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SITTING DAYS—2007

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

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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
National Whips—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
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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
HOWARD MINISTRY

Prime Minister
The Hon. John Winston Howard MP

Minister for Transport and Regional Services and Deputy Prime Minister
The Hon. Mark Anthony James Vaile MP

Treasurer
The Hon. Peter Howard Costello MP

Minister for Trade
The Hon. Warren Errol Truss MP

Minister for Defence
The Hon. Dr Brendan John Nelson MP

Minister for Foreign Affairs
The Hon. Alexander John Gosse Downer MP

Minister for Health and Ageing and Leader of the House
The Hon. Anthony John Abbott MP

Attorney-General
The Hon. Philip Maxwell Ruddock MP

Minister for Finance and Administration, Leader of the Government in the Senate and Vice-President of the Executive Council
Senator the Hon. Nicholas Hugh Minchin

Minister for Agriculture, Fisheries and Forestry and Deputy Leader of the House
The Hon. Peter John McGauran MP

Minister for Immigration and Citizenship
The Hon. Kevin James Andrews MP

Minister for Education, Science and Training and Minister Assisting the Prime Minister for Women’s Issues
The Hon. Julie Isabel Bishop MP

Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs
The Hon. Malcolm Thomas Brough MP

Minister for Industry, Tourism and Resources
The Hon. Ian Elgin Macfarlane MP

Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service
The Hon. Joseph Benedict Hockey MP

Minister for Communications, Information Technology and the Arts and Deputy Leader of the Government in the Senate
Senator the Hon. Helen Lloyd Coonan

Minister for the Environment and Water Resources
The Hon. Malcolm Bligh Turnbull MP

Minister for Human Services
Senator the Hon. Christopher Martin Ellison

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

Minister for Fisheries, Forestry and Conservation and Manager of Government Business in the Senate
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
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<td>Leader of the Opposition</td>
<td>Kevin Michael Rudd MP</td>
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<tr>
<td>Deputy Leader of the Opposition, Shadow Minister for Employment and</td>
<td>Julia Eileen Gillard MP</td>
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<td>Industrial Relations and Shadow Minister for Social Inclusion</td>
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<tr>
<td>Leader of the Opposition in the Senate and Shadow Minister for</td>
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<td>National Development, Resources and Energy</td>
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<tr>
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<td>The Hon. Archibald Ronald Bevis MP</td>
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<td>and Customs and Shadow Minister for Territories</td>
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<td>Christopher Eyles Bowen MP</td>
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<td>Senator Kim John Carr</td>
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<td>Shadow Minister for Multicultural Affairs, Shadow Minister for Urban</td>
<td>Laurence Donald Thomas Ferguson MP</td>
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<td>Peter Robert Garrett MP</td>
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

NOTICES
Withdrawal
Senator SIEWERT (Western Australia) (9.30 am)—Pursuant to the notice of intention given yesterday I withdraw business of the Senate notice of motion No. 1 standing in my name for today.

Presentation
Senator Siewert and Senator Nettle to move on the next day of sitting:
That the Senate:
(a) notes:
(i) the impact of reduced rainfall on inflows into river systems in northern New South Wales due to the combined effects of climate change and drought,
(ii) that serious water management issues already exist in these systems, including problems with over-allocation of water resources, and
(iii) the economic value of the range of industries that depend on these systems, from dairy farms on the floodplains through to commercial fisheries; and
(b) calls on the Federal Government to:
(i) abandon plans for damming the Clarence, Tweed, Richmond and Mann Rivers, and
(ii) work with local communities, local water authorities and state governments in developing non-runoff dependent alternative sources to meet increasing demand, such as rainwater tanks, stormwater capture and storage, and recycling.

Senator O’Brien to move, contingent on the Wheat Marketing Amendment Bill 2007 being read a second time:
That it be an instruction to the committee of the whole that:
(a) the committee divide the Wheat Marketing Amendment Bill 2007 to incorporate Schedules 1, 3, 4, 5 and 6 in a separate bill; and
(b) the committee add to that separate bill enacting words and provisions for titles and commencement.

Senator Nettle to move on the next day of sitting:
That the Senate:
(a) notes the Victorian Law Reform Commission’s publication, Assisted reproductive technology & adoption: final report, which acknowledges the research that shows that having single, lesbian or gay parents does not pose a risk to the wellbeing of children; and
(b) calls on the Federal Government to work with all states and territories to provide IVF treatment and adoption rights to all people, regardless of their sexuality.

FOOD STANDARDS AUSTRALIA NEW ZEALAND AMENDMENT BILL 2007
In Committee
Consideration resumed from 14 June.

The CHAIRMAN—The committee is considering the Food Standards Australia New Zealand Amendment Bill 2007 as amended and Australian Greens amendment (1) on sheet 5248 moved by Senator Siewert.

Senator McLUCAS (Queensland) (9.32 am)—As I indicated last night when I was speaking at 11 pm, we will not be supporting this amendment moved by the Australian Greens. Labor is on the record frequently and often talking about the impact of advertising on children, children’s eating habits and families. We are not of the view that this is the place to deal with this issue. It is an issue that, I believe, the Labor Party have put on the agenda for a long time and we will ensure that an appropriate policy response to
the inappropriate advertising of lower quality food—let us call it that rather than junk food—will be developed at the appropriate time. But this is not the place to deal with this particular matter.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (9.33 am)—I thank Senator McLucas for her comments. Firstly, I would like to assure Senator Siewert that even the more liberal amongst us—indeed libertarian amongst us—do not believe that restrictions on advertising constitute a nanny state. Be not concerned about that. Indeed, this morning I read the Australian newspaper and saw that Kellogg’s has just announced that, because of concerns about obesity, they will no longer use cartoons and toys to advertise cereals for young children. So you make a very valid point.

As Senator McLucas said, this is not really the place to proceed with this sort of amendment. Australia currently has policy and regulatory requirements that limit television advertising of food and drink to children during children’s viewing times. Like Senator McLucas, we do not believe that it is appropriate for legislative action in this area while the Australian Communications and Media Authority is reviewing the current standards. In fact, public consultation is yet to be concluded and the resulting public comment should, I think, inform any legislative change in this area. So I think this proposal is a bit premature; we should wait for the public consultation process to be conducted. I understand that a discussion paper calling for public submissions is due to be released this month—June 2007.

Senator SIEWERT (Western Australia) (9.35 am)—I thank the parliamentary secretary for his answer. When is that consultation process likely to be concluded?

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (9.35 am)—We hope that the consultation process will be concluded by the end of this year. As I said, there should be a discussion paper calling for public submissions by the end of this month.

Question negatived.

Senator SIEWERT (Western Australia) (9.35 am)—I move Greens amendment (3) on sheet 5246:

(3) Page 92 (after line 6), at the end of the bill, add:

Schedule 4—Genetically modified food and animal feed

Food Standards Australia New Zealand Act 1991

1 After Division 4

Insert:

Division 4A—Genetically modified food and animal feed

23AA Interpretation

In this Division, unless the context otherwise requires:

operator means a person who places a product on the market and also a person who receives a product that has been placed on the market at any stage of the production and distribution chain, but does not include the ultimate consumer.

traceability means the ability to trace food, animal feed, and ingredients of food and animal feed, that are produced using genetic modification technology throughout the production and distribution chains.

23B Packaged foods

(1) All packaged food derived from genetic modification, or containing an ingredient derived from genetic modification, must be labelled as such regardless of whether or not it contains DNA or protein resulting from that genetic modification.
(2) The label required by subsection (1) must contain the words “derived from genetic modification (GM product)” in conjunction with the name of the food or in association with any specific ingredients derived from genetic modification, or “genetically modified (name of food) (GM product)” or “contains genetically modified (name of ingredient) (GM product)”.

23C Unpackaged foods

All unpackaged food, including bulk foods, derived from genetic modification, or containing an ingredient derived from genetic modification, regardless of whether or not it contains DNA or protein resulting from that genetic modification, must have displayed in association with the food the words “derived from genetic modification (GM product)” in conjunction with the name of the food or in association with any specific ingredients derived from genetic modification, or “genetically modified (name of food) (GM product)” or “contains genetically modified (name of ingredient) (GM product)”.

23D Exemptions

The following foods are exempted from the provisions of sections 23B and 23C:

(a) all meat, milk, eggs obtained from animals treated with GM veterinary products, or fed GM food;

(b) food produced with the help of GM enzymes;

(c) takeaway foods and restaurant meals.

23E Animal feed

(1) All genetically modified animal feed, or animal feed containing an ingredient derived from genetic modification, must be labelled as such regardless of whether or not it contains DNA or protein resulting from that genetic modification.

(2) The label required by subsection (1) must contain the words “derived from genetic modification (GM product)” in conjunction with the name of the food, or in association with any specific ingredients derived from genetic modification, or “genetically modified (name of feed) (GM product)” or contains “genetically modified (name of ingredient) (GM product)”.

23F Accidental contamination

(1) Food or animal feed which is contaminated by less than 0.5 % of the product by adventitious GM DNA or protein, that is approved by Food Safety Australia New Zealand, is exempt from labeling, so long as operators can demonstrate that they have used all appropriate steps to avoid the presence of accidental contamination.

(2) Food or animal feed which is contaminated by detectable levels of GM DNA or protein that is not approved by Food Safety Australia New Zealand must be labelled as containing GM material.

23G Traceability

(1) The Governor-General must make regulations prescribing a comprehensive traceability system for all foods and animal feeds containing GM product or derived from GM processes that ensures the ability to trace the food or animal feed throughout the production and distribution chains.

(2) The regulations made under subsection (1) must include, but are not limited to, requirements that:

(a) operators must ensure that information identifying GM product or GM-derived material in food and animal feed is transmitted with that product;

(b) operators must have in place systems and procedures to allow the identification of the person or persons from whom and to whom the products referred to in subsection 23F(2) have been made available;
(c) operators must retain the information specified in paragraph (b) for a period of 5 years from each transaction, and make it available to competent authorities on demand.

(3) Operators delivering food to the ultimate consumer are exempted from paragraphs (2)(b) and (c).

(4) For the purposes of paragraph (2)(c), competent authorities means a department or other public organisation appointed by the Minister responsible for food safety for the purposes of this Act.

(5) The Minister responsible for food safety must implement a monitoring plan in order to trace and identify any direct or indirect, immediate, delayed or unforeseen effects on human health or the environment of GM product or animal feed or both after it has been placed on the market.

As I indicated in my speech in the second reading debate, the Greens are concerned about enabling adequate labelling and notification of genetically modified food and we believe that the standards at the moment are lacking in that they do not require the provision of adequate information for people to assess the genetically modified content of the food that they are potentially buying. We have put forward a number of quite detailed amendments to ensure that food is adequately labelled to indicate whether the product contains genetically modified material and the nature of that genetically modified material.

We think this is an important amendment that provides better disclosure to the community and to consumers, to enable them to make informed decisions. We believe it is appropriate to include this amendment to food standards because it relates directly to public health and safety and will ensure that people are fully informed. With all due respect, I hope that this is not another area that is under consultation and where we will have to ‘wait and see’. I appreciate there are processes being undertaken in a number of these areas, but a number of the answers we have had, last night and today, have been: ‘Just wait and see; this is under consultation.’ It is pleasing to see the government is taking these issues on board, but I would like to see something come out the other end.

Senator McLUCAS (Queensland) (9.37 am)—Labor supports full disclosure of genetic modification of food, but we will not be supporting this amendment. We cannot support full consultation and review processes in respect of these provisions because those full consultation review processes are not included. So we cannot support this particular amendment, but we want to have it on the record that we do support full disclosure and labelling for genetically modified food.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (9.38 am)—Can I just adopt Senator McLucas’s comments in terms of the process. Senator Siewert, you raise perhaps a legitimate issue about genetically modified food, but the problem again is—and I raised this last night in the debate—that amending this bill would not in fact have the outcome that you desire. It would take a change in the food standard, to be enforced at the state jurisdictional level, before any effect would be had with respect to genetically modified food. I understand what policy you wish to achieve, but that policy would not be achieved by what you seek to do here. So the government opposes this amendment.

Senator SIEWERT (Western Australia) (9.39 am)—I appreciate the consistency of the government’s approach in terms of taking it to the states. Is the government considering putting this—and the other items that we have been discussing through this amend-
ment process—on the agenda for the council?

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (9.39 am)—This is not under active consideration currently, no.

Senator SIEWERT (Western Australia) (9.39 am)—I think we may be encouraging you to put this on the agenda. It is obvious, by the sound of it, that it has bipartisan support. It sounds like the ALP support it. You have indicated that some sort of notification would be appropriate. So I encourage the government to put this on the agenda.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (9.40 am)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE MANAGEMENT SYSTEM AND OTHER MEASURES) BILL 2007

Second Reading

Debate resumed from 13 June, on motion by Senator Colbeck:

That this bill be now read a second time.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (9.41 am)—The Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Bill 2007 paves the way for the introduction of the new Child Care Management System. First announced in the 2006 budget, the new management system will require all childcare service providers to come online and establish new electronic reporting arrangements with the Commonwealth government.

Labor supports the new Child Care Management System, and we support this bill. We believe the new system has great potential to provide more accurate and timely information about the supply of child care in Australia, including usage patterns and, importantly, vacancy information. The system should also improve information to parents about their benefit entitlements. Used effectively, the new management system could bring substantial benefits to the provision of child care in Australia. However, we are concerned that the government’s broader attitude towards child care leaves much to be desired.

Just six months after the Commonwealth Treasury said that parents were being too choosy and child care was affordable, the Treasurer’s budget gave belated and insufficient recognition to the problems that many Australian families have with childcare costs. The government has taken no action on childcare access, and it has no plans to improve early learning and development for our children. Given these shortcomings in the government’s approach to early childhood, I foreshadow that I will move the second reading amendment now being circulated in my name.

The new Child Care Management System will significantly change the nature of the administrative relationship between childcare operators and the Commonwealth government, particularly in relation to the payment of the childcare benefit. About 96 per cent of Australian families take the childcare benefit as fee relief paid to their childcare centres. So, whilst CCB is an entitlement for families, it is overwhelmingly paid by the government to approved childcare service providers.
Currently, services are paid their CCB fee relief on an advance and acquittal basis, four times a year, with an annual reconciliation. The new management system introduces a new payment method for CCB. Under the changes proposed in this bill, payments will now be made weekly in arrears, based on a child’s actual attendance in the previous week. Services will now be required to submit attendance records for each child to FaCSIA weekly via the internet. FaCSIA will then pay the appropriate amount of CCB to services to pass on to parents as fee relief. This is a significant change for providers.

To help operators with any cash flow issues arising from the change to a payment in arrears system, the government has proposed that providers will receive an enrolment advance for each child. This advance amounts to one week’s maximum rate of childcare benefit per child and will be required to be acquitted once the child leaves that operator’s care. Labor welcomes the introduction of this advance to help operators with their ongoing cash flow issues.

The new system also requires all communication between childcare providers and the government to be online. This requires providers to have appropriate information and communications technology and ensure their staff are trained in how to use it. The weekly electronic reporting of attendance might become a significant issue for some providers. The entry and exit times for each child will be required to be entered into a computer either manually or through a swipe-card system. Parents will be required to log each child in and out every time they pick them up and drop them off.

Labor recognises that there is a lack of appropriately qualified, experienced and trained childcare staff. We are concerned that these weekly reporting requirements will require staff to do a lot of data entry and that this will place an extra burden on the staff resources of all childcare providers. We hope that the quality of care our children receive will not suffer as a result.

One positive from the implementation of the new management system is that it gives parents better information on their benefits. One new function of the system is the provision of an online statement from Centrelink detailing childcare benefit payments made on behalf of families to their childcare service. This should improve the information available to parents. We also hope that the move to the payment in arrears system will ensure that childcare benefit calculations are more timely and accurate and will reduce childcare benefit overpayments.

Under questioning during the recent Senate estimates hearings, departmental officials admitted that, in the last financial year, around 124,000 families were hit with an average childcare benefit debt of $309. That is a total of over $38 million in childcare benefit overpayments. This is in addition to the $140 million in overpayments that families faced through the family tax benefit system.

Labor understands that family budgets are under pressure as a result of record mortgage payments, spiralling credit card and household debt, rising childcare fees and, most importantly, record petrol prices. We support the changed payment arrangements in the new management system and hope that it is able to help reduce this overpayment burden on families.

On the question of what benefits the new management system will bring to childcare planning, the government has remained silent. There is concern that the current design of the management system does not provide government and the sector with the necessary information about childcare demand and does not relate this demand to the current
availability of places to assist future planning.

While this bill introduces new fines for services which do not give required information to the Child Care Access Hotline, the government has given no indication at all that it will quickly and accurately use the new information it is gathering to help better identify present and future childcare needs. The recent House of Representatives Standing Committee on Family and Human Services report *Balancing work and family* noted that:

Unfortunately, given the economic importance of child care provision, some Australian families are experiencing problems in accessing affordable care.

The government has completely abandoned all planning issues in the provision of child care in Australia. The government continues to deny that parents face any difficulties in securing a place for their child, especially one that meets their needs. Labor knows that this is simply not the case. We know that many parents face weekly challenges in securing a childcare place for their child. We believe that the substantial investment being made in the new management system should be focused on gathering and analysing the information necessary to improve the planning and provision of child care in Australia.

Schedule 2 of the bill introduces a civil penalty and infringement notice system for childcare operators. Family assistance law currently provides for criminal penalties but not civil penalties. These new sections impose for the first time a civil penalty system on childcare operators. With the introduction of the new civil penalty provisions, childcare operators and individuals face fines if they breach any of the obligations in these particular sections in the bill. These new civil penalties are currently limited to situations where childcare services fail to give the Child Care Access Hotline information on the places they have available within the required time frame, as set down by the departmental secretary. Aiding and abetting— withholding information—will also render an individual liable.

These new fines impose an initial layer of sanction upon operators who continually fail to provide information to government on their vacancies. Infringement notices are the first step, and they can be followed up with more substantial fines if the problems continue. Labor supports an infringement regime that introduces an intermediate layer of sanction in between taking no action and the complete suspension of an operator. We know that the suspension of an operator’s approval has a major impact on families, and this new fines system will provide a new incentive to improve operator compliance with the requirements of the family assistance law.

Schedule 3 of the bill contains a range of other miscellaneous amendments. These include new powers for the departmental secretary to immediately suspend a childcare service if the operator fails to comply with Commonwealth, state or territory law relating to child care or if the secretary believes there is an imminent threat to the health or safety of a child. Suspension does not result in permanent cancellation of approval to receive childcare benefit. Suspension means that an operator does not receive childcare benefit for the period of the suspension and can no longer provide fee relief to parents.

High-quality and accessible child care in Australia is of fundamental importance to Australian families. Labor has strongly argued for many years that the government has a responsibility to support families with the costs of caring for their children. Yet, time and time again, Australian families have been told that there is no problem. Treasury
says that families are being too choosy. The Minister for Families, Community Services and Indigenous Affairs claims that families are spending less of their household income on child care. But families know that they are in fact paying more and more for child care—at the same time as the Prime Minister is telling families they have never had it so good. How out of touch is this government after 11 long years in office? Families know just how costly child care has become—even if the government does not.

According to the Australian Bureau of Statistics, childcare costs are rising five times faster than the average cost of all other goods and services. Independent analysis by Mr Saul Eslake from the ANZ Bank, undertaken for the Taskforce on Care Costs, shows that childcare affordability has declined by 50 per cent in just the last five years. This year, after denying there was any problem—and five minutes before an election, of course—the government decided to give families a one-off bonus increase, but families have carried very heavy costs for the last four years.

Labor welcomes the increase as a belated recognition of the challenges that families face but continues to be concerned that the government has failed to provide the ongoing relief that families genuinely need. We are very concerned that what will happen is what happened four years ago: the bonus will be quickly overtaken by increased costs.

It seems perhaps that this view is shared by the minister, who was reported on Saturday as saying that, if any service provider did the wrong thing by increasing their fees to completely absorb this increase, the government were ‘not going to be casual bystanders’. But then he admitted that the government were powerless to stop these fee increases and in fact he was going to do nothing at all.

One area where the government are most definitely casual bystanders is in the area of early childhood education. The government are doing nothing for the 100,000 Australian four-year-olds who do not attend preschool. Under this government Australia spends the least in the OECD on pre-primary education, spending just 0.1 per cent of GDP compared to the OECD average of 0.5 per cent.

The government’s whole approach to early childhood is a mess. There is no coherent policy agenda. There are no clear directions. On the one hand, we hear from the Minister for Education, Science and Training how important early childhood is and how she wants all four-year-olds to have preschool. On the other, we have the Minister for Families, Community Services and Indigenous Affairs saying that child care has nothing to do with early education. In his view, all he is responsible for is providing care.

In contrast, the opposition is providing fresh policy ideas and showing a new direction for early childhood education. The Leader of the Opposition, Kevin Rudd, understands the importance of early childhood education and knows how critical it is to provide the best future for Australia’s children. Labor has now committed to providing all four-year-olds with 15 hours of early learning per week for up to 40 weeks a year. We will provide $450 million each year in new Commonwealth spending to ensure this occurs and to make sure this service expansion does not increase fees for parents. Importantly, unlike the minister for families, we understand that early education and care should be integrated across all service types because young children do not stop learning when they are in a place the government calls ‘child care’. Our children are always ready to learn. Labor believes that early childhood programs are an opportunity for the foundational growth that all Australian
children should have and we will provide it for them.

I now move the second reading amendment standing in my name:
At the end of the motion, add: “but the Senate notes that:
(a) child care out of pocket costs are increasing five times faster than average prices for all goods and services;
(b) for the past 4 years, child care out-of-pocket costs have increased by more than 12 per cent each year;
(c) as a result of these increases, child care is becoming less affordable for Australian families;
(d) despite the international consensus on the benefits of early childhood education, Australia ranks last in the Organisation for Economic Co-operation and Development countries on the percentage of gross domestic product spent on pre-primary education;
(e) there are currently 100 000 four years olds in Australia that do not attend preschool; and
(f) the current Government has no policy agenda to provide preschool education to all Australian four year olds”.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.56 am)—The Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Bill 2007 will help realise several substantial childcare initiatives for Australian families announced by the government. The new Child Care Management System, the CCMS, is the key in this agenda, providing a significant boost to the supply of information and accountability across the childcare sector. The CCMS is a national childcare computer system that will underpin the government’s projected $11 billion investment for the years in child care. Families, childcare services and government will all, under the CCMS, be able to base their operations on the very best information on childcare supply and usage that has ever been available across Australia. This is partly to provide simplified arrangements for childcare services to report to the Child Care Access Hotline so that families can get up-to-date information on childcare vacancies.

However, the CCMS will be just as important in simplifying and standardising the administration of childcare benefit for families. The information on childcare usage and fees will now be reported online by all approved childcare services directly to the Department of Families, Community Services and Indigenous Affairs, and Centrelink. This will allow childcare reductions and weekly arrears payments to services to be calculated and paid swiftly. Also, information on families’ childcare usage and childcare benefit payments made on their behalf to the childcare services will now be directly accessible by families through an online statement. While the CCMS will reduce the administrative burden on childcare services and therefore benefit Australian families, the significantly changed arrangements for services’ interactions with government will be recognised by rolling out the new system progressively across childcare services from 1 July 2007 over a period of two years.

The CCMS will support the childcare compliance strategy announced in the 2006 budget to protect the integrity of payments made to families using child care. Those compliance measures are also provided by this bill. The compliance measures are aimed at the childcare benefit program, which is mostly delivered to families through their childcare services. Services must be approved to participate in the childcare benefit program and the approval is based on their compliance with certain conditions. This compliance system is now to be strengthened. As a result of the new compliance measures, combined with the benefits of the
new CCMS, the risk of incorrect payments and fraud will be minimised. Improvements will be made to detect problems if they should occur. Childcare services’ awareness of their obligations and the consequences of non-compliance with their obligations will be increased because of the new measures.

A new civil penalties scheme is a major element of the compliance measures in the bill. The new scheme will allow a pecuniary penalty to be imposed on any service that contravenes a civil penalty provision, such as the new provision which puts an obligation on a service to provide information on the Child Care Access Hotline on time. This obligation reflects the importance of getting timely and up-to-date information into the hotline. If this information flow works well, families can readily find out about any vacancies at childcare services in their local area, and childcare place needs in a particular location can be assessed efficiently.

The new civil penalties scheme will operate in conjunction with an infringement notice scheme. If an infringement notice is issued to a childcare service, the service will have the option of either paying the lesser penalty set out in the notice or proceeding to a court to determine liability. The new civil penalty scheme and infringement notice scheme will be developed in future legislation to consolidate the range of penalties that may be applied to childcare services, relevant to the level of non-compliance. The two new notice schemes will not directly impact on families receiving childcare benefit. A family will only be affected where an approved childcare service consistently fails to comply with its obligations under the family assistance law, such as through the application of existing sanction provisions.

A further compliance measure in the bill will allow families to be notified if their childcare service should fail to comply with one of its conditions of approval, or have its approval suspended or cancelled. Families are entitled to know if this occurs because their childcare benefit may stop and they may become liable for the full fees if they stay in the service. As it is only fair, the bill will allow this information to be passed on to families.

Further childcare measures relating to compliance and other matters are included in this bill—for example, amendments to the absence provisions for childcare benefit. These amendments will reduce the administrative burden on both families and services by providing for childcare benefit to be paid for the first 42 days of absence from care for each child, regardless of the reasons for the absence and without the need for documentation. Other similar amendments are made by this bill.

Question negatived.
Original question agreed to.
Bill read a second time.

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

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT (TOWNSHIP LEASING) BILL 2007
Second Reading
Debate resumed from 14 June, on motion by Senator Abetz:
That this bill be now read a second time.
(Quorum formed)

Senator MURRAY (Western Australia) (10.05 am)—I seek leave to incorporate Senator Bartlett’s speech.
Leave granted.

Senator BARTLETT (Queensland) (10.05 am)—The incorporated speech read as follows—
The Aboriginal Land Rights (Northern Territory) Act was established with cross-party support in 1976, enabling communal Aboriginal land ownership in the Territory under Australian law. The land title is inalienable and equivalent to freehold title, but is held communally, reflecting the nature of Aboriginal land ownership.

The Northern Territory Aboriginal Land Rights Act was subjected to major amendments last year which, amongst other things, enabled 99-year leases to be established on townships on Aboriginal land in the Northern Territory.

This Bill before us enables the Commonwealth to establish a township leasing entity in the event that the NT Government has not established a township leasing entity of their own to manage the leases.

The Democrats expressed very strong concern at the time that legislation was pushed through this Senate that there had been completely inadequate consultation with Indigenous peoples throughout the Territory who would be affected by these changes. The Senate Inquiry process into that Bill was totally inadequate – another in a long and sad line of acts of contempt from this government towards the Senate which continues to degrade the credibility of the Senate Committee process.

Indeed, some months later, I recall hearing a speech in a public forum from one of the participants in that disgracefully brief Inquiry process, seriously questioning whether contributing to Senate Committee Inquiries was a worthwhile use of their time in the future.

The ability of Aboriginal landholders to meaningfully participate in that Inquiry process was minimal, despite the fact that it directly affected some of their most basic rights. The process was so bad that even Minister Mal Brough later conceded that it was less than ideal. Despite those widely admitted flaws and inadequacies with the previous legislation, this time around the government has prevented any sort of Senate Committee inquiry at all, even though there is no urgency to pass this Bill prior to August.

The continuing refusal of this government to allow proper public scrutiny of their legislation and open public engagement and consultation with affected Indigenous people is simply inexcusable. The Democrats are on record in this Senate as far back as August 2005 calling for proper consultation to occur before changes are made, but this has not happened. We are on record saying that we would consider potential changes to Land Rights if it could be shown it may be of benefit to Indigenous people, but that this “should not and must not be done without the full involvement of consultation with and subsequent agreement of the Aboriginal people.”

