INTERNET

The Journals for the Senate are available at

Proof and Official Hansards for the House of Representatives,
the Senate and committee hearings are available at

For searching purposes use
http://parlinfoweb.aph.gov.au

SITTING DAYS—2007

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

RADIO BROADCASTS

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

<table>
<thead>
<tr>
<th>Location</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>CANBERRA</td>
<td>103.9 FM</td>
</tr>
<tr>
<td>SYDNEY</td>
<td>630 AM</td>
</tr>
<tr>
<td>NEWCASTLE</td>
<td>1458 AM</td>
</tr>
<tr>
<td>GOSFORD</td>
<td>98.1 FM</td>
</tr>
<tr>
<td>BRISBANE</td>
<td>936 AM</td>
</tr>
<tr>
<td>GOLD COAST</td>
<td>95.7 FM</td>
</tr>
<tr>
<td>MELBOURNE</td>
<td>1026 AM</td>
</tr>
<tr>
<td>ADELAIDE</td>
<td>972 AM</td>
</tr>
<tr>
<td>PERTH</td>
<td>585 AM</td>
</tr>
<tr>
<td>HOBART</td>
<td>747 AM</td>
</tr>
<tr>
<td>NORTHERN TASMANIA</td>
<td>92.5 FM</td>
</tr>
<tr>
<td>DARWIN</td>
<td>102.5 FM</td>
</tr>
</tbody>
</table>
FORTY-FIRST PARLIAMENT
FIRST SESSION—TENTH 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. Alan Baird Ferguson
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

Nationals Whip—Senator Fiona Joy Nash

Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber

Australian Democrats Whip—Senator Andrew John Julian Bartlett

Australian Greens Whip—Senator Rachel Siewert

Family First Party Whip—Senator Steve Fielding

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

(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.
(8) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Hon. Ian Gordon Campbell, 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
Treasurer The Hon. Mark Anthony James Vaile MP
Minister for Trade The Hon. Peter Howard Costello MP
Minister for Defence The Hon. Warren Errol Truss MP
Minister for Foreign Affairs The Hon. Dr Brendan John Nelson MP
Minister for Health and Ageing and Leader of the House The Hon. Alexander John Gosse Downer MP
Attorney-General The Hon. Anthony John Abbott 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)
Minister for Fisheries, Forestry and Conservation and Manager of Government Business in the Senate

Senator the Hon. Eric Abetz

Minister for Small Business and Tourism

The Hon. Frances Esther Bailey MP

Minister for Local Government, Territories and Roads

The Hon. James Eric Lloyd MP

Minister for Revenue and Assistant Treasurer

The Hon. Peter Craig Dutton MP

Minister for Workforce Participation

The Hon. Dr Sharman Nancy Stone MP

Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence

The Hon. Bruce Frederick Billson MP

Special Minister of State

The Hon. Gary Roy Nairn MP

Minister for Ageing

The Hon. Christopher Maurice Pyne MP

Minister for Vocational and Further Education

The Hon. Andrew John Robb MP

Minister for the Arts and Sport

Senator the Hon. George Henry Brandis SC

Minister for Community Services

Senator the Hon. Nigel Gregory Scullion

Minister for Justice and Customs

Senator the Hon. David Albert Lloyd Johnston

Assistant Minister for Immigration and Citizenship

The Hon. Teresa Gambaro MP

Assistant Minister for the Environment and Water Resources

The Hon. John Kenneth Cobb MP

Parliamentary Secretary to the Prime Minister

The Hon. Anthony David Hawthorn Smith MP

Parliamentary Secretary to the Minister for Transport and Regional Services

The Hon. De-Anne Margaret Kelly MP

Parliamentary Secretary to the Treasurer

The Hon. Christopher John Pearce MP

Parliamentary Secretary to the Minister for Finance and Administration

Senator the Hon. Richard Mansell Colbeck

Parliamentary Secretary to the Minister for Industry, Tourism and Resources

The Hon. Robert Charles Baldwin MP

Parliamentary Secretary to the Minister for Foreign Affairs

The Hon. Gregory Andrew Hunt MP

Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry

The Hon. Sussan Penelope Ley MP

Parliamentary Secretary to the Minister for Education, Science and Training

The Hon. Patrick Francis Farmer MP

Parliamentary Secretary to the Minister for Defence

The Hon. Peter John Lindsay MP

Parliamentary Secretary to the Minister for Health and Ageing

Senator the Hon. Brett John Mason
SHADOW MINISTRY

Leader of the Opposition                        Kevin Michael Rudd MP
Deputy Leader of the Opposition, Shadow Minis-
ter for Employment and Industrial Relations     Julia Eileen Gillard MP
 and Shadow Minister for Social Inclusion       
Leader of the Opposition in the Senate and    Senator Christopher Vaughan Evans
Shadow Minister for National Development,      
Resources and Energy                           
Deputy Leader of the Opposition in the Senate  Senator Stephen Michael Conroy
and Shadow Minister for Communications and     
Information Technology                         
Shadow Minister for Infrastructure and Water   Anthony Norman Albanese MP
and Manager of Opposition Business in the House 
Shadow Minister for Homeland Security, Shadow  The Hon. Archibald Ronald Bevis MP
Minister for Justice and Customs and Shadow     
Minister for Territories                       
Shadow Assistant Treasurer and Shadow Minister  Christopher Eyles Bowen MP
for Revenue and Competition Policy              
Shadow Minister for Immigration, Integration   Anthony Stephen Burke MP
and Citizenship                                  
Shadow Minister for Industry and Shadow Minis-
ter for Innovation, Science and Research        Senator Kim John Carr
Shadow Minister for Trade and Shadow Minister  The Hon. Simon Findlay Crean MP
for Regional Development                        Craig Anthony Emerson MP
Shadow Minister for Service Economy, Small     Laurence Donald Thomas Ferguson MP
Business and Independent Contractors           
Shadow Minister for Multicultural Affairs,     Martin John Ferguson MP
Shadow Minister for Urban Development and      Joel Andrew Fitzgibbon MP
Shadow Minister for Consumer Affairs            Peter Robert Garrett MP
Shadow Minister for Transport, Roads and Tour-

ism                                         
Shadow Minister for Defence                     Alan Peter Griffin MP
Shadow Minister for Climate Change, Environment
 and Heritage and Shadow Minister for the Arts  
Shadow Minister for Veterans’ Affairs, Shadow    
Minister for Defence Science and Personnel and  
Shadow Special Minister of State                
Shadow Attorney-General and Manager of Oppo-

sition Business in the Senate                  
Shadow Minister for Sport and Recreation,      
Shadow Minister for Health Promotion and       Senator Joseph William Ludwig
Shadow Minister for Local Government           
Shadow Minister for Families and Community     Senator Kate Alexandra Lundy
Services and Shadow Minister for Indigenous   Jennifer Louise Macklin MP
Affairs and Reconciliation                     
Shadow Minister for Foreign Affairs            Robert Bruce McClelland MP
Shadow Minister for Ageing, Disabilities and    Senator Jan Elizabeth McLucas
Carers
| Shadow Minister for Federal/State Relations, Shadow Minister for International Development Assistance and Deputy Manager of Opposition Business in the House | Robert Francis McMullan MP |
| Shadow Minister for Primary Industries, Fisheries and Forestry | Senator Kerry Williams Kelso O’Brien |
| Shadow Minister for Human Services, Shadow Minister for Housing, Shadow Minister for Youth and Shadow Minister for Women | Tanya Joan Plibersek MP |
| Shadow Minister for Health | Nicola Louise Roxon MP |
| Shadow Minister for Superannuation and Intergenerational Finance and Shadow Minister for Banking and Financial Services | Senator the Hon. Nicholas John Sherry |
| Shadow Minister for Education and Training | Stephen Francis Smith MP |
| Shadow Treasurer | Wayne Maxwell Swan MP |
| Shadow Minister for Finance | Lindsay James Tanner MP |
| Shadow Minister for Public Administration and Accountability, Shadow Minister for Corporate Governance and Responsibility and Shadow Minister for Workforce Participation | Senator Penelope Ying Yen Wong |
| Shadow Parliamentary Secretary for Foreign Affairs | Anthony Michael Byrne MP |
| Shadow Parliamentary Secretary for Defence and Veterans’ Affairs | The Hon. Graham John Edwards MP |
| Shadow Parliamentary Secretary for Environment and Heritage | Jennie George MP |
| Shadow Parliamentary Secretary for Treasury | Catherine Fiona King MP |
| Shadow Parliamentary Secretary for Education | Kirsten Fiona Livermore MP |
| Shadow Parliamentary Secretary to the Leader of the Opposition | John Paul Murphy MP |
| Shadow Parliamentary Secretary for Industrial Relations | Brendan Patrick John O’Connor MP |
| Shadow Parliamentary Secretary for Industry and Innovation | Bernard Fernando Ripoll MP |
| Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs | The Hon. Warren Edward Snowdon MP |
| Shadow Parliamentary Secretary to the Leader of the Opposition (Social and Community Affairs) | Senator Ursula Mary Stephens |
CONTENTS

THURSDAY, 16 AUGUST

Chamber
Petitions—
Immigration .................................................................................................................... 1

Notices—
Presentation ................................................................................................................... 1

Committees—
Selection of Bills Committee—Report ................................................................. 2

Committees—
Economics Committee—Extension of Time ............................................................. 11

Notices—
Postponement ................................................................................................................ 11
Address By The Prime Minister Of Canada ............................................................... 11
Nuclear Weapons ............................................................................................................ 11

Business—
Rearrangement ............................................................................................................ 12
Rearrangement ............................................................................................................ 12
SIEVX ............................................................................................................................. 14
National Library of Australia ........................................................................................ 15
Age Pension .................................................................................................................. 16
Jobs, Education And Training Child Care Fee Assistance .......................................... 16
Privacy (Data Security Breach Notification) Amendment Bill 2007—
First Reading ................................................................................................................ 17
Second Reading .......................................................................................................... 18

Committees—
Publications Committee—Report ........................................................................... 20
Rural and Regional Affairs and Transport Committee—Report ................................ 20
Treaties Committee—Reports ..................................................................................... 34

Budget—
Consideration by Estimates Committees—Additional Information ......................... 36
Telecommunications (Interception and Access) Amendment Bill 2007 .................. 36
Maritime Legislation Amendment Bill 2007 ............................................................. 36
Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Am­endment Bill (No. 2) 2007 .................................................................................... 36
Families, Community Services and Indigenous Affairs Legislation Amendment (Further 2007 Budget Measures) Bill 2007—
First Reading ............................................................................................................. 37
Second Reading ............................................................................................................ 37
Aviation Legislation Amendment (2007 Measures No. 1) Bill 2007—
Returned from the House of Representatives ......................................................... 42

Committees—
Foreign Affairs, Defence and Trade Committee—Report ...................................... 42

Business—
Rearrangement .......................................................................................................... 48
Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007,
Northern Territory National Emergency Response Bill 2007,
Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007,
CONTENTS—continued

Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008 and
Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008—
In Committee ................................................................................................................... 51

Questions Without Notice—
Uranium Exports ........................................................................................................ 73
Local Government ....................................................................................................... 75
Nuclear Energy ............................................................................................................. 76
Housing Affordability ................................................................................................. 78
Renewable Energy ....................................................................................................... 78
Fishing Industry .......................................................................................................... 80
Distinguished Visitors ................................................................................................. 81

Questions Without Notice—
Apple and Pear Industry ............................................................................................ 81
Internet Content .......................................................................................................... 83
Interest Rates ............................................................................................................... 84
Indigenous Communities
Nuclear Energy ........................................................................................................... 85

Questions Without Notice: Take Note of Answers—
Uranium Exports—Nuclear Energy ........................................................................... 87
Answers to Questions .................................................................................................. 93

Parliamentarians’ Entitlements ..................................................................................... 95
Committees—
Reports: Government Responses ............................................................................. 95

Auditor-General’s Reports—
Report No. 5 of 2007-08 ............................................................................................ 99

Committees—
Selection of Bills Committee—Report .......................................................................... 99

Budget—
Consideration by Estimates Committees—Additional Information ....................... 102
Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007,
Northern Territory National Emergency Response Bill 2007,
Families, Community Services and Indigenous Affairs and Other Legislation
Amendment (Northern Territory National Emergency Response and
Other Measures) Bill 2007,
Appropriation (Northern Territory National Emergency Response) Bill (No. 1)
2007-2008 and
Appropriation (Northern Territory National Emergency Response) Bill (No. 2)
2007-2008—
In Committee ............................................................................................................. 102
Report: Government Response .................................................................................. 169
In Committee ............................................................................................................. 172

Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007,
Northern Territory National Emergency Response Bill 2007,
Families, Community Services and Indigenous Affairs and Other Legislation
Amendment (Northern Territory National Emergency Response and
Other Measures) Bill 2007,
Appropriation (Northern Territory National Emergency Response) Bill (No. 1)
2007-2008 and
CONTENTS—continued

Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008—
  In Committee .................................................................................................................. 199
  Third Reading ............................................................................................................... 214
Water Bill 2007............................................................................................................... 233
Water (Consequential Amendments) Bill 2007—
  Second Reading ......................................................................................................... 233
  In Committee .............................................................................................................. 276
  Third Reading ............................................................................................................ 299
APEC Public Holiday Bill 2007—
  Second Reading ......................................................................................................... 299
  Third Reading ............................................................................................................. 302
Product Stewardship (Oil) Amendment Bill 2007 ............................................................ 302
Social Security Amendment (2007 Measures No. 1) Bill 2007 ........................................ 302
Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007—
  First Reading ............................................................................................................. 302
  Second Reading ......................................................................................................... 302
Committees—
  Membership ............................................................................................................... 307
Documents—
  Tabling ...................................................................................................................... 307
  Departmental and Agency Contracts ......................................................................... 309
Questions On Notice
  Iran—(Question No. 3173) .......................................................................................... 310
  Petition: Dr Andrew Theophanous and National Crime Authority—
    (Question No. 3386) ................................................................................................. 310
Thursday, 16 August 2007

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

PETITIONS

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

Immigration

The humble Petition of the Citizens of Australia, respectfully showeth:

That we reaffirm our support for the Constitution of the Commonwealth of Australia which states “Whereas the people of New South Wales, Victoria, South Australia, Queensland and Tasmania humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth” (Constitution Act 9th July 1900) and the affirmation of 69% of our Australian population that they are Christians, and the statement of one of our founders that “this Commonwealth of Australia from its first stage will be a Christian Commonwealth” (Sir John Downer 1898), and the Opening Prayer of the Parliaments “Almighty God we humbly beseech Thee to vouchsafe Thy blessing upon this Parliament. Direct and prosper our deliberations to the advancement of Thy glory” and recognises the importance of these beliefs in ensuring the ongoing stability and unity of our Christian nation.

Your petitioners therefore pray the Parliament of Australia will:

1. Review our Commonwealth Immigration Policy to ensure the priority for Christians from all races and colours, especially from persecuted nations, as both immigrants and refugees.

2. Adopt a ten year moratorium on Muslim immigration, so an assessment can be made on the social and political disharmony currently occurring in the Netherlands, France and the UK, so as to ensure we avoid making the same mistakes; and allow a decade of the Muslim leadership and community in Australia to reassess their situation so as to reject any attempt to establish an Islamic nation within our Australian nation.

And your petitioners, as in duty bound, will ever pray.

by Senator Humphries (from three citizens)

Petition received.

NOTICES

Presentation

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

That the Senate—

(a) calls on the Government to ensure that, in the spirit of the open market, no subsidies, payments or escape of taxes or payments be given to the Gunns Limited’s proposed pulp mill in Tasmania; and

(b) prefers that if taxpayer support for business is available it go to non-polluting, clean, green and environmentally-sustainable business.

Senator Milne to move on the next day of sitting:

That the Senate calls on the Government to pursue a reduction in emissions of synthetic greenhouse gases in the Australian refrigeration and air conditioning industry by:

(a) requiring end-of-life recovery and recycling or destruction of substances;

(b) introducing financial measures, such as a tax or a refundable levy on synthetic greenhouse gases, to achieve an increased use of alternative substances with a reduced or negligible global warming potential;

(c) introducing phase-out dates for the use of hydrochlorofluorocarbons and hydrofluorocarbons in particular sectors with high emissions; and

(d) instigating measures which require the adoption of not-in-kind technologies.
Senator PARRY (Tasmania) (9.31 am)—
I present the 13th report of 2007 of the Selection of Bills Committee, and I seek leave to have the report incorporated in Hansard.
Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 13 OF 2007

(1) The committee met in private session on Wednesday, 15 August 2007 at 4.17 pm.
(2) The committee resolved to recommend—
(a) the Australian Securities and Investments Commission (Fair Bank and Credit Card Fees) Amendment Bill 2007 be referred immediately to the Economics Committee for inquiry and report by 17 September 2007 (see appendix 1 for statements of reasons for referral);
(b) the National Market Driven Energy Efficiency Target Bill 2007 be referred immediately to the Economics Committee for inquiry and report by 22 October 2007 (see appendix 2 for statements of reasons for referral);
(c) the provisions of the Trade Practices Amendment (Small Business Protection) Bill 2007 be referred immediately to the Economics Committee for inquiry and report by 5 September 2007 (see appendix 3 for statements of reasons for referral);
(d) the Offshore Petroleum Amendment (Miscellaneous Measures) Bill 2007 be referred immediately to the Economics Committee for inquiry and report by 11 September 2007 (see appendix 4 for statements of reasons for referral);
(e) the provisions of the National Greenhouse and Energy Reporting Bill 2007 be referred immediately to the Environment, Communications, Information Technology and the Arts Committee for inquiry and report by 6 September 2007 (see appendix 5 for statements of reasons for referral); and
(f) the provisions of the Defence Legislation Amendment Bill 2007 be referred immediately to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 5 September 2007 (see appendix 6 for statements of reasons for referral).

(3) The committee resolved to recommend—
That the following bills not be referred to committees:
• APEC Public Holiday Bill 2007
• Maritime Legislation Amendment Bill 2007
• National Health Amendment (Pharmaceutical Benefits) Bill 2007.
The committee recommends accordingly.

(4) The committee considered proposals to refer the Migration Legislation Amendment (Restoration of Rights and Procedural Fairness) Bill 2007 and the Same-Sex: Same Entitlements Bill 2007 to the Legal and Constitutional Affairs Committee, but was unable to reach agreement on whether the bills should be referred.

(5) The committee agreed to reconvene to consider bills to be introduced on 16 August 2007, with a view to reporting again to the Senate later today.

(Stephen Parry)
Chair
16 August 2007
Appendix 1

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Australian Securities and Investments Commission (Fair Bank and Credit Card Fees) Amendment Bill 2007

Reasons for referral/principal issues for consideration
Australians should not have to pay exorbitant bank penalty fees.
This bill will stop fee gouging by banking by:
- Ensuring fees are for cost recovery.
- Boosting the powers of ASIC, etc

Possible submissions or evidence from:
Choice
ASIC
Australian Bankers Association
Consumer Action Law Centre
Etc.

Committee to which bill is to be referred:
Senate Finance and Public Administration Committee

Possible hearing date(s):
5-7 September 07

Possible reporting date:
17 September 2007

Fiona Nash
Whip/Selection of Bills Committee member

Energy Performance Contracting Association of Australia
Committee to which bill is to be referred:
Economics Legislation Committee

Possible hearing date(s):
Possible reporting date:
22 October 2007

Fiona Nash
Whip/Selection of Bills Committee member

Appendix 3
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Trade Practices Amendment (Small Business Protection) Bill 2007

Reasons for referral/principal issues for consideration
This Bill amends section 87 of the Trade Practices Act 1974 to allow the Australian Competition and Consumer Commission to take legal action on behalf of persons who have suffered or are likely to suffer loss or damage as a result of unlawful secondary boycotts.

Currently, the ACCC cannot take such action even though it is able to do so in relation to all other forms of anticompetitive conduct under Part IV of the Trade Practices Act. There is no good reason for excluding secondary boycott conduct.

The Government believes that people affected by unlawful secondary boycotts should have access to the same remedies as people suffering loss or damage as a result of all other forms of anticompetitive conduct under Part IV of the Trade Practices Act.

The relevant secondary boycott provisions are contained in sections 45D and 45E of the Trade Practices Act.

A secondary boycott involves action by two or more people acting in concert, which prevents a third party, such as a potential customer or supplier, from dealing with or doing business with the target. The innocent third party, who has nothing to do with the dispute which is the subject of
the direct boycott, suffers loss or damage as a result of the boycott.

Sections 45D and 45E of the Trade Practices Act deal with two types of secondary boycotts. Section 45D prohibits two persons from acting in concert to hinder or prevent a third person from supplying or acquiring goods or services from the target of the boycott, where the purpose or likely effect of the conduct is to cause substantial loss or damage to the business of the target.

Section 45E prohibits a person from making an agreement with a trade union for the purpose of preventing or hindering the supply or acquisition of goods or services between that person and the target of the boycott.

At present, the ACCC is able to investigate and prosecute unlawful secondary boycotts under sections 45D and 45E, but it cannot bring representative actions. That is, the ACCC cannot seek compensation for damages on behalf for parties affected by a contravention of the provisions.

On previous occasions when Parliament has considered extending representative actions to these provisions, the debate has centred on whether the provisions themselves should form part of the Act or whether they should be reclassified as questions of industrial relations.

On this issue, the Government’s position is clear: this is a matter of competition policy, because trade is adversely affected in the market affected by an unlawful boycott. Secondary boycotts can have a significant impact on our economy. They disrupt trade, they reduce output and they inhibit competition. It is important that we provide a strong disincentive for those people who would target, intimidate and bully small business by applying a secondary boycott to that business.

As the provisions are part of the Trade Practices Act, it makes sense to allow the ACCC to have consistent enforcement powers across all the provisions in Part TV.

In relation to concerns about extending the ACCC’s capacity to take representative actions, it should be emphasised that the Government’s changes will not create a new cause of action. Unlawful secondary boycotts are already prohibited by the Trade Practices Act, and the ACCC can currently obtain substantial penalties against parties who contravene sections 45D and 45E. These reforms are about enabling the ACCC to bring a representative action seeking compensation and other remedies.

The ACCC takes into consideration a number of factors in determining whether it will bring a representative action, including the resources available to those affected to bring their own action. Therefore, these reforms will be of particular benefit to Australian small businesses that often do not have either the time or resources to commence legal action.

For over 10 years, the Government has committed itself to implementing reforms which provide fairer outcomes for small business. This commitment is in recognition of not only the significant contribution small business makes to our economy, but also of the fact that the nearly two million Australian small businesses often lack the power and resources to take action when they experience unfair treatment. This is particularly so in relation to secondary boycotts, as small businesses operating on tight margins and with limited cash flows find it difficult to bear both the cost of the secondary boycott and the burden of initiating legal proceedings.

As a result of this Bill, those who would inflict economic damage on small Australian businesses under s 45D and 45E of the Act will no longer be able to do this with impunity. Instead, they will be held to account for the economic damage that they cause as the ACCC will, for the first time, be able to bring a representative action on behalf of those small businesses.

The Government reaffirms its commitment to stand up for small business against thuggery and intimidation. It is vital, both for our economy and our way of life.

These amendments will achieve greater consistency in the administration of the Trade Practices Act and provide Australian small businesses with greater protection from unlawful secondary boycott conduct.

Possible submissions or evidence from:
Committee to which bill is to be referred:
Economics
Possible hearing date(s):
Possible reporting date:
5 September 2007
(signed)
Stephen Parry
Whip/Selection of Bills Committee member
Appendix 4
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Offshore Petroleum Amendment (Miscellaneous Measures) Bill 2007
Reasons for referral/principal issues for consideration
The effect of repealing section 327 of the Act
The duration of production licences in the light of amendments to the Act
Confirm at the desirability of phone provisions aimed at improving the operation of the Act
Possible submissions or evidence from:
Request submission on the above.
Committee to which bill is to be referred:
Economics
Possible hearing date(s):
Possible reporting date:
11 September 07
(signed)
George Campbell
Whip/Selection of Bills Committee member
Appendix 5
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
National Greenhouse and Energy Reporting Bill 2007
Reasons for referral/principal issues for consideration
The bill:
- Establishes a single, national framework for reporting greenhouse gas emissions, abatement actions and energy consumption and production by corporations from 1 July 2008.
- Eliminates unnecessary costs currently imposed on the Australian economy through streamlining duplicative reporting requirements under a patchwork of separate state, territory and national reporting programmes.
- Enables the secure sharing of nationally consistent data, under robust security and confidentiality protection arrangements, between the Australian Government and state and territory governments to better inform the climate change response and energy policies of all governments.

The Australian Government will invest over $26 million over five years to implement the national reporting system.

Key features of the system are:
- a single online entry point for reporting based on the Online System for Comprehensive Activity Reporting (OSCAR), which is recognised as a world class application;
- public disclosure of company level greenhouse gas emissions and energy data for the first time;
- consistent and comparable data provided to government for policy making; and
- reporting thresholds that avoid capturing small business.

Thresholds and timing for reporting
The first reports under the new national streamlined system will be due in October 2009. Companies will report greenhouse gas emissions and energy use and production for the preceding 12-month period from 1 July 2008 to 30 June 2009.

Companies emitting more than 125,000 tonnes of greenhouse gases or using or producing more than 500 terajoules of energy will be required to report at the start of the new system, as will facilities emitting more than 25,000 tonnes of greenhouse gases or using or producing 100 terajoules of energy.

The threshold for companies will be phased down over time to 50,000 tonnes of greenhouse gases or 200 terajoules of energy used or produced, to allow new reporting companies to prepare for
their reporting requirements. The facility threshold will remain the same.

**Relationship to Emissions Trading**
The Bill underpins the Australian Emissions Trading system, announced by the Prime Minister on 17 July 2007.
Robust data reported under the Bill will provide sound information to inform decision making during the establishment of the trading system, including permit allocation and incentives for early abatement action.

**Development of the Bill**
Introduction of this Bill gives effect to the April 2007 Council of Australian Governments (COAG) decision to establish a mandatory National Greenhouse Gas and Energy Reporting System.
The design of the national reporting system is consistent with the proposal developed through the COAG and consulted on during October 2006 with all levels of Government and industry.

**Possible submissions or evidence from:**
Committee to which bill is to be referred: Environment, Communications, IT and the Arts
Possible hearing date(s):
Possible reporting date:
6 September 2007
(signed)
Stephen Parry

Whip/Selection of Bills Committee member
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
National Greenhouse and Energy Reporting Bill 2007
Reasons for referral/principal issues for consideration
Arbitrary nature of Thresholds – Part 2, 13
Possible submissions or evidence from:
Emissions Trading Experts
State Governments, Academics, Economists
Committee to which bill is to be referred: E.C.I.F.A.

Possible hearing date(s):
Possible reporting date:
(signed)
George Campbell

Whip/Selection of Bills Committee member
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Defence Legislation Amendment Bill 2007
Reasons for referral/principal issues for consideration
Consideration of the bill as necessary
Possible submissions or evidence from:
Committee to which bill is to be referred:
Foreign Affairs, Defence and Trade
Possible hearing date(s):
Possible reporting date:
5 September
(signed)
Stephen Parry

Whip/Selection of Bills Committee member
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Same-Sex: Same Entitlements Bill 2007 for inquiry and report by 13 September 2007; and
Migration Legislation Amendment (Restoration of Rights and Procedural Fairness) Bill 2007 for inquiry and report by 10 September 2007”.

At the end of the motion, add “and, in respect of the following bills, the bills be referred to the Legal and Constitutional Affairs Committee:

(a) Same-Sex: Same Entitlements Bill 2007 for inquiry and report by 13 September 2007; and
(b) Migration Legislation Amendment (Restoration of Rights and Procedural Fairness) Bill 2007 for inquiry and report by 10 September 2007”.

It is becoming a regular Thursday morning activity for the government to come in here and whack down its desired outcome for bills to be referred to the Selection of Bills Committee and to demonstrate its willingness to
ignore the views of anyone else in this chamber. I repeat once again that, unless there has been an extremely good reason, the longstanding convention has been that any request for a bill to be referred to the committee has been agreed to. Certainly I have heard of no reason of any substance to explain why the Democrats’ request for these two pieces of legislation to be sent to the committee should be rejected by the government. The government’s attitude seems to be: ‘We don’t like it, so we’re not going to support it being referred.’ Frankly, that is not good enough. The government is quite entitled to vote against the bills should they come on for debate in this chamber, but to block the bills from being examined by committee and to deny the opportunity to seek public input into these bills are very different matters.

It is very important to maintain the distinction that referring a bill to a committee does not indicate support for what is in the bill; it indicates support for the concept of enabling a bill and the matters that the bill addresses to be examined. Putting forward policy proposals in a legislative form is, I think, probably the key task of a parliament or a legislature. To refuse to allow that to be done without good reason or without any reason of any consequence at all other than, ‘We don’t feel like it,’ or ‘We don’t want that issue to be raised,’ is, in my view, just not good enough.

It should be emphasised that the Selection of Bills Committee Report No. 13 of 2007 is referring six bills, including—I accept—two private senators’ bills. The government is going to request the referral of the four other bills to committee later this afternoon. This has also become a consistent pattern: bills that we have not seen or bills that have just been introduced that morning are referred across to a committee.

The two Democrat private senators’ bills would require only short inquiries. This is partly a reflection of the reality that there is a real prospect that the next sitting could be the last before the election. It is also partly a reflection of reality that, whilst the legislation that we are seeking to refer has not been examined previously, despite what the government might say, it is an attempt to put into legislative form issues that have been raised. I point particularly to the Same-Sex: Same Entitlements Bill 2007. The Democrats have had legislation seeking to remove discrimination in this area in this chamber since 1995. So the broad issue is not new, but the form in which it is being put forward here is new. This is new legislation, and it is being put forward in the first sitting week after a report was brought down by the Human Rights and Equal Opportunity Commission, following a comprehensive inquiry. It is a new piece of legislation; it is in a new format. It might be addressing an old issue but it is addressing it in a new way, following a comprehensive inquiry.

That is one reason why the Senate inquiry does not need to be particularly long. It is simply examining whether or not the legislation adequately addresses the recommendations of the Human Rights and Equal Opportunity Commission report. I emphasise that support for the principle of this report has been expressed by people across the political spectrum. Unfortunately, we keep seeing support expressed for the principle, but any efforts to enact that principle in law continue to be blocked. This seems to be another example of where an effort to implement a principle that everybody says they support is blocked by the government. This shows that the government’s words cannot be believed. The government are not genuine about addressing this issue of discrimination against same-sex couples, because they keep block-
ing every attempt to address it—and this is yet another one.

Migration is another area where the issues are old. These issues were raised and debated here in 1998. However, the context in which migration laws are operating is new, so I believe that it is appropriate for them to be examined. A new bill has been put forward; it was introduced last week. (Time expired)

Senator LUDWIG (Queensland) (9.37 am)—Mr President, I congratulate you on your new position. I want to make a short contribution on the Democrats motion. We will not be opposing it but I want to make a particular point: the strength and test of a government is its ability to allow dissent. In this instance, the government has demonstrated its inability to allow matters to be aired, to be scrutinised by the Senate and to be dealt with by the Senate, particularly where the government may fundamentally disagree.

Senator Bartlett has encapsulated what is the ability of the Senate—the ability to scrutinise, to look at the issues and to have debate in the committees, which then report back to the Senate. That is all that Senator Bartlett has asked for. He has not asked for a view from the government about the veracity or otherwise of the particular piece of legislation. Senator Bartlett understands that there may be differing views in the Senate on the bill and the difficulties that might surround how it might be progressed. Senator Bartlett accepts that.

This is the difficulty that I see with what this government has turned the Selection of Bills Committee into. We now have a situation where the government refers bills that it thinks the committee should look at, it accepts references—even, sometimes, when we may indicate as part of the Selection of Bills Committee that we do not have a view on whether the bill should be referred—and it denies references, based on the grounds that it thinks that the matter has already been looked into. I suspect that its argument in this instance will be that the Human Rights and Equal Opportunity Commission has looked into this issue significantly and therefore no further work needs to be done. In this instance, there is a difference. This is about a legislative outcome and how that would be progressed. It is a different issue, in truth. The government simply rejects bills that it thinks should not be referred, because it wants them dealt with quickly in the chamber, or it sends them off for a short inquiry.

We now have a situation which is a far cry from where we used to be. The position which we adopted as a general principle in this place was that, within the usual confines, senators should be able to allow bills to be referred to committees for inquiry and examination. That does not predetermine the position that any party might adopt when the bill comes back here for debate—if it were to come back for debate, because sometimes they do not. The government has now sought to exert control over the outcome—and this is a poor outcome for the Senate more broadly.

The beauty of this place is that it allows debate and it allows committees to examine matters. Part of the ability of the committee structure is to allow scrutiny, to throw light into dark corners and to allow us to have arguments—and not to have them in here. That is part of the position as well, because, if you will not allow the committees to do work such as that which Senator Bartlett has put forward, the debates will come back into the chamber. Senators understand that, if they want matters to be progressed, they will have to progress them in here. We will then lose more time dealing with these issues on the floor of the chamber, instead of allowing the Senate committees to deal with them. I am also concerned about that. By not allow-
ing the committees to do their work, more business is generated in here. You will then complain that not enough government business is being done. May I remind you that it may, in fact, be by your own hand.

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (9.41 am)—The government opposes the motion put forward by Senator Bartlett. What Senator Bartlett and Senator Ludwig have told the Senate would, on the face of it, make a fair degree of sense, until you realise that the selection of bills proposal that the government is supporting is the referral of six bills to various committees. When you look at those six bills, you see that two of them are from the minor parties: one from Family First and one from the Leader of the Democrats herself, the National Market Driven Energy Efficiency Target Bill 2007. The government has some questions about the policy intent of that bill, as it does with the Family First proposal, but it is more than happy for those bills to be referred to Senate committees. The bland argument that the government will not consider any dissent, that the government will not allow the reference of anything which it does not agree with, falls flat at the very first hurdle, which is: what are we actually debating? Out of the six bills being referred, two are from minor parties and the government has not indicated its support for them.

We as a government make a considered decision—and it would be good if every senator would do this—in relation to each bill that is proposed. We then look at the work, at the timing and at the particular value of each of the bills. In the case of the Same-Sex: Same Entitlements Bill 2007, we simply advise the Senate—and I dare say that this is, perhaps, where the idea of this bill came from—that the Human Rights and Equal Opportunity Commission reported on this very matter, and its report was tabled in this place on 27 June 2007.

Are we trying to stifle consideration? No. The Human Rights and Equal Opportunity Commission, which this government funds, received 680 submissions. That is a lot of public input and a lot of public consideration, and guess what? The government wants to consider the report. That is not unreasonable. Given that another arm has already investigated this—namely, the Human Rights and Equal Opportunity Commission, which received over 680 submissions on that particular issue—we believe it is a bit premature to have such a Senate inquiry.

The government does not support the referral of the Migration Legislation Amendment (Restoration of Rights and Procedural Fairness) Bill 2007 because most of the provisions the bill would seek to repeal—and that is what we are discussing—were enacted with the support of the then government and opposition. So this issue had a lot of public debate at the time the government and opposition agreed to it and now somebody is wanting to revisit the issues and repeal some of those sections. We are saying no, the Senate has had a fair crack at this already, has had a look at that, and, therefore, this is not a fresh and new debate—matters have already been considered.

We have taken a very principled and considered approach to all the bills put before us—the two new ones, the Australian Securities and Investments Commission (Fair Bank and Credit Card Fees) Amendment Bill 2007 and the National Market Driven Energy Efficiency Target Bill 2007, things that the Human Rights and Equal Opportunity Commission have not looked into and things that the Senate has not debated before. These new and fresh matters are worthy of a Senate inquiry and that is why we support them, but we do not support the other matters which
have already been given considerable air-
time. When you manage these things, you
have to determine value in consideration of
each measure.

Senator BOB BROWN (Tasmania—
Leader of the Australian Greens) (9.47
am)—What a failure that was to respond to
the submissions from the two earlier senators
from the Democrats and the opposition. The
government is simply dictating, through its
numbers, which bills it will allow to go to
committee and which it will not and which
topics it decides it wants to have analysed by
Senate committees and which it does not. It
is a policy-driven decision made by an arrog-
ant government which has taken over the
committee system, which has the majority in
the Senate and is dictating which topics af-
fecting the Australian populace will get Sen-
ate scrutiny and which will not. This is a
breach of the promise by the Prime Minister
himself that he would not allow hubris to
interfere when the government got the num-
bers to control this place. If ever there was
an argument for the government to be
stripped of seats in this Senate and put back
into a minority, where it deserves to be, we
are seeing it here this morning. Senator
Abetz has fostered that argument and put it
beautifully by his presentation—that sheer
arrogance to deny oxygen to topics which
should go to the Senate committee, such as
the Migration Legislation Amendment (Res-
toration of Rights and Procedural Fairness)
Bill 2007 and the Same-Sex: Same Entitle-
ments Bill 2007. The government says: ‘No,
we don’t want to see those scrutinised. We
don’t want to see how they might best be
implemented. They’re complex pieces of
legislation and we, in particular, don’t want
to see our government’s failure in these areas
under scrutiny.’

Senator Abetz has by his reverse argu-
ment, his negative presentation, really stated
for us all how out of control the arrogance of
the government is now that it has the num-
bers in this Senate and how we are going to
see this Senate continue to be sidelined and
its role under the Constitution put on the
sideboard if this government continues to
have a majority in this place.

Senator ALLISON (Victoria—Leader of
the Australian Democrats) (9.49 am)—It
might be helpful to the debate if the minister
could give the Senate some indication of
when the government expects to make a de-
cision on the Same-Sex: Same Entitlements
Bill 2007, or proposals therein, and whether
the minister is prepared to provide—

something which has been missing so far and
is a good reason for sending this bill off to
committee—details of the cost implications
of these changes. We have heard some fairly
rough, rubbery figures expressed here and
there, but there are certainly big differences
and gaps in the information that is needed.
That was one of the reasons not to revisit the
whole issue. I think HREOC did that very
well indeed. We do not need to do that but
we do need to look at the implications of this
bill coming into force.

When is the government going to make up
its mind on this issue? Will we have to wait
until after the election or can we expect
something fairly soon? After all, HREOC did
an extensive inquiry. It seems to me there is
only one consideration and that is: how soon
can we implement it? Are we going to get a
decision in the next few days, weeks or
months or after the election? When will it
be? Will the minister see to it that informa-
tion about the cost implications that were
mentioned are made available?

The PRESIDENT—Senator Allison,
Senator Abetz has already spoken and we are
not in the committee stage of a bill, so I will
put the question.
Question put:
That the amendment (Senator Bartlett’s) be agreed to.

The Senate divided. [9.55 am]
(The President—Senator the Hon. Alan Ferguson)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noes</td>
<td>35</td>
</tr>
<tr>
<td>Majority</td>
<td>5</td>
</tr>
</tbody>
</table>

AYES

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

NOES

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

PAIRS

Bishop, T.M.  Troeth, J.M.
Carr, K.J.  Coonan, H.L.

Evans, C.V.  Ellison, C.M.
Hutchins, S.P.  Minchin, N.H.
Stephens, U.  Brandis, G.H.

* denotes teller

Question negatived.
Ordered that the report be adopted.

COMMITTEES
Economics Committee

Extension of Time

Senator PARRY (Tasmania) (9.58 am)—by leave—At the request of the Chair of the Economics Committee, Senator Ronaldson, I move:

That the time for the presentation of the report of the Economics Committee on private equity markets be extended to 20 August 2007.

Question agreed to.

NOTICES
Postponement

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Faulkner for today, proposing the reference of a matter to the Foreign Affairs, Defence and Trade Committee, postponed till 10 September 2007.

General business notice of motion no. 877 standing in the name of Senator Stott Despoja for today, relating to Hearing Awareness Week, postponed till 10 September 2007.

ADDRESS BY THE PRIME MINISTER OF CANADA

The PRESIDENT (9.59 am)—A message has been received from the House of Representatives, inviting senators to attend an address to the House by the Rt Hon. Stephen Harper, Prime Minister of Canada.

NUCLEAR WEAPONS

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.59 am)—I move:
That the Senate—

(a) notes that 14 August 2007 was the parliamentary launch of Securing our Survival (SOS): The Case for a Nuclear Weapons Convention, published by the International Campaign to Abolish Nuclear Weapons;

(b) considers that a nuclear weapons convention would offer the international community the best way to prevent proliferation and nuclear terrorism and achieve disarmament; and

(c) urges the Government to actively pursue multinational negotiations, leading to a nuclear weapons convention.

Question negatived.

Senator Allison—I seek leave to table a copy of Securing our survival (SOS): the case for a nuclear weapons convention, which was released today in Parliament House.

Leave granted.

Senator Milne—by leave—I wish to have it noted that the Australian Greens supported the motion.

BUSINESS

Rearrangement

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (10.00 am)—I ask that government business notice of motion No. 1, varying the hours of meeting for the Senate this week, be taken as a formal motion.

The PRESIDENT—Is there any objection to this motion being taken as formal?

Senator Bob Brown—Yes.

The PRESIDENT—There is an objection.

Rearrangement

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (10.01 am)—I move:

That, on Tuesday, 11 September 2007:

(a) the hours of meeting shall be 2.30 pm to adjournment; and

(b) the routine of business shall be:

(i) questions without notice, and

(ii) the items specified in standing order 57(1)(b)(iii) to (xii).

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.01 am)—I seek leave to make a short statement.

Leave granted.

Senator BOB BROWN—I thank the Senate, particularly Senator Abetz. The motion before us seeks to vary the sitting hours on the first Tuesday when we come back in September, to facilitate the visit of the Rt Hon. Stephen Harper, the Prime Minister of Canada, to address the House of Representatives. Senators have been asked to join that address. The matter I want to raise is the formal notice given to Australians that we would also be seeing a visit by Prime Minister Abe of Japan, to address the House of Representatives. That visit has fallen through. I want to find out from the government why that has happened. On the face of it, it appears that, in the run-up to the election, the Prime Minister of this country did not want the embarrassment of finding thousands of protesters outside this parliament protesting against the slaughter of Australian whales—including, this year, some 20 humpback whales—by the Japanese whaling fleet, which is currently preparing to set forth on its bloody mission from Tokyo into Australian waters off Antarctica in the coming summer.

Senator Abetz—Mr President, I raise a point of order. The motion that is being sought is dealing only with a visit by Prime Minister Harper. We can ask why other prime ministers and other people are not visiting but, with great respect, I think we should confine our comments to those which are relevant.
The President—Minister, Senator Brown sought leave to make a statement, so he does not need to speak directly to the motion that is before the chair.

Senator BOB BROWN—And I will be brief. The Prime Minister of Australia, John Howard, did not want to be embarrassed by thousands of protesters outside of this parliament, in the run-up to an election, as Prime Minister Abe addressed the parliament inside. He did not want to have to speak to Prime Minister Abe about the slaughter of Australian whales in Australian waters before their migration north along Australian coasts. Next year we will have fewer humpback whales not only because of Prime Minister Abe’s backing of the slaughter but also because of Prime Minister Howard’s failure to take any action to prevent it, such as in the International Court of Justice.

Prime Minister Abe is having trouble at home; this arrangement was convenient for him. Prime Minister Howard did not want to face the embarrassment of his failure to protect Australia’s whales against this slaughter by the Japanese whaling fleet in front of the Australian populace in the run-up to the election. The question I put to the government is: why isn’t Prime Minister Helen Clark, of New Zealand, invited to address this parliament? Are we to see only right-wing, conservative prime ministers from around the world addressing the parliament? Why not our neighbour? Why not the long-serving prime minister of our neighbouring country, New Zealand? When will she get to address this parliament—or is it only people who have views consistent with those of Prime Minister Howard who get the honour? I think it is time that we had some independent way of judging who comes to address the House of Representatives. I think we could be more eclectic about it rather than having this selective request from Prime Minister Howard.

Senator Payne interjecting—

Senator BOB BROWN—Prime Minister Howard makes all appointments, Senator, on a political basis. This is another example of the political use of this parliament. We need to have a more expansive view taken on behalf of the Australian people as to who comes to address the House of Representatives.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (10.06 am)—I seek leave to make a brief statement.

Leave granted.

Senator ABETZ—The issue that is before the Senate is in relation to Prime Minister Harper’s visit, and what we have just witnessed is an abuse of the process to try to make some cheap political points. In relation to the comment that only right-wing conservatives address the parliament, under the prime ministership of John Howard we have had that right-wing conservative Bill Clinton and that right-wing conservative Tony Blair address our parliament. What a joke! How ridiculous and stupid to make those sorts of assertions.

When the invitation was made to the Prime Minister of Japan, we knew that humpbacks were going to be migrating north at the time and we knew that whaling was an issue. In recent times, our environment ministers, in particular Malcolm Turnbull and Ian Campbell, have been champions in this area on the world scene. We all know why the Prime Minister of Japan is not coming. He has had to decline our invitation because of certain matters domestically within Japan. We knew about the whaling season. The whales did not change their migratory patterns because of the impending visit by a Japanese prime minister. We knew about the whaling issues before the invitations were extended and it is simply because of the position the Prime Minister of Japan finds him-
self in that this visit is no longer taking place. To try to spin some sort of conspiracy theory out of this shows why the Greens should never be given the balance of power in this place.

Question agreed to.

SIEVX

Senator GEORGE CAMPBELL (New South Wales) (10.08 am)—At the request of Senator Lundy, I move:

That the Senate—

(a) notes that:

(i) 19 October 2007 is the sixth anniversary of the sinking of the boat known as the Suspected Illegal Entry Vessel X (SIEV X), which was bound for Australia and sank with the loss of 353 lives, including 146 children and 142 women,

(ii) a temporary memorial to the SIEV X victims, featuring painted timber poles to represent the children, women and men who drowned, will be erected on 2 September 2007 at Weston Park, in the Australian Capital Territory, on the Canberra lakeshore and will stay in place for 6 weeks, with the approval of the National Capital Authority (NCA) and the Australian Capital Territory Government,

(iii) this memorial is supported by people from church, school and community groups from every state and territory in Australia, by the families of the victims, and by the Australian Capital Territory Government, and

(iv) approval for a permanent memorial to the SIEV X victims is ultimately the responsibility of the Canberra National Memorials Committee (CNMC), chaired by the Prime Minister (Mr Howard);

(b) calls on the NCA and the CNMC to give permission for the SIEV X memorial project to be established as a permanent memorial on the Canberra lakeshore; and

(c) expresses its regret and sympathy at the tragic loss of so many innocent lives.

Question put.

The Senate divided. [10.13 am]

(The President—Senator the Hon. Alan Ferguson)

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

Noes............. 33

Majority........ 1

AYES

Allison, L.F.  
Bishop, T.M.  
Campbell, G.  
Faulkner, J.P.  
Forshaw, M.G.  
Hurley, A.  
Kirk, L.  
Lundy, K.A.  
McEwen, A.  
Milne, C.  
Murray, A.J.M.  
O’Brien, K.W.K.  
Ray, R.F.  
Stephens, U.  
Stott Despoja, N.  
Wong, P.  

NOES

Abetz, E.  
Barnett, G.  
Birmingham, S.  
Boyce, S.  
Chapman, H.G.P.  
Cormann, M.H.P.  
Ferguson, A.B.  
Fifield, M.P.  
Heffernan, W.  
Johnston, D.  
Kemp, C.R.  
Macdonald, J.A.L.  
McGauran, J.J.J.  
Parry, S.  
Payne, M.A.  
Scullion, N.G.  
Watson, J.O.W.  

Barrett, A.J.J.  
Brown, B.J.  
Crossin, P.M.  
Fielding, S.  
Hogg, J.J.  
Hutchins, S.P.  
Ludwig, J.W.  
Marshall, G.  
McLucas, J.E.  
Moore, C.  
Nettle, K.  
Polley, H.  
Siewert, R.  
Sterle, G.  
Webber, R.  
Wortley, D.  
Adams, J.  
Bernardi, C.  
Boswell, R.L.D.  
Calvert, P.H.  
Colbeck, R.  
Ferravanti-Wells, C.  
Fisher, M.J.  
Humphries, G.  
Joyce, B.  
Macdonald, I.  
Mason, B.J.  
Nash, F.  
Patterson, K.C.  
Ronaldson, M.  
Trood, R.B.
PAIRS
Brown, C.L. Minchin, N.H.
Carr, K.J. Coonan, H.L.
Conroy, S.M. Troeth, J.M.
Evans, C.V. Brandis, G.H.
Sherry, N.J. Ellison, C.M.
* denotes teller

Question negatived.

NATIONAL LIBRARY OF AUSTRALIA

Senator GEORGE CAMPBELL (New South Wales) (10.16 am)—At the request of Senator Lundy, I move:

That the Senate—

(a) notes that:

(i) legal deposit is a statutory provision found in the legislation of most countries requiring producers of publications to deposit gratis copies of their works in libraries, usually the national library,

(ii) in Australia, the Copyright Act 1968 requires Australian publishers to deposit one copy of every publication with the National Library of Australia (NLA),

(iii) the National Library Act 1960 requires the NLA to develop and maintain a national collection of library material relating to Australia and the Australian people and legal deposit is a major factor enabling the NLA to meet this requirement,

(iv) legal deposit has ensured that an outstanding collection of Australian publications in print form has been acquired by the NLA on behalf of the nation,

(v) the NLA is seeking revision of the legal deposit section within the Copyright Act 1968 to encompass publications in non-print form due to the impact of new technologies and the Internet on the creation, publication and dissemination of information, which has been profound in recent years,

(vi) a significant amount of Australia’s documentary heritage is now published in electronic form and unless the NLA is given a mandate through legal deposit to collect non-print publications, many of these works will be lost to future generations, especially as many electronic works have a very short lifespan on the Internet, and

(vii) the NLA is collecting a very small proportion of Australian electronic publications, as this endeavour requires seeking permission on a publication-by-publication basis, which is very resource intensive and unsustainable into the future;

(b) calls on the Government, as a matter of urgency, to introduce legislation to extend legal deposit to non-print publications, as such legislation is of strategic importance to the future collection and preservation role of the NLA; and

(c) recognises that other countries have already acknowledged this and legal deposit legislation has been amended in the United Kingdom, Canada, New Zealand, South Africa, France, Japan and the Scandinavian countries.

Question put.

The Senate divided. [10.18 am]

(The President—Senator the Hon. Alan Ferguson)

Ayes............. 32
Noes............. 33
Majority........ 1

AYES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Campbell, G. * Crossin, P.M.
Faulkner, J.P. Fielding, S.
Forshaw, M.G. Hogg, J.J.
Hurley, A. Hutchins, S.P.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Milne, C. Moore, C.
Murray, A.J.M. Nettle, K.
O’Brien, K.W.K. Polley, H.
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.20 am)—I move:

That the Senate—

(a) notes that:

(i) Australia is experiencing a period of record economic growth, and

(ii) the 2007-08 Federal Budget provided tax cuts to those earning more than $75,000, at a cost of $3.5 billion per year; and

(b) calls on the Government to invest approximately $3 billion per year to lift the aged pension by $60 per fortnight.

Question put.

The Senate divided. [10.22 am]

(The President—Senator the Hon. Alan Ferguson)

Ayes.............. 8
Noes.............. 54
Majority........ 46

AYES

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

NOES

Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Bishop, T.M.
Boyce, S. Calvert, P.H.
Campbell, G. Chapman, H.G.P.
Colbeck, R. Cormann, M.H.P.
Crossin, P.M. Eggleston, A.
Faulkner, J.P. Ferguson, A.B.
Fierravanti-Wells, C. Fifield, M.P.
Fisher, M.J. Forshaw, M.G.
Heffernan, W. Hogg, J.J.
Humphries, G. Hurley, A.
Hutchins, S.P. Johnston, D.
Joyce, B. Kemp, C.R.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Macdonald, I.
Marshall, G. Mason, B.J.
McEwen, A. McGauran, J.J.J.
McLucas, J.E. Moore, C.
Nash, F. * O’Brien, K.W.K.
Parry, S. Patterson, K.C.
Payne, M.A. Polley, H.
Ray, R.F. Ronaldson, M.
Scullion, N.G. Stephens, U.
Sterle, G. Trood, R.B.
Watson, J.O.W. Webber, R.
Wong, P. Wortley, D.

* denotes teller

Question negatived.

AGE PENSION

Senator SIEWERT (Western Australia) (10.25 am)—I move:

That the Senate—

(a) notes that:

(i) Australia is experiencing a period of record economic growth, and

(ii) the 2007-08 Federal Budget provided tax cuts to those earning more than $75,000, at a cost of $3.5 billion per year; and

(b) calls on the Government to invest approximately $3 billion per year to lift the aged pension by $60 per fortnight.

Question put.

The Senate divided. [10.22 am]

(The President—Senator the Hon. Alan Ferguson)

Ayes.............. 8
Noes.............. 54
Majority........ 46

AYES

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

NOES

Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Bishop, T.M.
Boyce, S. Calvert, P.H.
Campbell, G. Chapman, H.G.P.
Colbeck, R. Cormann, M.H.P.
Crossin, P.M. Eggleston, A.
Faulkner, J.P. Ferguson, A.B.
Fierravanti-Wells, C. Fifield, M.P.
Fisher, M.J. Forshaw, M.G.
Heffernan, W. Hogg, J.J.
Humphries, G. Hurley, A.
Hutchins, S.P. Johnston, D.
Joyce, B. Kemp, C.R.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Macdonald, I.
Marshall, G. Mason, B.J.
McEwen, A. McGauran, J.J.J.
McLucas, J.E. Moore, C.
Nash, F. * O’Brien, K.W.K.
Parry, S. Patterson, K.C.
Payne, M.A. Polley, H.
Ray, R.F. Ronaldson, M.
Scullion, N.G. Stephens, U.
Sterle, G. Trood, R.B.
Watson, J.O.W. Webber, R.
Wong, P. Wortley, D.

* denotes teller

Question negatived.

JOBS, EDUCATION AND TRAINING

CHILD CARE FEE ASSISTANCE

Senator SIEWERT (Western Australia) (10.25 am)—I move:
That the Senate—

(a) notes:

(i) that the policy of restricting Jobs, Education and Training (JET) Child Care Fee Assistance funding to 12 months limits the capacity of single parents to complete most courses of study,

(ii) the importance of further education opportunities to advance the earning capacity and living standards of single parent families, and

(iii) that the new restrictions on the JET program are hurting single parents; and

(b) calls on the Government to lift the restriction of 12 months funding for JET assistance in order to enable single parents to better access education opportunities.

Question put.

The Senate divided. [10.26 am]

(The President—Senator the Hon. Alan Ferguson)

Ayes…………… 32
Noes…………… 33
Majority……… 1

AYES

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

NOES

Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Boswell, R.L.D.

Boyce, S. Calvert, P.H.
Chapman, H.G.P. Colbeck, R.
Cormann, M.H.P. Eggleston, A.
Ferguson, A.B. Fieravanti-Wells, C.
Fiifield, M.P. Fisher, M.J.
Heffernan, W. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. Mason, B.J.
McGauran, J.J. Nash, F. *
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Scullion, N.G. Trood, R.B.
Watson, J.O.W.

PAIRS

Brown, C.L. Brandis, G.H.
Carr, K.J. Troeth, J.M.
Conroy, S.M. Minchin, N.H.
Evans, C.V. Coonan, H.L.
Sherry, N.J. Ellison, C.M.

* denotes teller

Question negatived.

PRIVACY (DATA SECURITY BREACH NOTIFICATION) AMENDMENT BILL 2007

First Reading

Senator STOTT DESPOJA (South Australia) (10.38 am)—I move:

That the following bill be introduced:

A Bill for an Act to amend the Privacy Act 1988 to require organisations and agencies to notify affected individuals of a breach of data security where their personal information is accessed by, or disclosed to, an unauthorised person, and for related purposes.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (10.38 am)—I move:

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

Question agreed to.

Bill read a first time.
Second Reading

Senator STOTT DESPOJA (South Australia) (10.38 am)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Privacy (Data Security Breach Notification) Amendment Bill 2007 marks an important reform to the Commonwealth Privacy Act 1988 by introducing a requirement that organisations and agencies notify affected individuals of a breach of data security where their personal information is accessed by, or disclosed to, an unauthorised person, and for related purposes.

As it stands, the Privacy Act 1988 does not currently have a specific requirement that compels agencies and organisations to notify affected individuals where there has been a data security breach.

The Sydney Morning Herald reported in an article this year titled ‘A sensitive issue’, the results of research conducted by the IT Policy Compliance Group which show that more than two-thirds of Australian organisations experience six losses of sensitive data each year. Further, the report states one in five organisations loses sensitive data 22 or more times a year. These breaches reportedly include customer, financial, corporate employee and IT security data which is stolen, leaked or inappropriately destroyed.

In May 2006, an Australian Computer Crime and Security Survey reported that in Australia the average annual losses from electronic attacks, computer crime, and computer access misuse or abuse rose 63% over 12 months, reaching AUD$241,150 per organisation in 2006.

Requiring agencies and organisations to implement an effective data security breach notification scheme is essential for private sector agencies and Commonwealth Government organisations to fulfil their fair information handling responsibilities towards the persons who entrust such bodies with their personal and often delicate information.

It is now imperative that agencies and organisations tell Australians where things have, or are suspected of having, gone wrong in regards to individuals’ personal information, to reduce the risk to individuals of possible identity theft and enable individuals to mitigate any other adverse impacts.

In Australia we have clear evidence of just how much of an impact lax or inadequate data security measures around personal information can have on individuals. To illustrate, I will refer to two recent examples of what is estimated to be thousands of cases.

The first incident concerns the loss of a CD containing the report into the death of Private Jake Kovko at Melbourne airport, where it was found and handed to broadcaster Derryn Hinch. This incident had consequences for Private Kovko’s family, the image and reputation of the defence force, and the individual staff member involved.

The second incident occurred in April where, because of a technical stuff-up on reality show Big Brother’s website, the personal details of fans who signed up for its special features were exposed. Behind Big Brother revealed the official site was not using encryption technology on its credit card sign-up page, exposing users to having their sensitive financial details intercepted.

It is also worth remembering that such breaches are occurring at a time where the Government is considering several proposals to rationalise, centralise and streamline many government services and databases, including the billion dollar Access Card project. This activity is creating several databases that contain delicate personal information which is a target for criminals in particular identity theft-related crimes. Such large databases also have the potential to magnify the data breaches and harm which can be suffered by individuals where there are security breaches.

This Bill will require agencies and organisations to give individuals early warning when their personal information is compromised.

The proposed Bill is partly based on several data security breach notification schemes already operating successfully in the United States. Beginning with California in 2002, at least 36 states have enacted laws which require certain agencies
that experience a data breach to notify individuals whose personal information was lost or stolen.

The proposed Bill is also partly a response to activity by various Privacy Commissioners in Australia and Canada. The Victorian, Ontario, and British Columbia Privacy Commissioners have all issued guidelines for security breach notification schemes. The Australian Federal Privacy Commissioner in her latest submission to the Australian Law Reform Commission in April this year has also stated that she supports the notion of public reporting or notification of security breaches, in certain circumstances, whether it is in relation to personal credit information or personal information in general.

The Bill defines a breach of data security as an interference with privacy in accordance with section 13 of the Privacy Act. Specifically, a data security breach will be incorporated into this section. Any unauthorised acquisition, transmission, use or disclosure of personal information involving an unauthorised party will constitute a data security breach and potentially be an interference with an individual’s privacy.

The question of who is an unauthorised party has been answered in this Bill. There are two types of unauthorised parties: the first type involves a person, agency or organisation that is not employed by an agency or organisation subject to the Privacy Act.

The second type of unauthorised party has two limbs. The first limb applies to an employee of the agency or organisation who exceeds his or her authority to access personal information. In such instances that employee will be considered an unauthorised party.

The second limb will apply to employees who use information for purposes unrelated to his or her professional duties, or outside the scope of authorised use under the privacy principles.

The Democrats have designed the definition of unauthorised party so as not to take into account the legitimate and lawful actions of employees, agencies and organisations involving individuals’ personal information.

The mechanism for the notification to a person of a breach of their data security is contained in clause 13AB of the Bill.

It is a requirement that an agency or organisation that holds personal information notify any person, in accordance with subsections (2) and (3), when there has been a confirmed or reasonably suspected breach of data security involving that person’s personal information following the discovery of the breach.

The Bill recognises that “time is of the essence” and requires organisations to notify persons affected by a confirmed or suspected data security breach promptly and without unnecessary delay. It is important that there be a written record of the notification and that the individual bears no cost related to the notification.

The Bill also emphasises that agencies and organisations must cooperate with persons affected by a data security breach. The Democrats recognise that agencies and organisations are in a unique position to assist individuals in the aftermath of a data security breach and to alleviate any potential harm which may be experienced by an individual.

To avoid any doubt that agencies and organisations must assist individuals in the event of an actual or suspected data breach, the Bill contains several provisions which guide agencies and organisations as to what information they should provide to affected individuals.

Agencies and organisations will have to provide copies of the information disclosed or suspected of having been disclosed, and advise persons of known or likely recipients of the information, any action taken by the agency or organisation to recover or attempt to recover the information disclosed, and any measures taken to prevent a recurrence of the breach.

This Bill seeks to balance the economic interests of agencies and organisations in needing personal information with the responsibilities that come with the fair handling of individuals’ personal information, not least of which is keeping the information secure.

In 2004, the then Minister for Justice and Customs Senator Chris Ellison released an Identity Kit aimed at assisting Australians with identity theft. In the introduction to that kit Senator Ellison stated:
"An individual’s identity is a personal part of who they are. Having their identity stolen can have a devastating effect, both emotionally and financially. Victims can often spend years and thousands of dollars trying to restore their good names.”

