senator Birmingham (2.14 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. I refer the minister to the government’s industrial relations laws and the ACTU’s dirty tricks manual, which details how the unions are trying to mislead voters about those laws. Has the minister seen reports that the ACTU strategy may be illegal? Will the minister inform the Senate about how the Labor Party and the ACTU are joined in this attempt to deceive Australian workers and their families about the effect of the government’s job-creating industrial laws?

Senator Abetz—I thank Senator Birmingham for his question and congratulate him on his first speech yesterday. I did read with interest suggestions that the ACTU’s dirty tricks campaign to manipulate public opinion about the current workplace laws is likely to be illegal. It would certainly appear that voters’ enrolment status, latest addresses etcetera, provided to Magenta Linus by the Electoral Commission, has been illegally passed to various unions in breach of the Commonwealth Electoral Act. Not only that, but unions are likely to be breaching privacy laws by collecting and storing irrelevant personal information such as mortgage information and family situation information without the consent of their members.
I listened with interest yesterday as Mr Rudd and Ms Gillard refused to condemn this roundly repudiated dirty tricks campaign while at the same time trying to pretend they knew nothing about it—the hallmark of Mr Rudd; like he knew nothing about Brian Burke’s breakfast, lunch and dinner, although he happened to be there! Like he did not know about the false dawn on Anzac Day or he did not know about certain business activities—

Opposition senators interjecting—

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

Senator ABETZ—The Labor Party get very touchy and glass-jawed when you point out the huge weaknesses in their leader. Every time he is trouble, he pretends to deny any knowledge of what he is confronted with.

I also saw with interest Ms Gillard, in full slippery mode, describing Magenta Linus as a private company. That may be the case, but it is also a private company that is so closely linked to the ALP that it created and provides Labor’s electoral management database, Electrac.

Senator Coonan interjecting—

Senator ABETZ—And Magenta Linus is actually owned and operated, Senator Coonan, by two former ALP employees. It is so close to Labor that it is even intimately linked to one Labor senator in this chamber.

Senator Marshall interjecting—

Senator ABETZ—I can invite Senator Marshall to guess who it might be. It is a senator who describes herself—so it is not Senator Marshall—as a director of Magenta Linus Superannuation, an entity very closely related to Magenta Linus. Yes, none other than Labor Senator Hurley. I am sure Mr Rudd will tell us that he also knew nothing of that connection with Senator Hurley, who is of course so intimately connected to this dirty tricks exercise. No-one should be fooled: the ALP and the ACTU are both up to their necks in this exercise. Personal information available to Magenta Linus only by virtue of being Labor’s database manager appears to have been illegally passed on to the big brothers in the union movement—and for only one reason: to manipulate the union membership’s vote for Mr Rudd’s and the unions’ benefit.

Today we saw Mr Lawrence, the new head of the ACTU, say that he wanted a closer relationship between Labor and the trade union movement. You’ve gotta be joking! The space between sardines in a tin would be very comfortable in comparison with the closeness between Mr Rudd and the union movement. Make no mistake, a vote for Kevin Rudd is a vote for the trade union movement to interfere in the daily—(Time expired)

Liberal Party

Senator WONG (2.19 pm)—My question is again addressed to Senator Minchin, the Minister representing the Prime Minister. Is the minister aware of the media reports—which he referred to earlier today—that a senior official of the Australian Electoral Commission was told to ‘shut up’ about potential breaches of the law related to the use of Kirribilli House for party political purposes? Didn’t this follow the AEC official statement that ‘there could well be a disclosure issue’ about the Prime Minister’s use of Kirribilli House for party political purposes? Can the minister advise what contact there was between the Prime Minister’s office and the AEC, or the Special Minister of State’s office and the AEC, in relation to this matter? Does the minister agree that it is completely inappropriate for any member of the government to tell a senior official of an in-
dependent statutory authority to ‘shut up’ when they are simply doing their job?

Senator MINCHIN—I think on this occasion that I would agree with Senator Wong that it would be inappropriate for anybody from the government to tell an official from the AEC to ‘shut up’. I think we can agree on that. But, as I am advised, nobody from the government told anybody in the AEC to ‘shut up’. I confirm that I am advised that there was absolutely no contact between the AEC and the Prime Minister’s office. As the Prime Minister has said in his press conference, there was contact, as there would be on a daily basis, between the Special Minister of State’s office and the AEC. Certainly, when I was Special Minister of State there was daily contact. The Special Minister of State’s office did contact the AEC with respect to the AEC’s comments on this matter. The official at the AEC told Mr Nairn’s office that what had been told to the journalist, in this case Ms Maiden, was in relation to a hypothetical question on disclosure obligations for property gifts in kind. Mr Nairn’s office advises that it was in fact the AEC commissioner, Mr Ian Campbell, who advised the AEC official in question that he should not make further comments directly to the media.

So there has been some convolution by the Australian in relation to this matter. I cast no aspersions upon Ms Maiden, who is a good reporter, but it does appear that some lines have been crossed here. As I am advised and as I understand it, Mr Bodel was asked by Ms Maiden about this. It was, as advised by Mr Nairn, a hypothetical question and was given a hypothetical answer about disclosure of property gifts in kind. Mr Campbell, the commissioner, then advised Mr Bodel not to make any further comments to the media.

I also understand from press reports today that the AEC is going to look at the question of whether any potential disclosure obligation exists in relation to the use of Kirribilli House for this function. As the Prime Minister also said in his press conference, he has received preliminary advice from the Chief General Counsel, Henry Burmester QC, to the effect that this function does not give rise to any disclosure obligation. The Prime Minister has indicated that that advice will be passed on to the AEC in relation to any inquiries it wants to make into this matter. That is where the matter stands.

Senator WONG—Mr President, I ask a supplementary question. Can the minister advise, given his answer, what the nature of the discussion was between the office of the Special Minister of State and the Australian Electoral Commission? Did the office of the Special Minister of State request or discuss with the commissioner that a discussion be had with the officer concerned? Were they aware of the discussion which was to come between the commissioner and the officer who is quoted in the press? In addition I ask the minister: when did the Prime Minister seek this advice from Mr Burmester and will that advice be made public, as the advice from Prime Minister and Cabinet ought be made public?

Senator MINCHIN—As I understand it, the journalist spoke to the AEC official and then spoke to Mr Nairn’s office. As a result of what the journalist told Mr Nairn’s office about what the AEC was saying, Mr Nairn’s office contacted the AEC to clarify those remarks and to see if that was in fact what the AEC official had said. It was a conversation based on clarification of the comments made by the AEC official to the journalist—no more, no less than that. In relation to Mr Burmester’s advice, it will, as I said, be provided to the AEC. I am not aware that there is any intention to make that advice public.
Budget 2007-08

Senator PAYNE (2.25 pm)—My question is to Senator Scullion, the Minister representing the Minister for Families, Community Services and Indigenous Affairs. The Australian government has a history of strong economic management, and, following the measures announced in the federal budget, millions of Australian families will be entitled to an increase in a range of payments, which include the family tax benefit and the childcare benefit. Will the minister inform the Senate of the government’s commitment to deliver greater financial assistance to Australian families and in particular to those families who use child care?

Senator SCULLION—I thank the senator for her question. I recognise her long-standing interest in and contribution to the welfare of families in Australia. I know that the senator would welcome, as other Australians would welcome, the fact that since coming to office this government has increased the total assistance to families to $6 billion per year—2.2 million families with 4.3 million children benefit from the family tax benefit. Eighty per cent of Australian families with children under 16 receive the family tax benefit, and the introduction of this benefit has meant that working families on lower incomes have experienced greater proportional increases in disposable incomes than those in higher income groups.

From 1 July 2007 there will be no withdrawal of family tax benefit part A until a family income reaches $41,318. Between that sum and $91,542, no family loses more than 20c of family tax benefit part A for each dollar they earn. Some families receive more in family tax benefit than they actually pay in tax. In the next financial year a single-income family with two children receiving family tax benefit will pay no net tax until their income reaches $50,813. Expenditure on family tax benefit for the next financial year is estimated to be $16.9 billion—that is, $14.7 billion through the offices of FaCSIA and $2.1 billion returned through the taxation system. The ABS tax figures released yesterday support this record and, despite the protestations from those opposite, show that under this system only 40 per cent of Australian households pay tax. This result by the government reflects a proud record of supporting all Australian families, especially those on lower incomes raising children.

I know that child care was part of the senator’s question and that she has always displayed a keen interest in child care. It is very important to allow as many families as possible, when they choose, to participate in the workforce. We have an extremely strong workforce. As my colleague Senator Brandis indicated just yesterday in question time, some 2,000 jobs per week were created in May, a magnificent outcome from this government. Child care is a fundamental part of ensuring that every Australian family gets access to the workforce.

Opposition senators interjecting—

Senator SCULLION—There is a bit of squabbling from the other side and I do not want to raise my voice, but while they are trying to interject I make the point that the Howard government has tripled the spending on child care compared with Labor. We now invest three times as much as they decided to invest in child care, which is estimated at around $11 billion to be spent over the next four years. The number of approved childcare places has doubled from 300,000 in 1996 to 615,000 today. The facts of the matter are that childcare fees rose at twice the rate under Labor as they have under us, Labor provided only half the level of funding and places that are provided currently, Labor did not release a childcare benefit and they did not provide the childcare tax rebate. Un-
der Labor, mothers did not get too many options for returning to work or getting support for child care. There were record levels of unemployment, people were paying 17 per cent on their mortgage and it was extremely difficult even to have a job.

Workplace Relations

Senator FIELDING (2.29 pm)—My question is to Senator Abetz, the Minister Representing the Minister for Employment and Workplace Relations. Minister, I refer you to reports of the Industrial Relations Commission’s decision last month that, under Work Choices, businesses can sack workers if the business is restructuring. The commission ruled that restructuring was a ‘genuine operational reason’ for sacking and that a company did not even have to prove financial difficulty. Minister, how is Melbourne based account manager Michelle Sperac, who was sacked, better off under Work Choices?

Senator ABETZ—I think it is always unwise for individual senators to seek to raise specific matters in this forum. I think it is also unwise for the government to respond in relation to those circumstances because, undoubtedly, there will be many issues in dispute between the two parties and, until such time as they are resolved and fully determined, I am not sure that it necessarily assists.

In relation to the general question as to whether or not a person can be dismissed in the face of a company facing difficulties, it nearly seems as though Senator Fielding himself has fallen victim to some of the false claims being made about Work Choices. I forget the exact details now, but literally tens of thousands of workers per month—indeed, per week—separate from their employers in Australia. About 12,000 of those are on an involuntary basis. That was the case before Work Choices. Unless Senator Fielding and those who are opposed to the current laws can make the claim and the point that more people are being dismissed as a result of the current system then, with respect, they cannot make their case.

The mantra of those opposite, as I am sure Senator Fielding will recall, was that, under this new system, there would be mass dismissals and we could expect the unemployment rate to grow. In fact, the exact opposite has occurred. More people are not being dismissed, but more people are being employed—about 360,000 of them, with 97 per cent or thereabouts full time. I would have thought that they were the sort of family-friendly policies that would have been appealing to the likes of Senator Fielding. I invite Senator Fielding to have a look at the industrial relations laws prior to March 2006. In those circumstances, I am sure he will find that the Australian worker today is better off for a whole host of reasons. There are more jobs, there is higher pay and there is less industrial disputation. It really is the trifecta that all Australian families have wanted for a long time, and it has been through the hard work of the Howard government that we have been able to deliver for Australian families in that regard.

Senator FIELDING—Mr President, I ask a supplementary question. I will try to get the minister back on track to the actual question. Minister, given that Minister Hockey has publicly admitted that it was not the intention of the legislation for workers to be able to be sacked if a business is restructuring and that he would change the law if needed, how is the government going to tighten Work Choices to prevent other employers sacking Australian workers?

Senator ABETZ—I invite Senator Fielding to enter the real world. Employers do not get out of bed in the morning asking: who can we sack? If Senator Fielding had ever
employed anybody in his own enterprise, he would know that the last thing he would want is the dislocation that occurs as a result of somebody leaving his employ. What employers want is long-term employees for the employee’s benefit and, of course, for the benefit of the business. That is what we are finding today with the 360,000 jobs created. Well over 90 per cent of them—I think the figure is about 97 per cent—are in fact full-time jobs because employers want to employ people. They do not go about looking for opportunities to sack people. That is where the Labor mantra that unfortunately Senator Fielding seems to be adopting is so false. (Time expired)

Queensland: Local Government

Senator BOSWELL (2.35 pm)—My question is to Senator Johnston, the Minister representing the Minister for Local Government, Territories and Roads. Are you aware of an open letter advertisement in a Central Queensland newspaper where the federal opposition leader states that he has asked Premier Beattie to review his council amalgamation proposal, asserting that ‘local councils are the lifeblood of rural and regional towns’? Further, is the minister concerned that Queensland rural shires are already suffering from the Beattie government’s proposed amalgamation of councils? Would the minister be prepared to offer himself as a mediator between the Queensland Premier and the federal opposition leader on this matter?

Senator Crossin—I thought you were the king of Queensland. You could be the mediator.

Senator McEwen interjecting—

The President—Order! Senator McEwen and Senator Crossin, come to order.

Senator JOHNSTON—I thank Senator Boswell for the question and congratulate him on his initiative and leadership in taking up the baton on behalf of rural and regional Queenslanders who are having their lives turned upside down by this crazy proposal of the Queensland Premier to amalgamate local councils. The federal Labor spin doctors are very hard at work and in full damage control over this issue to the point of issuing a full-page newspaper advertisement in Central Queensland attacking the Beattie government over planned council amalgamations. Here we have federal Labor attacking a Labor premier.

Former Prime Minister Paul Keating was absolutely right: this is a spin driven opposition. It is utterly focus group motivated. The focus group results and the latest polling information have obviously shown the spin team in the opposition that this is a significant issue. They did not need to look at focus group research because Senator Boswell and other Queensland government members have been shouting from the rooftops about this crazy Beattie proposal ever since it was proposed in April. The spin campaign has an advertisement in Central Queensland News on 8 June with the Labor candidate for the new federal seat of Flynn appearing with the Leader of the Opposition, Mr Kevin Rudd, urging the Premier to change his mind. This is how the Leader of the Opposition talks to his own state’s Premier: through an advertisement. Surely if he was worth any salt at all he would be able to say to the Queensland Premier, ‘This is not the way to go.’ But no, he has to run an advertisement; he has to try to pretend to the world—at least until after the federal election—that this proposal is not what he wants. That is what it is about: the phoney spin campaign, a smokescreen, painting a broadbrush picture that completely misrepresents things.

The Labor candidate in Flynn said that he is not sure if the amalgamation issue caused Labor support in Queensland to drop in the latest opinion poll, but he says people are
concerned. People are saying it is an issue for them and that they will seriously consider this issue when the federal election rolls around. Oh dear! And so the Leader of the Opposition must talk to the Queensland Premier via an advertisement. The unrest in rural Queensland over this proposal to amalgamate local councils is gathering momentum and is the issue in rural and regional Queensland. The arbitrary and unilateral way that the Beattie government has determined that 83 of the state’s local councils are financially weak is a cause for great concern. This is being set up for a classic backdown. It will be advertised; you will read about it because the Leader of the Opposition, as we all know, does not get on with the Queensland Premier. They are longstanding disgruntled participants in a number of former ALP stoushes. We will stay tuned and Senator Boswell will keep us in tune with future advertisements as to this crazy proposal.

Senator BOSWELL—Mr President, I ask a supplementary question. Is it a case of ‘I’m Kevin’—

Opposition senators interjecting—

Senator Forshaw—Which one of your 10 staff wrote it?

The PRESIDENT—Order!

Senator BOSWELL—‘I’m from Queensland and I can’t help’—

Opposition senators—Why didn’t Barnaby get this question?

Senator BOSWELL—or ‘I am trying to make a deal with the Premier, Mr Beattie’?

The PRESIDENT—I am sorry. There was a fair amount of noise on my left and I did not quite hear that question. Would Senator Boswell care to repeat it?

Senator BOSWELL—Certainly, Mr President. What I asked was: originally Mr Rudd said he was from Queensland and he was here to help.

Opposition senators—That’s not what you said!

Senator BOSWELL—I am asking the minister whether he believes it is a case of ‘I’m Kevin from Queensland and I can’t help’, so Mr Beattie is ignoring him, or is he setting Mr Beattie up for a backdown?

Opposition senators interjecting—

The PRESIDENT—Order! That question is out of order. It is a hypothetical supplementary question.

Senator Joyce—I rise on a point of order, Mr President. I am two seats behind Senator Boswell and I could not hear that question.

Opposition senators interjecting—

The PRESIDENT—As you can hear, Senator, there is a lot of noise coming from my left as we speak. I would ask you to come to order! I remind those on my left that it is your question. I do not mind sitting here, so if you want to carry on like that you will miss a question.

Broadband

Senator CROSSIN (2.42 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to her statements in the chamber yesterday when she said:

Obviously, in metropolitan areas fibre has some superior capabilities—

compared to wireless broadband. Can the minister explain what these superior capabilities are and will the government deliver parity of service for all Australians if it is only making these superior capabilities available to Australians living in the five mainland capitals?

Senator COONAN—Oh dear, oh dear, oh dear! Here we go again. Yes, Mr President, I can say, in answer to the question, that this government is committed to parity of services for all Australians irrespective of where
they live. Parity, I am afraid, can be delivered by different technologies.

**Senator George Campbell**—Oh dear, oh dear, oh dear, oh dear!

**The PRESIDENT**—Senator George Campbell!

**Senator COONAN**—That is a fundamental point that seems to have escaped those in the dark ages on technology who do not understand the difference between what platforms work where and the different capacities that they have. I give an unequivocal assurance that this government is committed to parity of service and equality of service and that it will be delivered by the best possible mix of technologies that we can deliver. The issue with Labor’s proposal, as I have pointed out on numerous occasions—and I really do enjoy having the opportunity to bring the Labor Party up to speed on these matters—is that it is a bit difficult to deliver parity of service with fibre when there is no kerb to go to, there is no exchange to run from, or, if in fact there is an exchange, it is only going to run about a kilometre up to possibly five at the very best depending on how close you are to the service.

If you happen to live on a property, if you happen to live more than a kilometre away from an exchange, it is not going to help you very much to have fibre in some rural and regional areas. I have tried very gently to explain this to those on the other side, but, no matter what questions I get asked, it does not alter the technical capacities of these various platforms. What I can say to the Senate and, of course, more broadly to all Australians is that this government is not going to leave some Australians out of the benefits of new technology. We are not going to treat rural and regional Australians as though they live in some second-class backwater forgotten by the Labor Party. We will make sure that this technology, which will be truly marvellous, will in fact extend to all Australians regardless of where they live.

**Senator CROSSIN**—Mr President, I actually asked the minister to explain exactly what the ‘superior qualities’ are—rather than the infrastructure difficulties encountered—not parity of service. But I will do that now. Can the minister guarantee that Australians living in rural and regional Australia will be able to receive high-definition videoconferencing, which is vital for e-health and e-education, over a wireless broadband connection? If it is that good, will the minister commit to the challenge of running her own office and department on a wireless connection?

**Senator COONAN**—This is getting sillier and sillier. As I have tried to explain to Senator Crossin, you do not necessarily have the best wireless applications in built-up metropolitan areas where you are close to exchanges. What this government is doing through its Clever Networks program is providing $113 million for e-health programs, e-education programs and research programs through the length and breadth of Australia. I was fascinated to read that poor old Mr Tanner, who is back in the Dark Ages, has suddenly come up with the bright idea that this is what we should have in Australia. This is broadband rhetoric from people who are clutching at straws. They do not really understand what infrastructure is in this country and they are simply trying to pull themselves up by Labor’s usual broadband bootstraps.

**Water**

**Senator SIEWERT** (2.47 pm)—My question is to the Minister representing the Minister for the Environment and Water Resources, Senator Abetz. I refer to the study by the Snowy Mountains Engineering Corporation, *Integrated water supply options for north east New South Wales and south east Queensland*, which was commissioned by
the National Water Commission at the request of the Minister for the Environment and Water Resources. Is the minister aware that the SMEC study did not consider the impact of climate change, reduced rainfall run-off and drought? Is the minister aware that these things were not included in the terms of reference from the government? Can the minister outline why climate change and reduced rainfall run-off were not considered an essential part of the terms of reference for this study?

Senator ABETZ—I have had a quick look through the briefing folder that I have been supplied by the minister. I do not seem to have a relevant brief on that, so what I will do is take that matter on notice.

The PRESIDENT—Senator Siewert, do you wish to add a supplementary question?

Senator SIEWERT—Mr President, there is further information I require and questions I would like the minister to answer. Minister, do you agree that the failure to consider climate change and reduced run-off means that the study is flawed? Will the government ask SMEC to revisit the report, taking into account climate change and reduced run-off? Was the failure to include climate change in the terms of reference during the period when the government was still in its climate-sceptic phase?

Senator ABETZ—We have never been sceptical about climate change; it has existed from day one. I have got news for the Greens: climate has been with us since day one of creation. It is quite clear that Senator Siewert has in fact already given herself an answer to the original question, which was disclosed in her supplementary question. Can I simply remind Senator Siewert and those listening that we as a government established a world-first Australian Greenhouse Office in 1998. Why do you think we did that—because we did not think climate change was an issue? Of course not. We did it because we were genuinely concerned, and we have had a program of ensuring that we engage in this debate on a sensible, slow and rational basis. That is why—(Time expired)

Broadband

Senator CONROY (2.50 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to a recent email from Sol Trujillo to Telstra staff, outlining the position of the company on the rollout of fibre to the node. Is the minister aware that Mr Trujillo states that Telstra: …has a plan in place that reflects negotiations and discussions with the Government that are now complete. Can the minister confirm that the government has completed negotiations with Telstra on the terms of its FTTN proposal? In light of Mr Trujillo’s email, why should the Australian public believe that the government’s panel of experts on FTTN is anything more than an elaborate rubber stamp for a deal that the minister has already negotiated with Telstra?

Senator COONAN—I thank Senator Conroy for the question. The government has no concluded agreement with Telstra.

Senator CONROY—Mr President, I ask a supplementary question. I again refer the minister to the email to Telstra staff from Mr Trujillo. Is the minister aware that this email further states that Telstra will no longer ‘develop, refine or negotiate’ the terms of the FTTN plan it has produced through ‘negotiations and discussions with the government’? Given that Telstra has completed negotiations and discussions with the government, will the minister now inform the Senate of the price for broadband access that she had agreed to?

Senator COONAN—Well, that is just proof positive that Senator Conroy has writ-
ten his answer before he hears what I have to say, because he just said again that the government had an agreement with Telstra. I repeat: the government has no concluded agreement with Telstra, and I have not been the recipient of any email from Mr Trujillo.

Broadband

Senator PATTERSON (2.52 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister inform the Senate of measures by the Howard government to use innovation and technology to provide world-class communications services to Australians and to Australian industry?

Senator COONAN—Thank you to Senator Patterson for her question. I do recognise her outstanding results as the former health minister in the use of technology to provide world-class services—

Senator George Campbell interjecting—

The PRESIDENT—Order!

Senator COONAN—for all Australians. I did read with interest today reports about the opposition suddenly—

Senator George Campbell interjecting—

The PRESIDENT—Senator Campbell, you are warned! You have been repeatedly interjecting all day.

Senator COONAN—waking up to the idea of 24-hour production chains using Australia’s broadband connections. Mr Tanner, this time, is the culprit. The Labor Party, of course, are putting up yet another plan, whereas this government has actually been doing the job of rolling out new and innovative broadband services since 2004. And, through funding provided by the Howard government, sectors like health, for example, as Senator Patterson knows, are already using broadband to provide 24/7 support for doctors. Radiographic images transferred using fast broadband connections are already viewed by radiologists both here and overseas. As an example, I recently visited a facility where an Australian company is using Australian qualified radiologists in Israel to support the north coast area health service, ensuring that, for instance, when a patient wakes up, the diagnosis is already waiting and treatment can start without delay.

Through programs including the government’s $113 million Clever Networks program, and the earlier Coordinated Communications Infrastructure Fund, we are already supporting projects which deliver world-class services to Australians, regardless of where they live. Back in 2005, for example, the government funded groundbreaking technology for BreastScreen Victoria, involving the use of a digital access network connected to mobile screening vans in rural and regional Victoria. This innovation has vastly improved services for women, and better utilises scarce radiologist resources by using digital images and broadband, with key funding from the Howard government.

But it is not just the health sector that is leading the world in the innovative use of broadband. The Howard government has also built a broadband postproduction network that links up Australia’s leading movie production houses and enables them to compete globally whilst the Northern Hemisphere sleeps. And recent Academy Award winners, such as Rising Sun Pictures and Animal Logic, are proof positive that Australia already has a night-shift digital economy.

So it is going to be very interesting to hear what Mr Tanner’s speech is all about tonight and how he will account for the fact that he appears to be in the Dark Ages when it comes to understanding the investment that the Howard government has made in fast broadband and clever solutions. So I say to the Australia public: don’t be fooled by La-
bor’s plans for tomorrow. Tomorrow is already too late. The Howard government is about real outcomes from new and innovative network solutions, not just vague plans and rhetoric. Our Clever Networks programs are real, they are rolling out, they are fully costed and they are already delivering concrete results to Australians. And this is really the important thing: this is just another example of the human dividends made possible by the Howard government’s strong economic management.

**Nuclear Energy**

Senator WEBBER (2.56 pm)—My question is to the Minister representing the Minister for Industry, Tourism and Resources, Senator Minchin. Does the minister recall saying in August 2005 that debate on nuclear power was a waste of time because the commercial and political realities meant it would never happen? Didn’t the minister also point out that it made no sense to adopt nuclear power because Australia still had an abundance of low-cost energy sources such as coal and gas? Given the minister’s view that nuclear power made no sense and was a waste of time, can he explain why the government is trying to drive Australia down the nuclear path? Have the minister’s views about nuclear power changed, or has he been ignored by the Prime Minister?

Senator MINCHIN—I am fascinated that there is so much interest from the ALP in what I may have said over the years. I think it was August 2005, some two years ago.

Senator Conroy interjecting—

The PRESIDENT—Order! There is too much noise on my left.

Senator Conroy interjecting—

Senator MINCHIN—I am endeavouring to answer the question but people like Senator Conroy keep psychobabbling along—

The PRESIDENT—Senator Conroy!

Senator MINCHIN—because they are not interested in my answer to Senator Webber’s question.

Senator Conroy interjecting—

The PRESIDENT—Senator Conroy! Come to order!

Senator MINCHIN—Our position is that nuclear power should be on the table as an alternative energy source for Australia. My statements made in 2005 were perfectly accurate and correct at that time. At that time, in the absence of Australia putting any price on carbon, nuclear power was unlikely to be viable in the foreseeable future, given that Australia, which has built its economic wealth and prosperity on low-cost energy, to become one of the most internationally competitive and successful economies in the world. It is a fundamental of Australia’s economic structure that much of our capacity and standard of living is built on our abundance of low-cost electricity, because of our fossil fuel endowment in coal and gas. The fact is that nuclear power costs anything up to two or three times the power that is produced by coal or gas. And Australia has benefited from the relatively cheap electricity we have been able to generate from coal or gas. So unless there is some intervention which results in the artificial, by virtue of the government intervention, rise in the cost of power produced by coal or gas—

Opposition senators interjecting—

Senator MINCHIN—Mr President, they asked the question; I do not know whether they want listen to the answer.

The PRESIDENT—Order! There is too much noise on my left.
electricity produced by nuclear power is so much more expensive.

Since that time, as senators will have noted, the government has decided, by observing what has occurred internationally and examining the failure of the European energy emissions trading scheme, that it will develop an emissions trading scheme of its own. That will involve a cap and trade system which will put a price on carbon. To the extent that we develop that emissions trading scheme and carbon pricing to the point where electricity from nuclear power becomes viable, then nuclear power should be on the table. The rather extraordinary position adopted by the Labor Party—which I think Senator Webber would herself find extraordinary—is that they are the ones saying that Australia must move immediately to put a price on carbon and they are the ones saying that we must cut emissions by some 60 per cent from 1990 levels in 2050, representing a massive difference in Australia’s energy mix. To then suggest that nuclear power—the only known baseload source of power that is emission free—cannot even be contemplated is an utterly idiotic position and speaks of the hollowness of the Labor Party’s position on the question of containing CO₂ emissions. You cannot be serious about containing CO₂ emissions in this country if you are not even prepared to contemplate the use of nuclear power in this country.

Senator WEBBER—Mr President, I ask a supplementary question. To prove I often listen to the minister, does the minister also recall asking the question:

How on Earth could we reach consensus on a site for, and construction of, a nuclear power station and the site to store the ... waste it would produce.

Given the government’s obsession with nuclear power, can the minister indicate whether those issues have been resolved? If so, can the minister confirm the proposed sites for nuclear power stations and indicate where the waste will be stored?

Senator MINCHIN—Again Senator Webber points to this issue. It is going to be important to develop consensus on this issue, and this is where I find the Labor Party quite extraordinary. Mr Mike Rann, the Premier of South Australia, fought us all the way in our attempts to implement Simon Crean’s policy to have a national radioactive waste repository in the best place in Australia—the best place in Australia having been determined by scientific evidence as South Australia. He fought that all the way. But now he is the great champion of maximising uranium mining in this country, to his credit. We think Mr Rann did the right thing trying to persuade the troglodytes in the Labor Party and the extreme greenies in the Labor Party that uranium mining is important to this country. He is now the one championing Roxby Downs as a great uranium mine—and good luck to him. But he is the one, hypocritically, who opposed us all the way in our endeavours to implement Mr Simon Crean’s policy on the storage of radioactive waste. You people cannot be believed on anything.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Liberal Party

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.02 pm)—I would like to add to answers I gave to Senator Wong and Senator Evans in relation to the issue of a Liberal Party function at Kirribilli House. I refer to the Australian Electoral Commission’s media statement of today in which the AEC says that it is examining if any potential disclosure obligation exists under the Commonwealth Electoral Act in relation to a function hosted by the
Prime Minister at Kirribilli House. The AEC has noted suggestions that the government may have attempted to silence or constrain the AEC responses to the media on this issue. The Electoral Commissioner, Mr Ian Campbell, said today, and I quote:

The AEC takes its integrity and independence very seriously and I want to make it quite clear that no attempt was made by the government or anybody else to influence the AEC in its response to this issue. Contrary to some media reports, the AEC Director of Funding and Disclosure, Mr Kevin Bodel, was not asked by the AEC or the government to shut up regarding these matters.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Liberal Party

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (3.03 pm)—I move:

That the Senate take note of the answers given by the Minister for Finance and Administration (Senator Minchin) to questions without notice asked by Senators Evans and Wong today relating to a function for the Liberal Party held at Kirribilli House and political donations.

In doing so I thank the minister for that supplementary answer, which confirms that the Prime Minister is under investigation by the AEC for what Senator Minchin himself describes as a Liberal Party function. He is exactly right. It was a Liberal Party function which business observers paid $8,000 to attend along with two other functions. A Liberal Party fundraiser was conducted at Kirribilli House, organised by the Prime Minister and largely supported by taxpayers. Taxpayers, who are paying the wages of the staff and the upkeep of Kirribilli House, have directly contributed to the cost of the Liberal Party organising fundraisers at official residences. I thought this was extraordinary and a terrible development in Australian politics.

I understand from the Prime Minister’s press conference that he has done this before. I understand he has got form on this. He thinks that he has done it once or twice—no doubt all that will come out. But the clear offence that has occurred here is that the Liberal Party have charged people for access to government and taxpayer funded facilities. They have sought to abuse their trust and they have abused their role as the government of this country in order to further their narrow political interests. This is partisan behaviour on behalf of the Prime Minister. It is not behaviour that the old John Howard would have conducted. This shows the deterioration in the standards of the government. This shows the commitment now of the government to do whatever it takes and to use whatever taxpayer funded resources are available to achieve their political ends. People understand; they are very cynical about the Howard government’s use of taxpayer funded advertising and they know taxpayers’ funds are being used to promote the government. We have seen the worst abuse of this in recent months and we will see more in the lead-up to the election. People have in some ways come to accept it because they have seen it all before; they know that in an election year taxpayers’ funds will be used by the Prime Minister to support his re-election. But what is becoming increasingly apparent is a pattern of behaviour that sees the Prime Minister abusing his office in a much more personal way. We remember of course the alterations to the dining room in Parliament House that were proposed—the third dining room alteration under the Howards. They did the Lodge, they did Kirribilli and then they were going to do Parliament House.

We have seen the $243,000 for alcohol at the official residences, the Prime Minister inviting his mates around for a booze-up and putting the cost on the taxpayers. We have seen the Broome holiday. The Prime Minister went to Broome on holiday at taxpayers’ expense. He flew in on the VIP jet and he
flew out on the VIP jet. When concern was raised, when the light was shone on this issue, the Prime Minister again sought to make a reimbursement. He fronted up $1,200 each for him and Mrs Howard to meet the costs of the VIP flight in and out of Broome, which on return took them to Brisbane. Economy rates for Broome to Brisbane are $1,200. It cost taxpayers about $54,000, but we got 2½ grand back from John Howard for the cost of his holiday in Broome. So what you are seeing is a pattern of personal behaviour that the Prime Minister did not indulge in in his early days in office, but his standards have fallen dramatically.

We have this latest incident where the government seeks to abuse its position, abuse taxpayers’ funds and run fundraisers for the Liberal Party, where donors to the Liberal Party—people who donate $8,000—are invited to official government residences and entertained as part of their donation. This behaviour is extraordinary. It is wrong, the Prime Minister knows it is wrong, and every Australian will know it is wrong when they see the telecast of his press conference. I have never seen him look so bad. I have never seen such an appalling performance by the Prime Minister, because he could not explain his behaviour. His behaviour was totally inappropriate. He could provide no rational answer. He even admitted that it was part of the fundraising effort on behalf of the Liberal Party. The Prime Minister ought to stand condemned for his behaviour. This is a new low in the standards of this government. I am not sure how low you can go, but increasingly the standards are falling. (Time expired)

Senator FERGUSON (South Australia) (3.09 pm)—What a ramble, Senator Evans. Perhaps it would not hurt if you looked a little bit into your own history—into the history of your Labor Party and the activities of your prime ministers when they were in office. Then you might find that your wild accusations are way off the mark. If you want to talk about fundraisers and Kirribilli House, how about referring to the fundraiser that Prime Minister Hawke had in 1987 in Kirribilli House? He had a fundraiser there for millionaires and multimillionaires, who were secretly invited so that nobody would know who was on the list. Then, when they got there, who was walking around amongst the millionaires and multimillionaires but the well-known ‘fixer’ Graham Richardson, touching every one of them for somewhere between $30,000 and $100,000, to be paid after the election so that it could be hidden in the administrative costs of the Labor Party. Why don’t you read your own history and look at the use of Kirribilli House—$30,000 to $100,000 from those touched by Graham Richardson—for what was unarguably a fundraiser?

Senator Chris Evans—Have a crack at Kirribilli.

Senator FERGUSON—In the case of Kirribilli House, where we had a function on the occasion of the federal council, those people who were business observers certainly never paid $30,000 or $100,000. They paid to be business observers and they went to a function—

Senator Chris Evans—They didn’t invite senators because they had not paid eight grand.

Senator FERGUSON—that was hosted by the Prime Minister in Kirribilli House. If Senator Evans wants to look into the history of the Labor Party and see what previous prime ministers have used Kirribilli House for, he ought to take a close look at Prime Minister Hawke. It was probably when Senator Faulkner was deputy secretary of the Labor Party in New South Wales; that seems to be about the right time.
Senator Chris Evans—Have a crack at defending the function.

Senator FERGUSON—If you are going to let him keep yelling out like that, Mr Deputy President—

The DEPUTY PRESIDENT—Senator Ferguson, address your comments through the chair. Senator Evans, cease interjecting.

Senator FERGUSON—When you have a function hosted by a Labor Prime Minister where the multimillionaires are touched for $30,000 to $100,000, that is all okay! ‘What about Kirribilli House?’ says Senator Evans. Kirribilli House was used for a function as part of the program that was put in place for the Liberal Party’s annual federal council and the people that went there—

Senator Chris Evans interjecting—

Senator FERGUSON—apart from delegates, who paid their way to go to the federal Liberal council—were people who were business observers. You do not like it when it hurts, Senator Evans, because your arguments are blown out of the water. In the other place today we heard the Leader of the Opposition, Mr Rudd, ask the Prime Minister some seven questions. When the Prime Minister replied, talking about the fundraiser that was put on by Prime Minister Hawke in order to gain contributions from the millionaires and multimillionaires that attended, Mr Rudd immediately moved a censure motion. He was not going to ask any more questions once the facts came out, once the truth came out.

We have this ridiculous situation where the Labor Party has come into this place harping on about a function at Kirribilli House—where delegates went for a couple of hours, where business observers had paid to attend the federal council where all of the business took place, where they were spoken to and where they had the opportunity to talk to all of the delegates—and they say that this was a Liberal Party fundraiser. I have never heard such rubbish in my life. If you want to talk about a fundraiser, talk about Richo moving amongst people, asking for contributions of $30,000 to $100,000. That is the real thing, isn’t it, Senator Faulkner? Senator Faulkner, who would probably have been well aware of what was going on at the time, knew that this was the way you raised funds. You have a secret dinner at Kirribilli House where you do not know who is going to the function, and when you get there you have Richo moving amongst them, touching them all for between $30,000 and 100 grand, all to be paid after the election. It was a pretty smart move, Senator Faulkner, but do not come in here painting yourselves as lilywhite and try to describe a function held at Kirribilli House for delegates to a council meeting and for business observers as a fundraiser. That is about the most ridiculous description I have ever heard, Senator Evans. You want to go back and check the history. Just check the history. (Time expired)

Senator WONG (South Australia) (3.14 pm)—Let us be clear about the facts of the Kirribilli House situation—the Kirribilli House cocktail party that Prime Minister Howard hosted for Liberal Party council delegates and donors to the Liberal Party of Australia. Let us be clear what the facts are. First, Mr Howard, the Prime Minister, hosted a function at Kirribilli House for delegates to a council meeting and for business observers as a fundraiser. That is about the most ridiculous description I have ever heard, Senator Evans. You want to go back and check the history. Just check the history. (Time expired)
The DEPUTY PRESIDENT—Order! There is too much noise. I understand people are a little bit excited and I understand it is Thursday afternoon.

Senator Ian Macdonald—We’re just keeping the gallery awake!

The DEPUTY PRESIDENT—I do not need your interjection, Senator Ian Macdonald. Senator Wong, you should address your comments through the chair and others should not interject during your speech. Someone else asked me to invoke that ruling, but the very person who asked me to invoke that is now interjecting as much as the other person who was interjecting upon them. I think a little bit of respect for the chair and the chamber is important.

Senator WONG—Through you, Mr Deputy President: what do we know about this event? First, the Prime Minister holds a function to which only Liberal Party federal council delegates and donors to the Liberal Party are invited. Second, the Liberal Party of Australia pay back just over $5,000—a fraction of the real cost. Where else in Australia can 220 people have canapes, shots of posh soup, oysters, prawns and two hours worth of wine for $5,000? I want to know where you can get that. You would struggle to pay less at your local pub for a fisherman’s basket and a pint of beer.

Senator Chris Evans—A VB and a party pie!

Senator WONG—Yes. Another thing we know about this matter is that not one cent was paid by the Liberal Party of Australia to the Australian taxpayer or to the Department of the Prime Minister and Cabinet for the use of the venue. Not one red cent was paid for the use of the venue. So you cannot get away with arguing this was full cost recovery, because the Australian taxpayer has, effectively, through their funding of Kirribilli House, subsidised your fundraiser and your venue. Kirribilli House is not a Liberal Party function centre, but that is how this Prime Minister is treating it.

What else do we know? We know that the Commonwealth Electoral Act requires in-kind donations to be disclosed. We know that is a provision of the Electoral Act. What was this? This certainly was a free venue—I note Senator Minchin in question time today said he may come back to us on this—although, arguably, there may have been some other in-kind donation associated with the cost, because no-one in Australia can believe that you only pay $9.46 for this kind of food and only $6.50 for this kind of wine over two hours. We know that the Electoral Act requires disclosure of in-kind donations and we also know that the Australian Electoral Commission is investigating whether or not there is something here that needs to be disclosed.

Senator Hutchins—There’s something fishy here!

Senator WONG—Yes, there’s definitely something fishy here. What have we seen over the last few days? We have seen this Prime Minister trying to worm his way out of this. He is in a difficult situation and he is trying to worm his way out of it. We have seen a range of defences put by the Prime Minister. First, he says, ‘I was acting in accordance with the advice of my department’—this mysterious advice that Senator Minchin says he would not mislead us about, but he refuses to table it, refuses to tell us who sought it, refuses to tell us what it says and refuses to tell us when it was provided. So we have no idea whether this is some old advice or some recent advice, but the government will hide behind it anyway. Second, I think Senator Minchin told us, I think, the day before yesterday in question time that this AEC disclosure issue was a bit silly. Well, the AEC is now investigating. And the
third thing we have been told is that it is not a fundraiser. What did the Prime Minister say in the press conference? He was asked: The nub of this is it is fundraising, isn’t it?

You will have to excuse the grammar, Mr Deputy President. The Prime Minister said: Yes, but, well, it is that and, well, sometimes a gathering of the type that I have alluded to, you know, might in a remote way be associated with fundraising.

So every defence you put up is just drifting away. You say in here it is not a fundraiser. Even the Prime Minister on the public record in his press conference admits that it is a fundraiser. You have no excuse. *(Time expired)*

**Senator FIFIELD** (Victoria) (3.20 pm)—On Monday I commended Senator Faulkner on the quality and consistency of his confected outrage, but I think Senator Wong has now just eclipsed Senator Faulkner. In the absence of confected outrage, what are the facts here? The facts are, yes, there was a function held on 1 June 2007 at Kirribilli House. The function was for invited guests of the Prime Minister. The guests were, indeed, delegates and business observers of the federal council of the Liberal Party. The costs of the function were fully reimbursed by the Liberal Party. The costs were, on a per head basis, comparable with other functions held at Kirribilli House and the Lodge. The function was held following the decision, which took into account previous advice from the Department of the Prime Minister and Cabinet, that it was appropriate to hold functions on a full cost recovery basis. The function was appropriate and the function was at no cost to the taxpayer. End of issue! The Prime Minister of Australia, by virtue of his office, is entitled to temporarily occupy Kirribilli House. Kirribilli House is temporarily his residence and, given the fact that that is temporarily his residence, he is entitled to exercise his discretion and invite whomever he wants to his residence.

Prime Minister Hawke exercised that discretion when he invited then Treasurer Keating, the then Secretary of the ACTU and a prominent business figure to his house to discuss a certain pact. Prime Minister Hawke exercised his discretion there. The opposition are asserting a breach of the Commonwealth Electoral Act. The opposition are asserting a gift in kind and a failure to disclose. The ALP are alleging conspiracy and cover-up. All of these claims are absolutely baseless. The Prime Minister has made it clear that he has received preliminary legal advice from Mr Burmester that there is no issue. The Prime Minister has indicated that he is very relaxed with the AEC conducting inquiries. Despite Labor accusations, the government has not sought—and never would seek—to interfere in an AEC investigation. We have the AEC’s own press release today to prove that. We all know what the ALP focus on Kirribilli House is about: it is a distraction from the ACTU’s megacampaign—a distraction from the Big Brother attempt to manipulate and intimidate unionists to vote Labor. Why wouldn’t regular, decent Australians who happen to be unionists be intimidated? They know that elements of the union movement are into payback. They know, and we know, that the ACTU are keeping a database on the responses—

_Honourable senators interjecting—_

**The DEPUTY PRESIDENT**—It is disorderly to shout across the chamber from both sides. I am trying to listen to Senator Fifield’s contribution to this debate.

**Senator FIFIELD**—We know, and those union members know, that the ACTU are keeping a database of their responses. This is Orwellian stuff. Imagine that you are at home one night and the union calls. Imagine
that a few nights later the union calls again. Imagine a week later that the union calls for a third time. Then a week after that the union knocks on your front door—

*Opposition senators interjecting—*

**The DEPUTY PRESIDENT**—Order!

**Senator FIFIELD**—The ACTU today were very quick to roll out for the papers a picture of a nice young 24-year-old ACTU worker. The message was, ‘How could she possibly intimidate anyone?’ No matter who the ACTU send out as their shock troops, we know that they are just a front for the Kevin Reynolds and the Dean Mighells. We know what these people really think of these regular decent union members—these ordinary members of the trade union movement. We know this from the ACTU campaign manual. It says, ‘It may be despicable to you that the member may agree with some of the federal government’s policies, but avoid getting into heated arguments. Such debates are likely to make the member dig their heels in.’ The ACTU holds the views of their own union members in absolute contempt. We know what the ACTU really think of the right of individuals to express their free will. We know what an ALP victory will mean: it will mean a Kevin Rudd ACTU puppet government. That is what awaits Australians if the ALP is elected to office. The ACTU have questions to answer to the AEC about their own database. *(Time expired)*

**Senator FAULKNER** (New South Wales) *(3.25 pm)*—The Prime Minister has turned Kirribilli House into a fundraising venue for the Liberal Party. He has crossed the line in Australian politics in doing so. We in the Labor Party have always said that the Prime Minister’s expenditure at Kirribilli House is scandalous. Just one example is the excessive grog bill since Mr Howard became Prime Minister. Some $243,244 and counting has been spent at the Lodge and Kirribilli House. It has all been guzzled by Mr Howard and his cronies and all paid for by taxpayers. Kirribilli House, as we know, has become the venue for Christmas parties, for New Year’s Eve parties, for all these other knees-ups—for any excuse at all for a knees-up for Mr Howard. A number of years ago I dubbed Kirribilli House as party central. Now, of course, Kirribilli House is no longer party central: it is Liberal Party central. It has become an absolute example of the misuse and abuse of taxpayers money that we see from this government. We ask for answers in relation to the misuse of Kirribilli House by Mr Howard. We ask for some transparency. We ask for some accountability. We ask for the truth. And, of course, just for a change, what do we get? Just the same old response: none at all.

Today in question time we asked: what was the total food and drink bill for the Liberal Party function—not just the cost paid for by the Liberals? There was no answer. We asked what advice was provided by the Department of the Prime Minister and Cabinet about costs that should be paid for by the Liberal Party. There was no answer. We want to know when the advice was sought. We want to know when it was provided. We want to know who sought that advice. We want to know why the government will not table that advice if they have got nothing to hide. Why the cover-up? Instead of the truth, what have we got? Ducking and weaving—a cover-up. The issue now is the definition of a ‘fundraiser’. We saw Mr Howard, before question time, in panic mode. Out he went to a press conference in the Prime Minister’s courtyard, red-faced—

**Senator Chris Evans**—And this was at 1.30 pm.

**Senator FAULKNER**—This was at 1.30 pm. He was red-faced, twitching and had that horrible, hollowed out Halloween-pumpkin-
like smile he gets on his face when he is under pressure. He almost uttered the whole sentence: ‘I will decide who will come to Kirribilli House and the circumstances in which they come.’ He nearly got the whole sentence out until he realised, ‘Uh-oh, we have a problem.’ He will decide who comes, but, I tell you what, he will not pay for it—the taxpayers will be stuck for the bill every single time. And he will not say who goes to these functions; he will not give you a list of attendees. He will not give the cost to the taxpayers. There is no accountability, no transparency, no honesty and no decency in process in relation to this.

Mr Howard in question time solved at least one thing: we know it is a fundraiser. In question time on Tuesday, Mr Howard said, ‘It was not a fundraiser, and you know that,’ Today, Mr Howard was asked:
The nub of this is it is fundraising, isn’t it?’ Let me quote Mr Howard’s answer—I do not often do it, but I am going to enjoy it now. Mr Howard said:
Yes, but, well, it is that and, well, sometimes a gathering of the type that I have alluded to, you know, might in a remote way be associated with fundraising.

Thank you, Mr Howard, for that clear explanation—that clear admission that you are sticking the taxpayers for the bill for these functions at Kirribilli House. The Liberal Party is not paying; Mr Howard is not paying; the taxpayers are paying. (Time expired)

Question agreed to.

Water

Senator SIEWERT (Western Australia) (3.31 pm)—I move:

That the Senate take note of the answer given by the Minister for Fisheries, Forestry and Conservation (Senator Abetz) to a question without notice asked by Senator Siewert today relating to water management and a report of the Snowy Mountains Engineering Corporation.

The question I asked was: why was climate change not included in the terms of reference? I have already established, through both estimates and the inquiry of the Senate Standing Committee on Rural and Regional Affairs and Transport into Traveston Dam, that the terms of reference for the study did not include climate change. I confirmed this when I asked both SMEC and the Department of the Environment and Water Resources on two separate occasions about why it was not included. When I asked why it was not included, Mr Dean of SMEC gave me a most unusual answer, which was that there was no definitive scientific basis for assessing those climate change impacts. When I asked the department about the terms of reference, I was told they were not a specific part of the terms of reference. That is why I asked the minister today why the terms of reference did not include the impact of climate change and reduced rainfall runoff. At this time, when we are facing both climate variability and drought, I would have thought that they would have been right at the top of the list of the terms of reference for this inquiry.

The minister’s limited response to my question was that this government has been on board with climate change for a long time. He said that they were not climate change sceptics as they had set up the Australian Greenhouse Office in, I think, 1998. I ask again: why weren’t the terms of reference drafted to include the impacts of climate change and reduced rainfall runoff? You are talking about dams; we are talking about the fact that we are already seeing the impact of climate variability on drought around Australia.

In Western Australia rainfall has decreased by 21 per cent since 1974. This has led to a reduction in rainfall runoff of 64 per cent. Dr
Gill, from the Water Corporation of Western Australia, reported this at the inquiry of the Senate Standing Committee on Rural and Regional Affairs and Transport into water policy initiatives. Professor Michael Young reported that, as a rule of thumb, when you have a decline in rainfall, the decline in water availability is normally about twice the reduction in rainfall. For example, a 15 per cent reduction in rainfall—which is what a lot of people are talking about for the Murray-Darling system—would mean there would be a 30 per cent reduction in yield. So on one hand you could have a very conservative figure of 15 per cent, or the reduction in rainfall could go up to 21 per cent. The impact that that has on reduced runoff varies from about one half up to three times the percentage we are talking about in Western Australia.

For the life of me I totally fail to understand why the government’s terms of reference for the SMEC report did not include climate change. The only thing that occurs to me is that Mr Turnbull asked the National Water Commission to commission the report—he proudly claimed in a media release on 12 April that he had asked for the report to be commissioned. I would have thought that if he were that desperate to look into getting water from northern New South Wales rivers—if he were serious—he would have taken into account how much water was available. He would therefore have had to take into account the impact of climate change, drought and reduced rainfall runoff. Considering that that has been the focus of the water debate here for a number of months—particularly for the Murray-Darling system—you would have thought that that would have been on top of the list when the government drafted the terms of reference.

Last week the rural and regional affairs committee heard from representatives of people in northern New South Wales, where we took evidence. The evidence was that the Richmond River in northern New South Wales is already overallocated, yet the SMEC report said that a dam is possible there. We heard that there are other land management issues in northern New South Wales. The Clarence River has some land management issues and there is also a fishery that is highly dependent on it. There had been no community consultation and yet the minister went ahead and asked the Snowy Mountains Engineering Corporation to do an assessment of the water resources that are available in the northern rivers without adequately taking into account climate change and reduced rainfall runoff. (Time expired)

Question agreed to.

COMMITTEES

Reports: Government Responses

Senator SCULLION (Northern Territory—Minister for Community Services) (3.36 pm)—I present seven 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—

REPORT OF THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE
GOVERNMENT RESPONSE

REPORT OF THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE
Mr Chen Yonglin’s Request for Political Asylum
May 2007

Recommendation 1
The committee recommends the Department formulate a protocol requiring that people claiming to be diplomats, employees or officials of foreign governments or people who possess knowledge or
understanding of the foreign government in question, be dealt with by senior officers.

Government Response
Agreed.

The Department of Immigration and Citizenship (DIAC) issued guidance on 17 October 2005 to DIAC staff reminding them of their obligation to maintain strict confidentiality in relation to asylum seekers and protection visa applicants, and of the need not to take any action which might result in information about the existence of an asylum claim or protection visa application, or the substance of a person’s claims for protection, being made known to the authorities of the applicant’s home country.

DIAC is also preparing a more detailed instruction for all DIAC staff in Australia and overseas relating to handling possible requests, in person or verbally, for asylum in Australia from persons claiming to be foreign diplomats or consular officials and persons claiming to be employed by a foreign government. The instruction includes advice on the privacy and confidentiality obligations of all DIAC staff. The instruction will be finalised in consultation with the Department of Foreign Affairs and Trade. All DIAC staff in Australia and overseas will be provided with the instruction which will be incorporated into a new departmental instructions framework to be developed under the Instructions Reform Project.

Recommendation 2

The committee recommends that DIAC take immediate steps to ensure that all officers are made aware of their confidentiality obligations under relevant legislation and conventions. Furthermore, that they are aware of the need to exercise care when dealing with a foreign diplomat and that such important matters are dealt with expeditiously by a senior officer.

Government Response
Agreed.

DIAC already provides training to staff on confidentiality and their obligations under the Privacy Act. The Department has also issued an administrative circular on the disclosure of personal information to third parties under the Privacy Act (Administrative Circular 198) and officers’ confidentiality and privacy obligations are included in the DIAC Code of Conduct (Administrative Circular 1045). Further specific guidance has been sent to DIAC staff, as outlined in the response to Recommendation 1.

GOVERNMENT RESPONSE TO SENATE COMMITTEE REPORT

Legal and Constitutional References Committee, March 2006

“Administration and operation of the Migration Act 1958”

May 2007

GENERAL COMMENTS

The government welcomes the opportunity to provide a response to the Legal and Constitutional References Committee’s Report into the Administration and operation of the Migration Act 1958 (“the Report”).

2. In developing this response, the government is mindful of the extensive material provided to the committee in the course of its deliberations, including the then Department of Immigration and Multicultural Affairs’ (the department) submission of August 2005 (containing some 56 pages) and response to a request by the committee to address specific witness allegations arising out of the committee’s inquiry, forwarded to the committee secretariat on 5 December 2005 (111 pages).

The government notes that in furnishing this earlier material, the department extensively covered the broad range of issues raised and provided clarification about its processes and operations.

3. It is mindful too of the position taken by the government Senators on the committee, in that they were unable to agree with either the analysis or findings of the majority Report and expressed the view that the majority Report is substantially flawed by a biased and highly selective use of the evidence presented during the committee’s inquiry.

4. The government Senators pointed out in their dissenting report that much of the material provided by the department on 5 December 2005 to deal with material critical of it was
not included in the Report. They drew attention to the key elements of the government’s reform programme announced since the Palmer and Conrie reports as they felt that these had not been adequately addressed in the majority Report of the committee.

OVERVIEW OF REFORM INITIATIVES SINCE REPORT TABLED

5. The government has made a significant investment in the department’s reform and improvement programme. Around $780 million in new and redirected funding has been committed. The new Budget measures announced on 9 May 2006 were informed by a number of departmental reviews that were recommended by Mr Palmer in his July 2005 report. These included reviews of business information requirements, IT platforms and governance, records management, the detention services contract, long term detention health services delivery, detention infrastructure and compliance activity. All of these reviews pointed to the need for further changes if the department is to meet the expectations placed on it.

6. By far the largest portion of the funding provided to the department in this year’s Budget – nearly half a billion dollars - is for Systems for People. This substantial programme of work will deliver the kind of support departmental staff need to do their jobs properly. It will provide better data quality, a single view of a client’s dealings with the department, less fragmentation of information and data, more flexible systems all of which mean better decision making. There is also a commitment of $42.5 million over four years in the Budget to support risk based compliance strategies, including deterrence and prevention and quality assurance measures. $22.6 million of that sum will be used to increase case management resources and implement a national case management framework. The framework will ensure that cases involving vulnerable clients with exceptional circumstances are managed in a fair, lawful, reasonable and timely way.

7. A major initiative to complement the case management approach is the implementation of the community care pilot in Sydney and Melbourne announced by the then Minister for Immigration and Multicultural Affairs in May 2006. The pilot, which is being delivered in partnership with the Australian Red Cross and the International Organization for Migration (IOM), will assist the department’s clients who are being case managed and who need either care in the community whilst awaiting their immigration outcomes and/or access to services to inform them of the immigration process, their likely outcomes and prepare them for their immigration outcomes.

8. The Secretary has made it clear to departmental staff over the past year that their job is to implement change and improvement and deliver the government’s migration, multicultural and citizenship policies. This depends on careful planning, strong leadership and good administration. Also, longer term planning is being informed by comprehensive staff and client surveys. Much of that work has now occurred and the department is well advanced in developing a new planning framework for 2006-07 and beyond, underpinned by a strong framework of values and an articulation of the kind of behaviours expected of leaders in the department.

9. The Secretary has regularly written to a large number of key external stakeholders to update them on progress and seek their views on issues. Formal feedback sessions have been held with groups of clients and the feedback shows that while it has a long way to go in achieving excellence in client service delivery, there are reports of more positive experiences in recent times. The Minister for Immigration and Multicultural Affairs recently launched a client service improvement programme in Parliament House. This brings together the many strands of work being undertaken to ensure much better client service is provided. This programme develops themes of “our commitment, our presentation, helping you and hearing you”. The Secretary reported earlier this year on the outcomes of the first all-staff survey in many years. The survey pointed to concerns about
image, leadership and client service, all of which are being addressed.

10. In his opening statement to the Senate Legal and Constitutional Committee at the Budget Estimates hearings on 22 May 2006, the Secretary stressed how the department is absolutely determined to perform professionally, lawfully and reasonably. Its key themes of being an open and accountable culture, having fair and reasonable dealings with clients and well trained and supported staff are crucial to its future. It has listened to criticism, is learning from mistakes and is very much focussed on improvement. A detailed document was tabled by the Secretary at the 22 May Hearing showing progress on implementing the Palmer programme.

OTHER ISSUES

11. In providing a response to this Report, it is noted that the government has not finalised a response to the Senate Select Committee (SSC) on Ministerial Discretion in Migration Matters. There are five recommendations in the Report which overlap with the Report of the Senate Select Committee. These are cross-referenced at Attachment 1.