To the Democrats the big issue here is not whether 99 year leases as envisaged in the Act and the Bill before may be beneficial in some circumstances. It is that there has been an almost total, and one would have to say apparently deliberate, attempt to exclude Aboriginal people from involvement in this process, other than trying to persuade – some would say blackmail – them into agreeing to a lease at the end of the whole process.

The Democrats were very critical of the new leasing scheme contained in the 2006 amendments due to concerns about a lack of protection against unintended consequences. In particular, the head leasing and sub leasing provisions may mean that traditional owners relinquish control and cannot prevent inappropriate commercial development on sub leased land.

In this case, the bill seeks to facilitate a lease by establishing a Commonwealth office of Executive Director of Township Leasing (in the absence of NT Government action). The fact that there is no legislated requirement for the Executive Director to undertake ongoing consultation or negotiation with Traditional Owners or Land Councils regarding management of their land once the headlease is agreed is of significant concern.

Of extra concern to the Democrats is the fact that, as the Explanatory Memorandum makes clear, the costs of the Executive Director of Township Leasing will be met for up to $15 million, to be provided over five years from 2006-07 to 2010-2011 and that the funds will be sourced from the Aboriginals Benefit Account (ABA). This Account contains the equivalent of mining royalties for mining carried out on Aboriginal land. The money is already there to be spent for the benefit of Aboriginal people. Whatever else one might think about the 99 year lease proposals, the fact that the government is covering the costs of the

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process from money that has already been set aside to be spent on the benefit of Aboriginal people is a complete disgrace.

If the Commonwealth Government is so keen to trial this 99 year lease process that it will bulldoze through major changes to the immensely important Land Rights Act without properly consulting the Aboriginal people who are directly affected, the very least they could do is to cover the costs out of consolidated revenue, rather than take it from money already set aside that is meant to be spent for Aboriginal people.

We must put a pause in this process until there is proper consultation. The government may try to say that this is urgent, but I would be very very doubtful that any lease would be ready to be agreed to before August. 99 years is more than a lifetime, particularly for Aboriginal people, given the disgraceful fact that they have an average life expectancy 17 years less than other Australians. If we are to try this pathway and process, let’s do all we can to make sure we get it right.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (10.05 am)—The main purpose of the Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007 is to establish an office of the Executive Director of Township Leasing to enter into and administer township leases on Aboriginal land in the Northern Territory. The office is intended to operate in the interim until the Northern Territory government establishes its own entity to hold a 99-year headlease. The office would hold the 99-year headlease and grant subleases in accordance with the headlease conditions and provisions of section 19A of the Aboriginal Land Rights (Northern Territory) Act 1976.

The Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 contained amendments to introduce a 99-year township proposal. The model proposes that traditional owners, through their land council representatives, grant a 99-year headlease over their township. The headlease would be held by a Commonwealth or territory entity that would then be empowered to grant subleases. The entity would pay capped rent to the traditional owners and be obliged to act in accordance with the conditions set out in the headlease.

Labor continues to have concerns about the 99-year leasing model provided for under section 19 of the Aboriginal Land Rights (Northern Territory) Act 1976, which passed through the parliament in September 2006. Although the federal government has signed a memorandum of understanding to enter into a 99-year lease with the Nguiu community in the Tiwi Islands, there will be a legal challenge by the Tiwi Islands Local Government Association. The local territory member, Marion Scrymgour, is strongly concerned about the deal. This is a politically divisive issue in the Northern Territory and it is being compounded by the federal government’s failure to provide any details or to facilitate an informed debate about the proposals.

The Northern Territory government was in the process of negotiating a form of entity that meets the interests and concerns of the traditional owners. The traditional owners are concerned about the level of control that they will exercise over future development on their land once they sign a 99-year lease. This process has stalled as a result of the opposition from within the Northern Territory government. Although this entity is supposed to operate only in the interim, it is possible that it will operate in the long term, in which case it may be inconsistent with the models negotiated by the Northern Territory government.

Funding for this office comes from the Aboriginal Benefits Account—which of course is Indigenous money—yet this model has not been negotiated with Indigenous people. Senator Crossin will no doubt pro-
vide details of how it is going to impact in the Northern Territory and on concerns that she has been hearing about in her close work with the communities that are most affected. We can only assume that this is just one more step in the process of disenfranchising many Indigenous communities across the Territory.

Senator CROSSIN (Northern Territory) (10.09 am)—The Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007 will bring a further change to the Aboriginal Land Rights (Northern Territory) Act. It is an amendment that allows township leasing—or so we have been led to believe. It will establish the office of the Executive Director of Township Leasing. This will enable communities to enter into township leases, which will be managed by the appointed executive director.

These leases will enable Aboriginal landowners to issue 99-year leases over their land, supposedly to improve the chances of economic development. The origins of this bill date from last year under the first tranche of changes that concerned the Aboriginal Land Rights Amendment Act of last year. We saw the introduction of section 19A—as opposed to the current section 19 under the act. Section 19 under the act allows for individual lots, plots or parcels of land to be released and leased, and last year we saw an extension of that to include whole townships.

If people want to get a clear look at the impact of this legislation and at the way it has been handled by this government, they should look at some of the fine contributions by my colleagues in the House of Representatives earlier this week. I refer in particular to people like Ms Macklin and the member for Lingiari, Warren Snowdon. This legislation impacts on Mr Snowdon’s electorate singularly and solely. He is probably one of the most knowledgeable people I know when it comes to the operation of the land rights act. I would also like to acknowledge the contributions from Mr Martin Ferguson and Mr Peter Garrett. I think they are a fine compilation of exactly how people feel about the way Indigenous people are being treated by this government.

This is not about us objecting to moving Indigenous people forward economically and it is not about us standing in the way of people who may want to embark on different sorts of economic development. This is about ensuring that Indigenous people are with you and are consulted and that there is informed consent for these changes. I want to emphasise that point about informed consent in relation to these changes and what they mean. Look at the contribution of the member for Solomon, Mr David Tollner, who looks after solely Darwin and Palmerston and so would have had no or very little interaction with the Aboriginal Land Rights (Northern Territory) Act. In his role he would not have gone to any remote communities to speak to people about this. His knowledge is minimal. The contribution by him in this regard was extremely disappointing.

What we have here is a sign of a government that is absolutely desperate to prove that it has been able to do something for Indigenous people before the coming election. In relation to the Tiwi Islands, where the basis of this legislation emanates from, we have a situation where in the 2006 budget $100 million was to be allocated by this government for Indigenous housing and for implementing this leasing plan. Twelve months have now elapsed—I will go into this in a bit more detail in a moment—and nothing has been done. Suddenly we have Minister Brough—or ‘Minister Bluff’ as some people in the Northern Territory might want to call him—running around like a rabbit in the spotlight trying to implement in the Tiwi Islands a housing strategy or a land leasing
strategy that is vastly different from those in Wadeye and in Alice Springs. There is no overall strategy here and there is no overall forward thinking. This is a sign of a government that is desperate to prove that it has been able to achieve something for Indigenous people.

And people in the Territory are resisting. People in Alice Springs are strongly resisting this minister’s ‘take it, take all of it or take nothing’ attitude. You do it on his terms or you do it on no terms: ‘You must do it in the way I want you to do it and the way I, as a non-Indigenous person in this country, perceive you should do it.’ According to Minister Brough: ‘The way you ought to develop your economic prospects is my way or no way.’ But Indigenous people are not silly. Indigenous people are quite intelligent. As Jenny Macklin said at the start of her speech on this legislation in the House of Representatives, where she quoted from the song From Little Things Big Things Grow, Indigenous people in the Territory have a history of waiting patiently—not aggressively, as this minister wishes to go about his business, but very patiently—until they get what they want, on their terms. So people in the Territory will sit back and wait and watch and listen. They are not about to be bullied or coerced into signing up to something they do not seriously believe in and do not understand.

I think if you look at the contributions to the debate on this legislation from non-government people in both Houses, they are about trying, again—and I think I do this nearly every month down here in this place—to encourage this government to sit down and negotiate with Indigenous people about exactly what it is they want.

The 99-year leases have been, and remain, a highly contentious issue in the Northern Territory. This bill specifies the functions, the terms and conditions of the office of Executive Director of Township Leasing. Let us go back at this point and have a bit of history. The history is that, at some point, someone came up with the idea that one way we might be able to improve economic outcomes for Indigenous people—and let us not go into an analysis of this federal government’s absolute neglect of the support needed for that to occur—was to talk about their land: ‘Let’s assimilate and normalise Indigenous people so that their lot in life is to buy a little quarter-acre block with a little house on it and a bit of a fence.’ That is so unlike Indigenous people’s view of economic success and economic outcomes. But, nevertheless, this is a government that believes in assimilation for Indigenous people—that is, ‘Let’s make them all like us’—and not self-determination—that is, ‘Let’s empower them and educate them and provide them with the knowledge and skills to actually determine for themselves where they might want to go with all of this.’

So one of these ideas was, ‘We’ll lease a whole community.’ That went a bit further when amendments were made last year to the Northern Territory land rights act. At that time the Northern Territory government was going to look at setting up an entity—I suppose it would be a statutory authority, in a sense—that would be the managing authority for this township. I have sought constantly, through questions on notice and questions at estimates, to find out exactly what this entity might look like, how it would operate and what its relationship would be to the town councils in these communities. Yet I still cannot get any comprehensive answers. I get answers, but they are not comprehensive answers about how exactly this is going to happen. So the Northern Territory government decided to embark on a range of consultations and to take its time. But of course we have a federal minister now who will not
take time. The value of his time is of the utmost, and it has to be done in his time and no-one else’s time. And so this legislation has now been drafted, and has been rammed through both houses of parliament within four days.

Has the legislation been provided to one Indigenous person in the Territory? No. Has it been explained to any Indigenous person in the Territory? No. I even had land councils this week asking me to email them a copy of the legislation—the very four entities concerned in the Northern Territory. They include the Anindilyakwa Land Council at Groot Eylandt. I am sure the Tiwi Land Council has got an idea of what is in it. But the Northern Land Council and Central Land Council have not had an opportunity to thoroughly examine this legislation. They have had no opportunity to have input to a Senate inquiry into this legislation. That, I think, is quite astounding in terms of the rights of Indigenous people in the Northern Territory.

I do not believe there is any urgency about rushing this legislation through before we rise next week. And a government that was genuinely concerned about engaging Indigenous people, informing Indigenous people and letting them have their say might actually have flicked this legislation off to the Senate’s Legal and Constitutional Affairs Committee and allowed us to go to places like Alice Springs or Darwin, Port Keats-Wadeye or Bathurst Island to consult people about what they thought of this concept and how that entity might be set up. But this government operates behind a veil of secrecy when it comes to Indigenous people. So there will be no Senate inquiry. That is not allowed—not on. ‘On my terms or on no terms’ is the way this minister conducts Indigenous affairs in this country.

We could have easily done that inquiry over the winter recess. It probably would have been a good time to go to the Territory; it is the dry season and we do not have minus temperatures up there, so people might have welcomed the change. And we could have easily reported on the first day back in August and dealt with this legislation then. We know that when Senate committees look at legislation there is an opportunity for us to change that legislation for the better. But the Senate committee has not had the chance to do that. And that, I think, is another example of this government’s belligerent attitude when it comes to the future of Indigenous people.

I want to go to a quote that we found in putting together some speaking notes on this legislation. It comes from a very eminent person in this country, an Indigenous person, Professor Larissa Behrendt. She writes regularly for a national Indigenous newspaper. In commenting on this government and the minister in the National Indigenous Times on 31 May this year she said that the minister’s:

... approach to Indigenous affairs has been one where he holds himself out as having the answers ... if only those blacks would see the wisdom of his ways.

She goes on to say, as to what really needs to happen—and I quote from her article—that ‘the truth of the matter is that Aboriginal people need to be saved’ from Minister Brough. Patricia Karvelas wrote an article, in the Australian of 5 June, headed ‘Indigenous policy is assimilationist’, in which former Family Court Chief Justice Elizabeth Evatt warns that such a policy could ‘destroy Aboriginal culture’. She went on to warn of the dangers implicit in the Prime Minister’s rigid ideas of mainstreaming Indigenous programs with the end result being ‘the eventual disappearance of Aboriginal tradition and culture’.

I do not have an awful lot of time this morning to contribute to this debate. While some people might think 20 minutes is
enough, I could probably speak for much longer than that. There are many things that I want to put down on the record, but the main point that I want to get across today is this. If this is going to be the way of the future for Indigenous townships and if Indigenous people actually want this to occur—and I am not convinced yet that is the case—the fact is Indigenous people have not been fully informed about how this is going to operate. When people actually sign on the dotted line to lease their land for 99 years, it will be forever—and I do not think the people have quite realised that. That is why we have Willy Tilmouth and the Tangentyere council fighting with this minister at the moment over the reformation of the town camps in Alice Springs. This minister is suggesting that they ought to give up the special purpose lease for 99 years but Tangentyere council is saying that is just a little bit too long, let us go for 20 years and let us sit down and talk about this. But at the end of the day, according to this minister, it is his way or no way.

In relation to the town camps, this minister makes an announcement in May 2006. He takes over a year to come up with a formal proposal, gives it to people in Alice Springs in May and gives them 30 days to make up their mind. I thought Martin Ferguson very cleverly highlighted in the House this week that when we talk about airports being leased for 99 years we do not give the corporations involved less than a month to look at the details. But that is what this government is expecting Indigenous people to accept. When Indigenous people say, ‘Wait a minute; we need a bit more time here,’ this government minister says: ‘Well, I’m going to take the money off the table. You play by my rules or you play by no rules. I will take my bat and ball and go home.’ Quite frankly, Indigenous people are quite used to this from this government. But they are also prepared to sit around and wait and make sure that at the end of the day what they perceive as being important in their life is what is finally negotiated and achieved.

In relation to the Tiwi Land Council, during estimates I put quite a number of questions on notice, through Senator Scullion to Minister Brough, and got this amazing answer that this was really none of my business, it was not my responsibility and I would have to ask the Tiwi Land Council myself. Yet I was able to get evidence that there are many times when questions on notice are actually put through the minister—that is the only way that you can do it in this place—and the minister actually flicks those off to the statutory authority and responds, ‘I’ve sent these questions to this authority and on their behalf here are the answers.’ Every time we have tried to get detailed information about this it has been blocked. We either get no answers to questions or questions are not answered. There was a stunning display of buckpassing in estimates only a few weeks ago where everything I asked of OIPC in the Community Affairs estimates was flicked to IBA, Indigenous Business Australia, who will be handling some of this leasing at Wadeye. When I asked IBA the questions, they then said: ‘We can’t give you the answers. That is actually OIPC.’

I do not think that was incompetence on their part. I believe it is a deliberate strategy. What is happening here is that people buck-pass and avoid answering questions at Senate estimates. You might laugh, Senator Scullion, but I saw members from IBA, having been sent back into the other room, quickly briefing people from FaCSIA before I went back to FaCSIA to re-ask the questions. A conference—discussion and conferring—was going on. So, yes, I do believe that there are problems in terms of openness and transparency.
Let me give you just one example of this in relation to how scattergun this government’s approach is to housing. Four houses have been built out at Wadeye, two at Nama and two at Wudapuli. I asked questions about the houses. I asked why there was no external provision for each house. They had no shed, no driveway, no verandah, no outside area to sit on and even no concrete around the outside. IBA told me they did not construct those because they were never asked to do so by FaCSIA. You have to ask yourself: what government would build a four-bedroom house and plonk it in the dirt without any external amenities for people? What sort of strategy is that?

Then we discovered that the lease that this government have asked people at Nama and Wudapuli to sign actually breaches the Northern Territory tenancy act. Why is that? Because the Northern Territory tenancy act only applies to certain land leasing arrangements, and Nama and Wudapuli leasing arrangements fall outside of that. So these people have been asked to sign a tenancy agreement that really under the law is highly contestable. So what sort of strategy is this? This is supposedly from a federal government that believes it is doing the right thing by Indigenous people by improving their economic lot and their economic outcomes. We hear a lot of rhetoric about how this is going to improve people’s economic outcomes. That may well be so—and we do not stand in the way of any sort of progress which actually takes people to the next level—but it has got to be done in consultation and with a little bit more foresight and planning and strategy than I currently see from this government.

Nobody can tell me what the total value of the township of Nguiu actually is; nobody in this government can tell me that. No-one can give me a business plan and a business case as to why leasing the whole of the township of Nguiu is going to be the best thing rather than leasing it lot by lot. No-one can show me what economic long-term value these people are going to get out of this. They tell me that it is going to give them economic long-term value and it is going to improve their lot in life, but I have not seen it on paper. If I was the director of Wesfarmers or Rio Tinto, I would not be buying into this because I do not believe the economics stack up—and the economics have never been done by this government.

This legislation is not supported by us because it is legislation that has not been done in consultation with Indigenous people. It is not about changes to the land rights act that involves their informed consent, and we will not be supporting it. (Time expired)

Senator SIEWERT (Western Australia) (10.29 am)—Nor will the Greens be supporting the Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007. We opposed the changes to the Aboriginal Land Rights (Northern Territory) Act last year that set in motion this process. We were extremely concerned then and opposed those changes, as we will oppose these. Yesterday, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, released his latest report on native title and also the latest social justice report. I would like to start by quoting him, because his words go to the nub of these issues. The media release on the Native Title report 2006 says:

The Native Title Report 2006 also examines the Australian Government’s economic reform agenda for Indigenous land, specifically the 99-year lease scheme that aims to provide home ownership opportunities on Indigenous land.

“The problem with this scheme is that Indigenous land owners have to give up their land rights if they want to access new homes and low interest mortgages,” Commissioner Calma said.
“Ultimately the lease and home ownership initiative is more a debt creation scheme - one which threatens our hard fought-for land rights. Unfortunately, the majority of remote Indigenous Australians can’t currently get mortgages because they are either unemployed, or they are recipients of benefits or precarious income that does not support mortgage repayments.”

The core belief on which the notion of the 99-year headlease process is built is that individual private rights will allow Indigenous Australians to accumulate assets and participate in the market economy. The fundamental belief of the government is that individual property rights will be the answer to everything. As Mal Brough said last May:

It is individual property rights that drive economic development. The days of the failed collective are over.

The cornerstone of all recent government reforms on homeownership and economic development for Indigenous communities is the belief in the individual as an agent in economic self-development. We are entirely justified in characterising this as an ideological belief because, on the government’s own statements, it is a belief that is held in the absence of any evidence based on domestic success. It is also in stark contrast and opposition to the knowledge and experience gained overseas. In the United States, Canada and New Zealand, and most recently Kenya, the conversion of communal hands to individual leasing arrangements has not led to any noticeable improvement in the creation of wealth. As the Aboriginal and Torres Strait Islander Social Justice Commissioner said when I questioned him in estimates last May:

What has been seen in all of those countries has in fact been a loss of communal lands when individuals have sold their land to outside interests and, therefore, once that process is started, it is a concern.

Going to the Tiwi situation, he said:

... a significant concern is in relation to the permit system that is being reviewed at the moment. Tiwi people are concerned that if the 15 per cent of homes that are reported to be able to be sold to outside interests are sold, if the permit system has been withdrawn, then what is to stop any of that 15 per cent inviting people over to traverse all the lands and what controls do the Tiwi people then have over their own lands?

The evidence from overseas is that, when land is converted to individual leasing, the trade-off of communal title does not deliver the expected wealth creation or improvement in living standards. At the same time, these communities lose control of their land, and the strength and cohesion of their communities suffers as a result. We are concerned that this will ultimately lead to worse outcomes in health and wellbeing. As Tom Calma says in the Native title report 2006 that was released yesterday:

In many Indigenous townships these leases are currently operating on communal lands. The benefits of these leases are that traditional owners retain decision-making control over the land. Under the Government’s 99 year headlease plan, the ‘established entity’ will make the decisions affecting all future development on Indigenous land.

So what will happen under the government’s proposal is that communities will lose control over their lands and another entity will make those decisions. What has been seen overseas is that this process does not work.

Put simply, we believe that the 99-year lease scheme is in fact the AWA process of Indigenous Australia. But while the benefits of individual workplace agreements for individual workers may be dubious—and many of us believe they are highly dubious—when the concept of the individual as the focus of economic development is applied to Indigenous communities, and particularly remote ones, where the opportunities for such development are already severely limited and
there is no evidence that it will deliver properly or deliver the outcomes the government claims, we believe that this will be yet another unmitigated disaster.

This is another manifestation of the dysfunction of leadership and misunderstanding of Indigenous policy development that has dogged this government over the last decade. This latest social experiment is shoehorning the ideology of naive individualism and economic rationalism onto our cultural landscape. It is destined to go the same way as the failed COAG trials and the mess that has been made of the whole-of-government approach to shared responsibility agreements, for example, where it is continually the government side of the equation that fails to deliver on its promises and any show of responsibility. This was best summarised by the Secretary of the Department of the Prime Minister and Cabinet, Dr Peter Shergold, last July. When talking about the failure of the government’s ambitious Indigenous reform agenda, he said:

I am aware that, for some 15 years as a public administrator, too much of what I have done on behalf of government for the very best of motives has had the very worst of outcomes. I (and hundreds of my well-intentioned colleagues, both black and white) have contributed to the current unacceptable state of affairs, at first unwittingly and then, too often, silently and despairingly.

These comments are mirrored in the findings of the Gray report that looked at the failed COAG trials and the disaster that has led to Wadeye. The Social justice report from the Human Rights and Equal Opportunity Commission, released just yesterday at the same time as the Native title report, sums up the attitude and culture that is behind this failing. In particular, it looks at some of the issues under the shared responsibility agreements. It then goes on to look at some of the issues that manifest themselves in the proposal for 99-year leases.

The report highlights the definition of community where it talks about making communities sign SRAs. They are being made to sign SRAs at community level rather than at family level. The social justice commissioner points out that the focus is on community, despite extensive literature about the artificiality and problematic nature of major Indigenous settlements in Australia, saying that these are artificial constructs which have brought together disparate clans and language groups. He then goes on to talk about the fact that it comes down to the government trying to progress an objective of so-called normalising Indigenous communities, which is clearly the basis of where the government are trying to take the 99-year lease process—that is, they are trying to artificially create so-called communities and normalise leases because that is what they think will lead to economic development. The commissioner says that such attempts and the 99-year leases are just the latest incarnations of this objective and that it will almost certainly have the opposite effect to what is desired. The changes are likely to reinforce the artificiality and alienating nature of these communities and will add to their social dysfunction.

The rights of traditional owners will be nullified. Regardless of compensation arrangements or rents, this is unlikely to work towards the development of harmonious communities. At the heart of these arrangements is a failure to engage the community and a failure to listen to them, as much as is a failure to see beyond the blinkers of ideology. There are many quotes in the social justice commissioner’s report that highlight the concerns that HREOC has about the mindless ideology that is driving the 99-year lease process—that it is not based on any evidence in Australia that it is going to work and it is not justified by evidence from overseas. Perhaps we would accept the concept more if
evidence from overseas showed that this has worked, but in fact it has not worked overseas and it is not going to work in Australia.

The social justice commissioner’s report also says that it is a culture of control that perhaps unintentionally disempowers Indigenous communities; it is a culture that is not based on respecting partnership. Indigenous peoples are treated as problems to be solved, not as partners and active participants in creating a positive life vision for generations of Indigenous people still to come. The greatest irony of this is that it fosters a passive system of policy development and service delivery while at the same time criticises Indigenous peoples for being passive recipients of government services. The commissioner talked specifically about the lack of consultation and the way this legislation is being forced through this place. There has been no consultation with the local community, as we heard from Senator Crossin. Great concerns are still being raised in the Northern Territory about the lack of consultation, the process this sets up and the fact that it is taking away control from traditional owners and putting it to an entity. These concepts were never adequately discussed. They were not discussed when the land rights changes went through last year. While elements of that legislation were discussed in the community, those particular elements were not; they were pushed through very quickly without adequate consultation, in the same way that these are being pushed through quickly without adequate consultation.

An example of the flawed nature of the thinking on this and the way this is being rushed through—and I touched on this the other day when I talked about the Greens concerns that this legislation is not being sent to a committee—is the issue around the money coming out of the account, the ABA, to pay for the leases. It is quite obvious that the government has not thoroughly thought this concept through. Five million dollars is coming out of the ABA and will go to traditional owners. The government could not even tell me—and Senator Scullion was there and knows this—what would happen with the $5 million once it had been collected from the lessees. After a number of hours, the answer came back that it goes to the entity to fund the entity to facilitate more headleases in other communities.

The Greens are deeply concerned about the fact that, for a start, it seems that no-one knew what was going on and that it had not been thought through. The bigger point is that this is being paid for out of the ABA. So that account is being used to undermine traditional owners’ decision-making powers. That is not what we understood the ABA was set up for in the first place. We very strongly object to that and I know that Aboriginal communities in the NT object to that because I have been told by them that they object to that. They do not believe that the money was put there for that. The money should be for the benefit of Indigenous communities to help them in their economic development. As I outlined earlier, we do not believe that this ideological approach will lead to economic development.

As Tom Calma points out, Indigenous people are likely to end up with a massive load of debt because they will not have the capacity to repay the loans. They will not necessarily have the capacity to get loans in the first place. Following on from that, it is highly likely that in a lot of these communities, with housing costs being so expensive, they will not be able to resell the houses anyway. So they are being forced into a process of giving up control of their land for very dubious economic circumstances. They are being forced into it because they are being normalised. No-one has actually asked them if they want to be normalised. Over-
seas, giving up community control has proved to be dysfunctional; it has proved not to work and it has massive problems, yet we use this flawed belief to force people to give up community control to get so-called non-essential services. However, I would argue—as I have argued previously—that these services are essential services and that people should not be forced into giving up control of their land and decision making over their land for essential services.

I have not touched on a lot of the issues as they relate specifically to the Tiwi example. I think Senator Crossin has covered that. I will just briefly touch on this and say that I asked the social justice commissioner about Tiwi specifically. He was invited up there by the local community because they were expressing concerns about the process in Tiwi. He raised in estimates a number of concerns the local community continue to have about the proposals for their agreement. As I highlighted the other day, there was a public announcement that an agreement had been signed not long ago when in fact that was not true—it was a memorandum of understanding; and further details are still being worked out.

I do not believe that Aboriginal communities have been given a full and frank assessment of what this process means in the long term. For example, they have not been given any analysis from overseas of what impact this type of process has delivered overseas. I do not believe there has been an adequate assessment of what so-called private ownership of houses really does deliver to Aboriginal communities. This is a flawed process built on ideology with no foundation in fact. It has not worked overseas. It is not likely to work here. This is about pursuing an ideological agenda that I believe will not work. It will further disempower Aboriginal communities and further entrench disadvantage rather than help them.

When the government were looking at the community in Alice Springs, because they were so ideologically focused on those communities in the town camps giving up control of their leases, they would not give them $60 million to address the issue of housing. If the government were genuinely concerned about the state of that housing, they would not have taken the ‘take no prisoners’ approach to bargaining that they did. They were inflexible. They said, ‘Take it or leave it.’ That is not a genuine approach to consultation and negotiation with the community. That is the expression of their ideological pursuit of their objectives. It is a case of, ‘It is our way or no way.’ I do not think that is the appropriate way that we should be working with Aboriginal Australians in the 21st century. This is bad policy, and I believe the Senate should reject it.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.47 am)—I thank senators for their contribution to the debate on the Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007. The Aboriginal Land Rights (Northern Territory) Act is an iconic piece of legislation, and any amendments to it always generate interest. But you would be forgiven for thinking that those opposite were continuing the debate that occurred 12 months ago when the substantive amendments to the act were passed by the Australian parliament. Those amendments enabled the creation of an entity to hold headleases over Aboriginal townships. The amendments also made provision for the Commonwealth to establish such an entity if required. This bill proposes a very simple amendment to establish the Office of the Executive Director of Township Leasing to manage the Commonwealth entity. It is a simple implementation step. However, the senators opposite used this debate to merely repeat untrue claims about the effects of the
long-term leasing of townships on Aboriginal land in the Northern Territory. It has been claimed that townships leasing alters the principle of communal ownership of Aboriginal land and that the townships leasing scheme is being implemented without the consent of the traditional owners. That is simply not true.