Information security has always been an essential element of Australia’s Federal and State information privacy laws. It is one of the core privacy principles of fair information handling practices: organisations that collect, hold and share personal information must take reasonable steps to protect personal information against unauthorised access, use, disclosure, modification or destruction.

The Bill will remedy existing privacy legislation which does not give individuals enough control over their personal information in instances of data security breaches. In order to protect brand, reputation, and trust, there are too many instances of agencies and organisations erring on the side of secrecy and cover-ups rather than openness and transparency.

My Bill changes this. It will also bring the Privacy Act into line with current community beliefs. A 2004 survey commissioned by the Office of the Federal Privacy Commissioner found that 94% of people would consider a business that they did not know having access to their personal information an invasion of privacy and 93% believed that it would be an invasion of privacy for a business to use the information that they supplied to them for a specific purpose to be used for another purpose.

The Data Security Breach Notification Bill represents a significant step towards strengthening privacy laws, assisting to minimise the risk of identity theft and improve overall agencies’ and organisations’ compliance with Federal privacy principles.

I thank Brent Carey for his assistance in the preparation of this legislation. I commend this bill to the Senate.

Senator STOTT DESPOJA—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES
Publications Committee
Report
Senator NASH (New South Wales) (10.31 am)—At the request of the Chair of the Standing Committee on Publications, Senator McGauran, I present the 23rd report of the committee.

Ordered that the report be adopted.

Rural and Regional Affairs and Transport Committee
Report
Senator HEFFERNAN (New South Wales) (10.31 am)—I present the report of the Senate Standing Committee on Rural and Regional Affairs and Transport Options for additional water supplies for South East Queensland, together with a Hansard record of the proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator HEFFERNAN—I move:

That the Senate take note of the report.

This report is the result of an inquiry which relates to a search for additional water supplies to meet the growing demand for water in south-east Queensland. Water is an extremely valuable resource and every state and territory in Australia is facing a tough challenge to secure a reliable and continued water supply. However, south-east Queensland is doing it tougher than most, given its booming population and declining rainfall and the prospect of an extra 1.5 million people moving over the next 25 years into an area that is deemed to be a great place to live. That has to be looked at in the context of climate change and declining rainfall. The Queensland government has responded to this challenge with a diverse range of demand management and supply source initiatives. However, the majority of evidence we received in this inquiry concerned the
Queensland government’s decision to build the Traveston Crossing Dam on the Mary River.

This committee is clearly aware that its ability to effect change in this area is limited. The management of water resources in Australia is a state responsibility. However, this inquiry has been important. It has given a voice to members of affected communities, and they have told us that they feel stressed, anxious and frustrated with how their state government has handled the dam process to date. The Traveston Crossing Dam is a huge project, split into two stages. Stage 1 is due for completion in 2011 and is expected to deliver an additional 70,000 megalitres of water a year. Stage 2 will be completed, if built, in 2035 and will deliver an additional 40,000 megalitres to 80,000 megalitres a year.

People have told us that since the announcement of the dam in April 2006 their lives have been on hold while they have wrestled with its impact. Do they sell up, move on and make a new start? There has been a lot of uncertainty, and local businesses and communities have suffered. Perhaps all this social upheaval would be a bit easier for them to bear if they could have confidence that the dam is going to achieve its aim. But I have to say that I am not totally convinced that it is the case. I am particularly concerned by the evidence we received from civil engineers questioning the ability of the dam to hold and supply the stated yield. Strong concerns were expressed that the alluvial floor of the dam would result in high levels of seepage. Other potential problems were also raised, including high evaporation levels, adequacy of the catchment and the existence of fault lines under the dam. The Queensland government have said that they are satisfied that the site is suitable, but I am still concerned, given the evidence we received to the contrary.

We received 249 submissions, held four public hearings and inspected the proposed site for the dam. I would like to thank the Queensland government for its cooperation during this inquiry. Its representatives have attended public hearings, organised site inspections and provided volumes of information throughout the inquiry process. It is clearly evident that high levels of uncertainty and angst remain in the affected communities and I hope that evidence presented to this inquiry is of practical assistance to the Queensland government as it considers the options for bulk water supply in south-east Queensland.

There are some challenges here. There is a lot of angst. As a practical person more than being the chair of the committee, the evidence that I have received from engineers was in their words, ‘This dam will leak like a sieve.’ It might not necessarily be political imperative that has caused this decision—it was probably taken some years ago—but the cancellation of the Wolfdene Dam was probably seen as a political imperative at the time. Nevertheless, that decision on the Wolfdene Dam has resulted in poor planning, political expediency and catch-up science—and it is struggling to catch up.

The committee did itself proud in this inquiry. We presented ourselves as fair and unbiased, as far as I am concerned. We gave everyone a fair shot at it. But a picture paints a thousand words. Bear in mind that I have a very strong view that if such a large number of people want to live in south-east Queensland then maybe some of the decisions taken way back in the days of the white-shoe brigade were wrong in that there was not enough money put into future planning for water. They probably put it in the bank or spent it at the casino instead. To paint the picture of the angst involved in this, taking water from traditional farming uses like sug-
arcane and putting it into toilet flushes is a difficult political decision.

Then there is the option of the Traveston dam, which I would like to put into context for people. The Traveston dam at stage 1 will have a yield of 70,000 megs and hold 153,000 megs—that is, 70 gigs and 153 gigs. It will cover a surface area of 3,000 hectares, so it will have a capacity of holding a gig every 20 hectares. Stage 2 is more efficient: it is 12½ hectares to the gig and covers an area of 7,135 hectares. To put that into perspective of what is a good site, the best example I can come up with—and there is an endless list of them—is Talbingle reservoir in the Snowy scheme. It has a 2.04 hectares per gigalitre storage. It has a much more efficient—in fact, 10 times as efficient—storage capacity compared to the surface area, which gives an indication for people who do not understand evaporation as to the absolute encroachment that evaporation will have in terms of the yield of the dam.

There are some practical considerations. We were a bit appalled—and I am pleased the Queensland government is addressing this—by the treatment of the people at Kandanga. I am still not sure what was proposed for the people who lived up all the blind valleys where the head of the valleys were going to be cut off by water. I do not if they were going to be helicoptered in or whatever. In any event, I am pleased and privileged to have chaired this inquiry and I think it is fair to say I have tried to give everyone a fair go. Thank you very much.

Senator MOORE (Queensland) (10.38 am)—To be part of this committee was a privilege in many ways, and I think the committee did a very good job in terms of giving people an opportunity to come forward and give information to their Senate. However, as the committee report has pointed out, and as I want to put on record again today, I had some deep concerns about expectations of members of the public that our committee could make complete decisions about this project. It came up consistently from all sides of the argument but, in particular, from people who were concerned about the impact of a dam on their community, on their land. Some felt that by coming to this inquiry they would be able to have our committee direct government on decisions about the dam. I found that very disappointing and very saddening. We had to make the process clear so that everybody involved in the process understood what was happening.

We asked questions at each hearing about the understanding and awareness people had of the environmental protection act process. People who had the issues in front of them had genuine concerns, as would any community. It is important to understand that, wherever there is a proposal to put major infrastructure into a community, that will have an impact—and there is no question that there will be an impact—and people will be upset. They wanted to have their voices heard, but it is most important, at all levels of government, that there is clarity about responsibility and accountability. Consistently, our committee was in the position of having to inform people about how the committee process operates and, in particular, how any assessment would be made in the future about decisions to build or not to build dams not just in Queensland but across our community.

We worked through with people about the operation of the environmental protection act and where any final decision would lie with regard to any environmental impact on the community. And they understood that: these are intelligent, aware and mainly informed people, but I think some unnecessary hope had been put into the process that this committee was going to direct action. What we did, quite rightly, was to listen, to seek answers and to seek information. In some cases
we were able to get information about some difficulties in getting clarity up until that time. At the end of our process, after considerable discussion within the committee, we were able to come up with an agreed position.

As you well know, Madam Acting Deputy President, the process of committees has a long history. A committee meets, hears evidence and then comes up with recommendations. The full committee came up with two recommendations, to which we all agreed after much discussion. The first recommendation, very straightforwardly, is that the information given to the minister under the EPBC Act would include the evidence received on any potential environmental impact of the Traveston dam on the Mary River and the species of that river. It is something we think is self-evident: any decision must take into account the evidence and the views provided and make full use of the whole process of seeking information and making decisions.

The second agreed recommendation goes to a full range of strategies for the Queensland government to implement ways to best utilise water in our state. It is very straightforward. Our committee agreed that the Queensland government should continue, not begin, to instigate strategies that will inform, engage and consult with members of affected communities—there is no argument about that—ensure that businesses affected by the proposed dams are adequately compensated and offered appropriate assistance—again, an agreed recommendation—and, where possible, facilitate the timely release of copies of reports and information to members of the community to achieve a transparent and open process—something, I think, through our committee, we were able to agree on and point out.

I think the committee did serve a purpose as our chair, Senator Heffernan, has pointed out. It gave people the opportunity to engage, hear and debate. In particular, I want to put on record my appreciation and thanks to the wide range of people representing the Queensland government who came forward to give evidence under somewhat difficult and sometimes confronting arrangements. The committee chose—and I think quite rightly—to have public hearings in at least one of the communities that was immediately impacted, and that was around the Gympie community.

I want to acknowledge the involvement of the people of Gympie and the welcome they gave us. It was most warm, as I would expect of that wonderful part of Queensland. Although they were deeply affected by what was going on, we were welcomed and overwhelmed with offers of assistance to be engaged in the process. The people of Gympie and around the Traveston should be commended for their involvement in this process. I want to put on record the efforts of the Save the Mary group, who have been working for a long time to make sure that people not only in the local area but across Queensland—and, through this committee process, across the country—know what is going on. I think that is an important aspect.

The people from the Queensland state government and associated bodies were tireless in providing information and communicating with our committee. I think we had evidence from those groups at most hearings. They consistently came back and gave information—as we know they should, because that is an appropriate relationship between state governments and Senate inquiries. There should be an open exchange and agreement that we are working together to come up with a response that will value the whole community and our country, so I want to put that on record.
I particularly want to consider the evidence given about the environmental impact on the lungfish in that area. It is a fish that I have heard about over many years in Queensland. I want to pay particular credit to Professor Jean Joss, an internationally renowned expert in this area, who came forward at one of our committee hearings in Canberra and talked about her role over many years of looking at this wonderful species. She raised, in a very reasonable way, her concerns about the future of this particular fish.

Also, we heard in Gympie from Dr Eve Fesl, an amazing woman who has been involved in community activities in that area and across our country for many years. She is an elder of the Gubbi Gubbi people, and I think she gave the whole community a special insight into the relationship between those people and their fish, the lungfish. We hope that this information will be effectively taken into account through the EPBC Act, and the Senate Standing Committee on Rural and Regional Affairs and Transport wants all that evidence put forward when the decision is made. It is not our role to make the decision; it is certainly our role to ensure that the debate is wide and transparent.

I also want to thank the secretariat of the committee, who worked so well to ensure that all of the people who wanted to be part of this process could be part of it and were effectively engaged and able to have their voices heard. The secretariat were most helpful in ensuring that members and participating members of this committee were able to get information quickly and be most aware of what was going on. In a quite difficult time they were able to work with the committee to present a reasonable and balanced report which puts forward the issues and ensures that the next appropriate step of the process will be taken with calm, scientific and compassionate awareness of the range of issues that should be taken into account in any government decision.

I am concerned that there may well have been some breach of our well-known practice about the way that evidence to a committee must be kept absolutely private until a committee report is tabled. That breach does not help anyone, and there are strong rules and processes within this Senate to make sure that everybody knows how these processes should be conducted. We look forward to ensuring that future processes will continue with honesty, transparency and clarity.

Senator SIEWERT (Western Australia) (10.48 am)—The Greens have made additional comments to this report by the Senate Standing Committee on Rural and Regional Affairs and Transport. While we do not disagree with the majority report—in fact, we agree with it—we do not believe that the recommendations go far enough. Based on the environmental, social and economic evidence presented to the committee it is quite clear that the Traveston dam is a white elephant, that it should not go ahead and that it is a giant waste of money. There is not a single doubt about that in my mind. On top of that, the dam is not going to work; it is going to leak like a sieve, as the chair said. There are serious evaporation issues. When the maximum depth at stage 1 is five metres, it is quite clear that there will be tremendous losses from evaporation, and it will leak. It is not going to work.

It is an expensive option. It is not the cheapest option to supply water and it has had a harrowing impact on the local community. The first they found out about it was when there was an announcement made that the dam would go ahead. We were told story after story about the negative impact that it was having on the community. The Queensland government have acted to address the social impact issues, but far too late. Some of
the damage is already happening and it is ongoing.

Access to information for the community has been extremely difficult. In fact, during the committee process we asked the Queensland government a number of times to table information. In the end they did table most of that information. The first time the community had access to that information was through the Senate committee. So if the committee has done nothing else—and I think it has achieved a lot more—at least it has provided an avenue for community members to get access to information and for them to be able to air their stories and tell people what impact this is having on their lives.

We absolutely agree with the evidence that the committee received that there have been serious negative implications for people’s psychological health, their general health, their social capacity and their economic prosperity. The evidence that we received overwhelmingly brings us to that conclusion. Based on the social impacts alone, the Greens believe that the Traveston dam is unacceptable. It is certainly having unacceptable social impacts. When you have a look at the triple bottom lines for sustainability—which are the economic, social and environmental impacts—it clearly meets none of them. It is not the cheapest option for supplying water into Queensland. Stuart White was one of the principal authors of a report for the mayors of the region. That report quite plainly points out that there are better options for water supply in Queensland, including water efficiency, water conservation and other non-rainfall-dependent water supplies, because one of the other clear bits of evidence that came out during this inquiry was that climate change had not adequately been taken into account.

The Queensland government has based a lot of its assumptions, and its conclusion for further dams, on the Paradise Dam. In the opinion of the Greens, the Paradise Dam should never have been built. It has no water in it. Wouldn’t the fact that this dam has no water in it start ringing alarm bells for the Queensland government? The Queensland government has based a lot of its assumptions on that dam—for instance, how it will protect the lungfish. The dam has no water in it so it is not protecting any lungfish! The so-called fish-ladder for the lungfish is being used as the model for the Traveston Crossing dam. The government has not proved that this model has worked, and it has not been audited. Another key issue that has come out of the inquiry is that the federal government will now audit the conditions put on the Paradise Dam.

The Queensland government has been using the Paradise Dam as an example of how successful the Traveston dam will be, but the Paradise Dam is not working and its environmental conditions have not been audited. Fortunately, the department has now said that it will undertake an audit of the Paradise Dam. When you move onto the environmental impacts of this dam, the evidence is absolutely overwhelming: the area has three highly vulnerable endangered species. There is the Australian lungfish, which the Queensland government has put under immense pressure through its building of the dam. We have just heard Senator Moore talk about that evidence. There is also the Mary River cod and the Mary River turtle. All three species are directly threatened by the dam. There are also issues concerning the impact on aquatic weeds from building the dam. Again, the evidence was overwhelming that this would have unacceptable, adverse impacts on the Mary River system. Then there are all the issues around water resource planning and the flawed water resource plan for
that area. The overwhelming evidence was that this had been a flawed process and that water from the river was overallocated.

During this process, as people may remember, the federal government announced the release of a review of the rivers in northern New South Wales. This was an attempt, I believe, to intervene in the south-east Queensland water supply crisis. Another flawed report, which was released by the Snowy Mountains Engineering Corporation, indicated that water could be taken out of some of the rivers. Five rivers in northern New South Wales were identified, although the report was much more wide ranging than that. Again, this threw a red herring into the debate. It upset the northern New South Wales community, and there had been no community consultation. And guess what? The people who had done the report had forgotten to factor in the impact of climate change. So the report is saying, ‘You can come and get some water from New South Wales,’ without anyone actually talking to people in New South Wales about it. One of the overwhelming influences on water supply is climate change and reduced rainfall. This was not taken into account in the report. This information started coming in, but the federal government seemed to indicate that it thought this was a good option. We then heard and took evidence from people in northern New South Wales and, as one would expect, we had an overwhelmingly negative response from this community to their rivers being identified as possible water resources. The Greens have touched on that in our additional comments and said that it is also unacceptable.

It is quite clear that the Queensland government needs to plan better for alternative water sources. Stuart White from the Institute of Sustainable Futures said in his report that the government has the beginnings of a really good plan there but that it needs to implement the plan and be much more clearly focused on non-rainfall-dependent alternative sources. It is also quite clear that the government needs to have a better focus on planning in south-east Queensland. Before the government goes ahead and plans for more people in that area, it needs to be able to identify how it can provide a sustainable water supply for people moving into the area. This is a serious planning exercise.

One of the points made in the report to the mayors was that building new developments is actually a good opportunity to introduce water efficiency. The point was made that you can reduce water inefficiency by 70 per cent in new subdivisions if you plan them properly. So it is critical that those proper planning decisions are made. The overwhelming conclusion from the overwhelming evidence is that this dam is a white elephant: it should not go ahead. Queensland needs to plan very carefully for its future water supply, but the Traveston dam will not meet the needs of the people of south-east Queensland.

Also, the key element that the Queensland government is trying to put across to the community there is that this dam is part of its urgent response to the water supply crisis. But the dam is not going to come on line until the year 2014 or 2015. It will not meet the immediate water needs of the Queensland community. This is a politically driven exercise. A stop should be put to it so that people in the region can get on with their lives.

Senator IAN MACDONALD (Queensland) (10.57 am)—The arrogance of the Queensland government in relation to the Traveston Crossing dam is only exceeded by their arrogance in relation to the forced amalgamations of councils in Queensland. I am delighted that the Prime Minister is taking action to give Queenslanders a say about
council amalgamations. I wish there were some way that we could require the Queensland government to abide by the wishes of the people in the Mary Valley in relation to the Traveston Crossing dam. From the evidence, the dam is quite clearly a waste of money. It is a political response to a serious problem—a problem that has been building for the last 10 years. It is a problem that Mr Beattie should have done something about in that period of time, but he has done absolutely nothing.

The evidence clearly shows how the Queensland government has made a political decision and then ex post facto has asked its public servants to try and justify it. I have the greatest admiration and a lot of sympathy for the public servants who appeared before the Rural and Regional Affairs and Transport Committee, because they were clearly quite uncomfortable in having to attempt to justify the unjustifiable. They did a very professional job, but at times I did feel great sympathy for them.

Clearly, on the evidence, the dam will be a waste of money. It will not achieve its goals. It will have dangerous if not fatal impacts on the unique fauna in the Mary River Valley. I have known about the lungfish all my life but I had not realised just how fragile its future was and how important it is to human-kind that it survives. Clearly, if this dam goes ahead its future is in real doubt. I urge Mr Turnbull, when considering this, to take into account—as evidence given to us says he must—the social and economic implications of this dam.

He should also take into account the actions of the Queensland government in the past in its response to conditions imposed upon the Queensland government under the EPBC Act. We received quite a deal of very persuasive evidence that suggested to us that in relation to the Paradise Dam the Commonwealth government did impose conditions under the EPBC Act, but the Queensland government has not bothered to comply with those conditions. That would make us think that any conditions that might be imposed on the Traveston dam would be treated with the same contempt as they were apparently with the Paradise Dam.

Senator Moore—That is not so.

Senator Ian MacDonald—I hear an interjection from the Labor Party saying that that is not true, but the evidence given to us clearly indicated that they had not complied with the conditions on the Paradise Dam. In fact the Queensland government could not really point to any substantial evidence—and they were given the opportunity—that they had indeed followed the conditions imposed by the Commonwealth government.

Further comments which coalition senators have added to the report—and of course we very strongly support the committee’s recommendations—indicated to the Queensland government that they should not proceed until further work was done on the already initiated water-saving measures, which we were praiseworthy of. There should be further work on increasing the capacity of existing dams. There really needs to be a more serious assessment of additional desalination projects, and the Queensland government does have to take a lead in relation to water recycling and the increasing use of grey water for non-potable purposes. I would like to speak further on this report but time is brief and I know a number of my colleagues want to make a contribution also to this debate. So I will stop there and defer to my coalition colleagues so they can make a comment on this report as well.

Senator Boswell (Queensland—Leader of The Nationals in the Senate) (11.02 am)—I initiated the Senate inquiry into the Traveston dam because I believe—
Senator Wong—One of your nine staff!

Senator BOSWELL—Senator, I do not have nine staff. Be very careful what you say, particularly outside. I initiated the inquiry and I am very proud to have done so with my colleague Barnaby Joyce. I saw a crossing on the Traveston as a travesty of justice for the people in the Mary Valley and, after I spent a number of days at Senate inquiries, I found my worst fears were justified. I cannot believe that there could be a worse place to construct a dam. After listening to five, six, seven or eight days of the Senate inquiry, I noted the evidence became stronger that this was the last place that we should put a dam.

There are parallels between this dam and the amalgamations of councils: find a National Party seat and then just dump on it. That is what happened with this proposal to put the dam forward. I was given some hope after seeing a report put out by Anna Bligh, the Deputy Premier, in which she said that they will have another look at it—that maybe there should be further inquiries and even an option of no dam at all—but when I went on the media she said, no, they were going to bulldoze ahead with it.

There are a number of reasons why this dam should not go ahead. Firstly, it will be a shallow mud hole. It will have evaporation and seepage problems. It is built on an alluvial floodplain. Whether there is an adequate catchment is another thing. Once the Mary River used to be able to take warships up to Maryborough but, already, where the Mary River flows into the Great Sandy Strait it is now about a metre deep at the mouth. Putting a dam across it will exacerbate the shallowness further.

The dam is just not feasible and is just stupid. When answering questions, the public servants said they had built the dam on a GHD report that had 35 pages in it, 15 of which were maps and six were blanks. There were no engineering studies or feasibility studies. There were no economic statements. They were just going to build a dam there. The reasoning seemed to be: ‘We have a water problem and people are getting worried about it. Let’s do something about it,’ and they thought they would find somewhere to do it. The embarrassment of the public servants was overwhelming. When I asked them: ‘Do you normally go in Queensland and build a $1.7 billion structure on a 35-page report, which is about 15 to 20 pages of fact done on a desk top?’ they were very embarrassed. They were put in an unbelievably embarrassing position.

My colleagues—Senators Russell Trood, Barnaby Joyce and Ian Macdonald—and I have added some comments. We believe that no work should be undertaken on the construction of the Traveston Crossing Dam without alternatives being properly and fully investigated. We said that you should investigate increasing the capacity of the Borumba Dam and have additional desalination plants, and I believe that is the future for Queensland’s water, yet the desalination report was hidden and required the Courier-Mail, under freedom of information, to bring it out. Now, of course, we are reaching the stage where, in Queensland, the state government is stealing water from the North Coast, putting pressure on the aquifers on Stradbroke Island. Everyone will be interconnected to feed the needs of Brisbane. This should never have happened. When Mr Rudd was responsible for the state government, he was responsible for closing down a dam around Beenleigh that would have provided adequate water supplies to Queensland. This he removed when he was the coordinator-general.

A dam should not go in at Traveston. It is a fill-gap position and should not be there. It has caused tremendous inconvenience and worry to the people in the Mary Valley. I
hope that, after seeing this report, which is supported by the Labor Party, and our additional comments, Anna Bligh will have a change of heart for the people of the Mary Valley. I hope she will show some sympathy to those people.

Senator Wong—Madam Deputy President, on a point of order: during the course of the debate, in response to an interjection from me, Senator Boswell indicated that he does not have nine staff. My recollection is that that is contrary to the evidence given at estimates. I suggest that Senator Boswell be given the opportunity to ensure that his indication to the Senate about that is in fact correct.

Senator BOSWELL—In response to that inquiry, I am allocated nine staff. The Democrats were allocated 15. I have an additional four staff as Leader of the National Party, which I use. I have a responsibility as a party leader. We have a one-stop shop. People come in on all issues—on rural and primary industry—and those staff are needed in the interests of my constituency. The answer is: four staff.

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Thank you. We are taking note of a report, so let us move on to that.

Senator BARTLETT (Queensland) (11.09 am)—I should correct the record with regard to previous comments about Democrat staff, as well, and contextualise it, but I shall not do that, because, as you say, this is about the Traveston dam, so I might do it another time. Suffice to say that it is a very misleading comparison.

This is an important report and I congratulate the Senate Standing Committee on Rural and Regional Affairs and Transport as a whole, particularly the secretariat, for pulling together all the information. They have pulled together what is in some way fairly close to at least a foundation of a unanimous report, as far as it goes, given how politicised the inquiry was. That was evidenced right at the start. Senator Boswell took credit for initiating this inquiry, which in one sense he did because he moved the motion, but he refused to talk with anybody else about how the inquiry would be put up, and he refused to consider any proposed amendment. He rejected an amendment from the Democrats to specify that it examine the Wyaralong Dam on an equal footing to the Traveston dam, and he basically set it up to make it as politicised as possible right from the start, rather than trying to have it as cross-party and as constructive as possible right from the start. I appreciate that the political reality was that this was always going to be politicised, but at least trying to get some sort of common ground right from the start, rather than turning it into a political campaigning vehicle, would have been helpful for the people that we say we are all doing this for, I might say, which is the people of south-east Queensland, particularly those affected by the two dams. Nonetheless, I think the committee as a whole, given that framework, did pretty well at keeping all the politics within control, with a few little outbreaks here and there, and sticking to the evidence.

I would also say that, as much as I think the Queensland government are 110 per cent on the wrong track here, they did cooperate pretty comprehensively with the inquiry. It should be pointed out that, whilst state governments always should do that, they often do not. I have been part of many Senate inquiries where state governments have just said, ‘Get lost; we’re not interested, and we’re not going to cooperate.’ On this inquiry, where so much of it was about targeting the Queensland government, one could understand why they might have taken that attitude and just said, ‘This is a politically motivated inquiry; get lost,’ but they did not do that. They provided a lot of information
and they deserve credit for that. That has helped the people affected, because they have been able to get access to information they had difficulty getting access to, as the Senate inquiry committee report details, and that should be acknowledged. It is not just about what we all come up with, what we all put in the report and what we recommend that is important; it is about what gets on the public record—the information that people get access to. And they were having difficulty getting access to it. They still are, in some respects, I should hasten to add. So it has been a valuable exercise from that point of view alone, and the Queensland government, despite the fact that they are totally wrong, nonetheless did cooperate—broadly speaking; it was not 100 per cent but it was a pretty good effort compared with many in other circumstances.

Having put that little bouquet up there, I should once again emphasise that I think the vast amount of evidence, including plenty of that provided by the Queensland government, reinforced the fact that the Wyaralang and Traveston dams have both been poorly thought through. It was basically policy on the run. We see plenty of that at the federal level, so it is no surprise to see state governments doing it as well. They have got a big political problem in south-east Queensland, and the need to be seen to be doing something about it became stronger than the need to be doing the right thing. They have been picking options that are ‘big bang’ options, like dams. There is a long history in Queensland of parties of all persuasions proposing big dams as big solutions to big problems.

The fact that the evidence shows that almost all of them have been big disasters does not seem to stop us going down the same track. There is no better example than the Paradise Dam, just up the road, if you like—or up the next catchment—from where the Mary River dam is going to go in. That was the dam that all scientific evidence showed was going to be ridiculously overpriced, totally unsuccessful and unworkable in terms of value for money, but both the major parties almost climbed over each other promising it at state level. We got it and, lo and behold, surprise, surprise, it is a disaster. It has not delivered the water, it has not delivered value for money and it has caused immense environmental destruction. We are going down that same path again here.

I want to make some other points. There was a lot of valuable evidence, particularly from the Institute of Sustainable Futures and Professor Stuart White, which I think should be drawn on for future reference, particularly by the Queensland government and people interested in water policy. There are clearly other alternatives. There is a substantial body of evidence that we do not need another dam at all. If you live in south-east Queensland, as I have my whole life, you are surrounded by empty dams. The evidence provided to the inquiry and subsequently by the state governments, which I have seen, is that if the Wyaralang Dam, in conjunction with the Cedar Grove Weir, had been built prior to this recent drought it would not be delivering any water. So the idea that these things are an insurance against drought is just ludicrous. There is plenty of evidence, some of it disputed, that demonstrates that the same would apply with the Traveston dam if it were built and we had the same drought conditions in the future; that, particularly with population growth, it would not deliver the water. This project involves billions of dollars and it is massively destructive environmentally and socially, so why the hell are we doing it? Because of the need of governments to be seen to be doing something—the big, grand solution.

The body of the report, the general statements and those additional comments from coalition senators make the case pretty clear.
that this is pretty dodgy, but they still do not go that clear extra step. You can make all the general statements you like about this being dodgy and all the statements about how the government should seriously consider this and that, but neither of the major parties has made the categorical statement that, if the evidence demonstrates there will be negative consequences on matters of national environmental significance, they will use their power under the EPBC Act to stop the dam. And that is what is needed: a commitment from both major parties before the election. It is not good enough to just go around talking about how bad it is with this unspoken implication that you will stop it. You need to actually give the commitment and say, ‘Yes, if we are in government after the election and the evidence shows’—as I think it undoubtedly will, particularly in relation to Traveston—‘that this will harm matters of national environmental significance such as threatened species like the Queensland lungfish, the World Heritage values of the Great Sandy Strait and the Ramsar wetlands downstream, we will use the power.’

We all know you have the power. The EPBC Act clearly provides the power—and I am duty bound to note that it was because of the Democrats that the EPBC Act is there. If it were not for the Democrats, who copped all sorts of flak from Labor and the Greens at the time for passing it in a strengthened form, the act would not be there and this inquiry would not have happened because there would be no federal role whatsoever. If it were not for the Democrats and the EPBC Act, there would be no hope for people who want to stop this dam.

But there is no dispute that the power is there under the EPBC Act. What is at dispute is whether or not the minister will use that power if there are reasonable grounds for doing so. I cannot believe that any credible environmental impact statement will do anything other than show that there are credible grounds—very strong reasons and evidence—that building the Traveston dam will have very negative effects on matters of national environmental significance that cannot be mitigated by fish ladders and the like. But you have to give a commitment that, if that is what the evidence shows, you will use the power, because it is not used very often.

It is a big step for a federal minister to use that power to stop a dam; it does not happen very often and people need that commitment that that power will be used, that the political will is there to use it. It is just not good enough to run around saying, ‘This is bad,’ if you are not going to take the follow-up step by saying, ‘We will act to stop it.’ Both the major parties have that power. The coalition parties that are clearly and rightly campaigning about the problems with this dam need to give that clear commitment. They cannot say now, ‘Yes, we’ll stop it,’ because obviously the due process of law has to be followed; they have to see the evidence through the EIS. But when they get it and if it shows anything like the totality of evidence presented to the committee, they will have more than ample reason for the minister to make that decision and they should be able to make that clear statement that they will use those powers, that there will be that political will there. Unless they do that, there is a real risk that they will be stringing along the people of the Mary Valley indefinitely, and that is just cruel.

Finally, I emphasise the situation with the Wyaralong Dam. It is often forgotten. But the evidence, particularly from Dr Brad Witt and his colleagues, showed that, if anything, this is even more ludicrous, purely on a policy basis. It will not have the same environmental and social impacts, although it will certainly have some. But, purely as a water policy issue, it is just plain stupid. There are
better alternatives, and the Queensland government should adopt them.

Senator TROOD (Queensland) (11.19 am)—The Queensland government’s plan to solve south-east Queensland’s water problems, in part by building the Traveston and Wyaralong dams, was deeply flawed from the very beginning. Of the many shortcomings in the proposals, three stand out in relation to the matter—the abject failure to properly assess alternatives, the contemptuous treatment of the people whose lives are being devastated and will be affected by these two proposals, and the lack of attention to detailed planning for the projects.

These failures are now fully exposed in the report by the Senate Standing Committee on Rural and Regional Affairs and Transport. This is not a polemical document. This is a sober, sane, sensible, methodical and systematic assessment of the evidence that came before the committee—

Senator Hogg interjecting—

Senator TROOD—of the 246 submissions—Senator Hogg, as you know—that were received by the committee. The conclusions reflect that kind of serious consideration of the issues. The conclusions that have been reached by the committee are very critical of the proposals in relation to both the Traveston dam and the Wyaralong Dam. The criticisms point to the failure to consider the environmental consequences, which were largely ill-considered and unconsidered. The economic impact was grossly underestimated, and the social dislocation was largely ignored at the time the proposals were first put forward.

A further criticism is that the cost-effectiveness of the two projects, measured against the benefits to the community, was always highly dubious. We now know that the first stage of the Traveston dam, which will deliver something in the vicinity of 80 megis, will cost around $2.6 billion—that is before we even get to the second stage of the dam. Finally, on the technical and engineering aspects of the dam, the challenges in relation to silting, evaporation and leakage all compromise the effectiveness of this dam in terms of its long-term capacity as a water storage facility. In short, against every criterion that might be deployed to justify these two proposals, the Traveston dam and the Wyaralong Dam, as Senator Bartlett has pointed out, fail the test of good public policy. This reflects an absolute failure—a failure which deserves condemnation—of the Queensland government to plan for the water supply of the south-east corner of Queensland into the future.

These are not the conclusions of merely the coalition members of the committee. This is a unanimous report, including the Labor members of the committee. The judgements which are reached in the report, the concerns which are expressed in the report, are concerns of the Labor members of the committee, as they are of Senator Siewert and of the coalition members of the committee. It is deeply ironic that Labor supports many of the concerns expressed in this report. So much of this drama and so much of the concern expressed by the community could have been avoided if Mr Rudd, at the time he was in a position of influence in the Goss government in Queensland, had decided to proceed with the Wolfdene Dam rather than to cancel that project. So it is a great irony that here we have a decision many years later, a judicious report by a committee, with conclusions supported not only by the members from the coalition government but also by Labor members who, as I said, are condemning the conclusions which were reached all those years ago by the Goss government.

There is enough evidence in this report to raise very serious concerns about the logic, the good sense, of building both the Trave-
ston Crossing Dam and the Wyaralong Dam. I would urge Mr Beattie to rethink his proposals and to consider the alternatives that are discussed in the report and that have been alluded to by Senator Siewert and all the other contributors to this debate this morning. Failing that, I would encourage the Federal Minister for the Environment and Water Resources to pay very close attention to, in particular, the environmental concerns that are raised within this report when he considers the exercise of his power under the Environmental Protection and Biodiversity Conservation Act. Let us not forget that the Wyaralong proposal, as Senator Bartlett has remarked, is at least as bad and ill conceived and impacts as profoundly on the local communities as the Traveston dam. Neither one of them should proceed. I hope that will be the judgement the Queensland government will reach before too long.

Senator Nash—Madam Acting Deputy President, I seek leave to move a motion to extend the debate on committee reports this morning.

Senator Wong—No; that has not been raised with the opposition.

Leave not granted.

Senator HOGG (Queensland) (11.26 am)—I understand that there is a time limit set, because of other pressing business in this chamber, for this debate to conclude at 11.30. I only want a couple of minutes to say that, whilst I was a member of the Rural and Regional Affairs and Transport Committee, right from the outset I believed that this committee process should not have proceeded. It was nothing more—as was identified by Senator Bartlett—than a political stunt by the National Party and certain elements of the Liberal Party in south-east Queensland because they are bereft of support and are clinging to any issue they can, and so it was not going to the merits of the issue that was before the committee. This was purely and simply a beat-up. I know, and everyone knows, that there was real concern within the conservative parties’ caucus room as to whether or not this inquiry should go ahead. Why? Because they knew it was an inquiry into a state government matter and that it was ultimately a decision of the state government. If this had been an inquiry into the EPBC Act and its application by the minister, then that would have been a proper matter for the committee.

Senator Joyce interjecting—

Senator HOGG—All you have done, Senator Joyce, is go out and beat up the issue because you do not have positive policies to put before the people in south-east Queensland. That is what this inquiry was about, and that is where the weakness is from your side. Some of the things that people over on your side have attributed to and said about people like me today are completely wrong. There were two recommendations out of this inquiry, Senator Joyce, and maybe you should learn how to read before you go outverballing me in the public arena. If you read this report properly you would see that anything that you have said about me and my attitude towards this is completely wrong. There are two recommendations, and only two, and they do not reflect the comments that have been made more latterly by Senator Trood and by Senator Joyce when he was out there doing what he does best—getting on the radio and trying to drum up some business and some votes to keep the National Party alive in south-east Queensland and in Queensland in general. That is what this inquiry was all about. The sooner that is recognised the better.

As for Senator Trood going back and trying to blame Mr Rudd for the Wolffden Dam, Senator Trood knows that that is nonsense as well. We have had no sincerity from
the government in this debate at all. It has been purely fabricated by them to try and draw some support for their candidates, for a failing party in south-east Queensland, a party that cannot get on in the state government arena. I will terminate my remarks there.

Question agreed to.

Treaties Committee

Reports

Senator WORTLEY (South Australia) (11.30 am)—On behalf of the Joint Standing Committee on Treaties, I present three reports of the committee. I seek leave to move a motion in relation to the reports.

Leave granted.

Senator WORTLEY—I move:

That the Senate take note of the reports.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

The Joint Standing Committee on Treaties is tabling three reports and I will speak briefly to each.

Report 86 contains the Committee’s findings on nine treaty actions. The Committee found all the treaties reviewed to be in Australia’s national interest and, where a recommendation was required, recommended that binding treaty action be taken. I will comment on four of the treaties reviewed in Report 86.

Mr President, the Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles is a multilateral agreement intended to reduce barriers to international trade in the motor vehicle industry by harmonising national standards for motor vehicles. The Agreement is expected to benefit Australia’s automotive industry by reducing costs and increasing flexibility as variations in standards currently represent an impediment to locally manufactured models being distributed overseas.

The Protocol additional to the Geneva Conventions relates to the adoption of the Red Crystal as the third official emblem of the International Red Cross and Red Crescent Movement. The adoption of the Red Crystal comes after several years of discussion during which the international community attempted to agree on a symbol which is devoid of political, religious or ethnic connotations. The Red Crystal, which is a red diamond on a white background, was eventually agreed upon.

The Protocol amending the Trade-Related Aspects of Intellectual Property Agreement is intended to enable least developed and developing countries improved access to cheaper medicine. Under the Protocol, World Trade Organisation members with insufficient manufacturing capacity will be able to import patented pharmaceuticals made under a compulsory licence from other Member countries in certain circumstances.

Finally, Mr President, the Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields formalises and enhances military cooperation between Australia and Turkey. The Agreement also clarifies the status of Australian and Turkish defence personnel and dependents when in the territory of the other. The Agreement was motivated in part by Turkey’s need for a treaty level agreement in order to cooperate on certain defence matters. The Committee supports the Agreement as growing the defence cooperation relationship between Australia and Turkey.

Report 86 also contains the Committee’s recommendations in relation to: a Scientific and Technical Cooperation Agreement with South Africa, Amendments to the International Telecommunication Union Constitution and Convention, a Supplementary Social Security Agreement with Germany, a Social Security Agreement with Korea, and Amendments to the Singapore-Australia Free Trade Agreement.

Report 87 contains the Committee’s findings on eight treaty actions. The Committee found all the treaties reviewed to be in Australia’s national interest and recommended that binding treaty action be taken in each instance. I will comment on five of the treaties reviewed in Report 87.
Mr President, the Mutual Assistance Treaty with Thailand provides a formal framework for the provision of mutual assistance between Australia and Thailand. Mutual assistance treaties allow Australia to provide and obtain formal assistance in criminal investigations and prosecutions. Ratifying the Treaty will ensure that Australia can provide, request and receive mutual assistance to and from the Kingdom of Thailand in accordance with clearly defined and mutually agreed terms.

Although we have been providing or exchanging mutual assistance with Thailand for a considerable period of time, one of the advantages of the treaty is that it codifies and clarifies the respective abilities of each state to provide assistance.

Report 87 also includes two Agreements for the Exchange of Information with Respect to Taxes, the first with Antigua and Barbuda and the second with the Netherlands, in respect of the Netherlands Antilles. The Agreements will enable information to be exchanged on criminal and civil tax matters. The Agreements will assist in the investigation of tax evasion and money laundering by establishing mechanisms to exchange information to establish the extent and nature of the tax evaded.

The Agreement on Operational and Strategic Cooperation between Australia and the European Police Office (Europol) will provide a formal framework for the sharing of intelligence and strategic cooperation between Australia and Europol. Europol is the European Union law enforcement organisation that handles criminal intelligence. The Agreement will facilitate the exchange of criminal intelligence between Europol and Australian law enforcement agencies, providing significant operational benefits to Australian agencies in combating international crime. The AFP has been designated as the national contact point between Europol and other competent authorities in Australia.

The Amendments to the Hong Kong Extradition Treaty amends the existing extradition treaty so that the ‘no evidence’ standard will apply to extradition requests from Hong Kong to Australia. The ‘no evidence’ standard means that the documents required for extradition do not need to include a brief of evidence of the alleged offence. The Committee was informed that previously the prima facie standard for extradition requests would require witness statements, documents and all the paraphernalia that is associated with a committal proceeding. Extradition requests from Australia to Hong Kong will remain at a level where the information contained in the request would, in accordance with Hong Kong’s domestic law, justify the extradited person’s committal for trial.

Report 87 also contains the Committee’s recommendations in relation to: an Agreement on Health Care Insurance with Belgium, an Agreement extending the operation of the Australian Patent Office as an International Search Authority and the International Convention for the Control and Management of Ships Ballast Water and Sediments.

Report 88 contains the Committee’s recommendation in relation to the Agreement between Australia and the Hellenic Republic on Social Security. The Committee supports this Agreement and recommended that binding treaty action be taken. The Committee wanted to table its recommendation in relation to this treaty as soon as possible given the importance of the Social Security Agreement with Greece, the number of people who will benefit, and the uncertainty relating to the timing of the upcoming election. The negotiations for this Agreement started in the early 1990s and the early tabling of the Committee’s recommendation also reflects its desire for the Agreement to be implemented quickly so that people can start accessing its benefits as soon as possible.

This is an important agreement for many people who have lived in Australia and Greece and the Committee welcomes its conclusion after such a lengthy period of negotiation.

Mr President, I commend the reports to the Senate.

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

Leave granted; debate adjourned.
BUDGET
Consideration by Estimates Committees
Additional Information

Senator NASH (New South Wales) (11.32 am)—I present additional information received by committees relating to the following estimates:

Budget estimates 2005-06—Rural and Regional Affairs and Transport—Standing Committee—Additional information—Transport and Regional Services portfolio.

Budget estimates 2006-07 (Supplementary)—

Economics—Standing Committee—Additional information received between 1 March and 15 August 2007—Treasury portfolio.

Rural and Regional Affairs and Transport—Standing Committee—Additional information received between 19 June and 14 August 2007—Transport and Regional Services portfolio.

Additional estimates 2006-07—

Economics—Standing Committee—Additional information received between 10 May and 15 August 2007—

Industry, Tourism and Resources portfolio.

Treasury portfolio.

Finance and Public Administration—Standing Committee—Additional information received between 21 June and 15 August 2007—Prime Minister and Cabinet portfolio.

Rural and Regional Affairs and Transport—Standing Committee—Additional information received between 19 June and 14 August 2007—Transport and Regional Services portfolio.

Budget estimates 2007-08—

Community Affairs—Standing Committee—Additional information received between 10 July and 15 August 2007—Health and Ageing portfolio.

Economics—Standing Committee—Additional information received between 28 May and 15 August 2007—Industry, Tourism and Resources portfolio.

Environment, Communications, Information Technology and the Arts—Standing Committee—Additional information received between 20 June and 14 August 2007—

Communications, Information Technology and the Arts portfolio.

Environment and Water Resources portfolio.

Finance and Public Administration—Standing Committee—Additional information received between 21 June and 15 August 2007—

Finance and Administration portfolio.

Human Services portfolio.

Parliamentary departments.

Prime Minister and Cabinet portfolio.

Rural and Regional Affairs and Transport—Standing Committee—Additional information received between 25 May and 10 August 2007—

Agriculture, Fisheries and Forestry portfolio.

Transport and Services portfolio.

TELECOMMUNICATIONS
(INTERCEPTION AND ACCESS) AMENDMENT BILL 2007

MARITIME LEGISLATION AMENDMENT BILL 2007

AUSTRALIAN TECHNICAL COLLEGES (FLEXIBILITY IN ACHIEVING AUSTRALIA’S SKILLS NEEDS) AMENDMENT BILL (No. 2) 2007
FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS LEGISLATION AMENDMENT (FURTHER 2007 BUDGET MEASURES) BILL 2007

First Reading

Bills received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Human Services) (11.33 am)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Human Services) (11.33 am)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) AMENDMENT BILL 2007

This Bill amends the Telecommunications (Interception and Access) Act 1979 to implement the second stage of recommendations of the report of the review of the regulation of access to communications, undertaken by Mr Tony Blunn AO.

The review examined the issue of how best to regulate access to telecommunications in the rapidly changing world of telecommunications technology.

A core finding of Mr Blunn’s review was the desirability of a single comprehensive legislative regime dealing with access to telecommunications information for law enforcement purposes. This bill is the second step in implementing that recommendation and follows the passage of the Telecommunications (Interception) Amendment Act 2006.

[Transfer of provisions from the Telecommunications Act]

The bill transfers key security and law enforcement provisions from the Telecommunications Act 1997 to the Interception Act. The transferred provisions relate to access to telecommunications data, and provisions regulating telecommunications industry interception obligations.

In doing this the Bill creates a clearer regime for accessing telecommunications data for national security and law enforcement purposes. Telecommunications data refers to information about a communication, as distinct from its content, and includes the sending and receiving parties, and the date, time and duration of the communication. Agencies currently access telecommunications data using provisions of the Telecommunications Act.

In transferring these powers to the Interception Act, the Bill consolidates and clarifies these provisions to better protect the privacy of telecommunications users. Changing technology is broadening the range of communications transmitted over the telecommunications network, and thereby changing the effective scope of the existing provisions. In particular, the capacity for the delivery of telecommunications information in real-time involves a much greater impact on privacy.

For this reason, the Bill creates a new two-tier access regime. The first tier encompasses the traditional access to existing telecommunications data. The second tier, which would be limited to a narrower range of agencies and require a higher threshold of authorisation, allows for access to future telecommunications data. Consistent with similar provisions in other parts of the interception and access regime, this bill creates offences for unlawful disclosure or use of telecommunications data.

The bill also establishes new record keeping and reporting obligations for law-enforcement bodies.
including a requirement to report annually on the number of authorisations.
It is important to stress that this proposal does not represent new powers for security and law enforcement agencies. Rather it creates new, more systematic and appropriate controls over the existing access framework.
The bill also transfers existing provisions relating to cooperation between telecommunications carriers and government agencies.
This includes the transfer of the existing obligation on carriers to ensure that communications passing over their network are capable of interception, the capacity to make determinations in relation to interception capability and to grant exemptions from the obligations.
The Bill preserves existing arrangements while at the same time simplifying provisions wherever possible.
The Bill clarifies and streamlines arrangements in relation to interception capability plans submitted by the telecommunications industry and the making of interception related determinations.
In transferring provisions from the Telecommunications Act, the Bill retains the existing framework for cost-sharing between the government and industry.

[Amendments to interception provisions]
The Bill also contains a number of minor amendments to refine the operation of the interception regime.
The Bill will broaden the offences for which interception warrants may be sought to include all child pornography offences.
The availability of interception in relation to the investigation of child pornography offences is crucial because of the central role that the internet and telecommunications plays in the exchange and possession of child pornography. This Bill will ensure that interception warrants are available to assist in the investigation of any offence relating to child pornography.
This Bill also permits the disclosure of lawfully accessed stored communications to assist the Australian Communications and Media Authority with the enforcement of the Spam Act 2003; and allowing agencies to disclose stored communications material to each other in relation to investigations into police misconduct.
The bill also changes provisions relating to network protection and security. In 2006, the Act was amended to ensure that the Australian Federal Police could adequately protect its network infrastructure.
The new Bill expands this capacity to a Commonwealth agency, security agency or eligible state agency to ensure that their network administrators can protect network infrastructure without the risk of being in breach of the Act. The provision acknowledges the seriousness that the Government accords to ensuring network security. This amendment would be subject to the existing sunset clause.
The bill will also allow security authorities, which have functions that include developing or testing technologies, to seek authorisation from the Attorney-General to intercept communications for the limited purposes of that development or testing.
This power is highly specific, tightly regulated and necessary in certain circumstances to ensure new equipment actually functions as intended.

[Conclusion]
The key parts of this bill effect the direct transfer of an existing regime from one Act to another. This consolidation will create a more effective legislative framework for accessing telecommunications information for law enforcement and national security.
By centralising, modernising and simplifying several important provisions, it will introduce greater clarity of responsibilities, rights and obligations for all those who use the provisions.

MARITIME LEGISLATION AMENDMENT BILL 2007
The Bill will enable the integration of the Australian Maritime College (the College) with the University of Tasmania to proceed. The integration is strongly supported by both organisations as a means of facilitating greater leveraging of capabilities, broadening course offerings and generating cost reductions through rationalisation of facilities. This will ensure that Australia and the
region continue to have access to a world-class maritime research, education and training institute. The College has gained recognition as an international leader in maritime education, training and research. The College’s expertise is recognised worldwide and it has established a reputation for the provision of quality services to the maritime industries in Australia and throughout the Asia-Pacific region.

The Bill includes the repeal of the Maritime College Act 1978, under which the College was established and currently operates, and the transfer of all assets and liabilities from the College to the University. In return, the University will be subject to conditions on certain funding it receives from the Commonwealth under the Higher Education Support Act 2003 for a period of five years. During that period the University will be required to report on key aspects of the College’s operations within the University, including governance, financial, and academic arrangements. The terms of the integration will ensure that the rights and privileges of current staff and students of the College are protected in the transition to the University.

The Minister for Transport and Regional Services will issue a certificate indicating whether the University has satisfactorily complied with the funding conditions, and if the certificate indicates unsatisfactory performance the Education Minister may require repayment of a portion of the Commonwealth funding going to the University. In addition to the conditions specified in the legislation, an agreement is to be negotiated between the Department of Transport and Regional Services and the University defining how the University will deal with the land assets to be transferred to it as a result of the integration. The special conditions will be in place for five years, after which time a review is to be conducted of the operations of the College within the University with a view to determining if further special conditions are warranted as part of the ongoing funding agreements in place between the Department of Education, Science and Training and the University.

The Government believes these safeguards provide an appropriate balance between protecting the Commonwealth’s interests and not inhibiting the flexibility of the new merged entity to pursue the opportunities that will arise as a result of the integration. There are no direct resource implications from the Bill. The 2007-08 Budget includes a figure of $61.4m representing the consolidated net assets that will be gifted to the University as a result of the integration.

The Bill also authorises the Australian Maritime Safety Authority (AMSA) to share its information with other Australian, State and Territory government agencies and other parties for the specific purposes of maritime domain awareness, maritime safety, protection of the marine environment, and efficiency of maritime transportation. This information includes data from a new international long range identification and tracking system for ships, which comes into force on 1 January 2008. AMSA has been tasked to receive information from the new system on behalf of Australia for distribution to other government agencies through the Australian Maritime Identification System (AMIS). AMSA receives vessel movement information from other sources, which also is to be fed into AMIS for distribution to other Government agencies, including security, intelligence, police, customs, immigration, environment, transport and fisheries agencies, to improve whole of government maritime domain awareness. Agencies are already seeking access to live data feeds from AMSA for their own functions and for development and testing of AMIS. There is currently no specific legal authority for AMSA to share information gathered for its purposes with other parties.

In addition to the benefit to Australian Government agencies in sharing in AMSA’s information sources, States and Territories, port authorities and coastal pilot service providers could use AMSA’s information to improve navigation safety, environment protection and transport efficiency, including such areas as improved vessel traffic management, port infrastructure planning and operations. The information will be released only for the purposes specified in the Bill.
This Bill provides funding to expand the highly successful Australian Technical Colleges initiative, as announced by the Treasurer in the 2007 Budget. The additional funding provided under this Bill will allow a further three Australian Technical Colleges to be established in the regions of greater Penrith, northern Perth and southern Brisbane. This brings the total number of Colleges being established by this Government to 28, with each College servicing critical regions in Australia where industry is experiencing skills shortages.

The further expansion of the Australian Technical Colleges initiative once again demonstrates the commitment of the Australian Government in investing in the skills needs of Australia.

20 Australian Technical Colleges are currently operating, with one more to open in the Pilbara region of Western Australia in July. More than 1800 students across Australia were attending the Colleges as at the census date of 31 March this year. Four more Colleges will commence in 2008. These three new Colleges will open no later than 2009.

Once all 28 Colleges are fully operational, approximately 8400 students will be trained at the Colleges each year.

Given that the legislation appropriating funds for this initiative only became available in late October 2005, this is a fantastic achievement by the Government, with the initiative implemented well ahead of schedule.

It normally takes an average of about three years to establish a new school. This Government established 20 Australian Technical Colleges in less than 18 months.

The success of the Australian Technical Colleges programme is reflected by the way that communities have embraced the Colleges. Local industry, business, education and community representatives are making important contributions to the establishment of the Colleges, including through their representation on the Colleges’ governing councils.

The fact that more than 1800 families have decided to place their students in Australian Technical Colleges, in their very first year of operation, highlights the attractiveness of the concept to both students and employers.

The Australian Government is committed to raising the profile of vocational and technical education. The Australian Technical Colleges programme will restore the true value of technical and vocational training in the community and produce a pool of highly trained tradespeople that will play an important role in ensuring the future of a number of key industries.

The value of this initiative extends beyond just the College students and their employers. The leadership shown by the Government has been a key driver towards reform in school-based training. Not only have a number of States and Territories removed regulatory and industrial barriers that previously prevented the offering of school-based apprenticeships, several States and Territories have followed the Australian Government’s lead and are establishing their own State based trade schools. The States and Territories are recognising the importance of encouraging young people to consider the merits of pursuing a trade based career.

This Bill increases the funding under the Australian Technical Colleges programme by $74.7 million over the period from 2008 to 2011. The three new Colleges are expected to be operational no later than 2009 and will provide more opportunities for young people to consider a trade based education. The level of funding available to support the establishment of these Colleges will ensure that they are resourced to provide high levels of support to both students and the employers who engage students as School-based Apprentices.

The Australian Technical Colleges offer a high quality integrated education and training programme that has not been available to young Australians through existing education providers. The input of industry into the operations of the Colleges ensures that the training provision is reflective of industry needs. Students are trained using the latest tools and equipment to ensure they are as work-ready as possible.
Each College is developing a delivery model that best meets the needs of the region in which they are established. In some cases, this involves the College working closely with existing education and training providers. In other cases, the College governing board has determined that industry needs will be best met by the College providing a full programme comprising both academic education and trade training. The flexibility of the Australian Technical Colleges programme has allowed for such diversity in delivery models and has been a key to the success of the programme to date.

I commend this bill to the Senate.

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS LEGISLATION AMENDMENT (FURTHER 2007 BUDGET MEASURES) BILL 2007

This bill provides the legislative basis for several 2007 Budget measures in the Families, Community Services and Indigenous Affairs portfolio, building on other recent Budget legislation for older Australians and families with children.

Older Australians in retirement are again among the beneficiaries of this new bill, as the Government continues to spend more on Age Pension than on any other single program — around $24 billion next financial year in pension payments to around two million people.

The Pension Bonus Scheme recognises the important role played by older Australians in the workforce, and supports their choice to participate. The scheme gives an incentive for people who choose to defer claiming Age Pension, or the veterans' entitlements equivalent, and keep working. The incentive takes the form of a one-off, tax-free payment of up to around $32,000 for a single person and $27,000 for each member of a couple, which is paid when they eventually claim and receive Age Pension.

This bill will make the Pension Bonus Scheme even better and more flexible in several ways. For example, scheme members who take certain types of leave from work will be able to stay in the scheme as non-accruing members for up to 26 weeks without failing the work test. Also, if people do fail the work test, there will be greater discretion for the usual 13 week claim lodgement period to be extended, so special circumstances such as serious illness of a close family member can be taken into account if a person claims late. A new pension bonus 'top up' will be allowed if a person's pension rate increases within 13 weeks after being granted, because their income or assets have decreased. This will help people whose retirement investments are not settled until shortly after grant of their Age Pension and bonus, to get the most out of their bonus. Lastly, new rules will allow the bonus accrued, but not claimed, by a scheme member who dies, to be paid to their surviving partner.

In a further measure targeted at older Australians, the existing social security income and assets test exemption threshold for funeral bonds will be increased from $5,000 to $10,000. The new threshold will be indexed in line with inflation so that it maintains its real value. This measure is also designed to allow individuals or couples to have a second funeral bond subject to the exemption, so that those with existing bonds can take advantage of the new threshold. This initiative will help Australians make better provision for their funeral arrangements without seeing their income support payments affected.

Families with higher order multiple births – triplets, quadruplets, or larger birth sets – will benefit from the extension by this bill of multiple birth allowance. Multiple birth allowance is an additional component of family tax benefit Part A for families with three or more children born together. It is worth over $3,000 per year for triplets and over $4,000 for quadruplets and larger birth sets. Multiple birth families face a significantly increased financial burden over most other families, both in the direct costs of raising their children and in the indirect costs of reduced workforce participation. Multiple birth allowance aims to relieve some of this financial pressure.

The allowance currently stops when the children turn six. However, the Government has listened to families, who have pointed out that this is one of their most expensive times, with the need to buy multiple school uniforms and supplies, and not having the capacity of many other families to save costs—through hand-me-downs, for example. This pattern of financial pressure continues
throughout their schooling. Therefore, multiple birth allowance will now continue to be paid until the children turn 16, or generally until the end of the year in which they turn 18 if they remain full time students. Over 1,000 Australian families will benefit from this extension – some will continue to receive the allowance past the children’s sixth birthday, when it would otherwise have stopped, and many others not currently being paid the allowance will start to receive it.

Crisis payment is a one-off payment, equal to a week’s worth of income support, for people in severe financial hardship in certain circumstances. People recently released from prison, victims of domestic violence, and people affected by extreme circumstances such as a natural disaster currently may receive a crisis payment. This bill adds newly-arrived humanitarian entrants to Australia to that list, to give extra support to refugees managing the immediate costs of settling into the Australian community, especially in finding long-term accommodation. Under this measure, around 6,800 humanitarian entrants will be assisted by crisis payment each year. An assurance of support is a form of guarantee that allows people who are at higher risk of requiring income support to migrate to Australia if an assurer promises to provide financial support for the person for two years after arrival, or ten years in the case of parent migrants. The assurance of support program protects public outlays, while not interfering overly with the migration program for financial reasons. This bill will improve and simplify the scheme’s operation. For example, the bill will remove the existing capacity for an assurer to withdraw an assurance of support after a visa has been granted to the person covered by the assurance.

The measures in this bill will commence on 1 January 2008.

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

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

### AVIATION LEGISLATION AMENDMENT (2007 MEASURES No. 1) BILL 2007

Returned from the House of Representatives

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

### COMMITTEES

Foreign Affairs, Defence and Trade Committee Report

Senator PAYNE (New South Wales) (11.34 am)—I present the report of the Senate Standing Committee on Foreign Affairs, Defence and Trade, Australia’s public diplomacy: building our image, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator PAYNE—I seek leave to move a motion in relation to the report.

Leave granted.

Senator PAYNE—I move:

That the Senate take note of the report.

Over recent years public diplomacy, as it is known, has attracted growing attention. In this report, the committee has considered and settled on a broad definition of public diplomacy being ‘work or activities undertaken to understand, engage and inform individuals and organisations in other countries in order to shape their perceptions in ways that will promote Australia’s foreign policy goals’.

Many international commentators have noted the increasing significance of public diplomacy, with some asserting that it matters more than ever and should not be the poor relation of mainstream diplomacy. There is a very strong connection between Australia’s international reputation and its ability to influence the regional and global agenda in
ways that promote Australia’s interests. Our international reputation can either promote or undermine our foreign policy objectives.

In the course of this inquiry, we have seen a significant number of government departments and agencies which are engaged in activities overseas that either directly or indirectly convey to the world a positive image of Australia. I want to mention some of those this morning. Let me start with two which I think are particularly important, which I have spent a bit of time looking at in various iterations. They are the Australian Youth Ambassadors for Development Program and the Australian Leadership Awards Program, which are strengthening mutual understanding between the people of Australia and particularly the countries of the Asia-Pacific region.

There are several visitors programs which are highly effective in promoting shared understanding and strong links between people in Australia and overseas. Even the work of local councils—particularly the City of Melbourne submission—highlighted work with international cities and organisations that goes far beyond a ‘civic ceremonial basis into productive connections of broad social, economic and cultural benefit’ to Melbourne in that case.

Inevitably in Australia, through AusAID and the Australian Sports Commission, we are forging very strong and friendly ties with other countries through the Australian Sports Outreach Program. ABC International, a major player in representing Australia offshore, encourages awareness of Australia and an international understanding of Australian attitudes on world affairs. Our universities are actively cultivating a network of relations between Australian students and scholars and their counterparts overseas and our cultural organisations are actively engaged in building Australia’s international reputation and encouraging a better understanding of Australia and its people, as are the very many other private organisations working with overseas communities, including non-government organisations—especially those engaged in humanitarian work—other sporting associations, businesses and the Australian diaspora.