CHAPTER 1 – MINISTERIAL RESPONSIBILITY

Recommendation 1 (1.37)
The committee recommends that the terms of reference for any future independent inquiries into the administration of the Migration Act provide the authority for the investigation to include both the Minister and the Minister’s office.

Government response
Not accepted.

CHAPTER 2 – PROCESSING OF PROTECTION VISA APPLICATIONS

Recommendation 2 (2.48)
The committee recommends that the Minister ensure all statements tabled in Parliament that relate to protection visa applications and review applications that take longer than 90 days to decide contain sufficient information to ensure effective parliamentary scrutiny of the visa and review determination process.

Government response
Accepted.

In accordance with the requirements of the Migration Act 1958 the reports include individual reasons for all applications not being finalised within the 90 day timeframe.

Recommendation 3 (2.63)
The committee recommends that the Migration Act be amended to require that onshore protection visa applicants be given at least two weeks notice of the intention to make a negative decision with respect to an application. In addition, it is recommended that DIMA provide a summary of its reasons for its intention to make a negative decision and the applicant be given the opportunity to respond.

Government response
Not accepted.

The Migration Act 1958 already sets out comprehensive requirements for the disclosure of personal and adverse information for comment and response by the applicant and the appropriate timeframes within which applicants are to respond.

Recommendation 4 (2.64)
The committee recommends that DIMA conduct an interview with all onshore applicants unless they are to be approved on the papers.

Government response
Not accepted.

In their dealings with the department prospective protection visa applicants are advised when completing the application form that a decision may be made based on the application and information they have provided. Because of the nature of claims made, the country of nationality concerned and the country information relevant to these claims, it is possible in many cases to reach decisions without an interview. In other circumstances an interview may be necessary.

Recommendation 5 (2.65)
The committee recommends that DIMA review the application forms and information sheets provided to offshore humanitarian visa applicants to ensure that they provide applicants with compre-
hensive and detailed information on the relevant visa criteria and assessment process.

**Government response**

Accepted.

The application form for an offshore refugee and humanitarian visa provides basic information relating to core visa requirements, family reunion provisions, the entry of minors under the offshore programme and the lodgement and processing of visa applications. There are also fact sheets and other information sheets that provide further details on the programme.

All publicly available information is regularly updated and new information sheets developed, where appropriate, to reflect policy and procedural changes. The department is also reviewing the way information is communicated to proposers under the Special Humanitarian Programme.

Also, the department is exploring ways of improving methods of communicating detailed information on offshore humanitarian visa criteria and assessment processes.

**Recommendation 6 (2.73)**

The committee recommends that the Government make training of interpreters a priority and establish a planned, comprehensive training programme to address the development and ongoing needs of interpreting services provided by or on behalf of DIMA.

**Government response**

Accepted.

As part of their contractual agreement with the Department of Education, Science and Training (DEST) the Service Industries Skills Council has undertaken a review of career paths and training for interpreters and translators. The resulting report gives a profile of the industry and its stakeholders, describes the current training situation and investigates further training needs for interpreters and translators in Australia.

The report shows that there are currently no nationally consistent competency standards and no consistent approach to training for interpreters and translators. Whilst more discussion needs to occur among stakeholders around areas of debate including levels of proposed qualifications, nomenclature, and other issues regarding the development of competency standards, stakeholders consulted generally supported the development of a nationally endorsed qualifications framework for the interpreting and translating profession.

DEST will ensure that national competency standards and qualifications for interpreters and translators are developed. This work will involve consultation with all stakeholders on issues that need to be addressed, as described in the report of the Service Industries Skills Council.

**Recommendation 7 (2.74)**

The committee recommends that a quality assurance process be developed and implemented to monitor and to report to Parliament through the department’s Annual Report on the quality of interpreting services provided by or on behalf of the department (including the RRT and MRT).

**Government response**

Accepted in principle.

TIS National already has a number of quality measures presented in the Portfolio Budget Statement and reported against in the department’s Annual Report. The quality measures cover aspects such as processing times for example providing an interpreter in a major community language within three minutes (telephone), or interpreter competence eg 90% of interpreter jobs to be done by a NAATI accredited/recognised interpreter (telephone).

In addition to these quality features, TIS National conducts an annual client satisfaction survey, which provides the opportunity for client organisations and individuals (including the department’s staff) to provide comment on the capacity of TIS to meet language needs, service quality, conduct and professionalism of interpreters, satisfaction levels with TIS services and confidence levels of clients about its performance. The results of the survey will also be reported in the Annual Report.

**Recommendation 8 (2.109)**

The committee recommends that the Migration Act and Regulations be reviewed as a matter of priority, with a view to establishing an immigration regime that is fair, transparent and legally defensible as well as more concise and comprehensible.
Government response
See comments under recommendation 9.

Recommendation 9 (2.110)
The committee recommends that the review of the Migration Act and Regulations be undertaken by the Australian Law Reform Commission.

Government response
Noted.
The government notes the committee’s comments regarding the Migration Act and Regulations. The committee’s recommendation has been forwarded to the ALRC for further consideration as to any future work program.

Recommendation 10 (2.111)
The committee recommends that the review of the Migration Series Instructions, announced as part of the Government’s response to the Palmer report, ensure that the Instructions accurately and clearly reflect and comply with the Migration Act and Regulations.

Government response
Accepted.
The department is progressively reviewing all compliance-related Migration Series Instructions (MSIs) to make sure they accurately and clearly state the law (as set out in both the Migration Act and the Regulations), make sense, are consistent with each other and are written in plain English.

This review will ensure that compliance-related MSIs are up-to-date and provide strong guidance to the department’s compliance staff.
The revised MSIs will be made available to Senators by the department via the committee office.

Recommendation 11 (2.112)
The committee recommends that DIMA’s approach to case management of protection visa applications be reviewed.

Government response
Accepted.
The Australian National Audit Office (ANAO) completed an audit report on the management of the processing of asylum seekers, which was published on 23 June 2004. The report concluded, inter alia, that:

“…the Onshore Processing of asylum seekers is managed well. The overall standard of record keeping, including the documentation of the reasons for decisions was high. This reflects DIMIA’s decision to use higher level and more experienced officers to make decisions in processing PV applications. These officers are also supported with appropriate training and guidelines” (Exec Summary at paragraph 18, page 5 refers).

Nevertheless, the department is continually re-evaluating and refining its approach to the case management of protection visa application processing.
The department commenced implementing a new case management service delivery approach from the end of January 2006. The new approach provides for the needs of vulnerable clients and/or those with exceptional circumstances to be managed in a more holistic and coordinated way. Following the 2006-07 Budget measure to increase the department’s case management resources, its capacity to manage further clients under this approach will grow significantly as a further 37 case management staff are recruited and trained.

Recommendation 12 (2.113)
The committee recommends that, as part of its new National Training Strategy, DIMA review the training methods and approaches for officers responsible for the processing and assessment of protection visa applications, with a view to establishing a planned and structured comprehensive training programme.

Government response
Accepted.
The department has had a comprehensive and formal training programme in place for protection visa decision makers since 1991. This programme is continually reviewed and developed to ensure that it continues to have a practical focus, reflects the learning needs of decision-makers on the job and provides a pathway for ongoing learning and development.
The review and development of the established training programme for protection visa decision makers is now being undertaken in the context of the department’s new training strategy. The de-
department’s National Training Branch is providing an internal consulting service to the Onshore Protection area in this work.

**Recommendation 13 (2.114)**

The committee recommends that the Government expand the responsibilities of its recently established College of Immigration Border Security and Compliance to include provision of training for officials responsible for the processing and assessment of protection visa applications.

**Government response**

Accepted.

The College of Immigration, which commenced on 1 July 2006, is initially focusing on developing training for compliance, detention, border security, immigration intelligence, investigations and case management. When these streams are complete it will commence work on other priorities including protection visas.

**Recommendation 14 (2.115)**

The committee recommends that the ANAO commit to a series of rolling audits to provide assurance that humanitarian and non-humanitarian visa applications are being correctly processed and assessed.

**Government response**

Noted.

The committee’s recommendation has been forwarded to ANAO to assist in their deliberations.

**Recommendation 15 (2.140)**

The committee recommends that the Migration Series Instructions include a requirement that case officers treat ‘dob-in’ information with the utmost caution, particularly if the information is provided anonymously, and ensure that such information is provided to applicants and their legal representatives.

**Government response**

Accepted.

As explained below, the concept ‘dob in’ usually refers to persons alerting migration officials to overstayers or illegal workers. Given that the recommendation is in the context of people who are seeking protection visas it is noted that protection visa decision makers have clear instructional guidance, in the Protection Visa Procedures Manual, on the identification and assessment of evidence which is relevant to the protection visa decision, including on the need to assess credibility of sources. The Procedures Manual also sets out the arrangements to be followed in disclosing personal adverse information to the applicant to enable them to respond.

The existing National Compliance Operational Guidelines advise departmental officers who have collected dob-in information that regardless of the source, all information received must be verified. The guidelines instruct officers to verify information received by checking departmental databases, locating client files and previous applications, contacting overseas posts, conducting checks under section 18 of the Migration Act, conducting police checks, and conducting observations of an address of interest in order to ascertain the resource requirements of the operation, to verify the accuracy of the information and to assess access and containment issues.

Section 18 specifically provides:

> 18. (1) If the Minister has reason to believe that a person (in this subsection called the first person) is capable of giving information which the Minister has reason to believe is, or producing documents (including documents that are copies of other documents) which the Minister has reason to believe are, relevant to ascertaining the identity or whereabouts of another person whom the Minister has reason to believe is an unlawful non-citizen, the Minister may, by notice in writing served on the first person, require the first person:

(a) to give to the Minister, within the period and in the manner specified in the notice, any such information; or

(b) to produce to the Minister, within the period and in the manner specified in the notice, any such documents; or

(c) to make copies of any such documents and to produce to the Minister, within the period and in the manner specified in the notice, those copies.'
The revised MSI on Visa Cancellation under sections 109, 116, 128 and 140 of the Migration Act will instruct officers that they are required under section 120(2) and 121(1) to put all relevant information to a visa holder and invite the visa holder to comment on that information prior to cancelling the visa.

The MSI states that while generally a visa holder is entitled to know the substance of allegations or claims about them and have the opportunity to respond to them, sometimes information provided to the department by a person such as a dob-in caller may be non-disclosable information if the person asks the department that the information be treated in confidence and the delegate agrees that the information should be treated ‘in confidence’ or it can be inferred from the circumstances that the information should remain confidential. A breach of confidence may lead to legal proceedings against the department.

This instruction also advises officers that if information cannot be disclosed to a visa holder because it contains non-disclosable information, the delegate may give little or no weight to the information, release part of the information, or use the non-disclosable information to obtain other evidence which can then be put to the visa holder.

Under all of these disclosure arrangements the identity of the person providing the information would normally be treated as confidential. Our clients are entitled to know the content of the information, but not details of the person providing information unless that person has agreed to the information being disclosed.

**Recommendation 16 (2.160)**
The committee recommends that the quality indicators for DIMA’s offshore humanitarian programme and onshore protection visa processing be amended to include qualitative performance measures other than timeliness (such as the number and outcome of review applications and appeals).

**Government response**
Accepted in principle.

The department is already exploring the potential for broadening existing performance measures to include additional qualitative measures in the humanitarian programme. The onshore quality assurance process is currently under review to ensure consistency with the department’s national quality assurance framework. This review will include the appropriateness of other qualitative performance measures.

**Recommendation 17 (2.219)**
The committee recommends that visa applicants’ legal representatives be accorded the right to participate in primary interviews conducted by DIMA.

**Government response**
Not accepted.

Applicants may request that their legal representatives be present at primary interview. However, these requests are considered on a case-by-case basis by the case manager. Attendance of another person may not be possible due to constraints on time and resources, or the case manager may decide that the presence of another person will actually hinder the interview. The representative does not have a right of veto over questions to be asked of an applicant or to respond on the applicant’s behalf.

In order to decide an application, case managers may need to be able to discuss the applicant’s claims directly with them and be able to hear the applicant clarify, in their own words, any issues that arise. The purpose of conducting an interview with a visa applicant is to provide the applicant with an opportunity to provide further information in support of their application.

If a legal representative is present at the primary interview, they also need to be a registered migration agent in order for them to lawfully provide immigration assistance to help someone apply to enter or to remain. It is against the law for a person who is not a registered migration agent to give immigration assistance.

**Recommendation 18 (2.220)**
The committee recommends that the government institute and fund a duty solicitor scheme for all persons held in immigration detention (not solely protection visa applicants).

**Government response**
Not accepted.
The government is of the view that a duty lawyer scheme for all persons in immigration detention (not solely protection visa applicants) is not required. The government reiterates the evidence placed by it before the committee in relation to the access by persons in immigration detention to lawyers and their access to reasonable facilities. The department is piloting limited access to IAAAS services to certain clients in detention who are being case managed.

**Recommendation 19 (2.221)**

The committee recommends that DIMA cease its practice of interpreting section 256 of the Migration Act narrowly which, in practice, limits access to lawyers. Detainees should be advised of their right to access lawyers, and lawyers should have ready access to detainees with the minimum possible restrictions.

**Government response**

Partially accepted.

The government agrees that people in immigration detention should have ready access to legal representation. However, it does not agree that the department’s interpretation of section 256 of the Migration Act 1958 is narrow. Detainees have access to legal representation on request. There have been instances in which visits by lawyers and others to detention facilities have been refused for operational reasons. However, such refusals are rare and have generally occurred in relation to specific incidents of unrest or disturbance, during which the detention services provider may not have been able to guarantee the safety of visitors.

A review of complaints received by the department over the last year indicates that only one complainant raised concern about access to legal advice. This complaint was about access to immigration legislation at centres, not access to legal advice or legal representatives. The department has provided additional copies of legislation to centres and is currently conducting trial Internet access at centres which will further facilitate access to sites containing relevant legislation.

**CHAPTER 3 - SECONDARY ASSESSMENT OF VISA APPLICATIONS**

**Recommendation 20 (3.198)**

The committee recommends that DIMA and the Department of Finance and Administration review the RRT and MRT current funding levels and systems in light of the current and expected workloads of both Tribunals.

**Government response**

Partially accepted.

The allocation of revenue to the MRT and RRT is agreed annually between officials of the Department of Finance and Administration (Finance) and the MRT and the RRT. The level of funding is assessed against the number of cases anticipated to be finalised in the financial year, in accordance with a funding agreement between the agencies. The funding agreement is currently being reviewed by Finance.

**Recommendation 21 (3.12)**

The committee recommends that the Migration Act be amended to provide that the MRT and RRT can, in appropriate circumstances, grant an extension of time in which to lodge applications for review.

**Government response**

Not accepted.

Sections 347 and 412 of the Migration Act 1958 state strict time limits for when an application for review must be given to the MRT and RRT. These time limits are generous and provide administrative certainty in government decisions. The Minister also has a personal non compellable power to allow a person to lodge a fresh protection visa application should this be in the public interest.

**Recommendation 22 (3.1)**

The committee recommends that the Migration Act 1958 be amended to provide an entitlement to legal representation at Tribunal hearings for applicants and an entitlement to call and examine witnesses at hearings.

**Government response**

Not accepted.

The Tribunals are to provide a mechanism of review that is fair, just, economical, informal and
quick. The process is intended to be non-adversarial and inquisitorial, and not a formal court hearing.

Section 366A of the Migration Act 1958 already provides for an applicant to be assisted during a hearing but not be represented. This assistance can be provided by a migration agent or solicitor.

Under sections 361 and 362 of the Act, the applicant may request to call witnesses and obtain written material. However, it is discretionary for the Tribunals to do so.

**Recommendation 23 (3.200)**
The committee recommends that the Commonwealth legal aid guidelines be amended to provide for assistance in migration matters, both at the preliminary and review stages, subject to applicants satisfying means and merit tests, and that necessary funding be provided to meet the need for such services.

**Government response**
Not accepted.

Assistance is already provided at both the preliminary and review stages to those most in need. Assistance at preliminary and merits review stages is provided by the Department through IAAAS. The IAAAS funds selected registered Migration Agents to provide application assistance to Protection Visa applicants in immigration detention, disadvantaged PV applicants in greatest need (including Temporary Protection Visa holders) in the community, and disadvantaged non-PV applicants in greatest need in the community and immigration advice to disadvantaged members of the community in greatest need.

Application assistance provided under the IAAAS includes assistance to prepare the merits review application should primary application be refused and to explain the implications of visa decisions made by the department and relevant merits review tribunal.

In addition, the Commonwealth legal aid agreements permit legal aid commissions to provide legal advice, minor assistance and duty lawyer services for migration matters where the type of assistance required cannot be obtained through assistance schemes administered by the department.

Subject to merits and means tests, legal assistance for judicial review is available through Commonwealth legal aid for migration matters in the Federal Court, Federal Magistrates Court or High Court if there are differences of judicial opinion that have not been settled by the Full Court of the Federal Court or the High Court that relate to an issue in dispute in the matter, or where the proceedings seek to challenge the lawfulness of detention.

**Recommendation 24 (3.201)**
The committee 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.

**Government response**
Not accepted.

The Migration Act currently establishes statutory obligations and exceptions concerning the circumstances in which information and documents are to be furnished to review applicants, dependent upon which Tribunal is considering the matter. Certain documents may not be disclosed because either they contain information about other people or it would not be in the public interest. Applicants are availing themselves of the opportunity to apply for access to relevant documentation under the provisions of the Freedom of Information Act 1982. Principles set out in the Privacy Act 1988 must also be followed.

**Recommendation 25 (3.202)**
The committee recommends that RRT incorporate into its Practice Directions specific guidelines on its approach to credibility.

**Government response**
Partially accepted.

In addition to a range of legal resources available to RRT members on the correct approach to assessing credibility and making credibility findings, there is a considerable body of relevant case law which RRT members are bound to observe.

This judicial guidance establishes legal principles for the assessing credibility.

The RRT is currently developing, in consultation with the migration industry, a document that draws together guidance and information on as-
Assessing credibility. It is intended that this document will be of benefit to members, applicants and migration agents.

**Recommendation 26 (3.203)**

The committee recommends that the MRT and the RRT be included in the training and development initiatives and strategies being developed by DIMA as part of the response to the Palmer report.

**Government response**

Noted.

Specific modules on the role of external oversight bodies and agencies in reviewing the department’s actions and decisions are to be included in the department’s programmes. This includes bodies such as the Ombudsman, the AAT, MRT, and RRT. The department is already working directly with the Ombudsman and the MRT and RRT in the delivery of training and the development of modules on their respective roles.

**Recommendation 27 (3.204)**

The committee recommends that the RRT incorporate into its Practice Directions specific guidelines on the weight to be given to expert medical reports, especially those detailing a claimant’s history of persecution with a clinical assessment of their current psychological condition.

**Government response**

Partially accepted.

The RRT is currently developing guidance on its approach to credibility assessment. This will include general guidance on expert medical reports.

It is noteworthy that each member of the RRT must by law assess evidence for themselves. They cannot assess evidence by applying strict guidelines, such as a rule or policy that may result in a relevant fact not being taken into account. In assessing any medical evidence RRT members take into account the expertise and opinion of the medical practitioner and the source of the information. Members are required by law to determine for themselves whether the claimed history of events occurred and whether an applicant has faced or may face persecution.

The RRT recognises that it is vital to assess evidence properly, having regard to the particular circumstances of each case and to do otherwise would amount to a failure to exercise its jurisdiction lawfully.

**Recommendation 28 (3.205)**

The committee recommends that the RRT be able to sit as a single member body and as a panel of up to three members as appropriately determined by a Senior, or the Principal Member. Members would be drawn from people with appropriate backgrounds for considering refugee and humanitarian applications.

**Government response**

Not accepted.

The Principal Member of the RRT has the capacity, through the provisions of section 443 of the Migration Act 1958, to refer the decision to the Administrative Appeals Tribunal, which may sit as a multi-member panel.

Members of the RRT are selected for their high level of skills and experience through a competitive nationwide recruitment process. They possess appropriate backgrounds and training to consider refugee and humanitarian applications.

**CHAPTER 4 – MINISTERIAL DISCRETION**

**Recommendation 29 (4.122)**

The committee recommends that coverage of the Immigration Application Advice and Assistance (IAAAS) scheme be extended to enable applicants for Ministerial intervention to obtain an appropriate level of professional legal assistance.

**Government response**

Not accepted.

A Ministerial intervention request is not a visa application process, nor is it a legal process requiring applicants to comply with statutory criteria. There is no format for making Ministerial intervention requests and persons may make multiple requests to the Minister seeking intervention. No professional assistance is required to make a request for Ministerial intervention, although it is open to a person to make their own arrangements for migration agent assistance, if they choose to do so. Nonetheless, arrangements for supporting the Minister for Immigration and Multicultural Affairs in relation to her intervention powers are being further explored and the department is considering developing further case management
processes for supporting clients. The views of the committee will be taken into account in this area.

**Recommendation 30 (4.123)**
The committee recommends that each applicant for Ministerial intervention be shown a draft of any submission to be placed before the Minister to enable the applicant to comment on the information contained in the submission. This consultative process should be carried out within a tight but reasonable time frame to avoid any unnecessary delay.

**Government response**
Not accepted.

It is not practical to consult individually on the content of DIMA’s submissions to the Minister as this would undermine the personal non-compellable nature of the intervention power and would pose significant and unacceptable costs for DIMA. It could also create extensive delays in resolving intervention cases, with cases where the Minister was minded to intervene taking longer to be submitted for consideration.

DIMA is exploring opportunities for notifying individuals where their request for intervention is assessed as meeting the Minister’s guidelines and referred to the Minister for consideration for the exercise of her or his public interest powers. DIMA is also exploring options for advising persons whose requests are assessed as not meeting the Minister’s guidelines of the reasons for such an assessment.

**Recommendation 31 (4.124)**
The committee recommends that all applicants for the exercise of Ministerial discretion should be eligible for visas that attract work rights, up to the time of the outcome of their first application. Children who are seeking asylum should have access to social security and health care throughout the processing period of any applications for Ministerial discretion and all asylum seekers should have access to health care at least until the outcome of a first application for Ministerial discretion.

**Government response**
Not accepted.

People who are the subject of a request for Ministerial intervention have already been through the visa application and merits review process and have not met the criteria for the grant of a visa. Existing arrangements enable bridging visas to be granted to persons whose cases are under consideration by the Minister for possible intervention, and for holders of such bridging visas to be granted work rights where they would suffer financial hardship.

There is a need to ensure that the making of a request for ministerial intervention does not result in undue expectations that the Minister will intervene. There is also a need to achieve a balance between providing an appropriate level of support to such persons, while preventing abuse of the protection visa and intervention processes by those merely seeking to delay removal action and gain access to attractive benefits while their case remains unresolved.

DIMA is developing a community care case model which will enable the provision of selected support services to identified groups and individual clients who require support and assistance until they receive an immigration outcome.

**Recommendation 32 (4.125)**
The committee recommends that the Minister ensure all statements tabled in Parliament under sections 351 and 417 (which grant the Minister the discretionary power to substitute more favourable decisions from that of the Tribunals) provide sufficient information to allow Parliament to scrutinise the use of the powers. This should include the Minister’s reasons for believing intervention in a given case to be in the public interest as required by the legislation. Statements should also include an indication of how the case was brought to the Minister’s attention by an approach from the visa applicant, by a representative on behalf of the visa applicant, on the suggestion of a tribunal, at the initiative of an officer of the department or in some other way.

**Government response**
Partially accepted.

Statements tabled in Parliament under sections 351 and 417 of the Migration Act 1958 are prepared in a manner consistent with existing legislative requirements. Any circumstances by which the case was brought to the Minister’s attention...
that would identify the person cannot be included in the tabling statement.

Cases are drawn to the attention of the Minister by the Department on the basis of departmental assessments that they meet the guidelines for referral. Departmental assessments draw on information from a range of sources not limited to, or necessarily related to, material submitted in requests for intervention. Publication of this information would convey an erroneous impression that there is some necessary causal link between the source of intervention requests and the outcome of those requests.

Recommendation 33 (4.126)
The committee recommends that the Migration Act be amended to introduce a system of 'complementary protection' for future asylum seekers who do not meet the definition of refugee under the Refugee Convention but otherwise need protection for humanitarian reasons and cannot be returned. Consideration of claims under the Refugee Convention and Australia's other international human rights obligations should take place at the same time. A separate humanitarian stream should be established to process applicants whose claims are in this category, including a review process.

Government response
Not accepted.

The existing provisions of the Migration Act 1958 allow for ministerial intervention in the public interest to deal with any cases where non-refoulement obligations under the Convention Against Torture and the International Covenant on Civil and Political Rights exist for non-Refugee Convention grounds, and for cases where continued stay on Convention on the Rights of the Child grounds is in the public interest.

The Department continues to monitor and advise the Government on the operation of the Migration Act and Regulations.

CHAPTER 5 - MANDATORY DETENTION

CHAPTER 6 - MANDATORY DETENTION IN PRACTICE

Recommendation 34 (6.15)
The committee recommends that the use of detainee labour should be subject to independent investigation by the Ombudsman or HREOC and re-examined as part of the review of the immigration detention services contract.

Government response
Accepted in principle.

In June 2006, the department concluded an internal review into the operation of the Merit Points Scheme and Meaningful Activities programme (MPS) following the release of the Roche Report which examined the detention services contract. The MPS was designed to provide detainees with a degree of empowerment and control over their day to day life by engaging voluntarily in useful and meaningful activities that contribute to the care of themselves and the detainee community. The internal review recommended a number of amendments to the policy underpinning the scheme to further improve detainee's health and well-being, and in July 2006 the Minister agreed to implement the new Purchasing Allowance Scheme (PAS) together with a broader programmes and activities initiative.

Under the PAS, all detainees receive a weekly allocation of points that enables them to purchase of incidental items. A minimum number of points are allocated to detainees for incidental purchases regardless of any participation in the programs and activities initiative. Detainees can also accrue extra points by participating in a broad range of programs and activities including life-skills, sport, computer training and English classes. The PAS and new programmes and activities initiative is currently being implemented across all immigration detention centres.

Recommendation 35 (6.34)
The committee recommends that the use of behavioural management techniques and restrictive detention be re-examined as part of the government's proposed review of the immigration detention contract. The committee further recommends that HREOC and the Royal Australia and New
Zealand College of Psychiatrists and other stakeholders be consulted during the process.

**Government response**
Accepted in principle.

The operating procedures for Management Support Units (MSUs) were developed by the department in consultation with the Ombudsman’s office and approved in August 2005. These procedures ensure that placements in more restrictive detention only occur where there is no viable alternative, for as short a time as possible, and under strict health and welfare and reporting requirements. All placements are reviewed by a formally structured Placement Review Team which includes specialist health providers (including mental health).

Contracting of health and psychological services in immigration detention will pass to the direct management of the department. This was one of the recommendations made in the Roche Report. The transition occurred in September 2006.

The department has established the Detention Health Advisory Group (DeHAG) to provide it with the necessary independent, expert advice to design, develop, implement and monitor health care services, including mental health care, for people in immigration detention centres and related facilities. Issues pertaining to care and management of detainees will be referred to DeHAG for expert advice.

**Recommendation 36 (6.35)**
The committee recommends that the ‘management units’ be closed. In the alternative, their use should be limited for short periods not exceeding twenty-four hours in cases of emergency.

**Government response**
Partially accepted.

The operating procedures for MSUs ensure that placements in more restrictive detention only occur where there is no viable alternative, for as short a time as possible, and under strict health and welfare and reporting requirements. All placements are reviewed by a formally structured Placement Review Team which includes specialist health providers (including mental health).

In addition to these procedures, placement in an MSU must now be endorsed within 24 hours by the department’s First Assistant Secretary, Detention and Offshore Services Division. Since October 2006 the MSU at Baxter has been used for administration and storage by the onsite Facilities Management contractors. It is no longer used as an MSU. The MSU at Villawood IDC remains operationally ready for use if required, however, it is current practice not to use the MSU, with its last use being in early February 2006.

**Recommendation 37 (6.36)**
The committee recommends that all measures which constitute a further deprivation of liberty within a detention centre be established by law, the grounds and procedural guidelines should be specified and procedural safeguards enforceable in the general courts.

**Government response**
Partially accepted.

The High Court in 2004, in the case of Behrouz v Secretary of the Department of Immigration and Multicultural and Indigenous Affairs (2004) 208 ALR 271 reiterated the right of any person in immigration detention to have recourse to the civil courts if they allege that they have suffered injury as a result of the negligent act of another while they are in immigration detention.

In May 2006 the government endorsed departmental principles guiding immigration detention. Those principles include that detention service policies and practices are founded on the principle of the duty of care; people in immigration detention are carefully and regularly case managed as to where they are to be located in the detention services network and the services they require; and people in centre-based immigration detention are to be provided with timely access to quality accommodation, health, food and other necessary services.

The government is exploring the options for the making of the immigration detention standards into appropriate regulations in the Migration Regulations.

**Recommendation 38 (6.44)**
The committee recommends that the forthcoming review of the detention services contract include specific examination of internal complaint processes including, among other things, mechanisms
for confidential complaints and protection from victimisation.

**Government response**
Accepted in principle.

A review of the DSC was finalised prior to publication of the Report. In March 2006, a Detainee and Visitor Complaints Management Project was initiated. The scope of the project involves establishing a centralised client feedback mechanism, with a principal focus on complaint handling and reporting.

Part of the project involves the development and release of posters to assist detainees with greater knowledge of complaint processes, including the department’s service guarantee of open and transparent monitoring and reporting of resolutions and outcomes.

As an interim measure, and to assist in the reduction of confidentiality breaches and potential victimisation, the existence of the department’s Global Feedback Unit (GFU) is also being notified in all immigration detention facilities as a confidential method for complaint submission and resolution via telephone.

**Recommendation 39 (6.45)**
The committee recommends that the Migration Act be amended to provide HREOC with an express statutory right of access to all places of immigration detention.

**Government response**
Accepted.

In the view of the government, HREOC could have an unrestricted express statutory right of access to all places of immigration detention, if it requests it. Amendments to the Migration Act 1958 made in November 2005 expanded the power and role of the Commonwealth Ombudsman to contact a person in immigration detention where that person has not made a complaint to the Ombudsman.

**Recommendation 40 (6.46)**
The committee recommends that a system of regular official visits by an independent complaints body be instituted and this function be performed cooperatively by HREOC and the Commonwealth Ombudsman.

**Government response**
Accepted in principle.

Independent complaints bodies, specifically the HREOC and the office of the Commonwealth Ombudsman, already undertake regular visits to detention facilities.

In 2005 the HREOC visited IDFs 3 times and the office of the Ombudsman visited 14 times. In addition to visits by representatives of their offices, the Human Rights Commissioner and the Ombudsman personally visited some facilities. HREOC and representatives of the office of the Ombudsman are also in frequent phone contact with complainants.

Both bodies have rights to seek entry to immigration detention centres to investigate complaints and also can and do undertake their own inquiries into aspects of immigration detention.

Given the Ombudsman’s expanded role in matters of immigration detention it is anticipated that the Ombudsman’s office representative will be visiting more often as a matter of course.

**Recommendation 41 (6.58)**
The committee recommends that the review of the immigration detention services contract include a review of the Immigration Detention Standards, Migration Series Instructions and Operational Procedures and ensure that rules relating to access to detainees are consistent with international standards.

**Government response**
Accepted in principle.

The Immigration Detention Standards (IDS) outlined in Schedule 3 of the DSC, set out the Detention Service Provider’s (DSPs) obligations to meet the individual care needs of detainees and maintain the good order and security of IDFs.

The Roche Report recommended that the IDS should not be used to directly drive performance but to guide and inform the operation of the detention system as a set of overarching principles, and that performance should be driven by a more focussed system, concentrating on systemic issues and quality improvement.

Variations to the current DSC arising from the Roche recommendations were signed on 29 September 2006. These variations include
novation of health services, purchase of professional cleaning and catering services, and the introduction of a new performance management regime. New input measures were also included in the contract in the areas of cleaning, catering, education and recreation. These were informed by industry standards.

The contract variation introducing the new performance management regime removed measures and sanctions associated with the IDS, but retained them in the DSC as a set of overarching principles. A new performance management system, which uses risk assessment to identify and address areas requiring quality improvements, is being established in accordance with the contract variation.

The IDS relating to health are being examined in the novation of health services from the existing DSC with a view to making them consistent with recognised health standards and performance measures.

Operational procedures have been developed to provide guidance to DIMA and DSP staff on the ground regarding how to undertake their duties consistent with contractual obligations. Operational procedures have been reviewed on a regular basis.

The Palmer report recommends that the department review its MSIs. All MSIs are being reviewed in the context of a Department-wide Instructions Reform Project. The Detention and Offshore Services Division in the department is conducting a review of key detention related MSIs during 2006. Included in this review are key compliance MSIs some of which will be completed or well advanced by December 2006, with the remainder of the compliance and other Departmental MSIs being reviewed by December 2007.

Recommendation 42 (6.58)
The committee recommends that the Migration Act be amended to give effective recognition to the right of detainees to have access to lawyers and other visitors, including medical and religious visitors.

Government response
Accepted.

Pursuant to section 256 of the Migration Act 1958, all people in immigration detention have the right to request access to all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her immigration detention. In addition, a detainee is free to request that a person visit them, subject only to reasonable conditions in which the visit is to take place, and subject to the good order and security of the immigration detention centre. No detainee is compelled to receive a personal visitor if they do not want to see them. Amendments to the Act to this effect will be considered as part of a broader policy review.

Recommendation 43 (6.60)
The committee recommends that restrictions on access to lawyers and other visitors imposed for disciplinary or behavioural management purposes should be expressly prohibited.

Government response
Accepted in principle.

Detainees have access to legal representation on request, as required by section 256 of the Migration Act 1958. Upon arrival at an IDF people are informed, as part of the induction process, of their right to receive visits from their legal representatives, their right to contact them by phone and to receive and send material to them via fax or post. Facilities, such as interview rooms, are available to support access to legal representatives.

People in detention who seek a protection visa or a review by the RRT of a protection visa decision are offered publicly funded professional assistance with those processes through the Immigration Advice and Application Assistance Scheme (IAAAS). IAAAS assistance must be provided either by a Registered Migration Agent (RMA) or, in the case of Legal Aid Commission IAAAS providers, a person who is an “official” within the meaning of section 275 of the Migration Act. Individuals are not obliged to take up the offer of IAAAS assistance. They may choose privately funded alternatives and can change their privately funded representation.

Lawyers are generally given unrestricted access to their clients in immigration detention. This can consist of visits or video conferencing during normal business hours and after hours in emer-
gency cases, or providing advice to detainees by telephone at any time. Private interview rooms can be arranged by contacting the DSP in advance, as access to these private rooms is subject to competing operational requirements.

Access to lawyers and other visitors is not restricted other than in exceptional circumstances and never for disciplinary or behavioural purposes.

The attached information brochure (Attachment 2) on visits has been produced (and is available at all IDF's) as an interim measure to improve communication with visitors pending completion of a comprehensive review of visits policies and procedures.

As part of that review, a survey to obtain feedback from visitors on their experiences of visits to IDF's has been completed. Legal representatives were also included as a target group of the survey.

**Recommendation 44 (6.134)**

The committee recommends that there be a presumption against the imposition of a liability to pay the Commonwealth Government for the cost of detention, subject to an administrative discretion to impose the debt in instances of abuse of process or where applicants have acted in bad faith.

**Government response**

Noted.

The imposition of a liability to pay the Commonwealth government for the cost of detention is a complex issue and must be considered in the context of the broader Commonwealth policy on debt recovery. Also, any change to the current policy will require an amendment to the Migration Act 1958.

The government will investigate this recommendation further and will report its findings to the committee.

**Recommendation 45 (6.145)**

The committee recommends that the Migration Act be amended to permit the mandatory detention of unlawful non-citizens for the purpose of initial screening, identity, security and health checks and that the initial period of detention be limited to up to ninety days.

**Government response**

Not accepted.

It is not appropriate to have an arbitrary time limit of up to ninety days established regardless of the circumstances of the case.

The policy of mandatory detention is to ensure that people arriving unlawfully do not enter or remain in the Australian community until any claims as to their rights to be in the community are properly assessed and they have been found to qualify for entry or to remain in Australia. The policy also ensures that essential health, identity and security checks have been conducted in each case.

The policy also ensures that unlawful arrivals who are found to have no grounds for entry to Australia or do not establish a legal claim to remain in Australia will be detained until they are available for removal from Australia.

This policy is an essential element in maintaining the integrity of Australia’s planned migration and humanitarian resettlement programs. Immigration detention centres are managed in accordance with the principles (amongst others) that “people are detained for the shortest practicable time, especially in facility-based detention” and that “families with children will be placed in facility-based detention only as a last resort”.

Approximately half of all people currently in immigration detention have been detained for less than ninety days.

**Recommendation 46 (6.146)**

The committee recommends the continuation of detention for a specified limited period should be subject to a formal process, such as the approval of a Federal Magistrate, on specified grounds and limited to situations where: there is suspicion that an individual is likely to disappear into the community to avoid immigration processes; or otherwise poses a danger to the community.

**Government response**

Not accepted.

Australia’s immigration detention policy has been maintained with bipartisan support since 1994. Immigration detention plays a significant role in maintaining the integrity of Australia’s immigration programme, and achieves a number of policy
objectives. It ensures that those who arrive unlawfully do not enter the Australian community until their identity and status have been properly assessed and they have been granted a visa, that they are available during processing of any visa applications and are immediately available for health checks, which are a requirement for granting a visa. Immigration detention also ensures that if applications are unsuccessful they are available for removal from Australia.

It is worthy of note that the Commonwealth Ombudsman has been given powers of reviewing cases of immigration detention. The Migration Act 1958 was amended on 29 June 2005 to require the Secretary to report to the Commonwealth Ombudsman on persons who have been detained for two years or more, and then every six months thereafter if the person is still in immigration detention at those times, and for the Ombudsman to provide assessments and recommendations relating to those persons to the Minister, including statements to be tabled.

**Recommendation 47 (6.147)**
The committee recommends release into the community on a bridging visa with a level of dignity that allows access to basic services, such as health, welfare, housing and income support or work rights.

**Government response**
Noted.

The broader issue of support for bridging visa holders is being considered as part of the review of bridging visas the department is conducting. The government will consider this review.

**CHAPTER 7 – OUTSOURCING OF MANAGEMENT OF IMMIGRATION DETENTION CENTRES**

**Recommendation 48 (7.132)**
The committee recommends that, as a fundamental overarching principle, direct responsibility for the management and provision of services at immigration detention centres in Australia should revert to the Commonwealth.

**Government response**
Not accepted.

The government announced, as part of the Roche Review, that these services will continue to be provided by external service providers.

**Recommendation 49 (7.133)**
The committee recommends that the detention services contract between DIMIA and GSL be redrafted immediately to incorporate all relevant suggestions and recommendations from the Palmer Report, the Hamburger Report and recent ANAO performance audit reports, particularly in relation to performance measures, outcomes, service quality and risk management.

**Government response**
Accepted in principle.

To determine how best to implement the recommendation of these reports, DIMA appointed an independent consultant, Mr Mick Roche, to examine the DSC and its management. In his review, Mr Roche recommended that the department introduce a number of changes including to:

- novate the health and psychological services sub-contract to the department’s direct control;
- revise contract management arrangements and monitoring of contract performance;
- establish a National Detention Services Monitoring Unit, based in National Office, Canberra;
- amend the contract to address issues in the insurance and liability and indemnity regime;
- review the fee structure under the current contract;
- encourage GSL to trial model(s) for enhanced Detention Service Officer (DSO)/detainee interaction;
- review the operational procedures with GSL; and
- review and update the requirements for the detention services Expert Panel.

The department completed negotiations in response to Mr Roche’s recommendations in September 2006 with the contractual variations signed on 29 September 2006. The variations to the DSC included:
• the novation of the health and psychological services sub-contract to the department’s direct control;
• new contract management arrangements and new contract performance management system;
• amendments to address issues in the insurance, liability, and indemnity regime raised by the ANAO;
• provisions requiring professional cleaning in all detainee occupied areas; and
• provisions regarding input measures for catering, recreation and education.

In addition to the contractual variations, DIMA and GSL agreed to the implementation of a trial model(s) for enhanced DSO/detainee interaction. The Detention Services Expert Panel is currently being examined, and the review of operational procedures is ongoing.

The fee structure under the current contract was reviewed during the negotiation process. DIMA and GSL agreed that amendments to the fee structure were not feasible for the duration of the current contract. The department will however, consider changes to the fee structure during the tender for a new Detention Services Contract. Likewise, new governance arrangements were considered, however it was decided that the current system should remain for the duration of the contract.

The Detention Services Tender Branch is continuing to co-ordinate the department’s strategy and expectations for the next tender process. The new DSC will have a greater focus on clients, health, and psychological services.

**Recommendation 50 (7.134)**

The committee recommends that a statement of detainees’ rights and conditions be established within the Migration Regulations, including clear provisions for the making of complaints to a third party, and third party powers to make rectification orders. This will be addressed in a broader review of detention policy reform, which is envisaged to be completed in 2007. It is noted that the Commonwealth Ombudsman and HREOC already have powers in relation to complaints.

**Government response**

Accepted.

The government accepts the recommendation that a statement of detainees’ rights and conditions be established within the Migration Regulations, including clear provisions for the making of complaints to a third party, and third party powers to make rectification orders. This will be addressed in a broader review of detention policy reform, which is envisaged to be completed in 2007. It is noted that the Commonwealth Ombudsman and HREOC already have powers in relation to complaints.

**Recommendation 51 (7.135)**

The committee recommends that an independent body be established with ongoing responsibility for monitoring the operation and management of immigration detention centres and the detention services contract.

**Government response**

Partially accepted.

The government in 2005 provided the Ombudsman with powers and additional resources for dealing with Immigration matters, in particular, detention issues. His enhanced role in this area includes establishing an expanded programme of regular visits to detention facilities, the development of an inspection function for people in detention facilities and in community detention and important changes to the arrangements for the provision of health care to detainees and the setting of appropriate standards for that care.

In accordance with the recommendations of the Roche report, the department has commenced establishment of a performance monitoring unit that will operate independently of both the department’s contract management function and the DSP. This unit will monitor the standard of service delivered to detainees, and report to the department’s management at a level above that of the officers responsible for day-to-day centre operations or contract management. It will also deliver feedback to the DSP to facilitate continuous improvement.

**CHAPTER 8 – TEMPORARY PROTECTION VISAS, BRIDGING VISAS AND COST SHIFTING**

**Recommendation 52 (8.34)**

The committee recommends that the Temporary Protection Visa regime be reviewed. Specifically, the review should consider the possible abolition of the ‘7 day rule’, and that all TPV holders be
given the opportunity to apply for permanent protection visa after a specified period.

**Government response**

Not accepted.

The temporary protection visa arrangements play an important part in the range of strategies put in place by the government to counter the surge in unauthorised boat arrivals in 1999. These arrangements reduce the incentive for people to engage in unnecessary, unlawful and often dangerous attempts to travel to Australia without authority.

**Recommendation 53 (8.68)**

The committee recommends that all holders of Bridging Visas Class E should be given work rights.

**Government response**

Noted.

The department is currently conducting a review of the bridging visa regime. The government will consider this review.

**Recommendation 54 (8.70)**

The committee recommends that if the Commonwealth Government rejects the proposal that all Bridging Visa holders have work rights, the Committee recommends that the current ‘45 day rule’ be doubled to 90 days to give people more time to apply for a protection visa.

**Government response**

Noted.

The department is currently conducting a review of the bridging visa regime. The government will consider this review.

**Recommendation 55 (8.115)**

The committee recommends that, in the light of increasing numbers of refugees from Africa, DIMIA should reassess its resettlement programmes to ensure that services are relevant, and that sufficient budget appropriation is made to cover all the costs of implementing those programmes.

**Government response**

Partially accepted.

The department is always looking to improve the delivery of settlement services to ensure the needs of our clients are met. The department works with settlement service providers and other government agencies to help newly-arrived refugees, humanitarian entrants and migrants settle successfully into Australia.

The significant needs of the African humanitarian case load were a key consideration of the department’s Review of Settlement Services for Migrants and Humanitarian Entrants released in May 2003. The Review identified a number of strategies to improve programme responsiveness to changing settlement priorities and improve integration between settlement and mainstream services. The review was informed by public consultations, attended by over 1000 people and through more than 140 written submissions, including from state and territory government agencies. The 2004 Budget provided an additional $100.9m over four years to strengthen settlement programmes in the department and complementary programmes in other agencies.

The department introduced a new model of the Integrated Humanitarian Settlement Strategy (IHSS) on 1 October 2005. The IHSS provides intensive settlement support to refugees and humanitarian entrants in the first six months after arrival. The key component of this new model is case management, which involves an assessment of individual and family specific needs and the delivery of a package of services through a case coordinator which addresses those needs. There has been a substantial increase in IHSS funding in recent years, from $31.6m in 2003/04 to $62.0m in 2006/07.

A new Settlement Grants Programme (SGP) commenced on 1 July 2006. The SGP provides settlement support and community capacity building to refugees, humanitarian entrants and family stream migrants with low English proficiency for up to five years after arrival. The funding priorities of the SGP are determined through an annual assessment of settlement needs. This approach ensures that the services provided through the SGP are targeted towards those communities and locations in greatest need of settlement assistance, and are responsive to changing settlement patterns and needs. The 2006/07 budget for the SGP is $30.8m.
The government also funds the Adult Migrant English Programme (AMEP) and TIS. AMEP provides up to 510 hours of English language tuition to eligible migrants and humanitarian entrants. The 2004 Budget allocated an additional $36.8m over four years to extend the Special Preparatory Programme (SPP) to provide up to 400 hours of English tuition to humanitarian entrants under the age of 25 years who have low levels of formal schooling (ie 0-7) and to supplement the existing hours offered up to 100 hours for those aged 25 and over. TIS provides translating and interpreting services 24 hours-a-day, seven days-a-week from anywhere in Australia.

While the government funds a range of settlement services to help newly-arrived refugees, humanitarian entrants and migrants settle into Australia through the department, many of the on-arrival and longer term needs of new entrants are most appropriately addressed through mainstream services.

The department liaises with a number of other government departments on the delivery of programmes for new arrivals, such as: the Culturally and Linguistically Diverse Employment Strategy and Action Plan with DEWR; the Newly Arrived Youth Support Services initiative with FaCSIA; and Family Relationship Services for Humanitarian Entrants with FaSCIA.

The Department of Health and Ageing, state health departments and the department are currently part of a multi-jurisdictional working party to provide advice to Health Ministers on the health care of humanitarian entrants and refugees and to explore options to improve the way health care is provided.

A high level Inter-departmental Committee (IDC) on Humanitarian Settlement has recently been formed to address the high levels of disadvantage amongst recently arrived humanitarian entrants and to improve whole-of-government coordination. The IDC aims to determine ways to improve the delivery of the government services to humanitarian entrants, with a focus on improving health, education and employment outcomes, planning, and early intervention services.

CHAPTER 9 – REMOVAL AND DEPORTATION

Recommendation 56 (9.28)

The committee recommends that the Migration Act be amended to require a comprehensive pre-removal risk assessment to ensure no ‘refoulement’, humanitarian or welfare concerns exist.

Government response

Not accepted.

The Migration Act, as amended by Parliament in September 1994, provided specific powers of removal for unlawful non-citizens, without the need for a deportation order. If an unlawful non-citizen is in immigration detention, and has no outstanding visa application on foot, including merits and/or judicial review of any visa refusal, the Migration Act requires that the person must be “removed” from Australia (section 198).

Pre-removal risk requirements were addressed in the department’s instructions for use of departmental officers, formalised in MSI 408 – Removal from Australia - which was issued in November 2005.

These included that a person is not to be removed until a number of steps are completed. A DIMA Senior Executive Service officer or State/Territory Director needs to sign off on an assessment that the person is available for removal. This assessment includes nine points covering matters such as that there are no outstanding identity concerns, confirmation that there are no unfinalised visa applications, court actions or Ministerial Intervention requests and no unresolved substantial claims against removal by parties, for example by the Ombudsman and UNHCR. For involuntary and high risk voluntary removees a check is made that the removal would not breach Australia’s international humanitarian obligations. A removee is also assessed to determine that they are fit to travel by medical staff.

Recommendation 57 (9.29)

The committee recommends that the Migration Act be amended to require that all prospective removees be provided with reasonable notice.

Government response

Not accepted.
All removees are provided with a minimum of 48 hours notice of their departure. However, there is an operational requirement that in some cases a person may be given less notice of their removal. If a departmental officer believes that there is significant risk of the person harming themselves or another person or if there is a risk that the removal may be disrupted (by a third party) a shorter notice period may be considered.

National security considerations may also result in a shorter notice period. The department is bound by the Aviation Security Regulations in managing the risks to aviation operations posed by potentially disruptive removees.

A departmental SES level officer or state/territory office director must approve any request to provide less than 48 hours notice of removal and reasons must be clearly articulated.

**Recommendation 58 (9.85)**

That the committee further review the operation of section 501 and the report of the Commonwealth Ombudsman investigation into the administration of the cancellation of visas on character grounds. Further, the committee recommends that, as per the Ombudsman’s recommendations, the use of section 501 to cancel permanent residency should not be applied to people who arrived as minors and have stayed for more than ten years.

**Government response**

Not accepted.

The department noted in its response to the Ombudsman’s report on the administration of section 501 of the Migration Act 1958 (as it relates to long-term residents) that any recommendation relating to reviewing or implementing changes to policy or legislation is solely a matter for the government.

A major departmental review of the policies and procedures for section 501 was initiated by the Minister for Immigration and Multicultural Affairs in November 2005. The terms of reference for this review include consideration of “whether the Ministerial Direction and MSI should be revisited to reflect the government’s expectations of the circumstances where a person’s visa should be cancelled” under section 501.

**Recommendation 59 (9.119)**

The committee recommends that, in order to comply with its ‘non-refoulment’ obligations and to ensure the welfare of persons removed or deported from Australia, the Commonwealth continue to enhance the scope of its informal representations to foreign governments, encourage monitoring by Australian overseas missions, and continue to develop strong relationships with local and overseas-based human rights organisations.

**Government response**

Partially accepted.

Australia continues to cultivate bilateral and multilateral relationships with various countries, particularly those in Asia Pacific region, to address the full spectrum of refugee issues and continues to work closely with key international refugee and migration organisations such as UNHCR, IOM and NGO peak bodies to deliver assistance to refugees and asylum seekers throughout the world.

Australia takes seriously its obligation not to refoul refugees and does not remove people where this would be in breach of its protection obligations under the Refugee Convention and other relevant human rights instruments. Monitoring, by its very nature, would be intrusive and could draw unwelcome attention to the individuals concerned and to those with whom they associate. This is consistent with general international practice for countries returning failed asylum seekers to their country of origin.

**Recommendation 60 (9.120)**

The committee recommends that the Commonwealth Government review and clarify its removal and deportation processes to ensure that formal and proper procedures for welfare protection are in place for the reception of persons being removed or deported from Australia.

**Government response**

Accepted.

The department issued a revised Removals Instruction (MSI 408 - Removal from Australia) on 1 November 2005. This instruction details the consideration that is to be given to post-return arrangements for removees with special needs,
for example, those with physical or mental health issues or those who are destitute.

Before a person is removed from Australia, their fitness to travel must be assessed by qualified medical staff. This process will highlight any physical or mental health issues that may require the department to organise post-removal care or referral for the person. The special arrangements put in place will vary according to the circumstances of the case, but may include special escorts and/or arrangements for individuals to be met upon their arrival by medical and/or welfare staff.

If a person is destitute then the department may provide them with a small allowance that will allow the person to obtain accommodation, purchase food and arrange travel back to their preferred destination within the country.

The department also offers reintegration packages, administered by the IOM, to eligible groups. These packages include a cash allowance and where possible, certain post-arrival services such as orientation briefings.

When appropriate, removal officers coordinate post-arrival arrangements for clients with special needs with the Australian mission or a medical/welfare group in the destination country.

Clients with special needs may also be encouraged to seek assistance from their consulate/government, to help with support arrangements once they return home. However, this relies on the willingness of the person to make such contact.

The reception arrangements, if any are required, are detailed in the removal planning documentation. Also, the escorts are required to complete a post-removal report and provide this to the officer coordinating the removal.

The report includes information on the arrival at the destination including who met the client on arrival (if applicable). The removals officer checks the report and addresses any matters requiring follow-up or referral. The report is retained on the client’s file.

CHAPTER 10 - STUDENT VISAS

Recommendation 61 (10.72)
The committee recommends that the Migration Act and Regulations be amended to allow for greater flexibility and discretion in dealing with breaches of the conditions of student visas.

Government response
Accepted.

In 2004, DEST conducted a review of the Education Services for Overseas Students Act 2000 (the ESOS Act). Following the evaluation, the department has worked closely with DEST and the education industry in revising the ESOS National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code). A number of proposed changes have been agreed with the education industry and are scheduled to be implemented progressively in 2007.

Revisions to the National Code will result in corresponding changes to relevant migration regulations, systems and policies regarding the Student Visa Programme. These changes are designed to allow for greater flexibility and discretion in dealing with breaches of the conditions of student visas. These changes to the National Code will come into effect from 1 July 2007 and will be complemented by changes to the migration regulations also due to come into effect from 1 July 2007.

Recommendation 62 (10.75)
The committee recommends that the recommendations of the Evaluation of the Education Services for Overseas Students Act 2000 continue to be implemented as a high priority.

Government response
Accepted in principle.

The department continues to work closely with DEST, the lead agency in the evaluation, in responding to the recommendations with a particular focus on the revision of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students, which will come into effect from 1 July 2007.
### ATTACHMENT 1

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<td>7</td>
<td>The committee recommends that coverage of the Immigration Application Advice and Assistance (IAAAS) scheme be extended to enable applicants for ministerial intervention to obtain an appropriate level of professional legal assistance. Extending the coverage of IAAAS should assist in reducing the level of risk of exploitation of applicants by unscrupulous migration agents.</td>
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<td>The committee recommends: that DIMIA inform persons when a representation for the exercise of ministerial discretion is made on their behalf by a third party; that each applicant for ministerial intervention be shown a draft of any submission to be placed before the Minister to enable the applicant to comment on the information contained in the submission. This consultative process should be carried out within a tight but reasonable time frame to avoid any unnecessary delay; and that each applicant be given a copy of reasons for an unfavourable decision on a first request for ministerial intervention.</td>
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<td>The committee recommends that all applicants for the exercise of ministerial discretion should be eligible for visas that attract work rights, up to the time of the outcome of their first application. Children who are seeking asylum should have access to social security and health care throughout the processing period of any applications for ministerial discretion and all asylum seekers should have access to health care at least until the outcome of a first application for ministerial discretion.</td>
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<td>The committee recommends that the Minister ensure all statements tabled in parliament under sections 351 and 417 provide sufficient information to allow parliament to scrutinise the use of the powers. This should include the Minister’s reasons for believing intervention in a given case</td>
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The committee recommends that the government give consideration to adopting a system of complementary protection to ensure that Australia no longer relies solely on the minister’s discretionary powers to meet its non-refoulement obligations under the CAT, CROC and ICCPR.

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**Government Response**

The report makes five recommendations regarding Australia’s trade and investment relations with North Africa. The Government’s response to these recommendations is provided below.

**Recommendation 1**

The committee recommends that the Australian Government should seek to improve access for Australian exports through negotiating lower tariffs on a bilateral basis, particularly in agribusiness.

The Government will continue to seek to improve access for Australian exports to North African...
markets. The Government pursues opportunities to improve market access both through the World Trade Organisation processes and bilaterally though ministerial and officials level representations, including through the proposed bilateral Trade and Economic Framework with Egypt and finalisation of an MOU with Egypt on live animal trade. It is considered that these activities will encourage growth and diversification in the commercial relationship and help build a closer economic relationship.

Market access commitments, such as the reduction of tariffs, can be made bilaterally through a free trade agreement (FTA) or through negotiation in the World Trade Organisation. However, under WTO rules, preferential access (which would improve access for Australian exports only) can only be granted in an FTA.

The Government’s policy approach to the negotiation on FTAs is that an FTA:

- should have the potential to deliver substantial commercial and wider economic benefits to Australia
- is fully consistent with WTO principles and rules, achieves trade liberalisation faster than through multilateral reform and builds on WTO commitments
- provides for comprehensive and substantial liberalisation across goods, services and investment
- significantly enhances Australia’s broader economic, foreign policy and strategic interests.

Australia is currently negotiating FTAs with a number of trading partners and our resources remain fully committed at this stage. However, the Government will continue to pursue opportunities to improve access for Australian exports to North African markets.

Recommendation 2

The committee recommends that the Australian Government initiate or continue ministerial discussions with North African trading partners to address technical access issues, particularly harmonising customs and standards requirements.

The Government will continue to make bilateral ministerial and officials level representations to address technical standards access issues impacting on Australia’s exports, particularly agricultural exports, to North African markets. Where appropriate, the Government will also continue to promote Australia’s favourable animal and plant health status and the recognition of our food safety and production systems which underpin the certification of Australian agricultural exports to facilitate the simplification of import clearance procedures (such as product testing) by our trading partners.

In addition, the Government will continue to encourage greater adoption by North African trading partners of internationally accepted science-based technical standards developed by international standards setting organisations such as the World Animal Health Organisation (OIE), Codex Alimentarius Commission and International Plant Protection Convention. The World Trade Organisation (WTO) processes, including the Trade Policy Review Mechanism, Sanitary and Phytosanitary Committee and WTO accession negotiations also provide avenues for technical access issues to be addressed.

Recommendation 3

The committee recommends that there should be closer focus given to expediting visa processing requirements for North African countries and that DIAC:

- review its visa processing arrangements for North Africa as a priority, and
- consider reviewing the assessment processes for North Africa students sponsored by their governments.