The township leasing scheme was a policy put forward by the Northern Territory Labor government. It preserves inalienable and communal underlying title. Township leasing provides for all residents in towns on Aboriginal land to have a secure tenure, but only where traditional owners agree to a township lease. This is a voluntary scheme implemented with the consent of traditional owners. It provides real ownership to residents for the first time. The Australian government has completed negotiation with the traditional owners of Nguiu in the Tiwi Islands. They told Minister Brough that, for the first time, they would have real property rights. They will have a say about the development in town and they will get economic returns. Maintaining that the land rights act already provided for leasing in the town is misleading. These towns have not been provided with secure tenure over 30 years of land rights. The system was complicated, it was not working and it needed to be fixed.

It has been suggested that if a Commonwealth entity were established, it would be confusing if the Northern Territory government at some later date established its own entity. The government has made it clear that it is only going down the path of establishing the Office of the Executive Director of Township Leasing because the Northern Territory government has failed to deliver on its commitment to establish a township leasing entity. It was the Chief Minister of the Northern Territory who undertook to have this entity in place by 2006. She did not deliver. If, and when, a Northern Territory entity is in place, the government will move to transfer headleases to that entity and the Office of the Executive Director of Township Leasing will be abolished. There will be no duplication. It has been said that the Australian government has acted too quickly and that the Northern Territory government’s position is to negotiate on a model for the township leasing entity. Actions speak louder than words. The Australian government has listened to the traditional owners of Nguiu who wanted a statutory office and has delivered that in this bill.

Senators opposite have claimed that we have made land tenure reform a condition of funding basic services. I am sorry, Senator Siewert, but that is simply not true. Basic services are not part of the negotiations; the negotiations involve providing services above and beyond what would typically be provided. These reforms are an important part of our strategy to tackle overcrowding in remote Indigenous communities. We are providing $1.6 billion over the next four years to address the problem.

The new strategy will replace the failed Community Housing and Infrastructure Program. Labor is so out of touch that it believes that CHIP was a good program. There have been numerous complaints of nepotism, mismanagement and waste through the old ATSIC community housing model that those opposite put so much faith in. Over the last five years, despite spending around a billion dollars on this old ATSIC housing program, housing stock increased by only 2 per cent or 471 homes and there has been a marked deterioration in the state of that housing stock. The old ATSIC program was an unmitigated failure and we will abolish it and add more funding to create a more effective program. Home ownership will be an important part of the Australian government’s housing strategy and we have provided over $100 million for the new Home Ownership on Indigenous
Land program, which is tailored to meet the needs of remote communities who opt for land tenure reform. Our approach to Indigenous affairs is about making a difference, not following the tired and failed policies of the past.

Those that speak against the bill seem to want things to stay just as they are. Local Aboriginal people are saying just the opposite to that. The traditional owners of Nguiu were the first to take advantage of this new opportunity. The traditional owners will retain underlying title to the land and receive formal compensation from other people using the land. This will assist them to establish an economic base. Residents will be able to buy a house or start a small business and be part of the broader Australian economy. The new arrangements will allow the Tiwi entrepreneurial capacity to flourish for the benefit of future generations.

The negotiating process for Nguiu started formally in December last year. Those opposite say that an agreement has not been reached yet. Again, that is simply not correct. On 9 May, Minister Mal Brough was advised by the traditional owners of Nguiu that they agreed to the package offered by the Australian government. The next step is for the Tiwi Land Council to follow the statutory requirements required before the lease can be executed. Other communities will recognise the benefits in time and will follow the lead of the Tiwi Islanders.

This scheme is the only way that people in these communities will be able to own their own home. Senator Crossin has said before that she believes that Aboriginal people do not want to own their own homes. She should not make such absurd generalisations; it is offensive. While Labor’s rhetoric on Indigenous affairs suggests new ways forward, their policies are simply stuck in the past. They do not want to reform land tenure which has kept Aboriginal people in poverty. They would deny Aboriginal people the opportunity to own their own homes and they would prefer not to talk about hard issues like domestic violence and child abuse. Labor does not want to deal directly with local Aboriginal people; they would set up a new government constructed representative body, just like the failed ATSIC, to speak for them. These are policies of the past.

Senators opposite quote selectively from those that oppose these reforms. Of course there will be those that do not want change. But, unlike Labor, we do not expect Aboriginal citizens to arrive at a consensus on every issue when we do not expect the same from other Australians. Sadly, Labor does not even bother to quote the positive statements from the people that actually own the land: the traditional owners of Nguiu. Those opposite prefer to deal with their mates who want to preserve the status quo. Senator Crossin in particular has been doing her best to unravel those reforms. She wants government to keep control of Aboriginal people rather than to allow them the sorts of choices that she and other Australians take for granted. After more than 30 years of land rights, the government is giving Aboriginal people real property rights in their townships. It is time for those opposed to this scheme to step aside and let Aboriginal people make decisions for themselves. This is a simple amendment that will allow the traditional owners of Nguiu to carve out a better future for themselves, other residents and future generations. 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.
Debate resumed from 14 June, on motion by Senator Abetz:
That this bill be now read a second time.

(Quorum formed)

Senator CARR (Victoria) (10.59 am)—I rise to speak in this second reading debate on the Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007. Labor supports much of the content of this bill, which includes provisions for the government’s new Higher Education Endowment Fund, HEEF, as well as other measures announced in the budget. While Labor supports the concept of the Higher Education Endowment Fund, HEEF, as well as other measures announced in the budget. While Labor supports the concept of the Higher Education Endowment Fund, I emphasise that many of the measures, including aspects of the new HEEF, the opposition regards as highly controversial.

The bill seeks to cover measures across a number of areas, including a reduction in the number of Commonwealth Grant Scheme funded clusters, changes to the Commonwealth Grant Scheme funding levels across disciplines, and an increase in the maximum HECS contribution for commerce, economics and accountancy courses. This bill has provision for increased student loans and contributions. There are a few measures that will provide a small number of undergraduate and postgraduate students with some additional financial support, which is of course welcome. The much-trumpeted HEEF is the centre-piece of the bill but apart from this by far the most significant aspect of the bill, in Labor’s view, and one that we regard as wrong and foolish is the change to remove the cap that limits the proportion of full-fee domestic undergraduate places. I will go to that matter in some detail later.

The government sought to present the recent budget as an education budget. The Treasurer went so far as to say in his budget speech that this was the budget that set up the nation for the future. The truth is that, while much in the education budget is welcome, it comes after 11 long years of neglect by this government of education and of training in this country. If we consider that education and training go specifically to building the skills and the capacities of our workforce for today to meet the challenges of tomorrow, it is a sorry state of affairs that there has been such a prolonged period of neglect by this government of education in this country.

This government has in fact cut funding to higher education by, on average, $100 million a year during its first term in office. Despite its claims to the contrary, up until this budget this government reduced real funding to universities by six per cent per student place between 1995 and 2003. So to call this an education budget in that context is somewhat ironic.

According to the government’s own figures, Commonwealth expenditure on education as a proportion of total government expenditure is forecast to decline over the next four years from 7.7 per cent of GDP in 2005-06 to 7.4 per cent in 2010-11. As a consequence, at the conclusion of my remarks I will be moving an amendment to the second reading that points out the government’s failings in education policy in general and in higher education in particular.

This bill does nothing to lift research funding for our universities and for over a decade the Howard government has allowed research funding, especially research grant funding through the Australian Research Council, effectively to wither on the vine. It has taken away the autonomy of the Australian Research Council, abolished its independent board and made the organisation’s CEO directly responsible to the minister of
the day, which means at the minister’s beck and call.

We saw the previous minister for education, Dr Nelson, veto a dozen research grants awarded by the Australian Research Council after an extensive process of peer review—knocked back by Minister Nelson without any public explanation as to the reason. As a consequence, the government is currently before the courts of this country seeking to prevent the public knowing what the reasons were for the government’s decision. This is the situation which led the outgoing CEO of the Australian Research Council, Professor Høj, to make somewhat frank and blunt public statements given the normal reserve of people who work in this particular area of the public service. He made comments about the implications of the government’s approach to our international reputation with regard to research. He was quoted in the Australian Financial Review on 2 May as saying:

I think in the longer term, if Australia got a reputation for excessive ministerial interference, I think people could well say that’s not such an attractive destination to be a researcher.

These are serious, measured and considered comments and they should be heeded by the government; and if not by this government, by this parliament.

The Higher Education Endowment Fund, HEEF, has attracted controversy. It has been claimed that that represents additional money for universities and that extent it is unusual that it would be controversial. Of course, Labor welcomes additional money being spent but there are concerns being expressed that in the context of the dire financial situation of universities in this country, particularly with regard to very important infrastructure, there is some scepticism about what the government’s proposals involve. It has been described as cunning and as possibly too clever by half. For a start, we do not know whether this is actually new money to be spent to augment the current infrastructure program or to replace the current infrastructure program. Minister Bishop reportedly said in the Australian on 6 May that the new HEEF fund would eventually supersede—that is the word used: ‘supersede’—existing programs including the capital development pool and unspecified other programs.

These programs are vital for university research infrastructure. Just this week, the Minister for Education, Science and Training, under questioning from Labor’s Kirsten Livermore, refused to clarify this issue. These matters were being considered in the discussion of the appropriations in the House of Representatives. The minister said that she would commit to a promise not to reduce infrastructure spending to universities. She would not actually commit to increasing it. That leaves entirely open the possibility that existing funds will be subsumed in the new HEEF, which would essentially swallow them up.

Quite clearly there is considerable ambiguity about what the government’s intentions are in this regard. We simply do not know what the implications of the actual expenditure of government moneys will be when it comes to research infrastructure. A growing backlog is emerging in maintenance and delayed capital works. The government says that the $5 billion endowment fund will yield a $300 million a year dividend for university buildings and facilities. I am sure members of the public would say that that is a lot of money, but the figures need careful consideration. At the budget estimates hearings, departmental officers confirmed that universities were reporting a $1.5 billion backlog in maintenance claims alone. That was based on figures from 2005. The present situation is much more serious. The Australian Na-
tional University reports a backlog of some $500 million in its current maintenance needs, and that is just one university. If you add deferred capital works, buildings that are needed but cannot be built for want of funds, the overall figure is more likely to be $3.8 billion, which is an even more pronounced need than the official acknowledgement of the current situation.

Across this country a number of universities are operating out of grossly outdated 1950s facilities. There are universities trying to educate students in crumbling buildings, overcrowded lecture theatres and decayed tutorial rooms. Many universities are in an embarrassing state of decay. There has been no serious effort to address the backlog of capital works in universities over recent years. This question of deferred buildings and other matters has been canvassed and complained about for many years, and yet there has been a failure of the government to respond. We are a First World country. Our international competitors are spending considerably larger sums of money on research infrastructure and university capital works than we are. The gap between our performance and that of our competitors is growing. We now have a desperate need to catch up and bridge the gap. I am concerned that this particular measure is not sufficient to meet that challenge.

We still do not know anything about the conditions attached to the establishment of the new fund. The government is seeking to raise expectations about what can be done with this fund, but it has given no clear undertakings as to what will be done with this fund. We do not know about the composition of the board. We have had indications of some appointments, including the Chief Scientist and others, but we have yet to see the full range of personnel the minister would like to appoint to the board. We do not know anything about the guidelines that will govern the fund. All we have been told by departmental officials is that this is a very complex measure and that they hope to have some matters before the parliament by September. I wait in some anticipation to see whether that actually happens.

The university sector has been starved of funds for the better part of the last decade. We have seen a decade of shameful neglect, and we are now seeing an attempt by the government to repair damage that the government itself has inflicted upon the sector. We will support this measure, but with those caveats because there are considerable issues that need to be looked at.

This bill includes a change to the fee-paying regime, an attempt by the government to further increase the level of fees that can be charged to students for domestic undergraduate places. There is a measure to remove the cap on domestic fee-paying students. We oppose that measure. Labor’s policy is to phase out these full fee paying domestic student places, which are only three per cent of the total student load at the moment but nonetheless reflect a determined ideological drive by this government to shift responsibilities away from the Commonwealth and onto individuals.

We are discussing with the higher education sector the finer implications of these measures, but ours is a philosophical position driven by a desire to give all students a fair go and equality of opportunity. Labor will of course allow full fee paying students who are currently in the system to finish their courses, but the policy position we argue is to phase out full fee paying students right across the public university sector, beginning in the 2009 academic year.

We oppose the government’s budget measures here for other reasons. It was indicated in the estimates hearings that the measures in this bill—reducing the number
of funding clusters, removing the cap on the number of full-fee degree places—will mean that universities will be free to enrol an entire discipline as a full-fee domestic course. It will be possible for universities to move to full fee paying programs in highly commercial areas where they believe they can maximise returns.

The position that has been acknowledged by the departments is that, within the clusters, there will now be opportunities for universities to charge the sorts of fees that have been a matter of some deep concern to the public in terms of the way in which this government approaches universities. This means a university will essentially be able to shift its program to those lucrative areas, particularly those exclusive areas, where it can charge the maximum amount for students to go to university.

The government decided early in its life to allow universities to charge up-front fees. We have seen students who can afford to pay higher fees being able to buy their way into courses when they have much lower entry scores than those of their peers in publicly funded places. For example, last year the entry score for a HECS place in the Bachelor of Behavioural Science course at the University of Sydney was some 17 points higher than the entry score for a full-fee place. Frankly, that raises serious questions of equity and also quality—and that suggests to me why it is necessary to remove this policy.

We have seen this government moving away from a commitment to fund education appropriately as a matter of national priority. What we see in the measures contained in this legislation is a recognition by the Howard government of its neglect, but these measures will in no way compensate for the 10 years of neglect. We are four months out from a federal election—so of course it is important that additional resources be spent on education! It is terrific to see the government suddenly feign an interest in education and research. But the fact remains that the provisions in this bill will actually see a much higher level of expenditure shifted towards individuals and away from the Commonwealth’s national responsibilities in these areas. What ought to be emphasised is that education should be seen as an investment, not just a cost. That is why I move the following amendment:

At the end of the motion, add: “but the Senate:

(a) notes that the Budget announcements in higher education come after more than 11 years of neglect and complacency towards, and underinvestment in, Australia’s higher education sector, and that under this Government:

(i) as a proportion of total revenue, Commonwealth grants to universities have decreased from 60 per cent of their revenue in 1996 to 40 per cent, while university revenue derived from private sources of income has increased from 35 per cent to 52 per cent and revenue from fees and charges has increased from 13 per cent in 1996 to 24 per cent,

(ii) Commonwealth investment in education as a proportion of total Government expenditure is actually forecast in the Budget to fall from 7.7 per cent in 2005-06 to 7.4 per cent in 2010-11, and

(iii) there has been a significant and serious run-down of research infrastructure, including a failure to provide a real increase for Australian Research Council project funding; and

(b) further notes that the Budget:

(i) abolishes the current cap of 35 per cent on full-fee domestic undergraduate degree places, and

(ii) increases contributions of the Higher Education Contribution Scheme for commerce, economics and accounting courses to the maximum amount while at the same time reducing the Com-
monwealth contribution for those courses”.

Finally, it is an irony that the Productivity Commission, of all organisations, has now come to the aid of public research and public universities in this country. It is an irony that the high priests of market economics have reminded the government of its responsibility to ensure the proper place of our public university system in this country and the critical role that universities play when allowed to fill their proper function of creating new knowledge, transferring new knowledge, training the next generation of researchers and highly skilled people and, of course, engaging in community debate and civic responsibilities. The Productivity Commission has said that the government’s emphasis on its very distorted view about the role of commercialisation needs to be addressed. Unfortunately, what we have seen with these sorts of measures is that the government has failed to heed even that warning from a body in whose words it would normally find considerable comfort. I will not spend a huge amount of time canvassing these issues in the committee stage, but it will be necessary to move amendments to this bill, which we will do. I commend the second reading amendment to the chamber.

Senator STOTT DESPOJA (South Australia) (11.19 am)—I am the Democrats higher education spokesperson. I have been in that position for almost 12 years, I might add, so it is a bit like groundhog day for me today. It is always a bit like that when the Senate is sitting on a Friday. It is always a bit like that, too, when we are dealing with another raft of higher education reforms from the coalition government that seek to further entrench deregulation, privatisation, fee increases and the lifting of caps on full fee paying places. But, for fear of seeming too churlish about the legislation before us, I do acknowledge that there are some good measures in this bill as well—not enough, however, to make up for the radical cuts that have been made to the sector over the past 11 years or so.

I rise to speak on the Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007 on behalf of my party, which obviously is passionately committed to and unshakably supportive of publicly funded higher education. I acknowledge that there are some worthwhile measures in this bill. Certainly, this legislation does represent more funding for the sector than it has had—not to mention a raft of broader reforms to the sector. I will start with the bits of the bill that we like. With regard to the income support measures, for example, while they are not specifically a part of this bill, I was especially pleased to see the government extend rent assistance to Austudy recipients. I would be incredibly disappointed to leave this place next year having not seen that particular change. I have argued for that change for a long time now; it is a change that I have run campaigns on and moved amendments on. I would be sorely disappointed—not to mention downright angry—not to see it implemented.

So a big tick to the government on that one. Do not think you are off the hook, though, because the government has yet to fully implement, or even acknowledge, a raft of recommendations in relation to student income support—recommendations, I might add, that were contained in the report of the first Senate committee inquiry to look solely at the matter of student income support. There are a raft of unanimous measures in that report which have yet to be responded to, let alone taken up or implemented. With property renters facing annual rent increases of up to 16.7 per cent—and, as we know, people are paying record median weekly rents—this particular change in relation to rent assistance is long overdue. But I remain
concerned that the issue of student income support—which we know is a fundamental issue, if not the most important aspect, in ensuring participation in higher education by traditionally disadvantaged groups—is being sidelined.

Universities Australia—then the AVCC—in its report *Australian universities student finances 2006* showed that 30.4 per cent of full-time Australian university students received youth allowance and 4.8 per cent received Austudy, compared to 29.7 per cent and 12.7 per cent respectively in 2000. Yet 12.8 per cent of full-time students had their applications for income support rejected, versus nine per cent back in 2000. So we are seeing a diminution of those students who are eligible for, or accessing, proportionately, student income support. That is hugely concerning to me. Nevertheless, the extension of rent assistance is a good, welcome measure, although a comparatively small one, as are the number of other measures contained in this legislation. With fees going through the roof and other charges being brought to bear on students, I can promise you that while I am here, and probably once I have left, I will continue to campaign for additional income support measures.

I want to put on record my concern for the process involved in this legislation. I wanted this bill to go to committee for some very good reasons, some of which have been articulated by Senator Carr on behalf of the Labor Party. That move to committee was rejected. Once again, I just want the people of Australia to know that we are operating a bit like a sausage factory—ramming through the bills with minimal scrutiny and minimal analysis. Even when there are good bits, there are also bits that are questionable. There are also good bits that need to be examined in further detail.

Take the diversity and structural adjustment fund. This $208.6 million is intended to assist universities to specialise according to labour market needs. It is specifically aimed at regional and smaller metropolitan institutions. The Democrats are not opposed to specialisation; we are certainly not opposed to diversity either. It is easy to believe that there are some issues confronting the university sector—funding problems, namely—which will make the current sector unsustainable into the future, unless there is some additional investment or broader reform on top of what has been included in the budget. Without that funding the sector is forced to reform and to rationalise, so this fund might be helpful to that end. Or it might not. It might be woefully inadequate for its intended purpose, in which case any attempt to further deregulate the sector is likely to advantage the prestigious universities at the expense of those smaller regional and metropolitan ones. That is probably pretty obvious. What is not obvious in this legislation is that we cannot work out the intended consequences or unintended consequences of a particular fund. We are being asked to pass funding measures, and funding that implements radical changes to the sector when senators in this place—and no doubt the members in the other place—as well as those in the university sector and the community generally have been given limited detail on how these measures might work. Once again, we have a framework that is being implemented, a debate that is inevitably rushed through and a committee stage rejected by the government. Once again, people have good reason to feel a little sceptical. We are naturally suspicious of government’s desire to deregulate the university sector. Opening up to market forces always sounds a bit catchy, but the reality is that the markets tend to favour those with resources and the brands already in place.
There are some other potential pitfalls for universities that are hidden in the detail of this bill. The sticky subject of workplace relations, for example, rears its ugly head under item 5, schedule 2, where the minister has a discretion to apply a 7.5 per cent penalty on a university’s CGS grants where she believes that the national governance protocols and/or the higher education workplace relations requirements have not been met. Remember those wonderful requirements that were passed in this place? Remember when the government did a deal with those four independent senators and how they lost their independence that day? Remember that further intrusion into university autonomy: the application of sticks not carrots to the university sector? Downright bribery it was. There is now a 7.5 per cent bonus if a university meets these requirements under a bill that will change a 7.5 per cent penalty with no apparent provision for appeal of the minister’s decision. Consider that the minister in her address to the annual conference of the Australian Higher Education Industrial Association this year on 15 March claimed that universities could be doing more to apply the spirit of the workplace relations requirement and that her apparent measure for the spirit of those requirements was the extent to which they adopt Australian workplace agreements. She said:

No-one is forcing staff on to AWAs ... But universities’ work practices must come into the 21st century.

While the minister, understandably, emphasised the carrots in that scenario, there are a few sticks in there as well. For students there is actually less in this budget; there is not a whole lot for students. The Democrats believe in a strong higher education sector that allows equitable access for students and that does not mean burdening them with already massive debts. Australian fees at both our public and now our private institutions are among the highest in the world. OECD figures show that the average tuition fees for students in our public universities lag behind only the United States and Korea, while students in our private universities are only behind the US in the amount that they pay. It is worth noting that public institutions in the US in many cases do not provide the same kind of the structure that we do in this country. The extent of the fees and charges that have been put onto the heads of university students and graduates in Australia is extraordinary.

Under items 1 and 2 of schedule 2 in this bill there are changes to the funding cluster—and Senator Carr talked about this—reducing the total number of clusters from 12 to seven, which increases for most disciplines within those clusters. We do support additional Commonwealth funding for those disciplines, particularly maths and statistics, which will increase by $2,729 per place. Hopefully, this will help arrest a dramatic shortage in maths and stats skills in academia and the broader workforce.

But there is a sting in the tail, with accounting, administration, economics and commerce places now receiving $1,029 less per place than previously. Of course, the government is now trying to cover this up by saying that the total funding per place for these courses could actually be more than it currently is, neglecting to mention that, where that is the case, it is because students are the ones who are picking up the tab.

Under section 2 of schedule 7, the maximum student contribution amounts will be varied to allow universities to levy significantly higher fees against students in the accounting cluster—$8,499, up from $6,709 previously. The government claims that universities are not required to do so, which is a very naïve way of doing it and, speaking about naivety, this brings me to schedule 5,
which the Democrats do not support. I have circulated an amendment to that effect with regard to the removal of the cap on full fee paying places for Australian students. A full-fee combined medicine-arts degree at the University of New South Wales costs $237,000. Good, if you’ve got it! Nice for some! That is not the average amount available to students in Australia today. People may say, ‘They don’t have to pay it.’ Poorer kids of lower socioeconomic backgrounds, who are traditionally disadvantaged, are told: ‘Don’t worry, kids, you don’t have to pay it; you can compete for a Commonwealth funded place’—albeit with differing levels of Commonwealth funding these days—‘You’ll still have a massive HECS debt that is the size of your parents’ mortgage. You’ll not get income support. But don’t worry about that because you will get to pay it off when you get married, have kids, buy a house and live the rest of your life.’ The government’s view is: ‘We don’t believe in debt in this country, so we get rid of the public sector debt. We just put it on individuals who are starting out their careers.’

I must not forget about mature age students. What do they start out with in this scenario? They have already got big debts, so they can just accumulate more debts. Do not worry about those people who are perhaps not as well off as some people, they can compete for Commonwealth funded places, because it is the rich kids or people who have access to money who can pay for these places. If that is not downright fundamentally inequitable, I do not know what is. I believe in higher education. Education at any level is an investment, not a cost. I believe in publicly funded education. I do not believe that it should be a province for the elite wealthy; it should be based on your merit, not on your bank balance. This bill basically signs the cheque, which says: ‘The cap on full fee paying places will be removed. It is now a free-for-all but, if you are wealthy, that is an added bonus.’

The Democrats will move an amendment designed to get rid of that schedule. We hope that all politicians, particularly on the coalition side, will consider this a worthy amendment. Do not get sucked in to believing that there is some kind of guarantee that the government, or the minister, can give that poor students will not be shut out of top courses. I invite the minister’s representative today, Senator Scullion, to articulate exactly what guarantee the government can possibly give. I cannot work it out, and I have been involved in higher education legislation not just for as long as I can remember in this place but before as an adviser. I do not know anyone in the sector who has been able to tell me or my office exactly what is involved in this guarantee. How can you put a guarantee in place that will stop universities, with the reforms included in this bill, from establishing only full fee paying courses? Commonwealth funded places are allocated according to cluster. What is there to stop universities from allocating their Commonwealth places to one discipline within that cluster and having only a full-fee course in another discipline within that same cluster? The removal of the cap on full-fee places, combined with the reforms proposed in this bill under schedule 4, allowing universities greater flexibility in enrolling students in Commonwealth supported places, could allow them to do exactly that. And it was confirmed at estimates hearings by the Department of Education, Science and Training. Let’s not take my word for it; take the government’s and the department’s word for it. Look at last month’s Hansard of Senate estimates hearings. According to the department, it will indeed be possible for universities to move places around within a cluster to create only full-fee degrees. The department has said it on record.
When it comes to a choice between what the bureaucratic experts are saying versus a minister giving a promise to backbenchers that these courses will not be funded, I know who I believe. With this freedom, it would be particularly lucrative for universities to manipulate their Commonwealth supported places and full-fee places within each cluster so that particularly high-demand courses are only full fee paying. In some respects, one could not blame universities for doing this, given how long they have been starved of funding. In fact, the government ripped funding out of the sector. The effect on student debt levels could be disastrous. The fact that the cap on full fee paying degrees has been removed is illustrative of that. This cap is not being increased to 50 per cent or 70 per cent; it is being entirely removed.

There is no other way to say ‘free for all’ than to completely remove the cap once and for all. By definition, that of course signals the possibility of only full-fee courses. How could it not? Again, through you, Mr Acting Deputy President, I ask the minister’s representative to explain to us how you will guarantee that you will not have only full fee paying courses. I assume that the representative is now Senator Minchin, not Minister Scullion. The government has brought in full-fee degrees for domestic students. It has overseen an increase in student fees, among the highest levels in the world, and it has slashed campus services and facilities. The impact of so-called voluntary student unionism is now being felt on campuses through a range of things—reduced resources, infrastructure, services and sporting facilities; the closing down of student newspapers; differing events on campus, a lack of representation, and a lack of welfare and other opportunities and services that were previously provided. The government agenda has been very clear.

No matter how you spin it, full fees signal true inequality. They subvert academic merit as a principle and fairer determinant of entry. It should of course be based on merit. The removal of this cap, combined with other changes in the legislation that allow universities greater flexibility in apportioning places, could fundamentally transform the equity of the university sector once and for all.

As I have indicated, the Democrats have circulated an amendment that deals with schedule 5 of this bill. We will be opposing that schedule. All that the amendment does is ensure that the current cap on full fee paying places remains in place. If any government members were thinking that this might be some kind of a threat to the notion of full-fee places, it does not. It just means that the cap will stay in place. I would dearly love to reform this legislation much more broadly. And just let me get at the Higher Education Support Act—I would love to reform that little baby too. But I know that that is not going to happen.