We commend the work of the government departments and agencies, the cultural and educational institutions and the many private organisations that are actively promoting Australia’s reputation overseas. Many of them work quietly behind the scenes and they are helping to secure a presence for Australia on the international stage and to build a reputation that helps to advance Australia’s interests internationally.

We note in the report, however, that Australia is in fierce competition with other countries that are also seeking to be heard on matters of importance to them. On some occasions the stage is very crowded. Some countries devote considerable resources to public diplomacy and even smaller countries like Norway have developed public diplomacy strategies to gain a comparative advantage in international affairs. Canada is reinvesting in its public diplomacy and making it central to its work and Germany, the United Kingdom and the US are keenly engaged in public diplomacy. China, in particular, has recently embarked on a significant campaign to improve its global image and to influence world opinion.

To ensure our efforts are not overshadowed in this highly contested international space, we have to ensure that we take advantage of opportunities to capitalise on the positive outcomes from our many public diplomacy activities. The committee identified some areas where we believe Australia could improve its public diplomacy achievements. For example, one very pertinent observation
made during the inquiry was that ‘the whole is not as great as the sum of the parts in our public diplomacy’.

In light of the importance of public diplomacy to Australia’s many interests, including trade, investment, security and those in the political arena, the committee believes that greater effort is required domestically to inform Australians about our many public diplomacy activities and the benefits that flow to the country from them. The committee has recommended that the government formulate a public communications strategy and put in place explicit programs designed to inform Australians about our public diplomacy and to encourage and facilitate the many and varied organisations and groups involved in international activities to take a constructive role in actively supporting Australia’s public diplomacy objectives.

The committee was concerned about the overall effectiveness of Australia’s whole-of-government approach to public diplomacy in producing a cooperative, coordinated and united effort by the many organisations and agencies that contribute to, or have the potential to contribute to, Australia’s public diplomacy, including the Australian diaspora. The committee noted that the importance of public diplomacy—especially as an exercise of soft power—means that an effective and effectively coordinated public diplomacy strategy is critical to the overall endeavours of Australia to effectively tackle some of our greatest foreign policy challenges, including the challenge of dealing with the threat of terrorism and developments and strategic changes in the south-west Pacific. With this in mind, the committee recommended that the government restructure the Inter-Departmental Committee on Public Diplomacy—the IDC—so that its functions extend beyond just sharing information between departments and agencies to include proper coordination and monitoring. One of its most pressing responsibilities would be to produce a coherent public diplomacy strategy that outlines priority objectives for public diplomacy.

The committee also drew attention to the observations of some cultural and educational institutions that the lack of strategic planning that we see in this area impedes more effective engagement in Australia’s public diplomacy, so we have recommended that Australia’s public diplomacy strategic plan take account of non-state stakeholders, including business, non-government organisations and Australian expatriates. The committee also recommended that the government establish a small but specifically tasked cultural and public diplomacy unit in the Department of Communications, Information Technology and the Arts. While liaising with the Department of Foreign Affairs and Trade, that unit would provide the necessary institutional framework to ensure that our cultural institutions are well placed and are encouraged and supported to take full advantage of opportunities to contribute to Australia’s public diplomacy.

To ensure that the department is able to meet the growing challenges of conducting an effective public diplomacy policy, the committee believes it would be more than timely for the Department of Foreign Affairs and Trade to commission an independent survey of its overseas posts to assess their current activities and to ascertain their future needs when it comes to public diplomacy, and we have recommended that accordingly.

The committee acknowledges that evaluating the performance of Australia’s public diplomacy is not easy. We are firmly of the view, however, that Australia’s public diplomacy programs can and should be evaluated. We have recommended as a matter of priority that the Department of Foreign Affairs and Trade put in place specific performance
indicators that would allow it to both monitor and assess the effectiveness of its public diplomacy programs. In other words, effective public diplomacy is not, in the committee’s view, just about listing activities page after page but, rather, also about properly contemplating the outcomes that derive from that activity.

In relation to funding, it is clear that a significant effort is required to project and establish a positive image of Australia in a fiercely contested international space. It is an expensive undertaking for a country of our size to secure and maintain international recognition as an ‘identity’ in its own right but it is fair to say that we have some natural advantages before we start. The committee notes and welcomes the increased funding allocated to cultural diplomacy announced in the 2007-08 budget—undoubtedly it will allow Australia’s cultural institutions to make an even larger contribution to Australia’s image abroad. In light of the proven capability of these institutions to contribute to Australia’s public diplomacy and their willingness and enthusiasm to do more, the committee believes that the government should consider either a significant expansion of the program or the strengthening of its commitment to supporting their public diplomacy activities more widely.

In conclusion, the committee has, in this very broad and interesting inquiry, looked at the challenges facing Australia to be both seen and heard on the world stage, the effectiveness of Australia’s public diplomacy, the coherence, consistency and credibility of its message, the network of relationships and communication systems that form the bedrock of public diplomacy and the coordination of public diplomacy activities between government departments and agencies and non-state entities. It has also looked at the training and qualifications of those responsible for the government’s public diplomacy programs, the use of technology, the evaluation of the programs and the funding available. It is a very interesting and comprehensive report. I hope that it is a milestone report in the consideration of this particular area of policy, and I commend the report to the Senate.

Senator TROOD (Queensland) (11.44 am)—I want to make a few remarks in relation to the report of the Senate Standing Committee on Foreign Affairs, Defence and Trade entitled Australia’s public diplomacy: building our image. Public diplomacy is essentially about Australia’s reputation and image abroad. In modern international relations I think countries increasingly appreciate the importance of their image and reputation and the vital importance they can have to the conduct of their wider foreign policy. It is an increasingly crowded field of international affairs. The United Kingdom, the United States, Canada and countries in Europe all conduct very considerable public diplomacy programs. They are all very well funded and, I think I can fairly say, they are increasingly providing further funds to advance those programs. So Australia, in relation to its image and reputation, has to compete in a very crowded international space. This poses very considerable problems and challenges for our broader foreign policy.

The committee’s report seeks to make a constructive contribution to understanding these challenges and to making suggestions as to how they may be met in the future. The purpose of the inquiry was not to determine the nature of Australia’s reputation and image it projects overseas; but we can fairly say that we received a lot of evidence that that image and that reputation were very favourably received in large parts of the world. It is reassuring that that is the case and it is, perhaps, not surprising because there is a great deal of public diplomacy activity which Australia projects into the international
arena. One of the interesting findings of the report is the extent to which this activity takes place. The following are manifestations of this activity: the considerable work done in our posts and missions abroad, the profile of members of the Australian diaspora around the world, the activities of AusAID, the activities of Australian sporting teams, the many performing arts companies which contribute to Australia’s cultural diplomacy and the very active role of Australia’s universities in promoting education overseas. These activities all contribute to the building of Australia’s image and its reputation abroad. Despite all this activity, public diplomacy in general—and this was a finding of the committee—is not as well coordinated as it might be. There are some areas of public diplomacy which the committee is of the view might be considerably better funded—not exhaustively, but I think increased funding would certainly improve the effectiveness of the program.

In the report, the committee acknowledges the very important and valuable work undertaken by the Images of Australia Branch within the Department of Foreign Affairs and Trade but believes its effectiveness could be improved by some modest reforms. Most of the recommendations in the report focus on strengthening policymaking in the department, improving coordination of our general cultural and public diplomacy programs and reviewing the need for additional funding.

The report contains 20 recommendations. I will save the Senate the time of going through each of these recommendations, but I think all of them deserve close attention. They will all materially improve the way in which Australia conducts its public diplomacy. All I want to do in the time which is available to me is mention the four most important recommendations.

Recommendation 6—and Senator Payne referred to this in her remarks—refers to the strengthening of the operation of the interdepartmental committee process within the Department of Foreign Affairs and Trade. This is actually the pivot of Australia’s public diplomacy activity, and the widespread view of the committee is that this needs considerable strengthening.

Recommendation 11 of the report suggests the creation of a new unit in the Department of Communications, Information Technology and the Arts, largely to more effectively coordinate the conduct of Australia’s cultural diplomacy. One very interesting finding of the inquiry was that there are a large number of arts organisations contributing to Australia’s cultural diplomacy abroad. They are contributing with great enthusiasm. Indeed, the impression the committee had was that there are other arts companies and other arts organisations which, given the opportunity, would very much like to contribute to that kind of activity. Those organisations which gave evidence were certainly of the view that these organisations which were contributing in such a constructive way were doing so without clear and obvious strategic purpose. So the creation of a unit in DCITA, we think, will help to address that particular problem effectively.

Recommendation 19 of the report suggests that there should be a review of the small foundations, councils and institutions—these bilateral organisations—which the Department of Foreign Affairs and Trade has set up over the last few years. The evidence to the committee was that each one of these small councils, institutions and foundations is doing very effective work in its own way in the pursuit and conduct of Australia’s public diplomacy. Indeed, my own experience, as a member of the Australia-Indonesia Institute board some years ago, reinforces my impression that they are a very effective
way of conducting Australia’s public diplomacy. The point is that, essentially, these organisations have not been reviewed since they were created. A review would be productive to see whether or not they could, perhaps, be more focused. I would hope that the review would take into account that many of these organisations should perhaps receive increased funding to conduct their activities.

Finally, recommendation 17 suggests that there be a strengthening of the mechanisms for measuring the conduct of Australia’s public diplomacy. Senator Payne referred to this matter as well. There are plenty of outputs which we saw as members of the committee, but the effectiveness of these outputs—the way in which they actually make a difference to Australia’s image and reputation abroad—is a matter that concerned the committee. Our sense of it is that they probably do in many ways make a very considerable contribution but, since we are dealing with public moneys here and since we are dealing with a policy program that is of vital importance to the nation’s future, we think they need to be better monitored and that closer attention should be paid to ensure that the programs are actually delivering what they are claiming to deliver.

In conclusion, the reforms will require greater involvement in public diplomacy activity by the government and a stronger commitment to the conduct of this area of policy. In the last budget $20 million was advanced for the public diplomacy program through the Australia on the World Stage program. I know the former Minister for the Arts and Sport, Senator Rod Kemp, has taken a close interest in this matter, and that is very much welcomed by the committee. This is a very narrow part of public diplomacy in relation to cultural diplomacy, and Australia should not be shy in making a greater contribution financially to the conduct of what is a very important dimension of our foreign policy.

**Senator Kemp** (Victoria) (11.53 am)—I rise to speak on the report of the Senate Standing Committee on Foreign Affairs, Defence and Trade report Australia’s public diplomacy: building our image. I would first of all like to indicate that I am going to direct my remarks essentially to chapter 9. I have not had time to read the full report in the brief time since it was tabled but, from what I have read in the summaries and, particularly, in chapter 9, I would like to extend my congratulations to Senator Payne and her committee, including Senator Trood, who is in the chamber and has spoken on the report. I think they have been very effective in identifying a magnificent opportunity for Australia; that is, the role that our cultural institutions and our artists can play in the public diplomacy area—in particular, their capacity to show to the world the sophistication of Australia and what Australia has been able to achieve culturally.

A great deal is happening in this area at the moment. You only have to read the press to see that companies as diverse as the Bell Shakespeare Company, the Australian Ballet, Opera Australia and our theatre companies are active on the world stage. But my judgement is that a great deal more can be done. I took great heart from the last budget when a new program, Australia on the World Stage—referred to by Senator Trood—was announced with funding of some $20 million over four years. It is a start—but, I have to say, only a start. That funding is welcomed and the establishment of the program is welcomed but, in order to conduct the strategic initiatives which have been so well explained in the report, more funding needs to be provided and there needs to be a greater capacity to undertake long-term planning. The committee have reflected on the organisational aspects of this, and they have made, to
my mind, some very helpful suggestions as to how the program can be better coordinated and form the basis for a larger strategic program in the arts.

We have performing arts centres opening up around our region. They will be hungry for important cultural events, and Australia can be a major supplier of these activities. Would it not be wonderful, for example, if Opera Australia were able to plan major tours each year through our region—travelling, for example, to Shanghai, performing in the wonderful new opera house in Beijing or travelling to Seoul, Tokyo and Kuala Lumpur? Just imagine the interest that would create and the opportunities it would provide for Australians in those countries to come into contact with the politicians, the businesspeople and the cultural people in those countries. Those sorts of events do provide a wonderful opportunity for that.

Opera Australia is only one such company that would benefit. The Australian Ballet is another one. Indeed, all the major performing arts companies would see the wonderful potential of having a well-funded program, as they would have the confidence to undertake long-term planning for major cultural initiatives in the region. Of course, I am talking not only about the major performing arts companies but also about our artists. One can easily project the exhibitions that could be held in the regions under a global vision type of program.

The report has effectively identified a wonderful opportunity for Australia. It is now up to the government to carefully consider the recommendations. My judgement is that to have a well-funded program along the lines which this report has outlined would probably cost in the order of $15 million to $20 million a year. That is not a small sum, but the amount of activity that that could help underwrite would certainly have a very substantial impact on our region and would be very useful in further promoting Australia and its cultural activities in Europe and America.

I welcome the report, the analysis that has been done and the insights which have been given. I certainly hope that the government will be able to give careful consideration to these proposals. Hopefully we will see further action on this extremely important front so that we can see a properly funded and organised program along the lines of Australia on the World Stage.

Question agreed to.

BUSINESS

Rearrangement

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (12.00 pm)—I move:

That, if the Senate is sitting at midnight on Thursday, 16 August 2007, the sitting of the Senate shall be suspended till 9.30 am on Friday, 17 August 2007.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—I call Senator Bob Brown—

Senator Moore—Bob Brown.

The ACTING DEPUTY PRESIDENT—There is only one Senator Brown.

Senator Bob Brown—No, there are two.

Senator Moore—There is Carol Brown.


Senator Abetz—They are both forgettable.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.00 pm)—Forgettable, says our fellow senator from Tasmania, but they are both good Tasmanians true. The reasonable thing for the government to do in moving a change which means that we will be sitting tomorrow if the
debate on the Northern Territory legislation goes until midnight today is to give an explanation of what the intention is. I heard that on the ABC Senator Abetz flagged the possibility of sitting on Saturday. He ought to be giving information to the Senate, rather than simply flagging to journalists what we might be doing. This legislation is huge. It needs proper scrutiny.

I heard that Senator Abetz indicated that there was filibustering going on in here. That is a direct calumny on the process that has taken place. That is not so. It is patently evident that senators have been contributing very directly to this important debate. The public assertion by Senator Abetz that members of this Senate have been taking time simply to fill in the Senate sitting hours with irrelevancies is quite outrageous. He might be more judicious in the words that he chooses to use outside in a political way to try and defame falsely those in the Senate. There are very serious matters before the Senate and they have been taken seriously by all parties, including the government, in the Senate. That process, as far as the Greens go, will continue.

This is important legislation. The nation’s attention has been drawn to it. This is our opportunity in committee to question the government about it, to elicit more information and to ensure that we are informed before we vote on the various amendments and then on the third reading of the bills. I request that Senator Abetz be a bit more moderate and sensible in the comments that he makes publicly about the process of this very serious debate in this parliament. We can do without the Senate being treated as a political football by the senator. If he were to attend more of the debate about the Northern Territory legislation, he might get to see how serious it is and how good and incisive the debate has been—including the contributions by the minister involved. All parties have been doing this in a mature and sensible way, and the proceedings deserve a better public description than the one Senator Abetz has given.

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (12.04 pm)—The motion that is before the Senate says that if we have not transacted the business by midnight tonight we will be commencing sitting again tomorrow at 9.30 am. The reason for that—and plenty of notice has been given of this—is that we as a government believe that the Northern Territory legislation, the water legislation and some bills relating to APEC need to be transacted by the end of this week. That was in fact discussed with leaders and whips earlier on. We had in fact wanted the citizenship bill to be part of that as well, but we removed that from the list of bills that we were requesting to have Senate consideration concluded on by the end of this week.

Yesterday, I was asked by journalists some questions in relation to the government’s plan. The government’s plan, as indicated quite some time ago, is to have these bills on the list transacted by the time that we conclude this particular sitting fortnight. It had come to my attention—and I will not say through which sources—that certain people were anxious for the government to apply the guillotine so that they could campaign on the basis of the government guillotining legislation through this place and treating it with contempt. There would then only be the one party that could save the Senate from this heinous activity of legislation being guillotined. All I ask senators to do is to give consideration to the way in which they conduct themselves during this debate. In general terms, what Senator Brown said was right. But I would not say that all senators have conducted themselves in an appropriate manner during this debate, because it has dragged out.
It is interesting that in the 106 years of this Senate since Federation, in 1901, only 29 bills have ever been considered for more than 20 hours. In those 106 years, 29 bills have taken more than 20 hours. In almost half—14 out of those 29 bills that have taken 20 hours or more—and in all that time and in-depth discussion, guess which government provided that time to the Australian Senate? The Howard government. That is a very good and very proud record. But, of course, when the Howard government says: ‘This is important legislation. We might recall parliament to give it more time to consider it,’ it is condemned by only one party. Guess who? The Greens. And we were told at that time, ‘There’s no need to recall the parliament early; the parliament is going to be sitting anyway. We can transact it during that time.’ Guess what happens? When we then do not recall parliament early and deal with it at the time suggested, there is a motion to defer its consideration until October.

Senator McGauran—By whom?

Senator ABETZ—You are quite right to interject, Senator McGauran, just in case people could not pick up who that might be—of course, it was the Australian Greens. And now, we have said, ‘We’ll give the Senate a whole extra day if they need it to consider this legislation,’ but I hear Senator Brown in the media saying he needs to get back to his electorate. Sometimes in life you have to make a decision about what is more important, and we believe that protecting the children and women in particular of these Indigenous communities is vitally important. We also believe it is vitally important for the environment that we get this water legislation through, which has been out and about for discussion and consultation for months. There is some machinery legislation to deal with the APEC conference that is happening very shortly—I think there is unanimity in the parliament in relation to that legislation.

That is all we are asking for. We are saying that, if the Senate cannot curtail the debate by midnight tonight, then we as a government are willing to sit an extra day and, if we have to keep sitting, we will then consider the consequences.

The history of the Howard government has been to allow exhaustive debate and, as I indicated, out of those 29 bills that have taken more than 20 hours, nearly half—14 of them—have been bills introduced by the Howard government. Only 29 bills have gone over 20 hours in this place in 106 years, and guess how much time we have already clocked up on this Indigenous legislation for the Northern Territory? Fifteen hours and 17 minutes. So, by the close of today, we will have clicked over the 20-hour mark in relation to this legislation. Then the tally will be 30 bills and exactly half of them, 15, will have been under the Howard government. It shows that we have never taken this place for granted. When we seek to recall parliament early to give it more time we are condemned by the Australian Greens. When we want to give it more time on a Friday, to have an extra day of sitting to consider bills, we are condemned as well. It is the typical, cynical approach of the Australian Greens: you’re damned if you do; you’re damned if you don’t. There will always be opposition manufactured for the sake of opposition so that you can get a cheap headline. I commend the motion to the Senate.

Question agreed to.

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE PAYMENT REFORM) BILL 2007

NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE BILL 2007
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.12 pm)—And, with that, Senator Abetz left the chamber. We are dealing with clauses 90 and 91, which effectively forbid courts to take into account cultural practice and customary law with regard to passing sentence and certain bail applications. We support the Democrats’ amendment here and oppose these clauses. I have a question for the minister: is it not true that other organisations in Australia are privileged under the law in a way that makes this legislation cut across the rights of Indigenous Australians in what can only be described as racist?

The Exclusive Brethren, for example, along with other Christian organisations, have exemptions from having unions come into their workplaces under the Work Choices legislation of this government. We know that the government is funding Exclusive Brethren schools which are set up to isolate Exclusive Brethren children from the rest of the community, which is described as ‘worldly’—meaning unworthy and not fit. This isolation means that those children do not and cannot eat with other children, cannot go to university, will not be allowed to vote and cannot go for military service. If one or other of their parents goes to a different customary view, cultural practice or religious ideology, those children are forbidden for life to see their parents again.

That matter has been raised before the Australian courts, including the Family Court. The Family Court has taken those factors into consideration in deliberations, including the passing of sentences. I ask the minister whether he is aware of whether the Prime Minister met the Elect Vessel of the Exclusive Brethren, Mr Bruce Hales, last Thursday. Is the Exclusive Brethren getting special consideration under the law at a time when Indigenous Australians are having any court consideration of customary law or cultural practice struck down by the way this law is applied?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.15 pm)—Perhaps the senator does not understand. I should just add some explanation, particularly with regard to his initial comments that this was just about Indigenous people: that is not the case. This provision is intended not only for prescribed communities; it is intended to extend across the entire Northern Territory community, consistent with changes made to the Commonwealth Crimes Act. There were some references yesterday—I hope that you are across it; in my mind I cannot go straight to the reference—to the fact that sometime last year we made some amendments to ensure that, in sentencing or applying bail conditions and determining the severity or otherwise of the circumstances, we could not take into consideration customary law.

I think it is important, initially, to outline exactly what the circumstances are with regard to the changes that this will make. This
will apply right across the Northern Territory and, consistent with other aspects of this bill, when the Northern Territory takes it over—which, I understand they have undertaken to do through the COAG arrangements; that evidence was provided to me by Senator Evans last night—we will repeal this. I understand the same provisions are being provided around Australia. That is the general circumstance of the bill; it is not only about the particular aspects of the prescribed communities.

These amendments do not prevent customary law or cultural practice from being taken into account for bail and sentencing. That is not the case. When you are considering bail or sentencing matters customary law and cultural principles or practice can be taken into consideration, and will continue to be taken into consideration. The amendments ensure that in making an assessment about the seriousness of the offence the relevant authority cannot take into account customary law or cultural practice as a factor which aggravates or lessens the seriousness of the offence—for example, in exercising some sentencing discretion, the court could still take into consideration that an offender will be subject to tribal punishment or something of the like under customary law. In sentencing, a court could say, ‘Well, he has already suffered under customary law; we can take that into consideration by lessening that sentence.’ That may be the circumstance. That consideration can still continue and it is a very important aspect of the recognition of customary law.

A bail authority could perhaps also consider the fact that an offender lives in circumstances in a family or a community structure that operates under a customary law environment. They could take into consideration the particular circumstances of a very strong tie with customary law in a community or family when determining whether or not to grant bail or set bail conditions. So, again, these amendments do not prevent customary law or cultural practice from being taken into account in bail or sentencing decisions. An extreme situation that we are trying to avoid is a court taking into consideration the argument that in a person’s culture violence against women was not considered a serious offence. We would not be taking that aspect into consideration, because the cultural law diminishes the offence. So that is what we are attempting to create here. As I indicated earlier, I understand that all of the states and territories have agreed to amendments that are parallel to the amendments we made last year to the Commonwealth Crimes Act with regard to these matters.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.19 pm)—Do customary law and cultural practice include Indigenous language?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.20 pm)—In a definitional sense I am not in a position to provide an answer to that. I could not see how language would either aggravate the seriousness of an offence or diminish the seriousness of an offence, so in that context I would say that the answer is possibly no. But language is obviously a part of culture.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.20 pm)—I wonder whether the minister would be good enough to take that question on notice and come back with an answer during the committee proceedings. I just go back again to my reference to the courts taking into account the special customs and practices of other groups including, for example, the Exclusive Brethren. Would this legislation cover customary law and cultural practices of the Exclusive Brethren as well?
Senator SCULLION (Northern Territory—Minister for Community Services) (12.21 pm)—I can provide some information to the question I had taken on notice. I am informed that I was correct: a person’s language would never be taken into consideration in terms of diminishing or adding to the seriousness of an offence. In terms of whether this extends to the Exclusive Brethren or any other culture, these amendments, in terms of how you define customary law or cultural practice, do not exclude any particular practices or culture. So, I would say that is the case.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.21 pm)—I want to go back to that definition. The cultural practice is the speaking of the language. I want to make it absolutely and abundantly clear here that the intention of the government is not to include Indigenous language in the term ‘cultural practice’.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.22 pm)—I indicated in my previous answer, Senator, that language is a part of culture and it is a part of customary law. The advice is that it would not be seen in a way that would either aggravate or mitigate the seriousness of an offence.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.22 pm)—If it is not to be taken into account, it can be seen as mitigating an offence. For example, if a person cannot read or does not understand an instruction given by a police officer in a language that is not their own, that is a mitigating factor. I need it to be abundantly clear that this legislation does not intend to prevent the court from taking into account customary law in, for example, excusing, justifying or lessening the seriousness of the criminal behaviour to which the offence relates. It may be very much a part of the consideration by a court, because a person’s understanding of instructions or, indeed, laws that are in a language they do not speak obviously affects their behaviour.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.24 pm)—The circumstances affected by this particular provision are the circumstances where, when you make an assessment of the seriousness of an offence, in terms of both sentencing and bail applications, then you cannot take customary law into consideration. But we are certainly not asserting that mitigating circumstances in a criminal trial would not be taken into consideration. This only refers to both sentencing and bail applications. Of course, those sorts of circumstances would always be taken into consideration in any prosecution and defence of a criminal matter. These provisions are specifically in regard to sentencing and the circumstances of bail.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.24 pm)—A person is found guilty or not, then a sentence takes into account such things as these clauses outline, mitigating or aggravating factors that are involved. The problem that I have with this is that the minister is saying that language can be taken into account in the finding of the person’s guilt or otherwise but cannot be taken into account then in the sentence that is applied. I think this is a law that cannot be supported.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.25 pm)—As I have said many times, I am not a lawyer, I do not have a legal background, but there are some things that strike me about your question. A matter of understanding is a mitigating circumstance. But those circumstances could be established. The fact that somebody did not understand the law would obviously be a mitigating cir-
cumstance. But, in this context, whether or not it is a particular language, or whether that language is part of customary law or not, is not the issue. The issue just goes to the matter of whether or not they understood, and that issue would provide some mitigating circumstances in consideration of sentencing and bail, not the fact that it was a customary law or a customary language. The issue is whether or not they understood.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that clauses 90 and 91 stand as printed.

Question agreed to.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.26 pm)—I would like to take this opportunity to correct the record. I paraphrased not verballed the Leader of the Opposition in the Senate. What I thought you had said last night, Senator, and what I indicated this morning is that the states are in fact intending to give effect to the COAG principles, I understand; I have been advised that is not exactly the case. Some advise that their existing law already complies so they will not need to amend their own legislation to ensure compliance.
not that receives funding from a Commonwealth, state, territory or local government authority, or one that is on loan—in other words, as I understand it, the computer does not have to have been funded directly by any of those bodies; it just has to be owned by a body that is funded by the government. I also understand that this applies to any organisation that is being funded. Is that correct?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.30 pm)—There is a suite of questions there. I am not saying they are out of order but out of order in the sense that we have already debated them. I think it would be useful later in the proceedings and I will undertake to get those particular details for you and provide them on notice.

Senator SIEWERT (Western Australia) (12.31 pm)—These are critical to this debate. The point we are trying to get to is that we are talking about any computer that happens to be owned or used by or on loan from an entity that is funded by the government in these prescribed areas, as I understand it. It does not have to be directly funded by the government. The point I am trying to make here is that these quite extensive and extraordinary powers go, for example, to any NGO that has government funding to provide services in these regions. They are subject to the laws. Am I correct in that?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.31 pm)—Absolutely.

Senator SIEWERT (Western Australia) (12.31 pm)—The computers just have to be located in the prescribed areas?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.31 pm)—That is correct. It is consistent with the range of these initiatives. It does not matter who you are, you cannot take alcohol or consume alcohol or have alcohol. This is a prescribed community and we do not want pornography available anywhere within the community. So it does not matter who it belongs to, we are taking measures to ensure that the children are protected.

Senator SIEWERT (Western Australia) (12.32 pm)—My understanding of the bills and the legislation is that this is not just about pornography. The list includes things that are slanderous, libellous or defamatory or what is offensive or obscene—I can understand the obscene bit, but people’s definition of what is offensive varies, I can tell you, because what I find offensive may be different from what other people find offensive. It goes to sending an anonymous or repeated communication that is designed to annoy or torment. I find some repeated communications annoying that other people would not find annoying. Who is the arbiter? Who decides, and what criteria are being used for what is offensive or what is abusive or what is annoying? I find some things extremely annoying. Who makes those decisions? Where will the criteria be outlined?

I would also like to know what happens in this instance: who identifies the person responsible for a publicly funded computer? How is that person designated and what happens if an organisation does not have someone that is responsible? I would also like to know what happens if there is unauthorised use of a computer. The person responsible for the computer is to keep a record of the use. What happens if some unauthorised person uses it? Is the responsible person still committing an offence, because if a person does not keep a record they are committing an offence? What are you doing about training people to know when something is slanderous or libellous or defamatory or offensive or annoying?

Senator SCULLION (Northern Territory—Minister for Community Services)
(12.34 pm)—Again, there is a suite of questions there. We have said that there has to be a reporting process. Everybody would be issued with a password so that when you get on the computer we can trace who it was that accessed these things, if that is the case, and it is an offence not to do that. If it is a computer that has the capacity to access pornography, then we want to ensure that it is not there. I would have thought that this was a fairly straightforward process.

You re-asked a question about the details of how we would have a definition and appraisal of a few of the issues. I said that it would be useful for me to get back to you on notice. It is a detailed answer and I will try to do that as soon as I can. In terms of the training, there is a whole suite of ways in which the intervention team is being prepared both in a cultural way and in other ways. When they arrive, one of their first tasks will be to ensure that we communicate with the community exactly what all these things mean. In my original submission yesterday I went through the process. That is one of the fundamentals and, because part of the legislation is that that will be explained, we will ensure that people understand very clearly what a lawful use of a computer is in those circumstances and what is not.

Senator SIEWERT (Western Australia) (12.35 pm)—You keep using the term ‘pornography’, and I understand the government’s intent. But, as I said earlier, you have not explained what materials, and why materials that could be considered offensive or annoying, are included in this. The definition does not just relate to pornography. There are lots of things that I find offensive that are not pornographic and there are lots of things that I find annoying that are not pornographic, and that is not defined here. You are also talking about computers that are owned by—potentially, again—non-government organisations that are not funded by government. But it is ‘any’ computer; you are not covering all computers. So aren’t you just going to all computers?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.36 pm)—The head title of section 28, the section you are referring to, is ‘Development of acceptable use policy’. Effectively, the remainder of this is a guideline under which the policy should be constructed. A particular example of the use of ‘annoying’ is in the guidelines under 28(3)(a)(i) to (vi). Subsection(3)(a)(i) states:

(i) that contravenes, or forms part of an activity that contravenes, a law of the Commonwealth, a State or a Territory ...

It is effectively saying that an acceptable use policy would go further than that, because continual, annoying messages are unlawful. So, rather than just having a provision that deals with one specific area, we have been efficient in ensuring that the lawfulness of computer use generally is also dealt with as part of these provisions.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.37 pm)—The question that Senator Siewert asked is: why doesn’t this apply to all computers?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.38 pm)—The answer to that is that this is within our capacity, and it applies only to the computers that we have a link to. The law, as part of these provisions, also extends to the illegality of having access to pornography in the community. If there are other private computers that have access to pornography in the community—and no doubt there are investigations of that within the community—it is unlawful and would be pursued. But we are saying that we have the capacity to have a look at those computers and put special provisions around the computers to
which we have access or links so that we can maximise opportunities to ensure that pornography is not available in the community.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.38 pm)—No; the Commonwealth has the ability to legislate on these matters and on unlawful matters relating to computers held by anybody. There are two components here. There are the things that are clearly unlawful and contravene a law of the Commonwealth, state or territory, but then there is a list of things that do not do that, such as being defamatory, offensive, abusive or harassing, and these are matters for which the legislation gives us no guide as to limits. It is fair and proper that we ask the minister, whose legislation this is, what the limits are outside the law to which this section is intended to apply. Why not apply those same limits to the use of all computers within the Territory? I think the reason the minister has given is that the Commonwealth cannot legislate to prevent legal material being disseminated by a computer. But the Commonwealth is legislating here to prevent legal material being disseminated by computers that are funded by the Commonwealth, if that material is considered defamatory or offensive. So here we are outside sexual matters, presumably, and into matters which are political. The Senate ought to hear exactly what the definition of those terms are and who is going to judge those terms in applying this law.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.41 pm)—A moment ago I took the same question, on notice, from your colleague Senator Siewert. I understand that there is a clear definitional process under law, and there will be a clear definition of those terms. I would hope to supply those to you shortly.

Senator BARTLETT (Queensland) (12.42 pm)—There are a couple of issues here. I appreciate the fact that the minister has to take things on notice—and it is certainly preferable that he does that rather than not answer or give us an incomplete or misleading answer—but it goes back to the core problem we have here. As was mentioned earlier today in this chamber, Senator Abetz—I appreciate that it was not Senator Scullion—has been out there, around the media, slagging off the Senate and saying that we are deliberately dragging out this debate, deliberately filibustering, deliberately trying to hold it up. I do not think that anything the Democrats could have done would have made it clearer that we are not trying to hold this up. But this is what happens when you do not let the Senate have a proper Senate committee hearing. You have to ask these questions here in the chamber because there is no other way to get the details on the record. It is not just for us to make an informed
decision in our vote, although that is important; it is for the community. It is just not good enough to pass laws and say, ‘We’re still working this stuff out.’ You cannot continue to use the excuse that it is an emergency to keep doing that. Frankly, it just reinforces the reason why the Democrats consistently argue that this bill should be brought back in the first sitting week in September—when we will be sitting, when an election will not have been called and when we will have a clear idea of what all this stuff means. Basically, as has just been indicated, these things are still being worked out. The powers are far reaching, and there are more far-reaching areas than this in the legislation, but certainly this in itself has its own significance in the imposition it puts on people. It is not a matter of arguing about the intent; it is a matter of talking about the implementation and the consequences.

Having made that comment, the question I would like to ask is with regard to the auditing of publicly funded computers under section 29 of part 3, where people responsible for a publicly funded computer must ensure that the computer is audited twice a year, on 31 May and 30 November, and on any other day determined by the minister—so, potentially more than twice a year. Is the cost of conducting that audit going to be worn by the body that has the publicly funded computer? Senator Siewert asked a question earlier about the definition of ‘publicly funded computer’, which is any computer owned by an organisation that is publicly funded. So it is not actually that the computer is bought with public funds but that the organisation that owns the computer is publicly funded in some way. Of course that means non-government organisations, some of whom are already active in these communities, bodies like Oxfam and Mission Australia and, I am sure, others. Are they going to have to bear the cost of auditing these computers? To use the example that was given in a slightly different context yesterday or the day before by Senator Crossin of people who are taking computers—laptops and the like—in and out of communities, is there any requirement for them to be audited or checked, or is it just those computers that are in the communities on those particular audit days? If that is the case, does that mean that as long as the computer is not present in the relevant place on that day then it is not going to be subjected to an audit?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.46 pm)—I will go to the questions on notice I took from both the Greens senators. In terms of the definitions, I am advised that general law covers those definitions and that they are clearly set out in general law. For example, the definition of ‘defamatory’ is that it tends to lower the persons about who it is said in the estimation of right-thinking people. There are a whole suite of those definitions that are available and that the courts would look to.

With regard to the questions from Senator Bartlett and, firstly, the cost of the audit: I am advised that this is a technical audit. It is an IT based audit. While the Commonwealth would not be paying the cost of the audit, I am advised that one of the principal costs of the audit is in fact the software used for the audit and at the moment issues surrounding the supply of software are under active consideration. In terms of a computer coming into the community and the example given by Senator Crossin, the legislation specifically says that the computer would ordinarily be in that location, so obviously it would not apply to somebody travelling in or out. An audit would not be required in those circumstances. If it was ordinarily located in the community then it would.
Senator SIEWERT (Western Australia) (12.47 pm)—Minister, I may have missed it but you said that the definitions are the standard ones as they apply in law. I also asked a question about defining ‘a responsible person’. I may be mistaken, but I do not know if that is defined in law.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.48 pm)—For the record, ‘responsible person for a publicly funded computer’ is described in the act.

Senator SIEWERT (Western Australia) (12.48 pm)—I understand that that is the definition of a publicly funded computer, but could you point out to me where the definition of ‘a responsible person’ is, or does it come under the relevant owner? I beg your pardon; I do understand.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.49 pm)—Minister, why is it that under section 26 ‘the responsible person for a publicly funded computer’ must ensure that a filter that has been accredited, in writing, by the telecommunications minister is installed on the computer’ but that that accreditation is not a legislative instrument? Why is it that the minister is given this power but parliament is not given an overview of it?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.49 pm)—I have no idea, Senator Brown, but if you give me a few moments I will try to get back to you.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.49 pm)—I am particularly interested as to the application of these filters on computers and the use of these publicly funded computers. Do these particular requirements apply in any part of the Commonwealth Public Service or anywhere else?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.50 pm)—With regard to Senator Bob Brown’s question, the reason that the filter is accredited by the minister is that it is simply a technical decision. They will receive advice that this is the standard of filter, not any old filter but a particular filter that might have a number or a brand. It might even be that the filter may have to meet a standard. It is simply a technical thing, so the minister has decided, through the process, that this is the standard that applies. Rather than the minister making a decision on what type, it is just that it meets a standard.

Senator MILNE (Tasmania) (12.51 pm)—Thank you. Was this the filter that applied in the Department of Agriculture, Fisheries and Forestry, where recently 11 staff were sacked and 14 others resigned for abusing the department’s internet system, including accessing pornography, when a departmental spokesman confirmed that 71 staff had been investigated after a tip-off about the misconduct et cetera? I want to know if this particular standard of filter that is being applied in these communities was the standard that was being applied before this incident occurred or post this incident occurring?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.51 pm)—Clearly, Senator Milne, the decision about what filter will be used has not been made yet. Obviously they will be taking into consideration issues and the most recent technology. No doubt they will be taking into consideration all those factors when that decision is made.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.52 pm)—The minister said that the parliament will not have an overview of that. That has been taken away by the government in this legislation. The minister gets the power, and the parliament is sidelined. But the important matter that Senator Milne is asking about is:
does this application of a filter requirement apply to the whole of the Commonwealth Public Service?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.52 pm)—These provisions apply specifically within the prescribed communities under the bill.

Senator MILNE (Tasmania) (12.52 pm)—Yes, but that is the concern that I have here. We are applying this to the areas that are being designated under the bill, and I understand that. What I thought I understood you to say a few moments ago, in answer to my first question in relation to this, is that there is already a standard filter that applies across the Public Service and that this is that particular filter. It is not just any old filter; you said it is one that is a ‘standard’ application. That was the inference I took from what you said, which is why I then asked: is that the standard that applied such that these breaches occurred in the department and have since been dealt with? Obviously, new standards are going to apply—or I would hope that new standards are now going to apply—in the Department of Agriculture, Fisheries and Forestry. I just need to have clarity about whether what you are putting on in the Northern Territory is what has failed in the Public Service already, or is it different from that? If it is different from that, will it also be applied across the Public Service, given that we have proven breaches and proven access to pornography on the government’s own departmental systems?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.54 pm)—My term ‘standard’ was not as in ‘common or garden’; it was as in specific requirements. So when you go to a ‘standard’ I was referring to a standard being a series of prescribed measures to give a particular benchmark for use technically or otherwise. I am sorry there was some confusion about that. With regard to the remainder of your question, what happens in the remainder of the Public Service outside this bill is beyond my capacity to respond.

Senator MILNE (Tasmania) (12.54 pm)—Then I think there is a very important issue here. We are being told that what is happening under this legislation is to stop people accessing pornography using publicly funded computers. We have examples now of people under the government’s watch, in its own backyard in Canberra in the Public Service, accessing pornography with a standard, a benchmark of some kind, that the government applies. I do not think it is adequate to answer the question by saying you are unaware of what goes on elsewhere. I want to be sure that whatever standard you apply is a standard that you will apply in the Public Service following these clear breaches and access to pornography. I think the public are shocked enough about the statistics that have been released about the Northern Territory. They will also be shocked to know that in the Department of Agriculture, Fisheries and Forestry 11 people were sacked, 14 have resigned and several have walked and that there are investigations going on. What I am asking is: are there different standards being applied to publicly funded computers in areas prescribed under this legislation from those that are prescribed in the Commonwealth Public Service, given that in the Commonwealth Public Service people have been accessing pornography?

Senator SCULLION (Northern Territory—Minister for Community Services) (12.56 pm)—This is an emergency situation in the Northern Territory. The provision in this legislation applies specifically to that. A decision on the standard of the filters has not been made. But no doubt, in the making of that decision, consideration of the previous
issues mentioned by the senator will be taken into consideration.

Senator MILNE (Tasmania) (12.56 pm)—I have always believed that this is racist legislation, and clearly it is, because the government is seeking to exempt itself from the provisions of the Racial Discrimination Act. You cannot have a situation where you say that certain standards will apply about the level of filter on publicly funded computers for one group of people in the population but that a different standard will apply when you are talking about the government’s own Commonwealth Public Service. Given that the State of the Public Service report published in 2004-05 said that 283 employees in 29 agencies were investigated for improper use of email or the internet—and that is not all pornography, I absolutely acknowledge that, but some of it is—we have a situation where the government is going tough on pornography in Indigenous communities but has a different standard for the Commonwealth Public Service. That is not a good look. That is very discriminatory. I would like to hear from the government an undertaking that the same standards will apply to all publicly funded computers. Otherwise, what is the justification for saying that Indigenous people have to have one level and other people have to have another?

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.58 pm)—The motion we are discussing here from Senator Siewert is opposing that parts 3 to 6 of the bill stand as printed. Before we go to a vote on that I want to ask about the other components in that section, on the acquisition of rights, titles and interest in lands. Division 1 is the grant of leases for five years. I wonder if the minister could explain what is the national emergency that requires the action that the government has taken in this acquisition of rights, titles and interest in the land.

Senator SCULLION (Northern Territory—Minister for Community Services) (12.59 pm)—We discussed the very same issues yesterday as part of the Democrats amendment. There was some comprehensive discussion on that, but I respect that you need to have the discussion, Senator Brown—you may have been elsewhere then. The five-year leases are a fundamental part of the intervention. We believe that the leases are a necessary part because we have a clear understanding that, without the acquisition, the infrastructure and the changes that need to be made will not be able to be made in an efficient and timely way in the context of the intervention.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.00 pm)—I am aware of the debate yesterday. I ask the minister again if he could explicitly put to the Senate—this is a key question which was not specifically answered by the minister—the relationship between the abuse of children and other members of the communities being targeted and the title to their land. Could the minister put in explicit terms how you are going to advance the cause of ending abuse and violence in selected communities by taking the land off those people?

Senator SCULLION (Northern Territory—Minister for Community Services) (1.00 pm)—First of all, I will make it quite clear that the ownership of the land will always remain with those people. The leases are for a five-year period. There are some clear connections between the violence and child abuse and the reasons we need to acquire unfettered access to the land to provide for changes—principally in infrastructure—to provide for further protection of children and families within these communities. That connection needs to be clearly articulated in the context, usually, of governance arrangements. It has been very difficult. I could cite examples, but it has been pretty difficult
around communities in terms of a decision-making process to ensure that these infrastructure placements are done in a timely manner.

Often the townships are owned by traditional owners. Often not all of the people living in the townships are traditional owners. The process to establish, for example, where there may be three or four groups of different traditional owners, who own parts of a township is an extremely long process, and a process that is a requirement when, let us say, we have to go and put in a sewerage pipe. It might cut across four or five of these. Because their rights are still protected in terms of consultation in other places in Australia, not when they are in the community—under the Aboriginal land rights act—the process to find the traditional owners and to go through the consultation process may take 12 months.

If we are going to make some changes to these communities in terms of infrastructure in a timely way then we need to ensure that the governance arrangements—which, in other circumstances, would have been okay, but might take a fair while—are okay. It may also be that the governance arrangements that are in place are the reason that the infrastructure is, frankly, so poor. But in any event, as you would well know, Senator, there is a very clear connection between the abuse and violence in the communities and the level of amenity. If we have 22 people living in a house then the stress and the tension—as well as the general hygiene and a whole range of other issues—within the house are obviously going to impact on the suite of issues that we are trying to ameliorate. So there is a very close connection between that and this government’s need to be able, in an emergency, to do this. I am not sure whether you accept that that is the case, but the government and the Australian people see it as an urgent situation—an absolutely urgent situation.

We know that we need to deal with this crisis on every front. One of the fronts that is absolutely fundamental to change—and I know you will accept it—is the provision of and changes to infrastructure that every other Australian takes for granted. We also know that you are not going to be able to provide that infrastructure in a timely way unless impediments to the swift application of that, by law, are removed. It is for a five-year period. I would hope that, well within that five-year period, the changes we are able to provide will change the circumstances of particularly the women and children who are living in these communities.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.04 pm)—The removal of consultation that is involved in this legislation is one of the great grievances from the Indigenous communities who handle their affairs well. If it is for five years, it may well be for 50 years or forever. The question remains about the government’s intention here. The minister talks about 22 people per household and this being an emergency. This was an emergency early in 1996 when Prime Minister Howard took over the reins of government in this country. For 10 years he turned his back on that emergency. In fact, he began by taking money out of the Indigenous communities, some of which would have gone into housing, health and so on—and I am talking about very large amounts of money: $400 million in that first budget. So things were made worse. This emergency has been made worse by the government’s own behaviour, and that comes right from the Prime Minister.

Now there is action being taken here which cuts right across the rights of First Australians to even be consulted. I want to
ask the minister: after this decade or more not just of failure but of compounding and making the situation worse by the Howard government, what is the estimated cost of the house-building program for the next five years that will bring Indigenous household habitation to the levels of the rest of the community? I agree that there is evidence—including from the World Health Organisation—that, where you have massive overcrowding, the rate of violence including child abuse goes up, and that it would be a good thing if we can bring that down.

I do not accept, Minister, by the way, that consultation is out the window here. I think it is a grievous stealing of the right of Indigenous people to be treated as adults who know their own lands, their own communities and what is best in those communities. That being swept aside by this legislation, I ask the minister, who has given a justification: if we are going to end this emergency within five years, what is the plan and what is the price being applied to that plan to bring house occupancy levels in these communities to those which approximate those of the rest of the Australian community?

Senator MILNE (Tasmania) (1.07 pm)—I am interested in the minister’s response on the need for infrastructure. I am aware that the legislation provides that, after the five years, the Commonwealth will maintain an interest in the infrastructure, but there is no definition of what is possible under the broad definition of infrastructure. In particular, I would like to ask whether the Commonwealth will be working with the private sector not only in building the infrastructure but in allowing members of the private sector to have access to that infrastructure. I am interested to know whether any of the infrastructure that is to be built will be built for or in conjunction with, or will be leased to, the mining industry in any shape or form.

Senator SCULLION (Northern Territory—Minister for Community Services) (1.08 pm)—I will answer Senator Brown’s questions first. In the statement that you made before you put the question, Senator, you implied that consultation was out the door. Then you said that you did not think that it was and you made some other assertions. I agree with you in that sense, Senator. We will be working with these communities. That is absolutely essential in building a partnership and is reflected across all of the communities that have been visited by the intervention task force. Consultation and talking about a partnership role are absolutely a certain matter. Under the law, there are certain provisions with regard to consultation. The expectation that we provide the level of amenity that is needed in a very short period of time may put that at risk. Any piece of legislation that underlines our capacity and our absolute determination to make things better for the women and children in these communities will continue to be supported.

In terms of how much money has been spent on housing and where all the housing has gone, I have to agree with you there too, Senator. We put $100 million each year into the houses in the Northern Territory—I am not sure why we are always having discussions about these matters—but we have fewer houses now than we had five years ago. Those are matters that concern us.

We have had a number of questions about where the money is going to come from for the housing. I think it might be useful to place on the record some additional information about this. The new fund that has taken over from the CHIP fund will provide an additional $287 million in funding for Indigenous housing for three years from 1 July 2008. The additional funding is on top of existing funding that has been provided through the CHIP. The total ARIA funding
from 1 July 2008 will be $1.24 billion over three years. This fund will also increase the proportion of funding that is provided to remote Indigenous communities, as a result of a greater focus on remote communities. The increase of funding to these areas will be greater than the additional amount provided under ARIA. The CHIP will continue to operate in 2007-08 as it has done; it has an allocation of $306 million for this year. There is also a payment of $6 million from ARIA to the Torres Strait Regional Authority in 2007-08. The amalgamation of these two programs—as they step over—will provide funding for new housing and for the repair and maintenance of existing housing, including in the communities that are a part of the Northern Territory emergency response.

In response to Senator Milne’s question: the transferral of infrastructure to private interests will only be to the Northern Territory government, a Commonwealth authority or a Northern Territory authority. As to whether we would be preventing a mining lease or similar things, I am not sure that we would move to prevent any particular activity, because this legislation is not intended, in any way, to have any unintended consequences such as impeding business. If Indigenous people in a particular area decided that they wanted, for example, a hairdressing shop, I am quite sure that the Commonwealth would ensure that we had the capacity to provide for whatever businesses were available.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.12 pm)—The minister did not answer the question about household occupancy rates, and I ask him if he will. What is the household occupancy rate in Indigenous communities expected to be at the end of the five-year period compared to the rate at the start of the five-year period?

The minister said that government funds had been spent on housing in the Northern Territory and that there are now fewer houses. We all know that that applies to the whole of the Australian community. Billions of dollars have been put into housing, but there are fewer houses held in government hands now than at the outset, simply because they have been privatised or disposed of in other ways.

We have to be very careful with the statistics here. It is important that we know what the government’s game plan is. When it comes to this housing allocation in the Northern Territory, the land is being taken from the Indigenous people—for five years in the first instance—without consultation. That is what I mean. This government did not consult with Indigenous communities in the Northern Territory before taking this action. The government says it is going to consult from here on in, but its record belies that it will be anything other than paternalistic approach to the future for Indigenous communities. If this is so serious that it is going to lead to the removal of the Indigenous people’s authority over their own land, what is the outcome in terms of reducing the household occupancy rates, which the minister cited as being the problem which connects us to the violence and abuse?

Senator SCULLION (Northern Territory—Minister for Community Services) (1.15 pm)—I would go firstly to the complex nature of the circumstances in communities, to the complex nature of the provision of housing and to the complex nature of the occupation of the houses. It is a seasonality issue. There are a whole range of issues about the number of houses. Do we have a target for how many people should live in each house? No, we do not. I certainly am not aware of one. I am not sure that that is absolutely essential. The term ‘normalisation’ means we want to have the number of
people living in houses at the level that you and I enjoy. That is the vision. It is not a five-year vision; we are in this for the long haul.

Communities’ needs are vastly different and we should respect that. For the sake of practicality, some communities have very low levels of occupation and some have very high levels of occupation. Townships which have a language difference have higher or lower occupation depending on what is happening. Independent assessments, which are being conducted at the moment, of each of the communities will provide us with some ideas and direction about the nature of the housing. You have already heard of some of the pilots we have conducted in terms of the nature of housing. We believe there can be some economic efficiencies in terms of critical mass, the numbers of houses we are able to purchase. We are in this for the long term. We know that, if a house is overcrowded, that house will function for a much shorter period. We acknowledge all of those things, and those issues will be taken into consideration as we further roll out our strategy. As I have indicated, it is the government’s stated intention that we will bring the strategy to this place within six months and report back again in 12 months. That will include a housing strategy which will reflect the needs and diversity we find among communities and within those communities.

Senator Bob Brown (Tasmania—Leader of the Australian Greens) (1.16 pm)—The problem with that is that, yes, you report back, but the legislation is through the parliament. If the report indicates that there are problems with it, unless things change in terms of the parliament—and well they might—we have no power to change the government’s trajectory. What surprises me here is that there is no ultimate plan involved in taking away the authority of people over their land—this incredibly important relationship and empowering factor in Indigenous communities—on the basis that the government is going to roll in and build new houses but it does not know how many and, as the minister says, it is incredibly complex. I agree with him on that. It is an extremely complex matter, but what the government has decided here is not complex—and, I submit, right at the heart of that complexity is the relationship of Indigenous people with their land. The government said: ‘We’re cutting through that. We’re taking that at the outset. We’re disempowering communities and we will do as we want over the next five years in consultation with you.’ But we know what that means, and that is the problem here.

It did not have to be this way. These outcomes could have been achieved, particularly if the Prime Minister had not turned his back on Indigenous Australians, with much better outcomes by now and moving through into the future. The minister says it is long term. I would agree with that and I agree that really earth-changing action has to be taken but not earth take-away action like this. It is very important that these communities do not have their spirit taken from them.

Can you imagine if this were legislation taking away for five years church property around the country because there has been child abuse in certain church properties, leading to millions of dollars in damages suits? Indeed, some church property is being put on the market to pay for it. Can you imagine, if that legislation were before the parliament, what the mayhem would be? No. That has not happened and it is not going to happen, but Indigenous people are suffering the taking away of their relationship with and authority over their land because this government thinks that is a simple thing to do which appears to them like a first move but it cannot explain what it is doing after that. It is wrong, you see. This whole plan was devised
even without cabinet, let alone consultation with this parliament, let alone consultation with the people who matter most—Indigenous Australians.

I go back to what Senator Milne asked. Minister, you said you want hairdressers, that they can do that now. There is a real concern that this will not be the end of the takeover of land by the Commonwealth and that big vested interests have a stake in this. Can the minister say that none of these lands which are being taken over will be given to entities other than those Indigenous communities involved, in terms of infrastructure?

Senator SCULLION (Northern Territory—Minister for Community Services) (1.20 pm)—It is probably useful to take the last question first. No, that is not the case. I would like to reflect for a moment on something that is close to my heart—that is, the spirituality of Aboriginal people and the communities in which they live. I respect the fact that the senator acknowledges that. I have to say that, as the intervention task force moved in, their spirits lifted. You assert that it is like taking a brick out of the church. You can make those assertions, but the land always belongs to them. It is not having an impact on native title. The Aboriginal land rights act still applies. When I speak to Aboriginal people about this matter I find that, yes, there was some concern over the first couple of days and there was a lot of mischief in the communities. It is very difficult to communicate in the communities and I acknowledge that perhaps we could have done that better. But, at the end of the day, the spirits of the people in these communities have been lifted. They have not been disempowered; they have been empowered. Now, for the first time in years and years, they enjoy the same rule of law and order that everyone takes for granted, that you and I take for granted.

If somebody threatens you with a stick or smacks you in the side of the ear when you are going down to the ATM, you have someone you can complain to about that. You do not just hold your ear and go home. The little people, particularly the women and children, in these communities, can now stand up to such threats in the same way that women and children in our community can. I have to say that their spirits have been lifted, and that is why I am such a strong supporter of the intervention and the legislation that is so necessary to provide for that. The land always remains Aboriginal land. The only difference to the land from the time we arrive until the time we leave will be the five-year strategy—it is a clear strategy—in which we will move over a range of fronts to improve the lives, wellbeing, safety and security of the Indigenous people who live in those communities. It is simply not reasonable to assert anything else, Senator. You find it difficult—and I accept that—to understand why there is a tie between our need to acquire this land and the safety of its people. I have been quite clear in my attempt to explain why that is the case. We are not going there with any other reason than to reflect the will and the feeling of the Australian people. The Australian people are saying to us: ‘This is a great thing. Go and help these Indigenous communities. Let’s make a real change.’ These laws do just that.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.23 pm)—The Greens do not disagree with lifting the spirits of Indigenous people. I note the letter from the Elliott Community Council, which says, ‘There’s a huge amount of money to be expended here, effectively, and we have infrastructure needs and we want to be part of what the government is doing here.’ The minister himself says, ‘People have got to understand that they are feeling better without the land being taken off them
for five years.’ The minister himself has given the argument that I put: you do not need to take land off people to make them feel that they have got more security, that they are going to get better services or that something is finally going to be done about the grog supply or, indeed, the abuse and violence. Those are things that we all want. I am not disputing that, but you cannot go to that argument, Minister, when you are asked specific questions about the aim of the government in taking over the land. You argue that it is to put in housing. But what aim does the government have in mind over the five years? You cannot give me an answer to that question. You said that you were in this for the long term, so can you tell the Senate that this arrangement for taking away the rights of people to make decisions about the use of their land and what is put on it for five years will end in five years and will not be extended?

Senator SCULLION (Northern Territory—Minister for Community Services) (1.25 pm)—I think I can remember long enough to take the questions in the order they were put this time. We do have a strategy. At the end of five years—as I have articulated, but I will say it again because perhaps it was mixed in with some other assertions I was making—we would like those communities to be the same—

Senator Bob Brown—Can you guarantee that it will end in five years?

Senator SCULLION—That will be your second question. I will take it in a moment. With regard to your first question about the standards—and that is what we are looking for—you are asking the question: what is our plan? At the end of five years these communities should enjoy the same level of law and order, the same level of housing and the same level of amenity that the rest of Australia enjoys. Will the land be given back at the end of that period—it will not be extended? Absolutely. It is a sunset clause. It will not have to go through the parliament. When five years expires from the day this legislation is enacted, those provisions will be lifted and the land will return to exactly the way it is today, except for the fact—and I wish this to be so and I am sure that you share my hope—that the circumstances in which those people find themselves will be drastically changed for the better.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.26 pm)—I am looking for the government to give a guarantee that the five years will not be extended.

Senator SCULLION (Northern Territory—Minister for Community Services) (1.26 pm)—I am happy to give that guarantee.

Senator MILNE (Tasmania) (1.26 pm)—I would like to follow up on an issue where you indicated to Senator Brown that there will be no big corporate interests facilitated by this bill. When I asked specifically about mining, you talked about hairdressing establishments. I specifically asked about that, and you said that this legislation will not in any way inhibit private sector development. I would like to know whether any of the privatised land that will be used for infrastructure development can in any way be accessed through partnerships or anything else by the mining industry or by any mining company.

Senator SCULLION (Northern Territory—Minister for Community Services) (1.27 pm)—I will make just a couple of points. Part 4, which contains the provisions for exploration of mining under the land rights act, is unaffected, including the veto. That is perhaps not part of your question but I think it is important. To give you a clear answer: we are not building houses for mining companies.
Senator MILNE (Tasmania) (1.27 pm)—
That is not what I asked. I asked for a guarantee that, under this legislation, privatised land cannot be accessed by the mining industry in any way, shape or form through partnership either with the government or with anybody else.

Senator SCULLION (Northern Territory—Minister for Community Services) (1.28 pm)—You are asking me for a guarantee about future acts that I know nothing about. We are talking about this legislation. I am not guaranteeing that people are not going to grow giraffes in these communities. We can go through a whole plethora of things, but I just do not think that would be useful. If there is some aspect to the legislation that you think indicates that that might be the case, I am more than happy to discuss it with you if you can bring it to my attention. From my scrutiny of the legislation, nowhere does it indicate that we are making it easier for one particular sector or another. I have said that we will not be building any structures for mining. We have no interest in providing one way or the other for any sector, including agriculture. These provisions are specifically to further protect women and children in these communities. That is what these provisions are about.

Senator MILNE (Tasmania) (1.29 pm)—
Before I respond to that, I draw your attention to the articles in last weekend’s papers from elderly Aboriginal women. They said that this legislation will make humbug worse for them, that they will be subject to more violence because of the breaching on social security and that they will be subject to more pressure and violence for their social security income from younger or other people in the community who are subsequently breached. So I draw that to your attention. I intend to come back to that later in the discussion of that particular bill.

In relation to the mining industry, my understanding is that you are privatising land because you want to provide infrastructure in those communities, but ‘infrastructure’ is not defined. You say that at the end of five years there will be ongoing interest in that particular land from the Commonwealth, the Northern Territory or any departments thereof. I also note that you said that the provisions of the land rights act still apply and so on, but I do draw to your attention that last year the government moved to allow for the nomination of a waste dump on Indigenous land without the consent of Indigenous people. It allowed the minister to approve a nuclear waste dump on Indigenous land without the consent of Indigenous people, and it also legislated to take away procedural fairness from Indigenous people. So you can hardly be surprised that Indigenous people or the general community are extremely cynical about a move to privatise land—especially when we know that the uranium miners are out there now, in large areas of the Territory. And, by coincidence, a lot of the prescribed areas would be enormously satisfying for the industry if they were able to service them from infrastructure in those communities. That is why I am asking specifically about this: we know that the mining industry has been a driver of the campaign against land rights and undermining Indigenous land rights.

The point I make is this: this legislation privatises land for the purposes of infrastructure. You have not defined ‘infrastructure’. You have said it is not designed to stop private enterprise. What is to prevent a mining company from entering into a partnership with the Commonwealth or with a community to access some of this funding to build infrastructure to support mining exploration or some other mining development, including a nuclear waste dump?
Senator SCULLION (Northern Territory—Minister for Community Services) (1.31 pm)—We have suddenly discovered that the hidden wealth of Australia's mineral resources is in fact hiding under each and every one of the 63 prescribed communities! Give me a break. This is a serious matter, and you are suddenly putting to this place that this is some kind of a Trojan Horse so that we can mine the area of the townships.

Perhaps I should describe the nature of the prescribed communities. We are talking about the area literally around where the houses are at the moment. We have a community and basically the boundary fence of the community is there, and that is where we are talking about. Having a radioactive waste facility, a mine or mining infrastructure there is not the intention. As I have said, it seems so silly to stand in this place and work through and guarantee all the things that we are not doing. We could spend forever here.

Your particular bent is ensuring that there is no assistance given to mining. This legislation is specifically to provide infrastructure to help out Indigenous Australians. The land is not being privatised. The things that government is able to do with the land are spelt out in the legislation. Whilst I am more than happy, in the spirit of trying to get through this, to continue to do this, I would say that all of the amendments you are discussing are already behind us. They have already been voted on. There are no amendments that we are currently considering, or are likely to consider, that cover this area.