Visa processing arrangements

The Government notes the committee’s recommendation on visa processing arrangements. The following initiatives have recently been developed and implemented to expedite visa processing requirements across North Africa as a result of recent reviews of post operations:

LIBYA

Following the opening of the new Consulate-General in Tripoli, an arrangement was introduced to evidence business visas granted to Lib-
yan Government officials with pre-printed business visitor labels. Libyan Government Officials now have a visa label affixed to their passport at the Consulate-General in Tripoli. DIAC will review the success of this service to assess the viability for extending it to other business visa applicants, subject to consultation with key stakeholders, including the Consulate-General, and an assessment of integrity issues.

DIAC (Cairo office) has also introduced a streamlined process for Libyan student visa applicants. Numbers in this caseload remain small, but are increasing and Libyan students are now given priority processing. DIAC (Cairo office) has also equipped the Consulate-General in Tripoli with pre-lodgement information to assist students to lodge assessment ready applications.

DIAC (Cairo office) has increased its emphasis on the Libyan caseload by increasing the frequency of visits to Tripoli to a minimum of three times per year to conduct formal discussions with Libyan government and business officials and Consulate-General staff.

MOROCCO

Processing of applications in Cairo presents some difficulties due to the fact that Moroccan law prohibits the sending of national passports, by mail or courier, in or out of the country. As a result Moroccans are still required to deliver their passports to Cairo in person for evidencing purposes. DIAC (Cairo office) has been developing and implementing strategies to address this matter, including trialling label-free visa issue for urgent Moroccan applications. This process, introduced in January 2006, has thus far operated on a case-by-case basis with approval from National Office. The trial of label free visas will be monitored to assess whether expansion of this process is possible. At this stage the process is restricted to a case-by-case operation.

To further enable the expansion of the label free visa service, DIAC (Cairo office) is also building relationships with the Moroccan Embassy (Cairo) to develop a strategy of passport verification based on passport copies and information provided by applicants to their Embassy.

The transfer of visa processing to a European post such as Paris, Madrid or Lisbon is not seen as a viable option as these posts all provide limited DIAC services and are managed only by locally engaged staff. Appropriate consideration of all cases requires the continued active involvement of DIAC Australia-based staff who are conversant with the local environment and better able to manage the complexities involved in processing the Moroccan caseload.

Other recent client service improvements include introducing fee payment by credit card for Moroccan applicants. This scheme has been arranged in consultation with the Commercial International Bank of Egypt (CIB) and, if it operates successfully, will alleviate delays associated with the obtaining and waiting for clearance of bank cheques drawn in US dollars. CIB have indicated that they should be in a position to fully introduce the credit card payment option for Moroccan clients by November 2006.

DIAC (Cairo office) has increased the number of interview trips to Morocco and Tunisia to deal with the increase in partner applications.

ALGERIA

The number of applications from Algerian nationals remains small across all visa classes. All applications are treated as priority by Cairo Office. DIAC (Cairo office) has scheduled a number of visits to Algiers this program year to conduct interviews and to explore the possibility of establishing Algerian panel doctors to service clients locally.

TUNISIA

The number of applications from Tunisian nationals is also very small across all visa classes and all applications received in Cairo are treated as a priority.

Integrity and Cultural Issues Impacting on Visa Processing in North Africa

The Government notes the Committee’s recommendation on visa processing arrangements. The Department of Immigration and Citizenship regularly reviews its processing arrangements for visitor visas and continually seeks to improve services. However, this must be balanced against the need to ensure that visa applicants meet the legal requirements for a visa. These may require additional inquiries and processing, depending on the risk associated with the caseload. Risk is assessed
using the non-return rate of visitors and the modified non-return rate of visitors and comparing these rates to the global average.

Currently the non-return rates for visitors from Egypt, Morocco and Tunisia are significantly higher than the global average and around the global average for Libya and Algeria. However, the modified non-return rates are significantly higher for all five countries, with Libya being 78% higher and Algeria being 74% higher than the global average.

The ‘non-return rate’ is a calculation of the percentage of visitors who arrive and do not depart within the validity of their initial visa. The ‘modified non-return rate’ is a calculation of the percentage of Visitors who have arrived, whose initial visa has expired within the reporting period and who have NOT applied for a subsequent visa deemed to be of benefit to Australia.

The non-return rates for visitors from the subject North African countries have improved in recent years. If these rates continue to improve consideration can be given to more streamlined visitor visa processing.

The Government notes the Committee’s comment that all visa applications from North Africa must be sent to the Australian Embassy in Cairo for processing and that this affects processing times. The North African countries currently account for only a small proportion of DIAC’s global workload and can be appropriately managed through the Embassy in Cairo. Nevertheless, as detailed above, the Department of Immigration and Citizenship continues to develop ways to assist North African clients within the restrictions imposed by local legislation and conditions.

**Visa requirements for North African business people**

Australia’s temporary business entry arrangements aim to address the demands of a modern and dynamic economy through a flexible and transparent regulatory framework. All procedures are streamlined to the greatest extent possible to ensure an efficient, expeditious and transparent service to overseas business visitors and companies seeking to obtain visas for skilled workers necessary for the conduct of their business. Australia has a universal visa system and seeks to facilitate the movement of people across the Australian border, while protecting the community and maintaining appropriate compliance. Australia’s business visa arrangements are non-discriminatory and are based on the purpose of entry rather than on the nationality or regional grouping of the applicant. Australia operates a fundamentally different system for regulating entry to the systems of New Zealand and North America and so direct comparisons of processing times and grant rates are not practical.

The Department of Immigration and Citizenship continually reviews visa requirements, processing procedures and related issues for business visa applicants from all countries in order to facilitate trade and economic relations as much as possible. Facilitation must be balanced by the obligation to maintain the integrity of Australia’s border and visa system. The Australian Government is actively promoting the Sponsored Business Visitor Visa for Australian companies seeking to do business with North Africa. The Sponsored Business Visitor visa allows for visa applications to be lodged by approved Australian organisations, at a departmental office in Australia, on behalf of North African visitors. The initiative provides more streamlined processing and greater certainty of outcome than standard business visitor visas.

Skilled temporary entry for business people working in Australia for extended periods is based on the provision of visas for stays of up to four years for managers, executives and specialists, as well as representatives of offshore companies seeking to establish a branch in Australia. This visa provides benefits that are not available from many of the countries with which Australia is usually compared. Spouses and dependents of temporary residents who are included in the visa application of the main applicant receive automatic full work rights on grant of the visa to the main visa applicant. Australia does not apply labour market testing and quota arrangements are not applied to temporary skilled entrants.

E-visa arrangements are in place on-line for business temporary residence applicants. The arrangements provide full electronic processing, from electronic lodgement to decision advice.
Assessment processes for Student visas

The Department of Immigration and Citizenship will investigate the assessment processes for North African students sponsored by their respective governments. However, it does not agree with the allegations made by Dr Vincent in his submission to the committee, for which no evidence has been provided. None of the countries of North Africa are subject to Assessment Level 4 (representing a very high immigration risk).

All students whose living, tuition and travel costs are covered in full by a foreign government are exempt from the requirement to sit an English proficiency test for student visa purposes, irrespective of their assessment level. Similarly, where a student is government sponsored, evidence of this sponsorship is generally accepted as sufficient to meet the financial requirements for grant of a student visa. This is in direct contrast with private students, who are required to demonstrate their financial capacity to study in Australia by providing comprehensive evidence of their financial status, including money deposits, loans and evidence of income.

Application fee payments

Department of Immigration and Citizenship officers at the Australian Embassy in Cairo have been working with local financial institutions to develop a better system for the payment of fees and visa application charges in the region, especially for Maghreb countries to allow for credit card payments.

Recommendation 4

The committee recommends that Austrade reconsider its organisational and representational arrangements for North Africa.

From 1 July 2005 the responsibility within Austrade for North Africa was transferred from the Western Europe to Middle East and North Africa sub-region. The Senior Trade Commissioner in Dubai has management responsibility for Austrade's operations in the Middle East and North Africa.

The opening of the Australian Consulate in Tripoli and appointment of a Consul-General/Trade Commissioner to Tripoli from January 2006 provided another avenue for Australian industry to access information on opportunities in markets of North Africa.

Austrade's Tripoli office also manages its commercial engagement with the North African countries of Algeria, Morocco, Tunisia and Mauritania. The Austrade office in Cairo manages Egypt. In Algeria Austrade uses a trade consultant to provide support to Australian companies on a project basis. Austrade is satisfied that these arrangements meet Australian industry's current needs.

The Government will continue to monitor and evaluate the benefits of alternate resource allocations by Austrade to North Africa, as part of Austrade's ongoing assessment of return on investment.

Recommendation 5

The committee recommends that high priority be given to the establishment of a Trade Commissioner and Consul-General in Algiers.

Austrade's Tripoli office manages its commercial engagement with Algeria. In Algeria, Austrade also uses a trade consultant to provide support to Australian companies on a project basis.

The Government is satisfied that this arrangement, supported by Austrade's Libya office and DFAT's Paris and Cairo offices, currently provides Australian industry with appropriate levels of Australian government services for Algeria.

The Government will, however, keep under review Austrade's allocation of resources for Algeria, in particular as it develops commercial strategies for future engagement in the North African region.
Recommendation 1
The Committee recommends that DFAT investigate and report to the Minister for Foreign Affairs, Minister for Trade and the Treasurer on the feasibility of setting up a CER Coordinating Secretariat/Inter Departmental Committee (IDC).

The Government has agreed that Commonwealth departments should coordinate the development and implementation of Australian policy on relations with New Zealand at officials-level through the mechanism of the inter-departmental New Zealand Policy Group, chaired by the Department of Foreign Affairs and Trade. The Policy Group met on 21 March 2007.

Recommendation 2
The Committee recommends that parliamentary travel, between Australia and New Zealand, on Committee work with New Zealand relevance be treated as domestic travel.

The recommendation is not accepted. Treatment of New Zealand as domestic travel would have significant and costly flow on effects for domestic travel entitlements such as family reunion travel for Parliamentarians, travel by staff of Parliamentarians and payment of travelling allowance. Currently all overseas travel (including to New Zealand) by Parliamentary delegations and Committees must be approved by the Prime Minister. The Government considers that this approval process maintains an appropriate level of accountability and ensures travel by parliamentarians is publicly defensible.

Recommendation 3
The Committee recommends that a Telecommunications Ministerial Council be established.

The Government does not agree with the establishment of a Ministerial Council but recognises the value of regular bilateral Ministerial meetings. There are regular opportunities for such meetings particularly where various forums are attended by both Ministers, including the annual Australia-New Zealand-Korea Broadband Summit and the APEC Telecommunications and Information Ministerial Meeting which is held approximately every two years.

The Government notes that the recent House of Representatives Standing Committee on Legal and Constitutional Affairs report on ‘Harmonisation of Legal Systems within Australia and between Australia and New Zealand’ also recommends the establishment of a formal ministerial-level dialogue on telecommunications regulation.

Recommendation 4
The Committee recommends that telecommunications be placed on the CER Work Program at the earliest opportunity.

The Government will give further consideration to the recommendation. Providing improved certainty via a formal government-to-government arrangement for telecommunications companies in both Australia and New Zealand that wish to enter the other market in regard to the regulatory environment they can expect, such as levels of access to existing infrastructure, competitive safeguards and transparency issues, could further liberalise trans-Tasman trade and investment. Such measures would also be in line with Australia’s Free Trade Agreements with Singapore and the USA.

The Government also notes that the recent House of Representatives Standing Committee on Legal and Constitutional Affairs report on ‘Harmonisation of Legal Systems within Australia and between Australia and New Zealand’ has recommended further legal harmonisation of the telecommunications regulatory regimes in Australia and New Zealand. The Government will consider whether inclusion of telecommunications regulatory provisions in the ANZCERTA is an effective way to accomplish this.

Recommendation 5
The Committee recommends that withholding tax alignment be placed on the Work Program for Coordination of Business Law at the earliest opportunity.

The Government supports the Committee’s recommendation that the issue of withholding tax alignment be addressed. However, consistent with the Treasurer’s Press Release of 29 January 2007, it is expected that this issue will be addressed through the commencement of negotiations for a new tax treaty, rather than through the Work Program for Coordination of Business Law, as the Committee suggested.
Recommendation 6
The Committee recommends that Competition Policy Harmonisation be placed on the Work Program for Coordination of Business Law.
The Government notes that the Work Program for Coordination of Business Law already includes exploring the potential for greater consistency in trans-Tasman application and enforcement of competition law. In its December 2004 report, Australian and New Zealand Competition and Consumer Protection Regimes, the Productivity Commission rejected the complete or partial integration by Australia and New Zealand of their competition and consumer protection regimes, on the basis that it would be unlikely to generate net benefits. The Government is instead pursuing the Productivity Commission’s recommendations in relation to a transitional integration of the two regimes, through increased cooperation, coordination and policy dialogue.

Joint Standing Committee On Migration Report:
Detention Centre Contracts: Review of Audit Report No.1, 2005-2006,
Management of the Detention Centre Contracts – Part B.

GOVERNMENT RESPONSE
Recommendation 1 – “The committee recommends that DIMIA act promptly to develop and implement the changes required to improve the insurance, liability and indemnity regime associated with its detention function.”

Government Response: The Department of Immigration and Citizenship (DIAC) has consulted widely to review the insurance, liability and indemnity regime in the Contract and to draft contract changes that will resolve these issues. DIAC has consulted with the Australian Government Solicitor and Comcare to determine the best way to revise these aspects of the contract. The required contract changes have been agreed in contract negotiations with GSL Australia Pty Ltd (GSL), and a contract amendment resolving these issues was signed on 29 September 2006.

Recommendation 2 – “The Committee recommends that the Minister for Immigration and Multicultural and Indigenous Affairs refer the progress report on the Palmer Implementation Plan to the Joint Standing Committee on Migration for examination when released.”

Government Response: The Australian Government made a commitment to table a progress report on the Palmer Implementation Plan in September 2006. The report was tabled in Parliament on 12 September 2006. It is open to the committee to examine this report.

The following is a response to other comments made by the Committee in its report:

Merit Points Scheme (page 16 of report refers)
In June 2006, the Department concluded an internal review into the operation of the Merit Points Scheme (MPS) and the Meaningful Activities Scheme. The internal review recommended a number of amendments to the policy underpinning the scheme to improve clients’ health and well being, and in July 2006 the then Minister agreed to implement the new Purchasing Allowance Scheme (PAS) together with a broader Programme and Activities initiative (P&A).

The PAS has been implemented in all centres to provide consistency and meet the needs of people in detention to make incidental purchases. The scheme and initiatives are consistent with the requirements of the Migration Act and Migration Regulations. Regulation 5.35A, which came into effect on 1 March 2006, amended the Migration Regulations to ensure that unlawful non-citizens detained in detention centres, who perform work that is allocated at the non-citizen’s request, do not commit an offence under subsection 235(3) of the Act.

Contract Performance Information & Monitoring (pages 19 to 25 of report refer)
In accordance with recommendations of the Palmer Report, DIAC engaged a consultant, Mr Mick Roche, to perform a review of the Detention Services Contract. Mr Roche made a number of recommendations, some of which require contract changes. The following summarises DIAC’s implementation of those recommendations:

- Mr Roche’s recommendations will be addressed through the replacement of the De-
DIAC is currently examining the insurance, liability and indemnity regime to be taken to the market as part of the detention services and health care tenders, noting previous advice and considering input from its advisors for the tendering project. In addition, the ANAO is currently conducting an audit on the current re-tendering activities, focusing on governance arrangements, in particular the recordkeeping arrangements, roles and responsibilities of personnel, expert advisors and the probity auditor.

**Food Services at Baxter IDF** (page 27 of report refers)

Improvements to the provision of food services at Baxter IDF have been ongoing, including greater choice of menus, barbecues, more opportunities for detainees to guide food choices, and self catering. This model is being rolled out to other IDCs.

An independent audit of progress was commissioned by the department recently. It indicates that GSL is to be commended on progress to date, and that a number of issues remain to be addressed. GSL is addressing these issues.

Food services are also reviewed and monitored by the department on a regular basis through local contract monitoring teams. A Food Delegates Committee (which is attended by representatives of the Detention Services Provider (DSP), DIAC and detainees) meets on a regular basis.

**Mental Health Services** (page 28 of report refers)

Significant progress has been made over the past year to improve health and mental health care for people in immigration detention.

The then Minister announced on 1 March 2006 that the current health and psychological services were to be novated from the DSP. The novated contracts came under the direct management of DIAC on 1 October 2006.

A Detention Health Advisory Group (DeHAG) has been established to provide DIAC with advice regarding the design, implementation and monitoring of improvements in health care for people in immigration detention. The Group is made up of nominees from major health professional organisations such as the Australian Medical Association, the Royal College of General Practitio-
ners, the Royal Australian and New Zealand College of Psychiatrists, the Australian Psychological Society and the Mental Health Council of Australia.

DIAC provides general primary health care services, as well as counselling and dentistry to people in immigration detention. Other services such as public health screening and acute hospital admissions for both physical and mental illness are provided by State and Territory based departments of health.

A Memorandum of Understanding (MOU) was signed with the SA Department of Health in November 2005 and the remaining MOUs are currently being negotiated with remaining State and Territory health departments to improve access for people in immigration detention to health services. DIAC has also engaged with a number of private hospitals and providers of mental health services to ensure timely health care for clients in circumstances where State and Territory based health services are unable to respond.

All people who are detained under the Migration Act 1958 are offered an induction health assessment, which includes an assessment of their mental health by trained professionals. This involves formal screening, clinical follow up and support by mental health professionals using recognised mental health assessment instruments and protocols. The model includes additional mental health resources, early and more rigorous mental health screening, referral to a multidisciplinary mental health team for diagnosis, development of a specific mental health care plan and ongoing care, and periodic reassessment or reassessment as requested by the individual client. In the Northern IDC, formal mental health screening for Illegal Foreign Fishers (IFF) only occurs if the IFF remains in detention for greater than three months.

AUSTRALIAN GOVERNMENT RESPONSE TO THE REPORT ON CURRENT AND FUTURE GOVERNANCE ARRANGEMENTS IN THE INDIAN OCEAN TERRITORIES BY THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES

MINISTER FOR LOCAL GOVERNMENT, TERRITORIES AND ROADS
JUNE 2007

Recommendation 1
The Committee recommends that the Australian Government review the decision to block the licensing of a casino on Christmas Island, in consultation with the Christmas Island community, with a view to reissuing a casino licence, at the earliest opportunity.

Do not support. On 16 July 2004, the Government announced it would prohibit casino operations on Christmas Island. Problem gambling is a major social concern in today’s society. The Government’s decision takes into account not only the financial aspects of a casino on Christmas Island, but also the social impacts as a consequence of problem gambling.

The Government’s decision was implemented through the Casino Legislation Ordinance 2005. The effect of the ordinance was to repeal the Casino Control Ordinance 1988 and apply the Gambling Commission Act 1987 (WA) to Christmas Island. The WA Act prohibits casino operations except where explicitly authorised by legislation. A similar ordinance was also passed for the Cocos (Keeling) Islands.

The Government strongly supports the development of Christmas Island and the re-opening of the Christmas Island Resort. To this end the Government supports initiatives to facilitate economic development.

The viability of a casino is not assured. During the eight years of its operation the previous Christmas Island Casino and Resort had only one year in which it made a profit, 1994.

Recommendation 2
The Committee recommends that the Australian Government adopt the policy that, in future, all Commonwealth land released for development on Christmas Island, is sold at full market value.

Noted. It is Australian Government policy when disposing of land to sell it at market value.

Recommendation 3
The Committee recommends that the Australian Government compensate Northern Bay Pty Ltd through the purchase of Location 448 Phosphate
Hill Road at full market value, or by some other means.

Do not support. The Department of Transport and Regional Services (the Department) did not offer free land to developers.

In March 2002, the Department released an invitation to tender for the construction of housing for the Christmas Island Immigration Reception and Processing Centre (IRPC). The tender documents invited developers to submit proposals for developing Commonwealth land. The land was not given to developers free of charge. The land was, and continues to be, owned by the Commonwealth.

Developers were also invited to submit an additional proposal for the development of privately held land as an alternative to developing Commonwealth owned land. The tender documents stated:

A1.29: The Tenderer may submit alternatives for the performance of works specified. All alternatives shall be considered on their merits and the Tenderer shall include a fully detailed description of the proposal. However, a fully conforming tender must be submitted in all cases.

A1.36: The objective of the tender process is to achieve the best possible mix on Commonwealth sites but also to provide the opportunity for options utilising privately owned land, and with alternative mixes. Tenderers are encouraged to consider sites owned by the private sector and to contact local Christmas Island developers who own land and would be willing to provide alternatives to the Commonwealth sites.

The Department agreed to use Commonwealth land as it provided the best value for money of all the proposals received.

Recommendation 4

The Committee recommends that the Australian Government conduct an investigation into the cost of sea freight to the Indian Ocean Territories with a view to reducing costs and streamlining operations.

Do not support. The Government facilitates transport links between the IOT and the mainland by providing port and airport services in the IOT. Charges for port and airport services are maintained at comparable levels to communities on the mainland. An open market exists for sea freight between the IOT and mainland Australia. Freight costs are subject to competition and reflect the costs associated with shipping relatively low volumes to a remote destination.

The Government supports air freight between the mainland and the IOT through a contract with National Jet Systems (NJS). The contract is similar to the Australian Government’s support to remote communities on the mainland. NJS operates two flights per week between the mainland and the IOT. Flights are made using a British Aerospace BAE Avro RJ70, which is fitted to carry both passengers and air freight. The Government provides funding to NJS if its revenue falls below an agreed amount.

Recommendation 5

The Committee recommends that the Australian Government rescind customs and quarantine charges, where they exist, on freight travelling between the Indian Ocean Territories and the Australian mainland.

Do not support. Customs and quarantine charges are imposed equitably on goods travelling between the IOT and mainland Australia. The IOT have a less favourable animal and plant health status than mainland Australia. To safeguard mainland Australia’s favourable animal and plant health status, the Australian Quarantine and Inspection Service (AQIS) undertakes inspections of goods travelling from the IOT to mainland Australia.

The cost of maintaining Australia’s animal and plant health status is shared by the Government and the community. Under the Quarantine Act 1908, the costs incurred in the provision of quarantine services are recovered from users of those services. AQIS charges are developed in consultation with industry, endorsed by the relevant industry consultative bodies and applied consistently to all clients. The AQIS fee structures are reviewed on a regular basis by AQIS and the import industry to make sure they continue to reflect the cost of the services provided.

Due to the IOT status as GST and excise free, goods imported into mainland Australia from the IOT are subject to Customs processing. Any
goods imported with a total value below $1000 are exempt from lodging a formal Import Declaration and incurring Customs processing charges. The $1000 threshold was established in the Customs Regulations in 2005 as part of the new revenue regime. A Self Assessed Clearance Declaration is required to be lodged with Customs; however this does not incur a processing charge. Goods falling within this range are also duty and tax free. These arrangements allow low value goods to be brought to the mainland without the imposition of Customs fees and charges.

For goods with a total value above $1000, a formal Import Declaration is required and Customs processing charges may be applied. As with quarantine, Customs processing charges are set on a cost recovery basis.

Importers must bear their fair share of the cost of customs and quarantine processing. If some importers were relieved of their share of the cost of providing customs and quarantine service, that cost might fall on other importers.

**Recommendation 6**

The Committee recommends that the Australian Government increase the number of flights between Australia and the Indian Ocean Territories under the existing contract, and invite international carriers to open services to the IOTs.

Do not support. The Australian Government currently assists the operation of two flights per week between Perth, Christmas Island and the Cocos (Keeling) Islands by National Jet Systems (NJS). The flights are currently made using a British Aerospace BAE Avro RJ70, which is fitted to carry both passengers and air freight. The Department of Transport and Regional Services (the Department) administers a contract with NJS under which the Government provides funding to NJS if its revenue from these flights does not reach an agreed level. NJS is able to apply to the Department to include additional flights in the scheme if there is sufficient demand. Over the six months to December 2006, the Department approved 13 additional flights, subject to demand for those flights.

Austasia Airlines currently charters a Silk Air aircraft to operate a weekly air service between Christmas Island and Singapore.

International carriers from almost all of the countries with which Australia has bilateral air services agreements and arrangements have the right to operate to Christmas Island but choose not to do so, primarily for commercial reasons. Several airlines operate international charter services to and from the IOT from time to time.

With regard to the carriage of domestic traffic between the IOT and the Australian mainland, the Australian Government does not allow foreign international airlines to carry domestic passengers or freight. This is consistent with the Australian Government’s policy that only Australian based airlines carry domestic passengers and freight and is consistent with the aviation policies of most other countries. The exception to this is New Zealand. Under the Single Aviation Market arrangements with Australia, New Zealand is able to compete on the domestic market under certain circumstances, as part of the Closer Economic Relations between the two countries.

The practice of granting foreign international airlines dispensation to operate cabotage services occurs on an ad hoc basis and only in exceptional circumstances when there is a benefit to Australia and Australian airlines cannot provide the necessary domestic service.

**Recommendation 7**

The Committee recommends that the Australian Government take action to ensure that:

- corporations law be amended to include the IOTs;
- the Education Services for Overseas Student Act 2000 be amended to include the IOTs as a possible destination for overseas students;
- a review of all Commonwealth legislation is conducted to identify and rectify similar instances where the Indian Ocean Territories are excluded from legislation; and
- in future, the IOTs be included under the provisions of new legislation except in instances where exclusion can be demonstrated as justified.

Noted. The Government is considering extending the Corporations Act 2001 to the IOT.

Noted. The Education Services for Overseas Student Act 2000 (ESOS Act) has been amended.
to apply in the IOT. The ESOS Act was previously excluded from operation in the IOT as the administrative support necessary for the operation of the Act was not available.

Do not support. It is the responsibility of individual Ministers to determine whether their portfolio legislation should be excluded from operation in the IOT.

Do not support. Since 1992, Commonwealth laws have extended to the IOT unless the IOT are expressly excluded and it is Australian Government policy to apply new Commonwealth laws to the IOT, unless it would be inappropriate to do so.

**Recommendation 8**

The Committee recommends that, as a matter of priority, the Australian Government allocate sufficient resources to implement a program for reviewing all Western Australian legislation currently applied as Commonwealth law in the Indian Ocean Territories, with a view to repealing, or amending, all legislation which cannot be practically applied in the Territories.

Do not support. It has been the policy of successive Australian Governments to align the laws of the Indian Ocean Territories with those of Western Australia (WA). This policy is achieved through section 8A of the Christmas Island Act 1958 and the Cocos (Keeling) Islands Act 1955, which apply all WA laws to the IOT upon enactment in WA. A list of applied WA laws is required to be tabled in the Commonwealth Parliament at six-monthly intervals. The applied WA laws are subject to review and disallowance by the Commonwealth Parliament.

Many jurisdictions, including WA, contain laws that are not relevant or practically applicable to some areas. Applied WA laws are only amended or repealed by Commonwealth ordinance where their application in the IOT is inappropriate.

The Department of Transport and Regional Services (the Department) reviews applied WA laws on an exception basis; that is, when an anomaly or conflict in the law becomes apparent.

Where an applied WA law vests a power in a person or authority, that power is vested in the Minister for Territories through the operation of section 8G of the Christmas Island Act 1958 and the Cocos (Keeling) Islands Act 1955. The Minister for Territories delegates many of these powers to officials from the Australian and Western Australian Governments.

In other circumstances, where administrative structures are required for the operation of applied WA laws, the Government endeavours to replicate these structures, either through arrangements with WA Government agencies or directly.

**Recommendation 9**

The Committee recommends that, following a review of existing applied Western Australian legislation, the Australian Government allocate sufficient resources for the ongoing monitoring of new, amended, or proposed Western Australian laws which apply, or will apply, in the Indian Ocean Territories as Commonwealth law.

Refer to the Government’s response to Recommendation 8.

**Recommendation 10**

The Committee recommends that the Australian Government cease its policy of market-testing and outsourcing to third parties services which it currently provides to the Indian Ocean Territories, with a view to promoting the development of community capacity within a framework of enhanced local/regional government.

Do not support. It is Australian Government policy to market test the provision of state level services in the IOT. State level services are those which would normally be provided by a state-type government, such as health care and provision of port and airport services. In the IOT, the provision of these services is the responsibility of the Australian Government.

Successive Australian Governments have determined that the direct delivery of state and local government services in the IOT is not core Commonwealth business and that the most efficient and effective delivery arrangements are via Western Australian government agencies or private providers under contract to the Commonwealth.

Market testing is used to determine whether a third party can provide a particular service more effectively and efficiently than the Australian Government. The aim of the market testing process is to achieve better service levels for the IOT.
communities and ensure value for money for the Australian Government.

Market testing has been undertaken for the management of airport, port and health services in the IOT. For airport and port services, private operators were able to provide the services efficiently and effectively and were an attractive alternative to direct service provision by the Australian Government. On the basis of market testing of health services in the IOT the Government decided that the current arrangements provide the best value for money.

When deciding whether to use a private provider, the Department of Transport and Regional Services (the Department) considers the opportunities for local employment and training. The Department encourages local IOT organisations, including the Shire Councils, to submit proposals for service delivery.

**Recommendation 11**
The Committee recommends that Section 8 of both the Cocos (Keeling) Islands Act 1955 and the Christmas Island Act 1958 be amended to include a framework for consultation with the Indian Ocean Territories communities in relation to service delivery arrangements with the State of Western Australia, and in the review of Western Australian legislation which is applied in the territories as Commonwealth law.

Do not support. The Department of Transport and Regional Services (the Department) regularly consults directly with the IOT communities. The Department also engages in consultation through the IOT Shire Councils. The Shire of Christmas Island maintains a Community Consultative Committee (CCC), which provides a forum for consultation.

In addition, WA Government agencies often consult with the IOT communities and relevant stakeholders in relation to services they provide on behalf of the Australian Government.

The Minister for Territories consults with key IOT stakeholders and visits the IOT at least once each year. The Australian Government is represented in the IOT by the Administrator and the Minister communicates regularly with the Administrator. The Administrator plays a prominent role in the IOT community and is chairman of a number of committees, such as the Health Consultative Group.

The Government does not support the incorporation of a consultation process into the Christmas Island Act 1958 and the Cocos (Keeling) Islands Act 1955. Such a provision would necessarily be broad. The Australian Government considers it is preferable to improve the administrative arrangements as this approach is more flexible and more easily amended.

**Recommendation 12**
The Committee recommends that the Australian Government alter the governance arrangements of the Indian Ocean Territories to provide the Shire of Christmas Island and the Shire of Cocos (Keeling) Islands with an expanded role. The shires should have:

- direct representation of the communities with the Minister for Territories; and
- a formal advisory capacity with regard to applied laws and service delivery arrangements.

Moreover, the shires should be:

- fully funded on the basis of an agreed service delivery framework;
- given adequate title to all assets required to carry out their functions; and
- able to jointly enter into a regional local government type cooperation agreement.

Do not support. The Shire of Christmas Island and the Shire of Cocos (Keeling) Islands (the Shires) have direct access to the Administrator, who is the Australian Government’s representative in the IOT. The Administrator is responsible for facilitating communication between the Minister and the IOT communities. The current Administrator has regular contact with the Shires.

Do not support. The provision of state-type laws and services is the responsibility of the Australian Government. The Government considers that existing consultation arrangements are adequate (see response to Recommendation 11).

Do not support. The Shires are funded on the same basis as local governments in Western Australia. That is, the Shires’ Financial Assistance Grant (FAG) funding will be ‘factored back’ at the same rate as applies to WA local governments.
The rate for the 2005/06 financial year was 90.98%. The Shires receive additional Australian Government support through the annual funding for the ongoing maintenance of specific assets, such as the Christmas Island Recreation Centre. They are also eligible to apply for Australian Government grants including Regional Partnerships funding, Roads to Recovery and for state type grants.

Support. The Government has agreed to transfer selected Commonwealth assets to the Shires. However, the transfer of any asset is subject to the relevant Shire taking full responsibility for the provision of services associated with the asset and having the financial capacity to maintain the asset.

Support. The Shires are currently able to enter into agreements with other local governments within the limitations imposed by their isolation. The Australian Government supports developing the capacity of the Shires to discharge their responsibilities.

Recommendation 13
The Committee recommends that the Australian Government undertake to develop options for future governance for the Indian Ocean Territories in conjunction with the communities on Christmas Island and the Cocos (Keeling) Islands, with a view to, where practical, submitting options to a referendum of those communities by the end of June 2009. Possible options could include but should not be limited to:

- maintaining current governance arrangements with some refinement;
- incorporation into the State of Western Australia; and
- a form of limited self government.

Do not support. It is Australian Government policy that residents in the IOT have the same rights and responsibilities as other Australians. To achieve this, the Government has aligned the legislative, administrative and institutional frameworks of the IOT with those of Western Australia.

Australian Government services are provided in the IOT by the same agencies that provide them in the rest of Australia. State government type services are provided by the Department of Transport and Regional Services (the Department). The Department provides these services directly, through sub-contractors and through service delivery arrangements with the Western Australian Government. Standards of service delivery are maintained at equivalent levels to those in remote mainland communities.

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Recommendation 18:
The Committee recommends that the legal deposit provisions of the Copyright Act 1968 be extended to include electronic copies of documents.

Response:
The Government is currently conducting a review of this issue. It will announce its decision in relation to this matter when it has considered the outcomes of that review.

Foreign Affairs, Defence and Trade References Committee
Report: Government Response

Senator BARTLETT (Queensland) (3.37 pm)—I seek leave to move a motion in relation to the government response to the report of the Senate Foreign Affairs, Defence and Trade References Committee on Mr Chen Yonglin’s request for political asylum.

Leave granted.

Senator BARTLETT—I move:
That the Senate take note of the document.

I do not want to take up too much of general business time, but the simple fact is that these responses have been a long time coming. We need to specifically take note of that fact and examine them—at least those that I have had some experience with. This particular report of the foreign affairs committee was an interim report into Mr Chen Yonglin’s request for political asylum. People, I imagine, would recall that incident in
relation to a senior Chinese diplomat from the Chinese consulate in Sydney. This report was tabled on 12 September 2005. The government response has come 20 months later—and the response is one page. It took 20 months to produce one page responding to two recommendations—and they were not exactly complex recommendations.

I suppose I should be thankful that the government has agreed to both of those recommendations. The recommendations were basically that the department of immigration formulate a protocol regarding circumstances where people claiming to be diplomats or consular officials seek asylum and also to remind all officials of their confidentiality obligations, because that was an issue that arose during the course of the inquiry. Thankfully, the department agreed with those. Indeed, they say they issued some guidance about obligations on confidentiality in October 2005. So why it has taken them 19 more months to get around reporting this fact by way of responding to the committee is beyond me.

Perhaps what is worse is that beneath that they say they are also preparing a more detailed instruction for all the department of immigration staff in Australia and overseas relating to handling possible requests for asylum from consular officials. So even though it has taken 20 months to respond to two single recommendations, they still have not actually fulfilled them. How long does it take to prepare a set of instructions with regard to this sort of incident? This is a shoddy approach. It is contempt towards the Senate to take so long to respond to such a simple, straightforward pair of recommendations. But to then still be churning through actually acting upon those for one set of instructions 20 months later is simply not good enough. It is, once again, an indication of a lack of consideration—what I consider is a contempt for the Senate committee process. There is no reason at all why that response could not have been tabled at the end of 2005 or at the latest in early 2006. And certainly there is no reason why the set of instructions could not have been put together for diplomatic staff well before now as well.

I also note, to save time, a separate government response that is amongst these seven tabled by Senator Scullion, that can sit there on the Notice Paper for another day—a response to the report of the Joint Standing Committee on Migration regarding detention centre contracts, which was originally tabled in December 2005. That also contained two recommendations. Again, it has taken 17 months to respond to two recommendations in a unanimous report of the joint migration committee. It is simply not good enough.

These completely inadequate responses, both in terms of time frame and content, need to be continually highlighted. It is one area that I certainly hope the Senate after the election, whoever is in government and whatever the composition of the Senate, puts renewed energy into trying to improve. A lot of expense goes into producing Senate committee reports, particularly those that engage the public. They are there in part to provide recommendations to government and they should be responded to far more promptly. I should remind the Senate that our standing orders have a guideline that the relevant government department or minister respond within three months. I am not sure I can think of the last report that was responded to within three months. I am not sure I can think of more than one that was responded to sooner than six months. But when we are getting to 18 months and beyond for a single page, then it is simply ridiculous. I seek leave to continue my remarks later.

Leave granted; debate adjourned.
Legal and Constitutional References Committee

Report: Government Response

Senator BARTLETT (Queensland) (3.42 pm)—I seek leave to move a motion in relation to the government response to the report of the Senate Legal and Constitutional References Committee on the administration and operation of the Migration Act 1958.

Leave granted.

Senator BARTLETT—I move:

That the Senate take note of the document.

This one was tabled in March 2006, so it has taken 15 months to respond. It is slightly better. It seems pretty bad when you have to say that it is better to be responding in 15 months later rather than 20, particularly given that this report contained 62 recommendations. At least there was a substantial number that the government had to respond to. It is still, in my view, completely inadequate to take 15 or 16 months to do so, but I suppose, compared to the other two hopelessly inexcusable efforts I have mentioned, it looks slightly better in comparison. But it is still not good enough.

I did want to go to the substance nonetheless of the government’s responses here. Again, this was a comprehensive committee inquiry that involved a lot of input from the public, a lot of submissions and public hearings. The inquiry itself was initiated by a motion of mine back in mid-2005. So it has taken a while—two years—to get through the whole process. It is a bit ironic in a way: the government senators on the committee dissented from all of the recommendations and basically did not agree with the report’s findings, so they were a minority on the committee. Despite that, the government has actually agreed to, agreed to in principle, agreed to in part or noted 41 of the 62 recommendations, which is probably not too bad a strike rate in some respects, given that the government senators on the committee did not support any of them. I should note that some of them have been acted on. Since the report was tabled back in March 2006 a lot has happened in the migration area and in the immigration department. We have seen some changes and improvements, some of which go to the issues raised in the committee report. So I do welcome that.

But I want to highlight some of the areas where the government have rejected recommendations or where they have noted them as something they are still looking at, because that is another area that needs to be highlighted. Firstly, some of the recommendations dealt with reforming mandatory detention. We have actually had some changes in the area of mandatory detention since then, but not as many as the committee would have liked. It is no surprise that the government has rejected those, but I would once again point to the report from the Ombudsman that was tabled in this chamber just yesterday. That report pointed out the continuing harm and suffering that is caused by extended detention and the immense public expense. Once again I urge that that issue be reviewed.

A number of the other recommendations that the government has rejected relate to support for visa applicants in initial interviews, access to legal assistance and support in other circumstances. There still seems to be this attitude that seeking legal advice is somehow or other an attempt to try and game the system. The simple fact is—and the evidence is absolutely crystal clear on this, as it was in this committee’s inquiry—that the provision of adequate support and assistance in putting together claims at the start saves everybody an enormous amount of time and thus, apart from anything else, saves the taxpayer an enormous amount of money. But as to the idea that continuing to try and run this sort of tricky little process—where you can
get legal assistance if you happen to know to ask for it, then you have to go through certain hoops, and then there are all these time constraints and other sorts of barriers—is somehow or other stopping the system being rorted, all that does is put more sand in the gears of the whole show. The government is continuing to refuse areas like rights for visa applicants to have legal representation in their primary interviews, despite the fact that plenty of examples have shown that cases that have taken five years—and that is something we have all complained about: how long it takes to get to the end—have sometimes taken that long because they just did not get a fair go right at the start and it takes all that time for that to be unpicked. Basically you have to go back and do it properly. That is why those recommendations are there—not to make it as easy as possible because we are a soft touch. Having a duty solicitor for all detainees would assist them to get out of the whole show quicker, one way or the other. These would be savings, not costs.

The continual narrow interpretation of the Migration Act, which limits detainees’ rights to access lawyers, whereby they have to actually know to request legal assistance, is an ongoing problem, as is a lack of legal aid assistance on migration matters. The government is still saying that sufficient assistance on migration matters is provided through the IAAAS scheme. The simple fact is, and the evidence is, that it is not. Again, it is a false economy. You might say, ‘There’s only so much out there; we’ve got to ration the money around,’ but if people do not get the assistance, people who have a fair case will keep pushing to have that fair case heard and it just clogs up the system and costs a lot more.

One of the key areas that I have concerns about relates to the recommendations regarding assistance for people on bridging visas, which has been a continuing problem. There is still a problem right here and now, with thousands of people in the Australian community on bridging visas for prolonged periods with absolutely no assistance: no work rights, no Medicare entitlements, no welfare entitlements—they are totally living on charity for years, some of them with children. This is just an unsatisfactory situation. I know there are issues that need to be balanced here, but we have the balance wrong. The government are refusing to act on some of those recommendations. And they are saying, ‘We’re doing a review on bridging visas.’ Well, that is good, but they have been doing a review on bridging visas since around the time the report was tabled, I think. How long are we going to have these reviews?

A similar area where there are problems with costs, with delays, with uncertainty, with expense and with hardship is the area of ministerial discretion. You do need to have an ultimate safety net, but it is grossly overloaded, it is opaque and it is inconsistent. There is a continual refusal to accept recommendations regarding that, despite the fact that it was clear even before this report was done that there was a problem. It was a problem, I recall, that was highlighted in a Senate committee inquiry in this area back in 2000. But the response here—and the government have noted a few recommendations about that—is that they are reviewing that as well. That review goes back to the previous minister, Minister Vanstone, and it must be getting close to 12 months since that review was started. We cannot keep having these reviews and letting them drag on and on, because the problem is continuing and the costs to the taxpayer and the human costs are continuing. I point out that this response from the government may have taken 15 or 16 months. There was a select committee report into the specific issue of the exercise
of ministerial discretion that looked into these issues in detail. I think it made 21 recommendations in March 2004 that have still not been responded to. To say, ‘Well, we’re still looking at it; we’re still reviewing it,’ is just not good enough. That is over three years. That is before the last election—ages ago! They say a week is a long time in politics. Well, three years is a long, long time to not respond to a Senate committee report, particularly in an area which has not been working efficiently and has been shown time and again to have real problems with transparency. It is just not good enough.

It is no wonder we have a credibility problem to such a degree with the political process, when we have all this expense of holding Senate committee inquiries, and we continually encourage people to have their say—we go out there and say, ‘Put in submissions; tell us about it; we need to know what’s happening in the real world; we’ve got to look at this; we need to be informed’—and we put it together, we print all the evidence, Hansard do all their work, the secretariats do all their work, the printers do all their work, we put out the report with all the recommendations and say, ‘Here’s what we’ve found; here’s all the evidence’—and then: nothing. Three years or more go by and: nothing. After three years or more the problem is still there and there is some internal review in the department. It is not good enough. So I welcome the acceptance of some of these recommendations and the progress that has been made, but there is still too much that has not happened. It needs further action and it once again reinforces the Democrats’ core belief that we need comprehensive reform of our Migration Act. Until we get that, these problems will not go away. I seek leave to continue my remarks later.

The DEPUTY PRESIDENT—Senator Bartlett, before I move to the next person who is seeking the call, can I just clarify with you the ones that you have moved and sought leave to—

Senator BARTLETT—Just the first two.

The DEPUTY PRESIDENT—Those are the two that I had marked on my sheet here. I just wanted to be absolutely clear on that.

Leave granted; debate adjourned.

AUDITOR-GENERAL’S REPORTS

Report No. 44 of 2006-07


COMMITTEES

Membership

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

Senator SCULLION (Northern Territory—Minister for Community Services) (3.55 pm)—by leave—I move:

That Senator Boyce be appointed as a participating member of the following committees:

- Economics Committee.
- Employment, Workplace Relations and Education Committee.

Question agreed to.

PREGNANCY COUNSELLING (TRUTH IN ADVERTISING) BILL 2006

Second Reading

Debate resumed from 7 December 2006, on motion by Senator Stott Despoja:

That this bill be now read a second time.

Senator STOTT DESPOJA (South Australia) (3.56 pm)—I begin this debate by thanking the cosponsors of the legislation before us, the Pregnancy Counselling (Truth
in Advertising) Bill 2006, Senator Carol Brown, Senator Nettle and Senator Troeth. I also thank a number of other women in this place who have been directly involved in getting the legislation to where it is today: Senators Webber and Moore, Senator Adams and, of course, the late Senator Jeannie Ferris, without whom we would not have got to this stage. There are many other colleagues, men and women, in both chambers of this parliament who have helped us in this debate and with the construction of this legislation, and I thank them too. I believe there is broad-ranging support for legislation of this type and I am glad to have this debate before us.

Senator McGauran—It’s not hard to get it here on a Thursday in general business.

Senator STOTT DESPOJA—In some ways it is a historic day for the parliament.

Senator McGauran—Everyone gets it.

Senator O’Brien—You never get anything; what are you talking about?

The DEPUTY PRESIDENT—Order! Senator McGauran, Senator Stott Despoja is entitled to be heard.

Senator McGauran—It’s not monumental; it’s just general business.

The DEPUTY PRESIDENT—Senator McGauran, you have been called to order. Senator Stott Despoja is entitled to be heard in silence.

Senator STOTT DESPOJA—He cannot dampen my enthusiasm today, no matter what he tries. It is very rare for private member’s bills to be introduced and debated in a way that they become law or maybe have an influence on law. That is what I hope for with this piece of legislation. I would love it to be voted on at some stage in the near future, but more importantly I would love it if the government took the initiative to introduce legislation to cover up what I perceive is a loophole in current trade practices law on transparency in advertising when it comes to certain not-for-profit groups—in this specific case, pregnancy counselling.

I said that this was a historic day; I actually think it is a ‘herstoric’ day because it continues something that we have seen in this place in recent times which gives me great joy and which I hope will continue long after I leave this place—that is, cross-party female senators working together. That is something we have seen in recent times that has given us much joy but has also worked towards very positive policy contributions.

It has almost been two years since I introduced my original private member’s bill, the Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005, into the Senate on 23 June 2005 to regulate pregnancy counselling services to prevent misleading and deceptive advertising or notification of pregnancy counselling services. Today, following the introduction of the Pregnancy Counselling (Truth in Advertising) Bill 2006 to the Senate last December, which was cosponsored by Senator Troeth, Senator Nettle and Senator Carol Brown, we have the opportunity to finally lay our cards on the table and debate the simplest issue: requiring pregnancy counselling services to be subject to comparable laws regarding misleading advertising as those organisations that are engaged in trade or commerce. What is so difficult about achieving this? We are not singling out particular organisations, as some people and services may claim. Nor would we dare suggest that or force those organisations to provide referrals for terminations. All this bill does is require all pregnancy counselling services, whether they have a certain philosophy, principle or perspective, or are anti-choice or pro-choice, to be up-front and truthful in their advertising.
I originally raised the issue of transparency in pregnancy counselling services in this chamber back in August 2004 and subsequently wrote to Sensis, the company which publishes and distributes the white pages, urging it to remove Pregnancy Counselling Australia from the emergency and community help pages of the white pages and replace it with a non-directive pregnancy counselling service. Sensis responded, highlighting that, following concerns raised the previous year, 2003, it had, in conjunction with Pregnancy Counselling Australia, already altered two previous listings. ‘Abortion trauma’ and ‘Crisis pregnancy counselling’ were altered to read ‘Pregnancy Counselling Australia (Pregnancy termination alternatives and post-termination counselling)’. This response, along with my increasing awareness of a number of other counselling services which do not mention that they do not provide termination services in their advertising and notification material, encouraged me to investigate and push for greater transparency.

What does this bill do? While I have already outlined broadly what this bill sets out to achieve—and, of course, I did that in a fuller form when my original legislation was introduced and at the beginning of my second reading remarks when the bill was reintroduced—I want to outline the objectives very clearly so that people are under no illusions. Firstly, this legislation prohibits pregnancy counselling services, whether the services provide the information in person or over the telephone, from publishing, distributing, displaying or broadcasting via internet, television, telephone, radio or like service, or by post, any material that is misleading or deceptive as to the nature of the services it provides or any material that is likely to mislead or deceive as to the nature of the services it provides. Secondly, the bill ensures that services must be up-front about whether or not they refer for terminations. Thirdly, it requires services which do not provide referrals for terminations of pregnancy to include in any advertising or notification material a statement such as ‘this service does not provide referrals for terminations of pregnancies’ or like statement. I am not wedded to a particular use of words or terminology; to make it clear is the most important thing. Finally, this legislation requires services which do provide referrals for terminations of pregnancy to include in any advertising or notification material a statement that the service does provide referrals for all pregnancy options. Basically, it does not matter what you do, you have to be up-front about it. You cannot give the impression that you do something that you do not do. You cannot deceive; you must be up-front. What is wrong with that?

Obviously, there are penalties for breaching conditions. The bill also ensures that Commonwealth funded pregnancy counselling services are ineligible to receive a grant for financial assistance unless the Commonwealth discloses whether it is a pregnancy counselling service which does not provide referrals for terminations of pregnancy or a non-directive pregnancy counselling service which provides referrals for all pregnancy options.

Additional reporting requirements contained in the bill include that the minister must report annually on the amount of each payment to the states and the name of each service provider receiving the payment and whether each service provider is a pregnancy counselling service which does not provide referrals for termination of pregnancy or is a non-directive pregnancy counselling service which provides referrals for all pregnancy options. All you need to do is disclose it. It is not about saying that the Commonwealth will only fund certain types of pregnancy counselling organisations, because I know
that is a criticism that has been levelled at the bill. It does not say that; you just have to disclose what you do and what you do not do in order to get taxpayer dollars. It could not be simpler.

For the record, there is currently no pro-choice federally funded pregnancy counselling service in operation. That is something that we have heard about before in this place. During estimates I have repeatedly questioned the government about its continuation of funding to the previously anti-choice pregnancy counselling helpline, Pregnancy Help Australia, despite the closure of the counselling operations and the establishment of the government’s new pregnancy counselling hotline to the tune of around $15 million. The previous hotline, Pregnancy Help Australia, has not been providing counselling since late last year, with callers instead receiving a recorded message.

There are a number of reasons why this issue is timely. Anecdotes and information have been brought to our attention, a Senate committee has exposed some of these issues and there are many heartfelt stories that have been recorded. There are organisations, women’s groups, social workers, individuals, fathers of daughters who have been affected, police and other people who have brought to our attention a range of issues that have highlighted the fact that, if women do not have the right information up front, especially when they are in a traumatised or highly emotional state, a state of crisis, if they do not have clear, concise, honest, up-front, unbiased information, things can go wrong. This bill is making sure that the advertising at least is up-front and honest. It would put Australia at the forefront of not just women’s rights but the recognition of human rights, highlighting the commitment to transparency in advertising as well as beginning the debate on the regulation of pregnancy counselling services. Anecdotal evidence that has been presented to us over the years reinforces the urgency of this particular issue and highlights the fact that misleading and deceptive information is being provided to women.

Essentially this bill does hold pregnancy counselling services accountable for the information and the advertising that they provide. It creates a safety mechanism for protecting some of the rights of women and their families and their partners, ensuring that they have access to non-directive counselling on all three options. All three pregnancy options are pretty obvious, but for the record they are: adoption, keeping a baby or having a termination. Women have said that they have felt bullied and pressured into continuing their pregnancies, that they have been offered baby clothes and assistance in that form and through government funding if they continue. Again, there are a range of mechanisms or options people may use to try to talk to someone, assist someone or counsel someone. It is not necessarily my definition of non-directive—obviously women have the right to receive information if they request it in those areas—but what we are more concerned about are some of the anecdotes which suggest not just misleading information but downright harmful information being given to women about what would happen to them if they chose to get a referral for a termination. I am sure my colleagues are happy to put some of those issues on the record.

A 37-year-old mother of two contacted my office after a recent experience with Pregnancy Counselling Australia. She had an unexpected pregnancy and she wanted to be fully informed about all of the options available to her before she made a decision. She said:

I am pro-choice but abortion is something I have always hoped I never would have to contemplate. I rang up Pregnancy Counselling Australia and
the local Pregnancy Help line looking for specific information. Now these national counselling services had absolutely no idea about services in the Northern Territory and when it came to RU486 the best that anyone could say was that they didn’t think it was available. And these services were quick to steer me towards the disadvantages of abortion. I got told that my uterus could get perforated, that I could suffer a haemorrhage or infection, that I could retain products of conception. I could potentially risk infertility and of course there were the psychological aspects of guilt, anxiety and depression. And potentially risk not bonding with any future babies. They did not give me any statistical information at all to give an indication regarding the actual incidence of these occurrences. They did not give comparative statistics comparing the risks of these problems post termination with the incidence of the same problems in pregnancy itself.

It is hard to imagine how anyone with women’s best interests at heart would provide that kind of information without some kind of substantiation. A woman who contacted an emergency number from the front of the white pages in Adelaide also reported:

I have had an abortion before and they told me if I had another one I would never be able to get pregnant again. They said I was a definite high risk to get breast cancer and that there were plenty of couples who would adopt my child if I didn’t want it. I said to her ‘you won’t give me information about abortion will you’ and she told me ‘No I don’t believe in it, no-one here does.’

I put on record I do not have a problem with people having those differing views; you have just got to be up-front. If a woman thinks she is contacting a counselling or other organisation in relation to these issues expecting to get unbiased, up-front advice on the options available to her, of which there are three, she needs to be able to tell from the advertisement that that is the organisation she is contacting, not be misled into thinking that they provide other services or stand for something else. Another woman—

Senator McGauran interjecting—

Senator STOTT DESPOJA—Again, another startling contribution by Senator Julian McGauran to this debate. Again, it will not dampen my enthusiasm for the legislation before us. It is incredibly important; it is needed. Another story from my electorate in South Australia illustrates why this is so important. A woman was told she should name her baby. She was also told that her baby did not have a place in heaven, and the young woman was asked if she thought having an abortion was sinful. A woman also told me of the advice she received from Birthline in South Australia. She said:

I rang them to get information about the Morning After Pill, they told me it can make me have an abortion, and that it can cause foetal defects if I was already pregnant.

These examples are a small number of the hundreds that I have seen over the years. I am not the only person in this place, let alone these organisations, who has received comparable stories. It is not about whether you have a particular opinion, Senator McGauran. I am very up-front about mine. What I am saying is: everyone is entitled to their beliefs, but do not mislead, do not deceive. Get the advertising up-front, transparent and honest—just as we would expect of everybody else in society, including businesses that make a profit and organisations that are subject to the Trade Practices Act. I want these organisations to be covered by comparable legislation so that women and others are not misled, particularly in what could be the most vulnerable and emotional state they could be in.

I am proud of the support this bill has received and the genuine commitment it has received from organisations. I acknowledge the work of people involved in organisations like Marie Stopes International, Children by Choice, Reproductive Choice Australia, Australian Reproductive Health Alliance and, of course, GetUp, who are actively involved in
asking men and women of Australia what they think of legislation like this and what they think of some of the stories they have heard and collating signatures for an online petition last year. A campaign jointly sponsored by RCA and GetUp resulted in 20,000 signatures supporting legislation of this kind. I obviously also thank my cosponsors again.

It is worth putting on record some other key facts. A recent survey commissioned by Marie Stopes International produced findings highlighting that 81 per cent of women believe that a pregnancy counsellor should refer for all three options. A further 12 per cent of women confirmed that when they had been faced with an unplanned pregnancy, they relied on pregnancy counsellors for support. There are many other results in that survey that are also of interest. I might add that, during estimates a couple of weeks ago, we learnt that each call to the government’s $15 million pregnancy helpline costs around $442. These are taxpayer dollars. I acknowledge those call costs may change as the service becomes well known; women will be more interested in using it or at least more aware of its services.

Seventy-five per cent of women surveyed in this Marie Stopes commissioned survey said they did not want to talk to a counsellor before making a decision about their unplanned pregnancy. So, yes, pregnancy counselling is important—it is a valuable service, from whatever perspective it may come—but it has to be honest, it has to be up-front in its advertising and it has to be transparent. I prefer non-directive counselling—and I have a very strong view as to what constitutes non-directive counselling—but counselling is not necessary, nor should it be compulsory, for women who are in a situation where they are facing an unplanned pregnancy. The majority of women have said they do not necessarily want it. But for those women who do want it, when they go to the yellow pages or the internet or see an advertisement on the back of a bathroom door, it has to say more than, ‘Pregnant? Upset or distressed?’ It has to explain what services it does or does not provide. At least in those circumstances the woman, her partner and her family are aware of who and what they are contacting and what services and/or counselling may result as a consequence of her picking up the phone or walking in the door and meeting with someone and talking about some of those most personal issues.

The results of the Marie Stopes survey further highlight the need for the regulation of pregnancy counselling services to ensure not only that women are fully informed but also that they have services of a high standard. Across the board, regardless of people’s perspective in the Senate inquiry on this particular bill or its predecessor, there was a strong view that we could look at the regulation and quality of counselling. It did not matter which perspective people came from. Maybe the Minister for Health and Ageing, Tony Abbott, should be looking into that to ensure that, regardless of what perspective people come from, there is quality assurance. That is not my particular debate today; mine is much more simple than that. Again, it is a bill about advertising.

This bill is necessary because, although the Trade Practices Act outlaws ‘conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services’, the majority of pregnancy counselling services are, of course, not bound by the Trade Practices Act because they generally do not charge for the information and other services they provide and, therefore, they are not considered to be engaged in commerce or trade.

I want women to feel safe and secure when they are calling or visiting pregnancy counselling services. I do not want people
bullied, I do not want people frightened and I
do not want people misled or deceived. It is
one of the most delicate and, arguably, trau-
matic times in a woman’s life. Providing
false or misleading advertising to women
who are confused or unsure about keeping or
not having a child is something all pregnancy
counselling services should be held account-
able for.

Why would anyone question this basic
principle in this legislation? If they are proud
of their philosophical beliefs, whether they
be anti-choice or pro-choice, then what is
the problem? Surely, people are still going
to receive calls to this service. Regardless of
their perspective, people cannot seriously
deny that this is long overdue. (Time expired)

Senator CAROL BROWN (Tasmania)
(4.18 pm)—The Pregnancy Counselling
(Truth in Advertising) Bill 2006 seeks to
promote transparency in the advice given by
pregnancy counselling services. It seeks to
achieve this by prohibiting pregnancy coun-
selling services from producing or providing
advertising material or advice that is mis-
leading or deceptive. It is aimed squarely at
making it easier for women to obtain truthful
and unbiased advice when faced with the
often-difficult situation of an unplanned
pregnancy.