If the amendment is successful, the cap will stay in place. How can that be threatening for members of this place? Without the cap, you would be opening the way for full fee paying only courses. I say again that anyone who thinks that there is a guarantee or that the minister’s word will ensure that there are not those places should just look at Hansard from estimates. Look at what we have been told. It is absolutely clear that it is possible to move all places to one course and offer another course as a full-fee one within the cluster. It is done and dusted; full fee paying courses in Australian universities and full fee paying courses only.

This bill is incredibly damaging. The removal of that cap signals a profound shift in public support for higher education. I certainly hope that senators on all sides will realise exactly what they are ushering in. I
am confident of the non-government perspective, but I hope that the government senators will realise too. The elite and the wealthy will get university courses but the rest will just pay their debts and fees and give up on getting into some of the courses, particularly the new courses that could be—and I am sure will be—full fee paying courses only.

Senator MILNE (Tasmania) (11.39 am)—I seek leave to have a speech by Senator Kerry Nettle of the Australian Greens in relation to the Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007 incorporated into Hansard. The speech has been circulated.

Leave granted.

Senator NETTLE (New South Wales) (11.39 am)—The incorporated speech read as follows—

The Greens are interested in two considerations when assessing Education legislation that comes through this place: 1: Quality 2: Equity

This bill breaks from the norm of Higher Education bills from this government in that it does have some measures which will improve the quality of higher education provision in this country and it also contains some improvements to equity provisions. But unfortunately and predictably the measures which threaten to reduce quality and undermine equity overshadow them.

This bill includes many significant changes to the funding and administrative provisions which guide the higher education sector. Last time I spoke on a higher education bill in the Senate I reminded Senators of the over 50 pieces of legislation I have dealt with in the 5 years since I have been The Greens spokesperson on higher education in Parliament. And here we go again.

Perhaps the most headline grabbing change that is in this bill is that it abolishes the cap on the number of full-fee paying places that a university can offer in each course. Until now universities have only been able to enrol up to 35% of enrolments in any one course as full fee paying students. This bill does away with that cap. It then goes further to say that whilst universities must offer their commonwealth supported places first (ie before they then fill up courses with full fee paying students) they only have to offer the number of commonwealth supported places within a funding cluster not within each course in that cluster.

This means that instead of having to have a least some (or indeed a majority as it used to be) of commonwealth supported students in every course, now universities are free to put all the commonwealth supported places allocated to a funding cluster into just one course within that cluster and then proceed to fill the other courses entirely with full fee paying students.

This means that for the first time in public universities in Australia we can see completely privatised courses for domestic students. I.e. universities will be able to set up say an accounting course and only accept students who can pay a full fee up front. This fee is determined entirely by the university so the university can get the student to pay a higher fee for their education so that the university makes a profit.

This change further solidifies the transformation under this government of the university sector from a publicly owned and operated educational community dedicated to free inquiry and educational excellent to a publicly subsidised private market of profit making purveyors of educational services.

Who wins out of this transformation? Do the students win?

Well if the shift to full fee paying courses gets off the ground then you can’t say that they will. They will end up more in debt than ever if indeed they are able or prepared to stump up the high fees in the first place.

Will educational standards win?

The answer must be a no. This change like so many of the changes introduced by this government has been made completely without reference to the big picture of educational outcomes.

This government has become so enamoured with the economic fundamentalism of privatisation, deregulation and profit making that it has totally lost sight of the point of a higher education system.
It’s certainly hard to see how this current change will improve educational standards.

When we see that the current take up of full fee places is well below 5% even though universities have been able to enrol up to 35% of students for some years now you wonder how universities are going to lure students into paying the large fees and filling up the full-fee courses this change is designed to allow?

It doesn’t take a genius to work out the best way would be to offer much lower entry grades than are needed to access a commonwealth supported place. That way a new market can be accessed particularly for high demand courses which offer higher remuneration opportunities on graduation.

But this will surely mean that standards will fall just in the same way as they have fallen in some courses which have been largely underwritten by full fee paying overseas students in recent years.

We have all heard the stories of academics being pressured to pass students who would not have ordinarily made the grade because of the financial imperatives that come with full fee paying courses.

So this particular change will not help students, it will not improve standards, and may in the way I have just described put academics under new pressures. SO why is it needed?

I have to say I am left scratching my head as to find any reason except that any shift away from relying on commonwealth supported places will further enable the government to affect a retreat from supporting our higher education system. That is the government does not want to invest in higher education.

Lifting the cap on full fee paying places may well take a while to have much of an effect. But what will impact on student much more quickly is the shift in the Commonwealth Grants Scheme that this bill introduces which will mean that once again HECS fees for many students will go up.

The change to the CGS is to reduce the number of funding ‘clusters’ from I 2 down to 7. Why 7 you may ask. Why is 7 better than 12? Well there is no answer to that it just appears like an arbitrary change. But putting that to one side what the change does is to increase the amount that students will have to contribute to the cost of their education via the HECS-HELP scheme for studying accountancy – economics – administration and commerce. These courses have been moved into the highest bracket of HECS fee along with Dentistry, Medicine, and Veterinary Science.

That means that a commencing student studying economics will have a HECS debt which is up to $6000 more for a 3 year course. How does this improve the educational outcomes of our higher education system? It doesn’t.

On the other hand there are measures here which increase the amount that the government pays to universities on a per student basis for teaching maths, statistics, allied health, medicine, nursing, behavioural science, dentistry and veterinary science. This is of course welcome. But before we laud the government too highly for this increase, let’s remember that this increase comes in lieu of adequate indexation for universities from the government.

Adequate indexation was a core request that was voiced by the Australian Vice Chancellors Committee back in 2003 when the Higher Education Support Act was so hotly debated. I well remember that debate and remember the representatives of the AVCC finally agreeing to support the bill on a promise from the government that the key issue of adequate indexation would be addressed in the follow year. Four year later, we are still waiting.

These funds are much needed because as we well know Australia is trailing well behind its competitors in the OECD in terms of public investment in higher education as a percentage of GDP. The government hotly deny this accusation of underfunding but it is pretty hard to argue with the figures from the OECD which show that not only has Australia not kept pace with its public investment in education as our national wealth has grown but we have instead gone backwards. That is inexcusable.

Public investment in higher education is crucial to ensure that the two criteria I referred to at the start of my comments are met—that is higher quality and real equity.

When the government pulls investment out of universities, we see universities turning to private sources of income to make up the short fall. I
have already touched on how a reliance on student fees has a negative impact on quality and creates obvious problems for equity, but it is also corporate income that universities are turning to as the government reduces its investment in universities.

The problems of this approach have been clearly shown this week in a report by the public policy think tank the Australia Institute. The Australia Institute’s report ‘University Capture: Australian Universities and the Fossil Fuel Industries’ tells us; in Australia over the last decade the fossil fuel industries have become steadily more involved in Australian universities. Fossil fuel industry associations and fossil fuel companies have spent millions of dollars funding research projects and sponsoring university chairs, academic posts and even entire schools. The Australian Coal Association Research Program, for example, has allocated $145 million to 929 different projects since 1992.

Likewise in 1999, the Minerals Council of Australia (MCA) set up the Minerals Tertiary Education Council (MTEC) with $15 million to achieve ‘cultural change in universities’. It sponsors 12 lectureships and contributes to the development of course materials at several universities.

And it is not just the fossil fuel industry that has sought to influence the educational landscape in our universities. Science labs are sponsored by bio tech companies, computing facilities provided by hardware and software manufacturers and academic positions sponsored by organisations as diverse as financial services companies, churches and poker machine manufacturers. What all these organisations have in common is that they have a particular barrow to push and that is why they are involved in subsidising education services.

This bill is part of this deliberate policy of encouraging universities to rely on private money and therefore weakens the independence and ultimately the quality of the work done in Australian universities.

The Greens and others find it appalling to watch this train wreck in slow motion and we fervently hope that there will be a changing of the guard in the education ministry soon and that this changing of the guard will mean that the public is put back in public education—including in higher education.

We also are working very hard to ensure that those who understand the importance of the public funding of public education have the majority in this Senate Chamber next year.

We do this because we want to see the twin goals of quality and equity to be reinstated as guiding principles of government’s higher education policies. That must include more support for students. The Greens policy calls for a simplified higher education living allowance that would ensure that means tested students would be able to access the living support they need to allow them to actually attend the courses that the government pays for them to attend rather than having to work to pay the rent. The Greens want to see student organisations properly funded so students can benefit from the vitality of campus life and access student controlled services, advocacy and representation.

The Greens welcome increased money on scholarships in this bill but note that compared to The Greens policy of abolishing fees (which would cost less than a quarter of the annual cost of the tax cut for high income earners announced in this years budget) it appears piecemeal and little more than an admission that the rise in HECS fees and the general increase in cost of student life is a barrier to poorer prospective students.

The fact is the government can afford to make university free for those qualified to attend. They simply choose not to. It is a false economy, a short sighted ideological move than is costing us all in so far as it prevents merit from becoming the only way to success at university.

The Greens will not oppose this bill because it does increase funding to universities and it does make some provisions which will improve the access for some to a university education. But we will continue to work towards a future where education is free to all Australians and where the freedom of academic inquiry is unhampered by the need to go cap in hand to the business world.

Senator KIRK (South Australia) (11.39 am)—I rise to speak on the Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007. This bill has been criticised quite rightly for its mechanisms spe-
cifically. But it also raises broader issues which, when placed in the context of changes to education policy during the term of this government, do need to be highlighted.

I would like to focus the Senate’s attention on the matter of the removal of caps on full fee paying places—which have been referred to by a number of speakers this morning—and also on the fundamental deficiencies in the education policy of this government as demonstrated throughout its 11 long years in office. I want to express my concern at the growing disregard that this government shows when making decisions that affect some of the most important aspects of Australian society.

Higher education is crucial to Australia’s future and we simply cannot afford to compromise its ability to innovate, create, expand and continue to move this country forward. I am disappointed to say—as many of my colleagues already have said this morning—that, when the history of education funding under this government is scrutinised, two startling and disturbing patterns appear. The first is that of cuts to education funding, which were followed by years of neglect of the education sector. As the election approaches, there seems to be an apparent re-emergence of interest in education by the government and it could only—and cynically—be categorised as nothing more than political puffery.

This in itself would be damaging enough, but the second pattern—a philosophical and policy one—should cause even greater alarm to Australian families who are concerned for their children’s future education. During the last 11 years we have seen a distinctive policy shift towards this government distancing itself from universities through its continual encouragement of fiscal independence for our tertiary institutions. As a result, higher education institutions have, by necessity, become economically focused. The combination of lower Commonwealth funding and the implementation of the full fee paying instrument for generating revenue have created strong incentives for what might be described as the evolution of the focus of universities. The government, however—as they constantly tell us—are proud of these initiatives. Although these initiatives might look good on the balance sheets, they have the effect of moving Australia away from the fundamental goal of having a universally accessible, merit based higher education system. It is only under such a system that universities will produce the best results and the best graduates and advance Australia as a nation in the most effective way. To trap and force universities into an economic focus alone is to change their role from one of educating to one of surviving. Yet, even during this election year proclamation of an educational conscience and push for redemption, we still see the damaging aspects of this government’s policy. They remain glaringly obvious.

The history of education under this government is clear. In the first year of its first term the government cut education funding by $100 million. It cut funding to technical and further education in TAFE by 13 per cent in the same year. Between 1995 and 2003 there was an alarming six per cent per student place drop in funding. These cuts paint a very dark picture of the regard that this government has for higher education and its place in a prosperous Australia.

As my colleague Mr Stephen Smith pointed out in the House of Representatives: to rub salt into the wound, this year’s budget, whilst being described by the Treasurer, Mr Costello, as an ‘education budget’, in fact estimates a drop in education spending as a proportion of GDP, from 7.7 per cent to 7.4 per cent. This is a government which, no
matter what it claims, has over the last 11 years ignored and failed to understand the nature and importance of education as the driving force behind Australia’s future.

This combination, of financial pressure and the imposition of a purely economic option, is a powerful instrument for shaping decision making and priorities in the higher education sector. It is this combination that the government seems to enjoy imposing upon the Australian people. We have seen it recently with the Work Choices legislation and we see it in the bill before us. Reduced government spending over the last 11 years, combined with the introduction of full fee paying places and now, with this bill, the expansion of the subject clusters and the removal of full fee paying caps, has effectively created coercion through circumstance, presenting to universities an economic choice but, in reality, leaving them with no choice.

Make no mistake: Australian universities have reacted in the expected way—in fact, in the only way they could—to the government’s policy direction. We have seen in universities, as the Senate is well aware, a big increase in private-source income and income from fees and charges. When the HECS contribution rate went up, the universities passed that increase straight on to students. When full-fee places became an option, universities were able to, and have, implemented strategies to allow students to enter university simply on the basis of the weight of their chequebook rather than merit. With the changes proposed in this current bill, and as confirmed by the Department of Education, Science and Training during the last round of Senate estimates, there is now an opportunity for universities to offer entirely full fee paying courses. What an absurd and contradictory situation in what should be a merit based system of education in this country. It is both understandable and predictable that Australian students oppose these measures, just as we in the opposition do.

In the time that I have left, I would like to speak briefly on the issue of full fee paying places. As I said a moment ago, the Australian system of university admission is, and should be, a merit based system. Students work hard to acquire the UAI score they need in order to get into the course that they wish to pursue. In this way, the system does encourage the brightest students into high-demand courses and ensures that graduates of the highest quality enter the Australian workforce. This is a key element of higher education. Yet it is one that is fundamentally undermined by the existence of the full fee paying avenue of entry into university courses.

Labor has opposed, and will continue to oppose, the existence of full fee paying places. Our shadow education minister, Mr Smith, has declared that when elected to government Labor will phase out full fee paying places. This is not to deny the demand for university education but rather to acknowledge the importance of quality education to Australia’s future. Labor policy represents the opposition of the majority of Australians students to full fee paying places. The National Union of Students strongly opposes the government’s full fee paying places scheme. The NUS has expressed its resentment of the possibility that this policy gives to those with money to enter university courses with lower admission scores and the way that it fundamentally undermines the value of a university degree. In fact, we saw, on Wednesday of this week, students here on the front lawn at Parliament House making this exact point. The removal of the 25 per cent cap in the field of medicine elicited a strong response from the Australian Medical Students Association. Its national president, Mr Rob Mitchell, stated:
With this move the Government is sending a clear message to the Australian public: gone are the days of equality of access to education. The message is clear.

This government is out of touch with students. To many—to me, particularly—that is not surprising. But we have to ask: is the government in touch with the wants of the universities themselves? No, it is not, according to the Group of Eight major research universities in Australia. Here we see a view counter to the view that the full fee paying solution to demand for university places is administratively effective. In its discussion paper published this month, the Group of Eight asserts that there are better and more effective ways to meet demand for university places than the full-fee mechanism, and that if these were implemented the question of full-fee or no full-fee places would become irrelevant. This demonstrates that this particular initiative of the government not only undermines the education system and alienates students but is considered to be potentially irrelevant to universities. It does not appear to be a sound policy at all but instead one driven by the tired old notion of ‘balance the books in any way possible and everything will be fine’. The problem is that it will not be fine. Students know it, universities know it and Labor knows it.

It is no secret that this is an ideological debate. It goes to the very core of how the government and Labor view education and, more broadly, the future of Australia. This government has been in office far too long. It is convinced that if you balance the books everything will be okay. But this ignores the need for a vision of a better Australia—a growing, advancing and expanding nation.

The Leader of the Opposition, Mr Rudd, has demonstrated this with his education revolution—Labor’s commitment to Australia’s education future. As Australians we need to define ourselves not by what we have been but by who we can be, and to move consistently and directly forward towards this. Education is the engine that drives progress, Higher education is the key to this process, and the decisions that governments make, however small they might seem, affect this crucial sector of our economy. The inclusion of full fee paying places in this system, the removal of the caps on those places and the refusal by the government to accept Labor’s amendments to this bill are all damaging decisions, ones which have the potential to irretrievably undermine Australia’s higher education system. I urge senators to take this matter very seriously. While these may be only a small number of changes, they do have the potential to cause enormous damage to the higher education system. I urge senators to oppose this legislation.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.53 am)—I too rise to contribute to the debate on the Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007. I commend the contributions of the previous speakers, particularly that of Senator Carr, who has been leading this debate on behalf of the opposition, and that of Senator Stott Despoja, who so clearly understands the intricacies of the higher education sector and articulated many of the concerns that we are all hearing from students around Australia who are being slugged by increasing HECS debts and fees and are now being confronted with full fee paying courses as the only option they might have to gain a tertiary education.

But, as Senator Carr said, Labor will support a number of the measures that are included in the Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007 because the bill amends the Higher Education Support Act 2003 to provide for
both the government’s 2007-08 budget commitments and the indexation increases. It also makes some technical adjustments for the years from 2008 to 2010 and adds maximum grant amounts up to the year 2011. The bill includes the higher education measures announced in the budget other than the Higher Education Endowment Fund. It covers a range of areas, including reducing the number of Commonwealth Grant Scheme funding clusters; changing the Commonwealth Grant Scheme’s funding levels across disciplines; specifying a revised maximum student HECS contribution for commerce, economics and accounting courses; introducing three-year Commonwealth Grant Scheme funding arrangements to commence from 2009; lifting the 35 per cent cap limiting the proportion of full-fee domestic undergraduate places; limiting the 25 per cent cap for medical places; and increasing the total number of Commonwealth supported places. I do not intend to go too much into the issue of increasing the cap for full fee paying funded places. I think that was well addressed by Senator Kirk.

Labor certainly supports the reduction in the number of Commonwealth Grant Scheme funding clusters. The government has argued that it will give universities greater flexibility in their capacity to allocate funds across courses. My concern, however, is that, while the proposed changes to the Commonwealth Grant Scheme and the removal of the cap on domestic full fee paying places will encourage competition for students and an associated development of different course offerings, these measures could actually have the effect of softening the demand for those disciplines in regional universities and attract students to full-fee places at ‘market-leading institutions’. That could pose some major challenges for regional universities, which could be challenged to devise course mixes that are attractive to students and also respond to regional needs. I know that the budget made provision for establishing the Charles Sturt University dental school. While that was a very important initiative that will help the university to meet local needs, that was the only such initiative that was funded in the budget and there are other regional universities playing a critical role across the country which will need to access the proposed Diversity and Structural Adjustment Fund to actually help them to implement the changes and avoid underenrolment of their agreed Commonwealth supported places. We have heard in the past that this has occurred several times across the country, with universities in regional areas not being able to fill Commonwealth supported places. That had to be to the detriment of regional economies and communities.

The legislation introduces three-year Commonwealth Grant Scheme funding arrangements to commence from 2009. It increases the total number of Commonwealth supported places. As I have said, that is a welcome measure, albeit belated, which I believe is in response to Labor’s repeated calls for improving the funding of our university sector. The legislation also increases the number of Commonwealth scholarships, from 8,500 to 12,000 a year, and allows them to be paid by the Commonwealth directly to students. Again, Labor strongly supports this measure. The legislation introduces an Indigenous scholarship classification for up to 1,000 higher education Indigenous students—a very important and positive measure to help the process of bridging the yawning gap that is Indigenous disadvantage in this country. In particular, I also welcome the additional funding to universities to improve teacher education programs. The bill creates the Diversity and Structural Adjustment Fund for universities, including the appropriation of an extra $67 million. That will be very helpful. The bill also provides addi-
tional funding to the Australian Research Council for the period from 1 July 2007 to 30 June 2011. All these measures are very welcome because they are all about a long-awaited investment in the higher education sector.

Labor also welcomes a provision that is related to, but is not in, this piece of legislation: the creation of the Higher Education Endowment Fund, with $5 billion initially, with extra funding from future surpluses going into that fund. Labor has always supported efforts to increase the number of young people who go to university because we believe that it is both in their interests and in the nation’s interests for them to do so. We want to see in Australia an education revolution that will underpin our future prosperity. But the Prime Minister has always been critical of that approach and has encouraged his party members to scoff at such an idea. Government members argue that Labor is being elitist. They accuse us of snobbery because we are committed to keeping young people at school and then encouraging them to go on to tertiary studies.

This budget indicates that finally the government is acknowledging its vulnerability in the area of higher education and is reacting to political pressure rather than having a view about the nation’s future and the importance of investing in it. This is actually Labor’s nation-building agenda. It is an agenda that recognises that the greatest investment of all must be the investment in the talents and creativity of our young people.

Senator Carr has identified that Labor does not support every aspect of the higher education bill. In the second reading amendment which he has moved, he notes:

... as a proportion of total revenue, Commonwealth grants to universities have decreased from 60 percent of their revenue in 1996 to 40 percent, while university revenue derived from private sources of income has increased from 35 percent to 52 percent and revenue from fees and charges has increased from 13 percent in 1996 to 24 percent...

These figures reveal that, in the 11 years of the Howard government, Australia has adopted a policy of substituting private contributions for public contributions to higher education. The OECD, in its report *Education at a glance*, and in other OECD documents, has pointed out that Australia is arguably the only country—and if not the only country then one of the very few countries over the last decade—that has substituted increases in private funding for increases in public funding. The pacesetting countries have increased both public and private funding for universities. Australia is one of the few countries that has not done that. In fact, it has substituted one for the other.

Minister Bishop challenges the OECD on a range of statistics in this report, but she cannot argue with the fact that, over the last decade or so, real government spending on tertiary education in Australia has gone backwards by seven per cent, whereas, on average, across OECD countries it has increased by 48 per cent. The Prime Minister, the Treasurer, the Minister for Education, Science and Training and others glowingly cite OECD reports and analysis when it suits them. But on this issue—an increase across the OECD of 48 per cent in funding for tertiary education but a seven per cent decline in Australia—the argument is: ‘This cannot be so!’ The OECD report tells a very sorry tale about university education in Australia and this government’s lack of commitment to the university sector.

Another indication of the lack of commitment is this fact: over the period of the present coalition government there has been virtually no increase in the number of Australian undergraduate enrolments in universities—other than in the last year or so, but that was off such a low base. For two years
there was a decline in the number of enrolments of Australian undergraduate students. The most recent figures are virtually unchanged compared to 1996. Earlier today we were debating funding for early childhood education and children’s services. At a time when we should be making a massive investment in Australia’s future, through higher education, schools, preschools and early childhood development, the government has presided over a situation where there has been virtually no growth in Australian undergraduate enrolments.

Instead, our public universities have had to rely much more strongly on overseas full fee paying students, and that is why we have a situation where revenues from fees and charges have increased from 13 per cent of university revenue in 1996 to 24 per cent now. It is as a result of having full fee paying Australian students, and before them it was very substantially the result of having foreign full fee paying students. The government has a view—and this is the biggest dividing line between Labor’s vision and that of the coalition—that higher education is essentially a private good. By that I mean that most of the benefits of going to university accrue to the student and not to the wider community, and therefore most of the funding should come from the student. That is the government’s philosophical view and it is one that Labor certainly does not agree with. Labor believes that there are much wider and stronger benefits for all of the community from young people gaining a university education.

How on earth is Australia meant to generate or attract or retain creative talent—that is, overwhelmingly, university educated people—to underpin the future prosperity of this country? Importantly, how do we encourage continued investment in regional Australia to generate new jobs and new wealth to support the national economy unless we invest in our young people? We continue to hear about the decline in agriculture, regional manufacturing and regional economic activity. Labor is very clear about the need to commit to a new generation of industries and opportunities that will harness regional creativity and opportunity.

The bill includes reducing the number of clusters funded under the Commonwealth Grant Scheme from 12 to seven, providing more flexibility to allocate places across different disciplines and respond to student and employer demand. Our public universities, which are becoming increasingly less able to access public funds and are taking on more of the dimension of private universities, are very much in danger of being out-competed by genuinely private universities because, as the total government funding of public universities falls but the regulation around them is not reduced, they will face a competitive disadvantage against private universities, which are less regulated.

Any measures that improve the flexibility of public universities to adapt to changing demand for university places in particular disciplines are to be welcomed. That is why Labor supports this measure. But, as part of that, the Commonwealth Grant Scheme funding for a number of disciplines is actually going to be cut, which will mean increased HECS charges for those disciplines. They are: accounting, administration, economics and commerce. To use the government’s own language, the funding for these will be ‘adjusted downwards’—which means ‘cut’—because, again, the government regards these disciplines as displaying much more the features of a private good than a public good. It is important that those young people who are training for accounting, administration, economics and commerce not be deterred from undertaking those endeavours by higher fees.
The Minister for Education, Science and Training has said that because HECS is repayable out of future income it does not matter if there are increases in HECS, because that will not deter students from going to university. What an absurd argument. Senator Stott Despoja made this point very well in her contribution to the debate. As for the idea that because a payment will be made out of future income it does not matter if HECS charges are increased, we have seen exactly what the impact of that has been on the level of enrolments in higher education over the past decade.

I particularly welcome the extra Commonwealth scholarships for low-income students. Students would be funded according to their need. Disadvantaged students should receive extra support. Labor is about access and equity in relation to higher education. We outlined that in our policy statement Education Revolution, which has as its central point the acknowledgment that education is the one thing that gives young Australians the chance to get ahead and maximise their potential. It also outlines the basic principle of a commitment to lifelong learning.

Education is now the single most important economic investment that we can make and the single most important economic issue that we confront. We have massive skill shortages across the country, an ageing population and a requirement to professionalise and improve the skills base and capacity of organisations and individuals around the country so that we can actually provide the services that we will need in our old age. To remain a prosperous society, to remain internationally competitive and to go to the next level of productivity, we have to make investing in the skills, education and training of the people in our workforce our highest priority. That applies whether we are talking about early childhood education, primary and secondary schools, vocational educational training, universities or ongoing professional development. I am afraid that the government’s economic measures in the budget and this bill fail to actually deliver much on that.

Senator FIELDING (Victoria—Leader of the Family First Party) (12.08 pm)—It was about 28 years ago that I first stepped onto a university campus to start my engineering degree. Back then university courses were free. Now of course there are a lot of costs involved in attending university. Family First strongly believes that Australia’s education system—primary, secondary and tertiary—should promote access and fairness. These budget changes will potentially deny access and erode fairness, and that is something Family First cannot support.

Family First believes it is fair that university students who receive some of the community benefit of university education should pay some of the costs—that is only reasonable—but there is always the question of how much is reasonable. What is the best balance which allows university students to contribute to the cost of their course but is not an unreasonable burden? What is the level which affects access to university? Access to university must be based on merit, not on who can afford it.

One of the concerns Family First has with the Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007 is that it would increase the cost of HECS for accounting, administration, economics and commerce students by 17 per cent. That is a significant amount, and Family First is not convinced it is reasonable to increase already significant costs. It was only a couple of years ago that universities were allowed to increase the HECS rate by 25 per cent, and most have taken that up. Family First’s No. 1 concern is that the bill could pave the way for universities to be able to offer degrees to
only full-fee students. It is a huge concern that universities could offer courses, probably more prestigious ones like law or dentistry, on a full-fee-only basis under these budget changes, despite the government having insisted they had to fill their HECS places, or Commonwealth supported places, first. A Senate committee last month heard that a university could exclude HECS students from courses by simply shifting subsidised places to other disciplines within the same cluster or funding band. The university could then charge full fees for everyone wanting the sought-after courses. I imagine some students would be prepared to pay these high fees; after all, what choice do they have? But what about those who simply cannot afford high fees? What happens to them?

The budget has changed how universities are funded by reducing from 12 to seven the number of discipline clusters. For example, law is now in the same cluster as accounting, administration, economics and commerce. This means a university could shift all its HECS places to accounting and commerce and require law students to fork out full fees. The incentive for a university to do so would be enormous, given that law and similar courses are highly sought after. Previously, there was a cap on the proportion of full-fee Australian students in a course and universities had to fill all HECS places in every discipline rather than a cluster before accepting full-fee students. This is a radical change which could have far-reaching consequences.

As the Higher Education Group manager in the department, Colin Walters, told the Senate committee:

If a university chose to set up a full-fee dentistry school and offer just full-fee dentistry places, it could.