In light of some of the previous discussions we have had in this place, I have continued to debate this issue and provide information where I can, even though there is no reason for me to do so, because it has already been debated. If I am showing some frustration I apologise; it is not normally my way, Senator Milne. You can continue to ask questions about what we are not going to do.

I would prefer if we could just focus on the bits of the legislation that concern you about what we have allowed. We have been quite prescriptive in the legislation about what the government are able to do in these communities, and it reflects our clear intention to make these communities better places to be.

Senator MILNE (Tasmania) (1.34 pm)—There is a deliberate misrepresentation there. What I was talking about was infrastructure to support those developments, not digging up and mining the communities within the boundaries of those communities. That is clearly not what I was talking about. I was talking about developing a node or point, if you like, in infrastructure. That is the point I was making, so please do not misrepresent that as suggesting anything to the contrary.

In relation to having dealt with this previously, the government did not provide an opportunity through a Senate committee process for a proper length of time to allow people to come before it and to tease out what it actually meant. My colleagues and I have tried to establish, throughout this debate, what is meant by it. I have heard what the minister had to say, and it will be noted. In terms of privatising the land, I would argue that that is precisely what will happen, because there is communal ownership now and it will go into lease arrangements—and, at the end of five years, I will be very surprised if that privatisation process is ever reversed.

Senator SCULLION (Northern Territory—Minister for Community Services) (1.35 pm)—I table the Hon. Mal Brough's response to the Scrutiny of Bills Committee's Alert Digest No. 9, as I said I would yesterday.

Question put:

That parts 3 to 6 stand as printed.
The committee divided.  

(The Chairman—Senator JJ Hogg)  

Ayes……………  49  

Noes……………  8  

Majority………  41  

AYES  

Adams, J.  
Bernardi, C.  
Boswell, R.L.D.  
Calvert, P.H.  
Carr, K.J.  
Colbeck, R.  
Cormann, M.H.P.  
Eggleston, A.  
Faulkner, J.P.  
Fifield, M.P.  
Forshaw, M.G.  
Humphries, G.  
Hutchins, S.P.  
Kemp, C.R.  
Macdonald, J.A.L.  
McEwen, A.  
Moore, C.  
O’Brien, K.W.K.  
Patterson, K.C.  
Polley, H.  
Ronaldson, M.  
Stephens, U.  
Trood, R.B.  
Webber, R.  
Wortley, D.  

Barnett, G.  
Birmingham, S.  
Boyce, S.  
Campbell, G.  
Chapman, H.G.P.  
Conroy, S.M.  
Crossin, P.M.  
Evans, C.V.  
Fierravanti-Wells, C.  
Fisher, M.J.  
Hogg, J.J.  
Hurley, A.  
Joyce, B.  
Kirk, L.  
Marshall, G.  
McLucas, J.E.  
Nash, F. *  
Parry, S.  
Payne, M.A.  
Ray, R.F.  
Scullion, N.G.  
Sterle, G.  
Watson, J.O.W.  
Wong, P.  

NOES  

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

Bartlett, A.J.J.  
Milne, C.  
Nettle, K.  
Stott Despoja, N.  

* denotes teller  

Question agreed to.  

Senator BARTLETT (Queensland) (1.45 pm)—The Democrats oppose part 7 in the following terms:  

(8) Part 7, Division 4, page 82 (line 2) to page 85 (line 6), TO BE OPPOSED.  

This amendment is to oppose part 7, division 4 of the legislation, which refers to the acquisition by the Commonwealth of the assets and liabilities of a community store. Part 7 more widely deals with the licensing of community stores.  

I continually seek to point to and highlight common ground and to attempt to find constructive and cooperative ways forward and I would note that, in the sections related to community stores, the general stated aim of action is one that is, broadly speaking, welcome. The feedback I have received from a wide range of people, including Aboriginal people and groups, is that some concerted action to improve the situation of community stores is welcome. I put that on the record. I am not sure why I keep making the effort of positively acknowledging what the government is doing, because it certainly does not acknowledge our approach. Indeed, even yesterday Minister Brough once again completely misrepresented the Democrats and made grossly false statements about the Democrats’ ‘inaction’ in this area—but I will deal with that at another time.  

The section dealing with the licensing of community stores recognises that there would be potential benefit in improving the situation of community stores. As with every example and comment with regard to this area of activity in the Northern Territory and with indigenous communities more broadly, it is not a situation of universal disaster across the board: there are positive examples of stores as well as extremely negative examples. There are different types of circumstances, different situations, different contexts, in all of the different communities; it is not an across-the-board disaster area. I hope that is acknowledged by the Commonwealth in the implementation of all of these things. I hope they do not take a scorched-earth approach and try to reinvent the wheel in areas where the wheel is actually doing okay. Nonetheless, there is undoubted merit in improving the situation of community stores.
I will not pass comment on all the other measures that are being taken, whether it be in this intervention or in a lot of other areas to do with Indigenous people, or on all the different ideas that people have. However, in the feedback I have had from people in the Northern Territory, more than one person has said to me, ‘If you could just make sure that all of the kids get a couple of good-quality meals each day—which could be done pretty cheaply—then you would be making an enormous difference to the health of those kids.’ I know that is a wider issue than sexual assault, but we were talking about the wider issue of the health of children, which is an overarching issue. If you get good-quality food for those kids each day, the health benefits, the social benefits, the wider community benefits, would be enormous and that could be done without massive expense. It would obviously be at some expense—getting food to these areas is not cheap—but, on a national scale, the cost of doing it should not be that large, and it certainly should not be beyond the wit of Australia. I am not sure that delivering it through the government is necessarily the best way of doing it. Utilising private means and community based means and leveraging off private enterprise may well be better ways of doing it, rather than through a government command economy way. That is a broader comment.

The Democrats amendment goes to part 7, division 4 of the legislation, on page 82: ‘Acquisition by the Commonwealth of assets and liabilities of a community store’. The Democrats’ reasoning behind this is that we think there are other alternatives. We understand the intent; it is the same intent with everything else: the Commonwealth identifies a problem and it thinks the best solution is for it to take over. We do not believe the compulsory acquisition power is necessary for dealing with stores’ management issues. We think they can be dealt with without giving the power to seize assets. In many communities, the community store is the only viable business, and to have that only viable business able to be acquired by the Commonwealth is a huge step. People should not be dismissive of what that is about. While we are not touching on some of the other aspects to do with the licensing of community stores—the varying of licences, the revoking of licences—the acquisition of assets and liabilities is a step further than is needed. There are already quite substantial powers in other areas.

That is the rationale behind the Democrats amendment. I have an alternative amendment if this one should fail—which, frankly, is pretty likely. Mind you, my alternative amendment is probably pretty likely to fail as well. But it is possible there might be a sudden outbreak of willingness to engage and listen on the part of the government. We will see what happens.

There are several questions I would ask with regard to division 4, ‘Acquisition by the Commonwealth of assets and liabilities of a community store’. Firstly, for the record: what are the appeal mechanisms if the Commonwealth moves to acquire; is appeal through the courts the only avenue, and, if that is the case, what is the scope of that appeal—is it in any way a merits review or is it a court being able to assess the lawfulness or otherwise of the action? Secondly, what is the mechanism for compensation if there is an acquisition by the Commonwealth?

Senator SCULLION (Northern Territory—Minister for Community Services) (1.52 pm)—The assertion that there is only one store, that the Commonwealth would be taking over that store and that this is some sort of draconian power does not really reflect the intention as stated in the legislation. Clearly there are a whole range of provisions available before that particular power would
be used. But we can say that it is about ensuring that stores operate in the normal way that we would expect stores to work, as I was saying to other senators today. When you go into a store the food is actually marked with a price tag. You would assume the quality of the goods in the store is up to scratch; you would assume that the store is not filthy; you would assume that the store does not have rats running across all the products at night; you would assume that you would have some sort of notice of opening hours, that you would know what they were and that the storekeeper would not just open whenever they felt like it; and you would assume that they would actually have fresh fruit and vegetables.

We have some fantastic stores in these communities—for instance, the Arnhem Land Progress Association is one, also Galungku and Palumpa, and I have been to plenty of others. These are outstanding stores that provide all of these things. But, unfortunately and tragically, in some communities that is not always the case. So it is our intention to ensure that, as part of this intervention, normal access to fresh fruit and vegetables is available to people in these communities. As I have said, it is a complex and sophisticated circumstance that we are dealing with and it needs a complex and sophisticated solution. The solution provided is ensuring that every store will have access to the same level of amenities that we who live outside of those communities take for granted.

When we have gone through the process of giving the community stores the opportunity to improve through a conditional licence and assisting them in that way, they will be approached and afforded the opportunity to take on a new operator if the operator is the problem. Where it is feasible, and other avenues to license the existing store have been pursued, the government then may consider facilitating the establishment of a new store. In areas where there is only one store and we have tried every single thing—and we will try all of those things—yet the store still does not provide reasonable service and food to these communities, the government reserves the right to move to acquire it. In some of these communities fresh vegetables and fruit are foreign to them. That should not be the case. So we will go all the way, right up to where we have strived to do everything, but I can tell you that this government is not going to accept: ‘Oh, well, we did our best. We’ll do everything else but you simply won’t be able to feed yourself properly.’ Roger Corbett, who is on the task force, used to be the CEO of Woolworths, ‘the fresh food people’. We are seeking his advice to ensure that the standards we are asking for the stores reflect the standards required in the wider community.

So I say again: this will be a power of last resort. We think the communities deserve the knowledge that, when this legislation has passed, we will work responsibly with the community stores to ensure they are providing those standards, and many of them are. The good stores will remain and will be encouraged. In fact, they may be the sorts of operators we would like to see in the other communities. But at the end of the day we have a compact with Indigenous Australia. We have said that we will stop at nothing to provide the same level of amenity. That does not mean saying, ‘If we can’t get the cooperation then, at a certain point after we’ve tried everything, we’ll simply give up.’ That is not what we are doing in this case. The suite of processes identified in the legislation ensures that this power is definitely a power of last resort. It is important to retain this power to acquire assets of stores, as has been written into the legislation, as a last resort.

Specifically, with regard to your question about appeal, like much of this legislation
the right of appeal is through the courts. The assessment process is exactly the same as for the acquisition of any property. It will depend entirely on the circumstances, which in some circumstances may well be a lease, but in other circumstances no lease may be involved. So the assessment of property would be on those terms.

There is no mischief, no hidden agenda from the government. We are simply saying that dietary factors have an absolutely close tie to health. I know the senator is not disputing that. But it is a very important point to make that the health and wellbeing of these communities is a fundamental part of this—all aspects are connected: health, education and housing. That is why, for each one of these endeavours, we have ensured that all of those anticipated blockages to our providing the same level of amenity are removed, whether those blockages are housing, infrastructure, school attendance or inappropriate use of welfare payments or whether it be, as it is in this case, the very simple thing that people take for granted—that is, the provision of food for your health.

Whilst you have not asserted it on this occasion, Senator Bartlett, it has been put to me that we need to demonstrate a close tie between any aspect of this legislation and the prevention of violence and sexual abuse in Aboriginal communities. While I am probably not able to make that assertion directly in this case, one would think the general wellbeing of the community was a fundamental plank in resolving the circumstances that these First Australians find themselves in.

Again, it is important to retain the power to acquire assets. I assure you that this will be a power of last resort. As we indicated in the legislation, this would be considered only when the community store is the only store available to the community but it has not been possible to issue a licence, and the store needs to be licensed to participate in some sort of income management process. We would then go through the full suite of processes in consideration of the store, as I indicated to you earlier. The stores will be given every opportunity to come up to a simple standard that every other Australian takes for granted. I think Indigenous Australians, particularly young Indigenous Australians who are growing up in these communities, deserve nothing less.

Progress reported.

**QUESTIONS WITHOUT NOTICE**

**Uranium Exports**

**Senator CHRIS EVANS** (2.00 pm)—My question without notice is directed to Senator Coonan in her capacity as Minister representing the Minister for Foreign Affairs. Is the minister aware of comments by the foreign minister yesterday that by selling Australian uranium to India, which has not signed the nuclear non-proliferation treaty, we can make the world a safer and more secure place? Can the minister confirm that these comments reflect the government’s position on selling uranium to India? Is the minister aware of overnight media reports from Pakistan, another country that has not signed the NPT, which suggests that by exporting uranium to India Australia will help to fuel a new nuclear arms race between Pakistan and India and lead to further nuclear testing? Can the minister now explain to the Senate how creating a new arms race makes the world a safer and more secure place?

**Senator COONAN**—I thank Senator Evans for the question. Of course the arrangement that the Australian government would agree to, with appropriate safeguards, is not going to create an arms race. I want to make that point perfectly clear. The supply of uranium to India for peaceful purposes only, if proper safeguards are in place, as we have
with China, would certainly not be creating an arms race.

The Labor Party’s position on this matter, if I may say so, appears to me to be both doctrinaire and somewhat illogical. India does have a good non-proliferation track record but has made it clear that it has no intention of joining the nuclear non-proliferation treaty. To this government’s way of thinking it is worth finding practical ways to bring India into the non-proliferation mainstream, as I said yesterday and the day before.

We note that, when in office, the Labor Party seemed to have no problems with uranium sales to France, for example, before it joined the nuclear non-proliferation treaty in 1992. India is a major and a rapidly growing emitter of greenhouse gases. This government has maintained for months now—

Senator Bob Brown—Mr President, I rise on a point of order. Just to clarify and to assist the minister, who said—

The PRESIDENT—Senator Brown, what is your point of order?

Senator Bob Brown—Did the minister—

The PRESIDENT—Senator Brown, that is not a point of order; you are asking another question.

Senator Bob Brown—I have not put it yet. The point of order goes to the statement that India has a good non-proliferation record. Did the minister mean to say that to the Senate?

The PRESIDENT—Resume your seat, Senator Brown. There is no point of order.

Senator COONAN—We have to live in the present. We know that India is a major and rapidly growing emitter of greenhouse gases. It really beggars belief and defies any conventional wisdom when people say that nuclear power is not part of the solution. We have maintained as a government for months now that the consideration of nuclear power has to be part of the solution. India is the largest democracy in the world and is certainly an influential regional power and an important potential strategic partner for Australia. This government has come to the view that it does not make much sense to be exporting uranium to China and not to India. Supplying uranium, if it can be arranged, for peaceful purposes, and policed for peaceful purposes, and if proper safeguards are put in place—these are all contingent conditions under which this government would consider exporting uranium to India—is something that we think is consistent with Australia’s interests. It is certainly consistent with the broader global interests of how to handle the fact that we have one of the largest, if not the largest, stocks of uranium in the world.

I think it is entirely inappropriate to be anticipating India breaking moratoriums on testing or diverting Australian uranium to non-safeguarded facilities. If we are to export to India we can control the way in which it is supplied. We can certainly control the way in which it is used. We do consider that, in all those circumstances, and the use for peaceful purposes, it is entirely consistent with our own domestic interests and the broader interests of the non-proliferation treaty.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I thank the minister for her answer, although I found it rather confusing. I draw her back to her assertion that the government’s position will not lead to another arms race. I refer her to comments by leading Pakistani political figure Imran Khan, who said the Howard government’s decision to sell uranium to India will encourage Pakistan to spend more on weapons. Didn’t he also state that this would lead to an ‘arms race in the subcontinent
which poor people in our countries cannot afford? How would a decision by Pakistan to divert its resources from helping its poor to building nuclear weapons help to make the world a safer and more secure place?

Senator COONAN—It is always interesting to see who Labor goes to as a source of authority for the basis of a question. I know we are a cricket-mad country, but to be basing foreign policy on the comments of a cricketer seriously defies—

Senator Sterle interjecting—

The PRESIDENT—Order! Senator Sterle, you will withdraw that comment.

Senator Sterle—I withdraw.

Senator COONAN—We know that the Labor Party never do the hard work on any of these issues. They never really look at the policy position but always borrow from somebody else. They either agree or take a point of difference simply to be opportunistic. This government has a considered policy on uranium exports to India. We have made it perfectly clear that it is contingent on a number of matters, including stringent safeguards, and is entirely consistent with a responsible attitude to the non-proliferation treaty.

Local Government

Senator IAN MACDONALD (2.07 pm)—My question is to Senator Johnston in his capacity representing the Minister for Local Government, Territories and Roads. Is the minister aware if any Queensland local councils that are set to be wiped out by the actions of the state Labor government have taken any action to conduct a plebiscite or referendum with their local constituents? Could the minister indicate what the Australian government is doing to assist the people of Queensland in exercising their democratic right to be heard?

Senator JOHNSTON—I thank the senator for his commitment to the people of Queensland. After reading the legislation in Queensland, they are going to need the commitment of Queensland coalition senators. I want to talk about the legislation that has been enacted in Queensland. Each local government that is being constrained and restructured has to do a number of things pursuant to the act. I draw your attention to section 159YR of the act, which says:

Each merging local government whose local government area will, on the changeover day for a new local government area ... partly or completely, be abolished to form part of the new local government area must take all necessary action to establish—

and this is the important part—
a local transition committee for the new local government area as required by this division.

The important thing is the composition of that committee. Subsection (2) says that the transition committee must be made up of, firstly:

... representatives of each merging local government, consisting of 2 councillors of the local government—

and, secondly—and this is the important thing:

... up to 3 union representatives, as agreed by the relevant unions, with each representative being nominated by a relevant union ...

How is ‘relevant union’ defined? Let me tell you. Subsection (5) says:

... relevant union means—

(a) the Australian Services Union; or

(b) the Australian Workers’ Union Queensland; or

(c) the Queensland Council of Unions.

Now we know why these regional councils are so frightened. They are going to be taken over by the union movement of Queensland. We also know why Mr Rudd is so timid and why Mr Ludwig is so bold in the Australian
this morning. He has the job of controlling local government. His conflict of interest is only rivalled in this place by the sections of this act, and one senator has a huge conflict. Section 159YT of the act says:

The members of a local transition committee must act in the public interest ...

But then listen to this:

If, for a member of a local transition committee, a conflict arises between the public interest mentioned in subsection (1) and the member’s private interest—

that is, the private interests of three unionists—

the member must act in a way that gives preference to the public interest.

This is a blank cheque to the union movement to take over regional councils in Queensland. This is the most outrageous piece of legislation. Have a look at the opposition. They have said nothing, they have done nothing and they know what the act says. This is a takeover by unions in Queensland of local councils in regional Queensland.

Senator Chris Evans—What rubbish!

Senator JOHNSTON—I have quoted the act. ‘What rubbish!’ says the leader. That is why in Warroo shire they have had a plebiscite and it has been 100 per cent ‘No’. There was nothing written on ballot papers, no informal votes—700 voters and over half of them have returned postal votes with ‘No’ because they knew that the union movement was going to take over their council. There will be three unionists on the transitional committee to tell a council what to do. It is absolutely the most outrageous and disgraceful piece of legislation that I or anybody in a generation in this country has ever seen. And the opposition sit quietly, rubbing their hands together, because they know that this is a union takeover. (Time expired)

Senator IAN MACDONALD—Mr President, I ask a supplementary question. I draw the minister’s attention to the second part of my question, which asked if the Australian government was doing anything to assist the people of Queensland to exercise their democratic right to be heard.

Senator JOHNSTON—I thank the learned senator. The Australian government is going to stand beside each elector in each council and provide for a plebiscite so the people of those shires will have a say, notwithstanding that the one-house parliament in Queensland has made it illegal to conduct a vote. All I hear from the other side is silence. This is an outrageous attack upon democracy and they know it. They have said and done nothing. Their party is complicit in an attack on democracy at a local government level. These are volunteers who are being chopped off at the knees by the Labor Party.

Nuclear Energy

Senator CARR (2.14 pm)—My question is to Senator Johnston, the Minister representing the Attorney-General. I refer the minister to the Minister for Industry, Tourism and Resources’ comments on ABC radio on 26 July when he said that the government was seeking advice on whether or not it could override state bans on nuclear reactors. Can the minister indicate whether the Attorney-General’s Department, the Australian Government Solicitor or the Solicitor-General have been asked to provide this advice? Have any of these agencies provided earlier advice to the government on this matter and, if so, when? When does the government intend to introduce legislation to give it the power to override state governments’ wishes and approve nuclear reactors?

Senator JOHNSTON—As usual, a desperate opposition seeks to trade on fear in asking a question about nuclear energy.
Opposition senators interjecting—

The PRESIDENT—Order! The question has been asked. You must allow the minister a chance to respond.

Senator JOHNSTON—The only contribution to the most important debate about Australia’s future energy needs from the opposition is to ask the question: whose backyard will have a nuclear reactor? That is their sole contribution. They have not brought to bear one piece of intelligence or consideration on this debate. The South Australian Premier has it all over them in terms of understanding Australia’s future energy needs and supports a nuclear industry as a viable option.

Opposition senators interjecting—

Senator JOHNSTON—I hear senators ask: ‘Where’s it going to be? Hasluck?’ They would not know a nuclear reactor if it landed on them, because it is simply a question that is not on the radar for them. But the government, on the other hand, is prepared to look at the interests of all Australians into the future. Over 300 reactors throughout the world are providing a reliable source of energy and are greenhouse gas free, and all the opposition can do is ask, ‘Whose backyard will have one?’ What a disgrace.

Senator JOHNSTON—I was interested to hear the learned senator introduce the issue of plebiscites. What this government will not do about nuclear energy—or any other matter of public policy—is outlaw voting and plebiscites. We would never do that. Let me tell you that we would never, ever outlaw plebiscites of the people. Yet the senator’s party in Queensland—and he introduced this in his question—has completely obliterated every legal remedy to councils in that state. We would not do the same.
Housing Affordability

Senator CORMANN (2.20 pm)—My question is to the Minister for Community Services, Senator Scullion. Will the minister inform the Senate of programs which the Howard government has implemented to assist renters in the private market? Is the minister aware of any alternative policies?

Senator SCULLION—I thank the senator for his maiden question in this place, and an excellent question it was, too. I listened with great care to his wonderful contribution in this place yesterday, and I think he will make a great contribution in this place. The notion of rental is a notion that everybody experiences somewhere between when they leave home and start off on the great journey—the vision of owning your own home. This government is absolutely committed to assisting renters. Direct rental assistance has provided $2.37 billion in this financial year. To put that in context, it helps around one million families a fortnight. The coalition government is committed to continuing to champion policies which make a real difference to Australians.

Opposition senators interjecting—

Senator SCULLION—They like to gibber and laugh on the other side there. But I tell you what we will not do: we will not behave like those on the other side do. We will not come up with false policies and raise false hopes. We certainly will not go and sit down in Canberra with a woman and say, as Mr Rudd said, ‘If you accept my policy then you will actually get $50 a month off the rent.’ The woman said: ‘That sounds like a pretty good deal. If I accept his policy and vote for Rudd then I will get $50 a month off the rent.’ Great stuff: the camera is clicking and Rudd walks.

The PRESIDENT—Order! Minister, you must refer to people by their proper names.

Senator SCULLION—After the cameras have gone, we then find out that Mr Rudd had misled the individual. If she voted for him and Labor came to the Treasury bench, she would not in fact receive $50 a month. She would actually have to move out of the current home—probably into a more expensive home, because it is actually being constructed—before she would be able to receive the $50. It is so disingenuous to give people false hopes with flawed policies. That is certainly not something we would do.

Senator Chris Evans—You don’t give them much hope at all!

Senator SCULLION—The Leader of the Opposition in the Senate interjects, but I can tell him that the Australian public have every right to be afraid, because those on the other side do not have the smarts. Have a look at them. They do not have the smarts to run a trillion-dollar economy. I am not the only one that has made that assessment; that was the assessment made in a report prepared for the Australian Chamber of Commerce and Industry—the Econtech report. So what does that independent arbiter say? If you elect Rudd, you will get the Rudd factor. They say that house prices will rise by three per cent if we abolish the Australian Building and Construction Commission—and on a $300,000 house that is $10,000; interest rates will rise by 1.4 per cent; and 316 jobs will be lost if workplace reforms are rolled back. So the promise of those opposite—the promise of Mr Rudd’s alternative government—is to ensure that 316 jobs will be lost. And it is very difficult to pay off a mortgage if you do not have a job. So the message is very simple: Australia’s renters and homebuyers cannot trust Rudd.

Renewable Energy

Senator MARSHALL (2.24 pm)—My question is to Senator Abetz, the Minister representing the Minister for the Environ-
ment and Water Resources. Does the minister recall saying, in answer to my question on Tuesday, that the government did not support state based renewable energy schemes? Is the minister aware that Pacific Hydro said yesterday that their $300 million worth of investment in projects in regional Victoria was driven by the Victorian renewable energy target? I ask the minister whether he is aware that Pacific Hydro also said:

Without the Victorian Target, we would not be able to commit this level of investment in Victoria which creates jobs and helps to reduce Victoria’s greenhouse gas emissions ...

Minister, aren’t there also a number of renewable energy projects in Tasmania that will only go ahead under the New South Wales based scheme? Minister, isn’t government policy putting at risk significant investments, along with hundreds of regional jobs?

Senator ABETZ—The short answer to the senator’s question is, of course, no. I noticed him during question time jumping on each occasion, so I thought he was going to have a real doozy of a question. I must say that I was quite disappointed at how flat it actually was. The renewable energy sector is an important sector, but we have to have all these things in a sensible construct. The IPCC has in fact said to the Australian community that the Howard government’s approach is the correct approach. That is why we as a government have invested heavily in renewable energy in a host of ways without insisting that the mandatory renewable energy target be increased.

Pacific Hydro are in the business of renewable energy. They just got a $300 million contact courtesy of the Victorian government. So guess what they are going to say? They are going to say, ‘We love it.’ What their press release did not say was that that target and their income resulted not only from Victorian government policy but also at a cost to the Victorian taxpayer. That is the important thing that people need to understand. If you were to increase the renewable energy target, you would increase the cost of energy and that would impact on every energy user in this country, especially in the manufacturing sector—which the Australian Labor Party profess to champion.

Those opposite go to the manufacturers, hand on heart, and say: ‘We want to look after you. Isn’t the Howard government policy bad?’ And then they go over to the Greens and the green groups, hand on heart, and say: ‘Guess what we’re going to do? We’re really going to do over the manufacturing sector, but don’t tell anybody, because we want your Green preferences. So you just tell all your supporters.’ This has been the problem with Mr Rudd and the Australian Labor Party. No matter what the issue is, they seek to walk down both sides of the street. It is about time the people of Australia were made aware of that by our friends in the media—rather than giving him the easy run that he has had.

In relation to renewable energy, I say to the honourable senator opposite: we have invested $252.2 million for solar hot water rebates; $336.1 million for green vouchers for schools; $201.8 million for the Photovoltaic Rebate Program; $328 million for the Renewable Remote Power Generation Program; $100 million for the Renewable Energy Development Initiative; $75 million for Solar Cities—something that the state of Victoria has in fact benefited from, which I thought Senator Marshall, as a senator from Victoria, might have had the good grace to refer to rather than trying to make cheap, political comment; $20 million for the ad-
vanced electricity storage initiative; $14 million for an advanced wind forecasting capability; and $25 million to develop renewable energy technology through the Asia-Pacific Partnership on Clean Development and Climate. And the list goes on and on.

What the people of Australia want, and what they are in fact receiving from this government, is a sensible, measured approach to the issues that are confronting us not only as a nation but also as a world. What those on the other side are doing is simply jumping onto slogans and claiming that somehow those slogans will benefit the community—but they will not. (Time expired)

Senator MARSHALL—Mr President, I ask a supplementary question. Has the government undertaken any assessment of the number of jobs that would be lost in regional centres if the state based renewable energy schemes were abolished? Why does the government fail to understand how these renewable energy targets work? Why is the minister ignoring the advice of Australian businesses that are creating jobs in regional areas and cutting greenhouse emissions?

Senator ABETZ—I thank Senator Calvert for this, his last question in this place, and note his genuine and longstanding interest in the issue of fisheries. I note that he devoted a considerable portion of his first speech to the state of fisheries in our home state of Tasmania. The Howard government has taken unprecedented action to better position the Commonwealth fishing industry for a sustainable future and, equally importantly, a profitable future. Through our unprecedented $220 million Securing Our Fishing Future package, the largest structural adjustment package ever offered to the Australian fishing industry, we have decisively dealt with the scourge of modern fisheries: too many fishermen catching too few fish. We have bought back on a voluntary basis over 550 fishing concessions, at a cost of $149 million, to improve the economics of the industry, and at the same time we are progressively rolling out management reforms to ensure the long-term sustainability and productivity of Commonwealth fish stocks.

I am pleased to say that our support for Australia’s valuable seafood industry does
not end there. We have stood up for Australia’s interests internationally on southern blue fin tuna. We achieved a sensible and balanced outcome in the south-east marine parks. Last month, we announced new arrangements to protect Australia’s prawn stocks and environment from exotic diseases associated with some imported prawns. I recently had the pleasure of opening the new $137 million Australian Seafood Cooperative Research Centre.

Senator Calvert has also asked me about the very important aquaculture industry in Tasmania, an industry which is very close to his heart and for which he has advocated over many years—in fact, he has sold their product in this place. I am pleased to say that the Howard government is an unashamed supporter of the aquaculture industry, including in our great state of Tasmania. We have invested $3.5 million in the aquaculture industry action agenda, a collaborative initiative with the Australian aquaculture industry. It remains the largest single investment in aquaculture policy development and planning in Australia’s history. This is in addition to our $16.5 million commitment to the Aquafin CRC and our ongoing investment in critical research and development through the Fisheries Research and Development Corporation, including a $1.2 million project this year to tackle amoebic gill disease. That might not mean much to others in this chamber, but I know that Senator Calvert fully understands the importance of tackling that disease.

Senator Calvert does not get much wrong and when he does it is in fact good. In his first speech, Senator Calvert predicted that the Tasmanian salmon industry could grow to a total value of $75 million. In fact, the valuable Tasmanian salmon industry grew an impressive $89 million in 2005-06 alone to a total value of $221 million overall. That is three times Senator Calvert’s prediction. I hope that he and his wife enjoy their retirement three times as much as they are hoping for.

Distinguished Visitors

The President—Order! I draw the attention of honourable senators to the presence in the President’s Gallery of an Australian Political Exchange Council delegation from the Philippines. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

Questions Without Notice

Apple and Pear Industry

Senator Fielding (2.35 pm)—My question is to Senator Abetz, Minister representing the Minister for Agriculture, Fisheries and Forestry. Minister, the government has decided to import apples from New Zealand, which has been ravaged by the bacterial disease fire blight. Australian growers want to make sure inspection regimes in New Zealand and Australia are up to scratch to reduce the threat of fire blight. But the Australian government has refused to release that information, which means growers have no way of knowing whether inspection is adequate. Minister, given that our $4.5 billion apple and pear industry and the livelihoods of thousands of farmers are at stake, why is the government refusing to release information on the inspection regimes? Is the government afraid that the industry will find the procedure inadequate to protect Australia from fire blight?

The President—Order! Before I call Senator Abetz, I remind Senator Fielding that your question should be addressed through the chair, not to the minister.

Senator Abetz—As a general comment, I say to the honourable senator that Australia’s approach to import risk assessments is always based on the science. The science has
to drive this, and sometimes it is very frustrating for players who want to have a say in this to nail down their arguments in scientific terms—that is what I invited people to do in another area of my portfolio, fisheries, in relation to the prawn import risk assessment. What drives Biosecurity Australia and others is the science, and that is what we, as a government, are going to rely on.

In relation to the potential import of New Zealand apples, I indicate to the Senate that the final import risk assessment was issued by Biosecurity Australia on 30 November 2006. Australia’s Director of Quarantine has subsequently determined a quarantine policy consistent with the requirements of the Quarantine Act 1908 that requires New Zealand to comply with very strict quarantine conditions before apples can be imported into Australia. It is likely to take some time before New Zealand apples might be imported. The Australian Quarantine and Inspection Service is now working with its New Zealand counterpart to ensure that New Zealand develops detailed operational arrangements that will comply with Australia’s quarantine requirements as specified in the import risk assessment. We cannot allow the threat—and this is very important—of a World Trade Organisation dispute action to deter us from making an appropriately thorough assessment of these operational arrangements.

On that point, I indicate to the senator that we are, quite rightly, as is New Zealand, signed up to the World Trade Organisation. New Zealand growers on the other side of the Tasman are threatening to take Australia to the World Trade Organisation because we are being too tough. On the other hand—surprise, surprise!—apples growers in Australia are saying we are being too soft. Chances are the science is in fact somewhere in the middle. That is what the scientists have advised us as a government and that is what we are working through.

I say to anybody that has issues in relation to import risk assessments: if we do not get the science right that can withstand a challenge in the World Trade Organisation, then we will not be the masters of our own destiny and the parameters that might be imposed by the World Trade Organisation will become the rules that have to be abided by. This is a two-edged sword for anybody that wants us to take action which goes above and beyond the science. Simply, New Zealand growers are saying we are being too tough; domestic growers are saying we are being too soft. It positions us as a government quite comfortably in the middle—not for any political reason, I hasten to add, but simply based on the science. Unless Senator Fielding has some scientific evidence to offer—and if he does, he should have provided that to the committee investigating this—I suggest he and anybody else not seek to play politics with what is a very sensitive issue.

**Senator FIELDING**—Mr President, I have a supplementary question. The Australian government’s inspection process relies on the human eye, which means there is room for error. The apple and pear industry has requested the government trial these inspections on its own orchards with artificial fire blight specs to test whether this method is efficient. How effective do you think you would be in finding a fire blight spot on an apple like this one in an orchard full of apples? Will the Australian government agree to test the efficiency of Australia’s inspection methods and prove its claims that it is committed to protecting Australian farmers?

**The PRESIDENT**—Order! Senator Fielding, I suggest you read standing orders very carefully before you produce an exhibit in the chamber.
Senator ABETZ—They say that imitation is the sincerest form of flattery, and I know that the soon-to-be expelled member for Franklin, Harry Quick, pulled exactly the same stunt in the other place in displaying an apple some time ago. I simply say that the treatment that will be required of these apples, with them being dipped in chlorine et cetera, will have a significant impact in relation to that. If you have scientific issues, I suggest: take it up with Biosecurity Australia.

I indicate to the Senate that New Zealand apples will not be allowed into Western Australia. The reason—no effective risk management measures could be identified for the disease apple scab that is not present in Western Australia. That is where the scientists take a very considered scientific approach in relation to apple scab, and those things are important. I invite people to take a rational, considered approach and accept the science. (Time expired)

Internet Content

Senator NASH (2.43 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Many Australian parents and carers are looking forward to the start of NetAlert’s National Filter Scheme which will give families practical support and a free filter to counteract offensive internet content. Will the minister outline to the Senate how the government’s new program can assist in keeping children safe from dangerous internet risks? Is the minister aware of any alternative policies?

Senator COONAN—Thank you to Senator Nash for her question. As a parent, I know that this issue is absolutely at the front of her mind and front of mind of parents right across Australia. The Howard government have a serious commitment to protecting all Australian children. We have seen this with the way in which we have intervened in Northern Territory Indigenous communities to halt systemic child sexual abuse and we saw it again on display last Friday with the launch of the government’s $189 million NetAlert program with the Prime Minister. As a parent I know that there is nothing more important to parents than keeping their children safe. Increasingly, parents are worried about the way in which the online world impacts their family. That is why the Howard government have invested over $189 million into our NetAlert program to give parents the best protection we can provide when it comes to keeping children safe online.

I can announce that next Monday, 20 August, NetAlert’s National Filter Scheme will go live. From Monday, every Australian family will have access to a free PC based internet filter from a specially designed internet web portal. These free filters will filter the internet against the Australian Communications and Media Authority’s black list and the list of banned internet sites. To ensure that we deliver the best available technology to parents, these PC filters have all been independently tested and will offer families protection against offensive web email and, most importantly, chat room content. Based on all our research with families, it is the chat room content aspect which most concerns parents, as chat rooms can and do expose children to risk and unwelcome stranger contact.

This is a challenging area for parents, where they need the help of government and law enforcement to keep their families safe. Whilst we acknowledge that nothing can replace parents in keeping children from harm, this government is serious about giving parents the full range of assistance and support we can to help make their job easier. We have backed up the $84.8 million National Filter Scheme with over $43 million of law enforcement funding to the Australian
Federal Police Online Child Sex Exploitation Team, and we have boosted funding for the Commonwealth Director of Public Prosecutions. We mean business. We have funded more hands-on internet safety officers for schools and we will shortly commence a public information campaign to inform and educate parents, who may find the internet intimidating, about the kind of online risks their families face.

None of these measures is sufficient by itself. It is a complex matter, and the parents of Australia deserve comprehensive help from government to keep their families safe. I gather from the chat on the other side of the chamber that Labor have underscored the fact that they do not have any interest or commitment to getting on top of what really concerns parents. They have not put up even one dollar of funding to deal with the internet risk facing our children. Only this government has the commitment to protect Australian families online.

**Senator Faulkner**—Why did you join the Labor Party, then?

**Senator COONAN**—Come Monday, I encourage all those caring for children—including Senator Faulkner, who obviously could not give a toss—to ring the family support hotline: 1800880176.

**Interest Rates**

**Senator SHERRY** (2.47 pm)—My question is to Senator Minchin, representing the Treasurer. I again refer the minister to the Treasurer’s recent false assurances that Australian financial institutions would be unaffected by the US subprime mortgage meltdown. Is the minister aware that the subprime crisis may cause the bank to put up its interest rates again, even if the Reserve Bank did not lift official rates, and that rates on credit cards and other products could move even higher?

What would be the impact of interest rates going up, yet again, on working families, who already pay $430 a month more on home loan repayments because of the nine hikes in a row? Doesn’t this illustrate, yet again, that the recent promise by the Howard government, that it would ‘keep interest rates at record lows’, was broken in respect of families?

**Senator MINCHIN**—As I have repeatedly said in this place, the undertaking we took to the last election was that we would ensure that interest rates remained lower under us than they would under the Labor Party. That is our undertaking. That is our commitment, and that is what we will say to the people at this federal election. As I have said before on numerous occasions, the evidence stands to support our assertion that interest rates are lower under the coalition than they are under Labor.

We have the latest evidence that the implications for interest rates in this country of the election of a Rudd-Swan government that would wind back nearly 15 years of industrial relations reform to the bad old days pre-Keating would be an increase in interest rates of at least 1.4 percentage points. So we do know that interest rates would be higher under a Labor government than under a coalition government. We believe that the Australian people understand that.

With respect to Senator Sherry’s question as to Mr Norris’s remarks, it is a fact that there is financial volatility in the wider world, particularly caused by the concerns and the fallout from the subprime mortgage market difficulties in the United States. Mr Norris was making the fair point that in the globalised economy that we have, which generally works to people’s benefit, there can be financial contagion—financial flow-ons—even to countries as strong as Australia. As the Prime Minister said in his press confer-
ence today, the reassuring aspect for Australia is that we do now have a very strong, resilient and flexible economy. We have paid off all our debt; we have the budget in surplus; we have real wages rising; and we have relatively low inflation and relatively low interest rates. So we could not possibly be in a better position, in our submission, to withstand any flow-on effects from the instability in world financial markets caused by the subprime mortgage market in the United States. Mr Norris was really saying that there will be a reappraisal of risk and a reappraisal of the price of credit.

We want to make sure that all our levers are set, as I said before, at low inflation. That emphasises the importance of maintaining flexible labour markets. It emphasises the importance of keeping the budget with strong surpluses. We have said that our target and our operating principle are to keep the budget at about one per cent surplus. That is why we are concerned about the extent of fiscal laxity at the state government level: it is placing undue demand on the economy, which will put pressure on inflation and, therefore, on interest rates. There are reasons for concern, and that is why, as the Prime Minister said, it is more important than ever at a time like this to ensure that you have experienced, strong, capable hands at the wheel of the national economy. And I submit to you, Mr President, that that is what Australia has, with Mr Howard as Prime Minister and Mr Costello as Treasurer.

Senator SHERRY—Mr President, I ask a supplementary question. The minister has referred to the Prime Minister’s reference to reasons for concern. He has not explained why the Treasurer has been claiming constantly that we will be unaffected by this meltdown. Has the minister also seen comments by a director of public-private sector partnerships, Dr Currie, that Australian non-bank lenders are ‘in a regulatory black hole’? In other words, they are not regulated. In light of this, on what basis did the Treasurer give his assurance that all is well for Australian financial institutions? Isn’t this just further evidence from the Treasurer and the government that they are arrogant and out of touch?

Senator MINCHIN—I think Senator Sherry would know that the non-bank lending sector, given that they do not take deposits, are not regulated in the same fashion as other parts of the banking system. That is a fact of life. Senator Sherry knows that and, of course, the Treasurer knows that. What concerns me is the extent to which Senator Sherry is causing alarm to borrowers from non-bank financial lenders by suggesting that there is any difficulty with them. There is no risk whatsoever to borrowers from non-financial lenders. They do have full mortgage insurance so it is wrong for Senator Sherry to suggest in this place, at least by implication, that there is any risk to them. I condemn Senator Sherry for the extent to which he is causing concern to borrowers from those sorts of lenders. They do not bear any risk because they are insured. To the extent that they are borrowing from others and the price of their credit goes up, there may be an impact. But there is no question of the financial stability or surety of the loans that people have taken out from those non-bank financial lenders, and nor should Senator Sherry be causing concern.

Indigenous Communities Nuclear Energy

Senator ALLISON (2.53 pm)—My question is to the Minister representing the Prime Minister. Given that the Prime Minister is now the self-appointed champion of free speech and democracy in Queensland, will he be providing additional time for debate about his emergency intervention legislation being rammed through the parliament with-
out proper consultation? Will he be apologising to Indigenous people for forcing a discriminatory system upon them without giving them a say? And now that public consultation has become a sacred tenet to him, will the Prime Minister invite a vote on whether Australia should proceed with nuclear power reactors or sell uranium to India, a country which refuses to sign the nuclear non-proliferation treaty?

Senator MINCHIN—We do defend our legislation with respect to Queensland local government, as my learned friend Senator David Johnston has explained. We do not choose necessarily to interfere in the affairs of the state of Queensland, but I think Senator Allison should understand that what Premier Beattie is doing is quite extraordinary and tramples all over proper democratic principles. It has always been my view that a state government does have a proper responsibility for the organisation of local government in its domain. We are talking about the third tier of government; we are not dealing with the local tennis club. We are dealing with a proper level of government with significant responsibilities who are elected by their constituents.

Senator Robert Ray interjecting—

Senator MINCHIN—We have good men and women who put themselves up for election to this important level of government in this country—that is, local government. This has significant effects on the lives of ordinary Australians. And we have the Premier of Queensland trampling all over the rights of those people to express a view as to whether their councils should disappear or not. It seems to me a fundamental matter of democratic principle that if a tier of government is effectively to disappear then the people affected should have a say in that matter. It is the people of Queensland who have elected this tier of government. I draw a distinction here: it is a tier of government that we are discussing.

To go to Senator Ray’s interjection, it is my recollection that, in relation to the actions of the Victorian government, the Hawke or Keating government was in power at the time; it was not the coalition government that was in power federally. May I say that it would be my view that any past or future Liberal government should give the people in their state a say in whether or not their councils are to disappear. To that extent, in the past, when Mr Hawke or Mr Keating was in power, Premier Kennett should have been given his constituents a right to have a say in whether the councils in Victoria were merged or disappeared.

So far as Senator Allison’s question about ramming the legislation on the Northern Territory intervention through the parliament goes, I would point out to Senator Allison that the bill has now been in this chamber for three days. I think the debate is up to some 15 hours. It is rapidly approaching the point at which it becomes one of the most exhaustively-debated bills in the history of the Senate. I am advised that only 29 bills in 106 years of the Senate have been debated for over 20 hours, and this one is rapidly approaching that 20 hours. We are happy for this debate to go for as long as the minor parties wish it to go. If you want to stay here till Saturday night, we will stay here till Saturday night to debate this bill. So I would hope that the minor parties will not seek deliberately to filibuster on this important bill.

To the extent that the minor parties have legitimate and serious questions for the minister handling the bill, we invite them to put them. But we would caution them against unnecessarily filibustering on this bill. We are happy for this very significant legislation to be properly tested in this place. I am surprised that Senator Allison is complaining
about the methodology. The Liberal Party of Australia and the National Party of Australia do stand for democratic principles and democratic rights. We have been the great defenders of the Senate; it is those opposite who have had it in their party platform for some 60 years that they will abolish the Senate. So we are the great defenders of democracy and of this chamber, and we stand by our principles. *(Time expired)*

**Opposition senators interjecting—**

**The PRESIDENT**—Order! I will not call Senator Allison until there is order.

**Senator ALLISON**—Mr President, I ask a supplementary question. I thank the minister for his answer, especially his confirmation of the importance of democratic principles. I ask again: why will he consult Queenslanders over local government amalgamations but not Indigenous people over this legislation? Given that freedom of expression and democratic principles are so important, will the Prime Minister condemn the treatment of whistleblowers Andrew Wilkie, who publicly criticised the attack on Iraq, and Allan Kessing, who was targeted for leaking reports on security shambles at the Sydney airport?

**The PRESIDENT**—I am not sure whether that is a supplementary question but I will invite the minister to answer those parts that are relevant.

**Senator MINCHIN**—I think that in government you must deal with issues as they arise on the merits according to proper principle. In this case we have deemed that, in relation to a level of government in Queensland, the people of Queensland should be given the right to have a say in whether a level of government is gutted by the Premier of Queensland. And I note that the opposition fully support our position.

With respect to consultation on the Northern Territory intervention, I think that Minister Brough conducted very widespread consultation on the matter. He has the support of Magistrate Sue Gordon and of Noel Pearson and Warren Mundine. Significant leaders of the Aboriginal community support this. My assessment is that this intervention has widespread support throughout the Aboriginal community of the Northern Territory. Mr President, I ask that further questions be placed on the **Notice Paper**.

**QUESTIONS WITHOUT NOTICE:**

**Uranium Exports**

**Nuclear Energy**

**Senator CARR** (Victoria) (3.00 pm)—I move:

That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Coonan) and the Minister for Justice and Customs (Senator Johnston) to questions without notice asked by the Leader of the Opposition in the Senate (Senator Evans) and Senator Carr today relating to nuclear energy.

I do so in the context that it has to be appreciated just how important nuclear research is in this country and what a magnificent chance we have to explore the opportunities for expansion of nuclear research in a range of medical developments and manufacturing industries and in engineering and other processes. What I find absolutely astounding though is the government’s irresponsibility when it comes to the selling of uranium to India in circumstances where India has not signed the nuclear non-proliferation treaty. India has something like 36 nuclear warheads, and the United States government has indicated that its position is to reprimand India over its nuclear weapons program because it has breached undertakings with regard to nuclear testing. In these circumstances I find it absolutely extraordinary that ministers in this government can claim that India has a strong record when it comes to...
honouring its commitments on nuclear testing and the military use of nuclear power. It is an extraordinary proposition that this government can seek to take a position of such blinding hypocrisy.

On the other hand there is the government’s position on local government. Just last year this government voted against a proposition, moved by me, to give constitutional recognition to local government. But this year, on the eve of an election, the government seeks to intervene in the electoral processes in Queensland with regard to the operations of the Local Government Act. We have a simple proposition: if that is to be the rule—this newfound commitment to concerns about local interests—it is important that that position be held in all regards. You would think that position would be held on the establishment of nuclear power plants. This government has received a commissioned report by the Prime Minister which indicates that it is the government’s desire to build 25 reactors in this country, yet there is no discussion about where those reactors are to go and no discussion about the consequences of building those reactors.

In that context, I think it is appropriate that we hear from this government about what legal advice they have sought about the capacity of the Commonwealth government in Canberra to override local communities when it comes to the expression of their desire not to have those reactors built in their localities. The Minister for Industry, Tourism and Resources stated on 26 July that such legal advice would be sought. Where is it? It is time for the government to put that advice on the table. If it is appropriate to intervene in local government elections in Queensland, it is also appropriate to put a position with regard to people’s rights to have their say about where these new nuclear reactors go.

Senator Ian Macdonald—Can you speak up a bit?

Senator CARR—We are entitled to know the locations of the 25 reactors that this government intends to build. The people of the Hunter, and the people of the Queensland coast, for that matter. The senator across the chamber interjects. We are entitled to know what his attitude is on the building of nuclear reactors on coastal Queensland. We are entitled to know what position is on the Hunter and Jervis Bay and on the Victorian coast. What is the situation in South Australia? Does the government intend to build reactors there? Why shouldn’t people have a say on whether or not such reactors are built in their backyards? If it is the case that the government now thinks it has the constitutional power to intervene in local government elections in Queensland, then it will also have the constitutional power to provide the AEC with the authority to conduct plebiscites on the issue of nuclear reactors right across Australia. That is simply the logic that has been put here today, and I would love to hear what this government has to say on that question.

Senator LIGHTFOOT (Western Australia) (3.05 pm)—I will first start by saying that I do not know what Senator Carr has been reading, but this country could not afford to build 25 nuclear reactors. This country does not need 25 nuclear reactors. Nuclear reactors cost billions of dollars each and, multiplied by 25, you could easily see that we do not have that. We do have uranium in this country. We are not, as some people may think, the biggest developer and biggest seller of uranium in the world. Canada holds that position. However Australia does have the biggest reserves of uranium in the world. We export something like 11,000 tonnes of uranium each year now. Canada exports slightly more than that. With the expanding of the $U_3O_8$ production, or yellow-
cake, in Kazakhstan, Kazakhstan will easily become the biggest exporter of uranium in the world, with 18,000 tonnes per annum beginning in 2008.

The point I want to make is this: if Australia does not sell its uranium, with guidelines, to India—the largest democracy in the world—then Kazakhstan will. India is a country with which we have historical ties. It is a country with which we have traded for almost a couple of centuries, if you include our British heritage. Many of India’s citizens live in Australia. India is a country that has shown the world what can happen when a country adopts the democratic process. This government, I know, will not expand its uranium sales unless there is agreement from India to our terms. And it is not just Kazakhstan that will sell uranium to India; there are places in Africa that will sell their uranium to India too. Plutonium is a very special by-product of uranium waste. It is not something that can be taken from used or spent fuel rods and put into a bomb. It takes years, sometimes, to develop enough uranium to make plutonium and enough to make a device that will explode. Also, it takes an immense amount of technology to do it.

If Australia does not use its uranium wisely, someone else will fill the void and Australia will miss out. My home state of Western Australia, for instance, has missed out on tens of billions of dollars over the past 20 years by not developing the known uranium sources in that state, the biggest mining state in the world, the state that has an excellent record for mining. If Australia does not contribute to the reduction of greenhouse gases, when we do have the devices here to do it, we will be left wanting. We will have the finger pointed at us saying: ‘You had the means to stop production of greenhouse gases, particularly carbon dioxide, and you failed to do it. Instead, you have kept on exporting coal.’ There is nothing wrong with exporting coal, particularly if that coal is adapted to the clean coal process.

Other countries in the world that we respect, such as the United States, the United Kingdom, Sweden and France—80 per cent of France’s power is nuclear power—are developing and expanding their nuclear power stations and building new stations. China, our biggest trading partner now, is expanding its nuclear power plants across China. Why shouldn’t China expand its nuclear power plants and buy uranium from Australia? China loses up to 10,000 people a year in its coalmines, largely in small coalmines that are owned by individuals in China. This will obviate the necessity for the rush to coal to create energy for the massive industrialisation of China.

If we do not do that, I think that we would have the finger pointed at us. People from various parts of the world will say to us: ‘You have the means to reduce the deaths in China by exporting your uranium there. You have the means to reduce the occurrence of millions of tonnes of greenhouse gases per year and you’ve failed to do it, you’ve failed to take note.’ We should grasp the opportunity and embrace nuclear power, provided—and only provided—that it is a safe issue for us to embrace. (Time expired)

Senator WORTLEY (South Australia) (3.10 pm)—Less than three months ago the federal Minister for Industry, Tourism and Resources, Ian Macfarlane, said that Australia will not sell uranium to India until India signs the nuclear non-proliferation treaty. Today in this chamber we have government senators’ responses to questions telling us that it is not necessary for India to sign the NPT for Australia to sell uranium to it. Minister Macfarlane spoke to the Age newspaper about the sale of uranium to India in May this year. The article said:
“The answer is no,” Mr Macfarlane said. “The Australian uranium industry can prosper without India, that’s my answer.

“We have a prohibition on the basis they have not signed the NPT.”

But it does not end there. The article goes on to say:

Asked about the contradiction with Mr Howard’s comments over uranium sales to India, Mr Macfarlane said he was simply stating the Government’s policy. “There has certainly been no discussion with me, and I’m the guy who signs the export permits, about the potential to supply India,” he said.

We are three months down the track and we have Mr Downer telling us that selling uranium to India without its signing the nuclear non-proliferation treaty would make the world safer, because its nuclear plant would be subject to international inspections for the first time. According to today’s Age newspaper, Mr Downer also said that there was no way that uranium could be used for military purposes. But the question really is: what level of safety and what level of assurances would we have about the uranium from Australia going to a country that has not signed the nuclear non-proliferation treaty? India’s chief scientific adviser has his own views about this. In an interview in the Hindu newspaper he is quoted as saying:

Whatever reactors we put under safeguards will be decided at India’s discretion. He went on to say:

We are not firewalling between the civil and military programs in terms of manpower or personnel. That’s not on.

The foreign minister does not ‘think there is a risk’. But how can we be sure? Is it a risk we really want to take?

The development by the Howard government of a shift in Australia’s policy from no sale of uranium to countries that have not signed the nuclear non-proliferation treaty, a policy that to date has served us well, to the possible sale of uranium to countries outside of the nuclear non-proliferation treaty will not be a decision welcomed by the Australian people. India is a nation that will not rule out nuclear testing and it will not put its name to the nuclear non-proliferation treaty or the Comprehensive Nuclear Test Ban Treaty. Labor believes that selling uranium to a country that will not sign onto the NPT is not only a risk we do not want or need to take but also a move that will undermine the delicate nuclear non-proliferation regime. Labor believes Australia has an obligation to make sure the International Atomic Energy Agency fulfils its role through the non-proliferation treaty. Yesterday, Mr Rudd said:

Nuclear weapons proliferation is not a laughing matter, it’s a serious matter ... And it is a very bad development indeed when we have the possibility of the Government of Australia stepping outside the Non-Proliferation Treaty and saying it’s OK to sell uranium to a country which isn’t a signatory to the NPT. This is a significant breach from the consensus of Australian governments in the past and I believe sends a bad message to the international community.

By committing to uranium sales to India, Australia would also be forced to cross its collective fingers that none of this nuclear material falls into the wrong hands. Pakistan cricketer Imran Khan has said that the Howard government’s decision to sell uranium to India will now spark a new arms race on the subcontinent. He told SBS television that Australia’s decision to export uranium would encourage generals in his country to spend more on weapons to counter India’s access to nuclear fuel.

Nuclear power is not the answer. It is not the answer to Australia’s future energy needs either. It will be at least 2020 before nuclear—(Time expired)

Senator IAN MACDONALD (Queensland) (3.16 pm)—From time immemorial in
our country, local councils have had the ability to question and poll their constituents on issues of importance to those local constituents. Nowhere in the democratic world have I ever been aware of a state government demanding by legislation that councils should not conduct a poll, yet this is what is happening in Queensland at the present time. Why there is not outrage in this chamber from all sides, I cannot comprehend. This is the greatest attack on freedom of speech that Australia has ever seen.

Whilst the opposition talk about conducting polls on nuclear power plants—and my colleague Senator Lightfoot has very clearly answered that—there is nothing to stop a council conducting a poll on a nuclear power plant or on anything else, except if you happen to live in Queensland. If you happen to live in Queensland, you cannot conduct a poll on a particular matter. And what is that matter? It is a matter of governance and whether the way you are democratically governed in your particular locality should or should not continue. A Queensland Labor government has determined by legislation that, if any councillor should dare to suggest that their constituents have a say, they will be in breach of an act and will be fined a maximum penalty of 15 penalty units, which is a substantial sum of money. The Queensland act goes on to say that any councillor who should have the temerity to ask his constituents for an opinion will face having to pay personally any costs incurred in doing that.

This sort of antidemocratic, un-Australian legislation is unbelievable in a country like Australia. I am disappointed the Labor Party in this place have not demanded some protection of freedom of speech. The union movement in Queensland—and of course all of my colleagues sitting opposite me are only in this chamber because of the union movement—were initially totally opposed to this because they knew that it would mean a loss of jobs in rural and regional Queensland. Mr Bill Ludwig, from the Australian Workers Union and father of Senator Joe Ludwig, was totally opposed to it. Suddenly, he has gone all quiet and we wonder why. As Senator Johnston said in answer to Senator Carr’s question, it is because the AWU in Queensland have been made part of the Queensland local government system in the transition process. That is why the unions have been bought off.

Australians must not contemplate having another Labor government in this country so that we have wall-to-wall Labor governments—eight Labor state and territory governments and a federal Labor government—because the arrogance of Mr Beattie, the arrogance that the Queensland state Labor government demonstrate, would be palpable and would consume and continue on into a federal Labor government. Mr Beattie demonstrates the arrogance that Labor governments exude. You can imagine if there were a Labor government in Canberra, unaffected and unable to be dealt with by an opposition here, the arrogance that Mr Beattie displays would roll over into a Rudd Labor government. Mr Beattie’s actions demonstrate very clearly to all Australians just how undemocratic Labor governments can be. The outrageous approach of the Queensland Labor government in not allowing Queenslanders to have a say on a matter of governance cannot be left to pass without outrage.

There were opportunities for Queenslanders themselves to demonstrate in the street, but Mr Beattie told the SES workers that if they put up any barricades they too would be sacked. And this is a supposedly democratic government. There is not an upper house in Queensland so its Labor government rules as it wishes. (Time expired)

Senator McEWEN (South Australia) (3.21 pm)—I address my comments to the
answers to questions given today by government senators relating to the sale of uranium to India. If anybody was looking for another reason not to vote for this government in the forthcoming election, they certainly heard it today. Not only is this government arrogant, out of control, reckless, presiding over interest rate rises and interminably racked by leadership divisions, it is now downright dangerous. This government is intent on dragging Australia down the nuclear path. We already know it wants to build nuclear reactors because that is the only answer it has to the nation’s future energy needs. Never mind all the clean, green, cheap and safe energy technologies that we should be exploring; this government wants dangerous, expensive and polluting nuclear reactors. Of course, it will not tell us where it wants to put them. But we will keep asking that question, and I am sure the people of Australia will keep asking that question too.

Now this government wants to sell uranium to a country that refuses to sign the treaty on nuclear non-proliferation—a country that has nuclear weapons and, as late as this week, is saying it wants to conduct more nuclear weapons testing; a country that abuts another country, Pakistan, which also has nuclear weapons, which has not signed the treaty and which has a long history of friction with its neighbouring country, India. What kind of reckless, dangerous behaviour is this from a federal government that is supposed to protect its citizens and keep them safe and is a signatory to international laws intended to prevent nuclear non-proliferation?

In this very week, we remembered the end of World War II. Who can forget how that war ended? It ended when the Americans dropped atomic bombs—nuclear weapons—on Japanese cities. Seventy-thousand people in Hiroshima were killed instantly and a similar number were killed in Nagasaki. Tens of thousands more died in the months following. The vast majority of them were civilians. That is what nuclear weapons do—kill lots and lots of innocent people. Some of us took the time this week to remember World War II and we hope that it never happens again. But it sounds like some of the people on the government side of this chamber do not learn from past tragedies.

The whole point of the nuclear non-proliferation treaty is to prevent another Hiroshima or another Nagasaki. If you undermine the NPT by condoning exceptions and exemptions and special arrangements for your friends, that weakens the treaty. Other countries then come along and say: ‘Me too! I want some of that special treatment too.’ Australia is, thank goodness, a signatory to the treaty, so we should be committed to it and to strengthening it, not trying to wreck it. The very suggestion that we sell uranium to a country that is not a signatory makes it look like we are not truly committed to the NPT—that it is not important and it is not necessary. The very suggestion that we want to sell uranium to India makes us appear to the rest of the world as though we are more concerned with playing ‘follow the leader’ with the United States than we are about global security.

Instead of flogging uranium to India and hoping it does the right thing, we should be encouraging that nation to join most of the rest of the world by becoming a signatory to the non-proliferation treaty. We heard vague comments today from Senator Coonan about how India’s use of the uranium that we will export to it will be managed and curtailed and restricted to civilian use. We are certainly not convinced on this side of the chamber that anything is in place to ensure that that happens. The government says that the exporting of uranium to India would have to be preceded by a nuclear safeguards agreement, but it cannot tell us how it will work and how it will be enforced. We know
anyway that such an agreement will not provide much protection because it would be with a nation that does not support the nuclear non-proliferation regime. We know that providing uranium to India for civilian purposes will have the effect of freeing up its existing fuel stocks to be used on its nuclear weapons projects.

This government is blinded by everything nuclear and is prepared to put at risk global security and the fight against terrorism. If we sell to countries that will not sign the treaty, why stop there? Other countries could be well within their rights to ask, ‘What about us?’ Why should Pakistan feel constrained if its neighbour is given the green light by the United States and Australia? When I came into this place, I thought ‘the arms race’ was terminology from a previous decade that I would never have to use again. But it seems that this government wants to reopen the arms race. What a devastating thing that will be for world peace and world security. (Time expired)

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (3.26 pm)—I want to make a contribution to this debate on the Queensland amalgamations because I think it opens a couple of areas—

Senator George Campbell—Mr Deputy President, I rise on a point of order. I understand that the motion before the chair is to take note of answers to questions today relating to the sale of uranium to India, the nuclear safeguards and the issue of nuclear reactors in this country. There has been no proposition to take note of the proposal about ballots or plebiscites in Queensland. Senator Macdonald got away with it; he took a bit of liberty and we let it go. But I think Senator Boswell is stretching a long bow by seeking to speak on this issue.