I am proud to co-sponsor this legislation
with Senator Stott Despoja, Senator Judith
Troeth and Senator Kerry Nettle. I wish to
make it absolutely clear that this is a bill
about promoting and ensuring truth in adver-
tising. It is important that it is not misinter-
preted as a bill that seeks to promote any one
pregnancy option over another. It does not. It
is simply aimed at protecting women from
receiving advice that may be false, mislead-
ing or even deceiving. It is about promoting
the fundamental right of Australian women
everywhere to be aware of the nature of the
pregnancy counselling advice they will re-
ceive.

In this sense, the bill is simply about pro-
moting truth and not prescribing one preg-
nancy option over another. Anyone who
thinks otherwise is incorrect. It does not mat-
ter what arguments are put forward by those
who oppose the bill to try to fudge or muddy
the debate. It does not matter that they delib-
erately declare that the bill is an attempt to
do other than what I have just described and
that they link it to moral arguments about the
rights and wrongs of the choices women
make when confronted with an unplanned
pregnancy. Those arguments will inevitably
be put forward today by those who oppose
the bill. I wish to remind them that this bill is
simply about ensuring that pregnancy coun-
selling services disclose the truth.

It was correctly observed in the committee
hearing that, up until now, in relation to
the provision of pregnancy counselling ser-
vice much of the focus has been on the
rights of the service providers. Indeed, what
this bill seeks to achieve is to shift that focus
back onto the rights of the women accessing
these services. This is where the focus should
be.

This bill is necessary because services that
provide counselling and advice free of
charge—such as the majority of pregnancy
counselling services in Australia—are ex-
empt from operating within the confines of
the Trade Practices Act—specifically, section
52, which dictates that ‘a corporation shall
not engage in conduct that is misleading or
deceptive, or likely to mislead or deceive’.
As a result, pregnancy counselling services
that provide advice free of charge are not
governed by any legislative restriction that
mandates that they not produce or provide
advertising material or advice that is likely to
be misleading or deceptive. A black hole ex-
ists, because currently there is no legislative
guarantee that women accessing such services can be sure that the advice they are being given is accurate. Essentially, this bill makes pregnancy counselling services subject to the same laws as organisations which engage in trade or commerce. It basically provides the necessary legislative framework to ensure that advertising material and advice given by pregnancy counselling services cannot be misleading or deceptive.

As senators would be aware, this bill is an amended version of the Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005, introduced as a private member’s bill by Senator Stott Despoja. Senators will also be aware that Senator Stott Despoja’s private member’s bill was referred to the Senate Community Affairs Legislation Committee for inquiry. The committee reported in August 2006. There was a minority report which received cross-party support. My colleagues Senators Stott Despoja, Moore, Nettle, Webber and Allison and I were the authors of that minority report, and I congratulate my fellow senators on their work for it. I welcome, too, the comments of Senator Judith Adams who, although she was not a signatory to the minority report, nevertheless supported the former bill.

That committee received a range of submissions and evidence, some of which supported the former bill, in its entirety or subject to amendments, and some of which opposed the bill. The committee report examined: the constitutionality of the bill; advertising a pregnancy counselling service; advertising in telephone directories; contentious terminology; whether the former bill was balanced; the options for dealing with an unplanned pregnancy; funding to pregnancy counselling services; qualifications and professional standards of counselling services and issues confronting women in rural, regional and remote communities.

Clearly, I cannot address today all the issues brought before the committee. However, I will address those issues that I believe are of great importance, not just to the committee members but to those who are most affected by the future of this bill—that is, the couples who need to access services and agencies and clinics, at a time in their lives when they are facing an unplanned pregnancy, and vulnerable women undergoing the sort of stress that only a woman who has experienced an unplanned pregnancy can truly appreciate.

The main issue raised before the committee, one that is very familiar to the sponsors of the current bill, is the fact that, under the law as it stands, there is no requirement for those persons who provide pregnancy counselling services to provide, in advance, a full and frank disclosure of any limitation on the nature of the advice or the referrals that they are willing to provide. The effect of this gap is that some women who, in response to the distress of an unplanned pregnancy, go to counsellors for advice or support find themselves unwilling recipients of advice that does not meet their needs and may even serve to increase their distress.

This bill is designed to prevent the situation in which a woman who wishes to consider all three options open to her—having and keeping the child, arranging an adoption, or terminating the pregnancy—instead finds herself the recipient of pregnancy counselling that is strongly directive in nature—that is, directed to the end of ensuring that, no matter what her wishes may be, her pregnancy will continue. Some providers are not only strongly directive; there are documented instances of counsellors having presented material that can only be called anti-abortion propaganda, because it has no basis in fact or is even contradicted by the findings of reputable research.
This raises a further inadequacy in the current legal framework for pregnancy and counselling services. It contains no proscription against the provision of misleading, inaccurate or untruthful information to a client and no requirement that counsellors or service providers apply professional standards in the advice that they provide and the techniques they employ, which should never be coercive.

During the committee hearings, proponents and opponents of the former bill traded accusations of bias. Such accusations may distract us from the most important consideration here. Where there is convincing evidence of the sort presented to the committee—evidence of the not infrequent provision of half-truths and scientifically inaccurate information and of a failure to provide advice on all available alternatives—the need to support this bill becomes clear. It must be passed to protect the very vulnerable women facing the distress of an unplanned pregnancy.

This bill does not seek to restrict the operation of services that provide only one type of pregnancy counselling service—namely, counselling to assist with the continuation of pregnancy. However, it does seek to ensure that such services are open about that fact. Some women will choose those services; some will not. The point is that potential service users should be able to make an informed choice on the basis of the advertising material made available by the service provider.

Some speakers in this place will have a view that this bill is not needed—that there is no need to require pregnancy counselling services to advertise what services they provide—and will ask, ‘Why would anyone provide misinformation or seek to deceive?’ Unfortunately, it does happen, and it appears to be happening more regularly.

Given the widespread interest and concern in this area, we now have a position whereby the yellow pages pregnancy counselling section offers advice to consumers in the form of an advertisement positioned prominently at the head of the section that reads:

We recommend that you fully understand the type of service each organisation offers before you contact them.

Here we have an organisation that recognises the concerns and has attempted to act. And yet the federal parliament is yet to act by simply putting in legislation that requires that pregnancy counselling services advertise their services—no more, no less.

Frankly, I can hardly conceive of how there could be any objection to the provision of openness, honesty and transparency on a matter of such importance. Yet, clearly, there are some people who disagree with the principles promoted by this bill. Do they really believe that it is justifiable to conceal the true nature and philosophy of a service that will only offer assistance and advice on pregnancy continuation because the end, of dissuading a woman from deciding to terminate a pregnancy, justifies the means—the use of a veil of deceit?

During the Senate committee hearings, the Bessie Smyth Foundation described how many women feel angry that anti-abortion agencies masquerading as impartial counselling services try and tell them what they should do and refuse to provide referral information for termination of pregnancy. This same group explained the state of mind of young women who had been to some service providers. They said that many women have been made to feel petrified about having a termination ‘because of the misinformation’ they were given.

I feel deeply for any young woman or any couple who have been misled or placed in a position where they find themselves unable
to gain the information they need at what is a major turning point in their lives. This bill aims to ensure that those who need pregnancy counselling services will be able to choose those services most appropriate to their needs and values, and that they will be able to obtain the best quality information concerning all of the available options that they might wish to consider.

There are no simple answers or one-size-fits-all answers to the complex questions raised by an unplanned pregnancy. Openness, honesty and absolute professionalism should govern those who offer advice and assistance through pregnancy counselling services. Decisions made without full access to the facts and without considering all the choices available could be wrong and a person may regret it for the rest of their life. Such decisions cannot be revisited in the weeks, months or years to come. A decision to terminate a pregnancy, to see a pregnancy to term or to give a baby up for adoption is not one that should be made lightly or in haste; it is a decision that the person making it has to live with for the rest of their life. Australians must have access to open, honest information about the available pregnancy counselling services. Anything else is clearly unacceptable. They deserve nothing less than the truth. They also deserve access to transparent information about the nature of the services funded by the government. Specifically, this bill proposes that the pregnancy counselling service—whether provided in person or over the phone—be prohibited from publishing, distributing, displaying or broadcasting any material that is either misleading or deceptive or is likely to mislead or deceive. This measure will ensure that such services are subject to the same standards that apply to all other services that fall under the Trade Practices Act.

The application of such a standard to pregnancy counselling services is necessary to ensure that women accessing such services are not provided with information that is skewed or distorted in any way. It is important to note that the bill also provides that it is a defence to the abovementioned prohibition if it can be proved that the people involved in providing the relevant information took no part in determining its content and could not reasonably be expected to have known that the material was in fact inaccurate or misleading. This bill provides that all pregnancy counselling services which do not provide referrals for terminations must include in any advertising or material a statement that indicates that it does not provide referrals for such services. Likewise, the bill also requires that counselling services which provide referrals for terminations must include in any advertising or material a statement indicating that the service provides referrals for all pregnancy options. These requirements are aimed at ensuring that women accessing such services are aware of the nature of the information provided by the service they are planning to access.

I realise that it is unlikely that this debate will result in a decision being made today on this bill. It is my hope that this bill will be taken up by government and afforded the same legislative time that government gave to the stem cell legislation and to the Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU486) Bill, now known commonly as the RU486 bill, which was again introduced by cross-party senators Moore, Nash, Troeth and Allison. This amended the Therapeutic Goods Act 1989 to transfer the responsibility for regulatory approval of RU486 from the Minister for Health and Ageing to the Therapeutic Goods Administration. Both these bills were the subject of heated debate within the parliament and in the wider community. Both pieces of legislation were the start of a historic cooperative approach by women sena-
tors across parties, who joined together to start and push debate where there appears to be no party willing to do so.

It is important that transparency in this area is achieved to ensure women are able to make informed choices about who they can contact for information when deciding if they can continue with a pregnancy, when seeking support in continuing the pregnancy or when they have decided to terminate the pregnancy. This is an important issue. Women have the right to know what type of service they are going to. A pregnant woman wanting advice should be able to know whether she is ringing a counselling service that advises her on all options related to her pregnancy or only some of them, and, if she has made a decision and is seeking specific support or referral, she should be able to easily find and access appropriate services for her needs. Without clarity and truth in advertising, this seemingly simple request cannot be fulfilled.

Senator TROETH (Victoria) (4.34 pm)—It is with great pleasure that I rise to speak about the Pregnancy Counselling (Truth in Advertising) Bill 2006, and in consultation with my colleagues Senator Natasha Stott Despoja, Senator Carol Brown and Senator Kerry Nettle. This bill has come about on the basis of the hard work being done by the Senate Standing Committee on Community Affairs and I applaud the foundation and the fundamental basis for this bill that the committee laid down. I was not on that committee but I would like to thank the senators who worked on that committee to make this information available.

This bill is founded on the basis of three choices that should be available to pregnant women, and those choices are: autonomy, the right of governing oneself; informed consent, the ability to make a choice on the basis of authoritative information supplied; and gender equity. Pregnant women should be able to get protection from misleading advertising. There is no trade practices attachment or necessity for many counselling services because, although corporate entities must not mislead, many counselling agencies are not corporate entities as they are free or come at a subsidised cost. It is important to note in the context of this debate the figures that my colleague Senator Stott Despoja noted in the result of a survey carried out by Marie Stopes International, that 75 per cent of women with an unplanned pregnancy do not want or need counselling. They make decisions alone or with the assistance of their partner, their family and/or their general practitioner. So we are thinking here of the 25 per cent of the total of women with an unplanned pregnancy who need to go to a counselling service to seek further advice. Nevertheless, of that entire group studied in the survey, 80 per cent of those women felt that there should be counselling for all three options. Ninety per cent of the women in that group thought they should be able to have access to an abortion in all or some circumstances.

The options available to a pregnant woman are three: adopt the baby after it has been carried to full term; terminate the pregnancy, or abort; or have the baby and rear the child. When women do seek counselling, with these very important consequences in mind, they want integrity and they want quality of care. So where would a woman go for choice? As Senator Brown mentioned, one of the options is to seek advice from the yellow pages. I would like to take three examples from the yellow pages.

Pregnancy Counselling Australia provides those important words of being free, being confidential and being compassionate. When you are a woman in the first days or weeks of contemplating an unplanned pregnancy, those are the qualities you look for. But
Pregnancy Counselling Australia, in its advertising, does not say that it is associated with the Right to Life group, which of course does not include abortion in the three options. The National Pregnancy Support Helpline, which calls itself a non-directive agency, and which has been set up by the Commonwealth government, again is a free call, so it is very accessible. But it does not actually refer for any of the three options and, on occasions, it has referred women to the internet. If women wanted to access the internet, they would do so in the comfort of their own home, as we say, without needing a call to the National Pregnancy Support Helpline. There is a third organisation, which uses the word ‘abortion’ in its visual advertising but does not refer for it. So if this were one of the options that you were contemplating and you thought, ‘Perhaps this organisation will help me,’ you would get there and find out that it only refers for adoption of the full-term baby or having the baby and rearing it yourself. So it does not refer for three options. What those organisations should say—and this is the whole point of this bill—is: ‘This organisation does not refer for termination of pregnancy’ or, ‘This organisation does refer for termination of pregnancy,’ so that before women actually get there and walk in the door, or make the phone call, they have advice on what the agency is about.

We are not dealing with any sector of the population here. These are people in crisis, as Senator Stott Despoja said, and they need clear, unequivocal information. They are not necessarily going to get it from every organisation that is in the phone book. What we want to say is: ‘This organisation does refer,’ ‘This organisation does not refer.’ The services, as Senator Brown correctly pointed out, should be used by the woman to make a decision—her decision, not one that is mandated by the service. As she so correctly remarked, up until now the focus has been on the service and the amount of money given to it or not given to it by the Commonwealth government. What we want the focus to be on is the client, the customer—or, as GPs call them, the patient or the client. False information provided by any of those services to a woman in this fragile state can lead to emotional complications which could affect the rest of the pregnancy and it could delay her final decision, with repercussions for both the mother and the child.

Now let us look at the bill. The main purpose of this bill is as with any trade practices type legislation—and that is what this is—we want to stop misleading and deceptive notification and advertising. If corporate entities and most large retail outlets have a false or misleading advertisement in the paper, they need to correct it immediately as to the false price being advertised or the particular brand not being available. Without making this choice seem in any degree flip-pant or light-hearted, that is exactly what these counselling organisations should be providing—that sort of information. So we want to stop misleading and deceptive notification in advertising, we want to promote transparency and full choice, we want to improve public health and we want to minimise the difficulties associated with getting advice.

In this bill there are penalties for providing misleading and deceptive information, and services should have to realise that if they provide deceptive and misleading information there will be a penalty. I am anticipating arguments, from people who will oppose this bill, that we are favouring one type of ideology over another. We have dealt equally—I repeat: we have dealt equally—with all types of services. So this bill is not aimed at one particular view of dealing with pregnancy. We have said, ‘You must advertise and you must notify for one type of ser-
service or another or indeed all three.’ Who could argue with that? If people want to extend or falsify our arguments, they in turn are being misleading and deceptive about the types of arguments that we are mounting. This is a machinery-type bill. It is not about promoting ideology for dealing with pregnancy in one form or another. It is a machinery bill which will put another piece in the jigsaw, if you like, of information that should be available to pregnant women.

We also say in the bill that financial assistance from the Commonwealth government would not be payable if these conditions were transgressed. As we know, some pregnancy services are provided with finance by the Commonwealth government. We have also said that the minister is to report annually on the payments to and the performance of pregnancy counselling services.

Some people will see this as an extension of bureaucracy and an overwhelming burden on the minister. It could not be any more difficult than obtaining the present figures for different types of services funded by the Commonwealth government because, currently, these figures are almost impossible to obtain in a legible form and in a form which makes sense. It is no more difficult than providing those figures. It would be a minute part of the Minister for Health and Ageing’s reporting, but one part which would place a standard on those services so that they can do their job properly. It is all about transparency and accountability. That is something we would want for all Commonwealth funding arrangements. I commend the bill to my fellow senators, and I thank my cosponsors for their hard work and cooperation in bringing this bill before the Senate.

Senator NETTLE (New South Wales) (4.45 pm)—I am pleased to debate the Pregnancy Counselling (Truth in Advertising) Bill 2006 and to have worked with all of the other cosponsors of the bill. This is an important piece of legislation for entrenching honesty in the way in which organisations relate to the public. We all want people to be honest and that is what sits behind the basis of the laws in this country that do not allow people to advertise in a deceptive or misleading way. We all want to see some honesty in the way in which people relate their services to the public.

The cosponsors of this legislation have put it in place for incorporated entities right across the board to ensure that we have that honesty so that when people see an advertisement they know what services they will get. But we have a loophole. This legislation seeks to close that loophole. I am proud to be a part of trying to close a loophole that exists in our current legislation which enables people to be dishonest in the way they advertise. Unfortunately, we are seeing some pregnancy counselling organisations taking advantage of the loophole that exists in our legislation.

The reason why this legislation is so important is that, when those organisations do take advantage of the loophole that exists in the current legislation, it is women who suffer. Women with an unplanned pregnancy want to find support when making a really difficult decision about what they are going to do about their unplanned pregnancy. They want to be able to find support and, when they see a pregnancy counselling service advertised—in the yellow pages, in the newspaper, or wherever—which says it will provide them with the information they need that will help them make a decision, that is what they want and expect. This legislation is about ensuring that that happens.

I want to talk a little about the impact on women with an unplanned pregnancy, their families and supporters when pregnancy counselling organisations take advantage of
the loophole that exists in our legislation and when they are misleading and deceptive in the way in which they advertise. I went to visit the Pregnancy Advisory Centre in South Australia, which is a government funded service which provides pregnancy counselling to women with an unplanned pregnancy. It is a great service. They provide information to women about all three options that women can pursue when they have an unplanned pregnancy. I spoke with them about some of the phone calls that they have been receiving. At the centre, they get an opportunity to see what happens to women when these women read one of these false or misleading advertisements, then ring up a service and get something totally different from what they had expected. I want to give some examples that the centre staff told me about, the experiences that they had had and of the women whom they had spoken to.

The mother of a pregnant 13-year-old woman rang the service that had advertised as a pregnancy counselling service to get some information regarding options for her daughter. She was told that if her daughter adopted out her child then it would be the worst thing that she could do. She was also told that if she terminated, ‘Well, that’s just killing the baby.’ It is not support for the mother of a 13-year-old who has an unplanned pregnancy to tell her that if her daughter terminates, ‘That’s just killing the baby.’ That is not pregnancy counselling; that is not support. She was told that there would be support for her daughter to keep the baby, such as cots and baby clothes. She was also told that the government would provide a few thousand dollars to keep the baby. This service is funded by the federal government, and it was advertising itself as being able to provide support to women with an unplanned pregnancy. That is not support to the mother of a 13-year-old with an unplanned pregnancy. That is what this legislation is trying to stop, to ensure that mothers like her do not have to experience that kind of disservice when they ring up to get support.

Again, a woman rang a service advertising itself as providing pregnancy counselling. She mentioned in the conversation that she had had an abortion. She was told, ‘I think you should name your baby.’ How is that providing any kind of support or genuine pregnancy counselling for a woman who rings up to talk about a medical operation that she has had only to be told, ‘I think you should name your baby.’ She was also told that her baby did not have a place in heaven. She was asked whether she thought what she had done was sinful. That is not support; it is not pregnancy counselling. An organisation that provides that kind of disservice should not be advertising itself as a pregnancy counselling service. This legislation is about ensuring that Australian women can have honesty reflected in the advertisements that they read.

It is not just about Australian women; it is also about men. The father of a 16-year-old girl from regional Australia rang up a service—again, one advertising that it would provide pregnancy counselling—when she was five weeks pregnant as a result of having been raped. When he suggested pregnancy termination as an available option for his daughter—which, clearly, she had; there are three options, and one of them is a pregnancy termination—the person at the other end of the telephone called him a murderer for stating that there are three things that you can do when you have an unplanned pregnancy: the first is a termination, the second is continuing on and becoming a parent and the third one is to have the child adopted. He mentioned one of those three options and he was told by the person at the other end of the phone that he was a murderer.
That is what we want to prevent occurring—for the father of a 16-year-old girl in this instance. I think that the father of that 16-year-old girl has the right, when he looks it up in the yellow pages, to know whether or not the service that is advertising itself as doing pregnancy counselling is actually going to be able to provide him and his daughter with support. This is a deliberate strategy being taken by particular pregnancy counselling services. To give you an idea of how deliberate it is, I want to tell you about some research that has been done in the United States by right to life organisations. One piece of research was done in 1988. It was called Turning hearts towards life. There was another lot of market research done in 2005. What that research was designed to do was to find out how best these right to life organisations could advertise their services in order to get women who had an unplanned pregnancy to ring them without realising that they were a right to life organisation. That was the intention of the research: to find out how best they could advertise their service to mislead and to deceive women about the service they were providing. What they found in that market research was that they should put themselves under ‘Pregnancy’ in the phone book and that they should talk about being free, low-cost, confidential, caring, friendly, non-judgmental, professional, trained and able to see people quickly. These were all important things.

These were all things that women wanted. But that was not why these organisations were doing the market research; they were doing it to find out how best they could advertise things that women wanted but exclude what they were actually not providing to women—that is, information about one of the three options that women can pursue when they have an unplanned pregnancy. The research told them that they needed to be careful about what they said and that if they put the word ‘options’ in their advertisement then some women may pick that up as being an indication that they were pro choice—that they thought women should have access to the whole range of reproductive rights and look at all of the options when they had an unplanned pregnancy. What they were looking for in their research was the answer to this: ‘What do we not put in the advertisement, because if we put it in the advertisement then people may be able to determine what our particular perspective is?’

I think it is really important when we have this debate to say, ‘We’re not talking about just anyone looking in the yellow pages and trying to find a particular service.’ This is not like trying to find where the nearest squash court is. We are not talking about somebody in that headspace. What we are talking about here is somebody who is in crisis; somebody who is extremely vulnerable. This is somebody who has just found out that they are pregnant or that one of their friends or family members is pregnant and it was not planned. Some people will be wildly excited because they thought they could never get pregnant and they have found out that they are pregnant. For other people it is going to be really frightening because it was not part of their vision for their life or for their future. They are in crisis and they really want to be able to get support. They really want to access someone who can go through with them what their options are—what they are thinking, what their values are and how they going to put in place the big life decision that they are being asked to make at that point. These are people who are in crisis. When you are in crisis you need clear information to make sure that, in the jumble of your confusion about what you are going to do, you are not misled. You need clear information.

I will give you an example. Ms Brigid Coombe, the Director of the Pregnancy Ad-
visory Centre in South Australia, gave this example when she appeared before the Senate committee into this legislation at the hearing in South Australia. I will read her words. She said:

I would like to give you an example of how easy it is for women to misinterpret information describing services on the 24-hour pages. I spoke with a woman at the centre last week who had rung Pregnancy Counselling Australia. As you will note on the White Pages, there it states, ‘Alternatives to abortion and post-abortion counselling.’ I asked her why she had rung them given that their entry states, ‘Alternatives to abortion’. She said she saw the word ‘abortion’ and in her anxious state thought, ‘That’s what I want,’ and rang them.

She needed clear information but she saw the word ‘abortion’ and, in her anxiety, jumped to a conclusion and rang that service. When she rang that service she was given inaccurate and alarming information. She then went to a gynaecologist in a hospital, where she was reassured with accurate information and given information about the counselling service provided by the South Australian government. She was able to get some support to make a really difficult decision.

I want to give that example because, as I said, we are not talking about someone trying to find the nearest squash court; we are talking about somebody who is perhaps not thinking as clearly as they might otherwise because they have in front of them a really difficult life decision. This is something that they did not expect and they need assistance to get through it. As we have heard other people mention, a lot of women are able to make their own decision: in fact, 75 per cent of women who have an unplanned pregnancy are able to decide which of the three available options they are going to choose.

The women who most need pregnancy counselling are those who do not have support networks around them or who feel that they need more information or who need some reassurance about making their decisions. The people who are uncertain about which of the three options they should choose are the ones who are ruffling through the yellow pages to find where they can get some support. It is precisely the most vulnerable of the women with unplanned pregnancies who are the ones looking through the advertisements to try to find out if they can get the service that they want.

What this bill says is that those advertisements should be clear about what kind of service they are going to provide. It is a simple, straightforward request. Let us be clear about what people are going to provide. As I said before, I thought everyone here agreed with the concept of people being honest about what kind of service they are providing. That is what this legislation is about. It says, ‘Let’s be honest about what kind of service is going to be provided when somebody rings up that number.’ That is not currently the situation because we have got this loophole in our legislation. But that loophole is proposed to be shut by the bill we are debating today.

I spoke to a group of students at the University of Sydney some time ago about the different types of pregnancy counselling services out there and what kinds of experiences women had had when ringing some of those pregnancy counselling services. I told them, as I have just now told the Senate, about some examples where people rang up expecting to get support and found that the phone had been answered by a ‘right to life’ organisation. They were told that they would be a murderer and that they had sinned. They were told to name their baby. The consequence of that for that woman—or for the friend or family member who rang—was disastrous. When I was talking to the students at the University of Sydney they asked me: ‘How do I find out? How do I know
whether or not a pregnancy counselling service is going to provide me with genuine information?’ I had to say to them, ‘Well, there is no law that requires those pregnancy services not to mislead or be deceptive in their advertising.’

It was partly as a result of those conversations that I produced out of my office a Greens guide for pregnancy counselling, which I have distributed to many different youth centres in my state. I have also distributed it to women’s health centres, which is where people go to find this information. The guide outlines which are the genuine pregnancy counselling services and which are the deceptive and misleading ones that will not provide women with information—let alone a referral—about one of the three options that they can choose when they have an unplanned pregnancy. But it should not be the case that a young woman with an unplanned pregnancy has to go into the youth centre to see a guide that enables her to determine which services are genuine or not. She should be able to see that in the advertisement. That is why we are proposing this piece of legislation.

It is an issue that other countries have had to deal with as well. In New York, just last year, a Republican member of parliament introduced a piece of legislation called the Stop Deceptive Advertising for Women’s Services Act. It was designed to deal with precisely the same issue that we are dealing with here today. She wanted to ensure that American women would see advertisements for pregnancy counselling services that were honest about the services that they provided. That is what the four women from the spectrum of the political parties are doing today. They are trying to ensure that Australian women who see advertisements for pregnancy counselling services will know that those advertisements are honest. That is what we want, and that is why we want it. We want it because it is in the best interests of not just women but everyone for services like this to be honest in their advertising.

That is why this bill is important. It is extremely important if we value things like honesty, and I do value honesty. That is why I support this bill and why I am very proud and pleased to be standing here commending this bill to the parliament. I say that if we care about Australian women and their friends and families we need to support this piece of legislation that is before the parliament today. (Time expired)

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (5.05 pm)—I too would like to make a contribution to this debate on the Pregnancy Counselling (Truth in Advertising) Bill 2006. I would like to highlight the consequences and the effects of the bill.

The bill was first introduced by Senator Stott Despoja in June 2005. The Senate referred the bill to the Senate Community Affairs Legislation Committee for inquiry and report by August 2006. It is on the public record—and there was extensive media coverage at the time—that the committee received over 6,000 public contributions to the inquiry. Supporters of the bill organised a petition, which was signed by more than 13,000 citizens and tabled in the Senate in June 2006. As a consequence, the bill that we are debating today is the second iteration of the bill. It is sponsored by Senator Carol Brown, Senator Stott Despoja, Senator Troeth and Senator Nettle.

The bill seeks to prohibit misleading or deceptive advertising or notification by pregnancy counselling services that do not charge for the information they provide. It seeks to promote transparency by requiring services to declare which pregnancy options they provide referrals for. The bill prohibits
pregnancy counselling services from publishing, distributing, displaying or broadcasting by internet, television, telephone, radio or like service, or by post, any advertising material that is misleading or deceptive as to the services it provides, or any notification of its services that is misleading or deceptive as to the nature of the services it provides.

The bill requires that advertising and notifications by pregnancy counselling services which do not refer for terminations include the statement, ‘This service does not provide referrals for terminations of pregnancy,’ or a like statement. The bill requires that advertising and notifications by pregnancy counselling services which do refer for terminations include the statement, ‘This service provides referrals for terminations of pregnancy,’ or a like statement. Breaching of either of these conditions would result in a penalty and a loss of any Commonwealth financial assistance until the service ceased to engage in what would be regarded as misleading or deceptive conduct. So the bill essentially seeks to make pregnancy counselling services subject to the same laws on misleading advertising as organisations that are engaged in trade or commerce are subject to.

Given the widespread interest in and the broad general support for the bill, it is very interesting to note why we are debating this bill as a matter of general business on a Thursday afternoon. I can only conclude that our Democrat colleagues consider it to be the most crucial issue that the minor parties want to bring before the Senate prior to the winter break—and that is quite extraordinary.

Organisations in receipt of government money to provide counselling services must ensure that they can provide unbiased, expert, independent and professional advice. Surely that goes for all kinds of services. It should apply to pregnancy counselling services just as much as it applies to financial counselling services, drought support counselling services and a range of other counselling services. I do not think there is one person in this chamber who would argue against the need for balanced and independent pregnancy counselling services to ensure that the full range of options is made available to women.

The bill represents a genuine attempt to ensure that women who find themselves pregnant are able to access counselling that helps them make informed decisions about their future—and, of course, every reasonable person would want that. But I doubt very much that the legislation, as drafted, can achieve its intended purpose. At the end of the day, I am convinced that this pursuit of truth in advertising for pregnancy counselling is a nonissue. This opinion is based on my consideration of these matters from the perspective of the Trade Practices Act—which has been quoted by several speakers as the purpose for bringing in this bill. The Senate economics committee considered the act in its deliberations. The second bill reflects some of the considerations of misleading advertising and deceptive conduct under the Trade Practices Act, but, as I am sure the ACCC and ASIC will attest, such conduct can be very difficult to prove.

Prohibition of misleading advertising is contained in section 52 of the Trade Practices Act and it is mirrored in each of the state and territory fair trading acts. It is also mirrored in the Australian Securities and Investments Commission Act in relation to financial services. The prohibition applies to statements about existing facts, predictions about the future, and even silence. Such conduct must convey or contain a misrepresentation and not merely be confusing. Intent is irrelevant in determining whether a contravention has occurred. Prohibition applies to material viewed on a website and to online conduct, including advertising, writing, conducting
business and putting information on the internet about business products or services. General corporations are liable under the Trade Practices Act. Licensed service providers are liable under the ASIC Act 1989, and all other organisations are liable under the state fair trading laws. To ensure that there is no misleading or deceptive conduct in pregnancy counselling, the establishment of a regulatory regime would be required—and, without that, this bill is meaningless. Such a regulatory regime, I would argue, would involve significant costs—money which could be better directed to direct counselling services or to strengthen the capacity of the sector more generally.

There is an important issue at stake here. I do not intend to go back to the arguments of the inquiry into the Pregnancy Counselling (Truth in Advertising) Bill 2006, but, in fairness, I would like to make some brief points. The first point is about terminology. Much of the debate around the original bill, which remains just as relevant to this bill, focused on the difference between so-called directive and non-directive counselling. The implication is that ‘non-directive’ refers to counselling with abortion referral as an option, while the more prescriptive term ‘directive counselling’ is defined by the lack of an option of abortion referral. However, this interpretation of non-directive counselling is at best a misrepresentation in its suggestion that best practice counselling inherently involves an ability to refer for an abortion.

In terms of the inquiry into this bill and the submissions received, I would like to quote from the submission by Dr Nicholas Tonti-Filippini, a consultant ethicist. He makes a very important point when he writes:

... the definition of non-directive counselling in the Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005, and Part 2 of the Bill which contains prohibitions with respect to counselling services that do not refer for termination of pregnancy, would seem to be based on a mistake concerning counselling services in general, and not just pregnancy counselling.

Referral for medical services is a function of medical practitioners and of other health professionals. Referral for specialist medical services is a function of medical practitioners. Counselling services do not normally have a referral function unless medical practitioners undertake them. The effect of the Bill, therefore, would be to limit Government funding of non-directive counselling services to medical practitioners—it would limit government funding to medical practitioners—and to prohibit the advertising of all other non-directive pregnancy counselling.

Further, he writes:

Pregnancy counselling services should not be seen as exclusively medical services. There is a need for women to be able to explore non-medical options. There is also a need for women who may want to continue a pregnancy to have access to support services. To medicalise pregnancy counselling would suggest that medical interventions are the only services available.

I think that is a very important point. In fact, I would argue that non-directive counselling is, by definition, unbiased, which is the argument that has been put against this use of the term in the bill. I was very pleased to see that the Commonwealth, when adding pregnancy counselling services to the Medicare regime, argued—and I am quoting from the Department of Health and Ageing website:

It is important that women are able to access non-directive counselling when they are uncertain about a pregnancy and that they are able to do so quickly.

This is a really important issue that needs to be understood in the context of the bill. Services are being defined as being ‘directive’ if they do not provide referral for the termination of pregnancy and ‘non-directive’ if they provide referrals for termination. But, if you
have had anything to do with counselling services, you will know that being non-directive in counselling has little to do with whether or not referral is provided, and that it could be argued that providing a referral to a distressed client constitutes pressure to take a certain path. Non-directive counselling actually refers to being able to allow a client to be self-determining in their decision-making process. It is a practice that counsellors use so that the client takes time to think through the issues raised and discussed so that she can make her own choice, having explored what supports are available to her.

One of the arguments that we have heard already this afternoon about directive and non-directive counselling is the issue of the role of counselling versus referral for termination. As I said when I quoted Dr Tonti-Filipini, referral for termination is the role for a medical practitioner who assesses the woman’s medical reasons for termination of pregnancy. The role of the counselling service is to assist a woman to be fully informed of her options, the consequences of those options and the supports available to her if she were to continue with any of these options. Counselling should be about exploring the options, with time given to the client to make her decisions based on her own values, beliefs and supports. Other elective surgeries are dealt with in this way, with transparent, independent counselling provided, so why would we not consider pregnancy counselling in the same way?

It is really quite important for people to understand that the bill defines non-directive counsellors as those who provide referrals for termination. Most commonly, services that provide referral for termination are also termination providers or services with connected business interests. So this counselling, at best, could be seen as pre-abortion counselling, and not independent counselling to explore all options regarding the decision whether or not to continue a pregnancy. There are very strong practice arguments for not referring to medical practitioners who work within termination clinics, and counsellors have an obligation to ensure that their clients receive both independent counselling services and independent medical advice.

Last year in the debates around RU486 we talked about the absolute agreement—more than 90 per cent of people in Australia believe this—that abortion levels in Australia are too high. So it is very important that we ensure that counselling services around pregnancy support include ensuring that people get information that gives them other options other than abortion. And yet this is what this bill is trying to address in a difficult and convoluted way. It is an unintended consequence of the way it has been drafted.

The argument in this bill is that, currently, counselling services that do not charge fees are not regulated in any way that might prevent them from engaging in deceptive behaviour or misleading advertising. It is of great concern to me that there are counsellors and counselling service providers who are not governed by legislation and are not bound to operate within the parameters set down by professional bodies. This is an issue that extends far beyond pregnancy counselling, to a range of services that particularly target vulnerable people.

Traditionally, if we talk about misleading and deceptive practices, they generally fall into four categories. Let us think about these categories in the context of the bill that is before us. They are, firstly, pretending to sell something that you do not have while taking money in advance; secondly, supplying goods or services which are of a lower quality than the goods or services paid for, or failing to supply the goods or services sought at all; thirdly, persuading consumers to buy something that they do not really want
through oppressive marketing techniques; and, finally, disguising one’s identity in order to perpetrate a fraud.

You can see that, in the debate that we have had so far, those arguments are implicit in the arguments that are being put in support of the bill. I absolutely agree that anyone seeking pregnancy counselling services should not be exposed to such fraudulent and deceptive practices. But we also have an argument that is being played out here that pregnancy counsellors should be value free. We know that that really is a nonsense. The staff of all reputable services are trained to adhere to the Australian Association of Social Workers code of ethics. There is a professional standard about this. But the campaign that has been around this bill has implied a very simplistic position that counsellors should be value free. All counsellors come to their role with a value and a belief system, just as we all do here. There is no such thing as a value-neutral or value-free counselling environment. This is acknowledged by health professionals who offer counselling, such as social workers or psychologists, but they are required, within their supervision, to reflect on their personal value and belief systems to ensure that they do not engage in directive counselling. But the view expressed in this bill of what is seen as directive counselling is very simplistic in terms of the understanding of values in the counselling environment.

We get to this argument about protecting women from misleading and unconscionable conduct—although not in the sense of the expression which I know Senator Brandis would use in respect of the Trade Practices Act—but I still remain very unconvinced that the bill will protect women in the way that proponents suggest. Truth and transparency in advertising is an issue that is much better addressed through professionalising the counselling services, accreditation mechanisms, registration processes and the development of professional standards, guidelines and codes of ethics to support high-quality impartial counselling services. I repeat: I am very unconvinced that the bill will have the effect of addressing this important matter. With regard to the argument that there are no avenues for consumers to make complaints about unprofessional services, I point to the range of state and territory consumer protection and health protection bodies which can serve this purpose.

Let us look a little more at the issue of deceptive advertising. The bill requires pregnancy counselling services to include the statement: ‘This service does—or does not—provide referrals for terminations of pregnancy.’ It is certainly entirely reasonable to require all services to declare the services that they provide, but why should any agency or business be required to advertise for services that they do not supply? Whether or not a prospective client determines from the advertising that the services he or she needs are not available from a particular agency is really a matter for the client. An agency that declares the services they offer is being neither deceptive nor misleading. If it declares that it offers alternatives to abortion, what else can that phrase be taken to mean other than exactly what it says? Surely it is a simpler approach that agencies that do make referrals for abortions should advertise that fact and state their own services. As I said, I really believe this truth in advertising argument is a nonissue.

I am sure it would be in the public interest if the Commonwealth published a comprehensive list of pregnancy counselling agencies that include not just the ones mentioned by other speakers but those clinics that currently advertise pregnancy counselling services but provide only termination services with no further counselling—in fact, they are the people who provide no support to a
woman who wants to continue her pregnancy, and profit from those who do not. (Time expired)

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (5.25 pm)—I know Senator Barnaby Joyce wanted to speak on the Pregnancy Counselling (Truth in Advertising) Bill 2006, as did Senator Guy Barnett. Both want to make some statements that they are pro life but unfortunately the schedule will not allow them to get up tonight. This bill purports to advocate truth in advertising about abortion. If that were really the case, abortion providers would tell women of the lifetime of emotional and sometimes physical pain that abortions can instigate. Everyone who considers abortion should first read Melinda Tankard Reist’s book Giving sorrow words, which is about women who have suffered so much as a result of abortion. Everyone who considers abortion should first read Melinda Tankard Reist’s book Giving sorrow words, which is about women who have suffered so much as a result of abortion. However, this bill comes from another angle. It is an attack on church groups who, as everyone knows, do not support abortion. They have a legitimate role in providing counselling. Often they are the only ones who are there for people in difficult circumstances. They are at the coalface of helping people in distress. They do not mislead in their advertising; they do not tell porkies.

This bill is a direct attack on them for daring to have a different view on whether abortion is a valid alternative to carrying a pregnancy to full term. This is an ideological bill that seeks to punish, censor and repress. It is intolerant. From a practical viewpoint, this bill does not achieve what it sets out to do. The explanatory memorandum says that the bill:

... would require services which do not provide referrals for terminations of pregnancy to declare this in their advertising and notification material, and services which do provide referrals for terminations to state that they refer for all options.

It also aims to redefine non-directive counselling into a counselling service which ‘will provide referrals to termination of pregnancy services if requested to do so’. So non-directive becomes directive. Independent neutrality becomes pro-abortion. The fundamental practical flaw in this bill is that its central concern is about referrals to abortion providers. It wants everyone to either offer referrals to abortionists or to state publicly that they do not provide such referrals.

That seems to be the overall thrust of the bill before the Senate, which ignores the most basic feature of abortion practice in this country. No referral is needed. Abortionists are not specialists requiring a referral from anyone. Anyone can go at any time to an abortion provider without a referral from anyone. Referrals have no official role in abortions. This bill fails to recognise that, which undermines its whole rationale. You need only go to the yellow pages in the Canberra telephone directory to see this. One advertisement under ‘Pregnancy counselling and related services’ says: ‘No referral necessary.’ Another sells its wares with the line: ‘Abortion four to 20 weeks, asleep or awake.’ Another says: ‘Abortion—same day services available.’ Another says ‘Same day consultation and procedure under intravenous sedation; approximately two-hour visit.’ In the yellow pages there is even a separate category, called ‘Pregnancy termination services’, so there is no doubt that everyone is very aware where they can go to if they want an abortion. It is very clear.

There is no need to persecute religious based groups for not providing abortion referrals, or for not saying they do not provide abortion services, when it is so obvious who does provide them—and referrals are not even needed. If we legislated to force providers of other services to state what they do not provide, we would be forever regulating in this parliament.
There are serious flow-on ramifications of the way this bill has been drafted. The definition of a pregnancy counselling service as a ‘service that provides advice to women and their support persons about pregnancy’ makes the group caught by this definition extremely broad. It would include all Catholic schools and hospitals, for example, because they would in the course of their activities provide advice about pregnancy. Under this bill, they would be forced to put up signs or make statements like, ‘This service does not provide referrals for terminations of pregnancy.’ Even IVF and fertility clinics would have to put up such signs, because of the broad definition within this bill.

If the movers of this bill were really concerned about women having all the information necessary to them when considering the fate of a pregnancy, they would have included the mandatory provision of an ultrasound with every counselling event. Then the woman would be able to see the life within her and be better informed as to what an abortion would mean to that new life. If the movers of this bill were serious about misleading advertising in pregnancy support services, they would insist that counsellors warn women of the pain that they may carry all their lives at the memory of an abortion.

The government’s move to offer pregnancy support counselling was a long overdue and most welcome initiative. Women facing unintended pregnancy will at last be given assistance with non-directive counselling by health professionals, independent of abortion clinics. The provision of a Medicare counselling item will allow women to be supported and informed about the choices and assistance available to them. I fully support more information being on the table about alternatives for women facing unintended pregnancies, because there has not been enough.

Most Australians are concerned about the high rate of approximately 90,000 abortions a year—or nearly one-third of all pregnancies. We pride ourselves on being a compassionate society, yet until now those 90,000 women had virtually no professional independent advice they could turn to for support, assistance and information. Despite the sensitivities and controversies of the recent debates on abortion, it is all worth it if we can move forward with such a progressive step as the government’s pregnancy counselling package. The new measures are expected to cost $51 million over four years. The helpline is expected to cost $15.5 million over four years. Medicare funded counselling is expected to cost $35.6 million over four years.

In contrast to the intent of the bill before us, the government’s measures will improve the availability of timely, confidential, professional pregnancy counselling for Australian women and their partners, including those in rural and remote areas. These measures are being implemented in consultation with professional groups. Training programs have been developed to support GPs, other health professionals and phone counsellors, with pregnancy counselling skills. The government has adopted a broad, compassionate, practical and generous approach to helping women facing unintended pregnancy. The bill before us, in contrast, is narrow, ungenerous and impractical. Its real agenda is to tie the hands of those who do the most to help. I will not be supporting the bill.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.34 pm)—Family First is strongly opposed to the Pregnancy Counselling (Truth in Advertising) Bill 2006 because it seeks to overturn the current system of pregnancy counselling and replace it with one which pushes agencies to become involved in abortion referrals. The bill seeks to do this in four steps. First, it identifies
community groups that the bill’s sponsors disagree with—those being pregnancy counselling groups that do not refer for abortion. It then takes the definition of their work, which is non-directive pregnancy counselling, and redefines it in the bill to what is, in effect, directive counselling that includes abortion referrals.

The third step is to accuse anyone of being misleading and deceptive who does not meet the new definition. Finally, the bill’s sponsors aim to penalise any group or person who does not bend to their will. Family First is extremely concerned about this bill and its consequences, particularly in the light of the harsh penalties it contains. The consequences of failing to meet the bill’s requirements are severe indeed: fines for individuals of $220,000 and fines for incorporated bodies of $1.1 million.

Let us look at the community groups. The Senate Community Affairs Legislation Committee reported on an earlier version of the bill last year. The committee majority report did not support the bill. It was interesting in the committee hearings how much the senators focused on pregnancy counselling groups they did not agree with. In fact, I recall asking the chair whether senators could confine their questions to the bill itself, rather than the operations of the various groups they took issue with.

It is disturbing that the bill effectively accuses the many good people working in pregnancy counselling agencies—many of them volunteers—of being deceptive. It accuses these people—mostly women—of lying to the women who approach them. Family First deplores this behaviour by the bill’s sponsors, which is motivated by the fact that others do not share the same ideological views.

It is instructive to look at one of the bill’s sponsors’ websites, which lists what it calls ‘genuine’ pregnancy counselling services as opposed to what it calls ‘deceptive’ counselling services. The bill corrupts the notion of non-directive counselling. It says that to be non-directive you have to be willing to direct your client to an abortion clinic. There is nothing non-directive about that. Unless a pregnancy counselling service is willing to comply with the bill’s support for abortion, the service has to include in all its advertisements and public material the statement: ‘This service does not provide referrals for all pregnancy options.’

Even the Department of Health and Ageing disagrees with the bill’s dodgy definition of non-directive counselling, saying:

Counselling is really about the process of supporting decision making and ensuring that the counsellor assists the client to explore their feelings in relation to the issue. The issue of what happens once the client has made the decision and whether there is ongoing referral is a different issue from whether nondirective counselling is being provided.

Family First believes it is important to stress that pregnancy support agencies that declare a conscientious objection to providing a referral for abortion do still provide information to women on all their options, including abortion. All they do not provide is a referral. Mrs Garratt from Pregnancy Help Australia said:

All our counsellors are trained to say, ‘We cannot provide you with a referral for termination services. We can, however, talk to you about your options and give you information about abortion procedures, et cetera, if that is what you want to do.’

Ms D’Elia from the Caroline Chisholm Society stated:

We do not refer for the termination of a pregnancy. We are not medical practitioners. That is the role of a medical practitioner. But we are happy to talk about all the options that are available for a woman to explore. We do explore all three options that are available. If someone was to
ask for a referral for termination we would say that it is really important for them to seek further counselling and support from their GP or local hospital. We do not provide a direct referral to a termination clinic; we believe that it is important for there to be the intervention of a medical practitioner in that process.

Further, the Caroline Chisholm Society argued:

We would be very clear that we are not directive within our counselling and yet having to state that openly works in the reverse, if you like. By stating that I am not a non-directive service under your definition then in fact what I am stating is that I am directive, and my social workers would walk out on that basis, and rightly so, because they would be misrepresented by the organisation if I were to sign a form that effectively said they were directive counsellors.

In conclusion, Family First believes that much of what the sponsors say in support of their bill is in fact a complaint about the quality of pregnancy counselling. It is worth noting that in the Senate committee inquiry there was unanimous agreement that the standard of pregnancy counselling in Australia could be improved. Family First believes this should be a priority to ensure all women get the help and support they need. Instead of targeting particular groups for ideological reasons, we should invest our energies in establishing a proper standards and accreditation system so women do not feel rushed to make a decision, so counselling services are separate to abortion clinics and so all women are aware of practical alternatives to abortion.

Senator WEBBER (Western Australia) (5.41 pm)—I would like to start my contribution by commencing where Senator Stott Despoja did, and that is by congratulating the co-sponsors of this important piece of legislation, the Pregnancy Counselling (Truth in Advertising) Bill 2006, and by expressing the wish that the cross-party work between women in this place continues. In the five years that I have been a member of this place, one of the things that I have enjoyed most has been working with the other women in this chamber, no matter which political party they belong to. I particularly want to congratulate my good friend Senator Carol Brown for assisting in bringing this important piece of legislation forward today.

A report in the 23 April 2007 issue of Archives of Internal Medicine showed further evidence that neither induced nor spontaneous abortions were associated with an increased risk of breast cancer in premenopausal women. This followed a 2003 international expert panel convened by the National Cancer Institute, which reviewed and assessed research regarding reproductive events and the risk of breast cancer and concluded that, based on existing evidence, induced abortion is not associated with an increased risk of breast cancer. Obviously this is very good news for the many women who experience terminations and miscarriages.

But there are still some pregnancy counselling services who insist on telling vulnerable women that they risk breast cancer if they have an abortion. Were they to charge for this supposed service, they would be in clear breach of the Trade Practices Act. But, because they provide this service for free, there are no legal methods of preventing them from exploiting vulnerable women or punishing them for making false and dangerous claims to those women. That is the very reason that I rise to speak today on this important piece of legislation.

There has been a lot of talk recently about Australian values. I am sure that all of us in this place are largely in agreement that at the very least Australians value honesty, freedom and a fair go. We are generally of the view that the best person to make decisions about how to live is the person whose life it is—that is, after all, the basis of a free society.
But people cannot make informed decisions if they make them on the basis of misleading or false information. That is why we prosecute companies who make false claims in advertising a product or mislead people about the nature of the services that they are paying for—and that is all we are attempting to do here today. We are making sure that when a woman is faced with an unplanned—some say unwanted or difficult—pregnancy, she is able to choose the service that is most relevant for her.

Some providers have tried to claim that they choose to outline the risks of abortion in the interests of providing full information so that women can make a fully informed decision. On the surface, this sounds like a reasonable claim, but a quick look at the websites of these agencies shows how this argument has been twisted. Looking at sections on continuing a pregnancy, you will see a discussion about the possible effects on a woman’s life—on her educational and employment concerns, her feelings about her family and the father of the child and her feelings about becoming a mother. There is no talk about the many risks associated with pregnancy and childbirth, including—rarely, I admit—death, and nor should there be. These are issues for her to discuss with medical professionals and not with telephone counselling services.

However, click on the pages concerning abortion and you will find mountains of statistics and talk of steel instruments and infections in an attempt to scare women out of considering a relatively safe procedure—indeed, safer than childbirth. If abortion is as dangerous and damaging as these false providers believe it is, they should not need to resort to misleading women. If they are genuinely interested in educating women, they should be honest enough to provide women with information about the many health risks that come with pregnancy also, no matter how small those risks are.

Some claim that this bill seeks to prevent anti-abortion providers from continuing in their role. This is simply not true. Many women have never considered and would never consider terminating a pregnancy. They do not need a service that will discuss that option. Genuinely pro-life organisations can continue to help these women by providing support and comfort, whether those women choose to keep their baby or put it up for adoption. But many women are open to all options—examples of which have been discussed earlier today in this chamber—because the pregnancy they are concerned about is unplanned. They are therefore genuinely undecided. These women need to know that the service they ring or visit is open-minded and honest and will not judge or coerce them into making a particular decision. All this bill requires is that services that do not meet this description not pretend that they do. Is that so much to ask?

A woman’s time is just as valuable as her money, in my view, and she does not need to have either of them wasted by misleading advertising. I do not believe that this is too great an imposition on any provider. But, more importantly, the right of providers to attract women to their service by whatever means necessary must not override a woman’s right to make decisions based on facts—not on lies and deception—whether that decision is in choosing the provider to speak to or whether or not to proceed with her pregnancy.

I would like to make it very clear that there are many pro-life agencies that provide a compassionate and high-quality service to many women. They do not try to mislead women and trick them into using their services. They rely simply on being very good at their job of counselling women who are
experiencing difficulties. There are also some very vocally anti-choice organisations that make it clear that they oppose abortion and want to dissuade women from that option. I do not necessarily agree with their views and am happy to debate their arguments with them, but I am also happy to acknowledge that they are very clear in their motives. But not all agencies are respectful of a woman’s ability to make choices about her health and her future. Some agencies use language that, to someone like me, is very obviously code for anti-choice agencies; but to a woman who is unfamiliar with these tactics it may sound very welcoming and compassionate.

For instance, at the moment in the Perth yellow pages there is an ad for an agency that says:


and it gives you the phone number and then it says:

and speak to someone who cares.

Not once in that ad is it disclosed that that agency will try and actively dissuade you from choosing one of the three options, it will not refer for one of the three options and, in fact, it will behave in the way that I have alluded to earlier. It will say such things as ‘if you choose abortion as the option, you may never have any more children, as there is an increased risk of infertility; you will get breast cancer’—and the lies go on. Not once in that ad is it made obvious that that service provider does not and will never support one of the three options.

However, if I were a young and vulnerable 16- or 17-year-old woman, and fortunately I am not, and were to read that ad, I would presume that words such as ‘needing help’, ‘want someone to talk to’ and ‘confused’—‘confused’ particularly—meant that you were going to canvass the full range of options about the decision I had to make in a non-judgemental, non-directive way. However, at the moment when agencies like that say to vulnerable young women, ‘We don’t support you having a termination; if you do, you’ll get breast cancer, you’ll never carry a pregnancy to full term,’ and other ridiculous statements, there is nothing we can do. Because vulnerable young women do not pay for that counselling, that agency cannot in any way be prosecuted for its misleading, deceptive and cruel behaviour towards them.

If people in this chamber think this is not an issue that we should be concerned about, that it is all quite clear and people should be allowed to behave like that, as Senator Carol Brown said earlier, it would seem that even the yellow pages publishers themselves no longer agree with that view. They seem to think there is something going on out there and that people are being a bit deceptive. They are concerned that people who use their phone directory to find a particular service are able to find the service that is right for them.

If that were not the case, why else would Sensis themselves go to the trouble of placing an ad right at the front of ‘Pregnancy Counselling & Related Services’ in every edition of the yellow pages published this year throughout Australia that says:

We recommend that you fully understand the type of service each organisation offers before you contact them.

How are we meant to understand the full type of service that each organisation offers when they published ads like the one I have mentioned:

Are you pregnant? Alone? Need someone to talk to?

How are we to get an understanding from that ad that this service automatically dis-
misses one of the only three options available to young women? It is deceptive, but there is nothing we can do about it. Even if some of the other speakers in this debate do not agree with my view on that, it would seem Sensis themselves actually do.

To pretend that there are providers out there who try to trick women out of continuing with their pregnancy, as has been alluded to by Senator Fielding, is an absolute nonsense. To imply that there are only two kinds of provider—one that pushes abortion, and one that pushes pregnancy—is ridiculous and offensive to providers on all sides of the debate. Indeed, there are quite clear ads in the Perth yellow pages from providers that actually do provide abortion. Those ads are very clear. They say they will refer. Some of them do not actually advertise in the counselling section; they advertise in the abortion section—unlike what Senator Fielding was alluding to—because they actually provide the service.

In coming to this debate, we must separate our own very personal views about abortion from the issue at hand. The issue at hand is the need of pregnant women to be provided with a supportive environment that respects their decision-making abilities. That is all we are asking for today—for respect for decision making and open and transparent advertising by those that advertise those services.

It is a pity Senator Fielding is not still here. During his contribution earlier I was saying to someone that I did not actually recall Senator Fielding being at all of the committee hearings into the first draft of this legislation. So it is interesting that he has a view about the conduct of the entire inquiry and how it was carried out. I will concede that from time to time things did get a little bit heated—on both sides of the debate; not just in what people perceive as my side or Senator Fielding’s side. Sometimes they did get a little heated and I did not envy the job of the chair in dealing with those issues. But I do not recall him being there for all of the hearings—

Senator Barnett—He was there for some of them.

Senator WEBBER—He was there for some of them, indeed, Senator Barnett. But some of us on this side are getting a little tired of Senator Fielding coming in and quoting committee reports as if he was an integral part of all inquiries when in fact we rarely see him at them. A year or so on it does get a little bit hard to bear.

I recall the Festival of Light in Adelaide getting very defensive about the services they offer, because they do provide some of the advice I was alluding to earlier. One of the things I do agree with Senator Fielding on is some of the evidence given by the Caroline Chisholm Centre. I would urge all service providers, including those from Pregnancy Help Line, to look at their recommendation that all counsellors should be trained professionals registered with their relevant professional body. That may be a way out of this. It may be a way of ensuring that we deliver a truly professional standard of counselling.

That was in evidence given by the Caroline Chisholm Centre, and it is something that I agree with. To do that, of course, those services would have to be government funded or they would have to charge for their services, because there are not many professionals of that calibre who are prepared to operate a 24 hours a day, seven days a week phone line free of charge. Having said that, when the Caroline Chisholm Centre raised that as an issue, the Festival of Light—in Adelaide in particular—did not like that idea. They did not like the idea that they may actually be compelled to use professional counsellors who are registered with their
relevant professional body—counsellors who have recognised tertiary qualifications in how to provide non-judgmental, non-directive counselling, as would be implied by an ad that says:

Are you pregnant? Alone? Need someone to talk to?

People like the Festival of Light do not like that idea at all. Why would you not want to use professional counsellors? Why would you not want to use professionals? Why would you not agree, if you refuse to discuss one of the three options and refer to one of the three options, to advertise accordingly? People like me are left to draw one particular conclusion—because you do want to mislead and because you do want to manipulate vulnerable women, particularly young women, into phoning your service to then try to guide or coerce them into a decision that you as someone who has never met them before in your life judge to be in their best interest. It is not my job to judge what is in their best interest and it is certainly not the job of some of these people volunteering on some of those counselling lines. It is our job in this place to ensure that people do not mislead or deceive and that we do have an open and transparent process.

The only protection these services have at the moment is that no-one pays, and because no-one pays they can get away with an awful lot of bad behaviour. If it were a commercial transaction they would find themselves in court very quickly. Imagine if these people were offering to sell you something and then they said, ‘We only want to sell you two-thirds of it but not the other third.’ It is deceptive, it is misleading, and it is exploiting some vulnerable women at a very vulnerable stage in their lives. It is our role as legislators to separate our personal views on termination from the way drugs are treated in an administrative process of access and who is best able to determine safety. It is inconceivable to me that anyone could object to such a simple notion as transparent advertising for counselling services.

Debate interrupted.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! The time allotted for this debate having expired—

Senator Barnett—Mr Acting Deputy President, I seek leave to record my opposition to the bill.

The ACTING DEPUTY PRESIDENT—Senator Barnett, there has not been a vote. There being no vote I am not sure there is a process for you to record your opposition. The time for the debate has expired.

Senator Barnett—Yes, I appreciate that, but I would like to put it on the record that I oppose the bill. I am not voting on the bill but I am recording my opposition. I know there are others who would like to do the same.