Minister Bishop has confirmed that universities would only need to fill HECS places in a cluster group, not each discipline, before accepting full-fee students, but she said that government approval would be required for any significant movement of HECS places. This does not satisfy Family First and does little to appease our concerns that some universities will not see this as a green light to offer courses on a full fee only basis. The fact is, this legislation allows that to happen, and that is the key issue. The legislation allows universities to offer courses only on a full-fee basis, and that is wrong. This issue is about access. It is about Australian students being able to enter higher education and leave without a massive debt. Full fee paying places remove access for ordinary Australian families who cannot afford to pay up to $100,000 for a degree. For those who take out the $80,000 loan available from the government, this is a huge burden for graduates who will leave university wanting to start up careers, buy their first home and start a family.

To think that some Australian students could be denied access on the basis of cost, because they could not afford full fees or because they are quite rightly reluctant to take out a huge loan, is deplorable. We already know with HECS that students are sensitive to the cost of a degree. Potential students do consider whether degrees are worth the extra debt, and some decide they are not. I can think back to my engineering degree almost 30 years ago, when, coming from a family with 16 children, my parents did not have a lot of spare cash. Quite rightly, we would have been very wary of taking on a huge debt if my engineering degree had been a full-fee degree. There are some louder voices in academia, industry and the media arguing that to ensure Australia has a world-class tertiary education sector, and to compete globally in the 21st century, full market forces must prevail. But, as Family First has long argued, what is market friendly is not always family friendly. In fact,
the two cannot be reconciled. There are reportedly 17,000 students already paying the full price of degrees.

Family First is also concerned about other possible changes to higher education beyond this. The minister has already publicly expressed the government’s support for greater deregulation of universities. The Howard government has been moving in that direction; but moves towards full deregulation, which the big research universities are calling for, could lead to even higher course costs. It has been reported that this proposal would allow universities to charge 25 per cent above the cost of delivering a course, which is a massive price hike. Any further moves to full deregulation could also punish smaller and regional universities and threaten their existence. Family First is not willing to take this extra step of higher HECS fees and full fee only degrees. Our university system should promote access and fairness. Access to university must be based on merit, not on who can afford to pay.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.17 pm)—I thank all honourable senators for their contributions to this debate. The Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007 will fundamentally reshape the higher education landscape in Australia. It responds to calls from the sector for greater flexibility and less red tape. It will allow a more diverse and vibrant higher education sector to emerge, one that strives for excellence and one that can achieve its own destiny. No longer is university elitist. No longer is higher education unsustainable, as it was under the 1970s era of Whitlam. The reforms of this government will also enable the sector to break out of the ‘one size fits all’ straitjacket of the 1980s Dawkins era. The decision in the budget to fully fund university overenrolments of up to five per cent of a university’s total funding will potentially create around 21,000 additional Commonwealth supported places, thereby effectively eliminating remaining unmet demand—that is, the number of eligible applicants who miss out on a place at university. In addition, it will allocate a further 2,300 new Commonwealth supported places later this year. Essentially, anyone who wants, and is eligible for, a place at university next year should be able to get one.

This is a far cry from the days of previous Labor governments when 100,000 young Australians who were eligible to go to university missed out on a university place. This coincided with unemployment of 11 per cent when a million Australians were on the unemployment scrap heap. This bill will relax the caps on Commonwealth supported and domestic full fee paying undergraduate student places. Labor has suggested that universities will en masse convert Commonwealth supported places into full fee paying places and will turn their backs on students seeking to take up a Commonwealth supported place. I expect universities to act responsibly, and I am instructed to tell the Senate on behalf of the minister that she will not let this happen.

Government policy remains that universities must offer their Commonwealth supported places in a disciplined cluster before they offer full fee paying places. Any significant shifts in student load between clusters must be approved through the funding agreements between the Australian government and universities. The Australian government will not let Australian universities walk away from their obligation to ensure access for Australians who want, and who are eligible for, a university education. Senator Carr has confirmed today that Labor would phase out fee-paying domestic undergraduate places.

Senator Carr—Yes, I have.
Senator BRANDIS—Thank you, Senator Carr. Where does this leave Bond University and the University of Notre Dame? This budget provides a massive $6.9 billion for the higher education sector, including an initial investment of $5 billion in the new Higher Education Endowment Fund. This means that funding for higher education increased by 31 per cent in real terms between 1995-96 and 2007-08, not including income support for students. At the same time, universities are reporting large increases in their operating surpluses and asset bases.

The taxpayer is funding record numbers of Commonwealth supported places. This bill provides a further half a billion dollars for many courses, including maths and statistics, allied health, engineering, science, clinical psychology, teaching, nursing, medicine, dentistry and veterinary science. In response to calls from the sector, this bill also reduces the number of clusters from 12 to seven. Reflecting the higher salaries that business graduates can 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 these disciplines. The change will only affect students who commence studying at higher education providers from next year.

This bill also establishes the new diversity and structural adjustment fund, which will assist universities, particularly those in regional areas, and smaller metropolitan universities to play to their strengths to ensure a diverse and sustainable sector with a focus on quality, access, efficiency and good governance. This bill also introduces three-year Commonwealth Grant Scheme funding agreements from 2009 to replace the annual agreements. Institutions that finalise a three-year agreement during 2007 will be able to take advantage of this arrangement from 2008. Through this bill the Australian government is increasing the number of Commonwealth scholarships from around 8,500 to 12,000 per year. This is over and above the additional annual scholarships for 1,000 Indigenous higher education students to undertake an undergraduate or enabling course. The current administrative arrangements will also be changed to ensure that scholarships are offered at the same time as students are offered a place and will be paid directly by the Australian government. This will help students make better informed decisions about which offer to accept.

This bill promotes a more diverse, responsive and dynamic higher education sector that delivers benefits for universities, for their students and in turn the wider Australian community. I say to the Australian people, if you cannot manage the economy you cannot invest in the future. The dividend of strong economic management by this government is that we can provide Australians with a good education and a job. I commend the bill to the Senate.

Question negatived.

Senator Stott Despoja—Mr Deputy President, under standing orders I ask that my name be recorded as supporting the motion.

Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator STOTT DESPOJA (South Australia) (12.25 pm)—The Australian Democrats oppose schedule 5 in the following terms:

(1) Schedule 5, page 13 (lines 2 to 14), TO BE OPPOSED.

As I foreshadowed in my remarks in the second reading debate we oppose the schedule...
that effectively removes the restriction on the number of full fee paying places. I have outlined my rationale for this amendment. In his contribution to the second reading debate the minister indicated that a certain event would not be allowed to happen—namely, that courses could become full fee paying courses only. Could the minister explain to the Senate how that would take place, how it would work that the guarantee would be enshrined?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.26 pm)—I am advised that that outcome will be secured in two ways: by the funding agreements, and by the requirement that any decision by a university to offer a course on a fee-paying basis only would have to be approved by the minister in advance.

Senator JOYCE (Queensland) (12.27 pm)—Is there the potential to manipulate a cluster of courses in such a way as to exclude a certain course? For instance, if you have within a cluster of courses medicine and dentistry at the University of Sydney, could the university only offer the Commonwealth sponsored positions within, say, medicine? What is the government’s intention to prevent this from happening?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.28 pm)—Senator Joyce has been good enough to foreshadow his question to the minister’s office in advance and I have been provided with the following answer. To reinforce the expectation that universities will be responsible in their decisions on fee-paying places and be transparent about them, the Minister for Education, Science and Training will be introducing some new provisions in their funding agreements with the Australian government. Higher education providers will need to publish in advance details of any undergraduate courses where the balance between Commonwealth supported and domestic fee-paying places offered is to be changed substantially. If a university proposes to offer an undergraduate course on a fee-paying basis only, the reasons for that decision will also have to be published and that decision must be approved by the minister. In the unlikely event that it is needed, a further provision of funding agreements will enable the Australian government to direct a provider to provide Commonwealth supported places in a particular course where it would be in the interests of prospective students to give such a direction. There would be an opportunity for the provider to raise concerns about any such proposed direction.

Senator CARR (Victoria) (12.29 pm)—If that is the case, why did the officials at the Senate estimates committee confirm that it is possible for universities to offer entirely full fee paying courses within a subject discipline within a cluster?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.30 pm)—Senator Carr, I am not in a position to assist you as to why officers may have answered a particular question in a particular way, nor would I be prepared to comment on the answers of officers to a question without having examined the question and the answer.

Senator JOYCE (Queensland) (12.30 pm)—I would like to put on the record that I thank the minister for his answer. I look forward to the foreshadowed provisions and I will rely on the good intent of the government to see them through.

Senator STOTT DESPOJA (South Australia) (12.30 pm)—I also thank the minister for outlining the proposal by the government, in skeletal detail, and I will now ask some specific questions about what on earth is going on here. The government has just come into the chamber and told us that there is going to be a new arrangement in relation to
higher education providers and the provisions that deal with them—that there is now going to be some kind of insertion of new rules, new requirements, into these provisions, regarding how up-front, full fee paying courses are dealt with. We need to go over it again and clarify exactly what is happening here.

When is this new arrangement going to operate from? When will we see the detail of this arrangement? Will it be legislated for—that is, will there be legislation before us in the chamber? Will it be through delegated legislation or guidelines, or will the changes simply be inserted into the agreements with the funding providers, or in negotiations with universities? Does this not represent an extraordinary new way of intruding into academic autonomy, or is this simply the government rationalising it on the grounds that ‘we give public money therefore they have to be responsible for certain actions’? And, if so, what are the mechanisms for appeal or debate?

I understand that Senator Brandis, the minister, has explained that this is subject to ministerial approval. So it will be at the minister’s discretion to decide what courses unis do and do not provide that have full-cost fees. If a provider may be directed to act in a certain way, I want to know what mechanisms or opportunities for appeal there are for universities to question that. The idea is that universities, when they do provide a full fee paying course, have to provide that information—publish, I think the minister said—and then it will be approved by the minister, if they are altering the course in ‘a substantial way’. I think that was the terminology that the minister used. What is ‘substantial’? Does it mean that it is 75 per cent full-fee paying and 25 per cent Commonwealth supported places, or is it 99 per cent and one per cent? Is it 100 per cent and zero? This is policymaking on the run. We are talking about one of the biggest potential changes to the higher education sector. We have exposed in here today and previously in Senate estimates that there is nothing, zip, to stop the government allowing full fee paying places in one course because of the nature of the cluster arrangements. This has been discussed here by Senator Carr, Senator Fielding and others in this place and is now questioned by Senator Joyce and others. There is nothing to stop universities providing a full fee paying only course except this last-minute, hey presto, rabbit-out-of-a-hat ministerial guarantee that will be built into the reporting requirements of the university sector and will rely on them telling the government, with the government having the power—excuse me, the minister; let’s talk about ministerial discretion here—the minister being able to approve or not approve it and universities having to give reasons for why they want to constitute a course in a particular way. And we know nothing about how this is going to be done, when it is going to be done or what consultation has taken place.

It is absolutely extraordinary. I am actually surprised. There is not much that surprises me in higher education legislation, but today I am actually surprised. So, through you, Chair, I ask Minister Brandis as the representative of the minister for education to explain exactly when we are going to see this stuff. Now I understand why I was denied the opportunity to send this bill to a committee: its lack of specificity. I wish I could have Senator Joyce’s faith in the intent of the government—and I understand he is genuinely concerned about this issue, hence his getting this information on the record—but government intent is not good enough for me. When a government tells me that it will not allow $100,000 degree courses—and I am well aware now of universities that charge more
than 200 grand—you bet intent is not good enough. I want nice enshrined legislative detail in front of me, not something that has been cooked up at the last moment in an ad hoc, ill-conceived, hasty manner in order to ensure that the schedule stays as printed.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.36 pm)—Thank you, Senator Stott Despoja. In the course of your contribution I think I discerned eight questions, which I will endeavour to answer.

Senator Stott Despoja—Glad you were counting!

Senator BRANDIS—Well, I wanted to do justice to your questions, Senator. The respective commencement dates for the provisions are provided for by clause 2 of the bill. The various provisions of the bill, when enacted, will commence upon either royal assent or 1 January 2008, as specified in the table in clause 2. You may take it, though, Senator Stott Despoja, that for functional purposes these arrangements will commence, as I think I indicated in summing up the second reading debate, from the commencement of 2008.

You asked, Senator Stott Despoja, about where we are to find the conditions that the minister might impose. There are no government amendments to the bill circulated, and I understand that it is not proposed that there will be any statutory instrument. The regulations that I indicated in response to Senator Joyce’s question and in summing up the second reading debate will be contained in the provisions of the funding agreements with the various higher education providers. I point out to you that similar arrangements already apply for medical places and new places.

In relation to your questions directed to the capacity to challenge the minister’s determination to decline an application by a higher education provider, as I already indicated in my answer to Senator Joyce’s question, there will be an opportunity for the provider to raise concerns about any such proposed direction. That would be a provision of the funding agreements, as I understand it. Of course, the provisions of the ADJR Act also apply to any ministerial discretion exercised under the act or under funding agreements entered into pursuant to the provisions of the act.

Those answers, I hope, address the particular inquiries you made of me, Senator Stott Despoja. May I close by responding to what I thought was essentially a rhetorical question, when you said, ‘Does this represent a new form of intrusion into the autonomy of higher education?’ If I may say, with respect, Senator Stott Despoja, I am sure that it is perfectly clear to you that the whole point of this legislation is to give higher education providers greater autonomy and greater flexibility. As you well know as somebody who follows these debates very closely, as I know you do, the vice-chancellors have been asking for that for a very considerable period of time now. But it is not the purpose of the government in providing extra flexibility to higher education providers to give them carte blanche, and therefore there are these protections in the form of requirements of ministerial approval provided for. If I may, I will respond to your rhetorical question with a rhetorical question of my own: what on earth would you have said if there were not such safeguards?

Senator JOYCE (Queensland) (12.40 pm)—Senator Stott Despoja said this was policy on the run, and I just want to be fair to the minister and clarify why that is not the case. This is an issue that has been under discussion with the minister’s office for quite some time. Correspondence has gone from the minister’s office back to my office with regard to this issue. It is an issue that has
been publicly discussed, even in the Melbourne Herald Sun today and on Triple J yesterday. So it is an issue that has been discussed openly. The minister has kindly provided a clarification for the Hansard to respect the intent of this chamber that the Australian people get to hear it on the record. I know that Senator Stott Despoja has strong beliefs about this, and today I approached her in this chamber to further discuss it. I think it brings a sense of security and a belief that there will continue to be social and economic mobility in Australia by allowing people to progress by their own efforts at high school and go into a higher economic field.

Senator CARR (Victoria) (12.41 pm)—Senator Brandis, I asked a question about what occurred at the Senate estimates. To remind you of those discussions at the Senate estimates I would like to draw your attention to the record of those discussions published in the Senate Hansard, which indicates that you were present at the time.

Senator Brandis—I don’t think that you are expecting that I would have a—

The TEMPORARY CHAIRMAN (Senator Ferguson)—Senator Carr has the call.

Senator Brandis—I just want to interject with this question: are you suggesting that I should have an unassisted memory of the entire proceedings of the Senate estimates, Senator Carr?

The TEMPORARY CHAIRMAN—Minister, Senator Carr has the call and he is on his feet, so you must allow him to continue.

Senator CARR—Thank you. To put it to you that you were present is not an accusation, Senator Brandis. It is to remind you that you were present at these particular proceedings.

Senator Brandis—I am listening to you with rapt attention.

Senator CARR—You are obviously not rapt enough. I will read from page 8 of the Hansard of the Standing Committee on Employment, Workplace Relations and Education hearing of Thursday, 31 May. Mr Manns and I have exchanged views for many years. I have always found him to be very precise in his evidence to Senate committees, and he is obviously a highly competent officer. The Hansard reads:

Senator CARR—Does the department have any projections on the increase in the number of domestic full fee paying students?

Mr Manns—the estimate behind the recent budget measure that removes what is commonly called the cap on fee-paying places is a 20 per cent increase in the number of domestic fee-paying places.

Senator CARR—Over what length of time?

Mr Manns—Potentially immediately. Provision has been made for that to happen.

Senator CARR—From 2008?

Mr Manns—for 2008. But I suspect that realistically it might take some time to flow through.

Then we went on to discuss precisely what those implications were. In 2005 there were 15,630 students paying full fees, some of whom were in summer semester, out of the total student body of some half a million. Those are the latest figures. So, while it is a relatively small number, about three per cent of the total student body, it is clearly an important factor when it comes to the question you posed to me about Labor’s compensation measures for universities. It is not such a large sum of money that it cannot be realistically responded to through normal appropriation measures. What is clear is that the government’s intention—and the budget assumption is built upon these intentions—is that there be a 20 per cent increase in the
number of domestic fee-paying students from next year.

I then asked whether it would be possible under the new arrangements for entire disciplines to be transferred to full fee paying programs. Mr Manns said:

It will be possible under the new arrangements for a university to offer a particular course only on a full fee paying basis, provided, as we said earlier, that it offers all of those places that it has been allocated in the broad discipline cluster as Commonwealth supported places first. That rule will continue to apply. Within that, the current rule that applies course by course will no longer apply.

So it is apparent that, within the funding clusters—for instance, if we take the law, accounting, administrative economics and commerce cluster—it is possible for one of those disciplines to be offered on a full fee paying basis. That point was confirmed when Mr Manns said:

Theoretically, if it is in the same cluster, yes.

But he then put the view to us that he thought it was going to be difficult for the universities to do that and that it would require discussion with the department. At no point was there any mention of a directive or new guidelines being issued to change the import of what was being said. One presumes that, if that information were available to officers at the time, we would have been advised of it. My question to the minister is: when was it decided that the guidelines would change and that new directives would be issued?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.47 pm)—I am told since estimates.

Senator CARR (Victoria) (12.47 pm)—Can I get a date on that?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.47 pm)—I am told that there is not one particular date that these arrangements have been in development, as you would naturally expect, Senator, of complex arrangements such as these. So in a period of time between estimates and now.

Senator CARR (Victoria) (12.48 pm)—So I presume that I can draw the inference from that that, in the period after 31 May, this proposal has arisen within the government.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.48 pm)—I think we should be careful with the use of words, Senator Carr. Let us be accurate here. Your first question was: when was this decided? Now your question is: when has it arisen? I do not know when the idea arose, but it was decided since estimates, as I indicated in my earlier answer.

Senator CARR (Victoria) (12.48 pm)—It was decided after this evidence was presented on 31 May that new directives would be issued to universities and new guidelines would be prepared such that universities now can no longer do what officers told us they could do on 31 May with regard to the provision of full fee paying courses within disciplines which are within a cluster. Is that the proposition that is now being put to us?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.49 pm)—Senator Carr, I think you need to be careful once again, if I may say so with respect. Your questions were directed to the draft legislation, as I understand it. What I told the Senate is that these arrangements would take the form of provisions in funding agreements, which do not form part of the legislation.

The TEMPORARY CHAIRMAN—Senator Carr, before I give you the call, could I remind both you and the minister that it would be a good idea to follow standing
orders and address the chair rather than each other.

Senator CARR (Victoria) (12.49 pm)—Thank you, Mr Temporary Chairman. The point I am going to make relates to the provisions of the budget measure. Questions at Senate estimates did not mention the legislation; they went to the budget measure—they went to the operational response of the department to universities and the universities’ practices in the enrolment of students. That was never a question of legislation and it is a bit cute—a bit of a lawyer’s trick—to try to reinvent the question in a way that suits the government. We clearly were advised on 31 May that the operations of this budget measure would produce this result—namely, that universities could enrol students in disciplines within a cluster on a full fee paying basis. That was a change in practice. We were further advised that there was to be an expectation within the budget measure that it would lead to a growth in the number of full fee paying students of some 20 per cent. That is my rhetorical point. My question to the minister is: is it still intended that the number of full fee paying students will increase by an estimated 20 per cent?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.51 pm)—With respect, Senator Carr—through you, Mr Temporary Chairman—I think that you are drawing a distinction without a difference here. The expectation of the budget measure is as indicated, and that has not changed. What you were inquiring of in Senate estimates, if I understood you correctly when you read the extract from the Hansard, was whether something—that is, the provision only of fee-paying places, to the exclusion of Commonwealth supported places—was a theoretical possibility. It is not the intention or the expectation of the government that that would happen. That is, I imagine, why the minister has required that the funding agreements contain provisions for her approval and other safeguards to ensure, as I indicated before, that that does not happen.

Senator STOTT DESPOJA (South Australia) (12.52 pm)—Through you, Mr Temporary Chairman. I ask the minister: why didn’t the minister mention these regulations during the debate in the House this week? I am just trying to assess this timeline a little better. We are talking about post 31 May; it is now 15 June. There has been no public discussion or revelation of these new proposals until today—coincidentally, in light of the discussions that we have had in this place today and in the media in the last couple of days. As I understand it, this legislation was debated on Wednesday in the House of Representatives. I am just wondering why the minister did not take an opportunity to make an announcement then about the possibility of our dealing with new delegated legislation, regulations or guidelines in relation to this issue. It seems quite extraordinary to me. I am sure this has been discussed and considered over the last couple of weeks. It seems as though this policy announcement was made today. Has the minister made any other public announcements? I am happy to stand corrected if this was analysed and scrutinised in the House of Representatives and if the minister made a full and frank announcement there.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.53 pm)—Through you, Mr Temporary Chairman: Senator Stott Despoja, I do not know what the minister said in the House of Representatives. What she said is a matter of public record. Why that proposal was not made at the time is not something that I am in a position to tell you. What I can tell you, as I indicated in an earlier answer, is that it is not proposed that there be delegated legislation; it is proposed that these safeguards be contained as terms of the funding agreements.
with the higher education providers. With all due respect, Senator Stott Despoja, it is a little bit rich that, of all people, an Australian Democrat senator should be complaining that this is policy on the run when an issue has arisen—it was first raised by Senator Barnaby Joyce—to which the government has responded in the course of the parliamentary debate and in the manner in which I have indicated. Isn’t that what the Senate is for, Senator Stott Despoja?

Senator STOTT DESPOJA (South Australia) (12.54 pm)—I am going to assume that that was rhetorical, because that was too cute by half when these issues were raised in the Senate estimates, the government has been aware of them and today in the Senate we have had an announcement on how the government will address this issue. I am just going to leave the government to back-pedal on that one. Anyone who has observed this debate knows exactly what is going on. This is news. This was not announced in the House. If it was, I am sure the minister or her advisers will let us know. We are not dealing with the terminology. We do not have before us what is proposed for the university sector. That is understandable. That is how it works sometimes.

I have a particular view that any such so-called guarantee or restriction on how the full-fee cap removal will work should be in some kind of statutory format. I do not trust the idea that it is going to be left to ministerial discretion. But I would like to ask—given that this is not news, according to government—what the response of the university sector has been to this proposal and how long the consultation has been on this proposal. I am assuming that they are aware of it. It may not have been public news until it was announced today in the Senate, but I am sure that they have been involved in discussions with the government.

I am just wondering how they view this proposal from the government of a possible restriction on how they operate. I want to clarify for the record—because this is the question that really counts—whether this proposal that universities will be prevented from providing only full fee paying courses be part of the agreement. I am not talking about within the cluster; I am talking about the courses. Will this proposal and the agreement that will be struck with universities, to which they have to adhere in their funding arrangements, now prevent them from providing only fee-paying courses—100 per cent fee-paying courses? It seems that you can still manipulate the courses within that cluster in order to provide only fee-paying courses. If the intention of this proposal is to prevent that, albeit subject to ministerial discretion, why remove the fee cap in the first place?

Clearly, if the government is not in favour of only full fee paying courses, why not keep a cap that prevents universities from having 100 per cent full fee paying courses instead of this potential manipulation of the clusters? We now have a belated response to this concern with the introduction of an added part in the funding arrangements so that universities will have to justify what they are doing. If they are varying courses and the amount of fee-paying places within those courses, they will need to get ministerial approval. The government is now giving a guarantee that there will be no such thing; it will not be possible to have 100 per cent fee-paying courses only.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.58 pm)—Before I deal directly with the question you have put, might I correct you and, indeed, correct myself. In the earlier question and answer, you asserted to me, and I adopted your assertion, that the minister had not commented on this proposal in the House.
of Representatives. It may be that it was not said in the second reading speech, but it has been drawn to my attention that in the consideration in detail stage in the House of Representatives, on page 152 of the House of Representatives Hansard on 13 June 2007, the minister said:

We have made it a requirement that the universities must continue to offer Commonwealth supported places and we will not allow universities to manipulate the provision of Commonwealth supported places to fill courses with full-fee-paying places. The way we will be able to do that is through the three-year funding agreements that are also a budget initiative from this year. Universities will be required to offer all Commonwealth supported places, and we will not allow them to manipulate those places so as to create full-fee-paying courses.

So, Senator Stott Despoja, this is not news today; both the substance and the mechanism were indicated by the minister in the other place on Wednesday evening. Senator Stott Despoja, you also asked—

Senator Stott Despoja interjecting—

Senator BRANDIS—If I may finish, you also expressed scepticism about doing this through the mechanism of funding agreements and wondered how we will know what the provisions of the funding agreements are. Might I direct your attention to section 30.25 of the Higher Education Support Act 2003, which deals with funding agreements, and, in particular, to subsection (4), which provides: The Minister must cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the making of the agreement.

So that, I hope, addresses that issue.

Senator Stott Despoja, I think the substance of your question was really the same question as was asked of me by Senator Joyce. That question was carefully considered by the minister’s office. The minister’s office provided a detailed and considered response which I read onto the record in response to Senator Joyce’s question, and I have also read onto the record the minister’s response to a question asked of her in the consideration in detail stage of the debate in the other place. I do not want to run the risk of confusing the issue by adding my own gloss or paraphrase on what this means, but I direct you to the minister’s answer and the minister’s office’s considered response.

Senator CARR (Victoria) (1.02 pm)—As I understand it, the question before the committee is that schedule 5 stand as printed.

The TEMPORARY CHAIRMAN (Senator Ferguson)—That is correct.

Senator CARR—The opposition will be opposing that question. As far as we are concerned, these full fee paying places should be phased out. We have indicated that that is our policy position. We have indicated that, in view of the fact that the government is seeking to have a 20 per cent increase in the numbers of people paying fees, that clearly would add to the present situation, which is fundamentally unjust. We have a situation at the moment whereby people are able to buy a place at a university with an ENTER score of up to 20 points lower than those that are undertaking HECS places in those courses. For instance, a full fee paying place at Deakin University in the Bachelor of Exercise and Sport Science course was 20 points below the HECS place ENTER score required. Frankly, we regard that as unfair.

We suggest that the cap arrangements that the government formerly had put some limits on the capacity for that sort of behaviour to occur, but with these new provisions the situation will become even worse. Whatever arrangements the government has entered into by way of a sweetheart deal with members of its own backbench, so be it. The only way that this injustice can be responded to effectively is to remove full fee paying
places from award courses at public universities. As a consequence, we will be supporting the removal of this schedule from the bill.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.03 pm)—It is more than absurd for Senator Carr, in the course of two contributions briefly separated in time, on the one hand to be condemning the government for imposing safeguards to ensure that there is no opportunity for universities to manipulate these arrangements to deny to Australian students the opportunity of Commonwealth supported places and, at the same time, to say that the vice of this legislation is that it provides for full fee paying places. Senator Carr condemns the safeguards that would avoid the very outcome that he condemns.

While I am on my feet, can I add to my earlier answer to Senator Stott Despoja’s questions. It has also been drawn to my attention that, in the summing-up of the second reading debate on 13 June in the other place, not Ms Bishop but Mr Nairn, speaking on her behalf, also addressed this issue. Let me read what he said:

This bill will relax the caps on Commonwealth supported and domestic full-fee-paying undergraduate student places. Labor has suggested that universities will en masse convert Commonwealth supported places into full-fee-paying places and will turn their backs on students seeking to take up a Commonwealth supported place. The Australian government expects universities to act responsibly and will not let this happen. Government policy remains that universities must offer their Commonwealth supported places in a discipline cluster before they offer full-fee-paying places. Any significant shifts in student load between clusters must be approved through the funding agreements between the Australian government and universities. The Australian government will not let Australian universities walk away from their obligation to ensure access for Australians who want, and who are eligible for, a university education.