Senator Minchin—Mr Deputy President, on the point of order: I would point out that Senator Carr in particular drew the direct analogy between referenda in Queensland on the issue of local government elections and referenda on the siting of nuclear power reactors. The two have been melded throughout this question time and throughout the debate in taking note. It is perfectly reasonable to give Senator Boswell the opportunity to make his remarks relevant to the general debate about the question of referenda on the siting of nuclear reactors and the relevance of that question to the issue of local government. He has not been given that opportunity yet.

The DEPUTY PRESIDENT—On the points of order: Senator Boswell there is really a choice. You can make yourself relevant to the question that is before the chair, which is in respect of nuclear reactors, or I can put that question and then you can move to take note of the other answer. If you go down the other path you run the risk that I will rule that you are out of order. It is up to you.

Senator BOSWELL—Mr Deputy President, I was responding to some of the remarks that Senator Carr made in his contribution when he brought forward the amalgamations debate and linked it with the other question. I believe that gives me the right to respond, as Senator Carr has, and I would like to proceed to do so.

Answers to Questions

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (3.29 pm)—Mr Deputy President, I would like to make some remarks on—
The DEPUTY PRESIDENT—You can move to take note of answers.

Senator BOSWELL—Yes, I move to take note of the answers.

Senator Wong—Mr Deputy President, I rise on a point of order. I am certainly not clear from that precisely what Senator Boswell is moving to take note of. He has been given fairly clear instructions from the chair and from his leader. If we are going to have a motion to take note of different answers, perhaps that could be made clear.

The DEPUTY PRESIDENT—I understand your point of order. Could someone help Senator Boswell move the motion, please?

Senator Minchin—On the point of order, I understand Senator Boswell is moving a motion to take note of all answers given in question time today.

Senator BOSWELL—I move:

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

I rise on this issue because I think it brings forward two distinct areas in this amalgamation debate. One is that we have been told today by Senator Johnston that the AWU and the union movement generally will be responsible for, or be taken into consideration on, the reconstruction of the councils. So there is going to be a power grab by the union movement. Then we are informed, if you look closely at the Premier’s second reading speech, that there could be—and I am maintaining there will be—a position where the council workers will be put under a statutory authority and they will not work for the local councils but will work under a statutory authority to avoid the results of our job creation policies—

Senator Robert Ray—Work Choices is the term!

Senator BOSWELL—Whether it is Work Choices, unfair dismissals or whatever you want to say, they are going to be taken away as employees from the councils and put under a statutory authority. That will cause a lot of angst not only for the workers out there but also for the councils that remain. What we have done today is to restore democracy in Queensland. At four o’clock, the Friday morning before last, the Beattie government decided that they were not going to have any decisions going against their proposal. Therefore we have come forward today and restored democracy in Queensland. I think it is a great thing for Queensland.

What this shows is the fact that Mr Rudd has absolutely no power, no pull and no direction and that Mr Beattie is just ignoring him completely. That puts paid to any presentation that Mr Rudd would have cooperation with the states. If this is the first sign of cooperation with the states then it is an absolute, miserable failure and is totally unacceptable. Mr Rudd, Kevin07—

Senator Brandis—Kevin007: licence to kill local government!

Senator BOSWELL—Kevin007 has said, ‘Elect me and you will have absolute harmony between the states.’ And he has gone down at the first hurdle. Mr Beattie has ignored him. Mr Ludwig is coming out and challenging Mr Rudd, because Mr Ludwig can see a big fat increase in the membership of the AWU. Once again we are saying that the unions will be running Australia if the Rudd alternative government is elected. We are going to have wall-to-wall state Labor governments but, more than that, we are going to have the AWU, the Ludwigs, the McDonalds, and all the unions calling the shots. If there has ever been a clear example of that, we saw it in the Australian today, where Mr Ludwig has tried to pull Mr Rudd into line. We have a union boss dictating the
terms to the alternative government of Australia. If that is not a warning to Australians then I do not know what is. You have a union boss who sees a big fat increase in the membership of the AWU telling Mr Rudd exactly what to do. I am appalled by it. I am appalled by the unions that are intervening in the opposition. The opposition is not in government and they cannot keep their hands—

(Time expired)

Question agreed to.

PARLIAMENTARIANS’ ENTITLEMENTS

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (3.35 pm)—I wish to clarify a comment I made earlier in the Senate in response to Senator Wong.

The DEPUTY PRESIDENT—You need to seek leave.

Senator BOSWELL—I seek leave to make a representation in the Senate.

The DEPUTY PRESIDENT—Is leave granted?

Senator Robert Ray—I object. You have to ask in the right terms. This is the second time in five minutes Senator Boswell has fluffed the Senate procedure. We will assist him again: you can ask leave to make a statement or you can ask leave to make a personal explanation—not to clarify or give additional information.

Senator BOSWELL—I seek leave to make a statement.

Leave granted.

Senator BOSWELL—I wish to clarify a comment I made earlier in the Senate in response to Senator Wong. I have nine positions allocated to me in the Senate, as Leader of The Nationals. Five of those positions have been filled, not four as I indicated earlier.

Senator Robert Ray—It’s a disgrace! You’ve got more staff than the Leader of the Opposition up here!

The DEPUTY PRESIDENT—Senator Ray, this is not a debate.

COMMITTEES

Reports: Government Responses

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (3.37 pm)—I present five government responses to committee reports. In accordance with the usual practice, I seek leave to have the documents incorporated in Hansard.

Leave granted.

The documents read as follows—

Joint Parliamentary Committee on ASIO, ASIS and DSD

Government Response to Committee’s Recommendations

Review of the listing of six terrorist organisations (tabled 7 March 2005)

Recommendation 1:
The Committee recommends that a comprehensive programme, that takes account of relevant community groups, be conducted in relation to any listing of an organisation as a terrorist organisation.

Response:
It is not practicable to undertake broader community consultation in advance of the listing of terrorist organisations. The Government has undertaken a number of steps to ensure awareness of the terrorist organisation offences. Following the listing of an organisation as a terrorist organisation, the Attorney-General issues a media release attaching the Statement of Reasons for the organisation. This information is disseminated to all major media outlets. The Attorney-General’s Department’s National Security website has been improved to give greater access to information and provides a list of all organisations listed as terrorist organisations in Australia, along with the Statement of Reasons for each of those organisations.
The Attorney-General’s Department has produced a ‘Question and Answer’ pamphlet providing information on recent counter-terrorism legislation. This pamphlet is printed in eight different languages and is distributed by officers of the Attorney-General’s Department at forums and seminars they are invited to attend. A pamphlet providing information on the terrorist organisation offences including the financing of terrorism offences is currently being developed by the Government.

Departmental officers have spoken at the following forums in relation to Australia’s counter-terrorism measures:

- 27 February 2006- Departmental staff briefed the Muslim Community Reference Group on the new counter-terrorism laws;
- 19 April 2006- Departmental staff participated in a legislation and policy forum held at Monash University to discuss the counter-terrorism legislation;
- 19 and 20 May 2006 – Departmental staff provided a presentation on the Government’s counter-terrorism legislation at a forum hosted by the Citizens for Democracy in Armidale;
- 28 May 2006- Departmental staff provided a presentation on the Government’s counter-terrorism legislation at a forum hosted by the Young Lawyers Association in Sydney;
- 2 June 2006- Departmental staff addressed the Attorney-General’s Non-Government Organisation Forum on Human Rights;
- 19 July 2006- Departmental staff provided a presentation on the implications of Australia’s new terrorism laws on specific ethnic communities at a conference of The Northern Migrant Resource Centre Inc. in Melbourne; and
- 7 December 2006- Departmental staff provided a presentation on Australia’s counter-terrorism legislation and arrangements at the National Security and Crisis Management Workshop in Sydney.

**Recommendation 2:**

The Committee does not recommend disallowance of these regulations

---

**Recommendation 1:**

The Committee requests ASIO and the Attorney-General to specifically address each of the six criteria referred to in paragraph 3.2 in all future statements of reasons particularly for new listings.

**Response:**

The six criteria are among a range of factors ASIO considers when making its preliminary evaluation of whether to put an organisation forward for possible listing as a terrorist organisation.

Section 102.1(2) of the Criminal Code Act 1995 (the Criminal Code) requires that the Attorney-General must be satisfied ‘on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur) or advocates the doing of a terrorist act (whether or not the terrorist act has occurred or will occur’.

The Statement of Reasons is designed to specifically address the legislative requirement for listing a terrorist organisation.

**Recommendation 2:**

The Committee does not recommend disallowance of these regulations

**Response**

The Government agrees with the recommendation

---

**Parliamentary Joint Committee on Intelligence and Security**

**Government’s Response to Committee’s Recommendations**

**Review into the re-listing of Al-Qa’ida and Jemaah Islamiyah as terrorist organisations**

**Tabled 16 October 2006**

**Recommendation 1:**

The Committee renews its request that the Attorney-General and ASIO incorporate the criteria ASIO has provided for determining which organi-
sations should be listed in future statements of reasons.

Response:
The six criteria provided to the Committee by ASIO are internal criteria, used only as a preliminary means of assessing whether an organisation should be considered for possible proscription.

Section 102.1(2) of the Criminal Code Act 1995 (the Criminal Code) requires that the Attorney-General must be satisfied ‘on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur) or advocates the doing of a terrorist act (whether or not the terrorist act has occurred or will occur)’. The format currently employed for the Statement of Reasons is designed to address the legislative requirement for listing a terrorist organisation.

Recommendation 2:
The Committee does not recommend the disallowance of the regulations.

Response:
The Government agrees with the recommendation.

Parliamentary Joint Committee on Intelligence and Security
Government’s Response to Committee’s Recommendations

Review of the re-listing of ASG, JuA, GIA and GSPC
Tabled 26 February 2007

Recommendation 1:

- The Committee renews its request that the Attorney-General and ASIO incorporate the criteria ASIO has provided for determining which organisations should be listed in future statements of reason.
- The Committee requests that the Attorney-General and ASIO provide the Committee with a set of criteria outlining under what circumstances an organisation will not be relisted.

Response:
The six criteria are among a range of factors ASIO considers when making its preliminary evaluation of whether to put an organisation forward for possible listing as a terrorist organisation.

Section 102.1(2) of the Criminal Code Act 1995 (the Criminal Code) requires that the Attorney-General must be satisfied ‘on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur) or advocates the doing of a terrorist act (whether or not the terrorist act has occurred or will occur)’. The Statement of Reasons is designed to specifically address the legislative requirement for listing a terrorist organisation.

The re-listing of an organisation is considered to be an entirely new listing. Therefore, whenever an organisation is considered for re-listing, the Attorney-General must be satisfied of the legislative requirements set out in section 102.1(2) of the Criminal Code. If the Attorney-General is not reasonably satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur), or advocates the doing of a terrorist act (whether or not the terrorist act has occurred or will occur), the organisation will not be listed as a terrorist organisation.

Recommendation 2:
The Committee does not recommend the disallowance of the regulations on the four terrorist organisations:

- Abu Sayyaf;
- Jamiat ul-Ansar;
- The Armed Islamic Group; and
- The Salafist Group for Call and Combat.

Response:
The Government agrees with the recommendation.
GOVERNMENT RESPONSE TO THE JOINT STANDING COMMITTEE’S ROUNDTABLE PUBLIC HEARING:

REVIEW OF THE GRIFFIN LEGACY AMENDMENTS

THE HON JIM LLOYD MP
MINISTER FOR LOCAL GOVERNMENT, TERRITORIES AND ROADS
July 2007

THE GOVERNMENT’S RESPONSE

Recommendation 1: The committee recommends that the Minister for Local Government, Territories and Roads in the future provides the Joint Standing Committee on the National Capital and External Territories with the option of inquiring into every Draft Amendment to the National Capital Plan. Where the committee requests an inquiry, the Draft Amendment under consideration should not be tabled until after the committee completes its inquiry.

Not agreed.

The Resolution of Appointment is the source of authority for the establishment and operations of the Committee. The current Resolution was passed by the House of Representatives and the Senate on 18 November 2004 and provides that the Minister for Local Government, Territories and Roads (the Minister) may refer draft amendments to the National Capital Plan to the Committee for its consideration. While it has generally been the government’s practice to refer draft amendments to the National Capital Plan to the Committee for its consideration, the government considers that the Minister should retain the discretion to do so.

Currently, as part of the approval process for draft amendments, the Minister provides a copy of draft amendments to the Committee giving them the opportunity to indicate if they wish to conduct an inquiry into the amendments. In addition to this, the Committee is also given the opportunity to be briefed on draft amendments. In the case of the Griffin Legacy Draft Amendments, the Committee was provided with private briefings throughout the development of the Griffin Legacy.

As part of the draft amendment process, there is usually time for the Committee to conduct inquiries, however there can be matters of national significance which may not allow time for full consideration by the Committee.

Recommendation 2: The committee recommends that the National Capital Authority explore options for ensuring that submissions to all the Authority’s consultation processes are made publicly available subject to full approval by the submitter and compliance with relevant privacy principles and advise the committee.

Agreed.

Submissions received during consultation processes will be made publicly available providing approval is obtained by the submitter and all relevant privacy principles are adhered to.

The National Capital Authority (NCA) has already released its Consultation Protocol (the Protocol) which includes the requirement to publicly release submissions. The Protocol also sets out the minimum requirements for consultation which must be carried out:

- when the Plan is being made or amended;
- when a Development Control Plan (DCP) is being made;
- on a development application; and
- when the NCA informs community and stakeholders on an annual basis.

The Protocol seeks to formalise, clarify and guide the community and stakeholders to ensure consistency in the application of consultation within the legislative requirements, as outlined in the Australian Capital Territory (Planning and Land Management Act 1988 and the National Capital Plan.

The Protocol is available on the NCA’s website here:
Recommendation 3: The committee recommends that before 29 March 2007 the Minister for Local Government, Territories and Roads moves to disallow Amendments 56, 59, 60 and 61 so that the National Capital Authority has the opportunity to further refine the amendments taking into account issues raised in the committee’s report.

Not agreed.

After the Committee’s report was tabled, the Minister publicly declined to disallow the Amendments.

The disallowance period ended in the House of Representatives on 22 March 2007.

On 29 March 2007 the Australian Greens Senator, Bob Brown moved to disallow the Amendments in the Senate. The debate and vote on the disallowance motion was held on 10 May 2007 and was not supported by the Senate. The Amendments are now incorporated in the National Capital Plan.

AUDITOR-GENERAL’S REPORTS

Report No. 5 of 2007-08


COMMITTEES

Selection of Bills Committee

Report

Senator McGAUrán (Victoria) (3.37 pm)—On behalf of Senator Parry, I present the 14th report of 2007 of the Selection of Bills Committee. I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 14 OF 2007

(1) The committee met in private session on Thursday, 16 August 2007 at 11.07 am.

(2) The committee resolved to recommend—

That—

(a) the provisions of the Tax Laws Amendment (2007 Measures No. 5) Bill 2007 be referred immediately to the Economics Committee for inquiry and report by 5 September 2007 (see appendix 1 for statements of reasons for referral);

(b) the provisions of the Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007 be referred immediately to the Employment, Workplace Relations and Education Committee for inquiry and report by 5 September 2007 (see appendix 2 for statements of reasons for referral);

(c) the provisions of the Higher Education Endowment Fund Bill 2007 and the Higher Education Endowment Fund (Consequential Amendments) Bill 2007 be referred immediately to the Employment, Workplace Relations and Education Committee for inquiry and report by 5 September 2007 (see appendix 3 for statements of reasons for referral);

(d) the provisions of the Health Insurance Amendment (Medicare Dental Services) Bill 2007 be referred immediately to the Community Affairs Committee for inquiry and report by 5 September 2007 (see appendix 4 for statements of reasons for referral); and

(e) the provisions of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 be referred immediately to the Finance and Public Administration Committee for inquiry and report by 4 September 2007 (see appendix 5 for statements of reasons for referral).

The committee recommends accordingly.

Stephen Parry
Chair
16 August 2007
Appendix 1

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee

Name of bill(s):
Tax Laws Amendment (2007 Measures No. 5) Bill 2007

Reasons for referral/principal issues for consideration

Tax Laws Amendment (2007 Measures No. 5) Bill 2007 The bills measures are as follows:

- modifies the tax treatment of leasing and similar arrangements between taxable entities and tax-exempt entities for the financing and provision of infrastructure and other assets (RBT reforms);
- thin capitalisation—changes to the definition of ‘excluded equity interest’;
- thin capitalisation—modifies the rules applying to authorised deposit taking institutions to take account of the special prudential rules applying to specialist credit card institutions;
- extends the capital gains tax (CGT) marriage breakdown rollover to transfers of personal superannuation interests from a small super fund to another complying fund (2007 Budget measure);
- exempt from income tax, the PM’s prizes from Australian history and science in the unusual circumstances in which they would be considered taxable;
- amends the CGT rules to provide a rollover for holders of statutory licences where a statutory licence ends and is replaced with one or more new licences;
- to facilitate the restructure of stapled entities - provides a CGT roll-over and amendments to the trust rules;
- lists nine new deductible gift recipients and extends the listing of another (all previously announced);
- introduces new tax incentives for the Australian film industry (2007 Budget measure);
- extends the premium 175% research and development tax concession to multinational corporate groups; and
- establishes a new board (Innovation Australia) to administer and oversight the Industry portfolio’s innovation and venture capital programmes.

Possible submissions or evidence from:
Committee to which bill is to be referred:
Economics

Possible hearing date(s):
Possible reporting date:
5 September 2007
(signed)
Stephan Parry
Whip/Selection of Bills Committee member

Appendix 2

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee

Name of bill(s):
Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007

Reasons for referral/principal issues for consideration

OUTLINE

The purpose of the Bill is to amend the Indigenous Education (Targeted Assistance) Act 2000 to appropriate additional funding to facilitate the provision of improving opportunities for Indigenous students in the communities of Coen, Hope Vale, Aurukun and Mossman Gorge in the Cape York region of Queensland through:

The embedding of the MULTILIT (Making Up for Lost Time in Literacy) teaching methodology in classrooms and in MULTILIT Tutorial Centres to enhance literacy teaching and improve the literacy levels of Indigenous students identified as requiring additional support; and

Student Education Trusts (SETs), individual trust accounts which will enable parents/guardians and members of a child’s extended family to save to support their child’s education costs.
FINANCIAL IMPACT

The Bill will increase the appropriation under section 14A of the Indigenous Education (Targeted Assistance) Act 2000 by a net $2.0 million over the 2008 programme year (in initial 2005 prices) to support the expansion of MULTILIT and Student Education Trusts in selected Cape York communities.

Additional funding of $8.1 million approved for the years 2009-2012 will be appropriated through the legislation for the 2009-2012 Indigenous Education Quadrennium.

These amounts are subject to supplementation as prescribed in the Act.

Possible submissions or evidence from:
Committee to which bill is to be referred:
Employment, Workplace Relations and Education
Possible hearing date(s):
5 September 2007
Possible reporting date:
5 September
(signed) Stephen Parry
Whip/Selection of Bills Committee member

Proposal to refer a bill to a committee
Name of bill(s):

Reasons for referral/principal issues for consideration

The Higher Education Endowment Fund Bill 2007 (the Bill) gives effect to the Government’s announcement, made in the 2007-08 Budget, to establish a perpetual endowment fund to generate earnings for capital expenditure and research facilities in higher education institutions.

The Bill:

- Establishes the Higher Education Endowment Fund (REEF) which, like the Future Fund, is a financial asset fund consisting of cash and investments.
- Grants the Treasurer and the Finance Minister, as the responsible Ministers, the power to credit cash amounts to the IEEF through a Special Account (also established by the Bill).
- Grants the Future Fund Board of Guardians (the Board) statutory responsibility for managing the investments of the I IEEF. These powers are the same as provided for in the Future Fund Act 2006 (Future Fund Act).
- Expands the Future Fund Management Agency’s (the Agency) operational activities to include its functions under the Bill but its role will remain the same – to provide executive support for the Board and will be responsible for the operational activities associated with the investment of the REEF.
- Requires responsible Ministers to issue an Investment Mandate—a collection of Ministerial directions— to the Board regarding the investment of the HEEF. The purpose of the Investment Mandate is the same as provided for in the Future Fund Act.
- Requires the responsible Ministers to determine rules for the maximum level of payments from the HEEF. The Education Minister is responsible for authorising grants of financial assistance to eligible higher education institutions consistent with these rules.
- Establishes the Higher Education Endowment Fund Advisory Board to advise the Education Minister on matters related to the making of grants to eligible higher education institutions.

Possible submissions or evidence from:
Committee to which bill is to be referred:
Employment, Workplace Relations and Education
Possible hearing date(s):
5 September
Possible reporting date:
5 September
(signed) Stephen Parry
Whip/Selection of Bills Committee member

 Append 3

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):

Reasons for referral/principal issues for consideration

The Higher Education Endowment Fund Bill 2007 (the Bill) gives effect to the Government’s announcement, made in the 2007-08 Budget, to establish a perpetual endowment fund to generate earnings for capital expenditure and research facilities in higher education institutions.

The Bill:

- Establishes the Higher Education Endowment Fund (REEF) which, like the Future Fund, is a financial asset fund consisting of cash and investments.
Appendix 4

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Health Insurance Amendment (Medicare Dental Services) Bill 2007

Reasons for referral/principal issues for consideration
Consideration of the bill as necessary

Possible submissions or evidence from:
Community Affairs

Committee to which bill is to be referred:
Community Affairs

Possible hearing date(s):
Possible reporting date:
5 September 2007
(signed)
Stephen Parry
Whip/Selection of Bills Committee member

Appendix 5

SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill(s):
Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007

Reasons for referral/principal issues for consideration
Examination of the bill as necessary.

Possible submissions or evidence from:
Finance and Public Administration

Committee to which bill is to be referred:
Finance and Public Administration

Possible hearing date(s):
Possible reporting date:
4 September 2007
(signed)
Stephen Parry
Whip/Selection of Bills Committee member

BUDGET
Consideration by Estimates Committees

Senator McGAURAN (Victoria) (3.38 pm)—On behalf of the Chair of the Foreign Affairs, Defence and Trade Committee, Senator Payne, I present additional information received by the committee relating to the 2007-08 budget estimates:

Foreign Affairs, Defence and Trade—Standing Committee—Budget estimates 2007-08—Additional information received between 26 July and 16 August 2007—Foreign Affairs and Trade portfolio.

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE PAYMENT REFORM) BILL 2007

NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE BILL 2007

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE AND OTHER MEASURES) BILL 2007

APPROPRIATION (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE) BILL (No. 1) 2007-2008

APPROPRIATION (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE) BILL (No. 2) 2007-2008

In Committee

Consideration resumed.

The CHAIRMAN—The question is that division 4 of part 7 stand as printed.
(Quorum formed)
Senator BARTLETT (Queensland) (3.41 pm)—This is, in effect, a Democrat amendment that we are speaking to. Just before question time Senator Scullion spoke in response to a couple of the questions that I asked. I have one or two more, but I will wait until he is in the chamber before I ask them. In the meantime, note that Senator Scullion’s comments before question time in many ways reflected mine—the importance of ensuring that Aboriginal people across the board, but particularly Aboriginal children, have access to fresh food and that their community stores are reliable and not filthy with rats and all of those sorts of things. There is no disagreement here. This is where we are at so many cross-purposes in this debate: raising a concern about the application of the government’s policy via this legislation is not in any way disputing the intent. I said at the start of my contribution that this is one area where there is pretty widespread agreement amongst the Indigenous and non-Indigenous people whom I have spoken to in the Territory.

There is definitely room for improvement amongst some of the community stores. I was pleased to note the minister specifically acknowledged that in some communities the stores are fantastic. Wherever we can in this debate, we need to ensure that we do not create the impression that every community is a disaster and that every Aboriginal man is a paedophile and so on. I know nobody is saying that, but that can be the impression that people get. I am sure all of us know—and I am sure that even Senator Scullion has heard this in his feedback—that a concern is developing amongst some Aboriginal men that everybody instinctively thinks that they are probably a paedophile or a violent drunk. That is not directed at the government, but when there is a lot of focus on the issue of child sexual abuse there is that potential. We all know that that is a minority of people, but we need to state that as often as we can to ensure that that almost subconscious perception does not develop.

But to come back to community stores: it is the same principle but a different point. Clearly, there are stores which are good, and it is important to acknowledge that. The Democrats amendment before us is not in any way disputing the stated goal. As I said at the outset, getting fresh, good-quality, healthy food into kids a couple of times a day is probably as good a health measure as you would wish for and better than an endless array of medical checks. If you can get the healthy food into them, you will be doing a hell of a lot more good in the long term. If you do not do that, you can have all the medical checks in the world and you will still keep having problems. This is a crucial area and the Democrats have indicated our in-principle support for the intent. Our concern is about the application and the workability of measures in the legislation. I think that is what we should focus on: whether this will work and whether it is necessary.

I appreciate the minister’s concern that the expansive and very significant power in the legislation does not reflect the intention. I am not debating the intention. I am debating what is in the legislation and how this power can be used. As a legislator, you have to look at what sorts of things are enabled by the power, not what the intention is of the government of the day. With regard to that, I think there are a couple of issues here that do need acknowledging. I will read out a bit of division 4 so that it is clear and it is on the record what is actually enabled by this section:

The Minister may … make … declarations in relation to some or all of the eligible assets—that is, the assets of a community store—to which this section applies …
These declarations may include:

(a) a declaration that the legal and beneficial interests in the assets are vested in the Commonwealth ... without any conveyance, transfer or assignment ...

(b) ... ...

(c) a declaration that a specified instrument relating to any or all of those assets ... continues to have effect after the legal and beneficial interest in those assets ... vest in the Commonwealth ...

(d) a declaration that, immediately after the legal and beneficial interests in those assets or liabilities vest in the Commonwealth, the Commonwealth becomes the successor in law of the holder of those assets.

Those are very significant powers, and I accept that the minister said they are powers of last resort. Our concern is whether that is still an acceptable reason for giving such extreme powers, particularly given the basic issues with regard to lack of oversight of how those powers are used. They were flagged in the Alerts Digest report of the Senate Scrutiny of Bills Committee, which has been referred to a couple of times in this debate.

I will not go into hyperbole too much, but I note that we have some allegations about the five-year leases being privatisation of Aboriginal land, which I think is an overstatement of the case. But, having said that, yesterday at the Press Club, Minister Brough was, once again, talking about Aboriginal communal titles being communism. I think that is also a ridiculous concept. You can throw around labels suggesting that having land rights has not worked because it is a form of communism, then you have the state coming in and taking over ownership. That is, potentially, nationalising the assets of Aboriginal communities. Again, I accept it is a last resort, but that is the power which the Commonwealth is being given. That is why you need to have a very good reason for wanting to do it. It is not an argument about intent; it is an argument about the potential consequences of this legislation.

Let us not forget that this part in the legislation to do with community stores has a lot of other powers in it as well—powers which are also pretty strong, which the Democrats are not opposing. These include decisions with regard to granting and refusing licenses, assessments of community stores, conditions of community store licenses—there are very strong powers going to the federal government in relation to that—and surrender and transfer of community store licenses. The Commonwealth already has all those powers. This measure just goes to acquisition, and I think it is a step too far. I do not think it is necessary and I think it is potentially damaging.

Again, the government talks a lot about empowering people, and Minister Brough used that term again yesterday. I do not see how the Commonwealth moving in and taking ownership of a community store is terribly empowering. It certainly would be empowering for a community to have their store run better, for it to be clean and reliable and for it to have fresh food available. I totally accept that. But I do not think the Commonwealth coming in and taking ownership of it is the way to do it.

I wish to take the opportunity of asking a couple more questions of the minister, which go specifically to matters raised in the Scrutiny of Bills Committee report on the legislation—particularly while the chair of the committee, Senator Ray, is in the chamber; I am sure he would love to hear a response to issues raised in that report of the Scrutiny of Bills Committee. Issues were specifically raised with regard to this division and the excluding of merits review. Clauses 97 and 106 of the legislation, which are in the broader part 7, give the secretary of the department the discretion to grant or refuse a
community store licence or to revoke an existing community store licence. The explanatory memorandum makes clear that that decision will not be subject to internal review or to external review by the Administrative Appeals Tribunal. Is it the best that the government can do to justify the lack of review to say, ‘This is an emergency; therefore, letting people have a review would slow things up too much?’ Is that seriously the only reason they will use to say that they can do what they want without even an internal review?

The other issue concerns the specific division which I am talking about here, which the Democrats are seeking to remove where the minister can, in writing, make declarations with regard to taking over the assets for a specified time. The Scrutiny of Bills Committee, again, drew attention to that and sought the minister’s advice. Subsection (6) of clause 112, division 4, says that such a declaration is not a legislative instrument. I, on behalf of the committee, thought I would seek the minister’s advice here about whether the declaration, although not legislative in character, is a determination subject to review under the Administrative Decisions Judicial Review Act and, if so, whether the exercise of the minister’s discretion ought not to be subject to merits review. Is the intent of simply stating that something is not a legislative instrument to prevent any form of merits review and, if that is the intent, can the minister guarantee that that will also be the effect?

Senator SCULLION (Northern Territory—Minister for Community Services) (3.52 pm)—It certainly is the intention that, consistent with other areas of this nature in the act in terms of acquisitions, the appeal process will be the appeal process available through the courts. As to whether this is exactly what we were intending to reflect, I understand that is the case.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.52 pm)—There were a number of other matters that Senator Bartlett referred to which require an answer. While the minister is thinking about that, I would take him to clause 86, which says at subsection (2):
If the Secretary, on reasonable grounds, suspects that a person other than the wrongdoer—the person being convicted of something—can give information relevant to an application for a civil penalty order in relation to the contravention, whether or not such an application has been made, the Secretary may, by writing given to the person, require the person to give all reasonable assistance in connection with such an application. Then subsection (5) says:
If a person fails to give assistance as required under subsection (2), the person commits an offence against this subsection. Penalty: 30 penalty units.

So we have a situation where the secretary or somebody outside the court can penalise a person—not the wrongdoer but somebody who might have information—30 penalty units. I would ask the minister to justify that.

Senator SCULLION (Northern Territory—Minister for Community Services) (3.54 pm)—As I understand it, if we know a wrong has been done and the secretary suspects on reasonable grounds that a person other than the wrongdoer can actually provide information relevant to the application—in other words, a witness to an event—the secretary may in writing require the witness to give all reasonable assistance. So we are saying that, if a person witnesses an event, that person is required to provide assistance. If that person fails to provide that assistance, under subsection (5), that is an offence. I have been advised that your understanding of that part is correct, Senator.
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.55 pm)—So we have a person facing a 30-penalty unit fine because, outside the court procedures, the secretary has requested what is called ‘reasonable assistance’ from that person and, as the secretary sees it, that person has failed to give that ‘reasonable assistance’. So we have a system that is outside the rule of law and outside the courts and outside the Australian system of presenting an opportunity for a person to either put their case—and plead one way or another and be represented—or appeal. This is summary justice by ministerially appointed officials. Surely that cannot be.

Senator SCULLION (Northern Territory—Minister for Community Services) (3.56 pm)—We are expecting people to help and assist in these matters where they can, and these provisions reflect that.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.56 pm)—How can the government justify a fine of more than $3,000 for somebody the secretary says has information and has not complied with their wish to get it? How on earth can you abandon the proper process of the rule of law and outside the courts and outside the Australian system of presenting an opportunity for a person to either put their case—and plead one way or another and be represented—or appeal. This is summary justice by ministerially appointed officials. Surely that cannot be.

Senator SCULLION (Northern Territory—Minister for Community Services) (3.58 pm)—This is not about convicting people of something; this is about ensuring that people, where they can and where it is reasonable, provide assistance in matters where they should.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.58 pm)—This is incredible! I know all that. Is the government giving one citizen the ability to impugn someone, without any evidence and without any responsibility, and fine that person more than $3,000 because that person did not do what they wanted them to? That is not justice; that is flouting Australian law and the justice system as we know it. Surely there is a mistake here. Who is this secretary going to be? What is the evidence that they require under this section? Where is the reference to the requirements that must be met under this section before they have the ability to hand out fines of 30 penalty units to fellow citizens who have no opportunity under the proper judicial system to put their case? Surely this cannot be.

Senator SCULLION (Northern Territory—Minister for Community Services) (3.59 pm)—I am advised that, before the maximum penalty of 30 points or any penalty could be applied, the matter would have to go through a normal criminal court process to obtain a conviction, rather than the secretary being able to summarily impose 30 penalty points at his whim.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.00 pm)—Now I have got to what should be the case. Where does it state that in this section?

Senator SCULLION (Northern Territory—Minister for Community Services) (4.00 pm)—I have been advised that with regard to most legislation there is no need to specifically state that this is a criminal pen-
alty and has to be dealt with by the courts. I am advised that that would be the normal process.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.00 pm)—No. If you follow this through, it says:

(4) If a person fails to give assistance as required under subsection (2), the Federal Court may, on the application of the Secretary, order the person to comply with the requirement as specified in the order.

(5) If a person fails to give assistance as required under subsection (2), the person commits an offence against this subsection.

Penalty: 30 penalty units.

That is talking about assistance that is required to be provided to the secretary under subsection (2). I am sure that the minister is right; it is intended to go to court. What we have here is at best clumsy, badly written law which has been written in haste by the government and which will be regretted at length by the citizens. The minister ought to look at the clumsy, unsatisfactory way in which this section is constructed and correct it to make sure that it is clearly understood by anybody reading this section that charges have to be laid and that the courts have to be brought in to the matter—and not just for subsection (4) but for the whole of the clause.

Senator SCULLION (Northern Territory—Minister for Community Services) (4.02 pm)—As I understand it, the process would be that, if somebody is identified as someone who may be able to provide assistance, we would ask them to provide assistance. If they then decided that they were not going to provide assistance, we would be able to coerce them to provide assistance through an application to the Federal Court. If the Federal Court then found that the person had decided that they were at that stage still not going to help, then that would be a criminal offence, for which there would be a maximum penalty of 30 penalty units.

The TEMPORARY CHAIRMAN (Senator Barnett)—The question is that part 7, division 4, stand as printed.

Question agreed to.

Senator BARTLETT (Queensland) (4.03 pm)—I move Democrat amendment (9) on sheet 5340 revised:

(9) Clause 93, page 71 (after line 3), after paragraph (1)(a), insert:

(aa) the community store’s capacity to train locally employed community members;

This is an alternative amendment. It is quite a small one and therefore one which would be given some genuine consideration if we were to assume that there was any degree of willingness to engage on the part of the government. It relates to the licensing of community stores. In the legislation, there is a list of criteria which are assessable matters in relation to the licensing of community stores. It includes the following:

(a) the community store’s capacity to participate in, and (if applicable) the community store’s record of compliance with, the requirements of the income management regime;

(b) the quality, quantity and range of groceries and consumer items, including healthy food and drink, available and promoted at the community store;

(c) the financial structure, retail practices and governance practices of the community store;

(d) any matters specified by the Minister under subsection 125(2) to be assessable matters;

(e) any other matter that the Secretary considers relevant to the provision of high quality community store services.

This is simply an amendment from the Democrats that seeks to add another assessable matter as a definite criteria, that proposed
assessable matter being the community store’s capacity to train locally employed community members.

We are all—quite rightly—talking about the need for any type of positive result to have long-term benefits. Part of that with a community store is or should be the ability for that store to train up locally employed community members. That is not the be-all and end-all of criteria, and it is not the sole reason a licence should be issued, amended, extended or removed, but we believe it is a sufficiently important issue that it is worth having as an assessable matter the capacity to train locally employed community members to staff the community store. It is something that is minor in the scheme of the totality of the legislation, but something that the Democrats nonetheless believe would be beneficial.

Senator SCULLION (Northern Territory—Minister for Community Services) (4.05 pm)—I acknowledge that the senator is touching on employment in communities and we do need to maximise it where we can. We have taken the approach of encouraging higher rates of employment. There are a couple of reasons for that. Some of these community stores have only one employee. To suddenly make it prescriptive that that employee be a local individual would not in the short term bring about the outcomes that we require. But that is certainly not the norm. We have some special programs that will very much target store workers through some of the retail training packages. Why the notion of simply encouraging that to take place rather than being prescriptive? One of the great challenges about being prescriptive is that, if you do not have people who are trained, then it tends to backfire on you and the level of amenity that we are looking for may not be able to be achieved, particularly in the short term.

Senator BARTLETT (Queensland) (4.06 pm)—I have a final question on community stores. Another matter raised in the Scrutiny of Bills report which I do not think has been specifically raised and specifically answered goes to the issue of revoking a community store licence because the store does not comply with assessable matters—these newly developed matters that are in this legislation. The report says: ‘The committee expressed a concern that a decision to revoke a community store licence because the store does not comply with these newly developed assessable matters and a decision to refuse to grant a community store licence to a new applicant who has taken into account the new assessable matters in their application are treated in the same way in terms of access to merits review.’ The committee expressed a view, which I emphasise was a unanimous view of the committee, including coalition members, that the first decision—that is, revoking a community store licence because the store does not comply with these newly developed assessable matters—fits in more clearly within the emergency response scenario that the government is painting as justification for all this, as opposed to the second decision, which is with regard to a new applicant who has taken into account the assessable matters. As I understand it—I am not actually on that committee—if an existing store is as appalling as the one Senator Scullion described before question time, the sort that does exist in a few communities, you assess it against the assessable matters and if it clearly fails you can revoke the licence. Whether or not I agree that it should be merits reviewed, at least you can say that this is justifiable under emergency response powers: ‘That’s the immediate here and now. The existing store is terrible. We make this assessment, and no merits review; there’s no time.’ This also applies, as I understand it, to
new applicants who take into account the assessable matters in their application.

When you are talking about someone who is a new applicant for a licence, the Commonwealth is still in a position where they can say, ‘No, we don’t think you meet the criteria here,’ but in that circumstance, according to the committee’s view—and I tend to agree with it—that is not the scenario that fits in an emergency response type of situation. You are talking about a new applicant who is yet to be given a licence as opposed to an existing applicant who is losing their licence and whether that person should also be excluded from merits review. So the committee sought the minister’s advice about whether a decision not to grant a licence to a new applicant should also be excluded from merits review, as this process would occur in full cognisance of the new assessable matters; it would not result in a non-compliant community store continuing to operate pending the review.

The justification for the emergency matters is: existing store; totally unacceptable; we cancel the licence; we do not want them to continue to trade whilst they are able to appeal under merits review. Whether or not you think that is a good thing is another matter, but that is very different to a new applicant that is not an existing non-compliant community store. The concern of the committee is that to exclude that also from a merits review there because the emergency situation will still apply.

Question negatived.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (4.11 pm)—It has been a long time coming, but I have pleasure in moving amendment (7):

(7) Clause 132, page 93 (lines 12 to 17), omit subclauses (1) and (2), substitute:

(1) Subject to subsection (3), the provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the Racial Discrimination Act 1975, special measures and are consistent with Part 2 of the Racial Discrimination Act 1975.

(2) Subject to subsection (3), the provisions of this Act, and any acts done under or for the purposes of those provisions, are not laws as described by subsection 10(3) of the Racial Discrimination Act 1975.

I am glad to see we are moving onto matters that might be a bit more substantial, although I am not suggesting the earlier ones were not important. There are a range of issues that we need to get to in this debate on these bills that are quite fundamental, and I am sure Senator Bartlett agrees with me that the question about the RDA is one of those. This amendment seeks to amend clause 132 of the Northern Territory National Emergency Response Bill 2007, and that clause provides that—and I will read the first two parts:
(1) The provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the Racial Discrimination Act 1975, special measures—

So it declares that everything that occurs in the act are special measures:

(2) The provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the Racial Discrimination Act 1975.

The second measure excludes the bill before us from the operation of the Racial Discrimination Act part II, and the Racial Discrimination Act part II is the section that prevents racial discrimination, so we are passing a bill which the government says should not be subject to the Racial Discrimination Act’s prohibition on racial discrimination.

I think on the face of it people will say: ‘Hang on! We’re passing a bill that’s for the benefit of Aboriginal people but we want to ensure that we’re not caught up by the Racial Discrimination Act that prohibits us from discriminating on the basis of race.’ I do not know about anybody else but it strikes me as passing strange that we should look to pass legislation that is for the benefit of Indigenous people, to deal with the crisis in terms of violence and child abuse in some Indigenous communities but, in doing so, we seek to exempt the legislation from the pretty fundamental requirement that it not be racially discriminatory.

I have had difficulty with this aspect of the government’s legislation, and Labor has had difficulty with it because we think it sends exactly the wrong message. As we know there are mixed views in Indigenous communities about whether these bills are discriminatory. There are mixed views in Indigenous communities about whether they are for their benefit.

Labor accepts that these are special measures, provided for under the Racial Discrimination Act, that are for the benefit of Indigenous people. Part II, section 8 provides that we can pass special measures for the benefit of persons under the Racial Discrimination Act—so we have the capacity to do that. Labor is assured by the government that these measures, in totality, are special measures, and we have agreed that that is the case. In fact, HREOC, in their submissions to the inquiry of the Senate Standing Committee on Legal and Constitutional Affairs into the bill, conceded that these measures could be characterised as special measures; however, they expressed very serious concern at the failure to consult the Indigenous people affected.

One of the aspects of special measures has been a consideration of the question of consultation and consent. It has generally been viewed that the aspect of consultation is central to the question of a special measure. Consultation clearly has not occurred formally in this case. HREOC were urging the government and the parliament to ensure that that consultation took place, arguing that it was never too late. Labor supports that view. We would have much preferred that more consultation had occurred prior to this, and the Senate committee chaired by Senator Barnett also urged that there be more consultation with Indigenous people to try and build support for the special measures.

The key issue is that Labor supports the fact that these are special measures. We believe that the totality of these measures are capable of being implemented in accordance with the terms of the Racial Discrimination Act. I know some people want to argue that case, and it will be argued here. I approach it from this point of view: people in a society have a bundle of rights. People are entitled to exercise those rights and sometimes you have to balance those rights. The rights that are pre-eminent in this debate are the rights of children, which I have always taken very seriously, rights based on the Convention on
the Rights of the Child. There are the rights of children to live in safety, to live free from violence, to live free from sexual abuse and their rights to an education and to proper food and clothing. Those are very basic rights but they are fundamental rights that need to be observed.

Labor takes the view that, on balance, these measures in this bill can be seen as special measures that are for the benefit of Indigenous people. In doing so we accept that some of the other rights of people—in terms of the welfare packages et cetera—are restricted. The welfare measures will require people to have some of their payments quarantined. You can argue that that is affecting some of their rights to dispose of their income as they see fit, but it is important when dealing with the special measures in this legislation to look at the totality of the package. I think that one can argue that, in total, the measures are for the benefit of Indigenous people, and that the package attempts to deal with very fundamental rights such as the right of children to live free from violence and sexual abuse and the right of Indigenous women—and men in some cases—to live free from violence. As I said, those constitute beneficial measures.

We have no problem in accepting that these are special measures and we are happy to have that recognised in the bill. In moving our amendment, Labor look also to protect the observance of the Racial Discrimination Act. What we seek to do in moving this amendment is to recognise that the measures in the bill, or the totality of the bill, can be considered special measures under the Racial Discrimination Act, but we oppose the government’s attempt to exempt the bill from the Racial Discrimination Act—to, in effect, say, ‘This is a law of the land which does not have to comply with or recognise the Racial Discrimination Act 1975.’

Labor is very proud of the Racial Discrimination Act 1975. We see it as one of the most important pieces of legislation ever passed by this parliament. We think it is a fundamental bedrock of our modern democracy and that it provides for people protections from discrimination on the basis of race, gender, ethnicity and religion. This is a fundamental protection in our democracy. I have seen the technical arguments from the government as to why they think they need to exempt the Northern Territory legislation from the Racial Discrimination Act and quite frankly the arguments are not strong enough. We have to do better than this.

We had the same challenge when Labor brought in the native title legislation in 1993. We had the same question about how one could seek to make the native title legislation consistent with the Racial Discrimination Act. We had the same arguments put to us at the time that in passing the native title legislation we needed to exempt it from the Racial Discrimination Act. People were uncomfortable with that so a lot of work was done to try to work through that problem. I know my colleague from the other chamber Daryl Melham did a lot of work on this, and I am grateful for his advice because he has been interested in this subject throughout his time in the parliament. In the end, we managed to ensure that the Native Title Act actually invoked the Racial Discrimination Act and we used it as a positive part of enacting the Native Title Act. It invoked and embraced the Racial Discrimination Act.

Even though a range of the measures—particularly those in relation to the validation of title—could be seen in some ways to be acting against Indigenous interests, the totality was seen as being of benefit because, as well as validating some titles, it provided rights of native title and future acts that were beneficial to Indigenous people. So we faced the same dilemma in 1993. That was the first
major debate I was engaged in in this place; I had been in the parliament for only six months and it was a very important debate for the parliament. We worked through the very problem that we are confronting now. We came out with a positive measure that allowed us to embrace the Racial Discrimination Act in the passing of the first native title legislation in Australia. What we have been asked to do today is to pass another measure which the government says is beneficial to Aboriginal people, which Labor accepts. But to also say, 'Oh well, it is beneficial but we don’t really want to be bound by something that says you’re not allowed to be racially discriminatory,' sends a conflicting message. I think it fundamentally undermines confidence in the legislation.

People rightly ask: ‘If you’re so confident, if you’re sure that this is beneficial for Indigenous people then why won’t you allow it to be subject to the Racial Discrimination Act? Why do you have to weasel out of meeting a fairly fundamental right for people to actually know that legislation passed in this parliament does not offend the Racial Discrimination Act?’ Quite frankly, that is the overwhelming consideration for Labor. We are supporting the bill. We are supporting the fact that these are special measures. We are committed to assisting the government in its endeavours to respond to the very serious issues in these communities—although every time Mal Brough speaks I am more inclined to vote against it, but that is a personal issue. I find his lack of good grace and his lack of any commitment to build support amongst either parliamentarians or Indigenous people abhorrent and I think his behaviour is very unfortunate. Labor are committed to supporting the bill. We recognise that these are special measures, but we see no reason why the government cannot ensure that we honour and invoke the Racial Discrimination Act rather than seek to exclude this legislation from the provisions of the act.

I know that there are all sorts of legal arguments. I have been taken through them and I do not pretend to understand all of the nuances, but I understand in broad terms the complexities involved. The bottom line is this: should the parliament really be passing an act which it says is for the benefit of Aboriginal people and at the same time seek to exclude that act from the provisions of the Racial Discrimination Act? It sends exactly the wrong message to the community. It sends exactly the wrong message to Indigenous people, who are nervous about how these measures will impact upon them. It says to them that we are not confident that this bill is not racially discriminatory. I am confident that it is not because the balance of measures are special measures for the benefit of Indigenous people. But it sends exactly the wrong message.

The bill has been drafted in haste. We have not had a chance to work through these issues. I know that during the native title debate we had a long period of time to really engage with the issues in order to find solutions, and we had extensive consultation with Indigenous people. That has not occurred on this occasion. I think we can do better than this. Labor is proposing this amendment to make that point and to try to ensure that the parliament does better. I have no confidence that the government will respond to any of this. The government have made it pretty clear that they are not interested in hearing from anybody else. But Labor firmly believe that we ought to do better in terms of ensuring this legislation is invoking and embracing the Racial Discrimination Act rather than seeking to exclude its provisions.

Senator SIEWERT (Western Australia) (4.26 pm)—The Greens have an amendment to these clauses as well, which goes much...
further than that of the ALP. While we will not oppose the ALP’s amendment, we do not think you can fix this act with this amendment. It is quite clear that this act is racially discriminatory, and we believe that the provisions do not qualify as special measures. A lot of people have been quoted in this chamber as supporting or not supporting this legislation over the last couple of days. I have been sent some words by Professor Mick Dodson, who is well known to most of us. He is the Director of the Australian National University National Centre for Indigenous Studies. I think his comments are very pertinent to the issue we are discussing right now of racial discrimination. He has written:

None of us is in any doubt that we have to intervene to make children safe. We have a responsibility to do this, so does government. But we must draw the line on responses that involve racial discrimination.

My life is littered with abuse. When I was growing up I got abused because of who I was. I got called names for being black, I got excluded for being black. I was treated as inferior for being black. I got told I would not amount to much for being black. I was told I was unworthy for being black. I got told my culture was primitive because it was black.

I was told my mother’s language was unintelligible gibberish because it was black. I was told I was uncivilised because I was black. I was told I had to be white. This was all abuse.

And how did I react to all this abuse? I got abusive. I punched the kids in the playground and on the sports fields. I screamed at the teachers and headmaster. I threw tantrums and sulked. I wagged school to get away. What did this achieve? Bummer all! My abusive behaviour reinforced the views of me and mine in the eyes of my abusers. Just another useless black fella (“the whole lot of em”).

By the time I got to be about 14 or 15 I realised this. I realised that being abusive back didn’t get me far. What was the problem? Well I now knew it wasn’t me that was the problem in spite of all the conditioning.

I realised I shouldn’t be blamed for being black. Being black is not a blameworthy thing. In fact blame as a reaction is not particularly useful at all to any perceived problem. So being sick of being blamed for being black is not a way out of the problem until you realise, like I did, that it was not my problem. It’s not me who is uncomfortable with being black, it’s some other people. So it must be their problem. Bingo! All solved, I thought, but it’s not so.

Being able to identify the problem and who has it does not always make it go away. You see, most people who want to abuse you in this way do not accept they have a problem. Most of them deny it or make excuses. But the decent ones do not and you cling to them.

When I got older and went to university and got an ‘education’ I found a name for this problem. It’s called racial discrimination. It’s another form of abuse. By then, like nearly all kids who are different growing up in this country this form of abuse is part of everyday life for you and you build up defence mechanisms including identifying the problem as not yours. When you grow up you teach your kids the same defensive responses and you hope they will teach your grandchildren because you know the problem is going to be around for at least that long.

This does not mean you walk away from the problem—you try to fight it in different ways through education, awareness raising, information sharing and through other processes such as reconciliation. You endeavour to assist people to deal with their problem. You do not accept silence as an option. You certainly don’t make excuses or seek to excuse.

I know today our kids get abused, our women get abused, even we get abused from time to time. Indeed we are sometimes abusers—I know I have done so. I have not been immune from giving someone an abusive verbal spray, I have not been free from pouring scorn and ridicule on others. Abuse is all around us. We need to desperately do something about it when it’s our kids who are being abused. We all know that. It’s a given.

But, we now have draft legislation which uses a form of abuse in the name of stopping abuse. What an abuse of process this is. It is an assault on democracy and an abuse of decency. We are
asked to accept abusive government behaviour in our name to stop abuse. We are asked to believe these are ‘special measures’ so we can be comforted that they comply with the Racial Discrimination Act. We are told we need to accept this so that the country can meet its international obligations. We are asked to accept that just to be absolutely sure our government needs to ‘disapply’ the RDA. Just in case—just in case we are asked to name our problem. Just in case the ‘special measures’ turn out to be a big fat political lie. We are told we need to take people’s land from them and remove their right to control access to that land in the name of stopping abuse—yet we know in our heart of hearts that this has nothing to do with the issue of child abuse. Deep down we know it is something else.

I am at a loss as to what to do. I have been fighting racial discrimination all my life and I have run out of ideas. But I know that no Australian should accept that racial discrimination is necessary in any context. It is too high a principle to set aside—as sacred as the rule of law itself.

It is not excusable in any situation and is even more troubling when we know what needs to be done to make children safe and it doesn’t involve racial discrimination.

I could not put it any better than Mick Dodson did when he wrote that. ‘These measures do not qualify as ‘special measures’. We do not believe that taking land away from people and taking away their permits and being discriminatory in welfare reform will lead to the advancement of Aboriginal people. We do agree that something needs to be done but we do not agree that we should set aside the Racial Discrimination Act to make that occur. Not only does the government count these as special measures, which we do not agree with, but just in case they do not count, everything is exempt anyway.

We have been through this debate: here we are talking about the taking away of people’s land; the taking away of the permit system; changing the system of welfare and taking people’s income support—50 per cent of it—whether they have children or not; and applying the Crime Commission to Indigenous child abuse and violence. That is racially discriminatory. When we asked Pat Anderson and Rex Wild, the authors of the Little children are sacred report, whether they thought any measures needed to be taken in order to address child abuse or whether they thought that any measures should be exempt from the Racial Discrimination Act, they said no. There is nothing in the report that says there should be any racially discriminatory measures taken.

Australia should be in no doubt that these are racially discriminatory laws. The government knows it because they are exempting themselves from the law. Special measures are supposed to be able to be taken to advance a particularly disadvantaged racial group. So why is the second clause in the bills there that exempts everyone? It is your ‘get-out-of-jail-free’ card. You get a get-out-of-jail-free card because we are going to exclude everything from the Racial Discrimination Act. That is what these laws do. Australia today should be in no doubt that parliament is about to pass racially discriminatory laws.

The Greens do not agree with the ALP. We do not think that these are special measures. We do agree that they should not be allowed to exempt other laws. If these laws go ahead—and it looks like they will because the government has got the numbers—this amendment makes it slightly better. So we will not oppose it. We think that the Democrats amendment to oppose this clause, and the Greens amendment, which is even more wide-ranging, are better because they actually oppose these clauses that are attempting to exempt these laws from the Racial Discrimination Act. There is no excuse for excluding these laws from the Racial Discrimination Act.
Senator SCULLION (Northern Territory—Minister for Community Services) (4.36 pm)—Perhaps I will try to deal with Senator Siewert’s questions first. You are quite right, Senator Siewert, the laws that we are bringing in here are discriminatory. But they do not discriminate against people; they simply discriminate in a way that treats one class of people differently from another. This is a targeted, emergency response in an Indigenous community. Senator Evans reflects that this is a fundamental part of what we want to do. Throughout this morning and yesterday we have accepted that we are moving forward. If there are impediments to our providing the levels of safety that we have said we would provide through this suite of initiatives, we need to remove that impediment. That is exactly what we have done. If we do not exempt some of these areas from the Racial Discrimination Act, they will be unlawful and they will not be able to proceed. That may suit the particular purpose of the Greens—that is your business—but it does not suit our purpose. That is why we promote it. We want to put these provisions in place because it is only this sort of suite of issues that will make any difference in these communities.

It is interesting that you are going to support Senator Evans’s amendment, which is an interesting amendment in that it is very close to our amendment; it is almost identical. There are two parts to the opposition’s amendment. The first part, which Senator Evans talks about, is quite right. That says that measures are consistent with the Racial Discrimination Act. So they have not declared it. They just said that they think they are consistent, so there is some risk involved in that. But, to be frank, Senator Evans, to go on about the sanctity of the Racial Discrimination Act and its sending the wrong signal is inconsistent with the second part of your amendment, which in effect excludes other parts from the act. I am not saying that you cannot have it both ways. I am very grateful for your very practical approach and for your support generally with the bill. But we are not going to support your amendment—and it is a good amendment; it is almost parallel to ours. It is unclear to us why you have chosen to deem the legislation as complying with part 2 rather than simply excluding it, as you have with the second part of your amendment. What I believe—and the advice I have been given is quite clear—is that it is just a high level of risk.

We are not looking at playing around the edges. The second part of yours does exclude it. The legislation reflects that we are not deeming it consistent; we are just simply excluding it. So there is no risk to these provisions going ahead. These are important provisions and I know that you accept that. I know that in all your deliveries here today, Senator Evans, you have ensured that there are no impediments to providing the levels of safety in these communities that we are going to provide. If that is the case, I would ask you look very carefully at my submission because the second part of your amendment does exclude it from the Racial Discrimination Act. I understand; it is very important to send the right signals. It is unfortunate that there are those in this place who interpret this as a discriminatory act and that somehow we are discriminating against them, instead of saying, ‘This is something we’re doing on behalf of Aboriginal people, particularly in these communities, and it’s something that should be supported.’ We contend that your amendment, whilst well meant, has no effect and therefore will not be supported.

Senator BARTLETT (Queensland) (4.41 pm)—I will leave most of my comments on this to the Democrat amendment, because it goes much more clearly to the specifics of the exemption to the Racial Discrimination Act. Senator Evans’s commentary is one I
broadly agree with. With regard to making a commentary about the principle here regarding exemption from the Racial Discrimination Act, it is not just a matter of standing up in support of a principle because it is a nice noble principle, although it certainly is that. These measures were put in place in the law because people not only felt it was the right thing to do but also recognised it was necessary to prevent serious injustice. I just do not see how you can say something is a special measure just because we say so but then exempt it from the Racial Discrimination Act. I have read at least some of the lawyers’ advices and government advices flying around the place and some of the answers that were given at the Senate committee inquiry into this. I guess we all say, ‘I am not a lawyer,’ but eventually you can read all the legal opinions you like. It really boils down to the fundamental issue: if it is not a special measure, if it is not positive discrimination, then it is racially discriminatory and in a negative way it is in breach of the Racial Discrimination Act.

To me, it demonstrates the insecurity of the government’s position and the insecurity in their assertions that all of these are positive measures and will be positive measures. I have no doubt that is their intention—it is certainly the intent of the minister—but it is whether or not it will be the effect, and that is the key part in relation to the law. Without getting religious on people, because that is not really my forte, the road to hell is paved with good intentions, and stacking a whole pile of them in legislation is not necessarily going to pave a road that will get you to a good place. We do need to look at practical outcomes. But issues to do with racial discrimination and prohibition against racial discrimination were put in place because it is a way of preventing us getting to bad places. It is not just about good intentions and feel-good stuff and, to me, that is the core issue here as well. So it is a fundamental issue for the Democrats. That is why, frankly, we basically believe that that whole section, which we will move to shortly—clause 132—should just be struck out.

**Senator CHRIS EVANS** (Western Australia—Leader of the Opposition in the Senate) (4.44 pm)—I think it is important to again make the key point. I hear what Senator Scullion says about what he thinks is a declaratory statement in the second part of the amendment. The key issue is this: should the parliament make an effort to comply with and invoke the Racial Discrimination Act when moving measures that are clearly directed at Indigenous people and that will apply different provisions to them than to non-Indigenous people in the same areas? It seems to Labor it is worth the effort.

I know this has been rushed and that the focus has been on other issues. I have seen a number of legal advices around the place, but this is exactly where we were with the Native Title Act. It seems to me that, for want of some effort and engagement with people, parliament can do better than this. It is easy for the government to say: ‘We’ve got the numbers so we don’t have to work too hard at this stuff. A lawyer has said to us, “This is the easy way to do it—just wipe out the Racial Discrimination Act and the bill will go through because you have the numbers, 39 to 37, and it will all be over.”’ Quite frankly, if the government did not have the numbers it would not be going through like this. We would be making more of an effort.

Labor will not support the Democrats and Greens in wiping out the whole section of this bill, because we are not going to scuttle the bills. Fundamentally, we think they are capable of being seen as special measures under the Racial Discrimination Act. But it does send the wrong message that the parliament is legislating for Indigenous people
but cannot do it in a way that preserves the observance of the act, which says that you cannot discriminate against people. It is pretty fundamental. I know that people get tied up in the minutiae of the legal argument, but fundamentally it says that we cannot have the right to be free of racial discrimination in legislation that is designed to be targeted at Indigenous people. It is just the wrong message.

Labor think we can do better. This amendment is our attempt to do better. Quite frankly, with more time and the goodwill of the government I am sure we could do better than this. I do not pretend our solution is perfect, and that is in part because we want to support the legislation and in part because we recognise the government has the numbers and it will go through anyway. But it is an important point of principle that the parliament think about whether or not we should do this in this way. I know that urging the government to reconsider is a waste of time, but I do think people should reflect on this. While we will support the legislation, I think the parliament could do much better than what we are doing here.

**Senator SCULLION** (Northern Territory—Minister for Community Services) (4.47 pm)—I think Senator Evans’s remarks deserve a response—and a level of response in terms of a legal mind. At least we are equals in that sense. Senator, what is at risk here? The reason we have moved to ensure that we have provisions in this legislation that clarify the operations of the Racial Discrimination Act is that we want to ensure that there is no risk of us not being able to go to the communities and do what fundamentally the opposition agree with.

When assessing that risk, it was not that we were saying, ‘Let’s just rush it through.’ In fact this area has had a great deal of scrutiny, and I am very pleased to see that it had a great deal of scrutiny on your side as well—and it is reflected. There is just a minute bit of difference. The question is whether deeming it rather than excluding it is a higher level of risk. If we get it wrong, we are putting at risk our capacity to roll out things that you agree with. We are definitely not being disrespectful of the Racial Discrimination Act. In fact, we just want to make it very clear we are not amending that at all. We are simply clarifying, through provisions in this bill, how to clarify the operation of the Racial Discrimination Act with regard to this particular piece of legislation.

**Question put:**
That the amendment (**Senator Chris Evans**’s) be agreed to.

**The committee divided.** [4.53 pm]

(4.47 pm)—I think Senator Evans’s remarks deserve a response—and a level of response in terms of a legal mind. At least we are equals in that sense. Senator, what is at risk here? The reason we have moved to ensure that we have provisions in this legislation that clarify the operations of the Racial Discrimination Act is that we want to ensure that there is no risk of us not being able to go to the communities and do what fundamentally the opposition agree with.