The ACTING DEPUTY PRESIDENT—Senator Barnett, your opposition is already on the record. Because the time has expired, you do not have a right to speak.

DOCUMENTS

Commonwealth Grants Commission

Debate resumed from 1 March, on motion by Senator Ian Macdonald:

That the Senate take note of the document.

Senator BARNETT (Tasmania) (6.01 pm)—I would like to refer to the Commonwealth Grants Commission Report on state revenue sharing relativities: 2007 update and its relevance to Tasmania—specifically, the considerable benefits that Tasmania is now receiving as a result of the windfall gains of GST revenue. I want to put it on the record that this report makes it very clear, and the
federal budget statements make it very clear—as indeed the Tasmanian budget statements make it very clear—that in this financial year the Tasmanian government will receive a windfall gain of $117 million in the 2007-08 year. That will give the state government an opportunity to axe state business taxes, as was agreed back in 1999. It would also provide the opportunity for the state government to do other things. For example, it could fund 3,500 jobs. It could build six new high schools in Tasmania. We have had a debate in the last day or so about the number of schools that are about to be closed by the state government. It could build 12 new district hospitals. It could buy 805 new ambulances. It could build 483 housing division homes. The GST revenue windfall gain to Tasmania makes it very clear that the state government has a responsibility to the Tasmanian people to use that money wisely, either in cutting taxes or ensuring that essential services are provided, particularly in the areas of health, education, police and so on.

In terms of the ongoing windfall gain, I want to make it clear that the GST windfall from 2003 to 2011 is humungous in size. In 2003-04 it was a $69.5 million windfall gain; in 2004-05, $106.1 million; in 2005-06, $102.2 million; and in 2006-07, $109 million. In 2007-08, it will be $117 million, as I have just indicated; in 2008-09, $131 million; in 2009-10, $140 million; increasing to a $152 million windfall gain in 2010-11. They are very significant numbers. So during that time the estimated GST windfall gain to the Tasmanian government is $927 million more than it would have received under the old tax system—the old tax system that federal Labor supported, the system that the state Labor government supported. They opposed tooth and nail the GST and the introduction of tax reform in and around 2000. The government moved ahead, with good economic management, which is a symbol of this government, and introduced these tax reforms—and what has happened? You have seen the windfall gains to Tasmania. That is approaching $1 billion by 2011. That is a huge amount of money.

So what has that tax reform actually done? At the federal level the tax reform ordered by the Howard government to make way for the GST has reduced or abolished the wholesale sales tax; income tax has been reduced, with 80 per cent of the population now on a 30 per cent marginal rate or less; company tax has reduced; and capital gains tax has reduced. At the state level the financial institutions duty has been abolished, the debits duty has been abolished, the various stamp duties have been abolished—but there is lot more to come. There is a lot more for the state government to do with the rivers of gold that they have in GST dollars flowing into the state of Tasmania—and, indeed, into all of the states of our great country, Australia.

The state government payroll tax is a tax on jobs. This is a particularly iniquitous tax. Tasmania has been benefiting from that tax significantly. That revenue increase in the 2003-04 year to the 2006-07 year was 34.6 per cent. So they should use the GST windfall to start phasing out this anti-jobs tax, in my view. This report makes it clear that the rivers of gold are flowing deep and fast into Tasmania with GST dollars. It is up to the state government to use those dollars wisely. (Time expired)

Question agreed to.

_Migration Act 1958: Section 486O_

Debate resumed from 9 May, on motion by Senator Bartlett:

That the Senate take note of the document.

**Senator BARTLETT** (Queensland) (6.09 pm)—In continuing my remarks on this, I note that a further report was tabled yester-
day citing 62 cases of people in long-term immigration detention. This other report, which was tabled back in May, contains a further 12 cases. These are continual reminders that the harm and damage being done by detention is continuing, as is the expense to the Australian taxpayer. For the moment I remind the Senate and the public of that fact, and at a later stage I will go through the specifics of some of these cases. I seek leave to continue by remarks later.

Leave granted; debate adjourned.

**Australian Livestock Export Corporation**

Debate resumed from 13 June, on motion by Senator Bartlett:

That the Senate take note of the document.

Senator BARTLETT (Queensland) (6.10 pm)—This is the report for 2005-06 for LiveCorp. Live exports of predominantly sheep and cattle have been a contentious issue in Australia for many years. Indeed, I think over 20 years ago there was a Senate committee report put out by the Senate Select Committee on Animal Welfare. This was established on the motion of the late Democrats Senator Don Chipp to examine a whole range of things, but this particular report was on the live export trade. The committee at that time made the statement that if you were going to assess the trade solely on animal welfare grounds you would want to get rid of it. Other factors, including economic factors, were such that the committee recognised getting rid of it straight away was not appropriate.

Between then and now we have had some improvements in animal welfare but still very significant problems and a massive expansion in the trade. As this report notes, we get $4.19 billion from live cattle and sheep exports. That is over five years, I might say. I am not dismissing the significance of $800 million or so a year, but it always sounds better to say ‘over five years’ rather than ‘over one year’. It is less than $1 billion a year. I also note that the slaughtered and processed meat trade is significantly greater than that. We have seen time and again over the years, in periods when the live export trade to particular areas has been suspended—usually because of a catastrophe, a scandal or a major animal welfare problem—that to fill the gap there has been an increase in the trade in meat processed in Australia.

We have had all sorts of furphies over the years about how there is no replacement or alternative, how it has to be slaughtered in the Middle East due to religious reasons or because they do not have fridges—all sorts of things. Frankly these are a bunch of furphies. There is a larger trade there that is value added and produces jobs in Australia, but there is not the focus put on developing that. I have spoken to people who are active in this industry who are quite prepared to acknowledge that there is capacity within the Australian market to fill the gap were the live export trade to be phased out. I am not saying that it could be done with the click of a finger and without some impacts. I recognise that it should be done in a way that minimises any economic and employment impacts. But there would be a bigger trade there if the same amount of energy were put into promoting and expanding it. I also say—and this slips off into other topics that I have talked about often—that there are issues with regard to labour force capacity in Australia at meatworks and the like. I am not diminishing those. All I am saying is that it is quite clear that the potential is there for an alternative.

The second thing I want to emphasise in this report, and I quote the chairman’s message, is that animal welfare issues have remained in focus in the previous year. He specifically said that the industry must be diligent and persistent in its response to community concerns on animal welfare and realistic about the expectations it has of Live-
Corp in the current climate. The industry is being diligent in response to community concerns, but it is being diligent in trying to belittle, dismiss or discredit them; it is not being diligent in trying to address them adequately. I do accept that there have been some improvements, but they have not been adequate.

We saw footage on television not too long ago of the conditions these animals are sent to in Egypt, for example, which are an absolute disgrace. The last time that happened, the minister had a review, as he always does, and put out an MOU and said, ‘This will fix it.’ There was more footage after the MOU was put out showing that the situation was just as bad. The government does not even bother pretending anymore; it knows it cannot enforce the MOU or adequate standards at the other end and it is just not going to do anything about it. I believe that is unacceptable. I would remind the Senate that the largest petition by a long way that has been tabled in this place in recent years, with 130,000 plus signatures, has been from Australians wanting something done about this trade. It is well and truly overdue for us to do more to remove this unnecessarily cruel trade. The alternatives are there if the energy and will is there. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Australian Political Exchange Council

Debate resumed from 13 June, on motion by Senator Bartlett:

That the Senate take note of the document.

Senator BARNETT (Tasmania) (6.15 pm)—I want to speak to the Australian Political Exchange Council annual report 2005-06 and commend it to the Senate and the public. It is an impressive document and I want to highlight the report of the 15th Australian delegation to China—

Senator Webber—There will be a 16th one soon.

Senator BARNETT—that took place from 28 June to 7 July 2006. I note Senator Webber’s interjection. She was involved in a delegation to China earlier this year, which she led. Likewise, I had the honour of leading the delegation to China during the period I mentioned and it was most informative and enjoyable. The members of the delegation included me, as leader, Mr Mark Powell, Federal President of the Young Liberal Movement; Andrew Conway, adviser to the Hon. Chris Pearce MP and federal Parliamentary Secretary to the Treasurer; Ben Wyatt MLA, state member for Victoria Park in the Western Australian Legislative Assembly; Mr Mark Butler of the Labor Party, Secretary of the Liquor, Hospitality and Miscellaneous Workers Union and recently endorsed Labor candidate for the federal parliament; and Bridget McKenzie, Junior Vice-President of the National Party in Victoria. David Wilson was the representative of the Australian Political Exchange Council.

This was the 15th Australian delegation to China and it was hosted by the All-China Youth Federation. We travelled to Guangzhou in Guangdong province. We went to Yichang and Wuhan in the Hubei province and our delegation concluded its 10-day visit in Beijing. In the report that I prepared on behalf of the delegation, we indicated some reflections and views on the Australia-China relationship, saying that it has never been closer and that the relationship, which officially commenced in 1973, is based on mutual respect, recognition of our shared interests and differences and a desire for peace, social stability, economic growth and prosperity.

In terms of the highlights of the delegation visit, we wanted to note the importance of the Australia-China free trade agreement
and, in particular, the recent visit of Premier Wen Jiabao and his meeting with Prime Minister John Howard. On the first day of our visit to Guangzhou, Prime Minister John Howard was in the same province signing an agreement for the export of liquid natural gas from Western Australia to China. It certainly underlined the importance of the free trade agreement negotiations. Five rounds of negotiations had been concluded at the time of our visit to China.

We met many government officials and were very honoured by the respect and regard that they held for Australia and for our delegation. We talked about the economy and economic reform and we noted that economic growth in China has averaged just less than 10 per cent over the last three decades and that it is expected to decrease a little but nevertheless remain at a very high growth rate over the next 10 years, certainly in the seven per cent to 10 per cent range. Of course, that is good news for Australia as China is a very key trading partner of our great country.

As a Tasmanian senator, the visit to the Three Gorges Dam was a very special event for me. It is the largest hydro facility in the world. It is in Yichang. Because it is important to Tasmania, it was absolutely fascinating to me. For the successful building and development of that dam they actually relocated one million Chinese people. The scale of the dam is quite amazing.

We were briefed on the Beijing Olympics, which are scheduled for 2008. We looked at the merit of economic development zones and education and cultural exchanges and we were briefed on the North Korea and Taiwan situation and some of the concerns that we hold regarding human rights and terrorism. All in all, it was a very successful delegation and it was a great honour to be part of it.

Question agreed to.

Consideration

The following orders of the day relating to government documents were considered:

Forest and Wood Products Research and Development Corporation—Report for 2005-06. Motion of Senator Ian Macdonald to take note of document agreed to.

Australian Broadcasting Corporation (ABC)—Report for 2005-06. Motion of Senator Ian Macdonald to take note of document agreed to.

Australian Fisheries Management Authority—Report for 2005-06. Motion of Senator Ian Macdonald to take note of document agreed to.


Wheat Export Authority—Report for 1 October 2005 to 30 September 2006. Motion of Senator Moore to take note of document agreed to.

Migration Act 1958—Section 440A—Conduct of Refugee Review Tribunal reviews not completed within 90 days—Report for the period 1 July to 31 October 2006. Motion of Senator Moore to take note of document agreed to.

Migration Act 1958—Section 91Y—Protection visa processing taking more than 90 days—Report for the period 1 July to 31 October 2006. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

Bilateral treaty—Text, together with the national interest analysis and annexures—Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes, done at Canberra on 6 December 2006. Motion of Senator Ian Macdonald to take note of document agreed to.

Regional Forest Agreement between the Commonwealth and the State of Tasmania—Variation, dated 23 February 2007. Motion of Senator McGauran to take note of document called on. On the motion of Senator Barnett debate was adjourned till Thursday at general business.

Australia–Indonesia Institute—Report for 2005-06. Motion of Senator McGauran to take note of document called on. On the motion of Senator Ian Macdonald debate was adjourned till Thursday at general business.


COMMITTEES

Environment, Communications, Information Technology and the Arts Committee Report

Debate resumed from 9 May, on motion by Senator Bartlett:

That the Senate take note of the report.

Senator BARTLETT (Queensland) (6.22 pm)—I would like to speak to this report, the environment committee’s report Conserving Australia: Australia’s national parks, conservation reserves and marine protected areas. It is quite a substantial report, 350 pages, and has 18 recommendations. It is a report I feel has not received adequate attention. Unfortunately, it was tabled out of session; it did not get significant debate in the Senate. It contains a lot of important recommendations. All bar one of the recommendations is unanimously supported by the committee across the board, and that to me reinforces the value of those recommendations.

The first thing I want to point out—and it flows on from my comments this afternoon about the disgraceful tardiness of the government in responding to committee reports like this one; a substantial piece of work—is
that two of the recommendations contained in this report relate to the government not yet responding to the report from the same committee from 2004 about invasive species. There were mountains of evidence given to this inquiry about the significant impact of invasive species, weeds and the like, escaped aquarium fish and other things causing immense environmental impact as well as economic harm throughout the country, including in protected areas. Frankly, the government cannot pretend it is being serious about this when it is yet to provide a formal response to a comprehensive Senate committee report into just that issue from three years ago.

Another recommendation I want to emphasise is the final one, which requested the Commonwealth to consider substantially increasing funding for World Heritage areas. One of the problems in this area, as with many, is that you have all the finger-pointing about how much the feds should put in and how much the states should put in. The committee tried to stay out of that argument. It recognises that national parks in general are predominantly a state matter, but clearly World Heritage areas do entail a federal responsibility. Of course there is direct responsibility under the federal environment protection act, which the Democrats were pivotal in strengthening and passing in 1999, but we have not had consistent regular funding around World Heritage areas from a federal level.

One example of this is the wet tropics World Heritage area, which covers from the Daintree, past Cairns, south down to Cardwell and almost to Townsville. It is an incredibly important area with massive biodiversity. The committee had the privilege of flying over part of that area to Mission Beach, where there are significant risks with continuing development that is threatening the survival of cassowary in the region. We visited Mossman Gorge, which is featured in this report, which is under significant pressure from visitation but which also has significant opportunities for engagement with local Indigenous people. But the lack of certainty and the inadequacy of funding for the Wet Tropics Management Authority, which is doing such very important work in that area, is holding back the potential of what that area can deliver. It is putting at risk the World Heritage values of the wet tropics World Heritage area. It is holding back the potential for major engagement of Indigenous communities. Eighteen different Indigenous tribal groups have come together and formed a regional agreement under the Aboriginal Rainforest Council, including with the Wet Tropic Management Authority, and there is some amazing potential for properly integrating the continuing cultural reality of the wet tropics area with the biodiversity—the ecological values—but it is being held back because the resourcing is not there. It is a clear area where the federal government can do more and it would deliver great benefits.

I link to that the recommendation about endorsing a recent report, the Gilligan report, which also recommended substantially increased funding for Indigenous protected areas. These not only help strengthen the ecological values of many areas but provide employment opportunities and meaningful connection to country and tap into the immense knowledge that Indigenous people have in land management.

The other recommendation I want to stress goes to that point: recommending that all governments give greater priority to Indigenous knowledge and participation in park management. As a nation we have grossly undervalued the immense knowledge that is there and continues to be there with the traditional owners and other Indigenous people in managing country. The reason so many of
these areas still have great ecological values is that they were managed by Indigenous people in a way that enables them to remain sustainable. That is a very important recommendation and I urge all governments to do more.

I note the Queensland government has moved down that path—finally. In evidence given to the committee in Cairns, the Cape York Land Council and others expressed a lot of frustration at the inability of Queensland Parks and Wildlife Service to enable proper engagement of Indigenous people with management of national park areas. I was pleased to see just recently an announcement by the state government that legislation has been introduced that will finally enable joint management of national park areas under Indigenous land use agreements with Indigenous people in the Cape York area. That is a very positive thing. I was speaking on this in the Senate yesterday; I would like to touch a little bit further on the point I was making then. One of the hurdles and frustrations in that area goes back to protected areas having an effect of locking out or disempowering traditional owners and Indigenous people. It is clearly part of the frustration that occurred recently in the north over the wild rivers legislation, but that has also been addressed as part of the agreement. I note that Noel Pearson has said that the wild rivers legislation will be amended to protect native title rights and interests and to provide for mandatory water allocations for Indigenous communities in each of the catchments on the cape affected by the wild rivers declaration. This is an important and positive step.

It had been a source of great tension between some Cape York Indigenous people, including Noel Pearson, and the Wilderness Society. I have been critical of the Wilderness Society in the past, and I have certainly been critical of environmentalists who undervalue the immense knowledge that Indigenous people have. I spoke in this place last year criticising William Lines, an environmentalist who I should say is not directly associated with the Wilderness Society. He was quite derogatory in denying the reality of Indigenous involvement and knowledge in managing country. We need to be encouraging more people in the environment movement to recognise this reality, and that is why I would repeat my call to those on the cape, now this issue has been resolved, to back away from further criticisms with regard to particular individuals in the Wilderness Society who have been singled out. Lyndon Schneider and Anthony Esposito are two environmentalists who I believe have done more than most to try to work with and engage with Indigenous people and to ensure their expertise is recognised and that employment opportunities are produced from that. It sends a dangerous message to the wider environment movement if they see some of those who have done the most over the years being singled out and attacked. We can all criticise, and I have done that myself; it is time now to work constructively. I think the opportunities are there to do that, and we really need to try to focus on that. I seek leave to continue my remarks later.

Leave granted; debate interrupted.

Consideration

The following orders of the day relating to committee reports and government responses were considered:


Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Review of Australia-New Zealand trade and investment rela-
tions—Government response. Motion to take note of document moved by Senator Webber. Debate adjourned till the next day of sitting, Senator Webber in continuation.

Foreign Affairs, Defence and Trade—Standing Committee—Report—Cluster Munitions (Prohibition) Bill 2006. Motion of Senator Bartlett to take note of report agreed to.


Sitting suspended from 6.30 pm to 7.30 pm

CORPORATIONS LEGISLATION AMENDMENT (SIMPLER REGULATORY SYSTEM) BILL 2007
CORPORATIONS (FEES) AMENDMENT BILL 2007
CORPORATIONS (REVIEW FEES) AMENDMENT BILL 2007
FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS LEGISLATION AMENDMENT (CHILD CARE AND OTHER 2007 BUDGET MEASURES) BILL 2007
MIGRATION (SPONSORSHIP FEES) BILL 2007

First Reading

Bills received from the House of Representatives.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (7.31 pm)—These bills are being introduced together. After debate on the motion for the second reading has been adjourned, I shall move a motion to have two of 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 BRANDIS (Queensland—Minister for the Arts and Sport) (7.32 pm)—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—

CORPORATIONS LEGISLATION AMENDMENT (SIMPLER REGULATORY SYSTEM) BILL 2007

The Government is delivering on reducing the regulatory burden for Australians. Australia is experiencing one of the most successful periods of economic growth since Federation. The current unemployment rate is at a 32 year low of 4.4 per cent; business investment continues to be strong, and both business and investor confidence is high. This is evidenced, for example, in the growth of the managed funds industry, which recently increased to $1.1 trillion in consolidated assets.

These results have not been coincidental. The management of the Australian economy over the last 11 years has involved consistently sound decision-making and prudent judgement. The Government has focused on the three policy levers of productivity, population and participation as the key elements to forging this success.

We, in the Howard Government, have determined that cutting red tape is one of the most important investments we can make in enhancing productivity gains. One of the ways I believe we can do this is by looking at options to allow business to get on with conducting business.

The Government recognised the importance of this in commissioning the Banks Taskforce to identify practical options to reduce regulatory burdens on business. In response to the Taskforce’s recommendations, the Government has implemented a number of initiatives, including improved regulation-making and as part of that, an expanded role for the new Office of Best Practice Regulation to ensure objective, comprehen-
sive analysis of compliance costs and competition impacts of all regulatory proposals.

Further, the Government is also focusing on its commitments under the regulatory reform stream of the COAG National Reform Agenda to reduce the regulatory burden imposed by all three levels of government, and is developing an annual red tape reduction agenda, informed by annual reviews of regulation undertaken by the Productivity Commission.

Today I introduce a package of measures that will further deliver on the Government’s commitment to reducing red tape. This Bill will make the corporate and financial services regulatory system simpler.

By contributing to greater business efficiency and productivity, the Bill will, in turn, contribute to economic growth and better living standards for all Australians.

The Bill is the culmination of extensive consultation with stakeholders. It shows that when this Government sets out to reduce red tape, it delivers.

Despite some suggestions to the contrary, the feedback from the community has shown that there are no easy solutions when dealing with the important balance between maintaining investor protections, and enhancing business productivity. This Government has tackled these issues though, and is committed to simpler regulation.

The outcome of the consultative process with the business and investor community is a package of 32 measures to simplify and streamline Australia’s corporate and financial services laws.

The Bill will reduce the burden of regulation in the areas of:

- financial services regulation;
- fundraising;
- company reporting obligations;
- auditor independence;
- corporate governance,
- takeovers; and
- general compliance.

The provisions in this Bill will achieve better disclosure outcomes, enhance auditor independence and improve enforcement arrangements in the event of corporate misbehaviour.

The Bill will amend various provisions of the Corporations Act 2001 and related Acts, to improve the efficiency of corporate and financial services regulation. The majority of these provisions are based on the proposals outlined in the Corporate and Financial Services Regulation Review Proposals Paper, which I launched in November last year.

Over one hundred submissions were received in response to this paper, which emphasises the significant interest that both industry and consumer representatives have in progressing these reforms. The Bill, importantly, includes some additional measures to address issues which arose during consultations.

The Bill will also implement the Government’s response to several recommendations relevant to corporate and financial services regulation, which were made in the Rethinking Regulation report of the Banks Taskforce.

The second intergenerational report clearly indicates that our future prosperity depends on the policy decisions that we make now: The establishment of the Future Fund and the reform of the superannuation industry are examples of how this Government is setting the foundations for long-term economic prosperity, rather than solely concentrating on short-term financial gains. This Bill builds on these reforms by facilitating improved access for investors to sound and affordable financial advice.

In this way, the Bill also complements the policies being progressed through this Government’s superannuation reforms, by improving all Australians’ ability to plan effectively for their financial futures by growing their superannuation assets.

**Financial services regulation**

As individuals and households accumulate greater wealth and are looking to fund their futures, there is a growing need for them to get access to appropriate financial advice.

A key measure in this Bill will improve the ability of all Australians to access financial advice. It will do this by making the provision of advice in relation to smaller investment amounts more cost effective. This will be achieved by enabling fi-
nancial advisers to provide clients with a Record of Advice, where the investment amount is under a prescribed threshold, rather than a full Statement of Advice.

A Record of Advice is a more concise document, and is easier to produce for advice in relation to smaller investment amounts. It is also more appropriate where the cost of producing a full Statement of Advice is otherwise likely to make financial investment advice beyond the reach of many Australians.

The proposed threshold will be set at $15,000 under regulations that will support the Bill. This targeted measure will therefore provide better incentives for Australians to seek the advice they need about their investment decisions.

In an environment which provides Australians with choice of super fund, this measure can be expected to enhance the ability of investors to consolidate existing superannuation amounts up to the prescribed limit, and thereby assist them to fulfil their financial aspirations.

However, let me be clear. Whether an investor received a Record of Advice or a Statement of Advice, the financial advice given must be made on a reasonable basis, having regard to the client’s circumstances.

Fundraising

In the International Monetary Fund’s ‘World Competitiveness Yearbook 2006’, Australia ranked 3rd of 61 countries for the protection of shareholder rights and share market financing.

This Bill will assist in maintaining Australia’s excellent international reputation in this area.

I recognise that corporate entities in our financial markets need to raise funds quickly and at a low cost if they are to expand their business activities within and outside Australia.

This Bill includes initiatives to facilitate corporate fund raisings by streamlining regulatory processes. This will be achieved through various measures, including by aligning certain disclosure requirements and removing inconsistencies between different parts of the law. At the same time, the relief provided is made subject to conditions in order to maintain an appropriate level of Investor protection.

The Government seeks to encourage employee ownership of companies through employee share schemes, given the many benefits it is recognised as bringing to the wider economy. The Bill will increase the opportunities for unlisted companies to establish employee share schemes by removing certain restrictions without diluting important protections.

Through this Bill, the Government is also reducing the cost of raising funds by corporate entities through various means, in particular, by removing some burdensome disclosure requirements. The Bill will ensure that sensible conditions are maintained such that all material information is provided to the market before the issue can proceed.

Company reporting obligations

Australian companies should not suffer under the weight of excessive reporting obligations. Feedback received in response to my November 2006 paper suggested that company reporting could be reduced, without compromising the need for the Australian public to have access to important company information.

In line with the Banks’ recommendations, the Bill will simplify company reporting obligations. Importantly, the Bill will increase the thresholds used to define a ‘large proprietary company’, which will result in a reduction in the number of proprietary companies required to lodge audited financial reports. The amendments, which will increase the current operating revenue and assets thresholds by 150 per cent, ensure that only economically significant proprietary companies are required to lodge such reports. This measure will result in cost savings for 33 per cent of companies currently required to report.

In this way, the Government is addressing the concerns of smaller business enterprises that reporting obligations should be proportionate to the size of their operations. To ensure that the monetary thresholds keep pace with economic growth, the Bill also allows future changes to the thresholds to be prescribed under regulations.

The Government recognises the importance to companies of being able to choose how best to communicate with shareholders in an effective and timely manner.
Australians are increasingly making use of the internet and in recognising this, the Bill brings the corporate law into the modern age by allowing companies to make annual reports available on the internet, and only require hard copies to be sent to shareholders who request them.

This will result in significant costs savings to business but importantly, shareholders will continue to have the opportunity to elect to receive hard copy annual reports free of charge. These amendments are also expected to deliver environmental benefits for the broader community.

The Bill also reduces compliance costs through: streamlined executive and director remuneration disclosures; simplified notifications to ASIC; more flexible payment arrangements for annual company fees; and improved company deregistration procedures.

**Auditor independence**

In the global economy, it is important that the independence of auditors is appropriately regulated.

The Bill will implement a number of improvements and reduce complexity in this area following from comments on my November paper and the results of the recent comparative review of Australia’s auditor independence requirements.

**Corporate governance**

Australia has a robust corporate governance regulatory framework. This Bill further balances the needs of business to operate efficiently while upholding shareholder expectations about company behaviours and operational standards.

The rules regarding related party transactions are an important check on the powers of the board to manage a public company. However, obtaining member approval for every related party transaction imposes a disproportionate compliance expense on companies in cases where the value of the transaction is relatively low.

This Bill will remove the requirement for member approval for such transactions that are at or below a prescribed minimum level, aggregated over a financial year. This rule will strike a better balance between measures to guard members from improper conduct, and excessively burdensome procedural requirements.

**Takeovers**

Experience has shown that telephone monitoring during takeover bids and 85 per cent notices impose onerous obligations without demonstrated investor benefits.

The Bill will, therefore, repeal these requirements.

**Compliance**

The Bill enhances regulatory processes in various other ways including by allowing companies to register company charges electronically, thereby making that process more efficient.

**Consultation processes**

The Bill has been developed following extensive consultations on the proposals and the Government appreciates the participation of stakeholders in the process.

Under the Corporations Agreement between the Commonwealth and the States and Territories, certain elements of the Bill needed to be considered by the Ministerial Council for Corporations. The Ministerial Council has approved those provisions.

The Bill is another significant instalment in the Government’s overall objective of reducing red tape for the benefit of all Australians.

To ensure that the Australian community can take the earliest possible advantage of the Bill’s red tape reductions, it is my desire that the Bill be passed as soon as possible by the Parliament.

Full details of the measures in this Bill are contained in the explanatory memorandum.

**CORPORATIONS (FEES) AMENDMENT BILL 2007**

The Corporations (Fees) Amendment Bill 2007 supports the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007.

The Bill makes a minor amendment to the Corporations (Fees) Act 2001 to allow a fee to be charged in respect of some additional market supervision functions which the main Bill will vest in the corporate regulator.

The Bill shows that the Government recognises the Importance of maintaining confidence in financial markets and anticipating the needs of all market participants.
Full details of the measures in this Bill are contained in the explanatory memorandum.

CORPORATIONS (REVIEW FEES) AMENDMENT BILL 2007


The Bill will amend the Corporations (Review Fees) Act 2001 to provide companies with the option of paying their annual review fees up front to cover a period of 10 years. The reform will reduce transaction costs for companies that take up this option, complementing other reforms that remove the need for companies to interact with the corporate regulator annually.

In particular, this measure recognises the importance of businesses to interact with government authorities more effectively. The Bill also responds to the need to enhance the efficiency with which businesses can comply with their corporate law obligations.

Full details of the measures in this Bill are contained in the explanatory memorandum.

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS LEGISLATION AMENDMENT (CHILD CARE AND OTHER 2007 BUDGET MEASURES) BILL 2007

The primary purpose of this bill is to give effect to the Government’s two key child care measures from the 2007 Budget. These measures are a substantial part of the extra $2.1 billion investment which focuses on helping Australian families with their child care costs. The extra investment will take the total projected expenditure in child care over the next four years to $11 billion. Parents will have more choice about participating in the workforce and children will have more opportunities for quality child care.

The first measure provides for a 10 per cent increase in the rate of child care benefit from 1 July 2007, over and above the normal CPI indexation increase that will apply from that date. The total increase for families eligible for child care benefit will be more than 13 per cent of their current rate. Depending on families’ incomes, this means up to an extra $20.50 per child per week towards their child care fees.

Over 730,000 families should benefit from the increase, and the Family Assistance Office will adjust families’ entitlements automatically. If a family receives child care benefit as a fee discount, their child care service will pass the increase on through reduced fees. A family that receives the benefit as a lump sum will get a bigger payment after lodging their 2007-08 tax return.

The second child care measure in this bill will improve and speed up families’ access to the child care tax rebate by converting it to a direct payment by the Family Assistance Office. The child care tax rebate is currently delivered through the tax system as a reduction in a family’s tax liability. It allows families to claim up to 30 per cent of their out-of-pocket child care expenses, up to a value of $4,000 per child per year, indexed annually. However, to ensure families received an accurate payment, they have had to wait up to two years to claim their rebate through the tax system. In addition, families with low or no tax liability may not have been able to claim their full child care tax rebate entitlement.

From 1 July 2007, the rebate will be delivered to families directly by the Family Assistance Office – at the end of each financial year in which the families have incurred the child care expenses (following lodgement of tax returns), and to all families who are eligible for the child care tax rebate, regardless of tax liability.

If a family paid for child care in both the 2005-06 and 2006-07 financial years, they could receive two child care tax rebate payments after 1 July 2007 – one through the tax system and one from the Family Assistance Office, potentially up to $8,000 per child. For 2005-06 child care costs, families will still need to keep receipts and claim them in their 2006-07 tax return. However, for any child care costs incurred after 1 July 2006, the Family Assistance Office will pay the child care tax rebate annually directly into bank accounts after tax returns have been lodged.

The new arrangement will make a big difference to families in managing their child care expenses.
The final measure in this Budget bill is to help young people with disabilities and severe medical conditions, by extending to them the benefits of the health care card. About 25,000 full-time students aged between 16 and 25, who used to be carer allowance (child) care receivers, may now be eligible for a health care card in their own right.

Carer allowance (child) provides a health care card in the name of the young care receiver. However, access to the health care card stops when the young person turns 16 and, unless they qualify for a low income health care card, or they have access to a concession card through their qualification for an income support payment such as disability support pension, they will no longer have a concession card.

This $19.3 million initiative will help students with a disability or medical condition and their families in managing their ongoing medical costs. This, in turn, will help them to continue their education, enhancing the future contributions they can make to the Australian economy in the long term.

The new health care card will be valid for 12 months and young people will need to reapply for it each year, confirming their full-time student status.

MIGRATION (SPONSORSHIP FEES) BILL 2007

The Migration (Sponsorship Fees) Bill will validate the past collection of certain sponsorship fees between 1 May 1997 and 23 May 2007.

It is a criterion for the grant of certain temporary visas that the applicant be sponsored. For example, sponsorship is a requirement for visiting sports people, entertainers, religious workers and academics.

Persons and organisations who wish to sponsor such a person approach the Department of Immigration and Citizenship for approval as a sponsor. If they are successful, the visa applicant then lodges their visa application. Doing things in this order ensures that visa applicants do not have to pay a visa application charge if their sponsor is not approved, as their visa application would have no chance of success.

Regulation 5.38 of the Migration Regulations prescribes a fee for sponsorship for these visas, currently set at $260. Sponsors pay this fee when seeking approval from the Department.

Regulation 5.38 specifies certain conditions for when the fee is payable. One of these was that the fee was payable only where the visa application was lodged by the sponsor. Another part of regulation 5.38 implied that the sponsorship fee was payable only after the visa application was lodged. These conditions did not reflect the sensible practice which had arisen over the years of visa applicants making their own applications, after the sponsorship had been approved.

This divergence between the strict words of regulation 5.38, and the normal practice for applying for these visas, has meant that the sponsorship fee has been collected in cases where it was not strictly payable.

In addition to this, sponsorship fees were not technically payable under regulation 5.38 for another reason.

Regulation 5.38 provided that if no visa application fee was payable, then no sponsorship fee was payable either. This reflected the fact that certain visa applications can be made at no charge, and it would be inappropriate in these cases to levy a fee for sponsorship.

The concept of a visa application charge was introduced into the Migration Act and Regulations in May 1997 to replace visa application fees. A technical amendment should have been made to regulation 5.38 at the time, to provide that where no visa application charge or fee is payable, no sponsorship fee is payable.

Due to an oversight however, this amendment was not made. Regulation 5.38 continued to provide that where a visa application is not subject to a fee, no sponsorship fee is payable. As visa applications have not been subject to fees since 1997 strictly speaking the sponsorship fee was not payable, even though a visa application charge was required.

Regulation 5.38 was amended on the 13th of April this year to make the technical amendment regarding visa application charges which should have been made in 1997. These amendments, and further amendments made on the 23rd of May this
year, also ensure that regulation 5.38 reflects the processing arrangements whereby visa applicants lodge their applications after their sponsor has been approved. These amendments to the Regulations provide that, from the 24th of May this year, the sponsorship fee can be lawfully collected.

The purpose of this bill, therefore is to validate the past collection of the sponsorship fee. It does so by providing that where a fee was purportedly paid under regulation 5.38, the fee is taken to have been payable when it was paid. This will validate payments of the fee which were made before the visa application was lodged by the visa applicant, and where the visa application was subject to a visa application charge but not a fee.

The bill will validate only those fees paid in connection with visa applications made between 1 May 1997 and 23 May 2007. The reason for the 1 May 1997 date is that this is the date upon which the visa-application-charge concept began, and it was clearly an oversight that the technical amendment to regulation 5.38 was not made on that date to reflect the new concept.

The bill will therefore validate fees paid up until the 23rd of May 2007, when further regulation amendments were made, ensuring that regulation 5.38 works in the way in which it was intended.

Debate (on motion by Senator Brandis) adjourned.

Ordered that the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007, Corporations (Fees) Amendment Bill 2007 and the Corporations (Review Fees) Amendment Bill 2007 be listed on the Notice Paper as one order of the day, and the remaining bills be listed as separate orders of the day.


In Committee
Consideration resumed.
day of the estimates hearing. I asked questions several times to that effect, so that I could have no misunderstanding about that. So it is not a question of waiting until the relevant time. If the information is available, I seek from you an assurance that it will be delivered to me immediately.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (7.36 pm)—Senator Carr, I am not in a position to give you the assurance that it will be delivered to you immediately. Senator Carr, may I say—that, since I have been a minister, I have taken a very punctilious view about the obligations of the government to respond to questions properly put and taken on notice by departments in estimates. I am of the view that the government has obligations to the parliament, which, in particular, means obligations to the opposition, and that this process would be made a nonsense of unless those obligations were discharged. I do not think you doubt my good faith about this, Senator Carr. You have me at a disadvantage. I do not recollect the particular question and I do not recollect the particular undertaking, but, if you say so, Senator Carr, I of course take you at your word. If the undertaking was given that the information would be provided that day then it ought to have been provided on that day, and you are entitled to expect that the public servants would have used their best endeavours to get it to you. All I can tell you is that my advice is that the information has been assembled. Obviously, it was not provided to you on the day, and there may well have been very good reasons why it was not able to be provided to you on the day. However, I am told that your information has been assembled, that it is being checked and that it will be provided as soon as that has been done.

Senator CARR (Victoria) (7.38 pm)—I appreciate the answer. If the information is provided to me as soon as it has been checked, I will be more than happy. I am concerned that it not be dragged out, because there is an unfortunate record here of a very large number of questions from this department not being provided to the committee within the designated time. At the last estimates, I had to go through the situation where material was provided to me on the day of the estimates or the day before the estimates, which was well in excess of the time that had been allotted for the return of questions on notice. In this particular case, I have absolutely no doubt that Mr Burmester gave me those undertakings. I checked this on several occasions, and I was told on several occasions that the officers were still working on it. I would have thought, given that I am not unknown to the officers, that if there had been a problem I would have been advised of it.

I have taken this opportunity to draw the minister’s attention to this difficulty and to draw to the attention of the departmental officers that I am not going to be taken for granted in this way. I do not think the opposition should be treated in this way. We are entitled to information. This is a very simple request. I take your commitment on the basis on which it has been offered. If that information is provided to me as soon as it is available, I will be only too grateful.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (7.40 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
BUSINESS

Rearrangement

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (7.41 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 4 (Evidence Amendment (Journalists’ Privilege) Bill 2007).

Question agreed to.

EVIDENCE AMENDMENT (JOURNALISTS’ PRIVILEGE) BILL 2007

Second Reading

Debate resumed from 13 June, on motion by Senator Colbeck:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (7.42 pm)—I rise to speak on the Evidence Amendment (Journalists’ Privilege) Bill 2007. This bill represents a quick fix for the Howard government. It moves to provide a form of professional privilege in the Evidence Act 1995 for the purpose of protecting journalists who refuse to name their sources.

There are two main reasons why this bill is being pursued by the government at this time. The first reason is that it is an attempt to pacify the recently formed coalition of media interests under the banner of Australia’s Right to Know campaign. The second reason is to take the heat out of the Harvey and McManus case in time for the upcoming election. I will make a few remarks on these reasons in my concluding remarks this evening, but, firstly, I will take the Senate through the detail of the bill.

The bill is modelled on division 1A of the New South Wales Evidence Act 1995, but it differs in that, whereas the New South Wales act proposes a general scheme of protected confidence, this bill, as its title suggests, is more limited in its application. The division title of the proposed new 1A in the bill is the same as that in the New South Wales Evidence Act—that is, professional confidential relationship privilege. However, when this definition of protected confidence in the proposed section 126A is compared with the New South Wales act, we see that it is vastly different. In the bill before us, the definition is exclusive to journalists; whereas, in the New South Wales act, the definition relates exclusively to conduct. While the New South Wales example would allow other professions to access privilege, the definition in this bill sets up a system of protected confidentiality whereby only journalists, otherwise called ‘confidants’ in the proposed division, may be entitled to a form of qualified privilege if they are communicating in confidence while (a) acting in a professional capacity and (b) acting under an express or implied obligation not to disclose the contents of the communication.

Proposed section 126B provides the means by which courts may exclude evidence derived of a protected confidence. Subsection (1) provides that the evidence may not be adduced where it would disclose the protected confidence, the contents of a protected confidence or protected identity information. Subsection (2) provides that this exclusion may occur via application of a party to the proceedings or via the presiding officer’s own initiative. Subsection (3) removes the application of judicial discretion and directs that the evidence must be excluded where harm would occur to a protected confider—in that instance, it would be journalist—and where the nature and extent of the harm outweighs the value of the evidence to be adduced. Subsection (4) provides a non-exhaustive list of factors the court must take into account in weighing the potential harm to the journalist against the potential value of the evidence, but also directs that a presiding officer must give greatest
weight to any risk of prejudice to national security. Subsection (5) of the bill provides that whatever its decision on whether to ad-
duce the evidence, the court must state rea-
sons for its decision.

It is interesting to note that the key diver-
sion from the New South Wales template is
the removal of discretion in consideration of
national security information. In the bill be-
fore us this evening, section 126B(4), which I
have just gone to, sets out the factors which
must be taken into account by the court when
deciding whether or not to exclude the evi-
dence. It states that the courts must take into
account and give the greatest weight to any
risk of prejudice to national security. The
criteria does not appear in the corresponding
list in the New South Wales act. This may be
a reflection of the differing responsibilities of
our respective levels of government.

So we see that the application of the quali-
fied privilege comes down, to a large part, to
judicial discretion. There has been some
comen that judicial discretion is undesir-
able and that journalists should be afforded
some type of absolute privilege merely by
claiming it. Of course, absolute privilege
simply does not exist for lawyers, politicians,
priests, doctors or any of the other profes-
sions; they are all subject to elements of ju-
dicial discretion. Judicial discretion in these
matters is not something to be anxious about;
it is to be desired. The parliament is best
placed to provide a framework as, in con-
structing rules, we cannot foresee all things
and all circumstances, and that is why these
matters are best weighed in each instance on
the facts of the case itself.

Proposed section 126C provides for a loss
of qualified privilege when the journalist
consents to the evidence being adduced. Pro-
posed section 126D provides for the loss of
privilege in circumstances of misconduct in
the form of fraud, a criminal offence or an
act which is liable to a civil penalty. If the
journalist was involved in such misconduct,
the court may decide that the privilege was
not available. According to the government,
however, the clear intention of this legisla-
tion is to introduce a privilege which pro-
vides the court with a guided discretion to
balance the competing public interests of the
freedom of the press with the public interest
of disclosure of that information.

Again, it will be up to the courts to make
the decision. In some circumstances, unlaw-
fully receiving national security information
is, in itself, an offence. The court will have to
weigh the value of granting qualified privi-
lege with the value of ensuring our national
security.

Proposed section 126E provides that the
court may make various orders to protect the
safety and welfare of the protected confider,
short of refusing the privilege. These include
media suppression orders and orders that
certain information be heard in camera.

Proposed section 126F provides that the
cases that are currently before the court will
not enjoy the protection of this section, but a
protected confidence which occurs before the
act comes into force may be covered. This is
a sensible approach.

The rest of the proposed bill, in essence, is
of a minor technical or consequential nature,
so I will not dwell on it here this evening—
although I may have more time than I had
considered, so I will go to some of the com-
ment about it. Labor’s view on the bill is that
it is welcome but insufficient. The Australian
Law Reform Commission 2005 review of the
uniform evidence law report, report No. 102,
did recommend protection for journalists. It
is worthwhile taking the Senate to it this
evening. It said:

Since the publication of DP 69, the issue of
protection of journalists’ sources has received
significant media attention. Under the common
law, courts have consistently refused to grant journalists a privilege or lawful excuse under which they can refuse to reveal their sources. The journalists’ code of ethics prohibits a journalist from revealing a source once a commitment to confidentiality has been made. At the time of writing, legal proceedings had commenced against two Herald Sun journalists for protecting the source of leaked government documents regarding changes to veterans entitlements. The Attorney-General of Victoria has indicated his support for a uniform national approach to journalists’ sources. The Australian Government Attorney-General has also announced that the issue would be considered by the Government.

At the recent national conference, the national platform of the Australian Labor Party was amended to include the following: Labor will legislate for proper freedom of information laws that enable Australians to access appropriate information about government activities, move to implement the ALRC recommendations on sedition laws, provide shield laws for protecting confidential sources and whistleblowers, and review laws that criminalise reporting of matters of public interest.

This is where we come to the heart of the matter. The Howard government is not genuinely committed to bringing about an open or transparent government. It is for this reason that it spends hundreds of thousands of dollars chasing leaks that have not detracted from good governance or national security but have, in fact, enhanced it. The two journalists that the ALRC report referred to are Gerard McManus and Michael Harvey. The bill will not help their case by directly changing the substantive law that applies. Neither is it retrospective in that sense nor does it seek to override the Victorian Evidence Act. What it might do is send a message to the courts of the Commonwealth parliament’s clear intention in relation to journalists’ privilege—that is, to recognise its existence. On that basis the Attorney-General, is seems, has given an assurance in revisiting this area with further legislation.

As it said at the outset, Labor supports this bill despite the fact that it is clearly less than ideal. The Howard government stands condemned that it did not act earlier; it did not act until this time, and it stands further condemned for the piecemeal nature of reform that this bill represents.

It is simply not good enough to blame the states. Some states and territories have whistleblower protection legislation in place. Some have professional privilege in place. As Mr Ruddock well knows, there is nothing to stop a parliament legislating within its jurisdictional competence to protect the rights and freedoms of Australians, especially with regard to transparency of government, the free flow of information or other related matters.

Be clear: this government is no friend of Australia’s right to know and no friend of anyone who desires freedom of information or transparent government. No other federal government has done more to clamp down on the flow of information, whether it be collapsing of government media units into the minister’s office; the direction of the AFP for the purpose of conducting fruitless but intimidatory raids against public servants; the crackdown on whistleblowers like Alan Kessing, who exposed the massive security failures of the Howard government at airports, despite all its talk of national security since September 11; the directives to public servants at Senate estimates not to answer questions about the channelling of $300 million to Saddam Hussein; the slack and tardy way that ministers like Mr Joe Hockey answer questions on notice that have been put on the record, if, indeed, he answers them at all; the explosion in government entitlements, staffing and blatant political advertising in order to maximise the benefits of in-
cumbency and the gigantic Liberal Party spin machine; the abuse of its control in the Senate; or the effective neutering of freedom of information legislation. This is a tired and arrogant government that does not enjoy scrutiny at all.

As I have said, Labor will support this bill to send a clear and unambiguous message of the parliament’s will. But we expect this area to be revisited before the election so that reform to the Evidence Act may be considered more broadly. With those remarks, I commend the bill to the Senate.

Senator NETTLE (New South Wales) (7.56 pm)—A free press is fundamental to a free society. When cities first began, democracy relied on the debate and argument that occurred in the Greek marketplace, where information was shared, ideas were aired and discussed. Now the marketplace of ideas is much bigger, and a free media is fundamental to our modern conceptions of democracy. Indeed, Thomas Carlyle argued that what he called the Fourth Estate can be conceived as democracy itself because it allows the people to debate and discuss the affairs of state. For a long time a free press has been an essential part of Australia’s democracy.

In 1824, in my state of New South Wales, the first Australian born politician, William Charles Wentworth, founded one of Australia’s first independent newspapers, the Australian. The birth of a free press was a breath of fresh air to the colonies, which had been weighed down by almost 40 years of government control and censorship. While there is much to criticise about today’s media, not least the monopoly of its ownership, the Greens believe the newspapers, now joined by the internet, television and radio, still form the backbone of our democratic processes. That is why we share the concerns of most of the Australian media outlets and much of the Australian public about the direction of media and public freedom in this country. Ten years of the Howard government have put a clamp on free speech and the public’s right to know about the workings of government. Policy has been replaced by spin, substance by rhetoric, and the cold hand of censorship is on the march again. Sydney journalist David Marr describes it this way:

John Howard has the loudest voice in Australia. He has cowed his critics, muffled the press, intimidated the ABC, gagged scientists, silenced NGOs, censored the arts, prosecuted leaders, criminalised protest and curtailed parliamentary scrutiny.

Australia’s Right to Know, a coalition of Australia’s major media outlets, say:

Australia risks undermining one of its main pillars of democracy if erosions to free speech continue. They say this is a bipartisan problem of ‘national importance regardless of who is in power’ and that the problem is longstanding, with both ‘Labor and the coalition governments at state and federal levels presiding over a serious deterioration in the freedoms we take for granted’. They describe it this way:

There has been an alarming slide into censorship and secrecy that has severely reduced what ordinary Australians are allowed to know about how they are governed and how justice is dispensed. They say there are more than 500 separate prohibitions governing the things that Australians are not allowed to know. These laws and restrictions vary from state to state, making it hard for the media to report.

The government would like to claim that the Evidence Amendment (Journalists’ Privilege) Bill 2007 bucks this trend. They claim that the bill seeks to protect journalists and their sources. In fact it does nothing of the sort; rather this bill is further window-dressing of the government’s attack on free speech in this country. This bill does the bare
minimum that could be done to protect journalists’ sources. It does not afford any protection to whistleblowers. It does not afford any protection to other professionals and their sources. It does not recognise the public interest in ensuring journalists’ sources are kept confidential and, once again, it drops the veil of national security over the whole bill, making it the overriding factor in any decision about whether or not a source can be protected.

I will say more on the problem of national security later, but first I want to talk about the inadequate scope of the bill. The bill is based on division 1A of the New South Wales Evidence Act 1995. However, there is a significant difference. This bill only applies to journalists, while the New South Wales bill allows a range of other professionals—doctors and counsellors, for example—and their informants or their clients—to claim protection. This bill explicitly limits protection to journalists and their sources. It is a major flaw in the bill.

There are a range of professionals that should be able to claim these types of protection: medical and health professionals, counsellors and religious advisors. There is no reason why a court could not weigh the balance of the harm caused by revealing a source for these professions against the importance of the evidence or information in the particular proceedings—just as they could in relation to a journalist. But it seems that, because the government wants to deal with a political problem of journalists being prosecuted for contempt, rather than dealing with the policy question it has opted for this narrowly framed bill. In fact, so narrow is the scope of the bill—combined with the limitations and qualifications contained in the bill—that it seems almost certain that journalists, such as Gerard McManus and Michael Harvey, and their sources, would still be prosecuted if this bill were to become law.

Proposed section 126D of the bill provides that when a communication between the source and the journalist involves fraud or an offence, the privilege or protection cannot apply. As a result, public servants, who in most cases would be committing an offence if they carried out an unauthorised disclosure to the media, would not be shielded by these laws, and nor would the journalists involved. In other words, whistleblowers remain out in the cold. Given this incredible inadequacy of the bill one could say, as the Media, Entertainment and Arts Alliance says, that this bill ‘will amount to nothing more than rhetoric without accompanying protected disclosure laws to prevent whistleblowers from being hunted down and prosecuted’.

Now more than ever there is a profound need for whistleblower protection in this country. Whistleblowers are, and have been, an essential bulwark in the rise of executive power at the expense of democracy, not just in Australia but around the world. Let us recall this important role. Without whistleblowers, the Watergate scandal would never have become public, and Nixon would not have had to resign. Without anonymous sources we would never have learnt about the torture at Abu Ghraib prison in Iraq. Yet once again the government has dumped the opportunity that this bill could have provided to protect whistleblowers. The Australian Press Council’s Charter for a free press in Australia states:

Freedom of opinion and expression is an inalienable right of a free people.

That right is recognised in article 19 of the United Nations Declaration of Human Rights. The Press Council’s charter has six principles, and the sixth principle states:

Laws, regulations and practices which in any way restrict or inhibit the right of the press freely to
gather and distribute news, views and information are unacceptable unless it can be shown that the public interest is better served by such laws, regulations or practices than the public interest in the people’s right to know.

It is the public interest that should be at the heart of any laws to protect journalists’ sources, and it is the public interest that is missing from this bill.

A court that is examining whether or not a journalist’s source should be protected should be able to assess not only the public interest of the particular case but the wider public interest of a free press that is in part built on the public’s confidence that information provided should remain confidential. That is why the Greens will move an amendment to this legislation to include consideration of the public interest as a factor in a judge’s deliberation on protecting a journalist’s source. The amendment will add an additional item to the proposed section 126B of the Evidence Act that lists the matters a court should consider. The Greens amendments ensure that, in addition to the matters already listed, the court will now also be required to consider ‘the public interest in maintaining the protected confidence of journalists’ sources’. I urge senators to support this amendment.

Irene Khan, Secretary General of Amnesty International, says in this year’s Amnesty report on the state of the world’s human rights that ‘national security has often been used as an excuse by governments to suppress dissent’ and that ‘in recent years heightened fears about terrorism and insecurity have reinforced repression’. The report shows how, around the world, national security has become a catch-all used and abused by governments seeking to justify suppression of political and civil rights, the removal of civil liberties and the abuse of human rights. In this country national security has underpinned the suppression of the truth about David Hicks and Mamdouh Habib and attacks on the rights of refugees. It has been the platform on which a raft of new terrorism laws has been introduced. The Greens have always supported sensible measures like increases to airport security, but the government has gone overboard with laws like new sedition offences, control orders and banning organisations.

One of the worst aspects of the new terrorism laws is the use of national security to suppress government information and create closed trials. The National Security Information (Civil and Criminal Proceedings) Act 2004 allows the Attorney-General to suppress evidence in proceedings, based on a very broad definition of national security. This new bill includes a clause, which is not included in similar state legislation, which will require a judge to use the same definition of national security as in the terrorism laws, when assessing whether to protect a journalist’s sources. This clause goes to the heart of the failure of this bill because it clearly would not protect whistleblowers such as those who are in fact acting in the public interest by revealing major flaws in Australia’s airport security. Worst of all, it requires a judge to give the ‘greatest weight’ to national security when deciding whether the protection should be maintained. The Greens will move an amendment to remove this bias in the bill towards national security. We accept that national security is a factor that a judge should consider in assessing the necessity of protecting journalists’ sources, but it should not be the overriding factor, and I urge senators to support this amendment.

This bill is extremely flawed. It has been rushed in as a political fix for the very public criticisms levelled by media outlets and concern amongst journalists about the prosecution of their colleagues. There are other models that could have been looked at, like that in New South Wales, in its entirety, and
the New Zealand model, which offers much more robust protection, with protection of a source the default position from which a case has to be argued to vary. It should have been part of a package of reform that also protected whistleblowers. The fact that the government has refused to allow a Senate inquiry into this bill has prevented the parliament from being able to examine these other options. The government has again wasted an opportunity to improve the framework for public debate and free discussion in Australian society. Once again, while paying lip-service to freedom, it has done the opposite, relying on spin rather than substance. And, once again, freedom of the press has taken a back seat to the government’s political ambitions.

Senator STOTT DESPOJA (South Australia) (8.08 pm)—I rise to speak on behalf of the Australian Democrats to the Evidence Amendment (Journalists’ Privilege) Bill 2007. As we have heard, this bill seeks to amend the Commonwealth Evidence Act 1995 and various other acts so that journalists’ sources are given some protection from discovery in federal legal proceedings, either in court or in out-of-court matters. This is a qualified privilege. The court has discretion to grant the privilege based on a number of matters. The court must consider freedom of press—association—and the public’s right to know. The law is said to be based on a New South Wales model, albeit with one modification: the court must give greatest weight to the risk of prejudice to national security. Privilege can also be obtained on behalf of a child. It will not apply to situations where legal professional privilege already applies or where there is misconduct between the journalist and his or her source, nor will it apply to matters related to James Hardie or the Proceeds of Crime Act.

As we are all too familiar with, the true reason behind this legislation—which the Democrats consider has aspects which are somewhat ill-considered, shall we say—is the enormous media pressure stemming from the case of Michael Harvey and Gerard McManus, which has already been referred to. I suspect that some sceptics among us may simply view this legislation as the government trying to solve a potentially embarrassing problem.

As honourable senators would be aware, for as long as the Democrats have been around we have desired open and transparent government at all levels and also government guarantees of freedom of the press, freedom of speech, free media, independent institutions and an informed and educated population. So it is worth noting that the issue raised by the bill is of fundamental importance to the Australian community, from the perspective of both the administration of justice, which dictates that a witness must generally answer all questions put to him or her—obviously, this is how a court obtains and weighs evidence—and freedom of speech and press.

We do not oppose the establishment of laws which aim to improve Australians’ participation in democratic processes. Indeed, the Democrats have put on record a number of ideas, policy suggestions and private members’ bills that deal with the issue of reform in these areas. We have called for greater protection in the area of Australian privacy rights and the revocation of the seditious laws. We drafted the Parliamentary Charter of Rights and Freedoms Bill 2001, relating to freedom of association and the press, which is a fundamental right. We have put whistleblower legislation on record. The Public Interest Disclosure (Protection of Whistleblowers) Bill, which I think Senator Murray, coincidentally, tabled this week, supports the role of public servants as well as MPs and journalists with an open, transpar-
ent and accountable government. So our record on this is pretty clear.

We would argue that such measures, if introduced, would counter some of the negative press that we have seen on this government in recent months. I note that in Senator Nettle’s comments to the chamber she referred to a litany of encroachments on freedom in Australia today, including, arguably, press freedom. Negative reactions include the annual press freedom report commissioned by the Media, Entertainment and Arts Alliance titled *Official spin: censorship and control of the Australian press 2007*. This report lists 19 areas in which the media’s ability to report freely has been constricted. It highlights restrictions caused by policy-making, law enforcement, government comments and public actions. In relation to the issue of journalists’ privilege, generally the Democrats support the rights, powers and immunities that will flow from the creation of a new privilege for journalists.

But, far from being uncontroversial, there are several aspects of the legislation before us which clearly demand attention. It is unfortunate too that the scrutiny and analysis of the legislation before us is occurring tonight on the floor of the Senate, albeit with a committee stage to follow, and not within the auspices of a Senate committee. As you may know, Mr Acting Deputy President, I attempted to refer this matter when it came to Selection of Bills. I wanted to refer this legislation to a Senate committee. That attempt was rejected by the government, and I understand that the Labor Party have argued that they would prefer to wait to see the next bill in this series before considering a committee. I want to put on record the Democrats’ concern that, once again, an attempt to refer legislation, with good reason, to a committee has been thwarted by this government. I have become used to death by committee in this government, where the government automatically refers legislation with minimal analysis and scrutiny and a time frame that is usually quite constricted. This is a case where the Democrats were actually prevented from referring a bill to a Senate committee, namely the Senate Standing Committee on Legal and Constitutional Affairs.

We are concerned that the journalist shield laws’ focus is too narrow in this bill. Missing from its protection are other professionals who handle confidential or sensitive information and, as have been referred to, potential whistleblowers who, in good faith and acting in the public interest, may turn to a journalist to reveal corrupt or inappropriate conduct on the part of public servants—individuals who, like journalists, are faced with a daily ethical dilemma about whether to disclose information obtained in confidence.