So that is three times, Senator Stott Despoja: in Ms Bishop’s response in the consideration in detail stage in the other place, in Mr Nairn’s speech on her behalf summing up the second reading debate, and in my response, which had been prepared in the minister’s office, to the question posed first by Senator Joyce and then posed again by you. I think it would be very difficult to maintain that there has been any want of transparency or clarification of the government’s position in view of those three considered statements.

Senator STOTT DESPOJA (South Australia) (1.06 pm)—I thank the minister for his answer. He has made very clear to me that, yes, we are talking about ministerial discretion applying to that cluster. I think, as Senator Carr would understand, that just reinforces what we have been concerned about all along, which has been confirmed in the Senate estimates of the parliament just over two weeks ago—that is, that this relates not to courses but to clusters.

I have no qualms about a government introducing safeguards—I just want to make sure Senator Brandis is clear about that—but I expect stronger, more enforceable safeguards that are less subject to ministerial discretion, so that promises such as ‘There will never be a $100,000 degree,’ which get broken with alacrity, will not recur.

I was aware of Minister Bishop’s statement. I saw that on the AAP wire, for goodness sake! It has been repeated across the universe, through NUS and everyone else. I was talking in specifics; I was not referring to statements like, ‘We’re going to make sure that they can’t be manipulated—blah, blah, blah,’ and ‘We’ll look at this—blah, blah, blah.’ I actually thought there might be something to table or some list of consultations that have taken place with Australian universities. I thought there might be some
detail—some meat on the bones—but I am being naive to suggest that.

Maybe I could at least get a specific response to an earlier question, which was: how do you define a substantial or a significant shift? What is meant by that?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.08 pm)—Senator Stott Despoja, I am afraid you seem to be descending into rhetoric now. The government has made its policy as clear as can be. It has also, as I have advised you, made clear that the mechanism of that policy will be not vaporous statements in parliament but specific clauses of funding agreements. As I pointed out to you before, by subsection 30.25(4) of the Higher Education Support Act, those funding agreements have to be tabled in the parliament. In relation to the definition of ‘substantial’, I am advised that that is not a defined term in the legislation.

Senator STOTT DESPOJA (South Australia) (1.09 pm)—So what is meant by a substantial or a significant shift? In the minister’s earlier outline to the parliament about what the vice-chancellors or the universities would have to explain in terms of a changed agreement or a change to the number of fee-paying courses, there was reference to the word ‘substantial’. I am just wondering what ‘substantial’ means in the circumstance? I asked the same question earlier. If it has not been defined, that is okay. Is it five per cent, 10 per cent or is it a big change? Is it like space—very big—or is it just a little bit? What constitutes a significant shift or a substantial change in terms of the funding arrangements for universities when it comes to a change involving the amount of fee-paying courses on offer, or fee-paying courses within the cluster? I reiterate for the record that we are talking about the cluster.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.10 pm)—Surely, Senator Stott Despoja, you are aware that there are many acts of this parliament which use the word ‘substantial’ as a test without providing a statutory definition of that term, because it is a plain English term. The term is used in the Income Tax Assessment Act, the Trade Practices Act and, I think, in various provisions of the Corporations Law. I think it is used in some of the media ownership laws. The use of the term ‘substantial’ without providing a mathematical definition as to what that might mean, but relying on the plain English of the word, is commonplace.

Senator STOTT DESPOJA (South Australia) (1.10 pm)—This is not a silly question. This is not suggesting that there is not a broader—

Senator Brandis—It was not a silly answer!

Senator STOTT DESPOJA—In relation to changes to full fee paying courses, I understand that universities will have to justify those changes to the minister if they are substantial, and then have them published and approved—or whatever was the quote from the minister earlier. In that context, what is a substantial change? I am happy to have a ballpark figure. I am seriously curious as to whether it is a 10 per cent change or a 50 per cent change—or is it undefined in the sense that it just seems to be a change from what was previously offered.

So, for example, if a university now has 25 per cent opportunities for fee-paying courses but wants to increase that up to 90 per cent or 50 per cent—or whatever it might be—and they have to justify this change to the minister in order to have it analysed, assessed and approved, or not approved as the case may be, what is substantial? If it is a one per cent change or a two per cent change, obviously that would not be substantial. I understand that. I am not deliberately
being difficult; I just wonder how it applies in this context. We can talk about how it applies in a taxation context or anywhere else, but as far as higher education is concerned—and in relation to this specific issue—I wonder whether that has been worked out. You can tell me it has not been. You can say, ‘Look, that is something that we’ll look at when determining the agreements with the universities down the track.’ Okay, but I am curious. ‘Substantial’ was the one specific reference in the minister’s outline earlier. It is probably as specific as I am going to get, and I am just curious about what that would constitute in a higher education fee-paying context, in terms of any change.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.12 pm)—I think Senator Stott Despoja has, if I may say so, demonstrated precisely why it would not be good drafting to gloss the word ‘substantial’ with some sort of mathematical formula so that we might have a silly argument over whether 25 per cent was not substantial and 26 per cent was. That is why the practical and commonplace drafting solution to this issue has been to use the word ‘substantial’ in its plain English meaning and not to subject it to mathematical or arithmetical formulae. This is the basis upon which a ministerial discretion—a reviewable ministerial discretion, I might say—is exercisable. I might venture to suggest that what mathematical formula might constitute a substantial change in one course, in certain circumstances might be different from what would constitute a substantial change in a different course in other circumstances—depending upon, among other things, considerations of scarcity. These are all very good reasons why the definition of substantial has not been limited by invariant arithmetical criteria but has been left to the flexible ordinary English word, as the word is usually used in statutes.
Senator Evans did not vote, to compensate for the vacancy caused by the resignation of Senator Ian Campbell.

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.22 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

FORESTRY MARKETING AND RESEARCH AND DEVELOPMENT SERVICES BILL 2007

FORESTRY MARKETING AND RESEARCH AND DEVELOPMENT SERVICES (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2007

Second Reading

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

That these bills be now read a second time.

Senator WATSON (Tasmania) (1.22 pm)—We are debating cognately two bills, the Forestry Marketing and Research and Development Services Bill 2007 and the Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007. The second of the two bills implements certain transitional measures. Effectively it enables the privatisation of the Forest and Wood Products Research and Development Corporation. We are establishing a new non-profit company, limited by guarantee under the Corporations Act 2001, and this corporation will receive payments that can be spent on activities such as marketing, promotion, research and other developmental activities. The bill establishes a new company that will replace the current Commonwealth statutory authority: the Forest Wood Products Research and Development Corporation. The effect of this is to transfer control from government to industry participants. The changes to agricultural extension services over the last 10 years reflect a worldwide trend towards privatisation so as to keep up with developments in markets both domestically and internationally.

This reorientation of the role of government in this area is matched by efforts towards deregulation in other areas better suited to private provision and the discipline of the market. The forestry industry clearly needs to be able to reorganise and strategically integrate its marketing and communication efforts to increase the consumption of timber products and to manage more effectively misinformation about sustainability and forest management, risks and harvesting practices. The industry particularly needs to convey, both at home and abroad, its very green credentials and to build the community’s confidence that it does have the expertise to manage our timber resource in a most sustainable way.

We have already seen what happens when this industry and the state forests and reservations are unable to manage and protect assets. I will refer briefly to the Victorian bushfires that burned for 47 days on a front as wide as 200 kilometres. The fires destroyed the Australian annual sawlog. It was a massive loss that should not have occurred. The forest industry are therefore heavily reliant on new research and development, and they need to know much more about managing fire risk. In addition to this, more promotion activities are needed to maintain competitiveness in a global market and to gener-
ate jobs in regional Australia. Currently the Forest and Wood Products Research and Development Corporation delivers research and development for the forest industries, and it is funded though statutory levies and charges and matching funding from the Commonwealth government. The Australian forest industry has identified a strong need for generic marketing and promotion of Australian forest products and forest management, which the corporation cannot undertake due to the legislative restrictions of the Primary Industries and Energy Research and Development Act 1989.

The Australian government gave policy approval to the proposal to establish a new industry services body and on 9 October last year it put forward legislation to implement the required changes. The policy proposal was agreed to by the Primary Industries Ministerial Council two years ago. The new company will replace the current statutory body. The idea is to provide enhanced capability that will communicate a positive image of the forest industry and the sustainability of timber as a resource.

Under the new arrangements, expenditure on research and development will not be reduced below the corporation’s current expenditure. Additional funding for marketing and promotion will be collected through changes to the levies and charges regime. A funding contract between the Australian government and the new company will set certain obligations and accountability requirements for the industry services body, including provisions relating to the use of levies and contractual payments, matching research and development funding and the transfer of assets and liabilities from the old corporation to the new company.

The main bill provides the minister with the ability to enter into a funding contract with a company to enable it to receive from the consolidated revenue fund and administer levies, charges and state forest grower contractual payments collected by the Commonwealth for industry promotion, research and development. The minister can then declare the company to be the industry services body for this purpose. Levies collected will be matched by appropriation from the consolidated revenue fund and then paid to the industry services body. There are also miscellaneous provisions in relation to ministerial directions to the industry services body in the event of an emergency, delegation of ministerial powers, compensation for acquisition of property and for the making of regulations.

The second bill, the Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007, deals with the transitional arrangements required to enable the smooth transition of responsibilities from the old statutory corporation to the new industry services body as well as consequential amendments to a number of other acts. These transitional arrangements include provision for the transfer of assets, liabilities and employees—together with all their rights and entitlements—from the corporation to the new industry services body. The value of the net assets is something in the order of $6.4 million.

Even though the industry is served by a number of organisations at national and state levels, performing marketing and promotions activities, this new industry owned company will enable the establishment of a new and more efficient approach for industry-wide issues. This is consistent with the approach taken in the reform of other rural industry statutory corporations for service provision. I refer particularly to changes that have occurred in other areas including the meat, pork, livestock export, egg, dairy, wool and horticulture industries that have been very
positive for producers and for the industry as a whole.

The forestry industry in the main supports this proposal, and the foundation of this support is built on the knowledge that this change will ultimately translate into improved industry profitability, leading to expanded output, growth and jobs. As a Tasmanian senator, I heartily support the prospect of facilitating economic growth and increasing the potential of Tasmania’s forest industry. Overall, in 2004-05, Australian forest products had a turnover of $18 billion, which was one per cent of the GDP, and employed 95,360 people. For Tasmania, the importance of forest product industries cannot be underestimated.

In July 2006, the ABS released statistics on the manufacturing industry in Tasmania for the 2003-04 year. With sales of some $1.2 billion, the wood and paper products division is one of nine industry subdivisions and was ranked second highest in terms of both employment and wages and salaries. The ABS noted in its commentary that, in terms of its share of industry value added, wood and paper manufacturing is the major manufacturing industry in Tasmania, contributing something like 26 per cent of the total income.

The relative importance of wood and paper product manufacturing in Tasmania is very apparent when compared to the national contribution of the industry, which is seven per cent. So it is a very important industry for Tasmania. The IVA, or industry value adding, per person employed in wood and paper products in Tasmania rated highest of the nine ABS industry subdivisions at $142,000 per person employed. For this reason, the establishment of Forest and Wood Products Australia is very welcome, and it is my hope that it supports the forest industry in Tasmania to expand to its full capacity and for the whole of Tasmania to enjoy the benefits so derived.

Senator O’BRIEN (Tasmania) (1.32 pm)—I first say that Labor welcomes the establishment of a forestry industry services company to undertake both research and development as well as marketing and promotion on behalf of the forestry industry. I want to talk about the length of time that the minister has taken to bring a bill to establish the Forest and Wood Products Australia company to this parliament. I also want to talk about the need to amend the Forestry Marketing and Research and Development Services Bill 2007 and the Forestry Marketing and Research and Development Services (Transitional and Consequential Provisions) Bill 2007 to ensure that there is an appropriate level of parliamentary scrutiny for Forest and Wood Products Australia in the context of this legislation and consistent with other legislation. I also want to discuss the fact that, frankly, the Senate committee inquiry into this legislation has absolutely revealed that this government has not developed the issues of water, carbon and climate change into the broader agenda for the forest industry.

It has taken the government an extraordinary period of time to bring a bill to this parliament to establish the company Forest and Wood Products Australia. The Forest and Wood Products Council established a steering committee in late 2002 to develop options for developing a new entity that could deliver both research and development as well as marketing and promotion. In September 2003, the steering committee released the Australian Forest and Wood Products Industry: Options for reform report, which first proposed establishing Forest and Wood Products Australia. That was in September 2003. We are approaching four years since that report was issued.
The industry has wanted to establish marketing and promotion as a key component of a new body to fill a long-overlooked gap. The forest industry identified that there is a perception that wood’s real environmental values are being largely overlooked by consumers. I believe there is a need to promote the inherent natural properties of wood products, such as the recycling potential, the sustainability of production, positive greenhouse impacts and potential to contribute to biodiversity and mitigation of environmental problems such as salinity. These concerns were brought to the attention of this government five years ago. Industry developed a proposal to establish Forest and Wood Products Australia four years ago. Only now, in what could be the last parliamentary session before an election—although I think we might have another couple of sessions in this parliament—does the government bring a bill forward which would meet the concerns the industry identified years ago.

If the government were serious about marketing and promotion for the forest industry, they would have finalised this bill years ago. If Minister Abetz were serious about marketing and promotion for the forest industry, he would have made this a priority when he became a minister. During Senate estimates in February, and again in the budget estimates round which has recently passed, Minister Abetz bemoaned the need to conduct more promotion of the positives of the forest industry. The minister should have been holding a mirror in front of himself as he talked about the need for forest industry promotion, because he should have been having a good hard look at himself to see who has been the real culprit in preventing the necessary levels of promotion for the forest industry. It has been a clear display of negligence by the government that this bill was not put before the parliament some time before this session of parliament. This bill has clearly been in contemplation for a very long time.

Think about the time that it has taken to bring this bill to the parliament. According to the information I recall from the Senate inquiry into this bill, the bill was drafted in February. So not only did it take a long time to reach the point where the government and the minister decided to promulgate legislation, but the legislation was prepared in February. It is now June, so it has taken from February to June to get to this point where we no doubt will pass this legislation in some form today. But since that time one wonders what reflection there has been on this legislation and other forms of this legislation that apply to other industry bodies which have been referred to in relation to the principles that underpin the various components of this package, including the statutory funding agreement.

Labor wants this bill to be consistent with other forms of legislation and we believe that this bill needs to be amended to improve the accountability to the parliament. I stress ‘accountability to the parliament’ because that is the area in which this bill is deficient. We do fully support an industry services body, as set out in this bill, but the bill must contain adequate accountability provisions to the parliament. This bill will establish arrangements in its unamended form that do not hold the proposed industry services body or the minister sufficiently accountable to the parliament for the expenditure of levy and taxpayer funds. The accountability requirements that the government established for the dairy industry services body, Dairy Australia, provides a benchmark for accountability. The amendment that Labor put forward for that legislation, which was accepted by the government, is in fact the template we are using in this regard and will replicate the government’s own benchmark in account-
ability that was developed for the dairy industry.

The amendment involves inserting two additional provisions into the legislation. First is a provision that, within 14 days of lodging their annual report, the industry body must give the minister a copy of the report. The minister must table this report to each house of parliament within 14 days of the report being given to the minister and, additional to other requirements under the Corporations Act 2001, the annual report must include the amount of forest service payments and matching payments made to the industry services body, the amount of those payments that were spent and outcomes as measured against objectives that apply in relation to the industry services body.

The second additional provision of Labor’s amendment involves other reporting requirements. It requires that the minister, as soon as practical after the holding of each annual general meeting of the industry services body, cause to be tabled in each house of parliament a report on the year ending 30 June before the holding of that meeting. The report must include a statement as to the amount of charges imposed under section 2 of schedule 7, or section 2 of schedule 8, of the Primary Industries (Customs) Charges Act 1999 and it must be received by the Commonwealth on or after that time. A statement as to the amounts of levy imposed under those provisions must be received by the Commonwealth on or after the transfer time. It also requires a statement as to the amounts of levy imposed under regulations made for the purposes of schedule 27 of the Primary Industries (Excise) Levies Act 1999, received by the Commonwealth on or after the transfer time; and a statement as to whether the minister is satisfied, on the basis of information provided by the industry services body, that the spending of forest service payments and matching payments complies with the funding contract and, if the minister is not satisfied, detail as to why the minister is not satisfied that the spending complies.

These are very fundamental provisions. It is all well and good for the industry services body to have contractual arrangements with the executive of the parliament or the government. It is a serious matter that levy payments in this legislation—in effect, a form of taxation upon industry—are not subject in an effective way to the scrutiny of parliament. I say again: these are measures which the government has included in other similar pieces of legislation—and I cite the dairy industry legislation, where the appropriate Dairy Produce Act provisions were included in the Dairy Industry Service Reform Bill 2003. These provisions are replicated in amendments which were accepted by the government in relation to that legislation. They are reporting requirements which the government was happy to bring forward, and Labor urges the government and the minor parties to support this amendment to ensure that there is an appropriate level of parliamentary oversight established for Forest and Wood Products Australia.

In the context of this legislation, and particularly in the area of research for this industry, this government has failed to incorporate the forest industry into the broader agenda of carbon, water and climate change that is going to be a future driver for the forest industry. During the committee inquiry into this bill, the current Forest and Wood Products Research and Development Corporation provided an extensive list of projects that they are undertaking. This list represents extensive necessary work to further advance the interests of the forest industry in Australia. But, frankly, the government has allowed a yawning gap to emerge for the future of the forest industry. The government has failed to develop any framework for the forest indus-
try to establish its links with the issues of water for this nation, carbon and carbon sequestration, and the climate change future Australia will need to tackle.

During the recent budget estimates, the Department of Agriculture, Fisheries and Forestry indicated that it had received no directions on how to address these most important issues for the future of forestry. The department indicated that it was not looking into how forestry would fit into any future carbon trading scheme. It was also clear from the recent budget estimates that the department was not being asked by government to address what the effect of water use will be on the forest industry. The department has not been tasked by the government to address how carbon absorption by forests will fit into the future of climate change in Australia. In addition, the government has failed to provide any leadership, therefore, to the forest industry’s responses to the issues of water and water use in Australia, to carbon and carbon sequestration and to the general climate change picture.

I have to say that that is not all that surprising, considering that the government has been a bastion of climate change scepticism and is a government which is causing Australia—and, in this case, the Australian forest industry—to be left behind on issues which will be the necessary responses to climate change. That is the greatest shame of all in relation to this industry, which I know is keen to be involved and has not seen the government leading it in the directions that are necessary to give it the best opportunities to respond to the challenges that those issues present.

In summary, Labor believes that this bill will provide the forest industry with additional capacity to market and promote its products. This is a step forward that the industry identified in 2002 as being necessary for the future of the industry, but it has taken the government the best part of five years to take steps to address this issue. It has taken five years from when the industry identified problems around marketing and promotion for the government to take steps to address the issue. In addition, the government has failed to put the future of carbon, water and climate change at the centre of its thinking for the future of the forest industry. This, frankly, is a failure of leadership and a demonstration that the government has been caught in its own web of climate change scepticism, which rendered it incapable of delivering the leadership that this industry needed in these important areas.

I say again that we believe this bill does not contain the necessary reporting requirements back to this parliament. We seek to address that issue by the amendment circulated in the chamber in my name—which, I say again, replicates what the government has already established as a benchmark in the dairy industry services body, which has been approved in this chamber—with the support of the government. I urge the government and others to support Labor’s amendment, lest we end up with inadequacies which we will regret in the future in relation to the accountability of a body that will receive the benefit of not only levies collected from industry but also taxpayer funds in the form of matching contributions from government regarding this and other legislation of this parliament.

Senator IAN MACDONALD (Queensland) (1.48 pm)—I am very pleased to join with my colleagues Senator Watson, Senator O’Brien and, I know, all other senators who have the interests of Australia and Australia’s forestry industry at heart in supporting the Forestry Marketing and Research and Development Services Bill 2007 and the Forestry Marketing and Research and Development Services (Transitional and Consequential

I want to speak on this legislation simply to acknowledge those people in the industry who have put so much blood, sweat, tears, enthusiasm and effort into getting this proposal to where it is today. I mention particularly the members of the Forest and Wood Products Council who, over many years, have struggled to ensure that full industry support was obtained for this proposal. I want to mention, in no particular order, the very fine work done in this matter by Mr Nick Roberts—then a chief executive of Weyerhaeuser and now, as I understand it, following a chance meeting I had with him in Sydney last week, working for my namesake in Sydney, Ian Macdonald, the agricultural minister in the New South Wales government. Nick was one of those who led the charge along with Ms Kate Carnell, who was then the Executive Director of the National Association of Forest Industries; Neil Fisher, the CEO of A3P; Greg McCormack, the President of NAFI; and people like Rob Lord from Norske Skog and Warwick Ragg.

Trevor Smith from the CFMEU, who did a lot of work in those early days, and more recently my good friend and genuine supporter of the forest industries Michael O’Connor from the CFMEU, have played a very significant part in ensuring that this particular positive piece of legislation gets to the table. I want to mention as well Timber Communities Australia; Jill Lewis and Kersten Gentle, both of whom made a very significant contribution to the hard work that was needed; Colin Shipard from the Australian Forest Contractors Association; Clive Dossetor from the Timber Merchants Association; recently Mrs Catherine Murphy, now the CEO of NAFI; and Doug Head, now the President of NAFI but in those earlier days a member of the Forest and Wood Products Council, who added his considerable support and standing to this piece of legislation.

Regrettably, Senator O’Brien could not help himself; he had to try to find some fault with this legislation. It is unfortunate, because I know Senator O’Brien supports it and has supported it for a long time, but he does not understand. If, perchance, he ever were in the situation where he was a minister in a government, he would understand that things take some time to put together, particularly when you are dealing with something as complex as this particular issue. Senator O’Brien is right: this thought was as much a government initiative as an industry initiative; it was a drawing together of thoughts by the government and the industry that at each election they had to face criticism, stupidity and hypocrisy, particularly from the Greens political party, about forestry. Anyone who knows anything about the forestry industry will understand that the forestry industry, particularly in Australia, is one of the most sustainable, one of the most environmentally friendly industries going. But each year the industry has to put up with these fraudulent campaigns from the Greens political party about forestry.

The Greens political party would have Australia source all of its forest and wood products from forests around the world that are nowhere near as sustainable as Australia’s forestry management is. I can never understand—except to confirm that the Greens’ opposition is purely left-wing political rather than environmental—why the Greens would want us to take forest products from the Solomons, from Papua New Guinea, from many other places around the world that do rape and pillage their forests in preference to getting them from Australia, which has the most sustainable forestry management regime anywhere in the world. It is hypocrisy and absolutely fraudulent behaviour of the
Greens in trying—and they are still trying, even today—to destroy this very sustainable industry for Australia that provides so much resource for our country. It also provides so many jobs and so much economic activity in rural and regional Australia, a part of Australia that, over the years, has declined in importance and declined in opportunities for employment. This industry brings back those opportunities and is a great industry for those of us who live in rural and regional Australia.

This initiative of the government and the industry, if I can say it was a joint initiative, is aimed at promoting the obvious good aspects of forestry—and that is all of them—and ensuring that Australians can understand the hypocrisy and fraudulence of the campaigns that the Greens mount every year against this very worthwhile industry. There is a good story to tell, but it is always easy for the Greens to get the ear of lazy journalists and to rubbish a very sustainable and productive industry. The industry and the government understood that the industry needs to be in a position to explain the benefits of forestry in a far better and more sustainable way than the industry has been able to do in the past. And so this idea came up at the Forest and Wood Products Council meetings back in 2002 and 2003, and the long process to bring it to fruition then started.

Senator O’Brien would have you believe that you have a talk about it one day and introduce legislation the next. Quite clearly, and unfortunately, Senator O’Brien does not understand the processes. The people who I mentioned earlier put a hell of a lot of work into getting this particular initiative to where it is. It had to fit in within the principles of research and development, but it also had to involve the industry and additional levies, and that required enormous amounts of consultation with the industry. I do not like to highlight this, but I point out that even with the greatest goodwill and the enthusiastic support of all the industry leaders, the ballot that was required before this legislation came into being was supported by only 72 per cent of the industry people entitled to vote. I know from those early days that there were concerns, particularly amongst smaller organisations, about the cost of additional levies. All of that had to be gone through so very carefully.

The industry leaders took that upon themselves; it was not the government doing it. The industry had to go around painstakingly, and I know some of those people I mentioned travelled the length and breadth of Australia meeting with small organisations, meeting with businesses, explaining it, showing PowerPoint presentations, doing a hell of a lot of work. We talk about it today, but we cannot really understand the effort and toil that those industry leaders put into getting the support that was needed and then getting it just right, which they did, over a period of time. I congratulate Senator Abetz on getting this legislation to the parliament at this time. Senator O’Brien says someone told him something at estimates. I would point out though to Senator O’Brien that even to go through the parliamentary process, it has had to go to the Scrutiny of Bills Committee, it has had to go to the Senate committee—these things do take time, and they have to be done correctly. I am a bit saddened that Senator O’Brien had to find some way to try to differentiate himself from the government, so he embarked upon this quite silly attack on the time taken. The time taken was necessary to get it right. It is not an easy thing to do; it is complex. But it is here today and I am delighted to see that. I do want to place on record the efforts of all those people I mentioned earlier in getting it to this particular point.

Senator O’Brien also had to throw in some comments, along with his leader’s message for the day, I guess it was, about
greenhouse gas emissions and the government’s approach to it. As has been pointed out before, time and again, the Howard government was the first government, I think, in the world to set up a greenhouse office, back in 1996.

Senator Abetz—It was.

Senator IAN MACDONALD—The first in the world. Thank you, Senator Abetz. We were on the case long before it became popular in other countries around the world and certainly long before it became popular in the organisations of the Australian Labor Party. They are the Johnny-come-latelys to this debate. Our government has been dealing with this seriously since 1996, the year we came into government. Time will not permit me to go into all of the things that our government has done, but I would just mention one little thing: the Commercial Environment Forestry project funded in the budget a few years ago. That is the sort of thing that this government has been doing with the industry to ensure that forestry is recognised as being very much part of the solution to climate change.

This government has funded and the industry has run any number of projects working towards that end. The enormous amount of effort that the government has put into matters like water usage and carbon sequestration involving forestry are too numerous to mention. But we got there with this particular project. The research and development element of it that has been supported by government for many years will remain, but the industry itself will put in additional levies to make sure that the Australian public are well aware of the sustainable nature of our forestry.

As I said, I regret to see that even today the Greens continue, at every turn, to try to destroy this fabulous Australian industry, this industry that does more to promote environmental results than practically any other industry. The Greens would have us all buy houses made of aluminium or cement—

Senator Abetz—Concrete.

Senator IAN MACDONALD—or concrete or steel, those sorts of building materials that have enormous greenhouse gas emissions. But the Greens would have you use aluminium, concrete, steel—

Senator Sterle—Mud.

Senator IAN MACDONALD—Well, I don’t know about mud—but certainly aluminium, concrete and steel, which have enormous greenhouse gas emissions. The Greens would rather you build with them than with the most sustainable product you can get, and that is native forest and wood products. They would have us buy paper made of pulp from the countries in the world that simply ravage their forests. Here in Australia we manage them sustainably. We need paper. The Greens use as much paper if not more than anyone else, but they want to get it from countries whose forests are just pillaged and ravaged, rather than from Australia, which, as I say, has one of the best if not the best forest management regime anywhere in the world.

Perhaps this legislation should not have been necessary, but, because of the easy message to sell, picked up, as I say, by lazy journalists who find these faults with the forest industries, it is necessary for the industry—not governments, and I make that clear; it is important for the industry itself—to fund and run education campaigns, and this legislation will help in that way.