When assessing that risk, it was not that we were saying, ‘Let’s just rush it through.’ In fact this area has had a great deal of scrutiny, and I am very pleased to see that it had a great deal of scrutiny on your side as well—and it is reflected. There is just a minute bit of difference. The question is whether deeming it rather than excluding it is a higher level of risk. If we get it wrong, we are putting at risk our capacity to roll out things that you agree with. We are definitely not being disrespectful of the Racial Discrimination Act. In fact, we just want to make it very clear we are not amending that at all. We are simply clarifying, through provisions in this bill, how to clarify the operation of the Racial Discrimination Act with regard to this particular piece of legislation.

**Question put:**
That the amendment (**Senator Chris Evans**’s) be agreed to.

**The committee divided.** [4.53 pm]

(4.47 pm)—I think Senator Evans’s remarks deserve a response—and a level of response in terms of a legal mind. At least we are equals in that sense. Senator, what is at risk here? The reason we have moved to ensure that we have provisions in this legislation that clarify the operations of the Racial Discrimination Act is that we want to ensure that there is no risk of us not being able to go to the communities and do what fundamentally the opposition agree with.

When assessing that risk, it was not that we were saying, ‘Let’s just rush it through.’ In fact this area has had a great deal of scrutiny, and I am very pleased to see that it had a great deal of scrutiny on your side as well—and it is reflected. There is just a minute bit of difference. The question is whether deeming it rather than excluding it is a higher level of risk. If we get it wrong, we are putting at risk our capacity to roll out things that you agree with. We are definitely not being disrespectful of the Racial Discrimination Act. In fact, we just want to make it very clear we are not amending that at all. We are simply clarifying, through provisions in this bill, how to clarify the operation of the Racial Discrimination Act with regard to this particular piece of legislation.

**Question put:**
That the amendment (**Senator Chris Evans**’s) be agreed to.

**The committee divided.** [4.53 pm]

(4.47 pm)—I think Senator Evans’s remarks deserve a response—and a level of response in terms of a legal mind. At least we are equals in that sense. Senator, what is at risk here? The reason we have moved to ensure that we have provisions in this legislation that clarify the operations of the Racial Discrimination Act is that we want to ensure that there is no risk of us not being able to go to the communities and do what fundamentally the opposition agree with.

When assessing that risk, it was not that we were saying, ‘Let’s just rush it through.’ In fact this area has had a great deal of scrutiny, and I am very pleased to see that it had a great deal of scrutiny on your side as well—and it is reflected. There is just a minute bit of difference. The question is whether deeming it rather than excluding it is a higher level of risk. If we get it wrong, we are putting at risk our capacity to roll out things that you agree with. We are definitely not being disrespectful of the Racial Discrimination Act. In fact, we just want to make it very clear we are not amending that at all. We are simply clarifying, through provisions in this bill, how to clarify the operation of the Racial Discrimination Act with regard to this particular piece of legislation.

**Question put:**
That the amendment (**Senator Chris Evans**’s) be agreed to.

**The committee divided.** [4.53 pm]

(4.47 pm)—I think Senator Evans’s remarks deserve a response—and a level of response in terms of a legal mind. At least we are equals in that sense. Senator, what is at risk here? The reason we have moved to ensure that we have provisions in this legislation that clarify the operations of the Racial Discrimination Act is that we want to ensure that there is no risk of us not being able to go to the communities and do what fundamentally the opposition agree with.

When assessing that risk, it was not that we were saying, ‘Let’s just rush it through.’ In fact this area has had a great deal of scrutiny, and I am very pleased to see that it had a great deal of scrutiny on your side as well—and it is reflected. There is just a minute bit of difference. The question is whether deeming it rather than excluding it is a higher level of risk. If we get it wrong, we are putting at risk our capacity to roll out things that you agree with. We are definitely not being disrespectful of the Racial Discrimination Act. In fact, we just want to make it very clear we are not amending that at all. We are simply clarifying, through provisions in this bill, how to clarify the operation of the Racial Discrimination Act with regard to this particular piece of legislation.

**Question put:**
That the amendment (**Senator Chris Evans**’s) be agreed to.

**The committee divided.** [4.53 pm]

(4.47 pm)—I think Senator Evans’s remarks deserve a response—and a level of response in terms of a legal mind. At least we are equals in that sense. Senator, what is at risk here? The reason we have moved to ensure that we have provisions in this legislation that clarify the operations of the Racial Discrimination Act is that we want to ensure that there is no risk of us not being able to go to the communities and do what fundamentally the opposition agree with.

When assessing that risk, it was not that we were saying, ‘Let’s just rush it through.’ In fact this area has had a great deal of scrutiny, and I am very pleased to see that it had a great deal of scrutiny on your side as well—and it is reflected. There is just a minute bit of difference. The question is whether deeming it rather than excluding it is a higher level of risk. If we get it wrong, we are putting at risk our capacity to roll out things that you agree with. We are definitely not being disrespectful of the Racial Discrimination Act. In fact, we just want to make it very clear we are not amending that at all. We are simply clarifying, through provisions in this bill, how to clarify the operation of the Racial Discrimination Act with regard to this particular piece of legislation.
Cormann, M.H.P.
Ferguson, A.B.
Fisher, M.J.
Humphries, G.
Joyce, B.
Lightfoot, P.R.
Macdonald, J.A.L.
McGauran, J.J.J.
Parry, S.
Payne, M.A.
Scullion, N.G.
Watson, J.O.W.

Eggleston, A.
Fierravanti-Wells, C.
Heffernan, W.
Johnston, D.
Kemp, C.R.
Macdonald, I.
Mason, B.J.
Nash, F. *
Patterson, K.C.
Ronaldson, M.
Trood, R.B.

Brown, C.L.
Carr, K.J.
Crossin, P.M.
Faulkner, J.P.
Ludwig, J.W.
O’Brien, K.W.K.

Troeth, J.M.
Fifield, M.P.
Minchin, N.H.
Ellison, C.M.
Adams, J.
Coonan, H.L.

* denotes teller

**PAIRS**

The Democrats oppose clause 132 in the following terms:

Clause 132, page 93 (lines 11 to 19), TO BE OPPOSED.

The Democrats are opposing clause 132 on the same principle we have just been discussing but our proposal is a much cleaner and clearer way of addressing it. Clause 132 states that the provisions of this legislation are, for the purposes of the Racial Discrimination Act, special measures and that the provisions of the legislation and any acts done under or for the purposes of those provisions are excluded from the operation of part II of the RDA. There are fundamental legal issues here. I will not go into all the legal arguments, but to say that something is a special measure under the Racial Discrimination Act does not necessarily make it so either.

The key point here for the Democrats—I have made this point before; I will elaborate on it a little more—is that the provisions of the Racial Discrimination Act are there because of a recognition that legal processes and policy implementation that are discriminatory in a negative sense on a racial basis almost inevitably mean injustice. How the government can credibly assume or assert that these measures they are putting forward will work to the benefit of people even though they may be negatively discriminatory on a racial basis is beyond me. The government are quite confident that these are all special measures under the act and, therefore, they are all fine. Good; in that case they should not have a problem. But they should not be able to get away with just saying, ‘It is because we say it is.’ If other people have a view that it is not, then I think they should have a right to be able to ascertain and determine that. Frankly, it is hard when you look at some of the measures in this particular bill, which is a very large one, to do anything other than suspect that the practical implementation, as opposed to the stated intent, will mean a racially discriminatory outcome.

It is worth looking at the history of why the Racial Discrimination Act came about. It did not just come about because people back in the 1970s thought it would be a nice thing to do, that it would look really good and make us look good globally, that it would be a fine upstanding principle. The fact that there is the Racial Discrimination Act at federal level has been absolutely pivotal in preventing flagrant and deliberately racially discriminatory acts against Aboriginal people, certainly in my own state of Queensland by the Queensland government. We had Aboriginal people in reserves and missions all around Queensland being paid less than the
award wages for years—consciously and knowingly—by the Queensland government. They had specific advice recited to them at cabinet level, we now know, telling them that these underpayments were in breach of the Racial Discrimination Act, and they still kept doing it. It is only because of the Racial Discrimination Act that those things stopped. And it is only today, in some cases 20 years later, that people are finally starting to get the money they are owed, that they were entitled to but did not get paid because of the racially discriminatory policy of the Queensland government of the time. So the act produced a practical outcome of ensuring equality.

I heard the following from one of the speakers in the second reading debate, and I found the lack of awareness of history extraordinary. They were talking about how well, back in the old days, the pastoralists employed Aboriginal people on their pastoral properties. They did not pay them their full wages—they underpaid them a bit—and they kept some of their money, but they used that to buy food for them, so they were doing them a favour and it worked out well and it was only when they started getting paid equal rates of pay that everything went wrong, and wasn’t that terrible. I am not saying there were not consequences of that, in terms of people being consciously thrown off stations by the pastoralists, but quite why that is seen as an appropriate thing to have done, I do not know. But, in the context of speaking in favour of this legislation, we have had speakers in this chamber saying it was actually a good thing that Aboriginal people used to have their money taken away from them, kept by pastoral station owners and used to buy food for them. There was underpayment of wages.

The simple historical fact is that some of those pastoral people kept some of that money for themselves. That is what is known as the ‘stolen wages’. We have had a Senate committee inquiry into that. It was not just pastoralists; it was state government agencies as well. The state government kept the money. I am going partly into the quarantining issue, which is in a different bill, so I will save my comments mostly for there in terms of this example. The state government took the money that Aboriginal people in Queensland were legally entitled to. It was not just welfare money; it was earnings. But they also did it for their family payments. They took the money, saying, ‘We’ll keep this because we know what’s best for you.’ Then they just kept it. They used it for other things. Or they used it to buy them a building and say: ‘This building’s what’s best for you. We know what’s best for you. We’ll buy this building out of your money.’ It was flagrantly racially discriminatory. In some cases I have no doubt there was a genuine intent—‘We know what’s best for you in terms of your money, in terms of what to do with your land. We have the intent to do this thing for your benefit.’ That is not good enough. That is why you have an act like the Racial Discrimination Act—because people did precisely these things before. And, in many cases, they did that with good intent. The outcome was gross injustice.

Let me hasten to add that I am not alleging in any way that the measures contained in some of the other bills we have not got to yet will mean that Aboriginal people will have their money taken away by the government and used for other things. They will still be able to use it; it will still in a legal sense be their money. So I do not want to overdo the parallel but I do want to point to the historical reasons for the Racial Discrimination Act. And there are plenty of other examples in Queensland alone, let alone elsewhere, of policies that were clearly discriminatory that were nonetheless put in place, at least in some cases, and where some people, with absolutely the best intent in the
world, were saying, ‘This is what’s needed for people.’ That is why this suggestion that this is some great, huge leap forward, some big, visionary never-before-tried approach, is in many ways quite misleading, because there is a lot about this piece of legislation before us, and some of the other measures we have not got to yet, that is actually quite a big leap backwards. I like a bit of retro stuff too, occasionally, and I do not mind leaping backwards if I think it is actually going to work. But the key issue for me and the Democrats is whether this is going to work. I think anything that gives an exemption from the Racial Discrimination Act is actually going to increase the chances of it not working. I make that assessment because of history, because of evidence, not because of a feel-good thing.

I will also briefly note and touch on Senator Evans’s comments about the comparison with the native title legislation. There is obviously a deliberate propaganda campaign from some in the government—although I have not heard Senator Scullion drop to this level yet, which is appreciated, but it has come from others; we heard it from Senator Minchin and Senator Abetz today—that in going through the issues in this legislation we are filibustering, we are deliberately holding up the law. We certainly are not doing that. From the Democrats’ point of view we are not doing that. But I would make the point again that, if you do not have a proper committee inquiry process, this is the only opportunity to explore and get sufficient detail on the record about this legislation, even if it is not going to be improved.

Senator Chris Evans—We would have sat on Sunday too, but for Senator Brian Harradine’s religious observances!

Senator BARTLETT—I think we spent about an hour deciding whether or not to say prayers on one day, or something—not that there’s anything wrong with that. I think the key point there is the engagement that occurred between all the parties, including the Democrats and the Greens—although they were the WA Greens at the time, so I suppose there is a bit of historical appropriateness in having a Green from WA as part of this debate, even if they are not the WA Greens anymore. There was engagement of people across the board. And, most importantly, as Senator Evans pointed out, there was extensive involvement of Indigenous people, from all around the country—indeed, as people may recall, they came with different perspectives. As has been pointed out by a number of people in this debate, there are different views from Aboriginal people in the Territory on what the government is doing. I have tried to reflect that diversity of opinion in my contributions throughout this debate. I have no doubt there are different views. In fact, I have spoken to Aboriginal people who have said, ‘We need help so badly that we need to do whatever it takes—get rid of the permit system, take over the land, exempt the Racial Discrimination Act—as long as we get a big boost in funding and some extra attention. That is what we need; we need it so desperately we’ll take anything.’ I understand that view. The point is that it should not be an either/or situation. It should not be that you either take the whole lot or you get nothing.
We should be able to do this properly and with a fair bit of thought. I know there is always a tension when you have the desire to assist immediately, but it comes back to the issue of whether you do it quickly or you do it effectively. This goes to the effectiveness of the government’s actions. To specifically allow an embedded exemption from the Racial Discrimination Act for the entire provisions of this act and any acts done under or for the purposes of the provisions of this act, will compromise its effectiveness. Maybe it would slow things down a bit in some areas. There should not even be an implication that that will bring everything to a screaming halt, although I am not sure that the minister has actually said that. It would not bring everything to a screaming halt but it might mean that in particular areas you have to work through things. That is why, as Senator Evans said, it would be far better if the work had actually been done and we had the opportunity for a proper inquiry.

I repeat that the Democrats’ preferred option, and the option put forward by many Aboriginal people, is to continue this debate when we come back in the second week of September, having better thought through a range of ideas and consulted with a range of Indigenous people in the Territory. That is the Democrats position. It is not to put it off until later but to put it off until September, when we know there will still be opportunity for debate. Let us be clear about this: despite the government’s rhetoric and despite some of the frankly offensive commentary by Minister Brough—including yesterday at the Press Club, where he grossly misrepresented the Democrats for one by accusing us of not doing anything, not taking any action and not even raising the issue, which is blatantly false and yet another smear—the simple fact is that Aboriginal people want to make this work and certainly the Democrats want to make it work.

The government simply refuses to engage with people and refuses to work through what are some difficult issues. I fully accept that there are complexities in the different ways you can go about this, but if they made that effort and worked with people they would be far better placed in a month’s time—having done the work and built that support across a wide spectrum—than they would by pushing this through unchanged. You might feel like you have to do this today because we cannot wait another three weeks, but there is plenty that will happen in that intervening period and this is about the long haul and what is going to happen in five years. Taking a few weeks to get it right at the start can make a big difference in where we end up in five years time.

**Senator SIEWERT** (Western Australia) (5.10 pm)—The Greens will be supporting this amendment. As I said earlier it is similar to one of ours but ours is a bit broader. As I have articulated in this place earlier in the debate, we believe that this clause is unacceptable. The issue of consultation was raised earlier in the debate. HREOC made a submission to the one-day inquiry, but unfortunately due to time we were not able to go through these issues as thoroughly as I, and I suspect as much as they, would have liked. They pointed out in their submission that they do not support the emergency response measures being exempt from the RDA. They also made some very pertinent points about the issues around special measures. They said:

These laws clearly have a number of significant actual and potential negative impacts upon the rights of Indigenous people which are discriminatory. The laws generally must therefore be justifiable as a ‘special measure’.

This is what we have been talking about. They went on to say:

HREOC submits that a fundamental feature of ‘special measures’ is that they are done following
effective consultation with the intended beneficiaries and generally with their consent. The absence of effective consultation with Indigenous people concerning the NTNER measures is therefore a matter of serious concern. HREOC accepts the need for urgent action. However, the success of that action both immediately and in the long term will depend upon effective consultation. And such consultation is fundamental to respecting the human rights of Indigenous people.

We have heard it said many times over in the last hours of this debate that the Commonwealth have done extensive consultation in the past and it is time for urgent action now. The government use that to justify the fact that they did not go out to talk about the special measures or consult with the Aboriginal community and those affected by these special measures, because this was urgent action. We reject that notion. Talking to Aboriginal communities generally about issues around abuse and disadvantage—and I accept that the government have been doing that—does not justify the fact that the government are taking these most extraordinary measures. It does not justify that because they cannot say that they have consulted with the community.

During the short committee hearing that we had last week, I asked a question of Andrew Johnson, who appeared with the ACOSS delegation. He also happens to be an expert in international child protection and is a former consultant to UNICEF and the UNHCR on emergency interventions. I thought it was an ideal opportunity to ask for his opinion of what you do in emergency situations and in emergency responses. He said:

In an emergency setting, the first thing a UN agency would do, under the direction of OCHA, is to ensure proper consultation on the ground. That is done within the first 24 to 48 hours and it is quite extensive. They then sit down with the communities to find out what supports and services they need. They set up safe houses and ensure that there are safe places for children to play. The international community ensures that there is safe and proper housing, water and access to medical services. The international community is able to do things quite quickly in a refugee camp, and that is based on consultation and asking the population themselves what they need. The biggest lesson learnt from all interventions internationally is that they always fail when they do not involve and empower the local communities to take part in the interventions that are taking place. If you look across the world at the operations that have been successful in resource-poor communities, the fundamental thing that crosses through all those interventions has been the giving of ownership, empowerment and control to the people themselves to ensure children are protected and families and communities are safe.

I do not buy the excuse that this was an emergency response and that therefore, ‘We could not go out and talk to the communities about what a special measure is.’ The government have failed in the basic outline of justifying a special measure and in justifying these provisions as special measures. There is no excuse for not going out and talking to the communities about these extraordinary powers the government are taking upon themselves. HREOC goes on in its submission:

More broadly, HREOC is concerned that the … measures are likely to produce unintended negative consequences that adversely impact upon the rights of Indigenous people.

Some examples are given later in the submission. They then outline some examples of how they are concerned about the special measures and how the special measures may have negative impacts, which would then make them not special measures, because they are not to the advantage of Aboriginal people.

HREOC point out, for example, the phasing out of CDEP—we will have a substantive debate about CDEP later, so I will not go into too much detail right now—and that
CDEP may increase unemployment, movement to urban centres and the risk of family violence. Bear in mind that 7,000 CDEP people are being moved off CDEP. Currently, they can only identify around 2,000 jobs. During the committee hearing, in answers to some questions that we asked, it became clear that $76 million is being taken out of CDEP and, to balance that, only $46.9 million is going into increased income support. That is a reduction of $30 million going directly into the pockets of Indigenous peoples in community. I would suggest that will have a negative impact on community. HREOC also talk about the unintended negative impacts on Indigenous physical and mental health and wellbeing and quote some evidence from overseas. They state:

International and domestic evidence links the mental health impacts of dispossession, the removal of children, loss of culture and a general sense of powerlessness that Indigenous peoples have experienced with the social dysfunction that is evident in some Indigenous communities.

For example, the landmark study by Chandler and Lalonde in Canada showed that those First Nations communities that had some form of self-government and settled land claims had much lower rates of youth suicide as a result. Those communities that did not, have excessively high suicide rates.

Given the highly interventionist approach of several aspects of the government’s emergency response, it is reasonable to expect that more functional communities will feel disempowered by measures that distance them from control over daily decision-making responsibilities. For example, the role and functions of the government business managers may have the unintended impact of undermining Indigenous authority structures and dispute resolution practices.

I would suggest that going in and quarantining 50 per cent of people’s income support, irrespective of whether they have children and irrespective of whether they are spending their money exactly how the government thinks they should be spending their money, will also disempower communities. HREOC state that the quarantining of welfare payments may increase the risk of violence against women. They also highlight the fact that quarantining payments for school attendance may disproportionately impact on families in areas without adequate schools and teachers. Further, they suggest that the amendments to the permit system may work against efforts to reduce substance abuse. They point out that alcohol bans may result in an increase in the prison population and that rapid intervention may result in undesirable compromises.

HREOC have very strong concerns that these measures do not necessarily qualify as special measures and they do not support measures that are being exempt from the Racial Discrimination Act. They have very strong concerns about these so-called special measures and believe that the measures should not be exempt from the RDA.

The government did not consult on these measures. They are saying: ‘These are special measures, give them a tick. We’re calling them special measures; therefore, they are special measures.’ These measures will have unacceptable impacts on many Aboriginal people. I do not dispute the fact that the government genuinely want to do something about child abuse in the Northern Territory. They are going about it the wrong way, which is why the Greens do not support this package. We do not support it because we do not believe that the measures outlined there will in fact deliver the outcomes that the government want. They are dressing up their response measures and the provisions in this legislation by saying they are special measures. Calling something a special measure that does not meet the internationally accepted criteria for what is a special measure does not make it a special measure.
I went onto the HREOC website and I looked at what the convention calls a ‘special measure’. The Greens do not believe that these measures qualify as special measures under the convention. In fact, I have very serious concerns that it takes the RDA outside the purview of the convention. HREOC expresses concerns, the legal community expresses concerns and the Aboriginal people, who have been inundating me with emails, do not believe these are special measures. They strongly highlight the fact that they have not been consulted about these so-called special measures. They have not been consulted about the bills, the acts or the measures that the government intends to put in place. They say that the government have not justified why they have to take our land as a special measure and how it will address child abuse. They say: ‘They have not consulted us about how changing the permit system will address child abuse or justified it and how it is a special measure.’ The government have not justified why the spelling out, specifically of Indigenous child abuse and violence, by the Crime Commission is a special measure. And they have not justified why they have to take such extreme measures in welfare reform and why they have to convert the jobs from CDEP to special measures.

But we know why they have done that. They have done that because they found out that they could not quarantine payments under the CDEP. People may remember that, when this plan was first announced on 21 June, the government said that they were going to be quarantining payments out of the CDEP. They backtracked on that one because they realised that they could not do that. That is why they are cancelling the CDEP. Not only is it the case that 7,000 people are going to 2,000 jobs but also many vital services that are being delivered in Aboriginal communities are dependent on the CDEP. So what is the government going to do there? Oh, that is right: ‘We’re going to come in and use those special provisions under the business management areas, where we can go and sit on the boards of community entities and put our spies on those boards and take their assets. That is how we are going to do that.’ That is a special measure as well!

It is ill thought out legislation that does not meet the absolute objectives that the government say they have, so they are giving themselves blanket exemption from the Racial Discrimination Act. The legislation is discriminatory—the government have acknowledged that it is discriminatory—and it will not deliver what they say it is going to deliver. They accuse us of filibustering, because they do not want these sorts of things exposed to the light of day. We are going to do everything we can to show how discriminatory this legislation is and show that it is not going to deliver the objectives that the government say that they are trying to deliver. If the government were genuine they would start listening to the communities that are saying, ‘We want you to do something, but we don’t want you to do this.’ Those communities have got really well thought out plans on how you can address these issues, but you do not want to listen to them or talk to them because they are saying things that you do not want to hear. The Greens will be supporting this amendment and opposing this racially discriminatory legislation and this specific clause, clause 132.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (5.24 pm)—The Greens will of course be supporting this amendment, as there is no reason for Australia to be going back into the dark period of racial discrimination which beset this country from 1788 until the Racial Discrimination Act was passed under the Whitlam government. This legislation sweeps that
aside and says that we can legislate on racial grounds against Indigenous people in a way that makes them second-class citizens to the rest of Australia. This is unacceptable in 2007. It is unacceptable because it is not necessary.

Suddenly, at the end of a long period of turning its back on the Indigenous people of this country, the Howard government has discovered that it should be putting a large amount of money into bringing the Indigenous people the services and the rights that the rest of the country has. That process is needed to end discrimination against Indigenous people—for example, to end the discriminatory situation whereby less is spent on health services for Indigenous people per capita than is spent on non-Indigenous Australians, even though Indigenous people die 17 years younger on average than non-Indigenous Australians. And I am talking about people right across this country, whether they be in the big cities in the south or the communities in the north.

What was required from the government was for them to move to give Indigenous communities the education, housing, skilling and security that other communities in the country have. The minister himself said in here today that, after it was understood that some of those things are being provided—belatedly—people felt better about it. And so they should, because they have been living under the discrimination of inadequate services for so long. But now to employ the Racial Discrimination Act, and to claim that it is a meritorious thing to do so because it will advantage Indigenous people, shows that the government’s philosophy, drive and reason behind doing this are based not on an equal partnership but on a discriminatory attitude of ‘We know what is best for you and we will do for you what we say, not what you say.’

So we have the situation where the Racial Discrimination Act is being set aside against not only existing national law but also international law. The Law Council of Australia said to the committee:

The Law Council considers the inclusion in legislation proposed to be enacted by the Australian Parliament in 2007 of a provision specifically excluding the operation of the RDA to be utterly unacceptable. Such an extraordinary development places Australia in direct and unashamed contravention of its obligations under relevant international instruments, most relevantly the United Nations Charter and the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). In addition to its status as a treaty obligation, contained in all major human rights instruments, the prohibition of racial discrimination has attained the status of customary international law, and has been characterised as one of the “least controversial examples of the class” of jus cogens. Jus cogens or peremptory norms of international law are overriding principles of international law, distinguished by their indelibility and non-derogability. They cannot be set aside by treaty or by acquiescence. Other “least controversial” examples of jus cogens include the prohibition of the use of force, the prohibitions of genocide, slavery and apartheid, and the principle of self-determination.

What has now been accepted, without any exception, as international law—and Australia proudly led the move for such international law in the middle of the last century—is being removed in this country of ours to discriminate against the first Australians. It is simply inexcusable that racist legislation should be before the Senate in 2007.

Mr Brough has said that there will be more Indigenous sex offenders arraigned or incarcerated. Let us look at the statistics regarding Indigenous people in the prisons of the Northern Territory. These statistics come from the Northern Territory Quarterly Crime and Justice statistics from 19 March this year. Indigenous prisoners currently represent 82 per cent of the daily average prison...
population and Indigenous juveniles represent 88 per cent of the daily average prison population. It is discrimination that those figures are the way they are. The minister says that he is going to make those statistics worse. The minister is presuming a lot here. The argument is that removing sexual offenders and putting them in jail will in some way or other improve the basic conditions of Indigenous people—conditions that have led to those figures. What we should be aiming to do is improve those figures. One of the ways of doing that is to ensure that when people come out of jail—sometimes called the university of crime—they are better for it and have gained some pride, some skills and some better ability to take part in the community that they go back to. We are not going to see that manifest here.

We know that there are zero facilities for dealing with sex offenders in Northern Territory jails. We know that the ability to deal with drug addiction in those jails is not much better. I am told that at the moment there are only two people out of 900 prisoners in the jails in the Northern Territory receiving some form of medical treatment—including substitute substances—for their drug addiction. I am also told that there are no psychiatric facilities in the Alice Springs jail or at the hospital and that there is no other way of dealing with people who have a psychiatric crisis. Eighty per cent of prisoners Australia wide have been found to have some sort of psychiatric disorder. If we have such appalling shortcomings, surely the government should move rapidly to work at that end of the spectrum to help fix people up who have been traumatised in a way that has landed them in prisons on the racial basis that the figures show. But that is not what we are getting here today.

What we are getting is the setting aside of the Racial Discrimination Act. That is totally unnecessary and ill-founded and breaches national and international law—certainly this overrides national law. It is a shameful thing for Australia in 2007, because it is so unnecessary. It suits the government’s philosophy. There is a punitive component here which is built into the racially discriminatory approach that we see in this legislation. There is no way that the Greens are going to support legislation in the Senate which says that you can discriminate on the basis of race and lays out how you will do it: ‘Here is how the Australian Crime Commission, with its coercive powers, can be used against Indigenous people—but not non-Indigenous people—not only in the Northern Territory but right across this nation.’ If you are black, you come under the scrutiny of the Australian Crime Commission, with its coercive powers, including its domestic spying powers and its ability to coerce the production of information and materials—powers which are way beyond what ordinary Australian law accepts.

Under this legislation, it does not matter whether you are in Brisbane, Perth or Adelaide: if you are black, you will come under this new police state regime. If you are white, you will not. It is appalling that there could be such highly honed racially discriminatory action against the whole of the Indigenous population of Australia. Can the fact that this legislation can be used against Indigenous people in Redfern be justified? How does that relate to this national emergency in the Northern Territory? When I asked the minister about this, he had no answer; there was no response. There is in this legislation a racist component—reflecting the view of this Howard government in 2007—against all the Indigenous people of Australia. When it comes to the argument that the racist laws are to help the people that they target, we will cope none of that. It is inexcusable and unacceptable, and we will be opposing it.
The TEMPORARY CHAIRMAN (Senator Hutchins)—The question is that clause 132 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (5.36 pm)—The Australian Greens oppose part 8 of this legislation in the following terms:

(2) Part 8, clauses 128 to 135, page 92 (line 2) to page 95 (line 2), TO BE OPPOSED.

We have just had the substantive debate on the Racial Discrimination Act. Part 8 includes more than the Racial Discrimination Act. We have had the debate on clause 132, which as I said is the substantive part of part 8. This part also includes the delegation powers and various modifications to the Northern Territory law—compensation for acquisition of property, various regulations and some Northern Territory laws—that will be excluded under this law.

The Greens—as I think we have stated on several occasions; on more than one occasion—oppose this legislation. We oppose the racial discrimination amendments and we oppose the other elements of this legislation. I will not go through again all the issues that we are concerned about around racial discrimination and these bills being excluded from the act. I think we have got that well and truly on record.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (5.38 pm)—I point out, as Senator Siewert has done, that this even goes further than removing the racial discrimination act as a bulwark against laws imposed on Indigenous people which do not apply to the rest of the country. For example, under clause 133, some Northern Territory laws are excluded. It says:

(1) The provisions of this Act are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as it would otherwise apply.

It goes a step further. It removes any Northern Territory law which might prevent discrimination on the basis of race; which might prevent a discrimination on the basis of the colour of one’s skin; which might prevent discrimination on the basis that you are a member of the first Australian community or nation; or which might prevent discrimination on the basis of the fact that your ancestors were here before 1788.

Part 8 goes to give extra powers to the minister to discriminate on a basis not seen in this country for half a century or more, and it is all unnecessary. The good that could come from this belated decision to put money and services into Indigenous communities to help them get the longevity, the education, the skills and the wherewithal that the rest of the community has does not need to be based on laws which are overtly and blatantly racist. But that is what the government has. This is a division called ‘miscellaneous’ which should be declared ‘the promotion of racism’, and we oppose it.

Question put:

That part 8 stand as printed.

The committee divided. [5.45 pm]

(The Chairman—Senator JJ Hogg)

Ayes……………… 51

Noes……………… 8

Majority……….. 43

AYES

Adams, J. Barnett, G.
Bernardi, C. Birmingham, S.
Bishop, T.M. Boyce, S.
Campbell, G. Chapman, H.G.P.
Colbeck, R. Conroy, S.M.
Cormann, M.H.P. Crossin, P.M.
Eggleston, A. Evans, C.V.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Forshaw, M.G. Hogg, J.J.
Humphries, G.
Hutchins, S.P.
Kirk, L.
Lundy, K.A.
Macdonald, J.A.L.
Mason, B.J.
McGauran, J.J.J.
Moore, C.
Parry, S. *
Payne, M.A.
Ray, R.F.
Scullion, N.G.
Stephens, U.
Trood, R.B.
Webber, R.
Wortley, D.

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE AND OTHER MEASURES) BILL 2007

Bill—by leave—taken as a whole.

Senator CHRIS EVANS (Western Australia)—Leader of the Opposition in the Senate) (5.50 pm)—I move:

(1) Clause 4, page 3 (lines 11 to 17), omit subclauses (1) and (2), substitute:

(1) Subject to subsection (3), the provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the Racial Discrimination Act 1975, special measures and are consistent with Part 2 of the Racial Discrimination Act 1975.

(2) Subject to subsection (3), the provisions of this Act, and any acts done under or for the purposes of those provisions, are not laws as described by subsection 10(3) of the Racial Discrimination Act 1975.

This is effectively the same measure that we moved in the previous bill, which related to the Racial Discrimination Act and Labor’s attempt to ensure that these bills complied with the terms of the Racial Discrimination Act. It is not my intention to repeat the debate. The debate occurred on the previous bill. Unfortunately the government refused to concede to make some measures to try to ensure that it was seen that these bills were invoking and consistent with the Racial Discrimination Act. As that debate has been had and lost I will not delay the Senate any further other than indicate that we will be supporting it again.

Question negatived.

Senator BARTLETT (Queensland) (5.51 pm)—The Australian Democrats oppose clause 4 in the following terms:

(3) Schedules 1 to 4, page 96 (line 1) to page 215 (table 2, item 5), TO BE OPPOSED.

This relates to the schedules 1 to 4 of the Northern Territory National Emergency Response Bill 2007. We move to oppose those schedules.

The TEMPORARY CHAIRMAN (Senator Hutchins)—The question is that schedules 1 to 4 stand as printed.

Question agreed to.

Bill agreed to.

Senator Bob Brown—Would you record the Greens’ opposition to the bill.

The TEMPORARY CHAIRMAN—That is recorded.
(1) Clause 4, page 3 (lines 10 to 26), TO BE OPPOSED.
This is basically a repeat of what we have just been through and opposes the exclusion of the Racial Discrimination Act provision in this bill, for the same reasons I have just outlined. I will not repeat all the arguments because people can look back at the Hansard from about 30 minutes ago. The same arguments apply with regard to this. I would just reinforce that in only speaking briefly to this, because we have just dealt with it, I do not want to in any way imply that it is not a serious matter. This is a very fundamental matter. To exclude the Racial Discrimination Act from legislation and just insert an assertion that something is a special measure just because you say so is just not good enough. It is nowhere near good enough and nowhere near enough effort has been made to find a better way of doing this.

The TEMPORARY CHAIRMAN (Senator Hutchins)—The question is that clause 4 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (5.52 pm)—The Australian Greens opposes clauses 3 to 5 in the following terms:

(1) Clauses 3 to 5, page 3 (line 7) to page 4 (line 24), TO BE OPPOSED.
The Greens oppose clauses 3 to 5. This covers one of the clauses that we just talked about, on the Racial Discrimination Act. I appreciate that we have already had that debate and dealt with those two amendments, so I will not go there again. It also covers the Crime Commission, which we have had some debate about, and the permit system. I appreciate we will have amendments that specifically relate to some of the other issues later. This contribution goes to the fact that the government is amending the permit system. Again, we do not believe that the government has demonstrated the positive benefit that this is going to have for the community in terms of dealing with child abuse and violence. We believe there is evidence to suggest that this will in fact negatively impact on the community’s ability to deal with these issues. I do appreciate—it is splitting hairs to a certain extent—that the government says that these permits are only going to apply to a small percentage of Aboriginal land and will remove the need for permits on roads and town leases. However, as came out in the committee report on a number of occasions and as has been put straight to me as well, the community are very worried about how they are going to police the permit system. Once people are allowed into a community—for example, tourists—how will they know to stay to the town boundary? Who is going to police it? It is going to be impossible to police people coming in to make sure they just stay in the designated areas that they do not need a permit to go into. Those are very significant issues.

The other point that has been made on a number of occasions and that also came up at the Senate inquiry into Indigenous visual arts is that the permit system is very important for stopping carpetbaggers coming into communities. It was put to us very strongly by Marion Scrymgour, the Northern Territory minister who is now responsible for child protection and also appeared at the Senate inquiry into Indigenous visual arts, who made a very strong case for why the permit system was important for protecting community art centres, artists and the art industry in the Northern Territory. So, again, we do not believe that this is a necessary measure, and it could have a negative impact. We do not support the removal of the permit system.

The government said that they received, I think, 100 submissions—it might have been over 100 submissions—when they had a consultation period on this issue late last year and this year. They said that they regarded
those submissions as confidential and therefore would not release them to the committee so that we could see what community members actually said about the permit system. They maintained that there was support for removal of the permit system. Well, I can tell you that the emails that I have had certainly do not support the removal of the permit system. I have had people email me many examples of why they think retaining the permit system as is is important.

As has been put to me on a number of occasions, the permit system is not perfect and some people who should have been excluded through the permit system have come into towns—I know that. As I said, it has not been perfect. But just because it is not perfect does not mean that you should take it away. People break other laws and you do not take those laws away. You do not amend the laws because some people break those laws. Just because the permit system has not been perfect does not mean you should get rid of it. Communities have argued very strongly to me that they want the permit system to remain because it is important to them to be able to control who comes onto their land. It is important to them to be able to manage who comes onto their land and to keep out perpetrators, grog runners and people that may be bringing in illegal substances. They do not think that it is a good measure to amend the permit system. The Greens do not think it is a good idea to change the permit system, and that is why we are opposing this particular provision by the government.

We went through the issues around the Crime Commission in quite a lot of detail in the previous debate. The Greens maintain our opposition to the changes the government wants to make to the Australian Crime Commission. We believe, as we articulated in the debate just then and in a previous debate, that it is racially discriminatory. We believe that, if you are going to give the Australian Crime Commission these powers, they should apply to all violence and child abuse. We do not support those provisions that the government is trying to bring in either.

This bill also deals with the provision of infrastructure on Aboriginal land, and this amendment covers those provisions as well. We have some very strong concerns about these particular provisions and the rights that the provisions give the Commonwealth under these clauses. What I would like to ask the minister specifically on this one is: how does the government think the provisions of the permits, where they are only applying to certain areas, are going to be policed? I think they say that the permits still remain in 98 per cent of cases. How does the government see the permits being policed for people remaining in the areas they do not have to have a permit for? When I asked Aboriginal community members, they did not know how they would be able to police access to areas where you do need a permit system and they are extremely concerned about how they would keep people out of specific sacred sites and off specific areas. They felt that this system was taking away their ability to control access to those areas. I would like the government to explain how they envisage this system being implemented.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.01 pm)—The same circumstances would always apply—that is, if somebody breaks the law with regard to the permit system and they go somewhere where they are not permitted to go, it is unlawful. I would have to say that for the first time many of these communities will actually enjoy the rule of law and there will be a police presence as such. There is no difference from any other breach of the permit system. It is operating exactly the same as it operated in the past. It
is a criminal offence if you do not have a permit under the Aboriginal Land Rights Act. There are some exemptions from that but that is pretty much the way it is. It would run in exactly the same way as it has always run. The amount of land that is exempted is actually 99.8 per cent.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (6.02 pm)—While we are on this issue, can the minister explain to me whether or not the Commonwealth minister or the Northern Territory minister has the power to revoke a permit issued by a land council or traditional owner? If they do, where do I find that in the bill?

Senator SCULLION (Northern Territory—Minister for Community Services) (6.02 pm)—I should say that I do not know; that is probably more accurate than the answer I will submit. But I am reliably informed at the moment—and, if it changes I will inform you—that that is not the case.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (6.03 pm)—That was what I thought based on advice given to me, but we could not find where that was in the bill. However it is a big piece of legislation and we have not had it for long. That raises the question then of what happens if a traditional owner issues a permit to someone of bad character and does not agree to revoke the permit. This government is very quick to identify traditional owners and people in Indigenous communities and to characterise them and accuse them of all manner of things, as Senator Heffernan did the other night in a most unscrupulous way. It then seems though that if a person who is of bad character is granted a permit by a traditional owner, who may be a close friend, co-conspirator, co-drug-user or grog runner or what have you, there is no power to revoke that permit.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.04 pm)—I can add some further clarification to my first very vague answer—and I apologise for that. The minister can only revoke a permit that he or she has issued. So if the land council issues a permit, under the provisions of the Aboriginal Land Rights Act it is the land council that can deal with that permit. The notion of the adjustments to the permit system is that we are exempting the main road that goes into the township and the direct township area. That will be exempted. In terms of issuing any special permit, as I said, the minister can only revoke permits that he or she provides.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (6.04 pm)—Just to follow up, is it the intention of the government that no-one has the authority to revoke a permit issued by an individual traditional owner if the land council, the minister, the Northern Territory government or the rest of the community believe that person to be of bad character and not someone who ought to be accessing Indigenous land that has not been made open automatically by the changes proposed by the minister?

Senator SCULLION (Northern Territory—Minister for Community Services) (6.05 pm)—I suppose the short answer is that the normal provisions of the law would apply.

Senator CROSSIN (Northern Territory) (6.05 pm)—I have a few questions I want to ask about this system, which perhaps the minister might be able to clarify for us. My current understanding is that, if a traditional owner issues a permit and the person is found to be someone of unscrupulous character, the land councils have the authority to be able to withdraw that permit. Is that correct?
Senator SCULLION (Northern Territory—Minister for Community Services) (6.06 pm)—They do indeed. But there is no difference now and there will be no difference in the future in terms of the provisions of these bills and as the Aboriginal Land Rights Act provisions stand.

Senator Chris Evans—Both answers can’t be right.

Senator SCULLION—I thought Senator Crossin’s question was: is it true that a permit provided by land councils or traditional owners under the Aboriginal Land Rights Act cannot be revoked by anyone else? My point is that outside the townships and the main street, where a permit is not required, that is the case. It is the case today before the provision of this legislation. That is the circumstance and, under the Aboriginal Land Rights Act, that is the case.

Senator CROSSIN (Northern Territory) (6.07 pm)—We need to get this really clear here. In some respects I think Senator Evans is correct. My understanding is that, under the current permit system, a traditional owner can issue a permit and the land councils have the authority to revoke that permit, but there has to be circumstances proved. My understanding is that that is the current provision under the Northern Territory Land Rights Act. Secondly, it was my understanding that either this legislation or one of the other three bills in this legislation gives the Commonwealth minister the power to cancel that permit if special circumstances are found to exist.

Senator CROSSIN (Northern Territory) (6.07 pm)—We need to get this really clear here. In some respects I think Senator Evans is correct. My understanding is that, under the current permit system, a traditional owner can issue a permit and the land councils have the authority to revoke that permit, but there has to be circumstances proved. My understanding is that that is the current provision under the Northern Territory Land Rights Act. Secondly, it was my understanding that either this legislation or one of the other three bills in this legislation gives the Commonwealth minister the power to cancel that permit if special circumstances are found to exist.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.08 pm)—I understand that, at the moment, if a permit is issued by a traditional owner, the land council can cancel the permit that a non-land council person can provide. What the amendments change is that only the person who provided the permit is able to cancel the permit, which is consistent with my response about the minister.

Senator BARTLETT (Queensland) (6.08 pm)—I have an amendment that goes precisely to this point but it is a bit of the way down the track. I do not want to jump ahead of things but I think that, given we are already talking about this, it is relevant because it is a specific Democrat amendment.

Senator Chris Evans interjecting—

Senator SCULLION (Northern Territory—Minister for Community Services) (6.08 pm)—I understand that, at the moment, if a permit is issued by a traditional owner, the land council can cancel the permit that a non-land council person can provide. What the amendments change is that only the person who provided the permit is able to cancel the permit, which is consistent with my response about the minister.

Senator BARTLETT (Queensland) (6.08 pm)—I have an amendment that goes precisely to this point but it is a bit of the way down the track. I do not want to jump ahead of things but I think that, given we are already talking about this, it is relevant because it is a specific Democrat amendment.

Senator Chris Evans interjecting—
rats, I hasten to add, have an amendment that specifically seeks to remove this new clause 74AA. I am not sure why it is there. I do not know whether it is meant to disempower the land councils in some way. There is some view that there have been lots of tugs of war between land councils and traditional owners or something like that and this is meant to stop those. I am not aware that it has been a big issue. I think that, even if it has been a small issue, if this is a solution it is more likely to create more problems than it solves. As I said, we have an amendment a bit down the track. I think the solution is just to scrap the new clause and enable the status quo, basically. I think the minister’s initial answer was that nothing is changing, but it is changing because of this new clause 74AA. I think it would be better not to have it changed, frankly. I do not know whether the minister can clarify it. Maybe he can tell me I am misunderstanding things, but that is as I see it.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.11 pm)—If somebody who has issued the permit passes on, the notion is that the person who has issued the permit represents a group of people who own the land. In that case, the assumption would be that there would be other people who would be a part of the landowners’ group who, I am assuming, would survive that. That also takes into account the fact that, from time to time, individual traditional owners may issue a permit in their own right. But if they were not to survive, the responsibility for issuing the permit, or any responsibilities before issuing the permit, would then lie with the landholding group they represented. In the same way if somebody is of bad character or has some information about a permit that has been applied to someone who is behaving badly, the information would have to go back to the person who provided the permit so that, if they wished, they could act upon it.

Senator CROSSIN (Northern Territory) (6.13 pm)—I think that what has come to light through the proposed changes here to the permit system just complicates serious problems that have emanated from the Northern Territory in the last 12 months, and I think the government should give some serious consideration to this. There is an infamous newspaper article that was written by an Australian journalist about one particular community in the corner of the Northern Territory on the South Australian and Western Australian borders. It led to a traditional owner issuing a permit, which then led to a non-Indigenous person trading Viagra for Indigenous art. Under that system, the Central Land Council was able to step in. Under the system you are proposing in the nature of protecting children, if that same scenario exists in two months time the person who is driving into that community with a truckload of Viagra in exchange for Aboriginal art would not need a permit if he goes down the main road and stays in the main part of the town, or he could get a permit from a traditional owner who would be just as culpable in all of this.

Basically, what you are saying to me is that, under your changes in this legislation, nobody would be able to revoke that permit except that traditional owner. Having packets of Viagra and trading them for art is not breaking the law; it is not illegal to do that. It was that issue that was raised by that journalist, which is a real-life issue, which triggered Rod Kemp’s passionate need to get this parliament to inquire into Indigenous art so that some of that stuff could be stopped. I honestly have to ask you to sincerely think about how taking away the ability of the land councils to remove that permit in a situation like that could protect the children in that community.
Senator SCULLION (Northern Territory—Minister for Community Services) (6.15 pm)—Perhaps I can take the question regarding the traditional owner who has issued a permit. As I said, the traditional owner represents a group of individuals, and anyone in that group of individuals who represents the land that the permit has been issued for can cancel the permit. In terms of the tragic story about Viagra and the artwork, it is against plenty of laws—I do not know exactly how many—to resell prescription drugs. The whole matter is cast with criminality and common law will prevail.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (6.16 pm)—Can I ask what I think is a more pertinent question. Senator Crossin raises a tragic example of potential exploitation, which is why we will be arguing against your changes to the permit system, but is it actually the legislative intent of the government that no-one else be able to revoke the permits once issued or is it an oversight in the legislation? Is it a policy decision by government that no-one else be able to revoke them? If so, why, given that the previous act did, as you indicated, provide for other people to revoke them? Is it an oversight, given the rush with which this legislation has been put through, or are you deliberately making it easier and restricting the ability to revoke these permits? Then the rest of us in the parliament can make a decision about whether or not we support that. I think we have agreed how it applies. Is this deliberate; and, if so, why?

Senator SCULLION (Northern Territory—Minister for Community Services) (6.17 pm)—There has been a great deal of confusion in circumstances where somebody with a permit has been legitimately going about their business and then someone else who had nothing to do necessarily with that person with that particular permit—it may have been a land council—cancelled that permit. And there have been circumstances where that has been the case. This is simply to ensure that we have no further confusion, and it will put beyond doubt that only a party who has issued the permit can revoke that permit. When I say ‘a party’, I am talking not necessarily about an individual but a group of individuals. So the same group of representative people are the only people who can revoke the permit. And, yes, it is deliberate, because there has been an amount of mischief where someone else who may have been unknown at the time has cancelled a permit, making the action on the land unlawful, even for the period of time whilst it was sorted out. When it is actually cancelled, they do not have a lawful permit to be on the land, and in that period of time that unlawfulness can be a bit embarrassing. We just want to make it clear that the person or the group of people who made the decision, the ones who were fully cognisant of the facts and the opportunities—the reasons why somebody said, ‘I want to come onto the land’—are the only ones able to cancel that permit, not some other individual or organisation, which has happened in the past.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (6.19 pm)—That was an interesting response from the minister. I am quite taken aback, given that this act, like no other, gives the minister special powers—and the minister has actually boasted on TV that he is the most powerful Indigenous affairs minister ever—but that you do not give him the power to revoke a permit where someone of bad character has been given it. It just seems amazing that you do not provide for anyone else to be able to cancel the permit, not some other individual or organisation, which has happened in the past.
do anything he damned well likes in any circumstance. Senator Crossin, with her local experience, raises one particular occurrence, but the minister’s response seems to say, ‘Because we have had particular problems with people being inconvenienced because someone has revoked the permit, the answer is to give no power at all to revoke the permit.’ On the face of it, I am warming to Senator Bartlett’s amendments.

Senator BARTLETT (Queensland) (6.20 pm)—I am pleased to hear that. Our amendments are not before the chair, but in the interests of efficiency we may as well continue exploring this issue. We have a dinner break at 6.30, so perhaps the minister could look into that issue over the break. There are two questions that Senator Evans asked Senator Scullion and that he partly answered with regard to this new clause 74AA on page 53 and why this decision has been made to prevent a land council being able to revoke a permit given by a traditional owner and vice versa. If I heard the minister’s answer correctly, he said that it was because there had been some mischief from time to time that had led to confusion. I can certainly understand that, if someone had a permit and the land council in Alice Springs, Darwin or wherever cancelled it, it might take a while for the cancellation notice to be stamped on the permit—that sort of thing—and there could be some confusion in the meantime. I can understand that, but I would assume that the same thing could apply with any permit that is revoked—making sure that, whoever revokes it, the message gets through to the appropriate people that it has been revoked.

The statement the minister made—to paraphrase him slightly—is that there had been some mischief about this sort of thing. I would appreciate it if he could provide some details, perhaps after the dinner break, of where that mischief is. How big is the problem that exists that this is trying to solve? As other senators have suggested, there is a lot of concern that this could be creating some new and bigger problems. If it is trying to solve a problem that is actually very tiny and, in the process, creating a much bigger one then it is probably not a terribly good idea. So perhaps the minister could give us some examples of where this has been a problem and whether there was actually some ill intent, as opposed to either confusion or a difference of opinion. That would be useful. I have been told that it happens occasionally that a land council will revoke a permit issued by a traditional owner but that it is not done very often. It is usually, if not always, done on the request of other people who have said that there is a problem.

Perhaps we could have been given some information about just how frequently this has been an issue at all, for good as well as for ill. I am sure that it has been done for good purposes; in fact, I know it has. I know of one example where some people were given a bunch of permits by someone to have a party in a dry area, a lot of other people complained, and the land council stepped in and revoked the permits to resolve the problem. That is one instance I have been given. That will not be possible anymore under this new section. You might be trying to deal with a problem but you are also preventing land councils from dealing with a problem, so I am still far from convinced that it is a desirable solution, and it would be good to have some evidence about this. I cannot help but repeat the comment that we should have had the opportunity to examine this properly in the Senate committee process when we had the land councils there. I think they got 30 minutes between them, maybe 35 if they were lucky, and we did not get the opportunity to ask them these sorts of questions. We would obviously have asked them then if we had had the opportunity. We cannot ask them
now, so we have to try and do it via the minister.

I want to track back to make as clear as possible the meaning of this new clause that the minister was explaining, because certainly from some material I have seen from the land council that is not how they perceive it. I am not doubting the minister but I think it would be good to get it absolutely beyond doubt. The wording says:

A permit issued under section 5 of the Aboriginal Land Act of the Northern Territory may only be revoked by the issuer of the permit.

I take what the minister has said to mean that if a traditional owner issues a permit for the purposes of this new section, the issuer is not just a traditional owner; it is any traditional owner, and it becomes a matter of whether the issuer is within the traditional owner class, if you like, or the land council class—or, indeed, the minister, I presume. It would be useful to clarify that because, on the face of it, the way it reads to me is that the issuer of the permit is a traditional owner, they issue it and no-one else can revoke it except them. The minister indicated that if that person passes on, the issuer is deemed to be the traditional owners as a group. Does that group ability to revoke only kick in if the original issuer passes on or is it there all the time that any traditional owner can revoke it? And if it is the case that any traditional owner can revoke it, does that leaves us in the circumstance where one traditional owner could issue a permit and another one could say it is revoked, and we would then have that same sort of confusion? That is something that springs to my mind with regard to that, whether that is relevant to the new clause or the existing system.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.26 pm)—I will just explain again some of the background. There has been a history of traditional owners cancelling permits that have been issued by land councils, and land councils cancelling permits issued by traditional owners. I know of some circumstances when it has in fact been for their spouse. It is very difficult to have a distant land council, which is often the case, cancel someone’s permit when it is for a spouse. The fundamental right to invite someone or to have your spouse live with you in the community is something that should not be able to be overruled by a distant land council. So, again, it is removing the power of the gatekeepers over some of the traditional owners who live on country. This just seeks to provide a clarity on that matter to stop this confusion. In terms of the law and order issue, it is always going to be a matter for the police rather than the land councils.

Senator CROSSIN (Northern Territory) (6.27 pm)—I am just wondering, Senator Scullion, if you could clarify for me whether you will now need a permit to drive from Katherine to Nhulunbuy along the track? Will you need a permit to drive on that main road?

Senator SCULLION (Northern Territory—Minister for Community Services) (6.27 pm)—There are a whole range of scheduled intentions that are associated with the proclaimed communities. When those communities that we have identified have been proclaimed then the roads that lead from wherever else that connect with the community will be scheduled.

Senator Crossin—You know the one I mean.

Senator SCULLION—I understand that we will have a whole suite of scheduled areas. I am not sure if we have them at hand; as I am speaking, someone can perhaps provide me with that. Whether or not that particular road is the one that joins Nhulunbuy
is something that I will be able to ascertain in a few moments.

Senator CROSSIN (Northern Territory) (6.28 pm)—You know about the exact bit of track that I am talking about—the 700 or so kilometres that join Nhulunbuy to the Stuart Highway. I would like an answer from you, if not now then certainly after the dinner break, as to whether you would need a permit to travel along that track. From memory, there are plenty of roads leading off that track that go into communities, but they are hundreds of kilometres away, as you well know. The other question I would like you to give me an answer to is whether or not you would need a permit to travel from Nhulunbuy out to Baniyala.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.29 pm)—When the permit system is amended so this can happen, you will not require a permit to travel from the Stuart Highway to Nhulunbuy. If other communities adjacent to the highway were prescribed communities, it is my understanding that if it was on the left-hand side of the highway you would simply turn left along the track that led directly to the other prescribed community. In terms of whether or not a permit would be required to drive from Nhulunbuy to Baniyala, it would depend on whether or not Baniyala was a prescribed community.

Senator CROSSIN—It is a prescribed community.

Senator SCULLION—You are talking about the road from Nhulunbuy which comes from the Stuart Highway. Let’s say you wanted to get to Baniyala and it was a prescribed community; you would not require a permit to get there. There would be no permit required to move from the highway via Nhulunbuy to Baniyala. I think it is important to note that there are a number of ways you could get to Baniyala, but we will be prescribing the route that would be taken. There is only one road from Nhulunbuy to Baniyala, but there are a number of other tracks that lead to the south-west from the highway to Baniyala, and I appreciate that.

Sitting suspended from 6.30 pm to 7.30 pm

Senator CROSSIN (Northern Territory) (7.30 pm)—Minister, I want to pick up where we left off before the dinner break—that is, your declaration that people would no longer need a permit to travel on the road between the Stuart Highway and Nhulunbuy. Can you advise me what this government is proposing in two aspects there. You would be well aware that the current permit system has been required on that road for people’s safety. It is extremely unsafe at times, and extremely corrugated. There are two rivers to cross, one of which is the Goyder, which can be extremely unsafe. My advice from the land council is that the issuing of permits was not so much so that people did not go where they were not advised to go but as a safety measure. After the permit was issued, if you went across that road and you had not arrived in 48 hours people started to be concerned about your safety. There is no mobile phone coverage along the road. We are talking about a 780-kilometre stretch here. People I have spoken to recently tell me that satellite coverage is intermittent. So, in revoking the permit system, what is this government’s plan to protect the safety of people who travel on that road?

Secondly, Dhimurru land management people tell me that tracking the number of people who use that road by permit allows them to also track the quality of the road, to get an idea of how much it is being used and when they ought to get out there and grade it. If this is now not something that can be monitored through the permit system, what
are the federal government’s plans for both of those measures in the future?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.32 pm)—Perhaps we could have a fair dinkum comparison. In my experience the Gibb River Road is the same sort of terrain with pretty much the same sort of vegetation. The Gibb River Road is not quite the same length, but it is pretty similar. A number of people go along that road, with a variety of different equipment—whether they are Indigenous people, tourists or just travelling around Australia; it is a very popular destination—and there is no permit system on that road. People just make the normal provisions for safety. We know the order of the road. You can find out the state of the road from the police station. There are a number of weather observations, particularly during the wet season, about which roads are cut. There is the website from the weather bureau, as you would be aware, that you can access to work out where you can get to. I know that you, as a well-travelled senator from the Northern Territory, would be aware of those issues. It is effectively just like anywhere else. To cling onto the permit system on the basis of safety I think is drawing a bit of a long bow.

If I could go back to my answer just before the break, I understand that you asserted that Baniyala—

Senator CROSSIN (Northern Territory) (7.33 pm)—There was another part to my question: the management of the road.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.34 pm)—As with the Gibb River Road, and any other graded road, there is scheduled maintenance. One of the ways you can nut out exactly what is happening along the road is to drive along it. This is not rocket science. A road has to be graded when a road has to be graded. This happens all around Australia without the permit system to tell you when to grade the road.

Senator CROSSIN (Northern Territory) (7.34 pm)—With all due respect, who will be responsible for that then? Under the permit system my understanding is that the people who did that were doing it through some sort of benefit derived from the permit system. My question to you really is: who is now going to take responsibility for that, seeing that you are opening up this avenue of access as a public thoroughfare, when it has not normally been?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.34 pm)—I understand that roads of that nature are the responsibility of the Northern Territory. If I could go again to my submission before the dinner break, when you said that you thought Baniyala was to be a prescribed community: I have been advised that that is not the case. It may well be that it is under another name. I advise that prescribed communities have over 100 people. I thought there were about 60 in Baniyala, but perhaps we got that wrong. But, for your benefit, it may not be the case that Baniyala is intended to be prescribed.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.35 pm)—Could the minister outline to the committee the impact of the increases in tourism and sightseers on the communities.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.35 pm)—I thank the senator for the question. It gives me the opportunity to briefly outline what the benefits will be. You talk about sightseers. Generally, people who travel in this way, while they are sightseers, when they go to a place they will require fuel, they will require a sandwich or a milkshake—the normal provisions for just driv-
ing in or out. When they get there, there are a huge range of opportunities. In fact, one of the biggest employers is the provision of artworks. We have many artworks for sale in these communities. It is unfortunate that they sometimes only have a couple of outlets. Those outlets by and large are excellent outlets—like Papunya Tula. There are a whole range of cultural artefacts and artworks available.

Artists are at different stages of development. There is the quality of artwork of someone like Papunya Tula and there is the bottom end of the scale, in terms of experience and style, which would be quite attractive to tourists. But that opportunity may not necessarily be available to the community. To touch on the committee that was chaired by Liberal Senator Eggleston which reviewed Aboriginal art and was tabled in federal parliament in June, today’s Australian says:

... Eggleston’s committee wanted the permit system abolished to “outmanoeuvre the carpetbaggers”, as he puts it. “By letting tourists come in and buy from the arts centres directly,” he says, “it would undermine the carpetbaggers, who come in and set up exploitative relationships with the artists.”

I do not have sufficient knowledge of the inquiry of the committee but, like all Senate committees, they have probably done a pretty good job. This reflects that there are a range of opportunities that tourists will be able to bring to the communities.

Senator SIEWERT (Western Australia) (7.38 pm)—I was a member of that committee. I was on that inquiry and I attended not quite all but virtually all of the hearings. I would not pay too much attention to what they quote in the media because the Australian has got it wrong. The committee did not recommend that, because the committee could not reach agreement on it. We were very careful not to make a recommendation, as I recall, on that.

Senator Crossin—Art centres already allow access to tourists.