In relation to the absence of protection for other professionals, it is generally accepted that confidentiality and privilege issues arise in relation to doctors, social workers, counsellors and priests, among others. In my home state of South Australia at the moment, health professionals are grappling with quite a difficult public health and legal policy issue that arises from the provision of counselling services to people living with HIV. While I note, as foreshadowed in the Attorney-General’s second reading contribution, that this bill is part of a wider legislative reform agenda, a decision by the government not to include these professionals in this scheme today is of great concern to the Australian Democrats. The decision to exclude priests, doctors and others also apparently sits uncomfortably—certainly according to the *Sydney Morning Herald*—with the New South Wales Attorney General, who has accused Mr Ruddock of going back on an agreement to extend the protections to people other than journalists.
In light of such criticism, the Democrats urge the government not to delay in any way bringing to parliament or releasing for public comment—for example, as an exposure draft—its second proposal. I think that should be done with alacrity. These issues are of grave importance to the community as a whole and need to be finalised quickly. It is unfortunate that the government has not seen sense in introducing the measures as part of a single package. I hope that this decision will not compromise state government cooperation in working towards uniform evidence laws across the country.

As for the absence of protection for whistleblowers, how appropriate that we should be debating this bill in the Senate in the week that Allan Kessing is to be sentenced—and I know that this was referred to in the original contribution by Senator Ludwig—for breaching confidentiality despite having exposed real problems at Australian airports. It is a little coincidental and a bit ironic. It is shameful how the government treats the case of Michael Harvey and Gerard McManus on the one hand and the case of Mr Kessing on the other. It is simply a case of Harvey and McManus being protected under this regime and Mr Kessing not being protected.

The Democrats caution the government that, unless it acts to protect whistleblowers, this law may actually backfire on it; there is the potential for unreliable sources to abuse this qualified privilege and to go to journalists to blow the whistle instead of following a suitable whistleblower protection scheme, which would emphasise escalation steps, if you like. This is just further evidence as to why we desperately need a private member’s bill or, indeed, a government initiated bill on whistleblowers and protected disclosures. We also echo the concern that has been stated by the Media, Entertainment and Arts Alliance that the bill risks ‘amounting to nothing more than rhetoric, without accompanying protected disclosure laws to prevent whistleblowers from being hunted down and prosecuted’.

In addition to these concerns—as you may be aware, Mr Acting Deputy President Barnett—the Parliamentary Library in its Bills Digest has also helpfully identified several aspects of the legislation that are problematic. I think Senator Nettle referred to a couple of these, as did the Labor Party in their contribution. Nonetheless, there is the proposed protection of confidences where they are made in the presence of a third party, if the third party’s presence is necessary to facilitate communication. The problem with that is that ‘third party’, unfortunately and perhaps unhelpfully, is not defined nor explained in the explanatory memorandum. I am happy for the minister to perhaps elaborate or define for the benefit of the Senate what is meant by the terminology ‘third party’.

Secondly—I know that Senator Nettle referred to this in her contribution—proposed section 126D is controversial in that it provides that the protection provided for by the professional confidential relationship privilege will not apply when the information contained in the document itself contains or its communication involves fraud, an offence or an act that renders a person liable to a civil penalty. ‘Fraud’ is defined broadly and again without any protection for whistleblowers. Almost any unauthorised release of information by a Commonwealth public servant may constitute an offence of some sort. Thirdly, the proposed section 4A to be inserted in the JHPA excludes the application of the professional confidential relationship privilege from a James Hardie proceeding, although this exclusion does not apply to authorised persons—that is, people who have seen the conduct of a James Hardie proceeding.
The Democrats are also concerned about the absence of a clear definition of ‘a journalist’. I am not sure whether in her contribution—which no doubt will follow mine—Senator Wortley will give her view on this particular issue. I note that the explanatory memorandum states merely that ‘a journalist’ is to be given its ordinary-usage meaning. But who and what is a journalist? I am sure that people in the chamber have their views, but I am sure that the minister will articulate his view as well.

There is also an absence of clear guidance as to when a journalist may be acting in their professional capacity, which begs the question: what constitutes professionalism in that instance? Formulating and enforcing a code of ethics and a code of conduct are two characteristics of many occupations which we may regard as professions. While law, medicine and teaching have had their share of adverse publicity, it is true that they are still seen probably as the leading and most attractive occupations because their ethical obligations are clearly spelt out in primary legislation. As to journalists, I note that the Attorney-General in his second reading contribution rightly states that journalists:

... operate under a strict code of ethics which stipulates a clear obligation to keep a source’s confidence.

But different from other professions is the fact that a journalist’s code of ethics is self-imposed. I am not necessarily debating the worth of that or otherwise, but clearly there is a differentiation.

In this proposed bill there is the opportunity for such a code to be enacted in the legislation. The Democrats would welcome seeing reference somewhere in the bill that a journalist acting in their professional capacity is someone who has agreed to be bound by a code of ethics. I am not sure what Senator Wortley’s view of that is. Again, I refer to her because of her former capacity. She may shed some light on this that may benefit the Senate.

A further issue with journalists’ professionalism in this bill is the way the bill also seeks to determine professionalism by reference to the chosen medium in which a journalist may report the news. The explanatory memorandum states that a journalist may sometimes not be acting in their professional capacity—for example, if they blog. The Democrats take issue with this idea of narrowing a journalist’s professionalism in this way. We would suggest that a technology neutral approach to journalism that is more clearly spelt out in the proposed bill would be more appropriate.

It is also unclear what impact, if any, this legislation may have on other areas of the law. Uniform defamation laws were introduced in January 2006 in every state and territory. Presumably, given that this bill establishes a qualified privilege for journalists, it recognises that in the interests of society a journalist should be able to communicate frankly with their source without fear of a defamation action. Of course, a well-known principle of defamation law is that, if a communication is covered by qualified privilege, a plaintiff can only succeed in an action of defamation by showing, in addition to the usual matters which must be proved, that the defendant was motivated by malice in making this statement. I ask the government, through you, Mr Acting Deputy President: has the government assessed the impact of this proposal on defamation law?

Another type of privilege, legal professional privilege—or client legal privilege—has proved to be one of the more common exemption claims under Australian freedom of information laws and has featured in a lot of the reported decisions. As honourable senators may be aware, the current Austra-
lian Law Reform Commission inquiry into privilege focuses primarily on the concept as it applies to federal investigatory bodies, but the issues paper recently released gives a comprehensive overview of the concept and raises some important questions about the extent to which privilege should be abrogated and in what circumstances. I have no doubt that this inquiry was prompted by issues raised in the AWB and HIH royal commissions, where there were attempts to claim privilege in order to frustrate investigations. Some of the discussion of privilege in the Australian Law Reform Commission issues paper will be grist for the mill in considering the privilege exemption in the context of this bill.

Equally, another impact which appears to have been overlooked is the protection for disclosures outside courts. Many statutory non-court bodies or administrative bodies have come to play a significant role in the resolution of disputes at the federal and state levels. Although differences in operation vary substantially between these bodies, in some cases the rules of evidence may apply. Even the royal commission process, which might hear evidence of journalists, in most instances will observe court etiquette and the rules of evidence, at least in part.

Senator McGauran, as an example, gained access to a woman’s private hospital records and medical records, despite the patient’s refusal to give her consent to their disclosure and despite her doctor’s refusal to provide the information on the basis of a well-established privilege—doctor-patient privilege—and then used his parliamentary privilege to discuss the case. I believe this did much harm to public confidence. So clearly there are a number of privilege issues that are worthy of discussion in a community context and, particularly in light of this legislation, in the Senate as well. I am sure that there are a number areas of parliamentary privilege—discussions, maybe outbursts, under parliamentary privilege—that are worthy of examination.

Such is the magnitude of the decision before us to enact this bill that, rather than ram it through the Senate, as we are about to do, the Senate Legal and Constitutional Affairs Committee would again have been the most appropriate place for us to examine some of these outstanding issues in relation to broader issues of privilege, the absence of protection for whistleblowers and some of the other issues that have been raised by me and other members in this place.

I really do not understand—and I am happy for the minister, Senator Johnston, to explain to us—why there was a need to push this through the parliament tonight. I do not understand why agreeing to a reference, even on Wednesday through the selection process, would have unnecessarily delayed such an important piece of legislation. Why was it that we could not explore some of these issues through the committee process—not necessarily a long one? Why couldn’t we have invited members of the community, including the journalist community, to play a role in this debate? (Time expired)

Senator MARK BISHOP (Western Australia) (8.28 pm)—The Evidence Amendment (Journalists’ Privilege) Bill 2007 is quite an important piece of legislation. By way of introduction, it is also way overdue. Such legislation has been in operation in New South Wales for the best part of 10 years. That begs the question: how serious is this government in implementing these amendments? I ask that question because the policy behind the amendment is about protecting freedom of information in the public interest. Yet, as we know, this policy is anathema to the current government. The Howard government’s hallmark in this area is to stem and control the flow of informa-
tion and squash or reduce informed public debate. The government is not interested in transparency or in serious accountability. As we have just seen in the Customs portfolio, it is determined to jail anyone who dares to speak out, even if the information revealed by the whistleblower is correct. The threat of the Crimes Act being applied to whistleblowers is now commonplace—

Senator Johnston—Madam Acting Deputy President, I rise on a point of order. With respect to Senator Bishop suggesting that someone in Customs is to be jailed: he is to be sentenced on the 22nd of this month. I would appreciate it if the senator did not mislead the chamber. For his own benefit—I am not carping at him politically—I simply say that I would hate for him to have to come back and correct the record.

The ACTING DEPUTY PRESIDENT (Senator Moore)—Thank you, Minister. Senator Bishop, in your contribution just be aware of that process.

Senator MARK BISHOP—On the point of order, if the particular person is to be sentenced, necessarily an option is a period of confinement.

The ACTING DEPUTY PRESIDENT—Senator, I have ruled on the point of order and I have asked you to be aware of the process as you continue with your contribution. Thank you.

Senator MARK BISHOP—That is why we say that this amendment seems to be an aberration for this government. Nevertheless, putting that contradiction aside, we do not hesitate in saying that this bill before the parliament is welcome. In the interests of free speech and in protecting those brave enough to speak the truth, we welcome the amendment. We particularly welcome it for those in the media. They have been threatened with jail if they print those same facts and refuse to reveal their sources to the thought police from this government. I will not go into the technicalities of the amendment—the minister’s second reading speech has done that adequately—but I will spend time reminding the Senate and those listening about the stupidity which brought this issue to a head.

I addressed the Senate in similar terms in September 2005. Let me for the record reiterate those circumstances. This is especially important because that stimulus was trivial in the extreme. In fact, as a test case for the basic principle of journalistic protection, it is absurd. The circumstances were as follows. The then Minister for Veterans’ Affairs, having procrastinated and stalled on policy for veterans, took recommendations of the Clarke review of veterans entitlements to cabinet. Instead of getting anything like what Clarke recommended—more than $600 million—the minister was rolled in cabinet. She got a touch over $100 million. Anticipating the announcement of her then coup, the PR machine had gone into overdrive. Veterans from across Australia were flown to Canberra for afternoon tea and cream cakes with the minister. They assembled for the planned announcement, straight after the government party room endorsed the package. Draft media releases for the minister, backbenchers and senators were drafted and printed. Fact sheets and questions and answers were also prepared. All were distributed around the DVA state network, in every state, for a coordinated splash. It was to be the peak of the minister’s career—and properly and rightfully so, had she been successful: the crowning glory of three years of doing little but cutting ribbons and handing out badges. But tragedy struck that morning.

The party room rolled the minister, the Prime Minister and the cabinet. They said it was not good enough, and veterans would not be happy, and they were absolutely right at that time. As a consequence, the PR machine was shut down. The veterans’ repre-
sentatives were sent home without their cream cakes and the minister was sent back to try another set of proposals. Immediately after the party room revolt, details of the rejected package were revealed. Later media reports gave most of the detail. This was sourced to numerous backbenchers. They were proud of their nerve, and seeking credit for their rebellion. The humiliation of the minister began. She wore the shame of an incompetent cabinet decision—her grand parade had been rained upon in torrents. But there was more. The PR material, now on the public record, was junked. One set of that junk found its way to the Herald Sun. Of course, all the detail was revealed. More humiliation. No doubt the minister was enraged and, after counsel from those obsessed with secrecy, the witch-hunt began.

The department set off to find the leaker of this three-day-old material, which was already public knowledge. The department, to cover itself, called in the Australian Federal Police, who, by analysis of computerised phone records, identified a suspect. That person was charged under the Crimes Act by the DPP and suspended without pay. This minor misdemeanour, of revealing old information, became a hanging offence. This heinous criminal was to be punished. Dismissal was to be the most likely outcome—a career ruined and retirement plans in shreds. It was not a matter of national security, nor was it concerned with any great matter of government policy—this was a petty offence, barely an offence at all. But it was a serious political error. Hell hath no fury like an incompetent minister shown to be so publicly. The minister’s ego was smashed, her career about to end in ruins. Someone had to pay, with his head set on a pike in front of the Public Service gates for everyone to see and to learn from.

The tale continued to the Victorian County Court. A jury found the accused public servant guilty. Fortunately, the triviality of the offence was recognised. On appeal, the charges were dismissed—common sense at last prevailed. In fact it is a little bit like that Australian short story we all read as kids: John Price’s Bar of Steel, set in convict times. The bar of steel wrongfully possessed by the convict John Price was really a pin—but, by strict definition, an offence to be punished, with a severe lashing. The lesson had to be learned, and what better way of teaching it. Things have not changed since with the current government.

Meanwhile, none of this absurdity matters a tuppeny damm. The journalists who revealed the stale information—already on the public record for three days—refused to reveal their source. For that the court threatened them with a charge of contempt. That carries a penalty of jail. So, what was a trivial issue took on a more serious nature. Commentators, journalists and editors were all concerned. There have been far more important and high-profile leaks, including, many years ago, an entire annual budget, but to threaten the journalist concerned with contempt and jail was sensibly not pursued. So we say this bill is a useful circuit-breaker.

It is to be noted that this protection for the media, as Senator Stott Despoja outlined, is not absolute. The criteria set out to achieve that protection are clear, though unfortunately discretionary. There is still a strong public interest provision in the amendment. We say, openly and up front, that none of this should be taken as support for the practice of leaking information, but there needs to be balance, especially when other means of obtaining public information are strictly curtailed, as they presently are in Australia.

We all know that as a practice, illegal or otherwise, leaking works. It works as a check against those who transgress good governance and accepted values. It has often
worked to reveal corruption, lies and incompetence. Many instances have been referred to in media commentary. The Prime Minister himself—we should acknowledge this—is a past master of grasping the political opportunities that leaking offers. His recent attempts to deny his advertising budget are just one example of his own exposure. Devious and deceitful behaviour is properly abhorrent to all Australians. Leaking is a direct result of that offence being caused to honest people. For the Prime Minister, it is a case of the biter bitten. It simply depends on which direction the information is flowing in and who is in control.

When I last addressed this issue in this place I offered support for the Liberals who might prevail and get this proposal introduced. I congratulate them for prevailing over the forces of darkness. It is therefore pleasing to see this amendment before us today, and we in the opposition are very pleased to be able to support it. If my memory serves me correctly, the minister who is introducing the bill before us today was one of those who were sensibly and critically involved in some of those discussions in 2005. On that note, I close my remarks and thank the minister for his interjection.

Senator WORTLEY (South Australia) (8.40 pm)—I rise to speak on the Evidence Amendment (Journalists’ Privilege) Bill 2007. In doing so I indicate my general support for the bill but stress that the bill does not go far enough and that the protection afforded is limited.

This is a bill to amend the Evidence Act 1995 to introduce a new privilege that allows journalists facing trial to refuse to disclose the identity of their sources. It would give the court discretion on the matter, requiring it to exclude evidence where the nature and extent of the likely harm to a protected source outweighs the desirability of the evidence being given. There are, however, several caveats to this which relate to specific instances in which the discretion may not be used. What this bill fails to do is address the issue of legal protection for the journalist’s sources—for whistleblowers and others who provide information to journalists. I would not be overstepping the mark by saying that it is too little and, for some, too late. The reality for anyone with their eyes open is that this is just another example of the Howard government’s approach to legislation in an election year. We have been waiting since 2005 for the Attorney-General to make good on the commitment to pass ‘shield laws’ to protect journalists. Now, two years later, what we have before us is a step in the right direction, but it is not the leap that it could have been and this in itself is disappointing. The absence of protections for public interest disclosures means that we have again missed an opportunity to address inadequacies in our laws. The broader question of protections for whistleblowers and for all professionals with a confidential relationship to their clients remains to be addressed.

This bill has made the legislative agenda because of the plight of two journalists, Michael Harvey and Gerard McManus, who are awaiting sentence for refusing to identify their source for a story that forced the government to abandon their plan to cut war veterans benefits. While these laws will not be retrospective, the Solicitor-General has made representations to the court that the law was in need of reform.

At our national conference, Labor committed to a national platform that includes the following: we would legislate for proper freedom of information laws that enable Australians to access appropriate information about government activities, we would move to implement the Australian Law Reform Commission recommendations on sedition laws, we would provide shield laws for pro-
ecting confidential sources and protecting whistleblowers, and we would review those laws that criminalise reporting of matters of public interest.

It has been argued that this bill provides some protection but that it could fail to be effective when journalists were speaking the truth about matters the government did not want revealed. Legal academic Dr Alexander Brown of Griffith University is head of a national project to reform whistleblower laws. He said in relation to the bill that journalists would still be dragged into prosecutions unless the government introduced whistleblower protection laws. The Media, Entertainment and Arts Alliance has said that the changes will amount to nothing more than rhetoric without accompanying protected disclosure laws to prevent whistleblowers from being hunted down and prosecuted. The Australian Press Council has also stated that the bill is too general to adequately protect journalists. The media alliance federal secretary and immediate past President of the International Federation of Journalists, Christopher Warren, said:

While journalists’ sources remain unprotected at federal law by anti-corruption body and whistleblower legislation, it is a farce to suggest this bill will in any way address the deplorable state of press freedom in this country.

The Age, while welcoming the new laws, also highlighted concerns in its editorial on 4 June when it wrote:

... the law also contains a glaring deficiency, because it neglects the vital role of whistleblowers who act in the public interest when they go to the media. In debate, Labor rightly lamented the failure of this legislation to protect the source on whom the journalist relies in the first place. That is of particular concern given the zeal with which governments have in recent times pursued whistleblowers, even when the public interest clearly justified bringing to light the information they had. Until that half of the press freedom equation is resolved, Australians’ right to know what their governments are up to will remain compromised.

The media alliance report Official spin: censorship and control of the Australian press 2007 highlights freedom of information, sedition, protection of whistleblowers and shield laws for journalists as areas where press freedom is suffering, and where there is a pressing need for legislative review.

The report also raised the issue that a question on notice in parliament last year revealed that, between 2002 and 2006, there were 53 referrals from Commonwealth government departments and agencies to the Australian Federal Police over ‘unauthorised disclosures of government information’. To quote from that report:

The introduction of laws protecting journalists from prosecution for maintaining the anonymity of their sources is merely nominal if whistleblowers can and will be uncovered and prosecuted by the authorities.

In May this year the Australia’s Right to Know media coalition was formed by a broad cross-section of the media, including the ABC, AAP, News Ltd, SBS, Fairfax and Sky News as well as commercial TV and radio organisations. The coalition announced that court suppression orders, the rejection of freedom of information applications, antiterrorism laws and increased government and police intervention had severely eroded press freedom in recent years. They quoted Reporters Without Borders ranking Australia at No. 35 on its worldwide press freedom index. Shamefully, that is a ranking which puts Australia below Estonia, Bosnia, Bolivia and Ghana in the press freedom index.

The Australia’s Rights to Know coalition has also compiled a list of examples of some current impediments to free speech, including:

• The Federal Government has finally agreed to release its 18-month-old polls into what
the public think of its WorkChoices law – but not until after the election ...

- The Federal Government claimed it was “not in the public interest” to release information on the first home owners’ scheme, including the number of wealthy people fraudulently claiming the $7000 grants under the scheme. A newspaper took the case to the High Court and lost.

- It has become almost impossible to get balanced reports from war zones as it has been in the past. Our military will cooperate only with embedded journalists to ensure only the official line is reported.

So, while I speak in support of the Evidence Amendment (Journalist’s Privilege) Bill 2007, I highlight that it does not address many of the reforms necessary to deliver true press freedom in Australia; it is a starting point only. I look forward to the introduction of legislation that addresses areas that have been neglected in this bill, including the adoption of the ALRC recommendations on seditious laws and the introduction of more effective shield laws for protecting confidential sources and whistleblowers.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.49 pm)—I would like to thank senators for their contributions to this debate. The Evidence Amendment (Journalists’ Privilege) Bill 2007 assists to reconcile the legal and ethical obligations of journalists. It does this by amending the Evidence Act to provide for judicial discretion to exclude evidence that would otherwise disclose a journalist’s source. In making these decisions, the court must consider a number of facts, including the nature of the proceeding, the likely harm to the journalist’s source and any implications for national security. The bill provides an appropriate balance between the competing public interests—the public’s right to information and the freedom of the press—and the public’s confidence that judicial decisions are based on relevant information.

The privilege is largely modelled on an existing privilege relating to confidential communications that exists in New South Wales. I cite the New South Wales Evidence Act 1995, which has a comprehensive model that, for the sake of uniformity, has been followed. The Commonwealth agreed to adopt the New South Wales provisions as the appropriate model for that reason. This approach was recommended by the Australian, New South Wales and Victorian law reform commissions following an 18-month review of uniform evidence law.

As the Attorney-General has said, the Australian government’s move to introduce this legislation demonstrates the Commonwealth’s position on this issue. This was necessary, as senators have noted, in light of the proceedings involving two journalists, Gerald McManus and Michael Harvey, currently before a Victorian court. The Commonwealth Solicitor-General made submissions in that case that a judge ought to have discretion to ensure that, in appropriate cases, broader public interest can be taken into account, which might mean that penalties, particularly terms of imprisonment, would not be imposed. As these proceedings are in Victoria, it will be equally important that the Victorian government also demonstrates its commitment by legislating on the issue. I note that senators have conveniently failed to acknowledge that obligation.

I would now like to address some specific concerns raised by senators and dealing with the issue of uniformity. Although this bill applies only to senators and dealing with the issue of uniformity. Although this bill applies only to journalists, it is wrong to suggest that the introduction of the bill reneges on the Commonwealth’s commitment to uniform evidence law. The Standing Committee of Attorneys-General is still in the process of finalising the model evidence
The bill. The working group of officers from the Commonwealth, states and territories is currently considering an expert reference group report and finalising a model for the consideration of the SCAG ministers. The Attorney-General has indicated that he is optimistic that the standing committee will reach agreement soon. The Attorney-General hopes to introduce a second bill to implement the remainder of the government’s response to the Uniform evidence law report.

There are a number of mechanisms already in place to address the issues raised by whistleblowers. The term ‘whistleblower’ should not be used glibly or recklessly when people are breaching their contracts of confidentiality. Governments must be able to conduct their business with a degree of confidentiality.

Federal public servants who report breaches of the Australian Public Service code of conduct for discrimination and victimisation under the Public Service Act are already protected. Similarly, the Commonwealth Ombudsman examines complaints over the actions and decisions of Commonwealth agencies. These mechanisms provide appropriate avenues for public servants to raise issues they are concerned about. It is not always in the public interest that information be disclosed. That is quite a trite statement and obvious. In some instances releasing information may be an infringement of privacy, damage reputations and undermine national security, as I have already mentioned.

It is discouraging that a number of senators have sought to take this debate to areas which range more widely than the issues before the chamber tonight. I see little point in addressing those save to say that, whilst the opposition uses the opportunity of this bill to criticise this government, I note that it supports the bill. It criticises the bill and it criticises the government, yet it has no policy on this matter. On this subject, the opposition has a very clear model to copy—that is, the New South Wales model. As I have said, for the sake of uniformity we have conducted this legislation in line with that model. I note the Greens have amendments here tonight, yet the opposition is prepared to complain and talk about the bill and say that there are things wrong with it and yet they have no amendments. As usual, the opposition is simply conducting a hollow political exercise of carping while having done no real work to address the issues about which they complain.

The bill is a significant amendment to evidence law and I welcome the opposition’s support. I pause to also say, in addressing Senator Stott Despoja’s issues, that the measures contained in the bill will impact on the evidence that may be adduced in any defamation case. However, these amendments to the Evidence Act will not affect the substance of the law that has to be established or proved to the standards required. The bill recognises the important role journalists play in our democracy and the need for journalists to protect their sources. This bill reconciles that need with the need to ensure that all appropriate evidence is before the courts. Accordingly, 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 NETTLE (New South Wales) (8.55 pm)—by leave—I move Greens amendments (1) and (2) on sheet 5283:

(1) Schedule 1, item 1, page 5 (line 7), after paragraph 126B(4)(h), insert:

; (i) the public interest in maintaining the protected confidence of journalists sources.
I explained the purpose of these amendments in my speech in the second reading debate. They are about trying to ensure that we recognise the public interest of journalists being able to keep the confidentiality of their sources. The example that I gave in my speech was in relation to airport security and the flaws around airport security that were revealed by the whistleblower. The public has an interest in ensuring that whistleblowers and others remain anonymous so that they feel confident in providing information to journalists. The example that I gave in my speech was in relation to airport security and the flaws around airport security that were revealed by the whistleblower. The public has an interest in ensuring that whistleblowers and others remain anonymous so that they feel confident in providing information to journalists. The very nature of the bill makes clear the intention to maintain and protect the confidences of journalists. I also add to this that it is very clear that the bill is modelled to conform and to be uniform with the New South Wales legislation. With respect to Greens amendment (2), it is necessary to give national security the greatest weight in order to ensure disclosure of information in circumstances where national security is relevant. It updates the New South Wales model, which was developed, as I think I mentioned, in 1998. It is also appropriate that the test be the same as in other legislation where national security is a factor.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.56 pm)—With respect to Greens amendment (1), the additional factor is unnecessary. The explanatory memorandum makes it clear that the factors listed under section 126B(4) are not limited to those listed. Indeed, the explanatory memorandum notes the intention is to protect the freedom of the press and enhance the public’s right to know. The very nature of the bill makes clear the intention to maintain and protect the confidences of journalists. I also add to this that it is very clear that the bill is modelled to conform and to be uniform with the New South Wales legislation. With respect to Greens amendment (2), it is necessary to give national security the greatest weight in order to ensure disclosure of information in circumstances where national security is relevant. It updates the New South Wales model, which was developed, as I think I mentioned, in 1998. It is also appropriate that the test be the same as in other legislation where national security is a factor.

Senator LUDWIG (Queensland) (8.58 pm)—Labor understand the principle the Greens are enunciating, but Labor, unfortunately, in this instance cannot support their amendment. There are two issues. Firstly, this clause has been specifically modelled on the New South Wales Evidence Act. The uniform Evidence Act 1995 and the part that you then amend by inserting the additional clause in proposed section 126B(4) is one of those which is not listed in the Evidence Act of New South Wales. That, of course, does not preclude the use of that provision in the way proposed subsection (4) is modelled, which states ‘without limiting the matters that the court may take into account’. So there are, by those very words, other matters that can exist that can be taken into account, and the court has that discretion. So, if those matters were relevant or germane to the argument, I am sure the legal counsel arguing on behalf of those people who might be in this circumstance would invariably argue that and a range of other matters.

The other matter is that if you juxtapose the New South Wales Evidence Act with the ALRC review—to paraphrase rather than going to the provisions—it says that this area should be modelled on the New South Wales Evidence Act 1995 in its terms. To gain uniformity across the jurisdictions, it settled on section 126B of the New South Wales Evidence Act 1995 and encourages both the Commonwealth and the other states and ter-
ritories to similarly adopt this process. So, without more, Labor does not see that it would add anything. In fact, it would detract from the uniformity of all of the other states and territories utilising 126B in the form promoted by both the New South Wales Evidence Act itself and ALRC report No. 102.

In respect of the second amendment, which goes to national security being given the greatest weight, without more, the Labor Party is left with the position that national security is important. It is important to ensure that it operates and that those matters are dealt with properly and appropriately by the courts. What I can say in progressing this is that the government did give an assurance that this area is to be revisited. My view and Labor’s view—and it is certainly not the government’s view at this point—is that the government will respond to ALRC report No. 102.

In that report there are a huge suite of changes proposed and recommendations put forward by the ALRC which I think this government will consider and bring back here, because some of them are necessary to ensure the uniform Evidence Act works effectively. So I think we will get an opportunity to revisit this area in detail and through a committee process. Labor will certainly be not only pushing for but demanding a proper committee process for that suite of changes. The Labor Party see the need to amend the legislation in this way. It should go further. It is piecemeal. We can make criticisms about the process, but the opportunity will be there.

The other part of the overall framework is that we are only getting the Evidence Act before us. If you go to the *Keeping secrets: the protection of classified and security sensitive information* report—and I am sure senators in the chamber may not have it with them, but they have probably read it—which was ALRC report No. 98 back in May 2004, you will see that it summarises how the whole of the area does need to be addressed and where this government has in fact failed. It goes to quite succinct areas. It goes to the accountability of the executive. The report states:

> It is a central tenet of representative democracies that the government is open to account for its actions, policies and administrative decisions. A key part of this accountability is public access to the information on which action and policies are based.

So we are talking about open government and the ability to have adequate freedom of information laws.

The section of the report which talks about open government also deals with privacy. The aim of that, of course, is to protect personal information about individuals and to give them some control over how that information is collected, stored, used and disclosed. The privacy principles are very important in that area, but we know that there is already a significant privacy review underway. The report also underscores where I think this government has not acted effectively on the reports and recommendations that were made some time ago.

The same chapter of the report deals with protection of whistleblowers. It states:

> One further element in an effective system of open government is providing protection for ‘whistleblowers’ from some of the consequences that might normally follow public interest disclosures, such as prosecutions for breach of a secrecy provision, the imposition of administrative or disciplinary sanctions, or other reprisals.

Of course, we know that this government, back in September 2002, ignored the Senate Finance and Public Administration Legislation Committee report which considered and noted:
Whistleblowing or public interest disclosure schemes rest on the premise that individuals who make disclosures serve the public interest by assisting in the elimination of fraud, impropriety and waste. An effective whistleblowing scheme is a necessary part of maintaining a good public administration framework …

We know that the government has not progressed separate whistleblower or public interest disclosure legislation federally.

So this government has dealt with all of those matters with a slither, but we cannot use this vehicle to promote those. We can only bring pressure and argument to bear on and debate those matters on which this government has failed to ensure openness, transparency and public accountability of government. This is not the bill to do it with, but it is open to us to make the point about where this government has failed. Having listened to the second reading debate contributions of other senators, I think those points have been well made. I have taken longer than I thought I would, but I thank the Senate for its time. I indicated at the outset that we would not support the Greens amendments, but I thought it worth while to put that in context and indicate Labor’s general position in this area.

Senator STOTT DESPOJA (South Australia) (9.06 pm)—I am sure we all thank Senator Ludwig for doing so; I could listen to him talk about that Evidence Act for hours! First of all, I want to seriously acknowledge the point made by Senator Ludwig on behalf of the Labor Party in relation to a more detailed examination of some of the issues and the prospective legislation in this area. The Democrats certainly look forward to the opportunity to analyse the suite of reforms through the Senate committee process. I still think it would have served a useful purpose in this circumstance, but I understand the will of the Senate and look forward to that opportunity in the future. I also take note of Senator Ludwig’s reference to the privacy review that is underway. That will be another significant report for the Senate to examine. I look forward to the government at some point addressing some of the loopholes and flaws in Australia’s current privacy regime.

The Democrats are sympathetic to the position that the Greens have put forward in their amendments. Our reading, and obviously that of others, of the first amendment is that the addition of a reference to ‘the public interest in maintaining the protected confidence of journalists’ sources’ provides additional protections, particularly for whistleblowers. My party will be supporting the intent of that amendment. We do not have a problem with the second amendment. We have expressed concern about something being given greater weight, so we will be supporting that amendment.

Through you, Chair, as I have done privately in the last few moments, I implore the Greens to consider whether or not they need to divide when people have indicated on record how they will vote. However, that is not my decision to make. Having said that, the Democrats will be supporting the amendments before us. Given what the first amendment is intending to achieve—that is, further protection for whistleblowers—we will all need to look at it in the next tranche of legislation. However, in this case, the terminology refers to ‘protected confidence of journalists’ sources’. We will support the amendments before us.

Question put:
That the amendments (Senator Nettle’s) be agreed to.
The committee divided. [9.13 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 6
Noes............. 52
Majority........ 46

AYES
Bartlett, A.J.J. 
Murray, A.J.M. 
Siewert, R. *

NOES
Abetz, E. 
Adams, J. 
Barnett, G. 
Bernardi, C. 
Birmingham, S. 
Boyd, R.L.D. 
Boyce, S. 
Brown, C.L. 
Calvert, P.H. 
Campbell, G. 
Carr, K.J. 
Chapman, H.G.P. 
Colbeck, R. 
Crossin, P.M. 
Eggleston, A. 
Evans, C.V. 
Faulkner, J.P. 
Ferguson, A.B. 
Fielding, S. 
Ferrar-Francis-Wells, C. 
Fifield, M.P. 
Fisher, M.J. 
Forshaw, M.G. 
Hogg, J.J. 
Humphries, G. 
Hurley, A. 
Hutcheson, S.P. 
Johnston, D. 
Joyce, B. * 
Kemp, C.R. 
Kirk, L. 
Ludwig, J.W. 
Macdonald, I. 
Marshall, G. 
McEwen, A. 
McGauran, J.J.J. 
McLucas, J.E. 
Moore, C. 
O’Brien, K.W.K. 
Parry, S. 
Payne, M.A. 
Polly, H. 
Rona, M. 
Sherry, N.J. 
Stephens, U. 
Sterle, G. 
Treloar, J.M. 
Troid, R.B. 
Watson, J.O.W. 
Webber, R. 
Wong, P. 
* denotes teller

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.18 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

FOOD STANDARDS AUSTRALIA NEW ZEALAND AMENDMENT BILL 2007

Second Reading

Debate resumed from 28 March, on motion by Senator Abetz:

That this bill be now read a second time.

Senator McLUCAS (Queensland) (9.18 pm)—We are now dealing with the Food Standards Australia New Zealand Amendment Bill 2007. This bill proposes to amend the Food Standards Australia New Zealand Act 1991 in a number of ways. Firstly, it reforms the assessment and consultation process. The current one-size-fits-all model for assessing different applications and proposals by the Food Standards Australia New Zealand Authority, FSANZ, will be replaced by three different streams so that applications and proposals can be assessed according to their nature and scope. Secondly, the bill contains amendments to strengthen the alignment of the policy-setting process of the ministerial council and the standard development and approval process of FSANZ. The bill enables FSANZ to suspend consideration of an application for up to 18 months where the council has notified FSANZ that it is developing a policy guideline on the same issue. Thirdly, subject to necessary changes to the food treaty between Australia and New Zealand, the bill streamlines the process for finalising standards, removing the option for a second review by the ministerial council after FSANZ has approved the standard. Fourthly, the bill introduces a new process for the scientific pre-market assessment and approval of high-level health claims. Finally, the bill makes several minor and consequential amendments to the act to reduce red tape and duplication and to improve clarity.
According to the explanatory memorandum, the purpose of this bill is to amend the act to expedite the development of food regulatory measures and to improve the framework within which FSANZ operates and food standards are made. The bill represents the government’s response to ongoing feedback from consumers, government and industry highlighting a number of areas for improvement in the framework for developing and assessing food standards by the authority. This framework originated in the National Food Authority, established in 1991 when states and territories entered into an arrangement with the Commonwealth. When New Zealand became a partner in the Australian food regulatory system in 1996, the Australia New Zealand Food Authority was established. In November 2000, the Council of Australian Governments, COAG, agreed to a new food regulatory system in response to the food regulation review recommendations contained in the Blair report.

The Food Standards Australia New Zealand Act 1991 established a new independent statutory authority, Food Standards Australia New Zealand—which we know as FSANZ—to develop and approve science based food standards, and conferred policy responsibility for the food regulatory framework on a ministerial council, comprising ministers representing all relevant portfolios. New Zealand, again, joined the system by way of a treaty. In 2004, the Food Regulation Standing Committee, comprising senior officials from the New Zealand, Australian and all state and territory governments, undertook a review of the food regulatory system aimed at identifying opportunities for reducing delays in the authority’s food standards assessment and approval processes and enhancing the protection of confidential commercial information. During 2005, as part of the review, industry and consumers were consulted on any additional concerns with the current standards development process.

A range of possible improvements was identified through these processes. These improvements included, firstly, the timeframe for decision making. The average time taken to complete a full assessment of an application had blown out to 16.8 months, leading to a considerable backlog of applications. Secondly, the one-size-fits-all approach fixed in the legislation for developing or amending a food standard meant that virtually all applications and proposals were being processed in the same way regardless of whether they were for a major or minor amendment to a standard or for a new standard altogether. Under the current framework, even applications for minor technical amendments are subject to the full gamut of two rounds of public consultation, three sets of reports and the opportunity for two rounds of ministerial council reviews. Thirdly, problems were identified relating to the interaction between the role of FSANZ and the ministerial council. Crossover between the standards development process undertaken by FSANZ and the policy development and final checks-and-balances role of the council were resulting in long delays and uncertainty. Fourthly, there were substantial industry concerns around the ‘free rider’ effect that resulted from generic standards. Currently there is no capacity for industry to capture exclusive benefits because all of the details of their applications were immediately made publicly available and because, once amended, the new standard applies to everyone. The absence of protections for commercially valuable information was identified as a disincentive for innovation, particularly in relation to health claims and novel foods.

The government has advised that the issues addressed in the bill were the subject of consultation with Commonwealth, state and territory governments, the New Zealand
government, the food industry, consumer and public health groups and members of the public. Consistent with Australia’s obligations under the Australia-New Zealand Joint Food Standards Treaty, schedule 3 does not take effect unless and until amendments to reflect this new process have been made to the agreement with New Zealand. Labor calls on the government to promptly negotiate the requisite amendments to the agreement so that the amendments in schedule 3 may come into effect as soon as possible. Labor supports these changes, representing as they do an effort to improve and streamline processes for assessing applications and proposals by FSANZ. It is hoped that these changes will improve the timeliness of FSANZ decisions, as the government has promised.

On 29 March this year, the bill was referred to the Senate Standing Committee on Community Affairs for inquiry. The committee received 15 submissions on the bill and considered it at a public hearing in Canberra on 23 April. Submissions to the Senate inquiry highlighted a range of views concerning particular aspects of the bill. The Australian Medical Association expressed disappointment that the bill:

... seems to place greater emphasis on improving processes for industry (reducing red tape and streamlining) than it does on the public health implications of food regulation activities undertaken by FSANZ.

The AMA proposed the adoption of a clear definition of ‘public health’ in the act and raised concerns in relation to changes to public consultation in some of the new assessment processes.

CHOICE raised a series of concerns about changes in the bill which it felt impacted poorly on consumer interests and the transparency of FSANZ’s processes. CHOICE particularly highlighted concerns about the new processes for assessing high-level health claims and argued that they compromised consultation and transparency, therefore undermining FSANZ’s integrity and primary objectives. CHOICE was concerned about changes to public consultation in some of the new assessment processes and that limitations on the capacity of ministers to request a review would limit their ability to protect the interests of consumers. Like the AMA, CHOICE also noted a lack of definition of ‘public health’ in the act.

CHOICE supported the new stop-the-clock provision and noted that it would be illogical for FSANZ to consider an application where the ministerial council had not yet finalised policy guidelines.

In common with the AMA and CHOICE, the Public Health Association raised concerns about changes to public consultation in some of the new assessment processes and noted the lack of a definition of ‘public health’ in the act.

The Dietitians Association of Australia was critical of changes to public consultation in relation to new processes for assessing high-level health claims and called for more information concerning the establishment and membership of expert committees. The association called for greater focus on the public health implications of food regulation activities.

The Cancer Council of Australia raised concerns that weaker measures in relation to food regulation could potentially lead to negative health outcomes for the public.

The Australian Food and Grocery Council argued that the amendments provided for a more efficient approval process where it was appropriate and particularly supported the new high-level health claims process, which it argued would address the significant ‘free rider’ effect. However, the council did raise concerns about the power of the ministerial council to amend standards and the lack of
clarity in relation to the process for amending editorial notes. It suggested further amendments to ensure certainty for business.

The Australian Beverages Council also raised concerns around the lack of clarity in relation to the process for amending editorial notes. The council argued that the proposed stop-the-clock provision was unnecessary and would seriously inhibit innovation and the competitiveness of Australian industry. Bayer CropScience, Monsanto and Dairy Australia similarly raised concerns with the stop-the-clock provision. Bayer CropScience and Dairy Australia suggested further amendments to ensure certainty for business.

The Senate Standing Committee on Community Affairs considered these submissions and raised a number of issues in its report: the assessment of applications; changes to clarify the status of editorial notes in the standards; the role of the ministerial council; and the stop-the-clock provision allowing for the suspension of an application by FSANZ under specified circumstances. It suggested further amendments to ensure certainty for business. It raised issues around new processes for assessing high-level health claims and the public health implications of food regulation activities.

The committee made three majority recommendations, all of which Labor supports: firstly, that the Commonwealth consider clarifying the definition of ‘public health’ in relation to the objectives of the Food Standards Australia New Zealand Act 1991 and the assessment of food standards; secondly, that the definition of ‘standard’ contained in proposed subsection 3(1) of the act be amended to clarify the process for amending editorial notes; and, thirdly, that the stop-the-clock provisions contained in proposed section 109 be amended to provide applicants with an option to proceed with the assessment process, on the understanding that approval may, if necessary, be rescinded or amended following any contrary policy decision by the ministerial council.

We are pleased that the government has moved on two of these issues, proposing amendments to address the committee’s recommendations dealing with editorial notes and the stop-the-clock provisions. Labor support these amendments. As it is always important that everyone is clear as to the intended meaning of legislators in regulatory regimes such as the FSANZ bill, we support the effort to clarify the use of editorial notes in the legislation.

Labor also support the government’s amendment of the stop-the-clock provision for greater flexibility. However, we are disappointed that the government has not adopted the third recommendation of the Senate committee, to include a definition of ‘public health’ in the bill. Labor had intended to move amendments to strengthen the public health objectives of the act, and we are happy to support the Democrats amendment in this regard as it has the same result as our intention.

Labor is conscious that efforts to improve processes for industry—reducing red tape, streamlining assessments and providing greater protections for intellectual property—must always be balanced with protecting the public health implications of food regulation activities undertaken by FSANZ. The government has a third amendment in its package—to omit subsection 112(6), a provision that has been removed after consultation with FSANZ. It appears that the provision has never been utilised and there are no existing regulations to this effect. Under these circumstances Labor will support this amendment.

The Greens and Democrats have proposed a number of additional amendments. Labor will be supporting some of these amend-
ments—notably those which reflect concerns raised during the Senate committee hearings—but I will wait until the detailed consideration of the bill to go through each of these individually. In conclusion, I repeat that Labor supports this bill and the amendments I have noted. We believe this package represents an effort to improve and streamline processes for assessing applications and proposals by FSANZ and hopefully to improve the timeliness of FSANZ decisions.

Senator SIEWERT (Western Australia) (9.32 pm)—The principal objectives of the Food Standards Australia New Zealand Amendment Bill 2007 are to meet and maintain high-level food regulation standards. FSANZ, as it is commonly known, is responsible for developing food standards and codes of practice covering the content and labelling of food, as well as food safety standards in Australia and New Zealand. While the Australian Greens are supportive of the need for review and revision of the current act, we do not believe that the bill before us adequately meets the needs of a modern and dynamic food standards process.

We are concerned that the act does not meet some of its basic objectives, in that it fails to provide a definition of ‘public health’ and, in doing so, fails to ensure that the legislative measures of the act are squarely aimed at delivering public health outcomes as opposed—as some would say—to being more focused on delivering food industry outcomes, in some cases. We also believe the act should include a stronger component of public consultation and address the advertising of unhealthy food to children. And we are concerned that the measures relating to the identification and labelling of genetically engineered food products are not in line with community concerns or a reflection of the desired community standard.

The Senate Standing Committee on Community Affairs undertook an inquiry into the provisions of this bill. While the Australian Greens are supportive of the main body of this report, we did include additional comments to address the definition of ‘health’, the issue of editorial notes, public consultation, some of the aspects of advertising to children, and genetically modified foods.

When we come to the issue of public health we believe that a very considered approach is needed. The Food Standards Australia New Zealand Act 1991 clearly sets out its objectives. They are: the protection of public health and safety; the provision of adequate information relating to food to enable consumers to make informed choices; and the prevention of misleading and deceptive conduct. These objectives place the context of food regulation clearly in a public health framework, highlighting the need for safety and health outcomes. Yet the act does not have a clear definition of public health.

So here we have legislation whose main objective is public health—but what is public health? With this in mind, we believe that the bill should include a definition of public health. Unfortunately, sometimes you would think that the interests of the food industry were being placed ahead of the interests of consumers and public health. The AMA put this opinion to the Senate committee in their submission. The report on this bill by the Senate Standing Committee on Community Affairs made a recommendation that the definition of public health be clarified, but, as far as I can tell from reading the latest lot of amendments, the government has not done that. The Greens believe that more is needed, and we highlighted that in our additional comments report.

We believe very firmly that the act needs a clear definition of public health. The Greens
support the AMA’s proposal that any definition of public health needs to include a commitment to the precautionary principle, which they defined in their submission:

The precautionary principle states that when an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.

As such, I have proposed an amendment to include the following definition of ‘public health’ in this bill, with the definition of the precautionary principle in mind. The definition is: public health is the organised response by society to minimise illness, injury and disability and to protect and promote health; it recognises that health and health care occur in an economic and sociocultural system both nationally and internationally, and therefore seeks to influence all sectors to maximize the health and wellbeing of society; and the precautionary principle should be applied in relation to all public health outcomes considered within this act. I will talk further about the definition when I move the amendments.

I now move on to the issue of public consultation. If passed, the bill will also see the implementation of three different options for the development and changing of food regulation arrangements. These are: a truncated process for minor variation of a food regulatory measure; a more extended process for a new food regulatory measure or a major variation to a food regulatory measure; and a general procedure for all other changes.

A number of submissions to the inquiry were from groups representing consumer and public health interests who indicated concern about the limitations imposed on public consultation proposed within the bill. The point they make is that, while there is a need for streamlining the consultation process, the current bill does not provide adequate opportunities for public consultation, particularly in relation to health claims on food and the maximum residual levels of pesticides and veterinary medicines. The submission from CHOICE recommends:

... that the proposed amendments to the FSANZ Act should also include a definition or further clarification of what applications or proposals would be considered to be a “major variation”, such a “significant change” or involve such “scientific or technical complexity” that they would require the full assessment and consultation processes. This would be consistent with the information provided in Section 36 of Subdivision E which outlines what is considered to be a “minor variation”.

CHOICE also point out in their submission that the establishment of an expert panel to advise FSANZ on applications to amend the health claims standard does not go far enough. They think appropriate consultation measures with an adequate time frame are essential to meet the public interest needs in this area. In response, the Australian Greens are recommending that the bill retain the current provisions that applications for amendments to the health claims standard must be subject to public consultation in a way which enables all public health and consumer stakeholders to comment on the implications and on the evidence provided for the proposed changes.

Then we come to the issue of editorial notes. The bill also amends the definition of a standard in subsection 3(1) to clarify that boxed text identified as an ‘editorial note’ or ‘example’ is not part of a food standard. The Australian Beverages Council commented in response to this that they are of the strong opinion that editorial notes:

... should not be used at all within the written content of the FSC or any individual Standard as they represent a “lazy” form of regulation. Even though the Act may state that editorial notes are not regulations, no court of law would fail to take note of them. We therefore strongly suggest that such editorial notes be removed from the body of
the FSC ... Regulations should in themselves be clear and unambiguous and not require “editorials” that are claimed not to be regulations.

A number of other submissions to the inquiry argued that, if editorial notes are important enough, they should be specified as regulations in the legislation and hence become disallowable instruments. The Greens support these views and the committee report, which states that there needs to be a ‘clear process of amendment to the editorial notes which will ensure appropriate public oversight and consultation’. In fact, the Greens believe that all editorial notes, boxed or otherwise, should be adopted as regulations to make the process clear.

Then we come to something that was not addressed in the bill but that we think should have been, and that is the issue of television advertising standards, or what we call the junk food clause. We believe very firmly that this is a public health issue. Health experts say that there are now more than 1½ billion overweight people around the world. One-quarter of Australian children are either overweight or obese and it is expected that this proportion will grow to one-half by 2025. We have one of the fastest growth rates of childhood obesity in the world. Professor Philip James, head of the International Obesity Taskforce, says the long-term costs of obesity will be huge. He says:

The problem of obesity is so big it was classified by WHO (World Health Organisation) as the biggest unrecognised public health problem in the world.

Private research puts the cost of obesity in terms of health and productivity losses at $11 billion per annum. The AMA has expressed concern that the rise in childhood obesity may, for the first time in Australian history, result in a decline in the life expectancy of newborns.

The International Association for the Study of Obesity says that government insis-
tence that people need merely to exercise more and improve their diets is not enough. It has renewed calls to ban junk food advertising aimed at children. In 2004, Australian advertisers spent $410 million on food advertising. More than 90 per cent of food advertising promotes fast food, chips, lollies, soft drinks, ice-cream and other junk foods— in other words, it is directed at children. A recent study commissioned by New South Wales Health found that overeating, not a lack of exercise, is the real cause of the growth in childhood obesity. Experts agree that kids cannot distinguish between advertisements and what their parents tell them, and we know that more than 90 per cent of food ads are for junk food and that overeating is the real cause of childhood obesity.

It is not hard to join the dots and come up with a ban on junk food advertising as being a sensible, logical solution. A ban on junk food advertising directed at children is what the Greens propose. The Greens propose amendments that prevent children from being exposed to advertisements pushing chips, lollies, fast food and soft drinks, where 90 per cent of the advertising dollar is spent, but allow for advertisements for food deemed beneficial to children’s health, such as fresh fruit. We believe this is a sensible approach and hope that the Senate sees it that way too.

A serious response to this growing public health issue must include measures to prevent advertising directed at children of food products which damage their health. This is why the Greens recommend that this bill should include a standard to remove the advertising of junk food during children’s television hours. This is a public health issue. This standard is entirely consistent, we believe, with the primary objectives of food regulation and public health as set out in this act. If there is a role for food standards in achieving public health outcomes and in assisting consumers to make informed choices
about the health implications of particular foods for themselves and for their families, then this is undoubtedly an area where FSANZ could be actively used in the community to combat the lifelong impacts of obesity. Therefore, we will be making the following amendment: that the advertisement of food or beverages during children’s television viewing hours should not occur unless the minister for health, having determined that such an advertisement is beneficial to the health of children, allows such an advertisement.

I would like to move on now to another area that we believe should be addressed in the standards, and that is genetically modified food. Truth in labelling is an extremely important issue, which I and the Greens believe is gaining increasing public awareness in Australia. The Australian Greens are very conscious of the right of every Australian to know exactly what food they are eating and where it has originated from. I do not believe that you can discuss food standards and safety in the absence of a requirement to tell people whether or not they are eating genetically engineered food products. Irrespective of whether or not you support the more liberal use of GMOs in agriculture, I believe that consumers have a right to make an informed choice about the social, economic and environmental impacts of their purchases. This includes the right to determine for themselves whether they actually want to eat genetically modified food.

This issue is about choice and knowledge; it is about the right to know. It is about allowing the public to be informed of what is in their food and how it is produced in order to let them decide whether it is really what they want to eat and whether they are prepared to pay for it. It should not be up to industry and its lobbyists to determine what they will and will not tell Australians about what is in their food and where it came from. Manufacturers and producers should be required to tell people what is in their products and where they came from so that people can decide for themselves whether they want those products. Australian consumers deserve to be listened to in this debate; it is important that their opinion is also taken into account. There is wide community expectation that the contents and components of goods and their country of origin—or the countries of origin of their various parts—will be accurately disclosed. Consecutive surveys have demonstrated that the consumer’s need for accurate country of origin labelling and for detail of what is in the food is very high.

A Taylor Nelson study in 2002 showed that 92 per cent of Australians thought that food derived from GE crops, such as oils, should be labelled; and 92 per cent thought that labelling should include highly refined products derived from genetically modified crops. This was reinforced by 61 per cent of Australians saying that they thought they would be less likely to buy a product if they knew it came from an animal that had been fed genetically engineered grain. Further research undertaken that same year by Taylor Nelson showed that 68 per cent of Australians would be less likely to eat a food that they knew had been genetically modified.

For these reasons, I think we need to amend the food standards to require full disclosure of genetically modified content. At the moment the requirement to label accurately for genetically modified organisms is extremely lax and most products do not disclose whether they contain genetically modified organisms or whether any of their component products have been genetically modified. We believe that the community want to know what is in their food and their requirement to know is growing. Therefore, I will also be moving amendments in the committee stage that the standards require notifica-
tion of the content of genetically engineered organisms.

Senator BARTLETT (Queensland) (9.47 pm)—I would also like to speak to the Food Standards Australia New Zealand Amendment Bill 2007. I want to focus on a particular aspect of issues raised by the food standards legislation. The legislation as a whole covers a range of areas, and previous speakers, particularly Senator McLucas, outlined the detailed aspects of the bill and all the different measures contained within it. Senator Siewert has detailed wider issues of labelling. As she points out, the objectives in the food standards act relate to the protection of public health and safety, the provision of adequate information relating to food to enable consumers to make informed choices and the prevention of misleading and deceptive conduct.

The authority deals with its responsibilities within a public health framework. But, even with existing labelling where there are requirements—for example, regarding country of origin—it goes beyond just narrow definitions of human health to wider issues. A food label can tell us a lot about the food we put on our plate, like its country of origin or how much fat or sugar it might contain, but the quality of food labelling is often called into question and it can be very controversial. I think this issue of preventing misleading and deceptive labelling is an important one. One only has to think about the debates over the labelling of GMOs in food, which Senator Siewert has just alluded to, to be aware of how passionately people can feel about having the information they want and need in order to make choices to protect their own health and wellbeing or to address other consumer concerns they have regarding, for example, environmental impacts of the production of certain types of food.

People are concerned not only about their own health and wellbeing but also about the wellbeing of others; they are concerned at the moment about childhood obesity and the health and wellbeing of the planet, the environment and the animals that are often used in the production of some of this food. There is a growing awareness within the community about the treatment of animals in food production and the practices of factory farming. Each year more than 540 million farm animals are raised in Australia for food or food production. The clear majority of these animals live their lives in conditions that, I argue, most people would find unacceptable if they were fully aware of them. While many people do not think too closely about the source of their food, more and more are becoming aware of the cruelty associated with many factory farmed meat, dairy and egg products. In addition, many people, whilst they might not think too closely about the source of their food, are nonetheless influenced by words used on labels that might imply that all is well and good, which in some cases is clearly misleading.

A 2001 study of people in Queensland regarding their attitudes to buying meat revealed that consumers ranked the humane treatment of animals ahead of issues such as price. More people are choosing free-range or organic meat and eggs in the belief that they are buying a more humanely produced food as well as, in some cases, for environmental reasons. In 2006 the free-range egg market comprised 20.3 per cent of the total volume of the grocery retail egg market in Australia, which represents a 200 per cent increase since 2000. I would argue that that has been driven by significant and growing community concern based on growing community awareness of the conditions in which battery eggs are produced and that those hens endure. Alongside that, labelling has gone some way towards more accurately reflecting
whether eggs are produced from caged birds. Inglewood Farms, which produces 60 per cent of Australia’s free-range chickens, reported a tripling in sales in six months. A 2006 survey focusing on Australian attitudes towards meat found that 63 per cent of respondents were more inclined to buy free-range pig products after becoming aware of the plight of factory farmed pigs.

I have to note in passing that it is quite unfortunate that the recent review of the animal welfare code of practice regarding the housing of pigs, particularly breeding sows, produced such a poor outcome in the face of such clear and overwhelming evidence of the appalling cruelty that sows are kept in for prolonged periods of time. Amendments to the code barely improve that at all and in some cases will make enforcement and oversight of those conditions and meeting of those codes even more difficult.

I would refer to a report that was recently produced by the animal protection and awareness organisation, Voiceless, a very professional organisation that looks at the facts and the details regarding the treatment of animals. They produced a report called From label to liable: scams, scandals and secrecy—lifting the veil on animal-derived food product labelling in Australia. I think it might have been sent to all parliamentarians. I know we all get a lot of mail—a lot of reports in our mail—but I would recommend people to dig that out of the big pile at the back of their desk and have a look at it, because it is very well written, well researched and quite straightforward in the information that it provides. That report highlights that our current food labelling system is woefully inadequate when it comes to the labelling of animal derived food products. Yes, there is certain information about animal derived food that has to be disclosed, but it is information like the lot identification or the date of packaging. There is no requirement under federal legislation in Australia which requires labelling that identifies how products such as meat or poultry were produced. Alongside that, of course, you may well get labelling that carries a very strong implication that it is produced in the open air, on green fields and under sunny skies when in many cases that is far from the reality.

The reality is that many of the commonly accepted terms that we might use to help us make more humane choices are not defined in federal legislation, such as the current law that we are debating at the moment, and they are not linked to any animal protection standards, leaving aside a separate debate about the adequacy and enforceability of our current animal protection standards when it comes to farm and factory animals. There is no certainty about what terms such as ‘free-range’, ‘organic’, ‘barn laid’ or ‘grain-fed’ actually mean. The term ‘free-range’ can and is still interpreted differently by different producers for different products. Animals produced in free-range conditions may still be subject to painful procedures like tail docking, mulesing or dehorning, or subject to limited food, early weaning, routine antibiotics et cetera. As the report from Voiceless says, many producers are hiding their inhumane factory farming through feelgood product labelling, using terms such as ‘farm fresh’ or ‘naturally perfect’ along with positive imagery of happy, healthy cows or chickens frolicking in green fields. I would once again remind the Senate that one of the aims or objects of the food standards legislation is the provision of adequate information and the prevention of misleading and deceptive conduct. I think this is an area that does merit further examination over the coming period.

It is true that we have a number of voluntary certification or quality assurance schemes. Some people may be aware of the RSPCA accreditation system for egg produc-
tion and pigs. I did mention previously some improvement and standardisation in the basic labelling of eggs in terms of whether they are caged eggs. Even that small advance in accuracy in the labelling of eggs came about only after a very concerted community campaign over long period of time which sought to phase out the battery cage. Indeed, here in the ACT, legislation was actually passed by the ACT legislative assembly to ban battery cage produced eggs, but that was not agreed to by other state governments. Instead a very poor compromise of just a small increase in the size of the cages was put in place.