I do not want to delay the Senate. I am delighted that this legislation is receiving bipartisan support. Senator O’Brien, in the committee hearing, mentioned that it did not have sufficient accountability—well, as I am sure Senator Abetz will elaborate on, what we followed here was the egg industry R&D

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arrangement, and this is really a template for the future. There is all the necessary accountability there, and the industry itself of course will ensure that it is accountable to itself for the additional funds that the industry will be putting in.

Congratulations to Senator Abetz and his department. I know the department has put in an enormous amount of work over many years on this. I have mentioned this twice before and I want to mention it again: I particularly want to recognise the efforts of all those industry leaders who have worked so hard to get this particular proposal to where it is today. Like my colleagues I commend the legislation to the Senate.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.05 pm)—I think I am in a position to say thank you for 2½ of the speeches that have been contributed in this debate. I thank Senator Watson and Senator Ian Macdonald. Before Senator Ian Macdonald I feel somewhat of an impostor because I know that he did a lot of the work to get this legislation to where it is today. But I have the privilege, being the Minister for Fisheries, Forestry and Conservation, of dealing with the legislation here. I thank senators for their contributions. I note the Senate committee report on this legislation. One aspect of the committee report dealt with the issue of accountability. With great respect—and I do not want to delay the Senate on this aspect too much—the Senate committee report dealt with governance and accountability from paragraph 3.13 onwards to paragraph 3.27 and made out the case very well.

Allow me to try to summarise the situation. We did have a further look at this situation after the Senate committee report and the minority report. We do not agree with the minority report that was co-signed by Labor and the Greens. We believe that the majority report is the more robust report. The forestry legislation is based on the Egg Industry Service Provision Act 2002. The egg industry services body is of a similar size to the proposed new forest industry services body. The simpler provisions for the egg industry services body have been shown to provide appropriate accountability under the funding contract, and the committee was made aware of this. The government will receive annual reports and audited financial statements from the forest industry services body, which will ensure that its operations are compliant with the provisions of the contract. The legislation and the accompanying transition bill provide for the government to declare a new industry services body for the forest industry. This has arisen in response to an initiative of the Australian forest industry itself, which Senator Macdonald so eloquently spoke of.

My other comments are in relation to climate change and Senator O’Brien’s obligatory comment about the government’s greenhouse response. As Senator Macdonald quite rightly pointed out, in 1996, when we won government, the then minister, Senator Robert Hill, indicated that the government was looking at this. By 1998 we had the first greenhouse office of any country in the world. We are accused of being poll driven on this matter.

Senator Sterle—Yes, definitely. I think I’ve said that five or six times already.

Senator ABETZ—We are accused of being Johnny-come-latelys on the issue. Senator Sterle, by a foolish interjection, is confirming that on behalf of the Labor Party. The other day I took the opportunity of asking the Parliamentary Library to have a bit of a look at the number of questions that were asked on global warming and climate change from 1998 to the current date. The information is very instructive. In the year that we set up the Greenhouse Office, 1998, how
many questions do you think the Labor Party asked?

Senator Ian Macdonald—Two? Three?

Senator ABETZ—You are an exaggerator. You think more highly of the Labor Party, Senator Macdonald, than they deserve. It was one question. From 1998 through to 2007, they asked 34 questions, which is pretty good, until you realise that, out of those 34 questions, 30 were asked in the last 12 months. So from 1998 until about 2006, you had year after year where the Labor Party did not ask a single question in this place during Senate question time on this issue. In fact, from 1998 to 2007, we asked more questions, as dorothea dixers, on this topic to try to get the public debate going on these issues than the Labor Party did. To those journalists who continually write and say the Labor Party have stolen the march on the Liberal Party and the National Party on this: just look at the documentation, the raw data, not the propaganda. If they looked at the raw data, they would be interested to see that we have had a constant, steady approach on this. The Labor Party ignored it, then saw it in the polls and ramped it up and tried to become the hero on the issue. We have constantly been the friend of the issue and continually husbanded the issue, as it should be, not taken the big, lavish approach that the Labor Party have taken on this issue.

One comment that Senator Macdonald made is that the forest industry, unfortunately, on the basis of each electoral cycle has had to confront the silly arguments in relation to forestry. That is why this legislation is so important—because it will allow the forest industry to become more proactive in defending itself and getting out correct information. Some of the difficulties the forest industry is facing today are shown in the Senate report on this legislation. The fact that the Labor Party and the Greens have signed off on the coalition minority report clearly indicates Labor and the Greens are in a coalition together, working together. They have already agreed to exchange preferences in New South Wales—that is already known—without any forest policy on the table. The forest policy is being developed; it just has not been put on the table as yet.

I also indicate my very real concern at what happened at the national Labor conference in relation to forestry. The Labor Party under Kevin Rudd has now backtracked from the very sensible position Mr Beazley had. All I say to the forest industry is: be very careful. Mr Mark Latham had a foolish, silly, stupid forest policy. Who was the architect of it? His political love child, whom he parachuted in to the seat of Kingsford Smith: none other than Mr Garrett. Keep in mind that Mr Beazley was wise enough to sideline him as shadow parliamentary secretary for the arts or something. Mr Beazley repudiated the Latham forest policy. As soon as Mr Rudd became leader, Mr Latham’s political love child, Mr Garrett, was put straight into the environment portfolio, and a very keen defender of the forest industry, Mr Martin Ferguson, was deliberately pushed out of that portfolio. Mr Rudd did not want too much robust discussion within the Labor Party on this issue, so the defender of the forest industry was sidelined, pushed aside deliberately so Mr Garrett would have the greater say in this area.

This report that the Labor Party has signed up to is just nitpicking in its desire to delay legislation and to inflict on the industry and the body concerned extra red tape and more cost so that the amount of money they can actually spend on research, development and active campaigning will be minimised. That the Labor Party would get into bed with the Greens should not surprise anybody, because it has been happening for far too long—and under Mr Rudd’s leadership it is clearly hap-
pening again. Today might even be the six-month anniversary of Mr Rudd’s elevation to the leadership. I am not sure if it is, but we must be getting to around that time. And do you know what? During those six months I think the Prime Minister has visited my home state of Tasmania on at least two or three occasions. I think Mr Rudd has as well, and so have Mr Downer and a whole host of cabinet ministers and shadow ministers—with one exception. Who do you reckon that might be? Who has difficulty in coming to the state of Tasmania in his position as a senior shadow minister? Mr Peter Garrett—although he and Mr Rudd promised the Tasmanian people that, before they made their decision at the Labor Party national conference, they would come to Tasmania and listen and learn. Clearly Mr Garrett does not need to listen and learn. He has already made up his mind, and that is why he has not visited Tasmania during that period.

That aside, another, unfortunate, issue confronting the forest industry is this celebrity cult, where just because you are an actor you all of a sudden become an expert to make commentary on forest practices. Or, as I had occasion to indicate recently to an Institute of Foresters of Australia conference at Coffs Harbour, because you are a well-recognised author of novels, you are then written up in newspapers as somehow having authority to comment on forest practices. I posed the question: how many newspapers would print articles from a forester saying, ‘With all my forestry credentials on the table, I now seek to critique this novel’? They would laugh the forester out of the place and say: ‘It is ludicrous. You have nothing to bring to the table.’ But, if you happen to be a writer of novels, you have everything to bring to the table and you are reported.

So it was, in a way, disappointing to read that Mr Ian Thorpe, for whom I have great respect in his capacity as a world renowned swimmer, came to Tasmania and, unfortunately, fed himself on a diet of Senator Bob Brown and other green activists.

**Senator McGauran**—Oh, not Thorpie!

**Senator ABETZ**—Yes, it was disappointing, Senator McGauran. But, despite such a terrible diet of information provided to him, Mr Thorpe was able to say: ‘A lot of people rely on the forest industry for work, so obviously just saying you can’t touch the trees wouldn’t be appropriate.’ On that basis he is streets ahead of Senator Bob Brown and the Australian Greens. It is instructive, isn’t it, that when we are talking about the development of the forest industry, with the Greens asserting that they always support downstream processing, there is a very large gap in the chamber and not a single contribution being made by them.

In this newspaper article, Mr Thorpe said that when he saw some of the forest practices they were quite confronting. I agree with him. I would invite him to have a look at the next steak that he eats—I assume he is a meat eater—and then go to the very beginning, look at a peaceful cow in a pasture and follow it through the process chain to the abattoir. I am sure he would similarly say it is very confronting. However, I am sure at the end of the day he, like so many of us, still enjoys his beef and his good meal of meat. Similarly, I say to those people: ‘Yes, we still enjoy reading our newspapers. We like having toilet paper and tissue paper and we like to have wooden furniture et cetera.’ Well, there are some confronting processes that have to be gone through. The test is not whether it is visually confronting but whether it is scientifically sustainable.

The challenge I continually throw out—that Senator Bob Brown, the Wilderness Society and others always refuse to deal with—is simply this: tell me where in the world do they do forestry better than in Australia? I
ask that question continually and not one of these anti-forestry campaigners are able to say to me: ‘Look, Eric, what you ought to do is look to country X for a better practice.’ The simple fact is they cannot, and they know it, and it is about time that they were honest in relation to this debate on forestry.

The third issue that concerns me is that some sectors of the forest industry are, unfortunately, bending over backwards in trying to avoid confrontation and, in doing so, I think, are offending common sense, good practice and good public policy. It pains me to say that in recent times Forestry Tasmania, albeit a government corporation in Tasmania, entered into a memorandum of understanding with a green group to get them out of the forests and stop them from demonstrating. And the Premier welcomed the agreement. Today, Madam Acting Deputy President Kirk—and with your legal background I am sure you would fully understand this—I am calling on the state Attorney-General, as the first law officer of the state, to have a very close look at this memorandum of understanding, repudiate it and ensure that it is ripped up.

This memorandum of understanding has as one of its operative clauses—and this is a matter of great concern—that the activists agree to not damage the completed road. The last time I read my Criminal Code, damaging property was a criminal offence. The MOU then says that the activists agree to ‘not hinder’, to ‘remove all impediments/obstructions’, to ‘not block or prevent movement by motor vehicles’. These are all criminal offences. Good public policy dictates that you cannot enter any binding agreement with another on the basis that one of the parties agrees not to commit a criminal offence.

This memorandum offends every principle of sound public policy. For the Premier to welcome this is unfortunate, as it indicates what he is now doing in a bid to get Kevin Rudd elected. Mr Lennon himself has not been willing to reconfirm his absolute commitment to the Tasmanian Community Forest Agreement. In fact, he has said that he has not said that he would rule out any more lock-ups. That is a major concern to the industry and a major concern to all those who worked so hard, along with Senator Ian Macdonald, in putting that balanced Tasmanian Community Forest Agreement together.

Here is an agreement that is endorsed by the Premier. He says that this memorandum of understanding between industry and the activists is a good move. This is a group of people who are saying, ‘If you remove yourself from the forest, we will no longer commit criminal offences.’ Guess what that group has done? The Huon Environment Centre got themselves out of the Florentine. But where are they today? Set up in the Weld. They agreed not to do damage or obstruct people in one forest and then they moved into the forest next door. To deal with these people in the way that the state government has means that there is state-sanctioned blackmail, and it needs to be condemned by every single person who has a concern about the rule of law in this country—particularly anyone who is concerned about the future of our forest industry. For Mr Lennon and others not to have condemned it, when it offends every principle of public policy, clearly shows what state Labor is doing in Tasmania: it is vacating certain forest areas to clear the way for Mr Rudd to announce further lock-ups in the lead-up to the election.

I plead with those opposite to desist from this ridiculous activity. After the last election, I thought Labor would have learnt its lessons about this. We had a good bipartisan policy: no further lock-ups. We now have 47 per cent of the state locked up. One million hectares of old growth is locked up, and so
the list goes on. Surely we can leave that which remains for the forest industry to enable it to make the transition, which will come in due course, to a fully plantation based sector. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

FORESTRY MARKETING AND RESEARCH AND DEVELOPMENT SERVICES BILL 2007

Bill—by leave—taken as a whole.

Senator O’BRIEN (Tasmania) (2.26 pm)—I have some general comments to make before we come to the amendments that I propose to move. One could not help noticing that the connection between the comments made by the minister in his speech in the second reading debate and the facts was, as usual, quite strained. I suppose language is a curious thing. How a person who is older than another can be their love child is a curious thing that only this minister could concoct in his fervent attempt to get a line.

Senator Abetz—It is there.

Senator O’BRIEN—Yes, it appeared there this week—some months after the statement, because I goaded the minister at

estimates about the fact that it was not on his website. He excused the action by saying that he did not want to trouble his department on the weekend to put it on the website. It would be interesting to see how many press releases that were issued then now appear on the website. I am certain the officers would be offended if it were suggested that they did not work on weekends, because I know that they do.

Senator Abetz in that press release pressed his claims that Labor’s platform represented a resurrection of Mark Latham’s Tasmanian forest policy. As I said, it is a press release that appeared on the Liberal Party website. In that press release, Senator Abetz said:

... Labor’s commitment to “protect at least 60 per cent of existing old growth forest (increasing to 100 per cent for rare and depleted old growth), and 90 per cent or more of high quality wilderness” (Draft National Platform, 91) will inevitably result in more forest lock-ups.

I was very surprised that Senator Abetz did not recognise the figures that he quoted. Those figures appear not only in Labor’s platform but also on—the Department of Agriculture, Fisheries and Forestry website—the website of his own department.

Under the heading ‘Nationally agreed reserve criteria’, which the website goes on to explain are also known as the JANIS criteria, are the following nationally agreed targets for the conservation of ecosystems:

• 15 per cent of the pre-1750 distribution of each forest type
• 60 per cent of the existing distribution of each forest type if vulnerable
• 60 per cent of the existing old-growth forest—

this is from the minister’s department’s website—
• 90 per cent, or more, of high quality wilderness forests, and
• all remaining occurrences of rare and endangered forest ecosystems including rare old-growth.

If Labor’s platform recites those words and that means that they have resurrected Mr Latham’s forest policy, does that mean that so has the minister’s own department and therefore his own government? The facts have never got in the way of this minister presenting an argument.

The figures quoted by Senator Abetz from Labor’s platform represent nationally agreed targets for conservation, and the figures that Senator Abetz used to attack Labor are in fact the government’s own targets, adopted in regional forest agreements for various regions, signed by the Prime Minister. So it is little wonder that Senator Abetz chose not to put this press release on his ministerial website, because it so directly contradicts the very argument that he has been making. And, as I said, he came up with a lame excuse for the reason that it was not on his ministerial website: because it was released on a Sunday.

This is a minister who is particularly good at selectively quoting Labor’s platform. In his press release, he conveniently left out a passage of the platform that talked about all of those goals which, as I say, appear on the departmental website. Our platform went on to say:

This goal will be achieved through the Regional Forest Agreement (RFA) process. RFA outcomes will vary from region to region in response to variations in community expectations and environmental concerns.

And, in the budget estimates, guess what? The Department of Agriculture, Fisheries and Forestry had to acknowledge that this statement from Labor’s platform is consistent with the regional forest agreements, the very agreements that the Prime Minister has signed, the very agreements that this government has signed up to, the very agreements which Labor have committed to support in our platform. As I said, this is a minister who never lets the facts get in the way of a good story. He has been left in this regard without a leg to stand on.

In relation to the issues around this particular legislation, the minister would have us believe that, in the near five years that have elapsed since it was proposed that the process encapsulated in this legislation be given effect, the government has expeditiously done all things necessary to get us to this point. Frankly, I took the minister’s explanation for the delay as a reflection on the previous minister, Senator Ian Macdonald, who made a contribution. Frankly, I would have thought that the minister was suggesting that, if there was a delay, it was perhaps the responsibility of his predecessor, not himself.

Senator Abetz interjecting—

Senator O’BRIEN—Yes, frankly you did. Frankly, the minister’s contribution left us with no concrete understanding as to the reason why, in an area where there is much established legislative precedent, much established precedent on the form of statutory funding agreements and much established precedent on the structure of the corporations necessary to be established—and indeed, at the committee inquiry into this bill, the department admitted that they had formulated the structure of the statutory funding agreement, and of course the company had formulated its arrangements, on the basis of the precedents established in previous legislation—it took five years to get to this point. No satisfactory explanation of that has been presented. We have had some glib presentations, a bit of an attempt to score a few political points, but no satisfactory explanation...
as to why it has taken five years to get to this point.

In relation to the question of whether the discussions that have taken place between the industry and the minister should satisfy the parliament as to how accountability should be dealt with, I would simply say that it is the opposition’s view that, where there are arrangements such as this that involve taxpayer moneys, and where there are arrangements such as this that, through this parliament, equip a private company with effectively a taxation power to apply to its own industry, there should be full and proper accountability to the parliament. That is not accountability to the executive—which is, as I understand it, what the government proposes to be the acceptable option—but full and proper accountability to the parliament. That means the regime which we propose to amend this legislation to achieve. It is a regime which we proposed in relation to the dairy industries model, a regime which a more reasonable minister has accepted.

The public will make their judgements on the outcome of this legislation ultimately over time. Some industries have had serious problems in relation to the operation of private organisations equipped with funds delivered by the taxpayer and by their industry under the force of the legislation of this parliament. It is the opposition’s view that those legislative arrangements ought to impose obligations upon any relevant minister—and we accept that, in the event that we were to win the next election, they are obligations that we would impose on a minister of ours. We accept that responsibility. Those obligations would require the minister to be accountable to parliament and to show the parliament that the operation of the agreements entered into between the minister and the corporation was being observed, that the arrangements were fit and proper in relation to that statutory funding agreement and the legislation and that, if there were any matters that the minister was not satisfied about, the minister would draw those matters to the attention of the parliament.

That is all we are asking for: that the minister and the body which is being equipped with taxpayer funds, and with funds levied from the industry under the authority and the force of this parliament, be accountable to the parliament. It does not sound like a very onerous responsibility, does it? So it would be surprising if this government took the view that it is not appropriate for taxpayer funds and parliament-authorised industry funds to be dealt with in the most accountable way to the parliament that authorised it. I wait to hear some responses to that. I move opposition amendment (1):

(1) Page 15 (after line 12), at the end of Part 4, add:

17 Tabling of financial reports

(1) The industry services body must, within 14 days of lodging a financial report (the annual report) mentioned in section 292 of the Corporations Act 2001, give the Minister a copy of the report.

(2) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 14 sitting days of that House after the day on which the Minister receives the report.

(3) In addition to the matters mentioned in section 295 of the Corporations Act 2001, the annual report must include the following details in relation to the financial year to which the report relates:

(a) the amount of forestry service payments and matching payments made to the industry services body;

(b) the amount of those payments that was expended;

(c) outcomes as measured against objectives that apply in relation to the industry services body.
18 Other reports

(1) The Minister must, as soon as practicable after the holding of each annual general meeting of the industry services body, cause to be prepared and tabled in each House of the Parliament a report in relation to the year ending on 30 June before the holding of that meeting.

(2) The report must include the following in relation to that year:

(a) a statement as to the amounts of charge imposed under clause 2 of Schedule 7, or clause 2 of Schedule 8, to the Primary Industries (Customs) Charges Act 1999 and received by the Commonwealth on or after the transfer time; and

(b) a statement as to the amounts of levy imposed under clause 2 of Schedule 10 to the Primary Industries (Excise) Levies Act 1999 and received by the Commonwealth on or after the transfer time; and

(c) a statement as to the amounts of levy:

(i) imposed under regulations made for the purposes of Schedule 27 to the Primary Industries (Excise) Levies Act 1999; and

(ii) identified by regulations made for the purposes of this paragraph; and

(iii) received by the Commonwealth on or after the transfer time; and

(d) a statement as to whether the Minister is satisfied, on the basis of information provided by the industry services body, that its expenditure of forestry service payments and matching payments complies with the funding contract; and

(e) if the Minister is not so satisfied—details of why the Minister is not satisfied that the spending does comply with the funding contract.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.38 pm)—In responding very briefly, I simply refer people to the Senate committee majority report as to why it is not necessary to have this extra layer of bureaucracy and extra layer of cost that Senator O’Brien is suggesting. In relation to the alleged delay of this legislation, I simply say that as a government we always want to consult and get it right, rather than rush it. As Senator Ian Macdonald so ably pointed out, there was a lot of consultation that took place, and we now have overwhelming support of the industry sector in relation to this legislation.

In relation to the media release that I issued on the Sunday afternoon of the national conference of the Labor Party—just in case anybody thinks there is a point in it, and I do not think there is—I was over in Western Australia attending the conference of Timber Communities Australia. I had my media person with me there and, as he always does, he put out a very good media release and issued it to the media immediately—rather than going through the department and asking people to come into their offices et cetera, when we were able to do it by remote control from Perth. The fact that it was not put onto my ministerial website is a matter for which I have chastised my very capable media adviser, because we stand by our media releases. I also thanked Senator O’Brien during Senate estimates for pointing out this oversight to me. The media release was expeditiously put on my ministerial website, so nobody should be under any illusion that there was something about it that I did not want displayed on the ministerial website.

I turn to the targets that Senator O’Brien referred to in relation to percentages of particular forest types. This is what the Labor Party continually does: what they say is the truth, but it is only half the truth. It is what they do not say that is the material point in
these debates. Sure, in setting up the regional forest agreements we had aspirational targets which were set out and signed off on. The only thing that Senator O’Brien talked about at Senate estimates, and again here today in this chamber, was the aspirations in relation to locking up. A very important part of the regional forest agreements was conservation, not only of the environment but of people’s jobs and local, regional communities. That is where you have to strike a balance. After many years of fighting and dispute within the Tasmanian community, we came up with a balance at the last election, which the people of Tasmania overwhelmingly signed off on.

I led the Liberal Party Senate ticket in Tasmania. Senator Kerry O’Brien led the Labor Party’s Senate ticket. Whilst undoubtedly each of us has a degree of personal following and other considerations, there is no doubt that the overwhelming support that I received for the ticket that I had the honour of leading was as a result of our balanced policy. As a result of the balanced policy that we submitted to the people of Tasmania, the Prime Minister has said, ‘No more lock-ups in Tasmania.’ I, honoured to be forestry minister, have also said that the government’s position is to have no further lock-ups in Tasmania because, having done all the equations for that agreement, we know that any more lock-ups would have meant loss of jobs.

Mr Rudd, we are told by Senator O’Brien, is fully committed to the Tasmanian community forest agreement. Why won’t he tell the people of Tasmania that if he is elected Prime Minister there will be no further lock-ups? Why won’t Senator O’Brien, the shadow minister for forestry, tell his own electorate of Tasmania that if he were to become forestry minister there would be no further lock-ups because a good sensible balance was achieved only two years ago? The reason is that they have done this deal in New South Wales to get Greens preferences, prior to the people of Australia being told what the Labor Party’s forest policy is. I think we can have a fair guess what it is if the Greens are willing to sign on to the Labor Party before even knowing what the publicly announced policy is.

That is why Mr Rudd and Senator O’Brien cannot tell us, and why Mr Garrett will not come to Tasmania, as he promised. He must be having a lot of bad hair days if he cannot come to Tasmania for this period of six months.

Senator O’Brien interjecting—

Senator ABETZ—I know I am getting very close to it as well, but I still have a few follicles left. The simple fact is this: the excuses that the Australian Labor Party are providing simply do not stack up. In relation to the accountability of this the guarantees are there. The contracts will guarantee that. It is very similar to the situation we have with the egg industry. Nobody has seriously suggested that the egg industry has some serious deficiency because of its regime; similarly, nobody can make out the argument that the forest sector is going to have some problem as a result of the regime that is being proposed in this legislation.

Senator O’BRIEN (Tasmania) (2.45 pm)—I will make a couple of points. The interesting thing in the conspiracy theories that the minister put forward is that he has no basis for them other than to advance them as the usual scare tactics of a government that has little to say on these matters. The curiosity with which the public must view these statements and the contortions that are necessary to come to the conclusions are mind blowing. Because we have not announced a forest policy and because there is some alleged agreement with the Greens about preferences in New South Wales, that must mean we have a forest policy! Because Mr Garrett
is the environment minister, he is a major issue for Tasmanian forestry—but, on the other hand, why doesn’t Mr Garrett come to Tasmania to look at forestry! Which particular contortion are we supposed to focus on? If Mr Garrett is supposed to come to Tasmania and focus on forestry, is that because the minister expects that there is something in him seeing the industry which will be germane to more reservations, or something like that? I am not sure where the minister is coming from. The classic position of this minister is, when you do not have any facts to justify an argument, you throw a few scare allegations out there and base your whole argument on those scare tactics.

Senator Abetz—Why did he make the promise? He made the promise! That is not my scare tactics. He scared Tasmania by promising.

Senator O’BRIEN—The minister suggests that Mr Garrett scared Tasmania by promising to come there. This is the contorted logic of this minister in relation to that. When Mr Garrett comes to Tasmania he will be welcomed by the Tasmanian people; he is a very popular person. He will look at the things that he needs to see there and he will discuss matters in relation to forestry with Labor’s forest shadow minister; that person is me.

Senator Abetz—Why haven’t you invited him? You do not have much pull.

Senator O’BRIEN—Here we have another little jibe by the minister. Why have I not invited him? I do not need to invite him, but I have certainly spoken to Mr Garrett about these matters, and they are matters which are germane to the discussions between him and me. But Mr Garrett has been very busy. He has been dealing with the issue that this government has refused to adequately deal with for years, and that is the response to the latest iterations of the climate change debate and the fact that this government does not have an adequate response to the climate change issue.

Senator Brandis—So Mr Garrett has been busier than Mr Rudd.

Senator O’BRIEN—Mr Garrett has been busy dealing with the issue—

Senator Abetz—Busier than Mr Rudd?

Senator O’BRIEN—No. I did not say that. I said Mr Garrett has been busy in relation to the issue of climate change and I am very comfortable with the way that Mr Garrett is handling his portfolio, including the portfolio of the arts.

Senator Brandis—We said nothing about the arts.

Senator O’BRIEN—Interestingly, the Minister for the Arts and Sport is in here interjecting. I have had some serious representations from regional art groups talking about the pathetic response that this government has made to the need for funding in the budget.

Senator Abetz—Sorry, no, that was the Tasmanian government.

Senator O’BRIEN—No. They were talking about the federal government, actually. In relation to the budget, states like Tasmania have done particularly poorly, possibly because the new minister has very little pull with the Treasurer in that regard. You would have thought, given that he has been one of his acolytes, he would have had more say in how the arts fared in the budget, particularly for regional communities. Labor continues to support this long-awaited development in this legislation. What we do not understand is why the government, in this chamber on 27 March 2003, would be willing to support precisely the same amendments proposed by the opposition in relation to the Dairy Industry Services Reform Bill 2003 and the Primary Industries (Excise) Levies Amendment.
That was the debate—in committee, as we are now—in this chamber on 27 March 2003. Senator Troeth, representing Minister Truss, I think, at that time, in this chamber, indicated support for precisely the same propositions that I put up. What is different?

Senator Webber—She is much more sensible.

Senator O’BRIEN—It is a different minister, yes, and the interjection from behind is that she is much more sensible. I will not disagree with that but, frankly, I suspect that Senator Troeth was carrying out the instructions of the minister responsible, Minister Truss, and Minister Truss agreed with the opposition proposition, which was, purely and simply, that there be provisions in relation to the tabling of financial reports in this parliament and that there be provisions in relation to what the annual report should say that were tabled in this parliament. In that case, those provisions were in relation to dairy service payments rather than forestry service payments, and in relation to matching funds, which are taxpayer funds, and the outcomes on which those funds were spent. Those outcomes are measured against the objectives that apply to the industry services body. The amendment does not sound too radical to me. It sounds as though it is eminently sensible for the body that actually authorises the company to collect these payments, and that authorises other payments to this company, to report back to it and to be the subject of appropriate scrutiny through this process on behalf of taxpayers.