Senator SIEWERT—Yes, art centres already allow access. We did not reach consensus on the issue of permits because we disagreed over all the evidence that we received and what it actually meant. The committee received very strong evidence from a number of submitters and people who appeared at the inquiry who said that they were very strongly concerned about the removal of the permit system and the impact it will have in allowing carpetbaggers into community. We received some evidence where people were saying, as Senator Scullion just quoted, that they did not mind having the permit system removed. But we received a lot of evidence that people were very concerned about the removal of the permit system and the inability to then control carpetbaggers coming into community. There were some very good examples given of how the permit system had in the past helped to control carpetbaggers. The committee did not reach a conclusion on that because we could not reach a consensus.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.40 pm)—There is anecdotal evidence of non-Indigenous people, particularly men, who have sexual relationships with young people and then move on and are very difficult to track down. Does the minister feel that the removal of the permit system is not going to make that situation potentially worse? What moves have been made by the government to ensure that that situation not only does not get worse but also is stopped and retrospectively investigated?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.40 pm)—I am making an assumption—and I am sure you will correct me if I am
incorrect—that the nature of the relationship that you are talking about is an unlawful or an inappropriate one. That would be a matter for the police. Tragically, over the years the permit system has usurped the real force of the law because people have said, ‘Well, we’ve got the permit system and that’s how we control things, so we do not need any police officers’. I am assuming that was the rationale because there are hardly any places where you can say, ‘There are sufficient police officers here and they are sufficiently resourced.’ We are moving to a model where there is the rule of law and if people travel into those places and they behave unlawfully then that is against the law. The law is there now to deal with it, not some notional system of permission where you say, ‘I’ll be able to have a bit of a chat to this person and I’ll be able to make an immediate appreciation if he is someone who is likely to be unlawful or not.’ The position we are moving to now is far superior to the one that we are leaving behind.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.41 pm)—It has not been a case of saying, ‘We don’t need any police officers.’ It is a case of the police officers and the facilities not being supplied. Governments are the lawful authority there and they have failed in their job. The question of now opening up communities to everybody who might want to, of their own free will, go there puts a big responsibility on to the government. There is no good intersection in this legislation for asking some of the very pertinent questions about the situation which exists, particularly about the much-quoted—by the government—‘rivers of grog’. This is as good an opportunity as there will be to ask the minister: who has been profiting from the rivers of grog? Has that been Indigenous people? If not, who has it been?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.43 pm)—I can hazard a guess at that. I do not have any evidentiary process that gives me a clear sign about that, but it might exist. Who profits from it? It has been my experience that it is both of those demographics, tragically. Certainly there are people outside of the communities—white people—who profit from the trafficking in human misery and there are also Indigenous people and, perhaps even more tragically, members of those communities who invariably profit as part of the deceit or the sale of the products.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.43 pm)—Can the minister name one Indigenous owned brewery or liquor production centre in Australia?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.43 pm)—I am sure the name Eumundi Lager is misleading, so no I cannot.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.43 pm)—The point I make here is that it has been non-Indigenous people who have profited, who have been the source of the rivers of grog mentioned in the Angry Australians by Ward McNally in 1974. I ask the minister: what will be done to look at how that profit system worked and what checks were put in place by the white community, which do not suffer the discrimination—for example, the removal of the Racial Discrimination Act—which the Indigenous people are now suffering through this legislation? What can the government say about this destructive behaviour by the community which brought grog to Australia at the expense of Indigenous people and who have made huge profits out of that? What has the Commonwealth done about that and, now that it is taking this action, what does it have to say about the prof-
iting from liquor at the expense of Indigenous people, who have not been the source of it, who do not have it as part of their culture? What does the government have to say about that?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.45 pm)—I was not here in the late 1700s and, again, I am only making personal observations. I am trying to be helpful. Just to clarify, do not mistake from my answer that it is both Indigenous and non-Indigenous. A substantial amount—at least 50 per cent—of the profit-takers in the delivery of alcohol to communities are Indigenous people. But, in the context of this discussion—and for a whole range of reasons I think it is important to keep it in the context of the provisions we are putting in place to ensure that these communities are kept safe—these provisions reflect what this government is doing. We recognise the close association between alcohol and violence and sexual abuse. That is very clear and you can look to some very good science and some very good material on that. This government has moved, through the prohibition of alcohol provisions in this suite of legislation, to ensure that we can provide an environment where it is much easier to ensure that alcohol does not continue to affect the communities in the way it has in the past.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.47 pm)—What about kava?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.47 pm)—I understand that the Commonwealth are moving to ban the importation of kava, so it will not be something that has any effect on any community in Australia.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.47 pm)—Why has the Commonwealth not moved on that before and why is it not in this legislation?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.47 pm)—Again, I stand to be corrected, but I understand that it is about an importation permit, and the technical nature of how you go about preventing import of these products is not under my portfolio or that of the senior minister. It is not that I am obviating; I am just not aware of the process. But the decision has already been made not to import. That was the mechanism, rather than putting it in this legislation.

Senator CROSSIN (Northern Territory) (7.48 pm)—Senator Scullion, perhaps you could explain to Senator Brown why it is that the importation of kava is restricted under a current regulation. The minister has just now decided to ensure that that regulation is implemented—which is the change—which is why it does not need legislation, as I understand it. The regulation is now simply just being enforced, which is why there will now be this ban on kava. There always was a ban, technically, in this country on kava, but the regulation was not in force. Perhaps you could explain to us why there has been a sudden change of attitude?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.48 pm)—As I have said to Senator Brown, that decision is clearly in another portfolio. Again, I am being as helpful as I can. I have no knowledge of that process; it is another portfolio decision. But, in terms of the consequences of that decision, as I have indicated to Senator Brown, it is another good decision by this government to further provide protection for women and children in communities.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.49 pm)—The legislation we are dealing with
sweeps up matters from a whole range of portfolios and puts them into one. I ask the minister: could he inform the committee what representations there have been to the Howard government over the last 11 years about kava?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.49 pm)—That has been a question for over 11 years, which, as you would be aware, I cannot give you an answer to right now. Just in the interests of ensuring that we are targeting exactly what you require so we ensure that we are spending taxpayers’ money efficiently, can you specifically state what sorts of approaches? Just for the sake of completeness—it could be a whole range: conversations, submissions or requests—perhaps you could be a bit more specific before I would be prepared to take that on notice.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.50 pm)—I refer to written representations that have been made to the government expressing concern and/or requiring action on kava since 1996.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.50 pm)—I will take that on notice, but I doubt very much we would be able to provide an answer to that sort of question tonight or before next week.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (7.50 pm)—I appreciate that—although it appears we will be sitting for some time tomorrow. I might make the same request about alcohol, but I think a very large truck indeed would be required to come to the Senate. The point to be made here—Senator Crossin has made it—is that, even where regulations or laws have been in place, the Commonwealth has failed in some circumstances to carry those out. When it comes to alcohol, the entreaties to this government by Indigenous people over the last 11 years failed. We regret that. Now the government is coming in and saying, ‘We’re not consulting with you; here’s a set of laws.’ How much better it would have been had representations been listened to by the government and had there now been a spirit of consultation with the people who know best—and that is the Indigenous people of Australia—about the impact, about what they require and about how to handle the terrible situation that has occurred, instead of now having a sledgehammer racist set of laws put through here with no consultation with the very people who have asked repeatedly to be given, through law, the protection they have been denied but which is being brought in now in this unsatisfactory fashion.

Going back to the permit system, I just want to make the point that the government must take responsibility for removing the rights of Indigenous people to the permit system in the way that has been debated here in the last hour or two, and the government must accept and shoulder the outcomes of that. But there is one outcome that they will not take responsibility for, because it is not measurable—and that is the death of culture. The powerful Western culture is moving in on an Indigenous culture which has nowhere else to go, no place to flee and no defence mechanism. Defences like the permit system are now being removed by law—and behind that is the thinking of this government that Indigenous people must integrate.

I listened to the former Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone, talking about the prospect of ending many remote communities. Talk about that prospect would never have been dreamt of if they were non-Indigenous communities, but these are Indigenous communities. What is being put
In any length; that is an obvious matter—the
government has in this debate made no con-
tribution on that hugely important assess-
ment for the Indigenous people of Australia
and this nation.

I want to make that part of the debate to-
night and I want it noted. I want to put it on
the record that we all knew that this was go-
ing to have a massive impact on Indigenous
culture, particularly across Northern Aus-
tralia where its stronghold exists after the dev-
stating of such culture across southern Aus-
itra. Here we go again, but this time many
of us care—and this time the eyes are wide
open. And the government has made no as-
essment of the impact.

Senator SCULLION (Northern Terri-
tory—Minister for Community Services)
(7.58 pm)—I thank Senator Brown for bring-
ing this very important issue to this place.
Culture is an absolutely central part of this
debate and a central part of Indigenous
communities. I do not have to acknowledge
that; I think all of Australia realises that.
Senator, you are right: the culture in these
communities is at threat. Many people in the
communities I visit tell me that their culture
is dying, that their culture is collapsing. But,
Senator, unfortunately, I cannot follow the
process that it is collapsing and dying be-
cause of anything this government has done.
It is collapsing and dying because of the
drunkenness, the violence and the sexual
abuse in those communities. That is why it is
dying. And I am not the only one saying that.
Anyone who has been to those communities
and has sat down with the people in those
communities—as I have done over many
years—know that those are the things that
are killing the culture that you quite hon-
ourably say that we should look after.

Senator Brown, I have to say that the cul-
ture is not dying everywhere. Daly River in
the Northern Territory is a wonderful com-
munity, mate. You drive into there and it is absolutely clean. It has very low levels of crime. It is fantastic stuff. There is great leadership. It has no permit system, Senator Brown. That is what makes it a stand-out: it is just an ordinary place with the rule of law and order. Do you know what the strongest thing in that place is, Senator? It is culture. They have maintained the strongest culture. With respect, do not come in here lecturing me or other Australians in this place about what has either damaged culture or is going to fix culture. At best, it is misleading. It is probably misinformed, and I like to be respectful about those things. Then there is Tjirrkarli. For $1,000 a night, people go there to spend time with Indigenous people and to get an understanding of the wonderful spirituality and diversity of their culture. That is a great thing for jobs. There is employment and prosperity. To become part of the economy is the future. They need opportunities—the same opportunities that you and I take for granted, Senator Brown.

When you say that we are out here with the bulldozers and that the government is going to push ahead because, after all, we have the numbers, although I have probably only been here a blink next to you, I have to say that my observation is that we represent Australians. Each one of these seats here represents a group of Australians. Let me tell you, if you want a vote on this, it will not be in this place. If you go outside the doors and talk to people out there, the vast majority of informed Australians think that this is the best thing that has ever happened. We can look back on a horrific past, which was a train crash of cultures in which the older culture lost out. They have gone through a great deal of change; we all acknowledge that. But I do not think it is reasonable, in the context of this debate, to come in and paint our intervention as anything other than stopping a further deterioration of culture and providing those individuals who live in Indigenous communities with the same opportunities in life for law, order, protection and anything else you want to name as the rest of us.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (8.01 pm)—It was a Greens bill, supported by the Senate before the government got the majority, that forced the Prime Minister’s hand. It made him go to the previous Chief Minister of the Northern Territory and say, ‘We want you to take children out of mandatory sentencing.’ Aboriginal kids were being locked up for stealing biscuits. The Prime Minister did not act on that until the political power of the Senate expressed itself, legislation went to the House of Representatives and there was a backbench revolt. The Senate also said that we wanted Indigenous languages available in the courts so that youngsters there understand what is going in. The Senate committee had found that they did not know and that tragically one youngster did away with himself because he did not understand that he was going to be freed three or four days later.

I am talking here tonight about the vacuum in all this legislation. There is money for this, money for something else and money for a third thing, but the government has defunded language programs in the Northern Territory. Where built into this suite of laws is not just the protection but the fostering of the rights of Indigenous people to their languages, customs and laws? What we have dealt with today are simple mechanisms for saying that the courts cannot take those into account. Where is the rest of it? I will tell you: it is not here.

When I moved also for a Senate inquiry and action in this place against petrol sniffing—that scourge of young people, 400 to 600 of whom were active petrol sniffers in Indigenous lands in the Northern Territory...
and adjacent states—it was this government that held that up. It did not want that rolled out in Alice Springs—you will remember that very clearly, Minister—until the force of public argument finally overcame the government resistance, and the vested interest behind that government resistance, to immediately making available non-sniffable petrol. That rollout has finally taken place, which will not only save the culture of those kids but their ability to appreciate it, take part in it and to enjoy it into the future.

The government says that it has some special moral authority to arbitrate what is going to happen through these laws, that that is best for Indigenous people and that it knows that because it did not consult them. It did not consult the Northern Territory government or the Indigenous people; it just brought the laws in, announced they were going to happen and started to enact them at the earliest moment. They are here in the parliament and will go through this week. What I am warning about is that the lack of probity, prudence and consultation here will have a very big cost, and that cost will be on the Indigenous people; they are going to bear it. The minister can make his argument in the way he has just done and cite examples, but we are talking about scores of communities here and about laws that reach into every black household in the country without consultation. I am warning about the impact that that will have on Indigenous culture into the future. There has been no assessment of it; there has been no account of it; there has been no consultation about it with Indigenous people. And there is nothing in this legislation which advocates it. That is the problem.

Senator BARTLETT (Queensland) (8.06 pm)—There are a couple of points I want to make to clarify the record or at least give my perspective on some of the things people have said. I think we are getting into a waxing lyrical stage here, which is sort of interesting. I also have some questions about other aspects of the bill to do with the permit issue we dealt with before dinner and some other sections to do with pornography et cetera. It might be my anal nature but I would rather move onto those sections before we have to ask more of those questions. So I am suggesting it might be good to put the question, although having said that I want to say a few things before we do because I am being a bit helpful—but not too much.

There has been some useful broader philosophical contributions from the previous speaker. I want to give my recollection of the record in regard to a couple of the points that were made with a purpose beyond just correcting the record. I am 99.9 per cent certain the legislation that Senator Brown is referring to that dealt with mandatory sentencing was a joint piece of legislation of the Labor Party, the Democrats and the Greens—Senator Bolkus, Senator Greig and Senator Brown from memory. As you would know, Madam Chair, having been heavily involved in the petrol sniffing inquiry yourself, my recollection is that there was an initial Senate inquiry put up by Senator Brown which focused on petrol sniffing, which I think the Democrats supported but some others felt was too narrow. It was focused too much or solely on Opal and not on other things. There was an effort, if I recall—it might even have been by Senator Scullion—to try and amend the motion put up by Senator Brown, and that was not agreed to. He did not want to amend it, so it
did not get up and everybody got nothing; no inquiry at all. It did not help anybody very much; a chance to beat up on the government of course for not going ahead with the inquiry.

I think it was Senator Scullion’s motion that did initiate the final inquiry after consultation with other people, including me. It might have been a bit broader than others wanted it to be, but we worked through it and we got an inquiry up. That inquiry was conducted over a period of a few months and went to a number of places, including Mount Theo, which I think got recognition through the Order of Australia award today for their work in that area. We produced a unanimous report after that consultation. The government acted on it because of ongoing political and public pressure and all those things, but it was recognised to have been a great success—although I would caution to say it was not the universal problem solved forever, as has occasionally been reported, but it was still a great success done in conjunction with and listening to Indigenous people.

My points are firstly to acknowledge that it was partly the role of people within the government, specifically Senator Scullion, who wanted to work constructively with people to get that inquiry initiated and then it was conducted properly and a good result was produced. I acknowledge the contribution that Senator Scullion made because he might have been, no doubt inadvertently, left out of history in the way it was described. I use that to contrast with what we are doing now, which is exactly the opposite: no consultation, no cooperation, no listening, no engagement, no nothing on a range of issues far more complex than petrol sniffing. That is why I have concerns about this working. It is nothing to do with all the philosophical to-ing and fro-ing we have had, interesting though it is. I hate to be a stick in the mud and put all that great, broad philosophical encountering to one side and pull it back to what is before us now and whether or not it will work in practice on the ground—that is my concern. I have some more questions on that but perhaps I should focus things and move it forward a little bit. It might be worth putting the question and moving on; it is just a suggestion.

The TEMPORARY CHAIRMAN (Senator Moore)—Thank you for your suggestion; I will give it a go. The question is that clauses 3 to 5 stand as printed.

Question agreed to.

Senator BARTLETT (Queensland) (8.11 pm)—Sheet 5341 is to do with leases—I am sure someone will correct me if I am wrong—but I think it is contingent on the major aspect of this link to the previous bill and the five-year leasing provisions in it. I think it is redundant, given that my previous amendment did not get up—although it is redundant anyway in one sense because it is not going to get up whether I move it or not. I think the points and the argument have been made, and I withdraw amendments (1) to (6) on sheet 5341.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (8.12 pm)—by leave—I move opposition amendments (2) to (9) on sheet 5354:

(2) Schedule 4, item 12, page 41 (after line 12), insert:

70AB Designated persons

(1) For the purposes of sections 70B to 70F inclusive, a designated person refers to:

(a) a person referred to in section 70(2A);

(b) a journalist acting in their professional capacity; or

(c) a person performing functions as an agent of the Commonwealth government or of the Northern Territory government on official business;
journalist means a member of a professional organisation recognised by the regulations for the purposes of this subsection.

(3) Schedule 4, item 12, page 41 (line 13) to page 43 (line 30), section 70B, omit “a person” (twice occurring), substitute “a designated person”.

(4) Schedule 4, item 12, page 44 (line 3) to page 45 (line 26), section 70C, omit “a person” (three times occurring), substitute “a designated person”.

(5) Schedule 4, item 12, page 44 (line 1) to page 45 (line 26), section 70C, omit “the person” (three times occurring), substitute “the designated person”.

(6) Schedule 4, item 12, page 46 (line 1) to page 47 (line 23), section 70D, omit “a person” (three times occurring), substitute “a designated person”.

(7) Schedule 4, item 12, page 46 (line 1) to page 47 (line 23), section 70D, omit “the person” (twice occurring), substitute “the designated person”.

(8) Schedule 4, item 12, page 47 (line 24) to page 50 (line 9), section 70E, omit “a person” (twice occurring), substitute “a designated person”.

(9) Schedule 4, item 12, page 50 (line 10) to page 53 (line 5), section 70F, omit “a person” (twice occurring), substitute “a designated person”.

It is good to get up every three or four hours and move one of these. We have had some discussion about the permit issue but the Labor Party regards this as a very important debate. This set of amendments seeks to put in an alternative regime to that proposed by the government. The government is effectively looking to remove the permit system from roads and townships and only apply it to land beyond those boundaries. Labor fundamentally thinks this is an issue of safety; this is an issue of child protection. The test we set when we agreed to support the legislation proposed by the government was that it would get our support if it improved the security and safety of children in a practical way.

There has been a lot of aspects to the government’s legislation where people have argued that the measures are not directly targeted towards the protection of children and that they are peripheral matters or matters that reflect a broader agenda that the government has been trying to get adopted. But clearly when it comes to the permit system I think the opposite is the truth: the government has not gone far enough and its measures to abolish the permit system is contributing to the thing they say this legislation is aimed at combating—that is, protection of Indigenous women and children, their ability to be safe.

We believe that the government’s proposals fail the test that we set for them. We think that the alternative regime that we propose will achieve some of the objectives the government argued for in support of their measures but will still allow those Indigenous communities to exercise the permit system in order to provide safety in their communities. It would provide them protection from the grog runners, drug runners and other undesirable characters who seek to prey on some of these communities.

We are supported in that by the views of the Northern Territory Police and the Northern Territory government. There was a submission to the Senate inquiry from the Police Federation of Australia, which I thought was quite compelling. It said:

In relation to the long-standing permit system for access to aboriginal communities, the PFA is of the view that the Australian Government has failed to make the case that there is any connection between the permit system and child sexual abuse in Aboriginal communities. Therefore, changes to the permit system are unwarranted.
The submission goes on:
Operational police on the ground in the Northern Territory believe that the permit system is a useful tool in policing the communities, particularly in policing alcohol and drug-related crime. It would be most unfortunate if by opening up the permit system in the larger public townships and the connecting road corridors as the Government intends, law enforcement efforts to address the ‘rivers of grog’, the distribution of pornography, and the drug running and petrol sniffing were made more difficult.

So the police are saying that they do not support the government’s proposals. They do not think we should go as far as the government are proposing in terms of amending that permit system. So Labor are offering an alternative regime which seeks to recognise some legitimate arguments made by the government and others about access for certain classes of individuals to townships. We propose a regime which provides for designated persons who can get access to the communities. It will allow those with proper reasons for visiting the communities to go there but it will still allow the permit system to restrict those who go for purposes that might offend the inhabitants, and those who might go there for purposes of criminal or inappropriate behaviour.

Our amendments allow access to roads and town community centres only to the class of people that we define in our amendments as ‘designated persons’. These designated people are members of parliament or candidates for election, as per the existing legislation; Commonwealth or Territory government employees, or agents of the Commonwealth or Territory governments acting in an official capacity; and journalists acting in their professional capacity.

Labor believes that there is a good argument for extending access to journalists. I think we all agree that being able to report on occurrences and what is going on in communities or in our society is part of a free society. That transparency is a useful part of our democracy so we think that there is an argument to put journalists on that list of designated persons. But we still think that we need to provide the protections that the permit system has afforded Indigenous people so that they can control who is coming onto their communities. It is a measure that will assist in protecting communities from sly groggers, paedophiles or whoever else comes onto the community without due cause.

We think our alternative regime is preferable to the government’s regime. We think it ensures that access to those with business in visiting the communities is guaranteed, but that those who are not designated persons ought to go through the current practices and apply for access through permits. We think it is a better balance between providing openness and transparency about what occurs in communities and the need for those communities to have their culture and tradition protected, and the security of the people who live in those communities assured.

It is not often understood that this is a question of people entering Aboriginal property. Just as I like to control who comes onto my property, it is not unreasonable for Indigenous people to want the same. This is their property. People tend to forget, when they are discussing Indigenous rights, that people have property rights. We do a lot in this act to suspend those property rights but I think it is important that the people in those communities retain that sense of control which in no way prevents the police or proper authorities coming onto their land.

I do not accept that the current system prevents that either, but if one wanted to make that argument, this amendment provides for designated persons. It provides access for those people who need to be there to ensure law and order and to provide proper
services, including health services or any of the measures that need to be supplied to communities. It allows the communities to control who else comes into their communities, and who uses the roads to those communities. The government argues that they have protected something like 99.8 per cent of the lands in the sense that people cannot go beyond the major roads and communities, but the point is that they can go where the people live. They can get access to the people who are in the communities. If we are serious about the security of children and protecting them from some of the activities that have been associated with people visiting communities, then the alternative regime we are proposing is preferable to the government’s regime. We think that the complete destruction of the permit system, which is achieved by the government’s legislation, is not supported on the evidence.

I know it has been a bugbear of the minister’s for some time; it is an agenda he has been running for some time. But this is not the opportunity for the minister to keep running his personal agendas; this is a question about whether the Parliament of Australia should pass legislation that deals with emergency concerns about child abuse and violence in the Northern Territory Aboriginal communities. We have to make a judgement about whether the government’s arguments for the changes it is proposing are solid. I do not think they are. I think we ought to fall on the side of the Northern Territory Police and the wishes of those communities and limit the changes in the permit system to the ones proposed by Labor rather than accepting the approach the government is proposing.

Senator CROSSIN (Northern Territory) (8.22 pm)—I want to make a few comments about this section of the legislation because I think the government has got this fundamentally wrong. Despite the fact that there may be some elements of this bill I have supported, I seriously think this part of the legislation is driving a personal agenda. I am not sure if it is the personal agenda of this minister or of the member for Solomon, who has advocated long and hard to have the permit system abolished. I am not sure because this does not actually cover any of the seat of Solomon.

The government got the opportunity to make this move into the permit system and, looking at their history, I think it will be just the start of further changes to come. We had an announcement last year that this minister and this government were going to conduct a review of the permit system. That happened. They say they got over 100 submissions. Funnily enough, I got three-quarters of those cc-ed to me. I am not sure on what basis they came to their conclusion but, on reading those submissions, I could come to no other conclusion than that the permit system needs not only to be kept in place but enforced. I have heard the minister say that a couple of people dragged him aside at a meeting and said, ‘Look, I didn’t want to say anything publicly, but I’d like the system abolished.’ Well, we do not usually operate like that in this country. When you call for submissions to an inquiry, people need to have the tenacity to front up and put in a public submission, a submission that is available for all time for others to see. We do not usually make changes by Chinese whispers or word of mouth. So I am not convinced that your submissions overwhelmingly said the permit system should be changed in any way at all. I think that, if you were so convinced that that was the evidence before you, those submissions would have been public, a paper summarising those positions would have been public. But we have not seen that at all.

I think this is the beginning of taking away some of the control that the land councils have in the Northern Territory. I do not say that there would be no communities
the Northern Territory that want changes to the system. So why don’t you consult with Indigenous communities and, for those who want the changes to the permit system, do it? It would be quite easy to schedule those by regulation to say that you will make changes to the permit system when and if required by individual communities, but I do not see that happening.

I went to Maningrida nearly seven weeks ago along with the member for Lingiari, Warren Snowdon, and I made it my business to talk to the police in that community. I did not talk about this in my speech on Tuesday night because I was leaving it for now. The afternoon that we were there we sat with those five police officers and had a cuppa, and they said to us both categorically: ‘Look, to be quite honest with you, we rely on the permit system as our key to stopping intruders in this community. Twice in the last 12 months we’ve noticed strange vehicles in this community, and the permit system was our opportunity to stop those vehicles. The first one took off and we weren’t able to chase them. We were immediately suspicious then about why they didn’t stop, but they got away. The second one didn’t get away; we were able to stop them. They had a stash of marijuana under the seats in the back and we were able to prosecute them.’ That, to me, is real hard evidence that the permit system works.

The police officers I spoke to three weeks ago said to me, ‘The reality on the ground is that the federal government needs to put more police into communities’—and, let’s face it; it is not going to happen overnight in these 70 communities—‘or, when they take away the permit system, give police the power to stop a car.’ For what reason? You actually have to have a reason to stop a car; you cannot just flag down a car and say, ‘You’re a stranger in this community; I want to search your car.’ The police tell me that, if the permit system is revoked on the main road, they will have no key, no mechanism, no trigger to stop, talk to or question people who may be suspect. The government has to seriously look at the implications of this on the ground and have a bit of common sense in this. I do not see any common sense prevailing in this.

I cannot believe that the federal government would turn their backs on the Northern Territory police force, on the Northern Territory Police Association and on the Australian Federal Police Association and say to those well respected members of those police forces, who seriously know what they are doing and seriously know how well the permit system can be used and implemented: ‘We know better than you. You guys out there on the ground are dealing with this 24/7, but your thoughts and ideas are really irrelevant in all of this.’ I would have thought that this week, with the Police Association meeting in Darwin and the strong representations that have come from the Australian Federal Police Force and from Vince Kelly, they would at least put a hold on this section of the legislation. They could just take it away and rethink it for another fortnight, and perhaps they say to themselves: ‘All right, we’ll make these changes but we’ll do it community by community, or we’ll implement these changes when more police get into communities.’ The way they are currently going about it does in no way in the world convince me that this is being done in the best interests of the children—in fact, quite the opposite.

The example that I gave earlier this evening is a real example. It was an example that moved the nationally renowned journalist from the *Australian* to write about it. He was so disturbed about it that he finally decided he would blow the lid on this operation between a senior traditional owner and a fellow from interstate. I heard what you said
before, Senator Scullion, about the supply of Viagra, but, let us face it, you can get it over the internet. If you are like me and thousands of other Australians who access their email every day, the spam for the purchase of Viagra is coming at you day and night. You can buy it. You do not need a prescription and it is being peddled out there in the community. That is the reality.

This is the one area, I would have thought, in the whole saga of child abuse and child neglect that we have heard about that you might seriously try to turn around. But I am blown if I can understand why you will not give either the land councils or the minister the power to revoke a permit if a TO is given that permit. I think that this sort of situation is going to be exacerbated. You know that as well as I do—you are from the Territory—and I think you know deep down that this is not going to work either.

Secondly, if you want to turn your back on the police forces in this country and suggest to them that you know better about how policing on the ground works, then I think you have seriously got this aspect of the legislation wrong. Finally, the irony is that somebody said to me the other day: ‘You know, Trish, if this government wants to abolish the permit system so that more tourists can go into the 70 communities, at the end of the day that will be the ultimate evaluation of this government. They have been an abysmal failure in Wadeye and a dramatic failure in Mutitjulu. So, if more tourists in this country witness what a devastating effect some of their policies have on these communities, maybe people on the eastern seaboard might suddenly wake up to what is actually going on in those communities and demand that more action be taken and the money be better targeted.’ Maybe at the end of the day, opening up these communities to more tourists might actually be the one form of scrutiny and evaluation that this federal government finally needs.

**Senator BARTLETT** (Queensland) (8.32 pm)—I will speak to the Labor amendments which, as I understand them, seek to provide us with a bit of a halfway house from the government’s approach. The Democrats prefer an approach, which is reflected later on, to just scrap the schedule altogether. I still have not seen any evidence that it is necessary. I have heard plenty of assertions. We got a few assertions at the Senate inquiry and some during the debate in the chamber but I have not actually seen any evidence that this works. We got one page given to us without notice in the Senate committee hearing by officials from FaCSIA and, without being too harsh, it was not the most thorough in-depth justification I have read for a significant public policy change. It was basically a few dot points with a few assertions.

There are a couple of issues here. I am not here to defend the permit system as the be-all and end-all that should never be touched—I do not really see that as something I can speak about with sufficient justification—but I certainly feel quite justified in saying that it is not something that should be touched without consultation and at least some indication of a reasonable amount of consent from the people affected. It has been a long-standing provision and I have not seen any solid evidence, as opposed to theories and assertions, that it causes the sorts of problems that are being alleged. But we are certainly quite happy to look at it if evidence is provided. Even so, it is clearly far better to do that, unless it is absolutely necessary, with some reasonable degree of consent and consultation. I have reasonable suspicion that there would possibly be a few places that would not mind having some variation to the system, but having a review with secret submissions that are not published and then saying that you have made a decision on the
basis of that is not exactly terribly comforting.

Going back to the specific link here, we are told that we have to do this now without consultation and without consent because it is an emergency and the emergency is linked to child sexual abuse and assault. But there has been no evidence at all to suggest that the permit system in any way exacerbates the problem. We are getting dodgy logic: that the permit system is in place in some communities and there is abuse in those communities therefore the permit system is not stopping it. Whatever the permit system was set up to do, I do not think that it was ever set up to stop child abuse. We have child abuse, it needs to be said, and child sexual assault at very serious levels in pretty much every town and community in the country to varying degrees, and to quite high degrees in many parts of the non-Indigenous community. That has been acknowledged by this chamber by a range of resolutions and, indeed, by the minister himself, Minister Brough. It is a very serious problem across the country—and that is everywhere where there aren’t no permit system!

The idea that by opening up a community, people will be able to see what is going on and they will see that there is child sexual abuse somewhere and it will stop, or people will not do it because there are other people wandering through their communities, is just ludicrous. People can think that way in regard to any city or any town of any size in the country. In many respects, it is the most secretive of grievous offences for all sorts of reasons. To link the permit system to child sexual assault and say that it gets in the way of that being mitigated, let alone eliminated, and to do that without evidence, is pretty lame, frankly, and that is being polite.

The wider issue then added on top of that is that it gets in the way of economic development et cetera. There is a debate that could be had there but it should not be tied to an emergency situation to do with child sexual abuse. I fully accept—before I get immediately misrepresented again—that improving the economic situation in some of these places would probably improve the strength of the community and reduce some of the psychological and social malaise that can be a contributing factor to child neglect and assault. I am certainly not saying that it does not matter whether we get improved economic circumstances, but that should be a more thorough debate rather than ramming this through under the guise of an emergency to do with child sexual abuse.

Again, I would ask, even on that point, whether there is some actual, decent, documented evidence, a good, peer-reviewed, thorough study, that demonstrates that those communities that have the permit system, on average, have a worse economic situation or worse child abuse statistics than those Aboriginal communities without the permit system. Certainly, in my state of Queensland, there are a number of communities and areas where there are serious problems with child neglect and abuse and there are serious problems with no economic development, and there is no permanent system in almost all of those. Senator Scullion mentioned a community before—I am not sure whether I can remember it now—that he was praising as being wonderful. Maybe it was the Daly River.

Senator Scullion—Yes.

Senator BARTLETT—That will give me the incentive to go there. That is good, and that does not have the permit system, apparently. I am sure there are other communities that are on the not-so-positive side of things that also do not have permits in the Territory and certainly in Western Australia and Queensland. I would also hazard a guess that
there are some pretty good communities in the Territory that also operate under the permit system. To try to single it out as some key delineating factor in the absence of some pretty decent evidence is pretty sloppy reasoning, and that is why I think people make the reasonable conclusion that there must be some other ideological agenda—and, people are allowed to put forward ideological agendas. We probably all do it in different ways with different degrees of consciousness or self-awareness that that is what we are doing. But, if you want to have things passed in a rush because it is an emergency, you need, firstly, to make it clear that all the measures relate to that emergency; and, secondly, as has been said a number of times, if you want that emergency intervention to be effective, you need to build trust. To me, this is one of the areas, along with the five-year lease area—probably the area of permit removal, even more so, on the basis of what people have said to me, anyway; I do not want to be too conclusive about that—where people have said, ‘I just cannot see any logical reason for this; there has to be some other reason for this; there has to be some other agenda and, if there’s some other agenda, it makes it really hard to trust what’s going on.’

A key issue for long-term success with this stuff is building trust. I am not saying that this is the be-all and end-all and it will never happen if this goes through, but I am saying you are making it a lot harder for yourselves for no particularly good reason.

Certainly, amongst the people I have heard from and talked to, a number of whom, as I have freely acknowledged, have been broadly quite supportive—a few very strongly—of what the federal government is doing, none of them has said that the permit system needs to go as part of this. There have been some who have said that that is the price we have to pay, that doing something about child abuse is more important and that, if it means getting rid of the permit system in the way that is proposed, that is the price we will pay. But it does not have to be the price they will pay, and that is what these amendments are about—and, more so, the Democrat amendments.

To me, the key issue is: where is the evidence? There have been lots of good assertions. On the face of them, you can even see how they might make some logical sense until you dig a bit deeper. But, without some decent evidence, I cannot support this sort of change. We got some pretty good evidence from John Altman, and whilst he, I am sure, says things the government does not like, I do not think they accuse him of not knowing what he is talking about or of not having a clue or those sorts of things. They might say he is outdated and living in the past and all that sort of stuff, but he knows a fair bit about this sort of area. He provided research to the committee—it was done on behalf of Oxfam, from memory—which pretty much demonstrated the opposite of what the government is asserting. That is why I believe this whole section should not be supported.

As to the specifics of the Labor amendment, they, as I understand it, basically seek to allow automatic access for a designated group of people. I think that is about right. That is a group of people listed in the legislation, which includes MPs, I note, and candidates. That leads me to one question, which I will float out there for the minister to answer whenever he does so. Groups of people listed under section 2A on page 39 as basically having automatic access included members of parliament, the Governor-General and government officials et cetera. But it also says ‘candidates for election’. I was wondering whether the definition of someone being a candidate for election means in the period after they have put in a nomination or whether it is—
Senator Chris Evans—Same as the current.

Senator BARTLETT—Right. Perhaps that could be clarified for me, as it sounds like a nice, clear-cut one. Or perhaps it goes from whenever a person announces that they are a candidate, which obviously they do well before they put in the nominations.

As well as that, I note that the Labor amendment allows in journalists who are acting in their professional capacity, so there is a special privilege status for journalists. I suppose there would be clarification in advance as to whether they are doing things on or off the record. I understand why that is put there but, again, I am not overly convinced about that. I am not in any way casting aspersions on journalists, let me hasten to add—that there is any particular reason for singling them out above all else. I can understand the reasons why it is put there. I think there is some merit in the halfway house that Labor has put forward. I am not overly keen on it because I do not see that the argument has been made at all for change, but that is another matter.

I have reviewed what the minister said before dinner about the specific issue of the revoking of permits. Perhaps I am a bit slow and it is getting a bit late, but I still do not understand 100 per cent what he said about that. I might leave that until we get to it specifically, because I note that there is a Democrat amendment and a Labor amendment around that same section. I think we can have the general debate about permits first and get to the specific, niche issues a bit later.

Senator SCULLION (Northern Territory—Minister for Community Services) (8.44 pm)—I am not sure whether I am looking forward to another debate about permits. I thought we had been through that, but no doubt we will deal with that when you are prepared to. I will speak to the opposition’s amendments and the effect of those amendments. With respect, I have to accept that this is a bit of a Clayton’s amendment. I can understand, perhaps, how difficult it must have been to try to find some sort of balance in this.

The effect of the proposed amendment is pretty much to allow government related persons and journalists access to areas as a designated person. I have been quite familiar with the permit system for very many years. When you work in a community as a government officer, you actually get a permit that has ‘ongoing’ on the bottom of it. It is just a once-in-a-lifetime thing whilst you are associated with a government department. I think that is pretty much the case at the moment. Allowing journalists is certainly something new. Journalists have often complained that they do not get access to communities, and I certainly support that part of the amendment, whilst it is generally caught up in the government legislation. I think Senator Crossin made my case very well: if people come to these communities—some of these communities are in a pretty poor state—they will know and they will travel back to their homes on the east coast and, as Senator Brown and others in this place have said, they will be part of the appropriate public outrage. If it is not right, people need to know about it, and that has been part of the problem, Senator Evans.

So what are the real changes here? There are a couple of changes. We sort of agree to the permit system as long as it does not really change anything. I really appreciate the difficulties you must have with this, Senator Evans, but effectively these limited changes would fail to open up the communities to the outside world. And they will not remove the climate of fear and intimidation in those communities. Senator Crossin reflected on a submission that we made that
the minister had said to me both publicly and privately that people were coming up to him not only to say, ‘We think you should scrap the permit system’; they were saying: ‘I’m afraid. The reason I have to talk to you here is that I cannot stand up and say something in a public arena when other people in the community may not like what I say.’ That happens a lot in Indigenous communities, and it makes the consultation process very difficult.

Senator Crossin—You hide behind that.

Senator SCULLION—If you have anything to do with consultation in those communities, Senator Crossin, you will understand that it is very difficult in a public arena to be able to ask, ‘Okay, what is actually going on?’ Like parliament, some aspects are a little bit wedded to a secret ballot and some are not. In my view, a secret ballot provides a far better indication of what people really think, and I think that is pretty much the situation here.

Senator Crossin touched on a couple of issues relating to the police, and I think the Leader of the Opposition in the Senate did as well. The police apparently have said that the government have failed to make any connection at all between child abuse and the permit system. Perhaps I will give it another crack. The police will well know that one of the issues, particularly in the younger generation, is that if you do not have a job you have a lot of time on your hands. You do not have to tell that to the police force, because that is certainly what police officers in the Northern Territory are telling me. That is the demographic that is extremely likely to provide a market for substance abuse in the communities. They are the ones who are saying: ‘I’ve got absolutely nothing to do. I don’t feel very good about myself. I don’t feel a great deal of self-worth.’ They are in the demographic that makes the market for substance abuse.

The behaviour patters around substance abuse are very destructive not only to the individual but to those around them—the destruction of culture and the destruction of brothers, sisters, families and communities.

Whilst that may not touch directly on child abuse, surely without employment these communities are without the normal opportunities that come with a community of 100 people on the east coast. If you drive into an east coast community, there are small businesses—the hairdresser, the baker, the petrol station and somewhere to buy hamburgers and a milkshake. Wherever it is, there are always businesses. But these communities are not characterised by that. These communities are not characterised by the same opportunities for employment, and employment provides, not with a long bow, the sense of wellbeing so that we can start breaking the cycle of substance abuse.

I am not sure how much consideration was given to that statement, but I have had a lot of discussions with a lot of police officers in the Northern Territory about the permit system and about a whole range of other issues as I travel around the Territory. I think Senator Crossin is fundamentally right. I will have to be very cautious, because I am very respectful of police officers in the Northern Territory—they are a great bunch—but I think if you said to police officers anywhere, ‘By the way, you have the right to pull anyone over and have a bit of chat,’ they would all say, ‘Great stuff.’ It is difficult sometimes when you know someone is a bad guy but you cannot pull them up.

It has been my experience in the sorts of small communities we have that, if a police officer thinks that someone is doing the wrong thing, there are a whole range of other quite legitimate ways in which he can have a chat to the people concerned. It is certainly not something that I think has any legitimacy
as another impediment to providing levels of safety—and that is what it is about. It is about providing the normal rule of law and order.

We will be providing $14 million in the first year and 66 police officers. That is what is going to change. There will be no more intimidation. People will actually feel that they can stand up and report someone who is behaving inappropriately. These are the sorts of fundamental changes that will do away with any particular idea that is wedded to the need for a permit system because it is a policing role. I am sorry, but I do not think that case has been made at all. The case that we should be making is that we need law and order. We need more police officers, and those police officers need to be properly respected and resourced. That is what will make the fundamental changes in these communities. The amendments fail to open up the communities and therefore are not going to be supported by the government.

With regard to your last question, Senator Bartlett, I understand that it is from the time of nomination.

Senator SIEWERT (Western Australia) (8.51 pm)—Reluctant as I am to keep going over some old ground, the minister just made a comment which may have been in the heat of a moment or may be what is driving some of these permit changes. He made a comment that it is only when people from the east coast travel through and get outraged and go back to the east coast and start stirring—he did not use the word ‘stirring’; that is my paraphrase. Now, I am sorry, but how many reports have we had about child abuse in the Northern Territory? You are not honestly telling us that it is just because people may have seen what is going on in these areas and gone back and caused outrage that you are taking action? Firstly, that is just a nonsense argument. But, secondly, does that mean we are going to open up every home in Australia for people to go in and see if there is abuse going on and then we will all get outraged? Because that is what you are doing—you are opening up Aboriginal owned land for people to go into to express outrage. Is that what you are doing it for? Let us do it for every Australian home. I know you are not implying—because we have been over this ground—that it is only in Aboriginal communities that child abuse occurs. So should we go out and tell the rest of Australia: ‘It’s okay, we’re going to open up all your homes so we can go in and get outraged and then do something about child abuse’? That is nonsense.

Senator CROSSIN (Northern Territory) (8.53 pm)—I am happy to say something here, and in the spirit of some sort of cooperation I probably should say something. Senator Siewert, I had mentioned in my contribution on the permit system that, if the intent of removing that system along main roads into these communities is to allow more tourist access to these communities, one of the things that may well occur as a result is that eventually people on the eastern seaboard may realise, if they have a long hard look at some of these communities, what this government’s funding and fundamental policy failures have been. Most people, if they had an opportunity to drive to Wadeye or Mutitjulu, would be quite shocked. In fact, I remember meeting James Hird on the night of my birthday this year when he had just come back from Wadeye, having been up there with the Bombers on a bit of a talent camp out in the communities. He spoke to me about how shocked he was at the condition of Wadeye. I mentioned to him that it had been one of the COAG trials, and he said that if that was the best the federal government could do—or words to that effect—he was pretty stunned. So my contribution on this matter was that if this opens up
more Aboriginal communities to show some of the funding problems of this government then they may well get quite a surprise.

While I am on my feet, I will take this opportunity to ask the minister a couple of questions about the permit system, and I will try to be very quick. During the dinner break I was advised—and your advice may well be different—that if a traditional owner issues a permit and subsequently dies, it will be impossible for that permit to ever be revoked. I believe land councils have a view that it is a drafting problem in this legislation, since this legislation only allows the issuer of a permit to revoke it. There is a view that this appears to be an unintended consequence of the drafting. I understand that the issuing of the permit does not go to the ownership of the group, it stays with the individual. I wonder if you have had time to clarify that.

Senator SCULLION (Northern Territory—Minister for Community Services) (8.55 pm)—That is not our advice and we do not agree with that. But if you do have some advice we would be more than happy to look at it. As I said earlier, it is our advice and view that all the land is communally held and, if someone passes away, the responsibility for that country still lies perhaps with an individual leader but certainly with the group of people, who would then be responsible for the maintenance of permission to travel upon that land. However, if you have some other advice, we would be happy to look at it.

Senator CROSSIN (Northern Territory) (8.56 pm)—I will pass that answer on. Can I raise two other issues? My understanding is that the land councils currently also use their power to revoke permits that might be issued by a traditional owner as a circuit breaker to resolve disputes within those communities, those Aboriginal groups. I understand that this is a function that has been called on regularly and it occurs usually in consultation with the police. So when the police have called in the land council to assist, the land council has been able to use its power to assist the police and therefore withdraw that permit. Of course, this amending legislation removes the capacity of the land council to perform that function.

The other issue I want to raise is that there is now a question over whether this proposed amending legislation is inconsistent with the scheme of the land rights act, particularly section 5(1)(b), and the basic principles of trust law. I will explain this. Aboriginal land is legally vested in a land trust which, at the direction of a land council, must exercise its function as trustee and owner of the land in a responsible fashion for the benefit of Aboriginal persons who are beneficiaries of the trust. So it is a basic principle of trust law that a beneficiary cannot direct a trustee how to perform its function. However, I understand the proposed amendment vests in a beneficiary the power to override the trustee, notwithstanding that the section I mentioned provides that a land trust may exercise all the powers of an owner of land, including the power to make decisions in the interests of the trust beneficiaries regarding entry to the land. My question is: is it an intention that this amendment would be inconsistent with that clause?

Senator SCULLION (Northern Territory—Minister for Community Services) (8.58 pm)—Senator, I have to say I had some difficulty understanding all of that. I understand what you are saying, but there are some quite complicated aspects and I do not have the Aboriginal land rights act in front of me. I will say a couple of things. The permit system, in terms of whether somebody is behaving or not, at the end of it, should not be an alternative to the law. If, for example, a traditional owner has said or the group have said, ‘You can come on country,’ it is up to the police to pass information about bad be-
haviour back to the permit holder if it is just inappropriate behaviour; if it is unlawful behaviour, the police should act. Whether they have a permit to be there or not is really immaterial. We often hear of people saying, ‘What we have got in the permit system really helps us provide law and order.’ It probably has in the past because the shield of law and order simply has not been present.

I am advised in a more technical sense that land trusts are in fact not trusts for the purpose of the land rights act; they are shells for the purpose of holding land.

Senator BARTLETT (Queensland) (9.00 pm)—On this point, as we have gone onto it now with those questions from Senator Crossin, I think it is worth putting on the record that the issues being raised were raised by the Northern Land Council in a supplementary submission. Because of the absurd time frame put on them, and on the Senate and the Senate committee, it was not actually submitted until after the hearing. So they put in that submission on Monday this week, after the hearing had been held, obviously when they were finally able to go through the legislation in detail and find this single clause in there. It is on the Senate committee website as additional correspondence, I think, for anybody who wants to check it out. It raises the issues that Senator Crossin was drawing on. Without disputing or getting into the competition of different advisers, whatever the opinion of the government about land councils, I do not think they would suggest that they do not know what they are talking about when it comes to permits. They live that stuff pretty regularly. Having said that, my understanding is that most of the day-to-day stuff with permits, in terms of individuals, is done at local level through traditional owners.

The one point I wanted to clarify goes back to that particular clause that we were discussing before the dinner break, section 74AA—item 14 on page 53. The minister has just said again that his advice is that, in the context of somebody passing on, the issue of the permit, while it is an individual, is in that category of being ‘traditional owner’ and therefore somebody else who is a traditional owner could revoke it. I want to clarify, because I really was not 100 per cent clear before dinner, whether that collective revocation power only applies in the context of the original issuer having passed on. Or is that something that applies all the time—forget about whether or not somebody dies? Is a permit able to be revoked by another traditional owner or is that only in the context of where someone dies? If it is able to be revoked by another traditional owner, doesn’t that create the same potential problems of confusion?

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (9.02 pm)—I want to respond briefly to Senator Scullion’s opposition to our amendments. All I can say is that I appreciate that he is very tired, but I found the response a little rambling. As I am very tired as well, it may be that I was not hearing well. But, quite frankly, claims that ending the permit system will create employment, end the drugs, remove the climate of fear and bring about world peace seem to me to be claims a little beyond what is rational or defensible. If Senator Scullion thinks that, I will take him around a few of the Western Australian communities, where there is no pass system, and I will show him the drugs, the unemployment, the hopelessness, the poverty and the abuse. Then we could both agree that the pass system has not protected people from that, but nor has the nonexistence of a pass system provided the sorts of protections that opening up is allegedly going to provide.

Quite frankly, I also do not share Senator Crossin’s optimism about non-northern Aus-
tralians visiting the north, visiting Aboriginal communities, seeing the shocking state of those communities and somehow coming back and doing something about it. Hundreds and thousands of Australians who have been through those communities settle back into their peaceful existence and pretend it is not happening. In fact, successive ministers have done it. I remember in this government all those ministers who went for photo opportunities at Wadeye—successive FaCS ministers. I think the Prime Minister went there. They all have the photo opportunities. Then when the report comes out and we assess what has happened there it is a complete disaster—failure to follow through on promises, failure of big government to deliver to those people. But what we are now to understand is that the government are saying: ‘We got the previous one wrong, and the one before that wrong, but we’ve got the answer this time. We’re going to give ourselves more power to control their lives and we’re going to really fix it this time.’

Maybe I am getting old and cynical, but I actually think we have to get some empowerment of Indigenous people, some ownership of solutions. We cannot change social norms. We can provide support but we are not going to change the social norms that apply in Indigenous communities. That is only going to happen if you empower the local Indigenous people. Part of that is protecting them from fear, giving them the rule of law and providing them with services—services that this government and its predecessors have not delivered them. You can go on about police. I cannot see us maintaining a police station ongoing in all these communities for the next 50 years. It will not happen. We all know it will not happen. You have already blown your funding from what was supposed to be tens of millions to $500 million and rising. When it goes off the political radar, as it has every other time, some of the commitment will wane and some of the funding will wane. While there is that enthusiasm, while there is that focus, we must build the Indigenous communities’ capacity to develop social norms, develop economies and develop a sense of ownership of a future that has hope. That is much easier said than done. These measures are about putting in place some of the building blocks for that. That is why Labor is supporting them. But I am not sure enough thought has been given to the next step. And the failure to consult with Indigenous people, the failure to give them a sense of ownership of this, is a fatal flaw at the moment. Unless the government actually listens and thinks about that, we will fail in this endeavour.

Quite frankly, I worry about this sort of big government response where people think that they are going to run Indigenous lives and that somehow we are going to fix all of this. We can provide the building blocks but, in the end, we have to provide the capacity for Indigenous people to do it. The pass system is not the problem. What it does is recognise that Aboriginal people have property rights—this is their land. As well as being a system, it is a symbol of their control over their land. This is about empowering them. They decide who comes there—and the terms on which they come’. This is about them having some say. Fundamentally, this government cannot cope with that. It cannot cope with the idea that Aboriginal people have control over their land.

The Country Liberal Party in the Northern Territory have not always been great fans of the land rights act. The current government have not been fans of the land rights act. A number of these measures seem to be more about that ideological obsession about challenging Aboriginal control over their land and about making them more like us with 99-year leases so they can have a private home et cetera. Economic opportunity is a
key part of the solution. This is more about the government’s inability to cope with Indigenous control and ownership of land, and that reinforces the concerns of communities that other measures in this package, which are well motivated, are somehow to be held up to suspicion. In a number of areas, like the Racial Discrimination Act and this area, you undermine the package. You go too far. You go in a way that adds to cynicism and suspicion and which will ultimately help undermine the success of the program. You do not need to make these changes to the pass system to make these things work. It is a bonus for you, because these are things you want to do anyway. You will actually undermine your capacity.

Labor’s alternative ensures that all those people who should be able to get there can get there. It provides a system by which people can apply to go on to the land. If somebody wants to go in and open a hairdresser’s shop on the corner and wants to get a permit then I am sure they will get a permit. I can take you to a lot of communities in Western Australia, Queensland and New South Wales et cetera where they do not have permit systems but they cannot get anyone to open a hairdresser’s shop on the corner either. It is not the permit system that is stopping that. We would be much better off in passing this set of laws, which so fundamentally take away from Indigenous people a whole range of current rights over land, to provide some recognition that we respect their relationship with the land and their property rights and we do not take away some of those rights just because we can.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.10 pm)—We sometimes need to remind ourselves just what we are doing here, not on the issue of intervention—I will not lecture you on that—but just on the scale: 99.8 per cent are exempted from all of this. This is just simply one prescribed road, and it was important that I had that clarified because I was not sure about it. There are no shortcuts. There is only going to be one prescribed road into a community. It is normally a public road paid for by taxpayers. It would require maintenance and a fence on each side. Anywhere else outside the township area, when you go off a road and there is a house and fence, is private property. The norms of anybody travelling in a town will provide. People are not going to be walking into houses, and I know that you are not asserting that. But it is a very small area and the relative benefits are a safer, more prosperous community. I accept your experience in Western Australia and it is a tragedy to know that there is no silver bullet for these issues. There has to be a suite of answers to this. I concede that if nothing else happens, if you just have open communities as they have in Western Australia, that is insufficient—I acknowledge that. We are providing a wide range of initiatives and this suite of initiatives is going to make a real difference. Part of those initiatives is the lifting of the permit system for the road in the way in—just on the township. We believe that a net benefit will be the prosperity and safety in the communities.

Question put:
That the amendments (Senator Chris Evans’s) be agreed to.

The committee divided. [9.16 pm]
(The Chairman—Senator JJ Hogg)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>28</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noes</td>
<td>31</td>
</tr>
<tr>
<td>Majority</td>
<td>3</td>
</tr>
</tbody>
</table>
AYES

Allison, L.F. 
Bishop, T.M. 
Campbell, G. * 
Crossin, P.M. 
Forshaw, M.G. 
Hurley, A. 
Kirk, L. 
McEwen, A. 
Milne, C. 
Murray, A.J.M. 
Polley, H. 
Sherry, N.J. 
Sterle, G. 
Wong, P. 
Bartlett, A.J.J. 
Brown, B.J. 
Conroy, S.M. 
Evans, C.V. 
Hogg, J.J. 
Hutchins, S.P. 
Marshall, G. 
McLucas, J.E. 
Moore, C. 
Nettle, K. 
Ray, R.F. 
Siewert, R. 
Webber, R. 
Wortley, D.

NOES

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

PAIRS

Brown, C.L. 
Carr, K.J. 
Faulkner, J.P. 
Ludwig, J.W. 
Lundy, K.A. 
Stephens, U. 
Stott Despoja, N. 
Troeth, J.M. 
Coonan, H.L. 
Ellison, C.M. 
Macdonald, I. 
Trood, R.B. 
Fifield, M.P. 
Payne, M.A.

(2) A Land Council may, by writing, request that the Minister revoke a permit issued to a person under subsection 70(2BB) where there are, in the opinion of the Council, reasonable grounds to believe that the person is of bad character.

I know we have gone over some of this ground earlier, but the bill proposes giving the minister the power to issue permits. The other section has limited to the person who issued the permits the power to revoke them and we have been through that discussion. This amendment will give a land council a right to ask the minister to revoke a permit, if there are reasonable grounds to believe the person to whom he has issued the permit is of bad character. It is just providing a facility for the land council to request the minister to make a decision within his powers. Labor think it would be helpful in the sense of dealing with people who perhaps should not have a permit and it would give the land council the capacity to bring that to the minister’s attention. Obviously, the decision still rests with the minister.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.21 pm)—We think opposition amendment (10) is unnecessary. The power of the minister to authorise a person or class of persons to enter or remain on Aboriginal land includes the power to revoke the authorisation. I am further informed that the situation now is that, if the land council has information that a person is of bad character, the land council should give that information to the minister and the minister can consider whether to revoke the authorisation. It is a given that, if there is unlawful behaviour, the matter should not really go through the minister; it should go to the police officers who can then deal with it.

Question negatived.
Senator BARTLETT (Queensland) (9.22 pm)—The Democrats oppose schedule 4 in the following terms:

(3) Schedule 4, page 38 (line 2) to page 151 (line 18), TO BE OPPOSED.

I feel that we have already debated this issue ad nauseam but it is nice to finally have it before us. The Democrats oppose schedule 4. It is our view that we should not be removing the permit system.

I appreciate all the arguments that have been put forward, both for and against, but, as I said before, there has been no evidence put forward to actually suggest that it is necessary. I do not believe such a major change should be made without evidence, particularly given that it is a proposal that has, I think undeniably, caused a lot of concern amongst many Aboriginal people in the Territory. It is seen with suspicion and, unless you have a very good reason, I do not see why you would do something that is going to be viewed with suspicion. I have heard no good reason to do that—certainly not one that is backed up with any evidence—so I oppose schedule 4.

Question put:

That schedule 4 stand as printed.

The committee divided. [9.28 pm]

(The Chairman—Senator JJ Hogg)

Ayes............. 45
Noes............. 6
Majority......... 39

AYES

Adams, J.            Bernardi, C.
Birmingham, S.       Bishop, T.M.
Boyce, S.            Brandis, G.H.
Campbell, G.         Chapman, H.G.P.
Colbeck, R.          Conroy, S.M.
Cormann, M.H.P.      Crossin, P.M.
Eggleston, A.        Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Fisher, M.J.         Hogg, J.J.
Humphries, G.        Hurley, A.
Hutchins, S.P.       Johnston, D.
Joyce, B.            Kirk, L.
Macdonald, J.A.L.    Marshall, G.
Mason, B.J.          McEwen, A.
McLucas, J.E.        Minchin, N.H.
Moore, C.            Nash, F. *
Parry, S.            Patterson, K.C.
Payne, M.A.          Polley, H.
Ray, R.F.            Ronaldson, M.
Scullion, N.G.       Sherry, N.J.
Sterle, G.           Watson, J.O.W.
Webber, R.           Wong, P.

NOES

Allison, L.F.        Bartlett, A.J.J. *
Brown, B.J.          Milne, C.
Nettle, K.           Siewert, R.
* denotes teller

Question agreed to.

Senator BARTLETT (Queensland) (9.32 pm)—I move Democrat amendment (4) on sheet 5341:

(4) Schedule 4, item 12, page 52 (after line 31), after paragraph 70F(20)(b), insert:

(ba) land covering areas of cultural significance, ceremony or storage of sacred objects;

This concerns an issue that I do not think we have talked about until now. It is a small but still important amendment. It deals with the issue of the definition of ‘common areas’ under the new part 70F of the act. Under the new regime put in place in this legislation, a person may enter or remain on a common area that is within community land. The definition of ‘common area’ as put in the legislation is:

an area that is generally used by members of the community concerned, but does not include:

(a) a building; or
(b) a sacred site; or
(c) an area prescribed by the regulations for the purposes of this paragraph.
The intent of that, I assume, is for the government to make clear that opening up the permit system to some extent does not mean that people can go into buildings, as Senator Scullion said, or onto sacred sites.

The Democrat amendment would add an additional criterion to also include land covering areas of cultural significance, ceremony or storage of sacred objects. From my recollection, that is based on suggestions made to the Senate committee through some of the submissions that the exclusions of areas from the definition of ‘common area’ really need to be a little broader and should go beyond just a sacred site to also include the words that I stated. Areas of cultural significance, ceremony or storage of sacred objects would not come under the formal definition of ‘sacred site’.

The legislation says that the minister will have the power to add other areas by regulation for the purposes of the paragraph. So it may be that the government will indicate the minister’s preparedness to look at including a definition like that as one that would be prescribed by regulation, and that would have the same effect. If we can get that commitment, that would be a positive thing. It would be better if it was put into law, which is why I am moving it as an amendment. But, if we can have some indication that putting it in the regulations may be considered, that would at least go some way to addressing the concerns of those who raised this as an issue.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.34 pm)—I know we have already voted on this, but I undertook to provide the senator with some information regarding his questions about the circumstance where a person who has provided the permit dies and how that works. I am advised that the Aboriginal Land Rights (Northern Territory) Act is in fact the mechanism for the administration of the permit system. This legislation needs to be read in conjunction with the Aboriginal Land Rights (Northern Territory) Act, which refers to traditional owners in the plural. That means that, if the traditional owner who issued the lease dies, another traditional owner can be delegated. This is taken, I understand, straight out of the Aboriginal Land Rights (Northern Territory) Act, so this legislation reflects that. It is in the plural in the original legislation, and it is reflected here.

With regard to the Democrat amendment, we think that the suggested additional exception to the definition of ‘common areas’ is a bit vague and unnecessary. The definition of ‘common areas’ already excludes sacred sites, which has a comprehensive and long-standing definition in the Aboriginal Land Rights (Northern Territory) Act. It would be unnecessary and confusing to add the proposed provision, so the government does not support the amendment.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.36 pm)—Could the minister tell the committee what the approximate area of common areas under this definition will be in total in the Northern Territory?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.36 pm)—My apologies, but I wish to ensure the accuracy of the record: I referred to the Northern Territory Land Act as the Aboriginal Land Rights (Northern Territory) Act. I apologise for that; that was not my intent. I just want to clarify that. Senator Brown, I wonder if you would be so good as to repeat your question.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.36 pm)—I asked the minister whether he could indicate to the committee the approximate area of common areas under this definition will be in total in the Northern Territory?
area of common areas in the Northern Territory, under the definition in this legislation.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.37 pm)—You would understand from the scope of the question that it might take me a moment to see how long it will take to provide that information, but I will attempt to do that as soon as it becomes available.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.37 pm)—Would the minister also describe what a common area is in relation to a community? We know what it is not: it is not a building, a sacred site or an area prescribed by regulations, but I would like to know what it is. Is it all other areas in a community or all other areas that a community uses?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.37 pm)—I understood, Senator Brown, that for the purpose of clarity the act will provide a schedule specifying, as we did with the prescription process, exactly where this particular act applies. It will be a place on the ground or a map with latitude and longitude that provides for the prescribed community. I am sure you will either continue to question me or someone will correct me but my assumption is that the common areas would obviously be the road areas and other public areas. It would differ from community to community, but most of the communities I go to have a large community space adjacent to the community centre. Normally, the community council or the community hall is in a hub where they have the childcare centre, the health centre and those sorts of things. One would assume that the common areas are all those areas that are not held privately within a prescribed area, so obviously private land would be a house, a front yard or whatever. Clearly, it would be the road areas and areas that are not held as private land.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.39 pm)—There are two things there. Firstly, you talk about areas used by communities. I presume that does not extend outside the definition of the area of each community which follows in this act to beyond what is defined as the areas that the government is assuming control of. Secondly, it says a building or a sacred site but it does not talk about land, so it means that common land is the backyard, the front yard and the side yard of dwellings, does it?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.40 pm)—I have a series of facts, but we need to recognise that I am providing this information under the proviso that each community will be quite different. You cannot just be prescriptive about the common area, so this is a series of facts that will help us put that information together in most circumstances but it may change from community to community. Common areas are defined as areas which are generally used by the community concerned. The arrangements which will apply will be no different to other townships, including Aboriginal townships such as Daly River, where the permit system does not apply. It will be clear from fencing and other improvements whether land is of a public or private nature—for example, land surrounding a residence will clearly be private. Sacred sites will continue to be protected as they are now whether they are on Aboriginal land or not. Aboriginal townships already have visitors who are not allowed to enter sacred sites. If a problem arises then, quite clearly, practical measures can be taken as has been done in the past to ensure that people are aware that there is a sacred site in the area. The Sacred Sites Authority have provided us with great deal of knowledge.
about how to make their signs unattractive to people as well as ensuring that people understand the significance of the site. It has been done in a number of other areas.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.41 pm)—I understand that the minister is saying that land outside of a community—the term used by the minister—this circumscribed township area, is not common land in the definition for the purposes of this legislation. I want to make it clear that we are not talking about Indigenous lands in the main; we are talking about those lands within prescribed areas. It says that it does not include a building, and the minister said that private households will be excluded and fences will be put up. I presume it will be like Canberra, but it is all going to be laid down in the regulations. There is nothing here to say that everybody’s houses are not open to anyone who wants to go through them, past them, by them. I am thinking here particularly about the influx of people from outside, including busybodies, who are now permitted to enter Aboriginal land under this legislation. I want to make it clear that this problem has been thought out and dealt with before we pass by this part of the legislation tonight.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.43 pm)—As I indicated from my seat but shall repeat for the record, the common areas we are speaking about lie only inside the prescribed areas which are only going to be prescribed areas for a five-year period. Nothing in my response to you refers to any lands outside of those areas. In terms of busybodies or other people, I think you made a good analogy—Canberra is probably a poor analogy—but like in a small country town where areas with buildings are private property. All other places would be considered to be communal areas. As I have said, we will be taking a very practical approach as with sacred sites. If this becomes a problem, then we need to look at it and try to resolve it.