You might recall, Mr Acting Deputy President Murray, a particularly fetching photograph of me with a chicken on my knee, helping to promote that campaign! I am not sure if that helped or hindered—it depends on people’s views. That was just one part of a large number of efforts to campaign on that issue. The end result of that campaign was to get some labelling that at least had that basic message: ‘This egg comes from a bird in a cage.’ Systems like the RSPCA accreditation system have developed because the public is concerned about animal welfare. People have not done this just for the hell of it; it has been agreed to in various ways. They are concerned about how food is produced and they want information. But as this report makes clear, these schemes are largely self-regulated. They apply a variety of standards. Some adopt a very narrow approach to animal welfare, some are more prescriptive than others and some are more open to public input than others.

These systems are helpful as far as they go, assuming they are accurate, but they limited. We need uniform enforceable laws. Without mandated labelling and terms defined in law, there is no easy way of differentiating between more humane produced products and intensive factory farmed products. This can be done. I understand that the ACT and Tasmania have legislation that requires the way that food is produced be identified, but this is limited to the labelling and sale of eggs.

Mandatory labelling of the way eggs are produced is also legislated in the European Union. Last year the European Commission also adopted an animal welfare action plan which includes a proposal for an EU animal welfare label. This label would identify products produced under high welfare standards linked to scientific standardised indicators. Australia has a precedent for providing information that is not focused just on food safety or public health on food labels. Our country of origin standards for labelling let consumers know where the food was produced—an issue of importance to many people. Food labelling that lets consumers know how their food was produced is another step in helping people make informed choices and using the power of the market to encourage producers to operate in more humane ways.

As well as not having labelling requirements to identify whether animal derived food was produced humanely, Australia also does not have any enforceable standards for the labelling of vegetarian or vegan products. This means that the many people who now, for environmental, ethical or health reasons, choose not to buy or eat animal products and by-products, may, and indeed often do, inadvertently end up consuming these products. Many people may not be aware that marshmallow and liquorice often contain items made from the bones, tissue, hoofs and skin of animals such as cows, pigs and fish, or that emulsifiers that have innocuous numbers like 481, 472 and 471, which are frequently found in basic products like bread, can sometimes contain animal derived fats. Again, some organisations such as the Vegetarian Society have developed their own labels to help consumers. But we should not have to
on this legislation, not to put forward amendments at this stage or anything like that but really to just open up the issue for wider consideration by the community, by the parliament, by the food standards authority. As I said, a lot of the issues and the greater detail are contained in that report put out by the Voiceless organisation. It is one that I think does need further consideration. It would need a lot of thought for it to be done properly and effectively in a way that did not create a lot of unnecessary costs on producers. But I would also argue that having a single, standardised, clear and enforceable national standard may actually assist producers and may assist in efficiency, compared with a lot of varied, imprecise, voluntary based and unenforceable regulatory regimes, which can actually provide people who are less scrupulous and more willing to be misleading with opportunities to exploit market opportunities that really they have no right to.

I leave my remarks for the pondering of the Senate and the wider community. These are issues that I will continue to raise in the future. I also seek leave to incorporate the speech of Senator Allison so we can get on to the committee stage of the debate.

Leave granted.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.03 pm)—The incorporated speech read as follows—

The Food Standards Australia and New Zealand Amendment Bill 2007 is aimed at making FSANZ a more efficient Authority by moving away from a one-size fits all assessment process for food regulatory measures.

Under the arrangements proposed in this there will be three different options for developing and changing food regulatory measures:

• a truncated process for minor variations of a food regulatory measure.
a more extended process for a new food regulatory measure or a major variation to a food regulatory measure and

a general procedure for all other changes.

The Bill also puts in place a legislative framework for variations to the Nutrition, Health and Related Claims Standard which relate to high level health claims – a standard which is still under development. Health claims are of course quite contentious and the Democrats have concerns about moves in food labelling in this direction above and beyond the matters in this bill.

The Democrats are broadly supportive of changes that encourage efficiency within agencies. Such changes should be encouraged.

However we do not support moves that weaken regulatory controls, reduce public consultation or give higher priority to industry needs than public health or safety.

The Foods Standards Australia and New Zealand Act 1991 clearly sets out that the objectives of food regulation are:

- the protection of public health and safety
- the provision of adequate information relating to food to enable consumers to make informed choices and
- the prevention of misleading and deceptive conduct

These are desirable goals and any changes to the regulatory regime must keep these in mind.

A number of submissions to the inquiry into the Bill raised the issue that the Act does not contain a definition of public health.

Both the AMA and CHOICE commented on the omission of a definition and the potential that this has for decisions about food regulation to be based on a limited view of public health – one which only looks at food safety and food borne illness – rather than a broader view of food regulation which includes its potential impact on health and nutrition.

At a time of unprecedented levels of obesity and the associated chronic disease burden, this is a major concern.

Food safety is an important issue. Moves towards intensive farming practices, the introduction of genetically engineered ingredients, more extensive food distribution, all have implications for the quality and safety of our food.

In a context in which food supply is constantly evolving we need a regulatory framework that can manage any potential hazards from these changes.

But food safety is not the only element that we need to keep in mind when it comes to food regulation and public health.

We are all aware that Australia is in an unprecedented epidemic of obesity and diet related illness such as cardiovascular disease and diabetes.

And yet there has been little response from the Government to this burgeoning epidemic.

We are all aware of this government’s continuing refusal to support bans on television food advertising to children.

They have been equally lax in pursuing improvements to food labelling which would provide clear and consistent information to help people make healthy choices.

Food labelling is a tool and it should be used to help us choose healthier foods but as it stands they are a joke - designed more to confuse than to enlighten.

There is a lot of information provided on packaged and processed food. Many people understand the importance of thinking about how much salt, fat and sugar they eat.

But lists expressed in terms that few of us can understand and don’t have the time to look at are not good enough.

The fact that the Parliamentary Secretary to the Minister for Health had to launch a 155 page guide to explain food labels last month shows that the present system is not working.

It is not acceptable that FSANZ is charging people $14.95 for a book to explain what is in an ingredients list, what percentage labelling of ingredients means, how people should read claims such as ‘low fat’ and ‘reduced salt’ and what kilojoules and fat is in commonly eaten foods and drinks.

And that people should have to take this book with them to see what’s in the 2000 or so foods that are listed in the book.
And the online information system that the Parliamentary Secretary also launched last month is no more help.

It may sound nice that you can look up 2,600 different foods and view data for up to 169 nutrients per 100 g for these foods but what does that actually mean for making healthy food choices during the day and how much help is an online system like that when you are doing your shopping?

What we need to know is where a particular food fits in a healthy diet and that information has to be easy to understand and easy to see.

Choosing the healthiest foods quickly is almost impossible at the moment for busy shoppers.

We need a clear, meaningful, coding system that people can understand which is what our amendment seeks to introduce.

“Traffic-light” food labels for nutritional quality (red, amber, green for high, moderate and low levels of sugar, fat, and salt) are an easy way for shoppers to see at a glance a food’s ranking on important dimensions.

A ‘traffic light’ system helps people make comparisons between products and to see what is the healthier option.

The intention of these traffic lights is obviously to guide the traffic and clear health profiles on food could dramatically change people’s choices.

Yes these labels would need to be flexible and specific for foods.

Obviously olive oil even though it is 100% fat is not all bad and an amber light might be appropriate, rather than red.

Similarly the natural sugar content of fresh fruits is often high but we would not want to be suggesting that people should limit their intake of fruit.

These issues can be accommodated in a traffic light system.

Many shoppers would be surprised to find that several of Australia’s best-selling breakfast cereals would carry red lights.

Choice’s recent analysis of children’s cereals showed that many are closer to confectionary than a health food – many were highly processed, high in sugar and salt and low in fibre, despite the marketers suggesting that they were a source of vitamins and minerals.

We also need to consider how trans fat are dealt with in such a labelling system.

There is growing evidence that trans fats pose a serious health risk and there are moves worldwide to deal with this.

Other countries have mandated the labelling of trans fats contents on foods. Australia should follow this lead – perhaps expanding the saturated fat category to include trans fat and with very low levels triggering automatic red lights.

Of course we should be banning the addition of trans fatty acids from all food. Denmark banned these fats in 2004 with no adverse effects on taste or price. Reports suggest that Starbucks is on its way to abandoning the use of trans fatty acids and that all US stores will be free of trans fats by the end of this year. McDonalds are also moving that way.

Unfortunately the agency in Australia charged with protecting our health has done nothing.

Some foods naturally contain trans fat but it is the addition of them in products such as biscuits and cakes and fast foods which is most problematic.

It’s true that industry will probably not like a traffic light type system. They will argue for voluntary schemes or try and make it more complicated so that it is too difficult for people to work out where a food really stands.

This is because traffic light approaches make it easy for people to see what foods are good and bad for health.

Industry is not going to want to see red lights on foods that are selling well.

But this sort of system can have a radical effect on people’s choices. Since the introduction of this type of system in the UK there have been drops in the sale of some products.

We are aware that the Australia and New Zealand Food Regulation Ministerial Council is looking into front of package food labelling and has been doing so for sometime.

But we can not afford to draw this process out indefinitely.
There is considerable international evidence from overseas about the value of a simple traffic light system.

Back in October 2006 the food ministers stated in their communiqué that it was important to involve the food industry in the work of developing a scheme for Australia.

Consultation is always important but we cannot let the demands of industry outweigh the needs of public health.

We need a mandatory system, a simple system, and a system which is not sponsored by the industry.

And we need that system brought in sooner rather than later.

Yes food labelling is only one step towards making the healthy choice the easy choice. There is certainly more that the government can and should be doing.

Healthy food needs to be easy and cheap to get for all people.

As we have said on other occasions food marketing to children needs to be tackled urgently.

Junk food and soft drinks should be kept out of schools and sponsorship by fast food companies banned.

Our town planners need to be designing cities that are more pedestrian and cycling friendly.

We could arrest the development of obesity in children and adolescents and address the problem in adults if we put in a concerted effort.

Better food labelling is part of such an effort.

The Democrats are also concerned about the reduction to public consultation that this Bill will enact if passed unamended.

As it stands the Bill does not contain any requirement that FSANZ seek public comment where an application has been lodged to vary a standard dealing with a high level health claim.

It would also appear that only one round of consultation will be necessary when vitamins and minerals are being added to food.

The use of health claims on foods and the addition of vitamins and minerals are both controversial measures.

Many health professionals would argue that health claims on food are little more than a marketing tool which doesn’t provide any meaningful information.

There is little evidence that health claims contribute to educating the public or benefiting public health.

Indeed more and more industry driven claims on food may actually increase the public’s scepticism about food labels.

Health claims may contribute to a ‘medicalisation’ of food, so that individuals think individual foods are the magic bullet that will reduce risk or solve health problems.

This will undermine whole-of-diet messages and distort the value of balance, variety and moderation in food selection.

The truth is that individual foods do not cause or prevent a disease and for many diseases the role of diet is unclear.

In those diseases in which diet may play a role, there are many other factors also at play and we cannot predict the individual level effects of any one food.

The addition of vitamins and minerals is also problematic.

Fortified foods, similar to foods which carry health claims, are often highly processed foods which have lower nutritional content.

Adding vitamins and minerals doesn’t make these healthy foods.

Fortification can be used as a way to market food and try and project a healthy image, but if the food is still high in sugar, fat and/or salt, the public can be mislead about its overall nutritional content.

Alternatively the fortification could be at such a low level that it is meaningless and yet consumers will think they are getting adequate calcium or vitamin C or whatever it is they are being sold.

And how will consumers manage all these fortified products? If they are having a fortified breakfast cereal, fortified bread for lunch, vitamins in there fruit juice - how will they know when is all too much?
Apples are apples and chocolate is chocolate. But what happens when we start adding vitamins to chocolate? Does this mean its as good as eating an apple?

If you’re trying to get you child or grandchild to eat something, are they more likely to go for the chocolate with added vitamins or the apple?

The line between what is healthy and unhealthy will become more unclear. There will be more confusion.

This will make it all more difficult to sell the message that we need to be eating more natural and unprocessed foods, more fruit and vegetables.

It is true that there are cases of micronutrient deficiency – where adding folate or iodine or iron – may be generally beneficial but these are few and far between.

Generally we have access to the food that we need to meet our vitamin and mineral needs.

We should be concentrating our efforts on encouraging a healthy diverse diet, not clutching at fortification as the answer.

And we should be providing for a broad input into decisions about how far down this path we go. We should be allowing all public health and consumer groups to have input into these decisions.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.03 pm)—I thank Senator McLucas, Senator Siewert and Senator Bartlett for their contributions to this debate. The Food Standards Australia New Zealand Amendment Bill 2007 proposes amendments to the Food Standards Australia New Zealand Act 1991. It sets out the process for developing and amending joint food standards for Australia and for New Zealand.

In summary, the bill introduces a risk based standards assessment and consultation process that will make the process more efficient and more effective. The bill aligns and harmonises standard development processes to eliminate unnecessary duplication and red tape, recognises the changing environment and creates processes to improve the management of issues in relation to food innovation.

On 29 March 2007 the Food Standards Australia New Zealand Amendment Bill 2007 was referred to the Senate Standing Committee on Community Affairs, which delivered its report on 1 May this year. The Standing Committee for the Scrutiny of Bills also reviewed the bill and included comments on the bill in the Alert Digest No. 5 of 2007. Both reports make recommendations that propose the development and tabling of relatively minor government amendments.

In light of these reports it is proposed to move three government amendments to the bill: firstly, to amend the definition of ‘standard’ contained in proposed subsection 3(1) of the bill to also exclude editorial notes and examples which are not boxed; secondly, to amend the stop-the-clock provisions contained in proposed section 109 to provide applicants of paid applications with an option to proceed with the assessment process if they so wish; and, thirdly, to remove new subsection 112(6) of the bill. Subsection 112(6) of the bill authorises the amendment of the standards development process in the Food Standards Australia New Zealand Act 1991 by regulation. The Scrutiny of Bills Committee is concerned that such a provision involves a delegation of legislative power.

The Senate Standing Committee on Community Affairs report also recommended including a definition of ‘public health’—and I know honourable senators mentioned this in the preceding debate. A determination on this complex issue cannot be made by the Commonwealth alone, as such a definition will have significant impact on all jurisdictions, including state jurisdictions, territory jurisdictions and New Zealand. This issue is being considered by the Food Regulation Standing Committee Strategic Working
Group presently. The government is actively monitoring the progress on this issue and will consider whether the objectives of the FSANZ Act ought to be clarified once this consultation process among jurisdictions is complete. It notes, however, that there is a need to avoid any clarification of a definition of public health that would result in unintentionally narrowing the scope of the act’s objectives. Additional clarification on a number of comments made by the Scrutiny of Bills Committee has been included in a supplementary explanatory memorandum for the bill.

The state, territory and, indeed, New Zealand governments have all been closely involved in the development of this legislation. All parties are committed to a food regulation system that runs as smoothly and efficiently as possible while maintaining the existing transparent and accountable arrangements. The bill demonstrates this government’s continued commitment to the protection of public health and safety and it improves upon the already robust regulatory arrangements that protect the safety of food for all Australians. 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 MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.08 pm)—I table a supplementary explanatory memorandum relating to the government amendments to this bill to be moved, including supplementary information relating to the explanatory memorandum for the bill. The memorandum was circulated in the chamber on 12 June 2007. I seek leave to move government amendments (1) to (3) on sheet QW325 together.

Leave granted.

Senator MASON—I move government amendments (1) to (3) on sheet QW325:

(1) Schedule 1, item 13, page 6 (lines 11 and 12), omit “boxed”.

(2) Schedule 1, item 76, page 67 (lines 10 to 16), omit subsection 109(9), substitute:

(9) If the Council notifies the Authority that it is formulating policy guidelines for the purposes of paragraph 18(2)(e):

(a) the Authority may, subject to subsections (9A) and (9B), suspend its consideration of any application which, in the opinion of the Authority, would be affected by the guidelines once formulated; and

(b) if the Authority suspends its consideration of an application, notify the applicant of the suspension, and the period of the suspension.

(9A) If:

(a) an applicant has applied for the development or variation of a standard; and

(b) an exclusive capturable commercial benefit would be conferred on the applicant if the standard were made or varied in the manner sought in the application; and

(c) either:

(i) the charge fixed under subparagraph 146(6)(b)(ii) in relation to the application is paid; or

(ii) in a case where the charge is payable in instalments—each instalment that is due and payable in relation to the application is paid;

the Authority must not suspend its consideration of the application unless the applicant first consents to that suspension.
(9B) If:

(a) an applicant elects to have the consideration of his or her application expedited; and

(b) either:

(i) the charge fixed under subparagraph 146(6)(b)(ii) in relation to the application is paid; or

(ii) in a case where the charge is payable in instalments—each instalment that is due and payable in relation to the application is paid;

the Authority must not suspend its consideration of the application unless the applicant first consents to that suspension.

(3) Schedule 1, item 76, page 70 (lines 12 to 14), omit subsection 112(6).

Why is the government introducing these amendments to the bill? On 29 March 2007 the Food Standards Australia New Zealand Amendment Bill 2007 was referred to the Senate Standing Committee on Community Affairs, which delivered its report on 1 May this year. As I mentioned previously, the Standing Committee for the Scrutiny of Bills also reviewed the bill and included its comments on the bill in the bill’s Alert Digest No. 5 of 2007. Both reports make recommendations that propose the development and tabling of relatively minor government amendments. In light of these reports the government is moving three relatively minor non-controversial amendments to the bill. Amendment (1), in relation to the editorial notes, is to schedule 1, item 13, page 6, lines 11 and 12 of the bill, which amends the definition of ‘standard’ in subsection 3(1) of the act to clarify that text identified as an editorial note or example is not part of the standard. The amendment proposed retains the policy intent that all text identified in the Food Standards Code as an editorial note or example is not part of a standard.

Secondly, the amendment proposed in relation to the stop-the-clock provisions is to schedule 1, item 76, page 67 of the bill. Clause 109 in the bill originally allowed the authority—that is, FSANZ—to suspend consideration of all applications if the authority considered that the application might be affected by the policy guideline under development by the Australia and New Zealand Food Regulation Ministerial Council. It is proposed to amend this provision to provide applicants with an option to proceed with the assessment process of a paid application. The authority will inform applicants about the role of the ministerial council in the standards development process and that approval, if it is granted, may be rescinded or amended if necessary following any contrary policy decision by the ministerial council.

Subclause 112(6) of the original bill authorised the amendment of the standards development process in the Food Standards Australia New Zealand Act 1991 by regulation. The Scrutiny of Bills Committee is concerned that such a provision involves a delegation of legislative power. Following consultation with Food Standards Australia New Zealand, it appears that the provision has never been utilised and that there are no existing regulations to this effect. The intention of this amendment is simply to remove the provision.

Question agreed to.

Senator SIEWERT (Western Australia) (10.12 pm)—I move Greens amendment (1) on sheet 5246:

(1) Schedule 1, page 6 (after line 2), after item 11, insert:
11A Subsection 3(1)
Insert:

*product of Australia* and *made in Australia* and *Australian made* means
100% manufactured, produced, assembled or processed in Australia.

This amendment adds a subsection which relates to whether or not a product is made in Australia. It says that ‘product of Australia’, ‘made in Australia’ and ‘Australian made’ mean 100 per cent manufactured, produced, assembled or processed in Australia. I do not know how many people are aware that ‘made in Australia’ at the moment means that only 50 per cent of the product has to be made in Australia. If a product is 100 per cent made in Australia, it says ‘product of Australia’. I challenge anybody walking around a supermarket not to think that if a product says ‘made in Australia’ it is 100 per cent made in Australia, not 50 per cent made in Australia and 50 per cent not made in Australia. The 50 per cent made in Australia could be the jar; it might not even be the food.

This amendment means the standard will require that if a product says ‘made in Australia’ it is 100 per cent made in Australia; if it says ‘product of Australia’, it is 100 per cent made in Australia; if it says ‘Australian made’, it is 100 per cent made in Australia. We believe this is very important. It is about telling the truth to consumers, about allowing consumers to make a choice and about setting a standard whereby they know with total reliability that when they have bought something in Australia it is made in Australia, because people associate a certain level of safety and quality with products, particularly food products, that are made in Australia. We believe that this is an extremely important amendment that clarifies something that has been unclear to many consumers. As I said, I bet that most consumers do not know when they buy a product that is labelled ‘made in Australia’ that as little as 50 per cent of that product could be made in Australia. As I said, we believe that this is an important amendment and I commend it the chamber.

Senator McLUCAS (Queensland) (10.15 pm)—I want to indicate that the Labor Party will be supporting the amendment proposed by the Greens referring to the ‘made in Australia’ label. I agree with Senator Siewert: there is no clarity about what the label in fact means. I think that this is a sensible amendment that will assist in clarifying that.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.15 pm)—I understand Senator Siewert’s frustration, but this bill is not the place to forward this sort of policy proposal. The Food Standards Australia New Zealand Act is Commonwealth legislation that establishes the food regulator and sets out the process for developing and amending food standards. This is a Commonwealth act and it has no legal application within the states and territories. This legislation is enforced by states and territories and, indeed, New Zealand under their own food and health acts. An amendment of this sort in an act such as this will have no effect where it counts, and that is in the jurisdictions that enforce and administer the legislation. The government’s point is purely that this is the wrong place to suggest this sort of amendment. I suggest to honourable senators that such a proposal would have to come through the ministerial council, which is a consultative group of all jurisdictions of the Federation, including the territories and New Zealand, or that people would have to make an application to FSANZ for the development of a food standard. Those are the two ways in which an effect could be had on standards within Australia where they in fact have an impact and are enforced, and that is in state and territory legislation. The government opposes this amendment.
Question negatived.

Senator SIEWERT (Western Australia) (10.17 pm)—I move Greens amendment (2) on sheet 5246:

(2) Schedule 1, page 6 (after line 2), after item 11, insert:

11B Subsection 3(1)

Insert:

public health is the organised response by society to minimise illness, injury and disability and to protect and promote health. It recognises that health and health care occur in an economic and socio-cultural system both nationally and internationally, and therefore seeks to influence all sectors to maximise the health and wellbeing of society. The precautionary principle should be applied in relation to all public health outcomes considered under this Act.

This relates to public health. I outlined the reasons why we believe this is essential in my speech in the second reading debate. I just want to remind people that the objective of the act is clearly the protection of public health and safety, but we believe that the act does not adequately define what public health is. We therefore seek to define it. The report of the Senate Standing Committee on Community Affairs did make comment on the lack of clarity around public health. I was hoping that the government would seek to further clarify that definition.

I also note that the Australian Medical Association raised the issue of public health. In fact, it recommended that a better definition be included in the act. In its submission to the committee it also had quite a lengthy definition on the precautionary principle and how it should be applied. I did not think it was practical to enclose such a lengthy definition of the precautionary principle, so I narrowed it down somewhat. I think that a definition of this nature in the act would make the issue around public health and safety clearer. Again, I commend this amendment to the chamber.

Senator McLUCAS (Queensland) (10.19 pm)—I want to indicate that the Labor Party cannot support this particular amendment, which is an attempt to define public health. We prefer the wording that the Democrats have proposed and we will be supporting their amendment. We understand the intent of the Greens amendment but we think the language that the Democrats have proposed is probably more apt.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.20 pm)—I acknowledge that Senator Siewert’s recollection of the report of the Senate Standing Committee on Community Affairs is quite right. The committee did recommend a definition of public health in the FSANZ Act, but the government decided not to adopt it for several reasons. The role of food regulation in achieving public health objectives is currently being considered by the Food Regulation Standing Committee strategic working group. It is an issue that is currently under consideration. A determination on this complex issue cannot be made by the Commonwealth alone. Such a definition will have a significant impact on all jurisdictions, including New Zealand. I think it is important—I mentioned this before but I want to stress it—that this is a consultative federal process that has impact on the ground where it matters in the states and the territories where the law is enforced. This is a highly consultative process and, for this to occur, all the states and territories and New Zealand would need to be involved. The government is actively monitoring the progress on this issue and will consider whether the objectives of the FSANZ Act ought to be clarified once this process is complete. The government notes however that there is a need to
avoid any clarification of the definition of public health that would result in unintentionally narrowing the scope of the act’s objectives. I suspect that all honourable senators agree with that.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.21 pm)—The Democrats also prefer our amendment to the Greens amendment, as might be expected. We might as well have the debate on both amendments and I will move mine later. It seems extraordinary to me that you can have an objective, which is the protection of public health and safety, and not be prepared to provide a definition of what that might mean. I can understand that you would wish to have maximum consultation, but presumably this bill had consultation and it must have been an oversight—surely you can assure us of that—that at the same time you did not consider defining that. I would also argue that you could put this definition into the bill and that it could be adjusted at some later stage should it be found to be totally inappropriate. However, I think the definition that we have put forward is a pretty straightforward one that few would find reason to argue against. I would be interested in the advice that you would take in this consultation you are having with New Zealand, even if you can indicate whether there are items on either Senator Siewert’s or the Democrats’ amendment which you would not want to pursue in such a consultation.

The problem with not having definitions is that that opens the way for interpretations, which might be at odds with what was intended. There could, for instance, be cases where the definition is interpreted as pertaining only to food safety and food borne illness. That would be a very limited view of public health and safety which would only address the short-term health impact of food regulation rather than the long-term impact on the health and nutrition of individuals and populations. I am sure there would be many other examples that one could give of how interpretations of a nondefinition might occur. It would be useful if you could advise us about what approach the government is going to take. Surely you have got some draft somewhere that you would take into such consultations. It is hard to believe that you would not have thought about this at all.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.24 pm)—As I mentioned, this is a consultative process and all jurisdictions—all territories, states and New Zealand—would have to be consulted. I think I also mentioned, in relation to the arguments raised by Senator Siewert, that this issue is currently being considered by the Food Regulation Standing Committee strategic working group. I have just been advised, Senator Allison, in response to your robust debate, that a progress report from the Food Regulation Standing Committee strategic working group is due in October this year. I suspect we are making some headway, even if it is not perhaps as fast as you would like.

Senator SIEWERT (Western Australia) (10.25 pm)—I appreciate that there is some reluctance to tell us what is being consulted about through the process, but I am wondering if that includes the issue of precautionary principle. Are you including that in the process?

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.25 pm)—I am not certain about that; I do not know, but I do know that the role of food regulation in achieving public health objectives is very complex, controversial and the consultation process is ongoing.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.26 pm)—I
move Democrats amendment (1) on sheet 5272:

(1) Schedule 1, page 6 (after line 2), after item 11, insert:

11B Subsection 3(1)

Insert:

**public health** is the organised response by society to protect, promote and restore health, and to prevent illness, injury and disability at a population level, recognising the multidimensional nature of the determinants of health, including biological, behavioural, social and environmental factors.

I wonder, Parliamentary Secretary, if you could advise us what the process will be for eventually putting in a definition. Will it come back as an amendment to this bill at some stage? Will there be any sort of consultation? And what is the time frame for achieving this aim?

Senator MASON (Queensland— Parliamentary Secretary to the Minister for Health and Ageing) (10.26 pm)—As I mentioned, in October there will be a progress report. For the definition of public health to be meaningful and have an impact on regulation of food within Australia, there will need to be not only consultation but agreement by the states, the territories and New Zealand. So this is not something that can be done quickly or simply by an amendment to a Commonwealth act; it will take some time to achieve a consensus.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.27 pm)—I move Democrats amendment (1) on sheet 5250:

(1) Schedule 1, page 7 (after line 34), after item 18, insert:

18A After section 9

Insert:

**9AA Matters that must be included in standards**

(1) The Authority must develop a standard for a simplified nutrition front-of-pack labelling scheme that:

(a) provides separate information on the nutrient content of a product being each of the fat, saturated fat, sugar and salt content of a product;

(b) uses red, amber or green colour coding to indicate the content level of nutrients mentioned in paragraph (a) in the product where a high level of nutrients is indicated by the colour red, a medium level of nutrients is indicated by the colour amber and a low level of nutrients is indicated by the colour green;

(c) uses nutritional criteria developed by the Authority to determine the colour code including a method of linking the colour code to specific levels of nutrients; and

(d) gives information on the levels of nutrients mentioned in paragraph (a) contained per portion of product.

(2) For the purpose of this section, **front-of-pack labelling** means a display of printed information:

(a) on or attached to the goods;

(b) on or attached to a container or primary package in which the goods are supplied.

(3) The standard required by subsection (1) must be implemented before the expiration of 3 months after the Food Regulation Standing Committee Front-of-Pack Labelling Working Group reports to the Council.

This puts in place a system of labelling for food which is commonly known as the ‘traffic light system’—that is, a system of labelling which essentially identifies those foods that are high in salt, in fats and in sugar. This is in response to a very serious problem Australia faces—that is, obesity. Australia has
one of the highest rates of child obesity in the world. It seems to us, and to many others that we speak with—physicians and parents and people who are interested in turning around this very serious problem in this country—that one of the issues associated with obesity is lack of information about what exactly is in the foods that are purchased so that ignorance on the part of people is not entirely up to them to solve. This is why we suggest introducing a labelling system that would assist people—assist parents and assist children—to understand the implications of the foods they eat and to allow them to make healthy choices so that we can avoid some of the serious problems which are facing our health system and our young people right now.

It is also critical at a time when you could argue that genetic engineering, intensive farming and highly processed food are more available than at any time in the past. A wide array of highly processed cereals presents itself in every supermarket to mum or dad or whoever it is who goes shopping with the kids. It can be quite difficult to figure out what is good for you and what is not. We know that the current system of labelling on foods is difficult to understand. If you have not brought your glasses with you to the supermarket, it can be difficult to even read it. Sometimes it is so hidden on the back of the product that you cannot find it anyway.

We have done quite a lot of work to investigate what a system that would overcome that might be, and we believe that it is appropriate for the authority to develop, as the amendment says:

... a standard for a simplified nutrition front-of-pack labelling scheme that:

(a) provides separate information on the nutrient content of a product being each of the fat, saturated fat, sugar and salt content of a product—

and—

(b) uses red, amber or green colour coding to indicate the content level of nutrients mentioned.

And, where there is a high level of nutrients, that is:

... indicated by ... red, a medium level ... is indicated by ... amber and a low level of nutrients ... is indicated by the colour green.

We believe that would go a long way to assisting to provide information to consumers about exactly what they are buying and how good or otherwise it is for their health.

It is quite interesting that the Parliamentary Secretary to the Minister for Health and Ageing had a launch just last month of a 155-page guide to explain food labels. That is an indication that the system that we have at the present time is not working. I really cannot see people going to the supermarket with the 155-page booklet, trying to figure out what is good for you and what is not. Not only is the booklet 155 pages long but it costs $14.95, so we expect people to purchase this great document and turn up and be informed about what to eat.

The labelling system at the present time tells us something of what the ingredients are in a given product, but it does not tell us the much more essential information that we now know is necessary. So I strongly suggest that we move towards a system which is now recommended. I understand that the United Kingdom and other countries are moving in this direction, so it is not a new concept. It has been tried and tested elsewhere. I can assure you, Parliamentary Secretary, that parents, in particular, are crying out for such a scheme. It would assist enormously in informing both them and their children about what is safe and good to eat.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.33 pm)—Senator Allison is quite right. Labelling is an issue,
and it is an important issue, particularly in the context of obesity and fat content. Indeed, the booklet that I launched the other day—

Senator Moore interjecting—

Senator MASON—Senator Moore reminds me that it is $14.95. It is money very well worth spending, I think, because it explains all about nutrition and labelling of products. Senator Allison, you are also quite right to suggest that this traffic light system, if we can call it that, is being used in Great Britain with some, although not complete, success.

While I agree with you about concerns about food labelling, as I mentioned to Senator Siewert earlier in a slightly different context, this is not a matter for this legislation. It is a matter to be taken to the food regulator, FSANZ, for assessment and possible inclusion as a food standard. That is one possibility. Food labelling can of course also be addressed by the ministerial council and, again, by all jurisdictions: the states, the territories and New Zealand. It is not an issue that can be addressed, by an amendment, through this legislation. That is not a criticism of the argument that we need a change to food-labelling practices. That may well be right, but this legislation is not the place to do it. I should inform the Senate that the issue of front-of-pack labelling is currently under consideration by the ministerial council, which will advise FSANZ of a way forward, but this legislation is not the place to do it.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.35 pm)—I differ from the minister on whether this is the place to do it or not, and I remind the parliamentary secretary that this amendment is simply to instruct the authority to produce a system. We have not attempted to indicate how much fat or salt or anything of that sort should be included in the red-light system but, rather, it is an expression of instruction, if you like, to an authority to develop such a system. We have not attempted to develop it here; that is not what this amendment is about. It is about giving an instruction to an authority to do it.

It would be useful to know whether Australia is going to be proactive in this way. Will you, as part of the food standards process, be pursuing this or not? It would be useful for us to know that. I assume that in this, as in most consultations, the government will be going in with a platform that it starts with as a negotiating point. Is that going to be the case? Will a traffic light system or something similar be part of the negotiation we take into this consultation?

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.36 pm)—Just to reiterate, Senator Allison, the act cannot instruct the states, territories and New Zealand. Only the ministerial council can do that. Again, that is a consultative process, not something that can be directed from this act. The Commonwealth’s position will depend on what the ministerial council decides. You are quite right that the United Kingdom have a traffic light system, but they are currently reviewing their labelling procedures as well. So, as you say, it is an issue primarily because of the issue of obesity, but this bill is not the place to enact those standards. I have just been advised that a progress report will come down from the ministerial council in October this year in relation to front-of-pack labelling.

Senator McLUCAS (Queensland) (10.37 pm)—I want to indicate that, whilst Labor have spoken long and loud about the need to respond to the epidemic of obesity—I do not know whether we can say that, but it is getting close—and we need to do something about it, we concur with the parliamentary
secretary’s explanation of why this is not the appropriate way to do it. Something has to happen and it has to happen pretty quickly, and part of the solution will be appropriate labelling to inform consumers—whether they are children or the parents who are being badgered by those children to buy a certain product—about what that product contains in an easy-to-read message. There is a lot of potential merit in the traffic light system, but I agree with the parliamentary secretary that this is not the place to enact that policy intent.

Senator SIEWERT (Western Australia) (10.38 pm)—The Greens will be supporting this amendment. As you can probably tell from my contribution to the second reading debate on the bill and from our proposed amendments on children’s television standards, we are deeply concerned about what we believe to be an obesity epidemic in our children. The Greens believe that an easy-to-use system—and one that children can participate in—is necessary. My sister has studied food technology at university. She has three children and, as you can probably appreciate, she pays close attention to what is in food products. However, she has great difficulty going around the supermarket with three kids under the age of 10 and trying to explain to them why they cannot have certain products while she is reading in depth the back of a product and trying to interpret it. Reading a book while having three kids in tow does not work very well. Can you believe that? The kids frequently come very close to winning the nagging competition. An easy-to-use system that is quick to use and that also engages your children so that they could learn as well would be very useful. We say to the government: ‘Please take this on board and get moving on it because it is essential.’

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.40 pm)—I suspect that we all agree that labelling must be clearer and that something has to be done, but I think we disagree on the process. This is not the right place to do it.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.40 pm)—I move amendment (2) on sheet 5272:

(2) Schedule 1, item 74, page 37 (line 5), at the end of section 42, add:

; or (iii) involves the addition of vitamins or minerals to food.

Amendment (4) brings back the public consultation requirement into any proposal that relates to variations to high-level health claims. The changes to the health claims process remove public consultation altogether, which we think is a serious omission. Because health claims may have a significant impact on public health and safety as well as on consumer information, they should be subject to the full assessment and consultation process. Removing all public consultation in favour of expert committees excludes many key stakeholders from participating in consultation, and it also places the interests of the food industry above the interests of consumers that this legislation is charged to protect. This is inconsistent with the three primary objectives of the act, which relate to the protection of public health and safety, the provision of consumer information and the prevention of misleading and deceptive conduct. I would appreciate it if the parliamentary secretary could advise us as to what led to the public consultation requirement being taken out in the first instance and, if this amendment is not supported by the government, why that is the case.

The TEMPORARY CHAIRMAN (Senator Crossin)—Senator Allison, could you clarify what amendment you are talking to? We are dealing with sheet 5272, amend-
ment (2), about the addition of vitamins and minerals.

Senator ALLISON—I understood that that was what I was speaking to.

Senator Mason—Madam Chair, perhaps I can help. I think Senator Allison was referring to item (4) in relation to public notification, whereas amendment (2) relates to the addition of vitamins and minerals.

Senator ALLISON—Yes, you are quite right. The numbering system on my sheet has got that the wrong way around—so I will start again. Amendment (2) requires the full consultation process for proposals that involve the addition of vitamins and minerals. The consultation paper leading into this bill cites the addition of vitamins and minerals to food as an example of an application that would require only one round of public consultation because it would merely be a change to an existing table. This ignores the considerable debate amongst industry, public health and medical professionals about the fortification of food with vitamins and minerals—they have the potential for significant implications for public health—and the marketing of these products may result in misleading and deceptive conduct. We argue, therefore, that it should be subject to the full consultation process.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.44 pm)—The government believes that there is nothing inherently problematic about the addition of vitamins to food that necessitates two rounds of public consultation rather than one, but if the issue warrants that level of scrutiny—that is, two rounds of public consultation—FSANZ, the food standards authority, is able to go down that route.

Senator McLUCAS (Queensland) (10.44 pm)—The Labor Party will support the Democrat amendment to have the two rounds of consultation prior to approval of the addition of vitamins and minerals to food.

Senator SIEWERT (Western Australia) (10.45 pm)—Likewise, the Greens will support this amendment. This came up during the committee inquiry, and the issue about the need for a second round of consultation was raised. The Greens believe that this warrants that sort of consultation process, so we will support this amendment.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.45 pm)—I move Democrat amendment (3) on sheet 5272:

(3) Schedule 1, item 74, page 56 (lines 31 to 34), omit paragraph 95(2)(d).

This amendment opposes the ability of the authority to declare the variation as urgent just because of an impact of trade. We do not agree with that. The government, effectively, elevates the trade interests to a level similar to that of public health and safety, and we think that is inconsistent with section 10 of the objectives of the act.

Senator McLUCAS (Queensland) (10.46 pm)—The Labor Party will not support this amendment. It is our view that the inclusion of this provision by the government was a common-sense approach and we support its retention.

Senator SIEWERT (Western Australia) (10.46 pm)—It may not come as any surprise that the Greens will support this amendment. It is amendments like this by the government that drive people to say that the act puts the interests of the food industry before public health and safety, so we believe this is a good amendment and we will support it.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.47 pm)—Senator McLucas put it very well: it is a common-
sense amendment. The situation could occur where it is necessary to utilise the urgency provisions in order to address an unforeseen negative impact on trade. The bill includes the safeguard that ensures that the trade ground can only be used if it is consistent with FSANZ objectives of the protection of public health and safety, the provision of adequate information relating to food to enable consumers to make informed choices, and the prevention of misleading or deceptive conduct. So the protection of public health and safety remains paramount.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.47 pm)—Is the parliamentary secretary able to provide an example of where this might be necessary?

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.47 pm)—An example of this would be an improvement in technology that could detect minuscule levels of a substance which, although not harmful, is not permitted under the food standards code. In a situation where—for example, on apples—new technology enables the detection of even the tiniest trace of an element that is not permitted, trade could be interfered with and an urgency provision would overcome that problem.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.48 pm)—I move Democrat amendment (4) on sheet 5272:

(4) Schedule 2, item 9, page 79 (lines 2 to 16), omit section 51, substitute:

51 Calling for submissions

(1) When applying for a high level health claims variation, the Authority must give public notice calling for submissions relating to the matters mentioned in subsection (2).

(2) The notice must:

(a) state that the Authority has prepared a draft high level health claims variation; and

(b) include a copy of the draft variation, or state how a copy of the draft variation can be obtained; and

(c) call for written submissions, for the purpose of the Authority’s consideration of the draft variation, to be given to the Authority within the period specified in the notice (the submission period).

I spoke earlier about amendment (4). This amendment brings back the public consultation requirement in any proposal that relates to variations to high-level health claims. I will not go through the arguments that I put before.

Senator McLUCAS (Queensland) (10.49 pm)—Labor will support this amendment as well, and we covered the reasons during the second reading debate.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.49 pm)—The high-level health claims committee is the technical committee that is capable of assessing the veracity—indeed, the weight—of health claims proposed by food manufacturers. This is a technical and scientific issue. Public consultation would not necessarily add to strengthening this process or protecting consumers from misleading behaviour. During the development of the health claim standard by FSANZ, the public was consulted twice. The interested public is very aware of the new health claims currently being developed. So there has been public consultation in developing this standard, and the government believes that this is a technical and scientific issue well placed for the high-level health claims committee to look at.
Senator SIEWERT (Western Australia) (10.50 pm)—The Greens will support this amendment.

Question negatived.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.51 pm)—by leave—I move Democrat amendments (5), (6) and (7) on sheet 5257:

(5) Schedule 3, item 5, page 89 (line 10), omit “draft after review”, substitute “or request second review of draft after first review”.

(6) Schedule 3, item 5, page 89 (line 17), at the end of subsection 88(1), add:

; or (d) request that the Authority review the draft.

(7) Schedule 3, item 5, page 89 (after line 19), after section 88, insert:

88A Second Review

A second review is to be conducted in the same manner as the first review as provided for in this Division.

These amendments keep the minister’s ability to have two opportunities to request a review of any FSANZ application or proposal. The bill proposes to reduce it to one, as I understand it. The food industry says that these reviews are unnecessarily prolonging the standard development process and prevent the commercial benefits of getting new, innovative products onto the market quickly. It is not clear how consumers might be disadvantaged when application processes are prolonged as a result of ministerial requests for review. In requesting these reviews, ministers are looking after the interests of their constituents when they feel the consumer and public health interests have not been adequately addressed. Limiting the capacity of ministers to request a review would limit their ability to protect the interests of consumers. It is our understanding that second reviews have only been requested on a very few occasions. So there seems to be no good reason to remove them.

Senator McLUCAS (Queensland) (10.52 pm)—Labor will support these amendments. They reflect the concerns that we heard during the Senate inquiry, and we think they are sensible amendments.

Senator SIEWERT (Western Australia) (10.52 pm)—The Greens, likewise, will support these amendments. I concur with Senator McLucas—the concerns were expressed during the inquiry process and these amendments reflect those concerns.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.52 pm)—I remind honourable senators that all ministers on the ministerial council, representing all jurisdictions in New Zealand, have endorsed the removal of the opportunity to request a second review. They have all agreed to that. Following an initial review, if any, the ministerial council will proceed to the last stage of the current process, which requires a decision to accept, amend or reject the draft standard. Experience thus far has shown that the second opportunity to review a food standard is of little value and that the process to finalise this standard could be improved and streamlined by removing the capacity for a second review. I repeat: following exhaustive consultation across all jurisdictions and across many stakeholders, it was agreed that the ministerial council did not require the opportunity for a second review.

Question negatived.

Senator SIEWERT (Western Australia) (10.54 pm)—I move Greens amendment (1) on sheet 5248:

(1) Page 92 (after line 6), at the end of the bill, add:

Schedule 4—Amendment of the Children’s Television Standards

Children’s Television Standards 2005

1 At the end of CTS 10

Add:
(e) advertise food or beverages unless the Minister for Health, having determined that such an advertisement is beneficial to the health of children, allows such an advertisement.

This is about putting in place a schedule at the end of Children’s Television Standard 10. I point out that standard 10 is about material that is unsuitable for broadcasting during a C period or a P period. It includes demeaning any people or group on the basis of ethnicity, nationality, race, gender, sexual preferences, religion or mental or physical ability. There is an extensive list. What the Greens seek to do is to add a standard that relates to the advertising of food and beverages.

As I articulated in my second reading contribution, the Greens are extremely concerned about the increasing epidemic of obesity in Australia. Ninety per cent of the money spent on food advertising, which in 2004 was $410 million, was spent on fast food, chips, lollies, soft drinks and ice cream. Only about one per cent could be specifically identified as having been spent on healthy food. Before we start talking about whether this is putting in place a nanny state, people should bear in mind that we do ban other advertising—cigarettes being the classic example. In places overseas, measures such as this have been adopted.

The government may argue: ‘Why put this in place? People do not pay attention to ads.’ Our argument is: ‘Why does the government spend so much money on advertising? Advertisers spend close to 70 times more money on food ads than the government spends on promoting healthy lifestyles.’ We believe that the advertising of junk food is deliberately targeted at young children in prime television time, and it is directly related to the increase in obesity. We believe that it is about time that action was taken to restrict the time that these sorts of advertisements can be shown on Australian television. We therefore move this amendment to put some control on the time that junk food can be advertised. This should be part of a package of materials, such as appropriate labeling and those sorts of things, but we believe this amendment would go a long way to addressing how these advertisements directly address children.

As a parent, you can exercise as much control as you like, but it is still undermined by the material being advertised on television. Having gone around shopping centres for years with my son and being nagged—and now I am doing it with my nieces and nephews—I can tell you that the power of television advertising of junk food is immense. No matter what you say in the middle of a supermarket to a screaming toddler—and some of them are a bit bigger than that—it is very difficult. I believe this measure is essential if we are to address the epidemic that we face in this country.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.58 pm)—The Democrats support a ban on advertising food during children’s television times as defined in various codes. We are not so sure about whether this is the right bill to do it—we think it is probably not—and we are also not so sure that you can usefully define which food is beneficial to the health of children and which is not. I think you would spend a lot of time arguing around that definitional point. Our preferred method of dealing with this situation is to simply ban food advertising during children’s television time, which would capture the vast majority of junk food advertising. You could have an exemption for community service advertisements, which would pick up on foods, such as apples, that you might want to advertise as being healthy for children. This obviously will not be passed in the chamber tonight but I point out that, in principle, the Democrats...
support a ban on television advertising of food during children’s viewing hours but we somehow doubt that this is the most appropriate way to do it. I would refer honourable senators to our private bill, which would deliver on that objective.

Senator McLUCAS (Queensland) (10.59 pm)—I was hoping we might finish this before 11 pm, but I think we will be back in the morning, which is a shame. Labor will not be supporting this amendment.

Progress reported.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Order! It being 11 pm, I propose the question:

That the Senate do now adjourn.

Middle East

Senator BERNARDI (South Australia) (11.00 pm)—The outbreak of hostilities between two rival Palestinian factions, Hamas and Fatah, has come at a very difficult time and threatens the Middle East peace process. I speak with some experience, because recently I visited Israel as a guest of the Australia/Israel and Jewish Affairs Council, as part of a bipartisan parliamentary delegation. The visit provided me with an insight into the realities of Israeli politics, Israeli social life and the country’s role within the Middle East. Despite having been subjected to a relentless campaign of terror during its entire existence, Israel has remained a vibrant and robust democracy. It has remained a country governed by the rule of law. It has an independent judiciary which the government and military are both answerable to. It also maintains freedom of speech and religion, which are two values we hold so dear in this country.

However, Israel does face a number of grave challenges, the most important of these being the search for peace. Of course we are all aware of the geography of Israel. To the south, in the Gaza Strip, Hamas refuses to recognise Israel’s right to exist and it remains committed to Israel’s destruction. We saw evidence of the hundreds of rockets being fired at Israeli towns and settlements by terrorists given safe haven in the Gaza Strip. To the north of Israel, Hezbollah is frantically rearming and reorganising to prepare for its next unprovoked attack on Israeli sovereignty. Here the United Nations is entrusted with keeping the illegal terrorist organisation Hezbollah from gaining strength and with preventing them from once again invading Israeli territory. Let me make this clear: Hezbollah is an illegal terrorist organisation. So, imagine my surprise to see the Hezbollah official flag flying within metres of a United Nations compound—serving as a direct antagonism towards Israeli citizens.

Some of the threats to Israel, however, are less well known—so much so that I only became aware of them through talking with a number of Palestinians and Israelis during the delegation. One such person was respected Palestinian journalist Khaled Abu Toameh. Mr Toameh made it clear that whilst the West regards the Palestinian Fatah party as relatively moderate and pragmatic, he regards them to be at least as dangerous as Hamas, and far more corrupt and incompetent.

But the most alarming aspect of my visit was two meetings linked not by personalities but by the content of the discussion. One of these meetings was with Mr Itamar Marcus of Palestinian Media Watch. Palestinian Media Watch is an organisation that monitors and translates what the Palestinian media, schools and imams are saying to their people in Arabic. As happens in Australia, there have been the usual claims that comments are taken out of context or have suffered through mistranslation, but there can be no denial of the sinister message that was pre-
presented so clearly to us. We were presented with images that would disturb even the most open minded of people.

Mr Marcus visited Australia last week and shared with some members of the Australian public much of what he shared with the delegation. This included many examples of incitement on Palestinian TV, which is the equivalent of our ABC. And when I say incitement, I do not just mean incitement to dislike, or even to hate; I mean incitement to murder, and to commit suicide in doing so. He showed us a music video, aimed squarely at children, urging them to become martyrs and to enjoy the delights of heaven, which, in his video, resembled a brightly coloured fairground. And the video was not shown just once; it was shown 50 times in a single month on Palestinian TV. We also saw a children's show in which a young, articulate 11-year-old Palestinian girl told the host that her goal in life was to become a martyr for Palestine. In May 2007, Palestinian Media Watch reported that Hamas was using a clone of Mickey Mouse on a weekly children's television program to teach Islamic supremacy and hatred of Jews and Americans.

This problem, unfortunately, is certainly not confined to Palestinian television. Mr Marcus showed a notice for a youth soccer tournament run by the Palestinian Ministry of Education, at that time also under the control of Fatah. Each of the teams was named after a Palestinian suicide bomber, while the tournament itself was named for a terrorist leader who was finally hunted down by Israel. The Department of Education was also responsible for textbooks denying Israel's right to exist and calling for constant conflict with it. In sermons broadcast on Palestinian TV, popular imams preach anti-Semitism and call for the destruction not only of Israel but of the Jews, in the most blood-thirsty of terms. We have been told on numerous occasions that the cause of Palestinian hatred towards Israel is the occupation and the ill-treatment of Palestinians. I now know, through my own experience, that the source of this hatred is far more insidious and will be far harder to overcome than simply granting a Palestinian state. Yet it must be overcome for there to be any chance of a genuine and lasting peace. Clearly, such a peace objective is not on the agenda of all those responsible for this incitement.

Sadly, my belief that this hateful behaviour was the exclusive preserve of the Hamas terrorist group proved very short lived. The following day we met with Ziyad Abu Ziyad, until recently a Fatah representative on the Palestinian Legislative Council. Mr Abu Ziyad is regarded as a moderate within the Fatah group. He is the co-editor of a joint Palestinian-Israeli journal and has been an important member of Palestinian delegations to various peace negotiations. His message to me, though, was far from impressive. Perhaps the most disturbing of it was that every time the issue of Palestinian incitement of hate, particularly directed towards children, was raised, he told us that he did not agree with 14-, 15- or 16-year-olds carrying out suicide bombings, because he felt that at that age they were too young to be making that kind of decision. He could not explain to me when pressed at what age it was appropriate for a person to become a suicide bomber or a mass murderer or whether it was all right for a Palestinian youth to carry out killings in ways that did not necessarily involve their own deaths. When he was further pressed on this issue, he claimed that Palestinian TV was so bad that no-one really watched it anyway so it did not really matter what was put on it.

Mr Abu Ziyad explained that all Palestinians had satellite dishes and they watched channels on that instead. This undermined the argument that he had been trying to im-
press upon us about the grinding poverty of the Palestinians, especially due to the blockade of Hamas. Somehow they could all afford satellite dishes! Since then, I have been advised that the Palestinians actually receive more aid per capita than any other population in the world.

Mr Abu Ziyad also sought to put a spin on various topics that simply did no credit to his cause. The most outrageous claim was that President Abbas was so concerned about peace with Israel that he even did his doctoral thesis on Jewish history. I have since been informed the thesis was a denial of the Holocaust. Mr Abu Ziyad blamed the Israeli occupation for the lack of peace, but there was a persistent refusal to acknowledge or accept that his own people must refrain from terrorism and meaningfully recognise Israel.

Of course, the occupation could have ended in 2000, had then leader Yasser Arafat accepted Israel’s proposal for a Palestinian state or even continued the negotiation process. When I asked why Arafat did not do so, Mr Abu Ziyad claimed it was because the Israeli Prime Minister at the time, Mr Barak, had demanded Israeli sovereignty over the Temple Mount. In fact, Mr Barak’s offer was for Palestinian sovereignty over the top of the Temple Mount, where the Islamic holy places are, and Israeli sovereignty under the mount, the site of Judaism’s holiest site, the Western Wall.

The truth is that Palestinians have the opportunity to pursue a peace process. Like most Australians, I fervently hope that they do pursue this process in the Middle East, but we have to understand that peace can only come when Israel has a genuine partner to negotiate with. Sadly, given my experience with the so-called ‘moderates’ on the Palestinian side, peace in Israel is a long way off. Until that time, I take comfort in our government’s strong support for Israel and its right to take the necessary steps to defend itself and its citizens from the evil that is terrorism in all its forms.

**Anti-Corruption Commission**

Senator MURRAY (Western Australia) (11.10 pm)—On 22 March this year I asked the Minister for Justice and Customs, Senator Johnston, why the federal government was not interested in setting up a federal anti-corruption commission with a similar charter and similar powers to those of state commissions such as the Corruption and Crime Commission in WA, Queensland’s Crime and Misconduct Commission and the New South Wales Independent Commission Against Corruption. The minister’s response never really addressed the underlying issue, which was how better to combat corruption. He spoke at length about the matrix of legislative framework that is available to the Commonwealth, the role of the Federal Police and the Commonwealth Criminal Code, but effectively he ruled out a federal corruption and crime commission.

This coalition government has a bad record on many areas of accountability, including freedom of information and whistleblowing. At its best, it moves slowly. It still has not even made the law changes on corruption recommended by Mr Cole and the OECD. The government seems to have little interest in delving too deeply, where it might be embarrassing, into the actions of ministers or bureaucrats. Just because a matrix of federal legislation and agencies exists, it does not necessarily mean that corruption is systematically investigated or that complaints of corruption are taken seriously. Fortunately, there is no reason to believe that there is endemic corruption at the federal level, but, when past and present corruption or serious misconduct is identified in Queensland, New South Wales and Western Australia by their state corruption and crime commissions, you
would be foolish and naive to imagine there is none federally.

In Western Australia, I heard complaints from property developers that there were delays in planning approvals and that some developments fortuitously did not seem to have those delays. I was aware that often big business appeared to win approvals over the objections of local communities. But I had faith that the system of approvals worked and that the people in charge of applying codes, rules and regulations were doing their job. I thought, as many did in WA, that the checks and balances were in place and people were doing their jobs properly—not always. But through the diligent work of the WA CCC and the commitment of the investigators, lawyers and the head of the CCC, matters were brought to light which brought the WA government, some state and local government politicians, some bureaucrats, some businessmen and some lobbyists into disrepute.

What has pleased me is that, even though the Labor government was embarrassed, the Labor Attorney-General and the Premier continue to back and support the CCC. From the WA estimates hearings, it appears that the CCC, instead of having its funding cut, will continue to be properly resourced. Regrettably, in other states the funding of similar organisations has been cut, staffing levels have been reduced and the governing legislation has been amended, all to curtail the entities’ powers and abilities to investigate.

The Fitzgerald inquiry in Queensland celebrated its 20th anniversary recently. As the Fitzgerald report said, it is important to recognise that you need much more than just a crime commission. It states: A Government can deliberately obscure the processes of public administration and hide or disguise its motives. If not discovered there are no constraints on the exercise of political power.

The rejection of constraints is likely to add to the power of the Government and its leader, and perhaps lead to an increased tendency to misuse power.

The ultimate check on public maladministration is public opinion, which can only be truly effective if there are structures and systems designed to ensure that it is properly informed. A Government can use its control of Parliament and public administration to manipulate, exploit and misinform the community, or to hide matters from it. Structures and systems designed for the purpose of keeping the public informed must therefore be allowed to operate as intended.

Secrecy and propaganda are major impediments to accountability, which is a prerequisite for the proper functioning of the political process. Worse, they are the hallmarks of a diversion of power from the Parliament.

The Fitzgerald report was a watershed in Queensland in accountability, but many commentators 20 years on fear that Queensland may be returning to some of the bad practices before Fitzgerald. Some recommendations of the Fitzgerald inquiry have been eroded over time. One of the most obvious was identified by Craig Johnstone in his article in the *Courier-Mail* on 18 May 2007 entitled ‘Legacy of transparency’. He wrote that one of the accountability mechanisms urged by Fitzgerald was effective FOI laws.

Queensland, which after Fitzgerald introduced freedom of information laws, has taken a leaf out of the federal coalition government’s songbook and included a myriad of exemptions so that its FOI laws are no longer working as they were envisaged by Fitzgerald and the original legislation. The Premier of Queensland has said that that state’s FOI laws are the same or very similar to those in other jurisdictions, as though this were something to be proud of. It is not.

The federal coalition is hopeless on FOI, but the media have pointed out that the cur-
rent Leader of the Opposition, although he has said he is in favour of amending the FOI laws at a federal level, showed scant regard for them and ensured that they were as limited as possible when he was a Queensland bureaucrat. So there is concern as to his promises.

In another article by Paul Williams in the *Courier-Mail* of 17 May 2007, which celebrated the 20th anniversary of the Fitzgerald inquiry and was entitled ‘Back to the old days?’ the ground-breaking anti-corruption journalist Phil Dickie is quoted as saying:

In some ways we might be in a more dangerous situation than before Fitzgerald—we now have the illusion of effective anti-corruption machinery.

In that same article, Dr Mark Lauchs from the QUT suggests that, even where legislation was passed, it was improperly implemented and, where institutions were established, they were often merely to give the semblance of accountability.

There are lots of ways for an incumbent government to ensure that, although mechanisms are in place, they are unable to do their job effectively. If you starve an organisation of sufficient funds, then it is unable to recruit the appropriate staff or undertake the full depth and range of investigations that are required. If you hobble the FOI legislation, then legitimate questions by scrutinising press or by a scrutinising individual or politician can be avoided. The mere presence of the mechanics or institutions of accountability does not necessarily ensure full accountability.