The amendment also requires the minister to table other reports in relation to the industry services body that has been authorised by the legislation that is going through the chamber now. It talks about the amount of forest industry levy payments received and the amount of taxpayer funding received and a statement by the minister that says the minister is satisfied, on the basis of information provided by the industry services body, that those funds have been properly spent or, alternatively, that they have not been properly spent and the reason that the minister thinks that. That is all we are asking for. We are not asking for some radical imposition of obligations. Frankly, it is laughable to talk about this being a red-tape issue for the company. They already have to provide an annual report under the Corporations Law. All we are saying is that matters that would have to be reported to the minister under the statutory funding agreement should be reported to the parliament. This minister of this government does not want the parliament to see that information. He wants the information to sit only in the hands of the minister.

One has to ask the question: why would a minister be concerned to prevent the parliament from knowing whether the funds the parliament authorised have been properly spent, how much they were, what the matching funds were and whether the minister, or a previous minister—or a successor—was satisfied that the statutory funding agreement they signed was being complied with? Why would the government oppose that? Why would it be sensible for that to not be in the legislation, particularly when the government has previously agreed to it? I do not understand that. We have had a very glib statement saying that the egg industry has different provisions. If the egg industry provisions are not adequate, that is a different matter, but the opposition—

Senator Abetz interjecting—

Senator O’BRIEN—I have not conceded that they are; I said, ‘If they are.’ The opposition believes that in this case it is eminently sensible for provisions to apply that the government has agreed to in respect of similar bodies. The dairy industry is a significant
body and one of the bigger industries in this country. If they are prepared to operate under that—and indeed they do—and it has not been an impediment to their operations, why would this be an impediment to the forest industry? I say that it would not be. The forest industry would be quite happy to be open and honest about how they are dealing with the funds that their community gave to them, as they would be in respect of taxpayer funds.

I did say earlier that the leadership the government has provided to this industry on certain matters has been lacking. However, in this regard, it is an easy proposition for the government to say: ‘Yes, we agree. We believe this industry has nothing to hide. We believe this industry will be very happy to have the statutory funding agreement between the minister and the government the subject of appropriate declaration and affirmation by the minister as well as in the tabling of their annual report.’ That is all we ask. One would not think it was much. One would not have thought it imposed a significant burden on the industry or the minister.

The minister would simply be doing the job that he or she is paid to do, which is to be accountable to the parliament. That is all we ask.

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.56 pm)—Very briefly, the issue in relation to our good friend Mr Garrett had a bit of an airing this afternoon. The simple fact is that he made a promise to the people of Tasmania to visit before the national conference. He did not. I think the people of Tasmania are entitled to an explanation as to why he has not visited. The reason given, that he is so busy he has not found the time, is interesting. Both Mr Rudd and the Prime Minister have been able to make multiple visits to Tasmania during that time—the excuse, therefore, is that Mr Garrett is busier than both Mr Rudd and the Prime Minister. I do not think that argument washes.

In relation to the current Labor Party policy, my media release that was issued on the day of the national conference of the Labor Party footnoted Mr Anthony Albanese’s media statement of 19 November 2004, when he was shadow spokesman in the Mark Latham era. I was able to point out how the wording during that period looked very similar to that which had then been ratified by the most recent Labor conference. The wording was that the Labor Party had ratified a policy of further protection—I repeat: further protection—of a list of Tasmanian forest types. As a result, they have further protection on the books. That is quite clearly in stark contrast—

**Senator O’Brien**—Tell me what it means? You’re making it up. Make up some more.

**Senator ABETZ**—What does ‘further protection’ mean?

**Senator O’Brien interjecting**—

**Senator ABETZ**—No, it is for the Australian Labor Party to identify what they mean, and that is why we have said to the Labor Party, ‘Identify those further areas.’ And they will not. But the Greens have exchanged preferences with them, so the Greens know, but the Australian people and the timber workers do not.

In relation to the area of disclosure and that I might have something to hide—this nonsense of tabling a document in this place and so-called other procedures which would simply be extra red tape and at extra expense—ASIC requirements are that the annual report is publicly available and posted on their website, in any event. Therefore, it is available to every member of the public through that mechanism. If Senator O’Brien wants a personal copy delivered to his office because he cannot master the internet, that is
forestry; I will ask the department to personally provide him with one.

Question negatived.

Bill agreed to.

FORESTRY MARKETING AND RESEARCH AND DEVELOPMENT SERVICES (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2007

Bill—by leave—taken as a whole.

Bill agreed to.

Bills reported without amendment; report adopted.

Third Reading

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.01 pm)—I move:

That these bills be now read a third time.

Senator O'BRIEN (Tasmania) (3.01 pm)—I do not normally speak on third reading debates, but there are a couple of points that I seek to make. Firstly, the opposition chose not to divide on the amendment it moved in the committee stage on the basis that this is a day on which I think some people are absent. In addition to that, of course, we are very clear what the outcome of the vote would be. But I place on the record that the opposition remain committed to those amendments and believe that they were the appropriate amendments. We reserve the right to be critical of the government for not accepting them.

In relation to the conduct of the debate, I think it is notable that this legislation establishes a body which will deal for the first time with marketing and promotion for the timber industry. We welcome that. I have noted both in the committee inquiry and in dealing with this legislation that representatives of the Australian Greens have chosen to take no issue with those matters. I therefore think we can take it that they are entirely uncontroversial. We will treat them as such and we will be quite happy to continue our support for the marketing and promotion of this industry on the basis that it is an industry with important contributions to make in relation to a sustainable forest industry, environmental issues, carbon sequestration, the provision of sustainable building products and a range of other issues which deserve the attention of the Australian public brought to it by a responsible marketing and promotional organisation such as the one which this legislation promotes.

Question agreed to.

Bills read a third time.

FINANCIAL SECTOR LEGISLATION AMENDMENT (RESTRUCTURES) BILL 2007

Second Reading

Debate resumed from 14 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (3.03 pm)—The Financial Sector Legislation Amendment (Restructures) Bill 2007, which the Labor opposition is supporting, encourages the use of what is known as a non-operating holding company, or NOHC, structure. It makes amendments to facilitate the adoption of such a structure as the ultimate holding company of a financial group in Australia by removing the regulatory impediments to the adoption of such a structure that arise under particular requirements of the Corporations Act 2001, removing the impediments that arise under income tax law and making some consequential amendments to other acts.

The measures will offer a financial group greater operational flexibility. They will provide for more efficient and effective means of meeting the prudential requirements by allowing the appropriate allocation of risk
between prudentially and non-prudentially regulated businesses of a group. They will also assist efforts aimed at quarantining risks in the various parts of a financial group by, for example, separating the risks of a group’s entrepreneurial private investment activities from its insurance and banking operations and encouraging new entry and greater competition in the financial services sector.

Schedule 1 will remove the regulatory impediments to the adoption of such a structure identified under the particular requirements of the Corporations Act that currently impede such restructures. The bill will facilitate the adoption of such a structure by providing the minister with the power to grant financial entities relief from specific statutory requirements under the Corporations Act that currently impede such restructures. Any relief granted will be specified in a restructured instrument. The minister will issue a restructure instrument that specifies the statutory provisions and the entities of a company group and any person involved in complying with the requirement to which the relief applies. The relief provided by the minister will only relate to specific provisions of the Corporations Act.

The minister will approve an application if he or she is satisfied that the restructure would improve the operating body’s ability to meet its prudential requirements as administered by the Australian Prudential Regulatory Authority, commonly known as APRA. I have to say that it would be a very foolish minister indeed who did not receive advice from APRA in respect of any level of additional risk that may be involved in such a structural rearrangement. That is just a word of caution for the record. Whilst we support this approach, the minister will obviously need to be well briefed and to keep a close eye on any such arrangements that are entered into.

There will be the application of internal transfer certificates and the bill will provide the minister with power to approve the issue of associated internal transfer certificates by APRA and an internal transfer certificate will provide for the transfer of assets and liabilities between the two entities of the company group being restructured to facilitate the rearrangement of different types of activities into separate business lines.

Also, we note the engagement of employees and contractors. Division 5 of the bill provides for the continuity of terms and conditions of employment for each group that immediately before the restructure was performing duties in the group. The objective is to leave the employer and employee in the same position with the same entitlements following the restructure. The restructure cannot be used by either party to change employment conditions or to trigger redundancies. The measure will apply from 1 July 2007 and was announced on 8 May 2007 in the 2007-08 budget.

Schedule 2 amends consolidation membership rules and the capital gains tax provisions in the Income Tax Assessment Act. The tax consolidation rules treat wholly owned groups as single entities for tax purposes. A consolidated group consists of a head company and all of its wholly owned subsidiaries. Currently, if a consolidated group contains an ADI, the head company tends to be the ADI to ensure that an ADI can be a wholly owned subsidiary of a non-operating holding company for tax consolidation purposes following an ADI structure and can continue to issue certain preference shares to meet its capital requirements. The amendment ensures that certain dividends paid by the non-operating holding company are frankable if those dividends would have been frankable had they been paid by the ADI prior to the restructure.

CHAMBER
There are some consequential amendments to the Australian Prudential Regulation Authority Act, the Income Tax Assessment Act 1997 and the Financial Sector (Transfer of Business) Act 1999, which will be renamed the Financial Sector (Business Transfer and Group Restructure) Act 1999.

I note that the bill we are considering in fact arises from a recommendation from the financial systems inquiry in 1997 known as the Wallis review. We are now 10 years on. It has taken some 10 years for the government to act in this regard. In September 1997 the government announced its response to the Wallis review. As part of that response, the Australian government agreed to facilitate the establishment of non-operating holding companies to encourage new entry and greater competition in the financial sector. So here we are, some 10 years on, dealing with the issue.

Labor, as I said, support the proposals. We support the efforts to address tax avoidance and evasion and to increase fairness in protecting revenue, but we note that the changes to secrecy and disclosure rules also contained are limited to Operation Wickenby and future large-scale tax avoidance and evasion task forces. Proposals to change the secrecy and disclosure framework due later this year will be carefully considered by Labor when introduced to parliament. There are claims that revenue estimates to be collected by Project Wickenby are inflated. However, in the Senate estimates committee the Commissioner of Taxation expressed confidence that the target of $323 million in extra revenue will be reached. As it always does at Senate estimates, Labor asked the ATO questions and received an update. Obviously, if Labor is in government at the end of the year, such an approach will continue and, if there is a change of government, whoever becomes the minister responsible for administering the instruments contained in this act will act cautiously and prudently on the advice of APRA to ensure that there is no increasing risk to any sector of our financial system. Labor will support the bill.

Senator MURRAY (Western Australia) (3.11 pm)—The Financial Sector Legislation Amendment (Restructures) Bill 2007 seeks to facilitate the adoption of a non-operating holding company as the ultimate holding company of a financial group in Australia. This provides financial groups with greater flexibility in choosing a corporate structure to manage risk exposure and to comply with prudential requirements without unnecessarily constraining their business efficiency and competitiveness. According to the explanatory memorandum, the NOHC structure offers a financial group greater operational flexibility while providing for more efficient and effective means of meeting prudential requirements by allowing the appropriate allocation of risk between prudentially and non-prudentially regulated businesses of a group. This type of structure can assist in quarantining risk in the various parts of a financial group by, for example, separating the risks of a group’s entrepreneurial private investment activities from its insurance and banking operations.

Under the amendments in this legislation, the minister will approve an application if he is satisfied that the restructure would improve the operating body’s ability to meet its prudential obligations. Schedule 1 to this bill extends the coverage of the Financial Sector (Transfers of Business) Act 1999 to the restructure of financial groups involving the creation of an NOHC as the ultimate holding company of the group in Australia. It will be applicable to the restructure of a financial group that has an ADI general insurer or life insurance company as the ultimate holding company of a group in Australia and where that ultimate holding company will be replaced by an NOHC.
This bill will facilitate the adoption of an NOHC structure by providing the minister with the power to grant financial entities relief from specific statutory requirements under the Corporations Act that currently impede such restructures. Any relief granted will be specified in a restructure instrument. The minister will also have the power to approve the issue of associated internal transfer certificates, which provide for the transfer of specified assets and liabilities between two related bodies of a financial group by the Australian Prudential Regulation Authority. The arrangement will allow APRA to work through the details of the rearrangement with the financial group so as to assist APRA to efficiently satisfy prudential requirements. This will provide financial groups with an efficient mechanism to separate their activities into separate business lines. The appropriate allocation of risk between prudentially and non-prudentially regulated businesses can assist the financial group to more efficiently and effectively meet its prudential requirements.

Schedule 2 of this bill amends the consolidation membership rules and the capital gains tax provisions in the Income Tax Assessment Act 1997 to remove tax impediments that prevent financial groups that contain ADIs from restructuring. The measure applies from 1 July 2007. According to the explanatory memorandum, these changes were recommended by the Wallis review, which took place in 1997 and concluded that, to protect against creditors of one entity seeking to pursue the other entities of a group, legal separation structured around an NOHC was the best method of quarantining the assets and liabilities of the various entities in the group. Such a structure, according to the Wallis review, relieves other entities of a group of any formal obligation to support a distressed affiliate and, because of this, it will provide financial groups with greater flexibility in choosing a corporate structure to manage their risk exposures and to comply with prudential requirements, without unnecessarily constraining their business efficiency and competitiveness.

The Wallis review took place at least a decade ago and in a substantially different regulatory environment. It also took place well before the Westpoint, ACR and Fincorp collapses, where elderly creditors were often left without their life savings and without recourse against the entities in which they had invested. Financial restructuring can be fraught with danger, especially for unsophisticated investors. It became apparent, when investors in ACR were interviewed, that a number of the investors were under the impression that ACR—its full name being ‘Australian Capital Reserve’—was in some way connected with the Reserve Bank. While groups like Westpoint, ACR and Fincorp are not ADI holders, general insurers or life insurers, the general point stands, particularly when you remember that the disgraced HIH would have fallen into the categories relevant to this bill.

My concern is that, with this separation of liability between an insurance company or bank and a more ‘entrepreneurial’ arm of it, a crooked, incompetent or immoral outfit
could restructure so that it was quarantined from a loss of investor funds. I can see the television advertisements now where the name of the ‘entrepreneurial’ arm is in big letters, the voiceover says that it is part of XYZ insurance group and there is the disclaimer in tiny letters at the bottom of the screen saying that the XYZ insurance group is not liable for any of the losses incurred by the ‘entrepreneurial’ arm. Using an NOHC structure, investors would not, in fact, be able to call on the insurance group to cover any loss that the entrepreneurial arm incurs. Such an entity will not be caught for false and misleading advertising because it will legitimately be part of a particular banking or insurance group. I know of no other effective consumer protection legislation that would stop this from occurring.

We all know that ASIC worked hard to ensure that ACR was properly complying with its obligations in its advertising to consumers, and look at what still happened there. Imagine what would have happened if HIH had been given an NOHC structure. I do not understand why, in the current financial climate, that regulation in this area is being loosened up—unless the government knows that there are dangers on the horizon. We should have learnt our lesson from the corporate collapses of insurance companies like HIH and others not to go down this road without further protection.

I want to remind the Senate that, in respect of related companies, corporate restructuring is already used by unscrupulous companies to deprive creditors, including employees, of access to assets when a subsidiary collapses. There have been examples in the past where employees—and creditors, generally—have lost out where the company responsible for the failure has been a holding company that has washed its hands of the debts of the subsidiary company. When companies were originally conceived, it was intended that they would provide a benefit of limited liability to their owners—namely, the shareholders. It was not intended that they would be manipulated to allow for the separation of assets in one company and liabilities in another, resulting in those to whom money is owed having access to no significant assets to satisfy their entitlements or not being able to recover from the parent or holding company.

On behalf of the Democrats, I have several times brought an amendment to the Senate in an attempt to implement the recommendations of the Harmer Law Reform Commission report in 1988. Harmer proposed making related companies liable for the debts of insolvent companies in limited circumstances. With those limited circumstances, it would be up to a court to consider matters like the extent to which the related company took part in the management of the insolvent company, the conduct of the related company to the creditors of the insolvent company and the extent to which the circumstances that gave rise to the winding-up are attributable to the actions of the related company.

Labor has supported these Democrat initiatives a number of times in the Senate, but for the same number of times the coalition has refused this obvious reform. Its refusal continues to benefit those who wish to abuse the system. The substance of the Law Reform Commission report proposal was that a liquidator or creditor of an insolvent company would be able to apply to a court for an order that a related company must pay an amount of a debt—and, obviously, that affects all creditors, including employees. Whether the court ordered the payment and how much was ordered to be paid would be determined by a number of factors, such as: the extent to which the related body corporate took part in the management of the company; the conduct of the related body
corporate towards the creditors of the company generally and to the particular creditor to which the debt or liability related; the extent to which the circumstances that gave rise to the winding up of the company were attributable to the actions of the related body corporate; and the extent to which the insolvent company had, at any time, engaged in one or more transactions that resulted in the value of the insolvent company’s assets being reduced. One weakness with all of that is that it does require people to take court action and, whether you are an employee or a creditor, that has a cost and time relationship—which means that you are trying to recover money after the event.

On behalf of the Democrats, I moved amendments that arose from that Harmer Law Reform Commission report of 1988 to the Company Law Review Bill 1997, the Financial Sector (Shareholdings) Bill 1998, the Financial Sector Reform (Consequential Amendments) Bill 1998 and the Bankruptcy Legislation Amendment Bill 2002. Previously, when I moved this Harmer amendment, the government said that it understood the intent and motivation behind it and that it would look to do something about it—hollow words, obviously.

It is evident that the behaviour of related corporations impacts upon individuals if related corporations incur debts or liabilities that they cannot meet. The Australian Democrats have long held that the Harmer Law Reform Commission recommendation of 1988 should be in law. Every instance that we have of corporations and unjustly enriched directors being able to walk away from a situation of debts or liabilities of a related company is just unacceptable. In the past it has happened in the airline industry, it has happened in the mining industry and it has happened in the insurance and investment industry. According to the EM:

… to date, no major Australian financial group containing an ADI has chosen to adopt a NOHC structure. This has been because regulatory and tax provisions have impeded Australian financial groups from moving to such a structure.

That being the case, I would suggest that the regulatory framework is just fine as it is. I am all for business efficiency and competitiveness in a global market, and my record in voting in this place shows that. However, it should only be achieved while maintaining market integrity and consumer, creditor and investor protection, which is appropriate. I do not believe that this bill achieves any of these objectives. This is another bill that raises the issue of the role of the minister and the role of the regulator in a given marketplace. Just like the Trade Practices Act, the relevant minister is the Treasurer, and here he intrudes on the role of APRA. Just as the Australian Democrats have difficulty with the role of the Treasurer in relation to the National Competition Commission, we are just as concerned that it is considered appropriate that he have a role in relation to financial institutions.

In June 2006 in an adjournment speech on the National Competition Commission, I questioned the role of the Treasurer in the whole approvals system. I said:

… if the Treasurer is to have a place in regulating matters of competition he must be required to make decisions and to detail them in writing. I note the report from the Scrutiny of Bills Committee that drew attention to the new subsection 36C(1) of the Financial Sector (Transfers of Business) Act 1999, which would grant the Treasurer the discretion to decide whether the conditions specified in paragraphs (a), (b) and (c) of that subsection have been satisfied, thus permitting an ADI, a life insurance company or a general insurer to obtain approval to change its corporate structure and thereby facilitate an NOHC being the ultimate holding company of a fi-
nancial group. The Alert Digest from the Scrutiny of Bills Committee notes that there is no provision in the bill for the exercise of the Treasurer of this discretion to be subject to any form of merits review under the AAT Act 1975. As the Alert Digest says, the Scrutiny of Bills Committee consistently draws attention to provisions that exclude review by relevant appeal bodies or otherwise fail to provide for administrative review.

I also consistently say that regulation of industry should be outside political influence. However, the government keeps inserting ministers into so much of the decision-making process and in situations which exclude review. That is just plain wrong. According to the EM, it must be demonstrated to the minister that, as a result of the restructuring, the operating body would be in a better position to meet relevant prudential requirements. So let us test that. Imagine HIH coming to the Treasurer 10 years ago for a decision to restructure in the way intended in this bill. Does anyone honestly believe they would have been knocked back then?

In examining the application, the minister will also consider the interests of depositors and policy owners of the operating body. The question for the Australian Democrats is whether those two very different classes of people have interests which are in any way similar, or are in fact mutually exclusive. The minister must also take into account the interests of the financial sector and ‘any other matters appropriate in making a decision’. This addition of the minister into the restructuring process is unnecessary and unwise. The legislation sets out the criteria which the minister must take into account, but my question is: why can’t APRA apply those criteria, and as an independent body? My question is: given that the criteria set out under section 36 of the act are the same as those which APRA would be taking into account, why can’t its role be extended to impose conditions on the restructure et cetera—subject to merits review of course?

A number of politicians of all political persuasions have jumped from various parliaments into the arms of investment banks and companies and insurance companies. On the precautionary principle, without imputing any misconduct or bad motive to the present incumbent, I am wary of any minister having a role in this type of matter. Either you have faith in your regulator and the regulatory framework or you do not. And if you do not, then you should beef up the law and the regulator, but do not give commercial corporate decisions to ministers. Although the provisions in this bill require the Treasurer to give reasons for his decision in writing, and to apply certain criteria to that decision making, I reiterate that it can put the minister in an invidious or conflict-of-interest situation and these processes should be left entirely in the hands of the regulator, the law and the courts.

In summary, I take issue with the basic principle of quarantining one part of a group from another for liability purposes. The effect can be that investors can be suckered into undue and irrecoverable exposure in one arm of the group. If the government had introduced law to take account of the Harmer recommendation, I would be much less concerned. My other major concern is the inappropriate powers given to the Treasurer to make these corporate commercial decisions, coupled with its non-reviewable nature. Consequently, the Australian Democrats oppose this bill.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (3.27 pm)—I thank the honourable senators for their contributions to the debate. The measures contained in the Financial Sector Legislation Amendment (Restructures) Bill 2007 facili-
tate financial groups in Australia to adopt a non-operating holding company as their ultimate holding company. This bill provides greater flexibility for financial groups in choosing a structure to better 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 in the financial sector to the benefit of both consumers and business. Any 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 relief from specific statutory restrictions in the Corporations Act 2001, which currently impede the adoption of a non-operating holding company structure. Any relief allowed by the bill will be limited to nominated specific provisions and does not in any way relieve an entity from meeting its general obligations under the Corporations Act or any other relevant legislation. The bill also makes consequential amendments to the income tax law to remove tax impediments that would otherwise discourage restructuring. I again thank the honourable senators for their contributions and I commend the bill to the Senate.

Question agreed to.

Third Reading

Bill passed through its remaining stages without amendment or debate.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Order! It being 3.30 pm, I propose the question:

That the Senate do now adjourn.

Australian Federal Governments

Senator IAN MACDONALD (Queensland) (3.30 pm)—I am in the throes of preparing for the annual trip I make to western Queensland, driving out into those areas and speaking with and listening to the concerns of people in north and north-western Queensland. I try to do this every year for four, five or six days. It is a great opportunity for me as a legislator to get to understand some of the problems of people living in remote parts of Australia. While I was planning that, I was talking to someone who said to me: ‘You’ll be travelling on some of those old beef roads, and you know the Menzies government will go down in history as the government that actually built those roads, those nation-building pieces of infrastructure.’ That led me on to a conversation about what governments are remembered for years later. It made me think of some of the initiatives of the Menzies, Holt, McMahon, Gorton and Fraser governments and some of the significant things that the Howard government have done for Australia. Historically, John Howard will go down as the man who reformed Australia’s taxation system in a way that could not have been envisaged in the five decades before we won government in 1996. That reform in itself had a fundamental impact on and benefit for Australia.

I was talking to this same person and saying, ‘Well, what would you remember the Hawke and Keating governments for?’ Without any prompting, people will immediately say huge inflation and very high interest rates—the 17½ per cent interest rates on housing loans. I well remember that because I myself paid it. I still have my bank statements showing 17½ per cent. My younger staff did not believe me—hence I was grateful that I had hoarded those bank statements—because younger people these days,
who have bought their houses in the last 10 years while the Howard government have been in control, cannot believe that people like me were paying 17½ per cent on our housing loans. And when I say that clients of mine—I was a lawyer and had a lot of business clients—were paying up to 22½ per cent and some even 28 per cent on business loans, people today cannot believe it. I know it is true because I was paying 17½ per cent on my housing loan and I knew business people who were paying up to 28 per cent.

Imagine having those sorts of interest rates today—the country would be broke. And of course it was under the Hawke and Keating regimes. That is what the Hawke and Keating regimes are renowned for and will be remembered for: high interest rates, high unemployment, double-digit inflation. It just shows what Labor are like. They cannot be trusted with the Treasury. Just look around at the state governments today. Similarly, state Labor governments cannot control themselves. They just spend, spend, spend. If people want something, they just hand out the money. So, certainly, that is what the Hawke and Keating governments will be remembered for.

The Howard government will be remembered for reforms in taxation and many other areas. The banning of guns was something that governments and leaders had wanted to do for decades but had never been game to do. John Howard had the courage to do it, and aren’t we all grateful for that now?

Those are some of the things in recent years, but I was also looking at some of the things that the Menzies government did. These are initiatives that the Liberal Party are not often given credit for. Mr President, would you remember that it was actually the Menzies government that introduced the Medical Benefits Scheme? It was the Menzies government that completed the rail standardisation between Sydney and Melbourne and funded other standardisation work. It was the Menzies government that introduced the Home Savings Grant Scheme and the Housing Loans Insurance Corporation. It was the Menzies government that introduced sheltered workshops, a particular benefit that Labor governments prior to Menzies had never even bothered about. It was the Menzies government that introduced invalid pensions, something the Liberal Party are never given credit for. We do not want credit; we are just glad that it was a Liberal government that introduced invalid pensions. The Menzies government also established the Australian Universities Commission and started funding what were then called colleges of advanced education and subsequently became technical and further education institutions and, even more recently, Australian technical colleges. So, looking back even to the Menzies days, Mr President, you can see the great social innovation and education innovation work that the Liberal Party were involved in.

In the period of the Holt, Gorton and McMahon governments, there was an expansion of assistance to secondary schools for science laboratories. Remember how Labor opposed that and how the government gave state aid to government schools; remember how Labor opposed those things in those days? The leopards really do not change their spots much. During the Gorton, Holt and McMahon governments we also introduced assistance for deserted wives. The Aboriginal Affairs Office was established. The Institute of Marine Science, which I proudly pass every day on my way to work between Ayr and Townsville, was established during those Liberal governments. They did fabulous work not only in Australia but right around the world. The Ord River scheme was established under the rule of these governments. Very proudly, I say, Mr President, it was dur-
ing those governments that we held the referendum that allowed Aboriginals to be regarded as full citizens, something that no government before them had done. I am pleased it was a Liberal government that introduced that.

In the Fraser years, family allowance was introduced, providing direct help for mothers and families. The lone fathers benefit was introduced. We prohibited sand mining on Fraser Island—one of the greatest environmental actions of any government in Australia. It was the Fraser government that banned whaling in Australian waters. It was the Fraser government that declared the Great Barrier Reef Marine Park. It was the Fraser government that proclaimed Kakadu, Uluru, Christmas Island and the Coral Sea. And the list goes on. It was the Fraser government that gave the Northern Territory self government and land rights. Under the Fraser government, state and local governments were given a permanent share of money, and local governments these days are in many instances very substantially supported by Commonwealth financial assistance grants. It was the Fraser government that established commercial FM radio. It is the Howard government that is establishing digital radio. It was the Fraser government, as my friend and colleague Senator Brandis would rightly honour, that established the Australian Institute of Sport.

Looking through the histories of governments in Australia, it is easy to ascertain that the good educational, social and infrastructure developments that have occurred in our country have proudly occurred under Liberal governments. Liberal governments have fixed and reformed the tax system and managed the economy to give us the fabulous lifestyle we have in Australia today. That sort of activity will only ever continue under Liberal governments, and I am proud to be a part of one. (Time expired)

Senate adjourned at 3.40 pm