What is really concerning is that the federal government does not even have some mechanisms of accountability in place and it shows no inclination to establish them. It does not see, for instance, that at the federal level a crime and corruption commission would be a good idea. It does not see that improving FOI and public disclosure laws would be a good idea. It is unmoved when whistleblowers like Mr Kessing are threatened with prison for bringing to our attention gross deficiencies in airport security.

There is little protection at a federal level for those who are willing to stand up and point out maladministration, misconduct or corruption. It seems that such whistleblowers are as likely as not to be muzzled, victimised or charged in the courts with revealing confidential material. What do you think would have happened to a bureaucrat blowing the whistle on the useless scrutiny and oversight of AWB contracts during the Iraq sanctions days? Do you have faith that their disclosure would have been fearlessly acted on? I do not.

It is interesting that the commentators looking back on the Fitzgerald inquiry all say a similar thing—that things are reverting to the time before the inquiry. There are a number of possible reasons for that: a complacency in the electorate, which is not demanding a higher level of accountability; a reduction in funding for the various investigative entities created out of the Fitzgerald inquiry; an inept and compliant opposition; and legislative changes that have had the effect of limiting the power of the press. All of these conspire to hinder the exposure of corruption or misconduct.

I am not suggesting that Queensland is any better or worse than anywhere else in Australia. The same vigilance is needed everywhere. To its credit, at least Queensland, like New South Wales and Western Australia, does recognise that there needs to be a standing commission with the remit to investigate allegations of corruption at all levels of government. Judging by the whiffs coming from that state, Victoria could very much do with the same.
The federal coalition government takes the view that, at the federal level, things are just fine and that everyone at every level of federal government is beyond question. That has been shown to be patently untrue at the state level and it is very likely to be untrue at the federal level. I am sure that, if there were a CCC body at the federal level, we would be surprised at what came to the surface. It can only be hoped that, if there is a change in government this year, there will also be a change in attitude on these issues.

Pregnancy Counselling (Truth in Advertising) Bill 2006

Senator JOYCE (Queensland) (11.19 pm)—I rise tonight to register my dissent to the Pregnancy Counselling (Truth in Advertising) Bill 2006 from Senators Stott Despoja, Troeth, Nettle and Carol Brown. Senator Webber said something that was quite apt tonight. She said that the best person to make a decision about how someone lives is the person that that decision affects. The person that abortion affects is the life that it terminates, the life that it kills—and that is the life of the unborn child. That is the person to whom we must refer when we refer to the person on whom the decision has the greatest effect. We also heard that we must separate our personal views from the issues at hand. I agree totally. The issue at hand is the termination of a human life, the destruction of a human life. That is the issue at hand. That must be dealt with.

I think we must first grasp the nettle on what we are talking about. We are talking about our ability to refer a person to a position where a human life will be terminated—that is, killed. We say that, because we believe that the person who is going to be killed has no right. What do we base this premise on? Do we base this premise on the fact that the person is not cognisant of their right? When we are asleep, we are not cognisant of our right. If a bill were brought into this House to refer people who are unconscious or asleep into a position where their life would be at threat, I would vote against that bill. A person is not cognisant of their right if they are intoxicated. If a bill were to be brought into this House to refer people who were intoxicated into a position where they may be killed, I would vote against that bill. A person is not cognisant of their right when they are young. Similarly, if a bill were to be brought into this House to refer people too young and too immature to be cognisant of their right into a position where they would be killed, I would vote against that bill.

No-one has the right to terminate my life now. They did not have the right a week ago. They did not have the right the day after I was born. The argument that we must always address is: why is it that the day before they were born they apparently have no rights? The argument becomes one of the crossover of possession to one of nurturing. Because we are in a position of nurture, because we are in a position of responsibility, we do not have the rights of possession. If someone is in our arms or inside our body, it is not a possession of ours; it is a responsibility. If a person is inside a bassinette, they are not the possession of the bassinette. Nor if a child hides in a cupboard are they the possession of the cupboard. This is the crux of the issue which people dance around but are scared to address.

I suppose in addressing this argument we must go to the extremities, because the extremities are where we are always taken. One of the extremities that is always brought in is the unfortunate and tragic circumstance of rape. In the issue of rape, all consciousness must be placed on the actions of a crime: who committed the crime? It certainly was not the victim, which is the woman or the mother. But is it the child? Why should the
child be punished for the actions of someone else? When we believe in that we believe in inherited guilt. We believe in the transfer of wrongs through generations, and that leads us to a whole philosophical conjecture that people can inherit the injustices that have been brought about by their predecessors. This is something that I find philosophically intolerable.

There are a whole range of other things within this bill—technicalities—that I think need to be brought out into the open. GPs are not required to advertise whether they will or will not refer women for abortion, yet they receive government funding. A psychologist who receives government funding does not advertise whether he will or will not refer people to a whole range of treatments. He does not have to list whether he believes or does not believe in hypnotherapy, cognitive therapy or whatever other form of treatment. It is an absolute right for a person or a body that has a fundamental belief that they are referring a person—and that is how they see it—to a place of imminent danger to not do so. In summary, not all members of the medical profession who receive government funding agree or accept all forms of treatment.

This argument is one that I know will go on for as long as we are in the Senate. I believe, as I have said before, that it is the slavery debate of our time. I put great emphasis on the fact that we must separate the action from the person. I do not for one moment presuppose the guilt of the person as a continuum. Nor do I believe that a person who ever owned a slave was an abhorrent person. The act of slavery was abhorrent. I do not believe that the person who has an abortion is intrinsically a bad person. I argue against the action of abortion. I will continue to argue this because it puts into stark relief our concerns about other things—the environment, animals and all the other rights that get carted into here and fought for with such fervour and with such forthright compassion. Yet at the same moment we stand away from the most vulnerable—from those persons who cannot defend themselves. We believe over time that by proxy we can somehow relieve ourselves from the inherent wrong which is the destruction, the killing, of a human life that is not an imminent or comparable threat to us. That is the inherent injustice of abortion: the killing of a human being who is not an imminent or comparable threat to us. But we can get absolutely fervent about the destruction of a whale or the destruction of a tree. Are we not in this process deciding that by proxy we will find other avenues to try to set down our beliefs, our fervour, our wish to protect all but the most intrinsic of what we are—the humanity of what we are?

This is an issue which has to be talked about. We must talk about when the right of the individual descends on the person. If we cannot get to that position of when the right of the individual descends then we must accept that it was there from the start—ab ovo. We must ask the question: if I have an intrinsic right to live without harm now, when did that right come about? When was the point in all our lives when a person did not have the right to kill you, and why? Lay down the position, the discussion, the philosophy of at what point the right for you to go unharmed in life was attached to you. That is the debate that must be had here and it must be had here because at this point we are ignoring the facts. We are ignoring the intrinsic issue of what this is about, and by so doing we only fool ourselves. We will be judged by history for doing that. I believe there will come a time in this debate when the argument will be so obvious that the conjecture will only lie as to how we could not have realised it right now. This is the debate that separates us from the animals.
Senate adjourned at 11.29 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]


AusCheck Act—Select Legislative Instrument 2007 No. 137—AusCheck Regulations 2007 [F2007L01570]*.

Bankruptcy Act—Select Legislative Instrument 2007 No. 138—Bankruptcy Amendment Regulations 2007 (No. 2) [F2007L01540]*.

Bankruptcy (Estate Charges) Act—Bankruptcy (Estate Charges) (Amount of Charge Payable) Determination 2007 [F2007L01535]*.

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part—

105—

AD/CESSNA 500/29—Wing Fuel Boost Pump Wiring [F2007L01726]*.

AD/S-76/75—Main Rotor Shaft – 2 [F2007L01684]*.

AD/SA 315/18—Main Gearbox Oil Acidity [F2007L01590]*.

106—AD/BR700/10 Amdt 1—High Pressure Turbine Time Limits [F2007L01727]*.

Crimes Act—Select Legislative Instrument 2007 No. 139—Crimes Amendment Regulations 2007 (No. 2) [F2007L01572]*.

Farm Household Support Act—Select Legislative Instrument 2007 No. 130—Farm Household Support Amendment Regulations 2007 (No. 1) [F2007L01606]*.


Industrial Chemicals (Notification and Assessment) Act—Select Legislative Instrument 2007 No. 146—Industrial Chemicals (Notification and Assessment) Amendment Regulations 2007 (No. 1) [F2007L01341]*.


National Health Act—

Arrangement No. PB 47 of 2007—Highly Specialised Drugs Program [F2007L01702]*.

Declaration No. PB 44 of 2007 [F2007L01699]*.

Determination No. PB 46 of 2007 [F2007L01701]*.


Primary Industries (Customs) Charges Act—Select Legislative Instrument 2007 No. 132—Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 5) [F2007L01605]*.

Primary Industries (Excise) Levies Act—Select Legislative Instrument 2007 No. 134—Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 6) [F2007L01666]*.

Primary Industries Levies and Charges Collection Act—Select Legislative Instruments 2007 Nos—

135—Primary Industries Levies and Charges Collection Amendment Regulations 2007 (No. 3) [F2007L01609]*.

136—Primary Industries Levies and Charges Collection Amendment Regulations 2007 (No. 4) [F2007L01662]*.
Productivity Commission Act—Select Legislative Instrument 2007 No. 148—Productivity Commission Amendment Regulations 2007 (No. 1) [F2007L01551]*.

Quarantine Act—Quarantine Amendment Proclamation 2007 (No. 1) [F2007L01607]*.

Radiocommunications Taxes Collection Act—Select Legislative Instrument 2007 No. 142—Radiocommunications Taxes Collection Amendment Regulations 2007 (No. 1) [F2007L01545]*.


Human Cloning and Embryo Research Act 2004 (ACT) [F2007L01722]*.
Human Embryonic Research Regulation Act 2003 (Tas) [F2007L01719]*.
Human Reproductive Technology Act (1991) (as amended) (WA) [F2007L01721]*.
Infertility Treatment Act 1995 (Vic) [F2007L01718]*.
Research Involving Human Embryos (New South Wales) [F2007L01717]*.
Research Involving Human Embryos Act 2003 (South Australia) [F2007L01720]*.
Research Involving Human Embryos and Prohibition of Human Cloning Act 2003 (Queensland) [F2007L01716]*.

Social Security Act—Social Security (Australian Government Disaster Recovery Payment) Determination 2007 (No. 4) [F2007L01743]*.

* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Civil Aviation Safety Authority: Chief Executive Officer
(Question No. 2653)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 9 November 2006:

With reference to the memorandum ‘CASA’s relationship with industry – a new definition’, published by Mr Bruce Byron, the Chief Executive Officer, Civil Aviation Safety Authority (CASA), on 11 October 2006:

(1) Did the Minister approve the publication of the memorandum.
(2) Does the Minister agree that a focus on compliance with regulations is ‘no longer a viable approach to safety as it is simplistic and not based on any analysis of the ever changing risks the aviation industry faces’.
(3) What analysis has CASA undertaken that shows that a focus on compliance is not a viable approach to safety.
(4) How is a failure to focus on compliance with regulations consistent with Australia’s obligations under Article 12 of the Convention on International Civil Aviation (Chicago Convention) which requires each contracting state to ‘adopt measures to ensure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force’ and ‘ensure the prosecution of all persons violating regulations applicable’.
(5) Does the Minister agree with Mr Byron’s decision to place ‘far less emphasis on getting involved in the detail of organisations through issuing administrative notices such as request for corrective action’.
(6) Is it the role of CASA to demand corrective action when it identifies breaches of safety rules.
(7) Can the Minister substantiate Mr Byron’s claim that ‘the amount of industry surveillance has and will continue to increase’.
(8) Has the restructure announced by Mr Byron in February 2006 enhanced or diminished CASA’s capacity to undertake industry surveillance; if it has enhanced CASA’s capacity, how has that capacity been enhanced.
(9) Why does Mr Byron’s memorandum fail to make reference to CASA’s obligation to the travelling public.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) No. The Minister was not required to approve or disapprove publication of the memorandum.
(2) Mr Byron has made it clear that there is no intention for CASA to cease oversight of compliance with regulations. The memorandum in question was reinforcing to staff that CASA is changing, so the emphasis was on the new activities and approaches, not existing activities, some of which, like ensuring compliance with regulations, will continue. The point being made is that CASA needs to broaden its focus to include additional initiatives and approaches to enhancing aviation safety, and not just focus on compliance with regulations, as has been a characteristic CASA’s approach in the past. Compliance with the regulations remains an important element in CASA’s overall oversight of
aviation and will continue. The Minister has no difficulty with CASA's expanding its focus to enhance aviation safety.

(3) See answer to question 2.

(4) CASA will continue to ensure compliance with regulations and will continue to meet Australia's obligations under Article 12.

(5) The Minister is supportive of any approach that produces better aviation safety outcomes for Australia.

(6) Yes.

(7) Yes.

(8) The restructure has enhanced CASA's capacity to undertake industry surveillance by, for example, appointing new senior managers with significant industry experience to head the two operational groups with major surveillance responsibilities, by relocating a large number of operational positions from Canberra to a new operational headquarters in Brisbane and to other centres closer to industry operations, by relocating field office resources, by centralising legal functions, by appointing system safety specialists, by appointing industry safety advisers, by establishing a group of flying training specialists, and by establishing a special General Aviation audit program.

(9) CASA's focus on the safety of the travelling public has been emphasised to staff through other statements, including “CASA's Priorities for Aviation Safety” which has a prominent position on the CASA website.

Civil Aviation Safety Authority
(Question No. 2666)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 10 November 2006:

(1) Which members of the Civil Aviation Safety Authority (CASA) Maintenance Regulations Project Team undertook a European study tour in late 2005.

(2) Did any non-team members participate in the study tour; if so, who.

(3) On what date did the study tour group depart Australia.

(4) On what date did the study tour group return to Australia.

(5) Can a detailed itinerary for each day of the study tour be provided.

(6) What was the total cost of the study tour.

(7) What was the cost of the following items: (a) domestic airfares; (b) international airfares; (c) land transport; (d) accommodation, disaggregated to show the name and cost of accommodation for each night; (e) hospitality; (f) meals; (g) travel insurance; and (h) other expenses not listed above.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) Members of the CASA Maintenance Regulations Project team who undertook a European study tour in late 2005 are as follows:

   Industry: Mr Stephen Dines; Mr Jim Pilkington; Mr Rob Tassini; and Mr Terry Ward.

   CASA: Mr Patrick Dodgson; Mr Hondo Gratton; Mr Rick McMaster; and Mr Joe Tully.

(2) One industry non-team member participated in the overseas study tour:

   Mr John Vincent, Qantas maintenance.

(3) Most of the study tour group departed Australia on 21 October 2005 and two officers departed Australia on 22 October 2005.
(4) The study tour group arrived back in Australia on 9 November 2005 with the exception of one industry member who remained in Hong Kong for an additional day.

(5) Itinerary for overseas study tour:

21 Oct – Most officers depart Australia for Europe, arriving Frankfurt and using surface transport to Cologne

22 Oct – Two officers depart Australia for Europe, arriving Frankfurt and using surface transport to Cologne

23 Oct – Team planning meeting in Cologne

24 Oct – Commence discussions with European Aviation Safety Agency (EASA).

25 Oct – Continue discussions with EASA

26 Oct – Finalise discussions with EASA and train to Braunschwieg

27 Oct – Commence discussions with Lufthansa-Bundesamt (LBA)

28 Oct – Finalise discussions with LBA and train to Berlin

29 Oct – Depart Germany for United Kingdom (UK)

30 Oct – Rest day

31 Oct – Discussions with UK Civil Aviation Authority (CAA) Gatwick

1 Nov – Discussions with British Airways, Heathrow.

2 Nov – Discussions with three General Aviation maintenance facilities, Shoreham on Sea

3 Nov – Depart UK for Holland. Discussions with Aircraft Engineers International

4 Nov – Discussions with Joint Aviation Authorities of Europe (JAA)

Note: two officers were separately sent back to Cologne to attend an EASA sports and recreational aviation conference on the weekend and rejoined the group in London prior to departing for Hong Kong.

5 Nov – Depart Holland for UK

6 Nov – Depart UK for Hong Kong

7 Nov – Discussions with Cathay Pacific Maintenance and HAECO

8 Nov – Discussions with Hong Kong Civil Aviation Department and depart for Australia

9 Nov – Arrive Australia.

(6) $112,098.29

(7) (a) nil (b) $74,673.52 (c) $4,274.08 (d) $16,527.87 (e) $2198 (f) meals and travel allowance; $12,811.29 (g) nil (h) $1,613.53

Civil Aviation Safety Authority
(Question No. 2699)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 10 November 2006:

With reference to the evidence by the Civil Aviation Safety Authority (CASA) Deputy Chief Executive Officer, Mr Bruce Gemmell, to the Senate Standing Committee on Rural and Regional Affairs and Transport on 30 October 2006 that CASA failed to enforce training requirements mandated in the Transair operations manual prior to the Lockhart River tragedy in May 2005 because ‘if we sought to enforce it they could simply cross it out of the manual, and that would be the end of it’:

(1) Can holders of air operator’s certificate simply ‘cross out’ provisions in operations manuals.
(2) Is it the case that original operations manuals must be approved by CASA.

(3) Is it the case that amendments to operations manuals must be approved by CASA.

(4) Why did CASA approve the provision in Transair’s operations manual that mandated Human Factors Management training.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) (2) and (4) These questions were asked and answered during testimony to the Senate Standing Committee on Rural and Regional Affairs and Transport on 1 February 2007.

(3) This question was asked and answered during testimony to the Senate Standing Committee on Rural and Regional Affairs and Transport on 15 February 2007.

Airservices Australia: Solomon Islands

(Question No. 2802)

Senator O’Brien asked the Minister representing the Prime Minister, upon notice, on 17 November 2006:

(1) Has the Minister, the Minister’s office, or any department, agency or authority for which the Minister is responsible received any advice from the Solomon Islands Government about its response to findings contained in the special audit into the financial affairs of the civil aviation division of the Ministry of Infrastructure and Development by the Solomon Islands Auditor-General, including the finding that contract breaches by Airservices Australia ‘may warrant action to be taken by the Solomon Islands Government to recover monies from Airservices Australia that were lost through payments made to third parties’; if so, can details be provided.

(2) Is the contract governed by Australian or Solomon Islands laws.

Senator Minchin—The Prime Minister has provided the following answer to the honourable senator’s question:

(1) I am advised by the Auditor-General that in the course of ANAO’s recent audit of Airservices Australia’s Upper Airspace Management Contracts with the Solomon Islands Government, officers authorised under the Auditor-General Act 1997 to gather information for the purposes of the audit discussed with senior Solomon Islands officials both the findings and recommendations of the special audit conducted by the Solomon Islands Auditor-General and the Solomon Islands Government’s response. The results of these discussions, and other audit work, are reflected in Audit Report No. 8 2006-2007, tabled on 18 October 2006.

(2) Air Services Australia has advised that the contract is governed by Australian law.

Civil Aviation Safety Authority: Chief Executive Officer

(Question No. 2832)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 24 November 2006:

(1) Is the Minister aware that the Chief Executive Officer of the Civil Aviation Safety Authority (CASA), Mr Bruce Byron, told a safety conference in November 2006 that when he joined CASA in 2004 ‘there were a lot of people, highly competent in their technical fields, who had risen up the hierarchy to management positions, but were simply out of their depth as managers’.

(2) How did Mr Byron measure the performance of CASA management before concluding his managers were ‘out of their depth’.

QUESTIONS ON NOTICE
(3) Is the Minister aware that Mr Byron claims that only one member of CASA’s current management team was at CASA when Mr Byron joined the authority.

(4) For each of the years to date since Mr Byron’s appointment, how many CASA managers have left the authority.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) Mr Byron is responsible for management issues in CASA, in accordance with his contract.

(2) Mr Byron measured the performance of relevant managers through the application of the high level of skill, knowledge and experience he brought to CASA as a result of a long career in senior management positions in the aviation industry. Mr Byron advises that, as appropriate, he took into account the views and assessments of members of the senior management team, including input from CASA’s senior human resources management, as well as management reports, industry feedback, and peer review/feedback.

(3) Mr Byron is responsible for management issues in CASA, in accordance with his contract.

(4) CASA advises that 24 managers left CASA between 1/12/03 and 30/11/06.

Qantas

(Question No. 2860)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 28 November 2006:

By year since 1996, has Qantas Airways Ltd been banned from servicing any aviation components; if so, in each case (a) why was the ban put in place; (b) which agency (domestic or international) made the decision to ban Qantas from servicing the components; (c) which components was Qantas banned from servicing; (d) for what period was Qantas banned from servicing the components; and (e) what remedial action did Qantas undertake prior to the ban being lifted.

Senator Johnston—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

The Civil Aviation Safety Authority (CASA) has advised that there was one instance in 2000.

(a) CASA advises that maintenance by the Qantas Survival Section was not carried out in accordance with approved data and there were deficiencies with their Quality Management System required under Civil Aviation Regulation (CAR) 1988 30(2D).

(b) CASA.

(c) Evacuation systems and related components at the Mascot Facility.

(d) 15 to 28 September 2000.

(e) CASA advises that Qantas made changes to document control; recurrent training of production examiners; changes to procedures for planning and certification; training of relevant staff on approved data and procedures; records put on computer; improved control of parts store; better segregation of work areas; changes to system for control and calibration of tools; production of a compliance matrix against CAR (1988) 30(2D); changes to procedures to introduce ‘management requested audits’; and progressive implementation of a new Quality Organisation and Quality Audit System.

QUESTIONS ON NOTICE
Defence Headquarters Joint Operations Command
(Question No. 2867)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 28 November 2006:

1. Did the Defence Housing Authority (DHA) announce in June 2006 that it had purchased 52 blocks of land at Bruce in the Australian Capital Territory as part of 350 serviced blocks for the accommodation of Australian Defence Force personnel located at the new Headquarters Joint Operations Command (HQJOC) at Bungendore, New South Wales; if so, apart from the 52 blocks at Bruce, how many other blocks so purchased are on the north side of Canberra.

2. For both the Australian Capital Territory (broken down into north side and south side properties), and Queanbeyan, how many properties does DHA (a) own, and (b) lease.

3. (a) How may personnel will be transferring from interstate to work at the new HQJOC building at Bungendore; and (b) how many will be accommodated in the northern part of the Australian Capital Territory (that is, north of the Molonglo River).

4. What is the comparable travel distance and time by private car to the Bungendore HQJOC site from: (a) Canberra City north; (b) Canberra City south; (c) Belconnen; and (d) Queanbeyan, by way of the Kings Highway and Macs Reef Road.

5. In consultation with the New South Wales Department of Main Roads concerning the assessment of need to upgrade both the Kings Highway and Macs Reef Road, what estimates of increased traffic flow were provided by the department for both routes.

6. What is the current estimate of increased daily traffic flow through the city of Queanbeyan from the Australian Capital Territory as the result of the HQJOC.

7. What advice on necessary upgrades was given by the New South Wales Department of Main Roads for each road and at what cost.

8. (a) What specific upgrades to either road have now been agreed to; (b) at what cost; and (c) what contribution will the Commonwealth be making either from the Department of Defence or other Commonwealth road funds.

9. (a) Did the former Minister state that no funding would be provided for roads in New South Wales for the purposes of Bungendore HQJOC traffic; and (b) is this still the case.

10. (a) What surveys have been conducted by the department into the road crash statistics for both Bungendore HQJOC routes over recent years; and (b) what were the results for both crashes and fatalities.

Senator Ellison—The Minister for Defence has provided the following answer to the honourable senator’s question:

1. On 8 August 2005, the then-Defence Housing Authority, from 23 November 2006 known as Defence Housing Australia (DHA), announced the purchase of undeveloped land in Bruce, Australian Capital Territory (ACT) where DHA would build 52 homes. Between October 2004 and November 2006, DHA acquired 229 blocks in the northern suburbs of Canberra, including the 52 blocks at Bruce. The remaining 177 blocks are part of the 350 blocks that DHA has the option to acquire under arrangements with the ACT Land Development Agency.

Of these 177 blocks acquired, 44 have completed construction and are now under management, and form part of the 739 properties managed by DHA on Canberra’s north side. The remaining 133 blocks are part of DHA’s ongoing construction program for delivery prior to December 2008. DHA is negotiating with the Land Development Agency for future land releases and, at this stage, expects to take up the remaining 133 blocks gradually, with completion of the land acquisitions ex-
pected by mid 2008. All the blocks are being acquired as part of DHA's on-going program to meet the housing needs of all Defence members posted to the Canberra region and not just those posted to HQJOC.

(2) As at November 2006:

<table>
<thead>
<tr>
<th></th>
<th>DHA-owned</th>
<th>DHA-leased</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT - north side</td>
<td>141</td>
<td>598</td>
</tr>
<tr>
<td>ACT - south side</td>
<td>53</td>
<td>277</td>
</tr>
<tr>
<td>Queanbeyan</td>
<td>32</td>
<td>342</td>
</tr>
<tr>
<td>Total</td>
<td>226</td>
<td>1,217</td>
</tr>
</tbody>
</table>

In addition, DHA manages 177 on-base properties at the Royal Military College Duntroon and 19 on-base properties at HMAS Harman.

(3) (a) Current planning has approximately 650.

(b) The number of HQJOC personnel who might choose to reside in the northern part of the ACT will not be known until late 2008.

(4) Travel distances and times by private car from various locations to the HQJOC site are shown below:

<table>
<thead>
<tr>
<th>Location</th>
<th>Time to HQJOC Site (Kings Highway entrance) (minutes)</th>
<th>Distance to HQJOC Site (Kings Highway entrance) (kilometres)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Via Queanbeyan Via Macs Reef Road Via Queanbeyan Via Macs Reef Road</td>
<td></td>
</tr>
<tr>
<td>(a) Canberra City North (north of Molonglo River) (from ABC Studios on Northbourne Ave)</td>
<td>26 34 30 44.9</td>
<td></td>
</tr>
<tr>
<td>(b) Canberra City South (south of Molonglo River) (from Deakin shops via Adelaide Ave)</td>
<td>32 44 31.1 51.7</td>
<td></td>
</tr>
<tr>
<td>(c) Belconnen (from Bus Interchange)</td>
<td>33 41 36.7 51.6</td>
<td></td>
</tr>
<tr>
<td>(d) Queanbeyan (from Post Office)</td>
<td>14 - 15.9 -</td>
<td></td>
</tr>
</tbody>
</table>

(5) In February 2005, the New South Wales Roads and Traffic Authority (RTA) was provided with a copy of the Kings Highway traffic assessment contained in the HQJOC Project Environmental Impact Statement. The RTA subsequently commissioned a consultant to provide a more detailed traffic analysis of the Kings Highway between Queanbeyan and Bungendore and of Macs Reef Road between Bungendore and the Federal Highway. The RTA provided a copy of the report to Defence in late December 2005, and has not yet advised if they endorse the report.

The RTA consultant’s report, which is based on the original 1,185 staff at HQJOC, assessed that the Headquarters would generate approximately 691 vehicle movements from Canberra and Queanbeyan, and approximately 123 vehicle movements from the direction of Bungendore each AM peak, with a similar but reversed flow in the PM peak. The assessment assumes 90 per cent of HQJOC staff would travel at the same time as the AM and PM business peak hour traffic (8.00 am to 9.00 am and 5.00 pm to 6.00 pm respectively). In practice, this is most unlikely to eventuate as the majority of staff would usually arrive at the Headquarters between 7.30 am to 8.00 am and depart between 5.30 pm to 6.00 pm.
The assessments have observed that the PM peak hour is the more critical of the two peaks. The table below provides a distillation of the RTA consultant’s assessment of the 2007 PM peak hour mid-block traffic flow on the Kings Highway.

<table>
<thead>
<tr>
<th>Location</th>
<th>Direction</th>
<th>Capacity (two way capacity)</th>
<th>PM Peak Hour (non HQJOC traffic)</th>
<th>PM Peak Hour (HQJOC traffic)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Queanbeyan</td>
<td>Eastbound</td>
<td>4,000</td>
<td>743</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>Westbound</td>
<td></td>
<td>433</td>
<td>681</td>
</tr>
<tr>
<td>Captains Flat intersection</td>
<td>Eastbound</td>
<td>1,500</td>
<td>425</td>
<td>76</td>
</tr>
<tr>
<td>HQJOC site</td>
<td>Westbound</td>
<td></td>
<td>137</td>
<td>688</td>
</tr>
<tr>
<td></td>
<td>Eastbound</td>
<td>1,500</td>
<td>542</td>
<td>123</td>
</tr>
<tr>
<td>Bungendore</td>
<td>Eastbound</td>
<td>1,500</td>
<td>329</td>
<td>126</td>
</tr>
<tr>
<td></td>
<td>Westbound</td>
<td></td>
<td>209</td>
<td>691</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>133</td>
<td>14</td>
</tr>
</tbody>
</table>

Note: The capacity of 4,000 vehicles per hour for the section of the Kings Highway on the outskirts of Queanbeyan takes into account that the section is urban, four-lane, two-way design. The capacity of 1,500 vehicles per hour is the theoretical roadway capacity taken from the Austroads Guide to Traffic Engineering Practice - Part 2, Roadway Capacity for a two-lane, two-way rural road, and is based on an assumption of rolling terrain with no overtaking opportunities for 40 per cent of the road length.

The Project has commissioned another traffic study which will use the reduced Defence staff number, and including contractor site support staff. The results of this study will be available later this year and are required to be presented to Government as part of the environmental conditions of approval for the Project.

(6) The RTA consultant’s report assessment of the HQJOC traffic from the ACT through Queanbeyan, which is based on the original 1,185 staff at HQJOC, is 691 vehicles each morning and evening. The assessment has estimated that 345 vehicles would transit the eastern outskirts of Queanbeyan, 325 vehicles would transit through Queanbeyan, and 20 vehicles would transit the western outskirts of Queanbeyan. It is most unlikely that this traffic flow would be in addition to the AM and PM business peak hour traffic as the majority of staff would usually arrive at the Headquarters between 7.30 am to 8.00 am and depart between 5.30 pm to 6.00 pm.

The Project has commissioned another traffic study which will use the reduced Defence staff number, and including contractor site support staff. The results of this study will be available later this year and are required to be presented to Government as part of the environmental conditions of approval for the Project.

(7) The RTA has not provided advice to Defence on upgrades for the Kings Highway. The RTA consultant’s report of 2005 recommended that three eastbound and two westbound passing lanes, each approximately one kilometre long, be constructed on the Kings Highway between Queanbeyan and the HQJOC site, and that a number of intersections on the Kings Highway be upgraded. The report recommended that no road improvements were required to the Kings Highway between the HQJOC site and Bungendore or to Macks Reef Road. The RTA has not yet confirmed the strategic cost estimate for the suggested road improvements to the Kings Highway.

(8) (a) and (b) No specific upgrades to either the Kings Highway or Macks Reef Road have been agreed.

(c) The Commonwealth has funded the construction of the intersection of the HQJOC primary access road on the Kings Highway. The responsibility for any other road improvements to the Kings Highway principally lies with the New South Wales and Australian Capital Territory
governments for their respective sections of the highway. The responsibility for improvements
to Macs Reef Road lies with the New South Wales Government.

(9) (a) and (b)     The Commonwealth’s position regarding funding for upgrades to local roads remains
as that provided in February 2006, that is, it is principally a State and local government responsibil-
ity.

(10) (a) and (b) Defence relies on the advice of State and Territory road and planning authorities for
information about road crash statistics.

The statistics for accidents on the Kings Highway between Queanbeyan and Bungendore refer-
enced in the Project’s EIS were obtained from the ACT Department of Urban Services and the
RTA’s databases for the years 1 September 1997 to 31 August 2002. The EIS did not contain statis-
tics for Macs Reef Road given the low number of HQJOC staff assessed to travel via that road.

Veterans’ Affairs: Servicewomen
(Question No. 2966)

Senator Allison asked the Minister for Veterans’ Affairs, upon notice, on 17 January 2007:

(1) Is it the case that:

(a) not all Australian ex-servicewomen who enlisted during World War II are entitled to a gold
    card but that Australian ex-servicemen are so entitled; if so, when will this anomalous and discri-
    minatory situation be rectified; and

(b) Australian ex-servicewomen have been afforded less recognition for their wartime contribu-
    tion than their male counterparts; if so, when will this imbalance be rectified.

(2) Does the Government agree that Australian servicewomen generally receive less pay per day than
    their male counterparts, despite being subjected to the same rules and regulations.

Senator Ellison—The Minister for Veterans’ Affairs has provided the following answer to
the honourable senator’s question:

(1) (a)     No. All Australian ex-servicewomen and ex-servicemen who enlisted during World War II
    must satisfy the same criteria in order to be granted a Gold Card. There is no discrimination
    against female veterans with respect to eligibility for the Gold Card.

(b)     No. Under the Repatriation system, ex-servicewomen are entitled to the same range of Repa-
    triation pensions and benefits available to their male counterparts if they satisfy the eligibility
    criteria.

Similarly, the Australian Government’s Saluting Their Service Commemorations program, aims to
highlight the service and sacrifice of Australia’s servicemen and women in wars, conflicts and
peace operations since Federation and to promote appreciation and understanding of the role that
those who have served have played in shaping the nation.

Some initiatives aimed at recognising the contribution of servicewomen include:

• commissioning of a special publication, Women in War, which covers the service of Australian
  women in the defence forces in wars, conflicts and peace operations since Federation. This
  publication will be available in August 2007;

• contributing $150,000 toward the construction of the Australian Servicewomen’s National
  Memorial in the sculpture garden of the Australian War Memorial, and $600,000 towards the
  construction of the Australian Service Nurses National Memorial on Anzac Parade, Canberra;

• presentation of the 2005 World War II Commemorative Medallion to ex-servicewomen who
  served during World War II and were still living on 8 May 2005;
• introduction of Certificates of Appreciation which are available to ex-servicewomen who served in World War II on the home-front or overseas, or overseas in later conflicts;
• inclusion of several interviews of ex-servicewomen and women currently serving with the ADF in the Australians at War Film Archive, a collection of more than 2,000 recorded interviews of veterans and service personnel from World War I until the present day; and
• funding of $10,000 for the design and development of the Australian Women in War element of the Australian Women’s Archive Project’s internet register established by the National Foundation for Australian Women. The Women in War element of the website includes details of more than 30 organisations, including many ex-servicewomen’s associations, the War Widows’ Guild of Australia and the Australian Women’s Land Army Association. The website’s primary goal is the preservation of the records of Australian women and their organisations. The Women in War element of the website also includes biographical information on more than 150 Australian women.

With respect to recognition of those who served in World War II, it should be noted that medals are awarded to an individual based on their eligibility, regardless of gender. No regulations concerning medals specify gender as a criterion.

(2) No. Pay and service conditions are determined by qualifications and rank, not by gender.

Australian Defence Force: Personnel
(Question No. 3045)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 8 March 2007:

(1) For each of the years 2001, 2002, 2003, 2004, 2005, and 2006, what were the retention rates among personnel that served overseas in the: (a) Royal Australian Navy; (b) Australian Army; and (c) Royal Australian Air Force.

(2) For each of the years 2003, 2004, 2005, and 2006, what were the retention rates among combat units that served in Iraq.

(3) For each of the years 2002, 2003, 2004, 2005, and 2006, what were the retention rates among combat units that served in Afghanistan.

(4) Are overseas deployments having an affect on the Australian Defence Force’s attrition/retention rates: if so, why.

Senator Ellison—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) (2) and (3) and (4) The information sought in the honourable senator’s question is not readily available. The Australian Defence Force (ADF) does not distinguish between personnel on the basis of whether or not they have served overseas in determining separation rates. Personnel will remain in, or discharge from, the Australian Defence Force for different reasons that are difficult to attribute to specific deployments or other factors.

Australia Post
(Question No. 3046)

Senator Allison asked the Minister for Communications, Information Technology and the Arts, upon notice, on 14 March 2007:

(1) Is it the case that Australia Post requires a driver’s licence for identification for international parcel post despatch despite the fact that South Australian licences indicate that the document is not to be used for that purpose.
(2) Is it the case that request for licence identification are illegal; if so, what action will be taken to: (a) stop the practice; and (b) prosecute offenders.

(3) Does Australia Post hold data obtained as a result of the request for driver’s licenses, if so: (a) by what authority is data held; (b) for what purpose is the data used; and (c) are those persons whose data has been held: (i) advised that this is the case; if not why not, (ii) advised of the use of the data; if not why not, and (iii) advised that their name and details can be removed on request; if not why not.

**Senator Coonan**—The answer to the honourable senator’s question is as follows:

Based on advice provided by Australia Post:

(1) and (2) No. Identification is required, but it can take the form of a photo ID such as a driver’s licence or passport, or a signature that can be verified by a credit, debit or social security card.

(3) Yes.

(a) Australia Post’s Transport Security Program (TSP) as approved by the Department of Transport and Regional Services (DOTARS) under section 19 of the Aviation Transport Security Act 2004 and Aviation Transport Security Regulations 2005.

(b) Security purposes.

(c) (i) and (ii) Yes, via a brochure that is available in postal outlets titled “Federal Government International Mail Security Requirements” and, more specifically, the back of the Customs Declaration forms that customers must sign and attach to relevant overseas items.

(iii) No. Under the approved TSP, Australia Post employees are directed not to discuss or disclose security measures with any customer or any other unauthorised person. The data is retained for a particular period, after which it is deleted.

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**Australian Defence Force**

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**Question No. 3094**

**Senator Mark Bishop** asked the Minister representing the Minister for Defence, upon notice, on 29 March 2007:

(1) With reference to the description of the activities of the Coordination and Public Affairs Division (CPA) on page 33 of the department’s annual report for 2005-06, how many staff were dedicated, in whole or in part, to the management of the:

(a) Kovco Board of Inquiry; and

(b) the Sea King Board of Inquiry.

(2) (a) What was the total cost to the CPA of each of the inquiries identified in (1); and

(b) what were the costs of:

(i) members’ fees,

(ii) members’ travel and support,

(iii) witnesses’ expenses,

(iv) counsel,

(v) transcripts, and

(vi) staff support from the CPA.

(3) With reference to each of the Boards of Inquiry identified in (1):

(a) what public relations support was provided;

(b) what was the cost of the support, in each case,
(c) how many media releases were drafted for:
   (i) the Minister, and
   (ii) the Board;
(d) how many media inquiries were logged; and
(e) how many briefs were prepared and provided to the Minister’s office.

(4) With reference to the Kovco matter not involving the Board of Inquiry (BoI):
(a) what travel was undertaken by staff of the CPA;
(b) on how many occasions was contact made with Private Kovco’s family with respect to his
death, the return of his body, and funeral arrangements;
(c) what arrangements were discussed with the organisers of the 2006 ANZAC Day commemor-
ation in Victoria;
(d) how much was spent for transport and other support, not associated with the BoI, of Private
Kovco's family; and
(e) what was the cost of the state funeral accorded to Private Kovco.

(5) (a) How many journalists are employed by the CPA; and
(b) at what annual cost are they employed, including salary and all other costs, such as accommo-
dation, travel and support.

(6) (a) In the 2006-07 financial year to date, how many media releases have been drafted in the CPA
for the:
   (i) Minister;
   (ii) Minister Assisting; and
   (iii) Parliamentary Secretary; and
(b) approximately how many staff are engaged in the production of these media releases.

(7) Of the 49.5 hours of vision referred to as having been prepared in the 2005-06 financial year, how
many hours included images of the Minister.

(8) (a) In the 2006-07 financial year to date:
   (i) which non-Defence journalists have travelled to operational areas,
   (ii) which media establishments are these journalists from, and
   (iii) to which operational areas have they travelled;
(b) what was the cost of each trip to the department and the Australian Defence Force (ADF); and
(c) how many of these journalists, or journalists sponsored by other agencies, were supported by
the department and the ADF, in whole or in part, during that travel.

(9) Is there a current hospitality funding allocation to the CPA or are funds made available from other
sources; if so:
(a) how much has been spent;
(b) on whom has it been spent; and
(c) on what date, and for what purpose.

(10) For the financial year 2006-07 to date, what is the current internal allocation within the CPA for
staff travel and accommodation.

(11) (a) How many training courses or ad hoc training sessions have been delivered to senior staff at-
tending estimates and other parliamentary committees;
(b) who prepares and delivers these courses; and
(c) what evaluation of these courses has been conducted to date.

(12) What is the current estimated cost of maintaining the Defence web page.

Senator Ellison—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) (a) and (b) One person was assigned within CPA Division to support the Kovco Board of Inquiry (BOI) by facilitating media access to BOI hearings in Sydney. More generally, public affairs support to boards of inquiry is not quantified or separately itemised for costing purposes, as CPA staff undertake such work as part of their normal duties.

(2) (a) See response to part (1) above.

(b) (i) to (v) No costs were borne by CPA Division.

(vi) See response to part (1) above.

(3) (a) As part of their normal duties, CPA staff provided media liaison and facilitated media access, distributed media releases, and provided strategic public affairs guidance as well as media assistance to next of kin and families when requested.

(b) CPA Division does not itemise costs against specific BOI activities. Such support is regarded as part of normal duties for CPA staff.

(c) (i) Kovco – three; Sea King – three.

(ii) Kovco – 21; Sea King – three.

(d) CPA Division’s Public Affairs Operations Centre received hundreds of media inquiries in relation to the death of Private Kovco, the Sea King accident and the subsequent boards of inquiry. Additionally, a number of daily BOI media requests were also directly managed by the on-site public affairs officer. Defence did not log all media inquiries relating to the BOIs and I am not prepared to devote the considerable resources required to manually collate the specifics of the information sought.

(e) Kovco – 64; Sea King – 122.

(4) (a) Travel was undertaken in support of media management requirements in relation to the death, repatriation and funeral of Private Kovco.

(b) Defence staff, including from CPA, maintained contact, in person and by telephone, with Private Kovco’s immediate family on a regular basis.

(c) Inquiries within CPA Division, the Defence Community Organisation (DCO) and Army Headquarters indicate that there were no discussions with organisers of the Victorian Anzac Day events.

(d) $7,370 was spent in transport and accommodation for Private Kovco’s family during the time of his funeral. The DCO provided a one-off payment of $3,550 to Mr Kovco (Private Kovco’s step-father) to compensate him for loss of income.

(e) Private Kovco did not have a state funeral.

(5) (a) and (b) CPA Division does not employ journalists as such. See response to House of Representatives Question No. 1422 for further details.

(6) (a) (i) 94 (as at 4 April 2007).

(ii) 51 (as at 4 April 2007).

(iii) 53 (as at 4 April 2007).
(b) Media releases are normally drafted by the relevant subject matter expert within Defence Groups. An assigned CPA public affairs officer will provide support in overseeing its production, and a CPA media room staff member will assist in its distribution.

(7) 0.75 hours.

(8) (a) (i), (ii) and (iii) Defence has managed the visits of the following journalists to operational areas.

<table>
<thead>
<tr>
<th>Location/date of tour</th>
<th>Name</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iraq and Afghanistan, October 2006</td>
<td>Brian Hartigan</td>
<td>Contact magazine</td>
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<tr>
<td></td>
<td>Greg Jennett</td>
<td>ABC television</td>
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<tr>
<td></td>
<td>Tony Connolly</td>
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<tr>
<td></td>
<td>Ben Doherty</td>
<td>The Age newspaper.</td>
</tr>
<tr>
<td>Iraq, February - March 2007</td>
<td>Ian McPhedran</td>
<td>News Limited</td>
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<tr>
<td></td>
<td>Gary Ramage</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Simon Bouda</td>
<td>Channel Nine</td>
</tr>
<tr>
<td></td>
<td>John Wilson</td>
<td></td>
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<tr>
<td></td>
<td>Jason Morrissey</td>
<td>2GB Radio</td>
</tr>
<tr>
<td></td>
<td>Ben McKelvey</td>
<td>The Bulletin magazine</td>
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<tr>
<td>Afghanistan, March 2007</td>
<td>John Hunter-Farrell</td>
<td>Defender magazine</td>
</tr>
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<td></td>
<td>Mark Wilton</td>
<td>The NT News</td>
</tr>
<tr>
<td></td>
<td>Justin O’Brien</td>
<td>Channel Eight Darwin</td>
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<td></td>
<td>Jeff Kehl</td>
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<td></td>
<td>Karen Middleton</td>
<td>SBS television</td>
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<tr>
<td></td>
<td>Jamie Kidston</td>
<td></td>
</tr>
<tr>
<td>Iraq, April 2007</td>
<td>Howard Sacre</td>
<td>60 Minutes</td>
</tr>
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<td></td>
<td>Drew Benjamin</td>
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<td></td>
<td>Liam Bartlett</td>
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<td></td>
<td>Stephen Cawley</td>
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</tr>
<tr>
<td>Iraq, May 2007</td>
<td>Danielle Isdale</td>
<td>Channel Ten</td>
</tr>
<tr>
<td></td>
<td>Ben Foley</td>
<td>ABC television</td>
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<td></td>
<td>Matt Brown</td>
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<td></td>
<td>Brant Cumming</td>
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<tr>
<td></td>
<td>Doug Conway</td>
<td>AAP</td>
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<td></td>
<td>Dean Lewis</td>
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</table>

The Australian Defence Force (ADF) facilitates access for media agencies that make their own way to operational areas or as part of a VIP visit program. Records of direct media engagement in these locations are not held centrally.

(b) It is not possible to break down costs for specific media visits as escorted media tours are co-ordinated within existing ADF sustainment and support arrangements for each operation. Travel is not specifically arranged to cater for media.

(c) See responses to (a) and (b) above.

(9) (a) to (c) CPA Division does not have a specific allocation for hospitality purposes. Funds are expended on an as-required basis and in accordance with the Department of Defence’s Chief Executive Instrument on Official Hospitality issued on 11 November 2005.

(10) The expenditure for CPA Division staff travel and accommodation for the first nine months of 2006-07 (to 31 March 2007) was $779,000.

(11) (a) to (c) None.

(12) Approximately $260,000 per annum.

QUESTIONS ON NOTICE
Travel Allowance  
(Question No. 3130)

Senator Sherry asked the Minister representing the Special Minister of State, upon notice, on 18 April 2007:

With reference to the department’s Outcome 3, ‘Efficiently Functioning Parliament’:

(1) For each of the financial years 2004-05, 2005-06 and 2006-07 as a projection: (a) how many travel allowance (TA) forms were processed; and (b) of these forms, how many were varied in the acquittals process.

(2) For the 2005-06 financial year, how many of the 356 Outcome 3 staff worked on processing of TA forms and what proportion of the total hours worked in support of the outcome was spent on processing of TA forms.

(3) (a) What are the direct costs, for instance salary, and indirect costs, for instance, stationary purchases, of processing the TA forms; and (b) what cost-benefit analysis has been undertaken to assess the need to reform and streamline these processes.

Senator Minchin—The Special Minister of State has supplied the following answer to the honourable senator’s question:

(1) (a) The number of Travelling Allowance (TA) forms processed are as follows:
   2004-05: 18,514
   2005-06: 20,259
   2006-07: 16,918, as at 1 May 2007.

   (b) The number of TA payments varied on acquittal are as follows:
   2004-05: 566
   2005-06: 532

(2) For the 2005-06 financial year, an average of approximately 11 staff worked within the team which, inter alia, processes TA claims. A significant diversion of resources would be required to accurately determine the proportion of hours dedicated to processing TA claims, as distinct from other travel entitlements. I do not consider that the additional work can be justified. The practice of successive governments has been not to authorise the expenditure of time and money involved in assembling such information on a general basis.

(3) (a) The preparation of an answer to this question to identify the proportion of costs related to processing TA claims, as distinct from other travel entitlements would involve a significant diversion of resources, and in the circumstances, I do not consider that the additional work can be justified. The practice of successive governments has been not to authorise the expenditure of time and money involved in assembling such information on a general basis.

   (b) Ministerial and Parliamentary Services, within the Department of Finance and Administration, progressively reviews its processes as part of its commitment to a process of continuous improvement. This includes the reform and streamlining of identified processes to improve efficiency and effectiveness. The reform principles that underpin our continuous improvement efforts are: Flexibility, Accountability, Cost effectiveness, Transparency and Simplicity.
Aged Care
(Question No. 3136)

Senator McLucas asked the Minister representing the Minister for Ageing, upon notice, on 19 April 2007:

Can a copy be provided of any reports, surveys or findings supplied to the Department by Campbell Research and Consulting Pty Ltd relating to the evaluation of the impact of accreditation on the delivery of quality care to residents of aged care homes.

Senator Ellison—The Minister for Ageing has provided the following answer to the honourable senator’s question:

Yes, once the project is finalised and I have had an opportunity to consider the contents of the final report and associated documents. I anticipate this occurring over the next few months.

Taxation
(Question No. 3169)

Senator Siewert asked the Minister representing the Treasurer, upon notice, on 26 April 2007:

(1) What country has the Japanese company INPEX Browse Ltd nominated as its country of residence for the purposes of the Income Tax Assessment Act 1997.

(2) Is it possible that income derived in Australia may not incur Australian income tax if the taxpayer has its country of residence in an offshore location and arrangements between Australia and that country are governed by a double taxation treaty.

Senator Coonan—The Treasurer has provided the following answer to the honourable senator’s question:

As these questions deal with matters that are the responsibility of the Australian Taxation Office, I have asked the Commissioner for advice. The advice in relation to the honourable senator’s question is as follows:

(1) It has been the longstanding practice of the Commissioner not to comment on the tax affairs of individual taxpayers.

(2) Yes. However, as a general rule, under Australia’s double taxation treaties foreign residents of Australia are liable to Australian tax on all items of ordinary or statutory income which has a source in Australia.

Research and Development Tax Concession
(Question No. 3175)

Senator Carr asked the Minister representing the Minister for Revenue and Assistant Treasurer, upon notice, on 30 April 2007:

With reference to the Tax Expenditures Statements for 2005 and 2006:

(1) Why have the estimates of revenue forgone under the research and development (R&D) tax concession (B53 in the 2005 report and B57 in the 2006 report) been substantially reduced between each of the statements for each of the financial years from 2002-03 to 2004-05.

(2) Why have the forward estimates of revenue forgone under the R&D tax concession been substantially reduced between each of the statements for each of the financial years from 2006-07 to 2009-10.
(3) Can details be provided of the parameter changes underlying the R&D tax concession that have led to the reduced estimates described in paragraphs (1) and (2).

(4) Can details be provided of the parameter changes underlying the amendments to estimates of revenue forgone under the premium tax concession for additional R&D expenditure (B54 in the 2005 report and B58 in the 2006 report) for each of the financial years from: (a) 2002-03 to 2004-05; and (b) 2006-07 to 2008-09.

Senator Minchin—The Minister for Revenue and Assistant Treasurer has provided the following answer to the honourable senator’s question:

(1) The estimates have changed due to a revision in the methodology used to calculate the offset and because the estimates are now based on more recent tax return data.
(2) See answer to question 1.
(3) See answer to question 1.
(4) This information is not published.

Research and Development Tax Concession
(Question No. 3176)

Senator Carr asked the Minister representing the Minister for Revenue and Assistant Treasurer, upon notice, on 30 April 2007:

With reference to the 125 per cent research and development (R&D) tax concession and the premium tax concession for additional R&D expenditure:

(1) What sources of information are used to predict take-up of each of the concessions and the expenditure by firms on eligible R&D initiatives.
(2) (a) In the 2005-06 financial year, how many firms claimed each of the concessions; and (b) how did these numbers differ from estimates made by Treasury or the Australian Tax Office prior to the 2005-06 financial year.
(3) For the 2006-07 financial year, what is the expected change in the number of firms claiming each of the concessions.

Senator Minchin—The Minister for Revenue and Assistant Treasurer has provided the following answer to the honourable senator’s question:

(1) Relevant taxpayer data is used as a base to generate estimates for each of these concessions.
(2) (a) Data for 2005-06 has not been published. (b) Data for 2004-05 and earlier years are available from the Taxation Statistics published on the Australian Taxation Office website.
(3) This information has not been published.

Research and Development Tax Concession
(Question No. 3177)

Senator Carr asked the Minister representing the Minister for Revenue and Assistant Treasurer, upon notice, on 30 April 2007:

With reference to the research and development (R&D) refundable tax offset for small companies:

(1) (a) For each of the financial years from 2002-03 to 2005-06, what was the actual expenditure on the tax offset; and (b) for each of the financial years from 2006-07 to 2009-10, what is the estimated expenditure on the tax offset.
(2) Can details be provided of any parameter changes that have affected estimates for this program from the financial years 2002-03 to 2006-07.
(3) What is the estimated change in the number of companies accessing the concession for each year of the forward estimates.

(4) What sources of information are used to predict take-up of the tax offset and the expenditure by firms on eligible R&D initiatives.

Senator Minchin—The Minister for Revenue and Assistant Treasurer has provided the following answer to the honourable senator’s question:

(1) (a) This data is published in the Australian Taxation Office’s Taxation Statistics which is available on the Australian Taxation Office website.

(b) This data has not been published.

(2) This information is not published.

(3) This information is not published.

(4) See answer to Question Number 3176 of 30 April 2007

Esperance Coast Road Upgrade Project
(Question No. 3196)

Senator Milne asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 9 May 2007:

With reference to the upgrade of the southern Tasmanian Esperance Coast road, funded under Auslink’s Strategic Regional Programme:

(1) Why have works commenced on the upgrade of the road even though the development has not undergone standard statutory local planning assessment procedures.

(2) Why did works start on the upgrade of the road in March 2007 even though the high-level implementation timeline for the project, as outlined in the council’s application for funding under AusLink, stated that works were not to commence until November/December 2007.

(3) Was there a signed contract between Huon Valley Council and AusLink when the works began on the upgrade of the road.

(4) How was Huon Valley Council able to obtain AusLink funding for the upgrade without council approval of a development application to construct the road.

(5) Why was the tendering process required by AusLink limited to tenders by local contractors.

(6) Given that the upgrade of the road includes the replacement of a bridge, which bridge is to be replaced.

(7) What exemptions under Auslink guidelines, if any, were sought by Huon Valley Council for the funding of the upgrade of the road.

(8) What is the link between the AusLink funded upgrade of the road and the Huon Valley Council’s intention to build a new road around the Dover foreshore to bypass the Kent Road bridge.

(9) Which local roads in the Dover township have been allocated Auslink funding in order to bring it to a standard suitable to act as an access road for the Esperance Coast Road when the upgrade is completed.

(10) Why have upgrade works started on Crown land – Coastal reserve areas and in areas of vulnerable coastal margin without any impact statements, or a roadworks program governed by the Commonwealth Coastal Policy.

(11) What studies were undertaken, when and by whom, to warrant the upgrade of the road being approved by AusLink.

QUESTIONS ON NOTICE
(12) What evidence is available that demonstrates that the project does not contravene the Environment Protection and Biodiversity Conservation Act 1999.

(13) (a) Is the Minister aware that areas of swift parrot habitat, a species listed in the Act, adjacent to the upgrade of the road have been removed without any formal impact assessment; and (b) what course of action will be taken to deal with the removal of areas of this habitat.

(14) Which authority is responsible for managing the Esperance Coast Road works on the upgrade of the road in regard to threatened species habitat, vegetation removal, infilling of natural gullies and encroachment of adjacent tidal zone.

**Senator Johnston**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) and (4) Councils are required to comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority under section 25.1 of the funding agreement.

In submitting the application for funding the representative of the Huon Valley Council warranted that they were authorised to submit the application on behalf of the Huon Valley Council and agreed to enter into a funding agreement for the Esperance Coast Road Upgrade.

(2) The application form stated that survey and design works on this project will commence by December 2006, with construction commencing November/December 2007. The timelines presented on the application form have since been re-negotiated during the funding agreement negotiations between the Australian Government and the Council.

(3) (4), (6) and (8) A funding agreement has been established between the Huon Valley Council on 23 February 2007 to reconstruct and seal 8.36 kilometres of the unsealed section of the Esperance Coast Road, together with essential rehabilitation of the 6.08 kilometre sealed section towards Dover. The rehabilitation, reconstruction and sealing will be carried out to a minimum sealed width of 5.5 metres as necessary, with 6 metres the preferred width and a minimum formation of 6.5 metres. The works include the replacement of an approximately 15 metre bridge, located on the sealed section on the outskirts of Dover (Kent Beach Road Bridge). The Dover foreshore project to bypass the Kent Road bridge is not part of the scope of the project funded under the AusLink Strategic Regional Programme.

(5) There is no mandatory requirement under the Programme guidelines for proponents to call public tenders for approved projects. Any requirement on a proponent to call tenders for work will be considered on a case by case basis and reflected in the funding agreement. As a general guide the Australian Government requires public tenders to be invited for works exceeding $1 million. Huon Valley Council has advised that they will be using their own labour force.

(7) None


(10) (12), (13) and (14) Schedule 1, Guidelines and Principals of the funding agreement requires that the Council is required to comply with relevant Commonwealth legislation such as the Environment Protection and Biodiversity Conservation Act 1999.

Council has advised that they have consulted with State Parkes and Wildlife Services and the Forest Practices Board.

The Council’s next project progress report is due in early June and it is understood that this will contain details of discussions held with the State Parkes and Wildlife Services and the Forest Practices Board.

QUESTIONS ON NOTICE
QUESTIONS ON NOTICE

(11) One of the programme assessment criteria (Collaborative regional planning/Regional support) for the Large Project category sought the extent to which the proposed project arose from collaborative regional planning processes. There is however, no specific requirement for projects funded under the AusLink Strategic Regional Programme to have undergone specific studies.

Smartcard

(Question No. 3200)

Senator Stott Despoja asked the Minister for Human Services, upon notice, on 11 May 2007:

Did five senior government officials from the department and the Minister’s office visit the offices of News Limited and Fairfax, publishers of The Australian and The Age, in the week commencing 21 March 2007 to discuss the access card proposal; if so, why was a meeting with senior opinion editors and lead writer held instead of normal journalistic routes such as media release, talking to journalists for quotes in a story, or offering opinion pieces.

Senator Ellison—The answer to the honourable senator’s question is as follows:

No. Officials did not meet with publishers of The Australian and The Age in the week of the 21 March 2007.