Like in any community—these are very different and I do not think it is useful to be prescriptive—this is private land. By and large, people know exactly where their private land on communities is. Norms about travelling upon private land exist now in those communities. You do not just wander across land or do those sorts of things; you walk up to the front door, knock on the door and ask to speak to the people inside, in exactly the same manner as you would in any other community. That is consistent with our approach across a range of these issues.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.45 pm)—Yes, but the legislation does not say that. We are left to trust that the regulations will. I was with Senator Siewert up at Karratha last year, looking at the Burrup. There was one place there which tourists could readily access. Signs pointed to where you could park and where you could go and look at the rock carvings in a very vast area. There were warnings asking people to respect the area and so on, and I was horrified to see that the places most proximate to the tourist parking areas had been defaced. One only has to look at other accessible human and natural heritage places around the country to see how some people cannot help but leave their mark. It is a reaction to their fear of mortality.

I am concerned that in removing the permit system and opening up these communities to whomever might come, the sacred sites will be a source of attraction to the curious, those who do not respect Indigenous culture—they are not few in number—and souvenir hunters. I want to know what it is in this legislation that is going to protect those sites now that the government is opening them to the greater threat of invasion by peo-
people who simply do not understand the significance of them to Indigenous people.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.47 pm)—The senator reflects on what we would all agree is a great tragedy. There are those in our community whom I simply do not understand. They go to some of our iconic natural heritage sites and want to carve their names in the trees. It is beyond me; I do not understand that and I am sorry that you were affected by the same sort of thing. There are laws against it.

I know of a well-known sacred site that is right in the middle of Tennant Creek. There is a fence around it and people know about it, but the experience is that none of those sorts of things happens there. Maybe it is because there is a high Indigenous population. It is right at the Julalikari Arts Centre, where tourists come in, have a cup of coffee and do those sorts of things. Perhaps it is not the perfect analogy because there are always people there but those sites, because people see and understand them, have never been desecrated.

Generally speaking, I think people are extremely respectful of our sacred sites. The way that you put the signage and manage the interaction are things that we have had a great deal of experience with in the Northern Territory. It is a criminal matter and very significant penalties apply under the Northern Territory Aboriginal Sacred Sites Act, and those will still apply. In any event, we would place a lot of confidence in that process—it is sad that we would have to—because it works so well in other parts of the Northern Territory that have the same sorts of visits as any proposed visits to some of these communities.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.49 pm)—Will those safeguards be in place before the permit restrictions are removed?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.49 pm)—I did not quite catch the last part of the question. But you would recall that, when we amended the Land Rights (Northern Territory) Act last year, we moved to increase the penalties for defacing sacred sites. I cannot recall when it was last year, but we will always move to ensure that there are disincentives. I am absolutely mystified by that sort of behaviour, but we will continue to provide penalties that are appropriate to act as a disincentive. Having said that, Senator, I wonder if you could ask the last part of your question again?

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.50 pm)—I asked whether the warnings—which may include penalties for people who might approach sacred sites illegally—and the appropriate management will be in place before the permits which currently restrict people going to communities are lifted.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.50 pm)—I understand that we have the capacity to roll out the lifting of the permit systems at some time. As I have been saying, the first thing is that a whole range of assessments are happening, but we will ensure that people have the capacity, as soon as possible, to manage the interaction between people and sacred sites. We have done it in other places and we need to ensure that that is on the ground. All I can say is that, like a lot of other things, generally speaking—I do not want to over generalise—the sacred sites that occur within these areas already enjoy that. Because of the nature of the communities, there are not many sacred sites but there certainly are some. That is a general statement. Those sites enjoy a management plan.
for the visitors that currently go to the communities under the permit system to ensure that they are aware of the penalties. So this is not something that we are starting from scratch. We will improve on a level of amenity that has to deal with an increased amount of visitors. I respect that, but we are not starting from a greenfields site in this regard.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.52 pm)—Let me put it this way: I expect the government will put in place protective plans and management authority before the situation changes—before the added visitation and the open entry to these communities take place. That responsibility sits very squarely on the shoulders of the government.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.52 pm)—Just for clarity and to ensure you understand, Senator, you would probably be aware that the Northern Territory government will need to legislate. We expect that to happen around November, and it will happen before the permit system is lifted.

Question negatived.

Senator BARTLETT (Queensland) (9.53 pm)—by leave—The Democrats oppose schedule 4 in the following terms:

(5) Schedule 4, item 14, page 53 (line 23) to page 54 (line 4), TO BE OPPOSED.

(6) Schedule 4, item 16, page 150 (lines 18 to 22), TO BE OPPOSED.

This deals with an issue that we have already talked of in about three different places, and I think the minister has answered the question that I have asked—at least as far as I am going to be bothered to pursue it, anyway. But it does still bring us back to the key point, I hasten to add, which is that I think the government is making a mistake here. The Democrats are opposing new section 74AA, which states:

A permit issued under section 5 of the Aboriginal Land Act of the Northern Territory may only be revoked by the issuer of the permit.

This means that if the permit is issued by a traditional owner then only that traditional owner can revoke it, unless they die—and we have dealt with that—and if it is issued by the land council then only the land council can revoke it. To a large extent we have talked about this, so I will not go on at length, but I think the core issue still has not been demonstrated—that is, why this is needed. I asked the minister prior to dinner if he could give us any more concrete details of just how widespread was the problem of land councils cancelling permits that had been issued by traditional owners in ways that had caused problems, had seemed to be capricious or had caused confusion. I am not denying that that could happen but I think it would be useful to get an idea of how frequent and how big a problem this actually is, because I am not aware of explicit examples.

The other side of that coin is what happens if you remove that power. Certainly my understanding—Senator Crossin referred to this and the supplementary submission from the Northern Land Council also referred to this—is that it is sometimes used as a circuit-breaker to resolve disputes within an Aboriginal group. In those circumstances, at least according to them—and I do not have any reason at all to doubt them—that is usually done in consultation with the police and often by the request of others in the community or Aboriginal group. It would seem to be logical to still allow that power.

There is a detailed process in the act for issuing and revoking permits, appeals and all of those sorts of things. The Northern Land Council’s supplementary submission indicates that ordinarily when they cancel a permit revoked by a traditional owner it is done in consultation with the police, other traditional owners and affected Aboriginal per-
sons. In doing so, they must take into account all relevant considerations and ignore irrelevant considerations, and any decision to revoke a permit may be reviewed in the courts under administrative law principles or via complaint to the Ombudsman. So if there is some suggestion that there is improper revocation happening then there is some form of review available there.

It seems that you would want to have a good reason for taking away this power. I suspect that it is just a bit of a shot across the bow at the land councils or just to take away a bit of their power because you can, because they are seen—and I think this terminology was used by the minister—as the gatekeepers. I do not know whether or not the minister was using that pejoratively on this occasion, but I have certainly heard it used in a pejorative sense. It is not my position to defend anything and everything that every land council does, by any means. There are issues there that one could have in a wider debate. But to take away their ability to cancel or revoke a permit issued by a traditional owner without reasonable evidence to demonstrate why this would be a good idea is a bit of a problem. The Senate has received evidence from land councils saying this will be a bit of a problem. It could make it a bit harder in some circumstances.

The fact that a traditional owner has the right to issue a permit is without dispute. I think it is eminently plausible to say that from time to time you will have a traditional owner who may not have the best intention in giving a permit to somebody of less than ideal character. I have certainly been regularly told that cancellation of permits can be used as a way of assisting in having a person removed. I totally accept what the minister has said a few times—that the permit system should not be a replacement or an alternative to a proper police presence. I am not suggesting it should be. Inasmuch as it may have evolved that way, that is not ideal, and certainly we should ensure a proper police presence. But it is not just about catching lawbreakers. If you are talking about dealing with culture, lines of authority and good public order, sometimes it is not about people who have actually committed crimes; sometimes it is about other related issues.

The permit system is staying in place to some extent, so there are still issues about ensuring that that permit system works as effectively as possible. It just seems that, unless there is a good case being made—and I seriously have not heard it—for removing this power from land councils, there will be one less avenue available to them to revoke a permit in circumstances where it is causing a problem for the community and it cannot be revoked in any other way. In the absence of some reasonably solid evidence presented by the minister indicating the number of times and perhaps some examples of where this has been done in a capricious or unfair way or in a way that is causing significant confusion, I do not think that the case has been made to have this new section put in. A reasonably good case has been made in submissions to the Senate that it will do more harm than good.

I should say that the land council suggested an alternative form of wording and I have not gone with that. I do not think that that has been adequately explored either and I am not 100 per cent convinced that it would be the way to go based on the evidence I have before me. I am not here just to be a parrot for the land councils, by any means. I have not adopted their alternative solution. I think it is better just to keep things as is. The case has not been made and, until it is, we should not have this section in there.
Report: Government Response

Senator SCULLION (Northern Territory—Minister for Community Services) (10.00 pm)—I take this opportunity to table a response from the Hon. Mal Brough, Minister for Families, Community Services and Indigenous Affairs. It is the response to the Standing Committee on Legal and Constitutional Affairs inquiry into Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory emergency response. That inquiry was conducted on Friday, 10 August. I seek leave to have the response incorporated in Hansard.

Leave granted.

I am pleased to provide you with the Australian Government’s response to the Standing Committee on Legal and Constitutional Affairs’ (the Committee) Inquiry into “The Social Security and Other Legislation Amendment (Welfare Payment reform) Bill 2007 and four related bills concerning the Northern Territory Emergency Response” conducted on Friday 10 August 2007.

Before I turn to our response to the recommendations in your report I was pleased to note in Chapter Three that the Committee expressed its deep concern in relation to the abuse and neglect of Indigenous children as described in the Little Children are Sacred report.

The Committee also noted the need for immediate action and welcomed the policy changes contained in the suite of bills as a genuine and enduring commitment by the Australian Government to tackle the appalling conditions in which many Indigenous children find themselves.

I welcome these supportive comments.

The report provided seven recommendations. I am pleased to inform the Committee that I agree in full to five of the recommendations (Recommendations 3, 4, 5, 6 and 7). In relation to Recommendations 1 and 2, I agree in part.

Recommendation 1
I fully support transparency and accountability. The Northern Territory Emergency Response (NTER) is no exception. The bills should be continuously monitored. I also agree that we should report to the public annually on the process.

I have noted your comments in relation to the Overcoming Indigenous Disadvantage (OID) reporting framework. At this stage however, I am not certain as to whether this is the most appropriate reporting framework. I will consider this matter further and what form the reporting framework best take and provide you with advice as soon as possible.

Recommendation 2
I agree that the Northern Territory Emergency Taskforce will make their strategic and operational plans public within six months and long term plans within twelve months. I also agree that significant revisions to these plans will be reported publicly.

Again I have noted the Committee’s comments in relation to the OID framework and my comments above stand.

There are two other issues I will take the opportunity to clarify for the Committee. There appeared to be a degree of confusion both from Committee members and from witnesses before the Committee in relation to ‘reasonable compensation’ and ‘just terms’.

I have sought advice and had confirmed that the term ‘reasonable compensation’ is consistent with the Constitutional requirement for ‘just terms’ and is used in legislative drafting in a range of existing Commonwealth Acts. The drafting represents current best practice to reflect the Constitutional guarantee and no significance should be attached to this form of drafting. As you know, legislative provisions cannot validly provide for less than the Constitutional guarantee. I re-affirm the position stated by the Prime Minister and myself when NTER was announced on 21 June 2007, namely that should compensation be payable to traditional owners and others it will be paid in accordance with the Australian Constitution and as set out in this bill.

Further, I have indicated publicly, that should I receive advice that suggests the provision does...
not give effect to the Government’s intentions, I am prepared at that time to amend the provisions. As it stands, there is no compelling case to alter the Bills.

Secondly, as I noted in my second reading speech the bills contain provisions that clarify the operation of the Racial Discrimination Act 1975 and other anti discrimination legislation. The provisions of the bill for the NTER are drafted intentionally as ‘special measures’ for the sole purpose of securing the advancement of Indigenous Australians, particularly Indigenous children.

As I have always said the NTER is about protecting the children.

I thank the majority members of the Standing Committee on Legal and Constitutional Affairs for their support for this package of legislation.

DRAFT FOR CONSIDERATION

Australian Government Response to the Recommendations of the Standing Committee on Legal and Constitutional Affairs Social Security and Other Legislation Amendment (welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response.

Recommendation 1

That the Committee recommends that the operation of the measures implemented by the bills be continuously monitored and publicly reported on annually through the Overcoming Indigenous Disadvantage reporting framework

Response:

Agreed in part. The Australian Government is committed to ongoing monitoring and reporting on the Northern Territory Emergency Response.

In the initial stabilisation phase, monitoring will be directed towards assessing progress on the implementation of the measures and securing the safety of communities.

In the normalisation phase, there will be intermediate and longer term impacts, for indicators such as school attendance, reflecting the staged approach to both the stabilisation and normalisation phases and to particular components such as welfare reform.

The Australian Government agrees that the bills will be continuously monitored and to report to the public annually on the process.

The Australian Government has noted the Committee’s recommendation in relation to the Overcoming Indigenous Disadvantage reporting framework, however at this stage are uncertain as to whether this is the most appropriate reporting framework. The Australian Government will consider the matter further and provide the Committee with further advice as soon as possible.

Recommendation 2

That the Committee recommends that the Northern Territory Emergency Taskforce make publicly available its strategic communication plan as well as other operational plans, within six months, and the long term plans being developed in relation to the intervention, within 12 months; and that information regarding significant revisions to these plans should be provided in the Overcoming Indigenous Disadvantage report.

Response:

Agreed in part. The Australian Government agrees that the Northern Territory Emergency Taskforce will make strategic and operational plans public within six months and long term plans within twelve months.

The Australian Government also agrees that significant revisions to these plans will be reported publicly.

The Australian Government has noted the Committee’s recommendation in relation to the Overcoming Indigenous Disadvantage reporting framework, however at this stage are uncertain as to whether this is the most appropriate reporting framework. The Australian Government will consider the matter further and provide the Committee with further advice as soon as possible.

Recommendation 3

The Committee recommends that the operation of the measures implemented by the bills be the subject of a review two years after their commencement, particularly to ascertain the impact of the measures on the welfare of Indigenous children in the Northern Territory. A report on this review should be tabled in Parliament.
Response
Agreed in full. The Australian Government agrees with the Committee’s recommendation that the operation of the measures implemented by the bills will be subject to a review after two years.
The Australian Government further agrees that this report will be tabled in the Parliament.

Recommendation 4
The committee recommends that a culturally appropriate public information campaign be conducted as soon as possible, to allay any fears Indigenous communities in the Northern Territory may hold, and to ensure that Indigenous people understand how the measures in the bill will impact on them and what their new responsibilities are.

Response
Agreed in full. The Australian Government asks the Committee note that this is already underway. Existing resources are being used to support communication and education initiatives and activities for the emergency response. Advanced communication teams have visited all prescribed townships and most have been visited by Commonwealth Department survey teams, radio advertisements have been aired across the Northern Territory, information products have been distributed, the Department of Families, Community Services and Indigenous Affairs website is regularly updated, information has been provided at Northern Territory shows and regular radio updates are being broadcast on Indigenous radio networks.

In addition the current appropriation bills contain funding for communication and education activities and initiatives and, for some measures, signage.

The Australian Government notes that a number of submissions received by the Committee have suggested the need for an information campaign on various measures, which the Australian Government is open to considering.

Recommendation 5
The committee recommends that the Australian Government develop, as a matter of high priority, explanatory material to assist people to understand what is meant in practical terms by the phrases a quantity of alcohol greater than 1350millilitres and ‘unsatisfactory school attendance’.

Response
Agreed in full. The Australian Government supports this recommendation.

Alcohol Measures
The application of the greater than 1350millilitres threshold is designed to differentiate between a situation where someone is presumed to be using alcohol for their own purposes and where they are presumed to be supplying it to others.

The Australian Government is currently working with relevant stakeholders including peak industry bodies and the Northern Territory Government to develop communication materials to ensure community members understand what the new rules mean as well as materials to help licensees and their staff meet these requirements and minimise disruption to their businesses.

In conjunction with the Northern Territory Government, the Department of Health and Ageing is currently developing service responses to support the rollout of the alcohol measures.

School Attendance
The Australian Government is proposing a national benchmark for attendance of not more than five unacceptable absences each school term in jurisdictions where the school year is divided into four terms.

Before parents are subject to the income management regime due to exceeding the national benchmark, parents will be given a formal warning.

Parents will have time following the warning to try and address the school attendance issues relating to their child(ren). It is intended that this will involve the school and possibly Centrelink social workers as required.

Acceptable reasons for an absence from school will be assessed on the basis of the law, policy, guidelines or rules in force in the State or Territory in which the child is enrolled at school. Centrelink will act on information about unacceptable absences according these State/Territory rules governing school attendance. Centrelink will also be able to use further discretion to exempt indi-
individuals from specific instances of income management in circumstances where absences have occurred due to events beyond a parent’s control (for example, where a foster carer has just taken custody of a child who has longstanding problems with school attendance.)

The Australian Government will develop communication material to ensure that community members understand the rules around implementation of the school attendance requirements related to their circumstances.

**Recommendation 6**

The Committee recommends that the Australian Government should closely examine the need for additional drug and alcohol rehabilitation services in the Northern Territory and, if necessary, provide additional funding support to those services.

**Response**

Agreed in full. In conjunction with the Northern Territory Government, the Department of Health and Ageing will examine the need for additional rehabilitation capacity. The Australian Government would also ask that the Committee note that the Australian Government has already provided the Northern Territory Government with $15.9 million to support rehabilitation services flowing from the Australian Government’s Summit on Violence and Child Abuse in Indigenous Communities held on 26 June 2006.

**Recommendation 7**

That committee recommends that the Senate pass the bills.

**Response**

Agreed in full. The Australian Government concurs with this recommendation and welcomes the Committee’s support.

In Committee

Consideration resumed.

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE AND OTHER MEASURES) BILL 2007

**Senator Bartlett** (Queensland)

(10.01 pm)—In addition to my request to the minister, are there any details of how much this issue has been a problem given that he has just tabled that response? Is there any sign of any response to the rather more detailed and problematic issues raised in the report of the Senate Standing Committee for the Scrutiny of Bills?

**Senator Scullion** (Northern Territory—Minister for Community Services)

(10.02 pm)—I tabled the response to the Scrutiny of Bills committee report earlier today.

The TEMPORARY CHAIRMAN

(Senator Sandy Macdonald)—The question is that schedule 4, items 14 and 16 stand as printed.

Question agreed to.

**Senator Siewert** (Western Australia)

(10.03 pm)—The Greens oppose schedules 2 to 5 in the following terms:

(2) Schedules 2 to 5, page 14 (line 2) to Schedule 5, page 154, (line 16), TO BE OPPOSED.

This relates to schedules 2 to 5. We have had the substantive discussion on nearly all of these sections other than the infrastructure section and I would like to clarify a few points with the minister. This is an even more complicated part of the bill than some of the other parts so I would just like to clarify a few bits, please.

My understanding is that part of this series of clauses is about ensuring the Commonwealth has ongoing involvement in the infrastructure after the five years. I understand that the provisions go to areas beyond just those that are covered in the emergency response areas but that particularly in emergency response areas there is a requirement for negotiation with the land council before any leases are granted.

**Senator Scullion** (Northern Territory—Minister for Community Services)
In response to your first question, yes, it does go beyond the prescribed areas. In fact it is for the entire Northern Territory. The requirement for consent not only applies but it also applies throughout the areas in my first answer.

Senator SIEWERT (Western Australia) (10.05 pm)—My understanding is that before any of the infrastructure is built in any of the emergency response areas there has to be consent from the councils.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.05 pm)—That is correct. If we are going to build particular long-term infrastructure, we have to have consent. That is not unlike the way it is now. It is a fairly informal arrangement. With the problematic issues about leasing, if you want to build a house, you get the consent of the landowner to be able to build the infrastructure. That was the way it was done and I suppose we have formalised the informal arrangements there in the absence of easily definable leasing arrangements. If we are going to put some infrastructure there, then we simply reflect the convention at the time, which was to seek consent to put the infrastructure up. That is what is reflected in that particular area.

Senator SIEWERT (Western Australia) (10.06 pm)—What happens if the land council does not provide its consent?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.06 pm)—We would not put the infrastructure in.

Senator SIEWERT (Western Australia) (10.06 pm)—I understand that the funding bodies are the Commonwealth, the Commonwealth authority or the Northern Territory. The funding body has statutory rights provided under these provisions. Those statutory rights, however, may be exercised by another person under clause 20Y. That other person does not then have those rights but can exercise the statutory rights.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.07 pm)—You have the same interpretation as I do. Let us hope we are both right.

Senator SIEWERT (Western Australia) (10.07 pm)—Those statutory rights may be transferred to another person. I would like to know the range of other persons or bodies. Secondly, to transfer those rights, or for somebody else to be able to exercise those rights, does the funding body need to get the permission of the land council?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.07 pm)—The only body they are referring to in terms of transfer is a government or a government authority. This does not refer to natural persons; this is referring only to a government or a government authority with the intent, of course, that the Northern Territory government may wish to take over some particular types of infrastructure.

Senator SIEWERT (Western Australia) (10.08 pm)—That is the transfer of statutory rights; I understand that. But part 20Y says: ‘Rights holder may permit others to exercise the statutory rights’. I am asking: is that separate? I am not talking about the transfer, which I understand is only to another government body, but about the person who can exercise the rights. I understand they are not being transferred. I understand they are only being exercised.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.08 pm)—That is correct.

Senator SIEWERT (Western Australia) (10.08 pm)—So I go back to my original question: who can be that person? Does a ‘person’ include a body or a business, for example?
Senator SCULLION (Northern Territory—Minister for Community Services) (10.09 pm)—This is going to allow situations where government wishes to allow other parties to provide services from a facility. That is the intention.

Senator SIEWERT (Western Australia) (10.09 pm)—That is what I thought. Can I interpret this to mean that the government goes in and builds some infrastructure or a service? I understand infrastructure includes service but, for the intent of this discussion, it is infrastructure on a lease that the Commonwealth now has. If they go in and build something, and then pass the exercising of their rights to another person or body—it could be a service provision organisation or a business—do they then not need the permission of the land council to do that?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.09 pm)—Yes, that is correct.

Senator SIEWERT (Western Australia) (10.09 pm)—Can I then clarify how long that transfer lasts, because I understand the intent of this is that the Commonwealth maintains its interests in this infrastructure and services after the five-year sunset clause has gone. You do not need the permission of the land council to exercise the powers. It means that potentially you have someone going in there who can then exercise and use that lease beyond the sunset clause. Yesterday we were told that that was not possible.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.10 pm)—I understand that, after they have been passed on, the rights holder may permit others to exercise those statutory rights. The holder of the rights then would be able to exercise those rights for as long as the original holder of the rights—which would be us—wished that to happen. So, if the question is whether—as a lot of the questions have been—it is to the end of the five-year lease, no, that is not the case.

Senator SIEWERT (Western Australia) (10.11 pm)—In other words, what you told us yesterday does not in fact apply. I asked specifically yesterday—and I think other people had been asking too—whether a government could go in when they are acquiring land and then take something over five years. We were told that that was not going to happen. As I understand this, if the interpretation we have just worked out is correct, somebody can in fact come in and acquire control over land, through this process, beyond the five-year sunset clause, and the land council can do nothing about it.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.11 pm)—As I understand it, there is no inconsistency in that. We were not being inconsistent.

Senator SIEWERT (Western Australia) (10.11 pm)—I do not see that, because yesterday we were told that this would be five years under Commonwealth control and that would be it. Now, in these specific areas, another entity that the Commonwealth is allowing to exercise their rights can come in and do that—beyond the five years. I appreciate that we are now talking about leases; we are not talking about the whole town. But the fact is that that is the question we were asking yesterday about businesses. You may remember we did have a discussion—or it could have been this morning—when I was asking that specific question about businesses coming in that the community does not really want in there and does not necessarily agree with. I do no want to revisit the argument about what is good. They probably do want most of them in there but there may be some who do not. You know as well as I do that there are some businesses that communities specifically do not want in their
community. To me, this provision, if I am correct—and from what we have just worked out, I think I am correct—means that they can go in there and they will not be out after five years.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.12 pm)—That is correct. I think the reason I said it was consistent is that we are now discussing a completely different provision. This provision talks about the nature of the issues beyond the five-year period we were discussing either this morning or yesterday.

Senator SIEWERT (Western Australia) (10.13 pm)—I want to clarify it. Just then we were talking about areas that are in the prescribed areas within the NT emergency response areas. What happens for the areas that are not under the prescribed areas? These provisions still apply, don’t they, but there is not the five-year sunset clause on them? Is that basically the only difference?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.13 pm)—That is correct.

Senator SIEWERT (Western Australia) (10.13 pm)—I have another question and that relates to the fact that the argument for the acquisition of land and the emergency powers is that it is so that government can go in to get things happening quickly with the provision of infrastructure. You are saying that it then needs to be negotiated with the land council. The argument that the government has been putting is that we need to do this because we do not have the time to negotiate. That is why I asked that question before about land councils and what would happen if they say no, because what you are saying is that the government does not have any other powers under these provisions to say, ‘You’ll do it anyway.’ You do have a provision that says ‘must commence to negotiate’. It may be that I am interpreting that differently or putting the emphasis in the wrong place, but does ‘must commence to negotiate’ mean ‘You have to talk to us’?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.15 pm)—Yes. You are correct: it has to be with consent.

Senator SIEWERT (Western Australia) (10.15 pm)—And there are no other powers in here? If they say, ‘No, that is it,’ there are no other powers to go in and say, ‘Yes, you will’?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.15 pm)—Someone is shaking their head and I am probably going to get in strife for this. As I read it, if you did not have consent, you would not expect to retain any interest in that after the five-year period. You would not be able to retain any interest in the infrastructure—that is, if you could do that. But that is not our intent. You would not seek to do that, so we would always seek consent. It is not part of the debate, but I appreciate the complexity of these issues. With our powers, we are running different provisions. If you require a brief on this matter, I will undertake to provide that to you.

Senator SIEWERT (Western Australia) (10.16 pm)—All the areas in the act are complicated. I acknowledge that we did have a briefing and I appreciate that, but these provisions continually reference back to each other and they are even more complicated than a lot of the other ones. The specific concern we have with this is around this issue of the Commonwealth, as the funding body and the holder of the statutory rights, then being able to hand over the rights to another person and it is not specified who that person could be. My understanding from these provisions is that it is completely left open. I understand that the Commonwealth retains ownership of
the infrastructure but it can hand it over for use under this provision and that does not have to be with the agreement of the land council. That is of concern.

I have another question, which may be technical. If it is going to be too technical, I would appreciate the briefing. In subdivision D, on page 30, it says:

(1) If a person has the statutory rights under 20W and 20X—
which are the two sections we were just talking about—
the person may, by writing, determine that the buildings or infrastructure is no longer required by the person.

Is that the person deciding they do not want it anymore and just saying, ‘We don’t want it anymore?’ or is this another person determining that you cannot use it anymore?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.18 pm)—I am advised that the statutory rights will end when a government or a government authority determine that they no longer require the buildings or infrastructure. The relevant land council must be advised of the termination of those rights and may require the former statutory rights holders to remove some of the infrastructure—they cannot just leave it there. This is going to ensure that the land is not encumbered by disused buildings or unwanted infrastructure.

Senator SIEWERT (Western Australia) (10.18 pm)—I have read the explanatory memorandum and it is still as clear as mud, so I apologise. Is the person who is being referred to in (1) the statutory rights holder?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.19 pm)—That is either the Commonwealth or the Northern Territory.

Senator BARTLETT (Queensland) (10.19 pm)—I want to ask some questions about the pornography section, which is the only schedule not being proposed to be excluded here. I do not really mind if we dispose of this question first or if I ask my questions now. It is a bit academic.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—I am advised that you should, Senator Bartlett, and then you can speak to the bill as a whole. Please proceed.

Senator BARTLETT—I also have one question about the law enforcement provisions to do with the ACC. This question has probably been answered, so I am sorry if I have missed it. People ask me questions about this all the time, so it is helpful if I can be accurate. Are they subject to a sunset clause or are they continuing? That was the only clarification I wanted around that schedule.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.20 pm)—It is a five-year sunset clause.

Senator BARTLETT (Queensland) (10.20 pm)—I also want to clarify some items in schedule 1 to do with prohibited material—that is, pornography. Not being familiar with the fine print of the different classifications in respect of pornographic material and the like, the material that is classified as level 1 prohibited material basically seems to be material that is classified as X—in that sort of sphere of things. My understanding of all that is that any possession of X-rated material anywhere in prescribed areas in Aboriginal communities in the Territory would be prohibited and subject to a penalty.

Under the section to do with supplying material into prescribed areas it says that the person commits an offence which is subject to a penalty of 200 penalty units or imprisonment for two years or both. It says the material consists of five or more items of pro-
hibited material. The way that reads to me is that if somebody had five DVDs or five magazines, for example, with them they would breach that section. Would that be accurate?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.22 pm)—I am advised that is correct, Senator.

Senator BARTLETT (Queensland) (10.22 pm)—I have a final question on this, which is probably similar to some of the questions you were asked about alcohol yesterday, about the education provisions or information provisions regarding pornography. This might have been touched on a bit yesterday. You are talking about there being information and education first, before the enforcement stuff kicks in, so that people have a bit of time to adjust. I want to ask about the mechanisms for that and, while we are at it, for the alcohol issue. I am thinking of retailers as well, because, whatever people may or may not think of this material, it is legally available. As we all know, there is more of it around the corner down the road in Canberra than pretty much anywhere else in the country. But I am thinking of people in the Territory and perhaps people coming from outside and going to communities who may have some material on them. How widespread will the information campaigns be and what will be the nature of the campaigns? I can foresee people being inadvertently caught up in this sort of thing, and more so for people coming from outside, when we are dealing with material that is legal everywhere else. Certainly category 1 material, as I understand it, is legal everywhere else; category 2 material is not. So there would need to be a reasonable amount of education.

I think people are somewhat more likely to be aware of the concept of the prohibition on alcohol going into Aboriginal communities, but they are probably not so familiar with the concept of prohibition on this sort of material. I would like some indication of the type of information and education campaigns there are likely to be for this, perhaps alongside the alcohol area, which does have its complexity as well. I think that was touched on yesterday, in terms of how you determine what 350 millilitres is and how people are likely to know those sorts of things.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.24 pm)—I think it was yesterday. I reiterate that throughout these processes we are going to need very much for the community to have a clear understanding. I have some sympathy: 350 millilitres—how much is that? I haven’t got a clue! I am old enough to remember that a 40-pounder is a 40-ounce bottle; now it is in millilitres. The communities will need to have a very clear understanding of that. As the senator indicates, sometimes the alcohol could be the easiest side of that. It is a very complex area. But an education program will be rolled out. We are working with the Northern Territory government and seeking advice from the NT government. We are also working with the Eros Foundation, which is the industry foundation. They have been very supportive and very helpful. So I think with that partnership I have a high level of confidence that the education program will be very effective.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.25 pm)—What account did the government take of violent as against pornographic material?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.26 pm)—I understand the classifications are very similar. I will have to seek some advice on that. The classifications deal with violence as well as sexually explicit material,
as you are no doubt aware, Senator, but I will have to seek some advice on the nature of the classifications because they can sometimes occur simultaneously. My very basic understanding of the censorship process is that they are taking it into consideration in terms of the classifications, but I will seek a more fulsome answer to that question on notice, if I could.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.26 pm)—I would like to know what information the government was working on when it decided that pornographic material was to be prohibited but not violent material. There have been no public statements regarding violent material, but there is a lot of literature and studies to show that that can be extremely influential on people in non-Indigenous communities. So far as I know, none of the statements by Minister Brough or Prime Minister Howard have canvassed the culture of violence that is abroad at the moment. A lot of it is imported from America. We see on our television sets people being dismembered, tortured—terrible things happening to human beings—in the name of entertainment. I wondered what impact that has on communities and what measurement of that impact the government has and why it has not acted on that. I presume, and the minister can tell me if I am wrong, that there has been an assessment of the impact of pornographic sexually explicit material. I am just wondering why the government has been quiet on violent material but very, very loud indeed on pornographic material.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.28 pm)—The senator’s presumption that we had not dealt with the violent aspect was incorrect. My assumption that the categories in fact did include the depiction of violence is correct. Both category 1 and category 2 have a depiction of violence as well as sexual activity to put them into those categories. So if it is just violent—there is no sexual activity; it is just something that depicts violence—it will be prohibited as a category 1 or a category 2. So that has been taken into consideration.

With regard to your second question, there has been a lot of discussion. I am not sure about what empirical science you draw on, but certainly a lot of the evidence has been given around the place. The concern about pornography was principally about the grooming of young people. Again, I do not have the capacity or the knowledge to go into any more than what grooming means generally, or preparing or encouraging. I am not sure how you would prepare, but the term used is ‘grooming’ young people to make them more vulnerable to sexual predators.

So the pornographic material was the very first concern. Violence is obviously of concern, and the government have very ably dealt with that. But our first and principal concern was to act in those areas that have been reported. That is why much of the discussion was focused on the sexually explicit material rather than the violent material. The violent material has been comprehensively dealt with in the provision.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.30 pm)—Violence is an enormous problem in the community. I am not going to draw the minister further on this, because it will not get me anywhere, but the point I make is that there is an attitude of accommodation for gratuitous violence that goes way beyond that which goes to non-violent sexually explicit material. That is a cultural thing. That is a Western and American cultural thing. It makes violence an entertainment. It makes huge amounts of money for some people. Whatever the classification system here is,
the public presentation of the need for this legislation has been all about pornography and not about violence when it comes to the material that is to be classified and prohibited. I think the government should look at that again. I am concerned about the impact of gratuitously violent material, masquerading as entertainment, on the whole of the nation, and the lack of restraint by government on explicitly violent material as against explicitly sexual material.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that schedules 2 to 5 stand as printed.

Question agreed to.

Bill agreed to.

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE PAYMENT REFORM) BILL 2007

Bill—by leave—taken as a whole.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (10.32 pm)—by leave—I move opposition amendments (1) and (2):

(1) Clause 4, page 2 (lines 21 to 28), omit subclauses (2) and (3), substitute:

(2) To the extent that this subsection applies, the provisions referred to in paragraph (1)(a), and any acts referred to in paragraph (1)(b), are, for the purposes of the Racial Discrimination Act 1975, special measures and are consistent with Part 2 of the Racial Discrimination Act 1975.

(3) To the extent that this subsection applies, the provisions referred to in paragraph (1)(a), and any acts referred to in paragraph (1)(b), are not laws as described by subsection 10(3) of the Racial Discrimination Act 1975.

These amendments relate to the Racial Discrimination Act and Labor’s attempt to provide for this legislation to invoke and encompass the RDA rather than seek to exclude the provisions of the RDA from this legislative package. We had this debate much earlier today. The government is not willing to look at ways of accommodating that view, therefore these amendments will be lost again, so I will not waste the time of the Senate other than to formally move them.

Question negatived.

Senator BARTLETT (Queensland) (10.33 pm)—The Democrats oppose clauses 4 to 6 in the following terms:

(1) Clauses 4 to 6, page 2 (line 3) to page 5 (line 22), TO BE OPPOSED.

Likewise, this was debated in some detail earlier on. It is the same issue: the Democrats believe that there should not be any exemption from the Racial Discrimination Act—in some ways, particularly in this area. Whatever merit there is or is not in encouraging more responsible behaviour or better protection of children through the quarantining of welfare payments, I do not see how that can justifiably be applied on a racial basis. In effect, that is what this legislation as a whole does. It provides welfare-quarantining mechanisms in a whole lot of different capacities, but, with regard to Aboriginal people in prescribed communities in the Northern Territory, it affects them universally. It is a pretty clear example of where, to your average person looking at it, it sure looks like tougher rules for the blackfellas than for the whitefellas. Unless there are extremely good
reasons, and it can be clearly demonstrated that it is positive discrimination for the blackfellas to get that type of so-called special treatment, then it is an extremely dangerous and potentially quite destructive thing to do.

I note that a number of people, again who have been broadly supportive of the government’s approach, have nonetheless called for the same sort of non-blanket approach to be taken in the Territory communities with regard to Aboriginal people as is being taken with the more selective application, such as that being proposed in the Cape York trials, for example, where it is only going to apply to people who are deemed to have been incapable of meeting certain criteria or demonstrating ‘irresponsible behaviour’—which I think is the more general, catch-all phrase—rather than catching everybody, including those who are responsible. So it is only in the Territory and in designated Aboriginal communities where that distinction between those who are responsible and those who are not is not being made, where it is being applied universally. It sure looks like racial discrimination to me. Obviously, the Racial Discrimination Act does allow that to occur, where it is positive discrimination or what are labelled ‘special measures’. I find it pretty hard to see how this is a special measure that is a positive discrimination. It is no secret that this whole model of quarantining is influenced fairly heavily, at least in terms of the public presentation of the debate, by what has been considered over a period of time and developed in Cape York, with the welfare trials that are close to being started up there.

Noel Pearson is a key driver of that, and he has also said a number of times that the same principle needs to be applied in the Territory—that there needs to be a distinction between responsible and irresponsible people and that you need to reward positive behaviour. Almost regardless of that debate, if you are looking at the justification for saying that these are special measures and therefore are positively beneficial to Aboriginal people, and you have one of the key Aboriginal defenders of the government’s approach saying, ‘No, this is the wrong way to go; it’s not going to be the best for them,’ then you really have to wonder how solid the government’s assertion is that this is a positively discriminatory or special measure. That highlights the problem with trying to use this catch-all loophole in the Racial Discrimination Act. In some ways this measure looks particularly stark and problematic, and I have not heard any justification to date—unless the minister before us has an absolutely fabulous, rip-snorting justification that he is about to unleash on us—for that type of exemption. I should state again that that is a very fundamental principle. We have pretty much had this debate already, so I shall not talk further. But I do not want that to be taken as any suggestion that we are treating this issue as a run-of-the-mill thing. The Racial Discrimination Act is fundamental. That point needs to be made as often as possible.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that clauses 4 to 6 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (10.39 pm)—The Greens oppose clauses 4 to 7 in the following terms:

(1) Clauses 4 to 7, page 2 (line 3) to page 6 (line 27), TO BE OPPOSED.

This is a similar amendment to that of the Democrats; however, ours goes a little further to specifically relate to clause 7, which excludes the Northern Territory laws. We have been through the debate on the issues as they relate to racial discrimination. We are particularly concerned with the so-called welfare reforms that the government is intro-
ducing through this bill. As has been outlined, a separate set of rules will apply to those in the Northern Territory. Not only do we think that this will not work but also we think that these specific clauses are discriminatory and they treat people in the Northern Territory as a different set of citizens. The reforms apply to everybody in the prescribed areas, whether they are exemplary parents or not. We will go into the details of the shortcomings of this bill shortly, but we are specifically here to do deal with the issues as they relate to racial discrimination.

The TEMPORARY CHAIRMAN—The question is that clause 7 stand as printed.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.41 pm)—I think you mean clauses 4 to 7.

The TEMPORARY CHAIRMAN—No, we have dealt with those in the previous amendment, which has already been passed.

Senator BOB BROWN—Is the running sheet incorrect?

The TEMPORARY CHAIRMAN—We have already put the question of clauses 4 to 6, so all we have to do deal with now is clause 7.

Senator BOB BROWN—The running sheet says that the Greens oppose clauses—

The TEMPORARY CHAIRMAN—It does but we have already dealt with them.

Senator BOB BROWN—I am saying that the running sheet says that this amendment is to oppose clauses 4 to 7. That is also what the amendment says.

The TEMPORARY CHAIRMAN—the point is that we have already put and passed numbers 4 to 6, so we are dealing with just clause 7 at the moment.

Senator BOB BROWN—Yes but we have the difficulty that the Greens amendment says 4 to 7 and it is listed as clauses 4 to 7 on the running sheet. Under those circumstances I ask that the vote on the Democrat amendment be put again.

The TEMPORARY CHAIRMAN—if you would like to put 4 to 7 you can do that.

Senator BOB BROWN—I would like to do that. The discrimination involved in this is absolutely disgraceful and it is an intended discrimination—it is overt and in-your-face racism. It will have not just the effect of flagging to Indigenous people that they are treated as inferior to the non-Indigenous population by this government, and by everybody who votes to support these clauses, but it will have untoward and perhaps unintended effects, although I do not think that the government has taken any time to look at what the effects will be. I draw the government’s attention, for example, to an article which appeared on page 15 in the Australian of last Friday, entitled ‘Bar humbug’, which states:

On one visit to Docker River in the far southwest corner of the NT, federal Families, Community Services and Indigenous Affairs Minister Mal Brough noticed the aged-care facility had bars on the windows. When he asked why there were bars on a facility for the elderly, a carer said it was not to keep the residents in but to keep the relatives out.

The humbug system is deeply ingrained in Aboriginal communities and there are concerns the federal Government’s changes to indigenous welfare payments may increase the family humbug—as it is called—particularly against the elderly whose pensions remain the same.

Grandmother Mildred Inkamala from Hermannsburg, one hour’s drive west of Alice Springs, says older women in her community live in fear of when the federal Government’s welfare quarantines come into effect.

And that is because they will then become the focus of attention of those deprived of payments who need to sustain themselves. I
do not know what the government is going to do about that. But, whatever the case, this discrimination to take away the rights of Indigenous people—rights which belong to the rest of the community—is just not acceptable, not under Australian law and not under international law, as the Law Council of Australia has pointed out to the government, the opposition and anybody else who had an interest in this matter. The Greens cannot support the overt discrimination and racism which is involved in this; hence the amendments.

Question put:

That clauses 4 to 7 stand as printed.

The committee divided. [10.50 pm]

(The Chairman—Senator JJ Hogg)

Ayes…………… 46

Noes…………….. 7

Majority………. 39

AYES

Adams, J. Barnett, G.
Bernardi, C. Birmingham, S.
Bishop, T.M. Boyce, S.
Calvert, P.H. Chapman, H.G.P.
Colbeck, R. Cormann, M.H.P.
Crossin, P.M. Evans, C.V.
Ferguson, A.B. Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Fisher, M.J. Forshaw, M.G.
Hogg, J.J. Humphries, G.
Hurley, A. Hutchins, S.P.
Joyce, B. Kemp, C.R.
Kirk, L. Lundy, K.A.
Macdonald, I. McEwen, A.
McLucas, J.E. Minchin, N.H.
Moore, C. Nash, F. *
Parry, S. Patterson, K.C.
Payne, M.A. Polley, H.
Ray, R.F. Ronaldson, M.
Scullion, N.G. Sherry, N.J.
Stephens, U. Sterle, G.
Troad, R.B. Watson, J.O.W.
Webber, R.

NOES

Allison, L.F. Bartlett, A.J.J.
Brown, B.J. Milne, C.
Murray, A.J.M. Nettle, K.
Siewert, R. *
* denotes teller

Question agreed to.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (10.53 pm)—Mr Temporary Chairman, I must admit that the fact that we actually started to move backwards was of some concern to me. I knew we were not moving forward quickly, but that we actually managed to go backwards was a surprise and was of concern to me. I also notice that the minister has even more advisers than he started with—and that does not augur well either. I move opposition amendment (3) on sheet 5351:

(3) Page 6 (after line 27), after clause 7, insert:

8 Review

The Minister must cause to be conducted, as soon as practicable after the first anniversary of the day on which this Act receives the Royal Assent, a review of the provisions of Part 3B of the Social Security (Administration) Act 1999 regarding the application of income management to persons by reason of their being persons in a relevant Northern Territory area.

This amendment seeks to include a clause which provides a review. The amendment requires the minister to cause to be conducted a review on the first anniversary of the act receiving royal assent—the review to be of part 3B of the Social Security (Administration) Act 1999, regarding the application of income management to persons by reason of their being persons in a relevant Northern Territory area.

The logic of this is quite simple. As we know, there is a five-year sunset clause, but the minister has the capacity, as I understand,
to annually revisit the question of the income management provisions and the areas to which they will apply. We think it is important that the minister formally review the success of the scheme after 12 months. We are going into uncharted waters in terms of income management and applying these measures in communities. It is important that we look as soon as possible at the effectiveness of the measures taken. I think it is important that the parliament gets the opportunity to debate the measures—not just have the government say that it has some sort of internal review—and gets the chance to have a look at whether or not these measures are working and, if they are not, see why not and have some assessment of all these changes. For example, there are a range of initiatives relating to school attendance, and we would want to know whether the measures have had any impact on school attendance—rather than just press on on the basis that we hoped they might and we continued to hold that hope.

It is important that we assess these things. It is, as I say, a major change in arrangements. There are concerns that whole communities are being required to comply with these changes. People are not being assessed according to their own individual behaviour when it comes to these measures; they are actually being required to comply with the system. One of my concerns with the approach is: where is it that we reward positive behaviour? Where are the mechanisms that allow those who do the right thing to be rewarded? Where is that encouragement for personal responsibility in the long term? But that is a more general point.

We believe that the bill ought to contain a formal review after 12 months. I know the minister has given some general undertakings about reviews, but we would much prefer that there be a legislative review after 12 months of the welfare reform and the income management system specific to the Northern Territory.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.57 pm)—The measures are not all rolled out at the same time in all the communities; they are being rolled out community by community. So any appreciation of the results at one particular arbitrary point in time, say in a 12-month review, will not necessarily provide the evidentiary process you require. The minister has the capacity, on the basis of the time he rolls them out, to examine how the programs are working on a community-by-community basis.

The proposed opposition amendment would impose an obligation to review the income management and land acquisition arrangements some 12 months after the act receives royal assent. We are committed to ongoing monitoring and reporting on the Northern Territory emergency response. Therefore, we will not be supporting this amendment.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (10.58 pm)—I really do not think that is good enough—though I know that will not make any difference. Quite frankly, that is the sort of assurance we got for the COAG trials. People said: ‘It would be too early to tell,’ ‘We’re waiting on the formal review,’ ‘We’ve got mixed results,’ and ‘We think things are going well in some areas.’ We got all the double-talk. It took us years to find out that the trials had been a total and utter failure, that we had totally failed the people who were subject to the trials and that we had made a complete hash of it. I got reassurances for a long period of time—‘It is too early,’ ‘We need to have a formal assessment.’ There were plenty of reassuring words, but money was going down the tube, Indigenous people were not getting the ser-
vices they deserved and the grand experiment—the ‘quiet revolution’ was the title for that one—was proving to be an abject failure. The revolution was a squib and the people who suffered as a result of the failure of the revolution were the Indigenous people upon whom we were conducting that particular experiment.

As this approach is experimental and quite radical, we ought to be much more focused on review. We ought to be focused on KPIs. I would like to see the KPIs contained in the legislation. We talk the language inside the Public Service, but we do not put it into the bills. I would like to know who is accountable for this stuff and who is going to lose their job if it does not happen as planned. I do not want to have a crack at the FaCSIA officials, but no politician and no departmental official is responsible when failure occurs. We are being asked again to take it on trust. I hope it works; I really hope it works. But it is another experiment; it is another stab in the dark. This government has had three or four; we had a few when we were in government. None of them worked; none of them made a fundamental difference to the lives of the people in these communities.

I do not want to give you a blank cheque. I do not think that the parliament ought to give you a blank cheque. The parliament ought to force the minister and the government, of whatever persuasion, back into this place to say, ‘Yes, it has worked in terms of alcohol control, but school attendances have not improved,’ or whatever the outcome is and explain what is working, what is not working and why not. We should not just give you a blank cheque so that someone can quietly drop a report that the opposition spokesperson has to find by nefarious means, that says that the whole thing was a disaster and that for the last year or two people have been skating around admitting that it was a disaster. That is not good enough. It is not good enough in terms of public administration, but it is also not good enough for the Indigenous people.

I think that this is an important amendment. I am not reassured by the minister. It would be a huge blue to not demand accountability for the measures that we take. We need key performance indicators and a real sense of accountability from the policymakers and those delivering the service. We say that these measures are going to improve Aboriginal people's lives. Let us prove it; let us hold ourselves accountable. The minister’s response reeks as being the sort of response we have had for every other experiment: things are allowed to quietly slip away as the political attention and the circus moves on and no-one is held accountable for the fact that we did not deliver to Indigenous people what we promised. I think that this is the most important clause that should be in the bill, but I know that it will not get carried. I and others will be much more assiduous about ensuring that there is proper reporting and measurement than perhaps we have been in the past.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.02 pm)—While my body says that I should just keep sitting, I think that I should give respect to your amendment—particularly because it almost parallels the legislation. While I am not saying that there is any mischief in it, I do not think that it quite represents our position. If you have a review 12 months from the day of assent, you are not really giving practical appreciation to the fact that we are rolling these measures out in a staggered sense over two months or three months.

Senator Chris Evans—Then assess the first step.

Senator SCULLION—Well, what we are saying is that 12 months after the first one
being rolled it will be reviewed. The next one will be reviewed 12 months after it is initiated.

Senator Chris Evans—The minister will make a decision. That is not a review.

Senator SCULLION—Hang on. Indeed, but the minister will be making a decision on the basis of a review. There will be a review of circumstances. On the basis of those circumstances, he will decide whether or not to continue the program. That is in fact a review, Senator Evans. I am not being picky; I am just saying that I do not think that we are that far apart on this. We are practically reflecting the timing of the implementation of the programs. Thank you for the support.

Senator SIEWERT (Western Australia) (11.03 pm)—As you can expect, the Greens have a number of questions relating to these amendments and very deep concerns about the impact that they are going to have and about the fact that they are not going to be effective. Unfortunately, during the short time that we had during the committee process, we did not get to ask many questions on this quite far-reaching legislation. Not only that, the answers to the questions that we put on notice—with all due respect to whoever wrote them—provided us with little additional information. So, unfortunately, I am going to have to ask them again—and take the opportunity to ask some much more detailed questions.

There are provisions that apply specifically to the Northern Territory and there are provisions that apply to the broader community. These are then broken down to apply to children that are not regularly attending school, to children who are at risk, to income management areas in Indigenous communities in the Northern Territory and Queensland and to remote communities. So there are some quite specific issues that we would like to address.

The first issue that I would like to address is about people who are covered in section 123U(b)—persons who are subject to the income management regime in the relevant Northern Territory area. As I understand it, that is anybody who is in the area physically from 21 June to when their last payment period was. That is correct, I think. If you were there at that time, the provision catches you unless you have an exemption from the minister. You could be travelling in the area and have to get an exemption from the minister not to be caught up in this if you are getting the various forms of income support that are covered by these provisions.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.06 pm)—You have to have a Centrelink address in the area.

Senator SIEWERT (Western Australia) (11.06 pm)—That is providing that you are not exempt, I understand. Can you perhaps point out to me where the section is that talks about the Centrelink address?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.07 pm)—I can provide that to you but I can assure you that anyone travelling through the area is not affected. You have to have a Centrelink address in the prescribed area.

Senator SIEWERT (Western Australia) (11.07 pm)—As I understand it, 123UB(2) applies to a person or a person’s partner if the person or person’s partner is entitled to be paid FTB under the family assistance act. Does that only apply if you are also getting category A welfare payments or does it apply if you are not getting category A welfare payments—in other words, you are just getting FTB?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.08 pm)—In relation to your previous
question, physical presence in the area can be tested in a number of ways, not only in the nature of an address—for example, if your Centrelink address said you are not present, obviously your presence in the area will not attract the provisions. But in a more general sense it is about your presence physically in the area.

Senator SIEWERT (Western Australia) (11.08 pm)—I am still waiting for an answer to my second question. While I am on feet—through you, Chair—I understand what you are saying about presence in the area. It says overnight in the area and it says other than if you are exempt. It says the secretary determines who is exempt. Then it goes through a series of things to determine who is exempt, but it seems to me you have to apply to be exempt.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.09 pm)—The bill, as the senator indicated, provides that a person may be exempt from income management in respect of either a specific Northern Territory area or from all relevant areas. Those provisions mean that, where it is clear that the person has little connection to a community, they can be excluded from the application of the income management at the time that it in fact applied to that community.

Senator SIEWERT (Western Australia) (11.09 pm)—Can I go back to my FTB question?

The TEMPORARY CHAIRMAN (Senator Watson)—You have been going back a bit tonight; yes.

Senator SIEWERT—My question was: if you are just receiving FTB, does it still apply to you—in other words, you can be working and receiving FTB, and this applies to your FTB? I am seeing shaking heads.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.10 pm)—No.

Senator SIEWERT (Western Australia) (11.10 pm)—It only applies to FTB if it is in association with some other sort of income support.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.10 pm)—That is correct.

Senator BARTLETT (Queensland) (11.10 pm)—I think we have the opposition amendment before us about a review. For the record, I thought I should speak to the actual amendment. I had a couple of questions about the schedules but I thought I would leave that until the final amendment. I want to indicate my support for the amendment. I think review of these provisions is important and, again, if the problem is 12 months I could cope with its being two years, but these are very far-reaching provisions, particularly the Territory ones and in the absence of any other outline already being in place for benchmarks, assessment criteria and those sorts of things. It would give much more confidence to a lot of people if there were something in the legislation that required an open and independent review. The Democrats support this amendment.

Question negatived.

Senator BARTLETT (Queensland) (11.12 pm)—I move Democrat amendment (2) on sheet 5342.

(2) Schedule 1, item 17, page 27 (after line 33), at the end of section 123UA, add:

Notwithstanding any other provisions of this Division 2, a person subject to the income management regime is entitled to access the appeal mechanisms of this Act relating to income management devices.

This simply seeks to ensure that a person subject to the income management regime is
entitled to access the appeal mechanisms of this act relating to income management devices. This is a fairly clear principle and it was also a fairly straightforward concern that was expressed to the Senate committee. The Senate committee process, as we know, was only a single day. Witnesses had less than two days notice to prepare submissions and only three days at best to read the actual legislation. There was seriously limited time to be able to explore all of these issues. I think the total amount of time I got to question officials from the government about the entire package of legislation was about eight minutes, so one can understand that there is a range of other issues one might have wanted to have raised.

Similarly, the vast majority of community organisations did not get to appear at all but those that did understandably focused a lot on the issues that we dealt with earlier tonight. Comparatively, there was very little about the whole income management regime. Given how major the change is, that is very unfortunate. That is not to say that I am 100 per cent opposed to at least exploring some of the principles here, although I am quite concerned with how they are being implemented, particularly with regard to the Territory.

I have said on record a few times that I think there is merit in exploring the approach that is being trialled in Cape York, which is also covered in this legislation. I am not 100 per cent convinced it will work but, as the name implies, it is a trial. It has been done after a fair bit of consultation. There are differing views about the totality of that consultation but there has been a fair bit of it. One of the key aspects of it is to engage people at the local level to make decisions that relate to when people become subject to welfare quarantining. None of that is present in the Northern Territory. It is automatic, it is blanket. As we have already stated, it has no bearing on whether somebody is a responsible parent or not.

On top of that, as this amendment relates, there is no appeal mechanism. At one level you could say, ‘It’s automatic; your welfare is going to be quarantined, so what is there to be appealed?’ but there is a whole range of powers given under this legislation to government officials and Centrelink officers to make decisions about pretty fine details in people’s individual lives. I believe that there needs to be the same scope for an independent merits review of those sorts of decisions. Through this legislation we are giving brand-new powers to Centrelink officers to intervene in the very fine detail of people’s lives. People should not forget that.

Particularly in the Northern Territory, as I said, there is no linkage to whether people are being responsible or not—exemplary or not. That is an extra factor: people will be subject to this whether they like it or not and whether there is any justification for it other than where they live, which is in an Aboriginal community in the Territory. I do not think it is stretching things too far to imagine some people might get a little bit peeved about that. The potential is certainly there for people to get peeved if they are having decisions made about how they run their lives and they do not agree with those decisions. They may think the decisions are not fairly based or based on mistakes or misunderstandings of what people have said. Let us not forget that, in many cases, we are dealing with communities and people whose first language is not English and whose cultural understandings of things is very different to that of many other people. There is any amount of material about the difficulties of communication, even when people’s English is perfect, because there are different interpretations of cultural expression.
There is ample opportunity for misunderstanding, even with the best will in the world. When the detail of how you live your day-to-day life is going to be controlled by somebody else and there is a prospect of them making decisions about what you are allowed to do and what you are not allowed to do, including defining what is an essential and what is not an essential, that is difficult and groundbreaking enough, but to then say that there is no scope for independent review is a really serious problem. It is a problem because of the potential for injustice; that is why you have independent reviews. It is a problem because having the independent review can be a real safety valve for people. So even when the decision was right, if a person has been able to appeal to someone else—even though that person has said, ‘No, that’s right’—they are more likely to say, ‘Okay, someone else has verified that.’ It can be of assistance.

Speaking as someone who used to work in what was the Department of Social Security, and who made decisions that were appealed, I can say that if you do not have a bad attitude to things—if you have the right approach—it can be very helpful to know that there is someone else there who will review your decisions independently and who will tell you if you have got it wrong. You can learn from that. That is particularly the case when you are dealing with a brand-new area. The people in the Territory are going to be the first people subjected to this, perhaps alongside the people in Cape York, although I do not think that will be up and running—the minister can correct me if I am wrong—as quickly as the Territory. Maybe Cape York will be next—and under very different circumstances—and then possibly, some time later, other people in the mainstream community will be subjected to it, but only those who are deemed to breach particular criteria regarding school attendance or child protection issues.

When you give a whole brand-new set of powers to Centrelink officers—and they are pretty far-reaching intervening powers—and allow those powers to be exercised in a way that has no external merits review, I think you make a bigger problem in developing a better understanding of how to use those powers well. There is, I know, the scope for internal departmental review, but frankly that is just not good enough. To say that people can take things to court is frankly insulting, particularly with regard to the sorts of decisions that people are likely to want to appeal.

I do not like always drawing parallels to my experiences with this government’s activities in the migration and detention area but it has some echoes for me because we had immigration officials making decisions about people’s cases outside the normal mechanism and, when people were unhappy with the decisions, the only appeal they got was to someone else within the department. I know there is only so far you can go with this parallel but I think there is a valid comparison. If there is a mistake made by an officer, whether through a misunderstanding, incorrect information, sloppiness, shoddiness, overwork or whatever, internal reviews are not sufficient, particularly when the person doing the internal review knows that that is it. If you are doing a review and you know there is an independent person watching over your shoulder, you are much more likely to do a better job. I am not casting aspersions at public servants, but it is just human nature. If you like, I am casting aspersions at human nature; I can do that in great detail if I am in the right mood. It is human nature that, if you know someone is able to appeal your decision to someone who is independent, you will do your job a lot better than if you think: ‘I’ll just do this here; no-one else is going to ever look at it. Near enough is good enough.’
This is a really important issue. It was singled out for special concern by a number of submitters to the inquiry, so, particularly because this is new area, it needs to have those appeal rights. I do not see how any talk about this being an emergency somehow is sufficient to justify jettisoning people’s rights to independent appeal about decisions that really affect pretty fundamental aspects of their day-to-day lives. That is particularly given that, in the way the government have designed this package and this measure, there is no automatic linkage between the income quarantining and anything to do with child protection. It is universal. You say it is some emergency measure to do with protecting children, but there is no linkage to people’s behaviour; it is just where they live. In that context, it is pretty serious to take away this appeal right. Let’s not forget this is people’s money. It might be being paid under a welfare entitlement but it is their money. It is an entitlement, and it is called that for quite a genuine reason. If you have someone else coming in and telling you what you can and cannot spend your money on, which is enormous intervention in people’s lives, then the least you can do is give them some right to appeal if they do not agree with the decisions that are being made on their behalf.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.23 pm)—I want to ask the minister if he can clarify some issues in relation to subdivision C, which is the additional provisions relating to school enrolment and attendance. Given the significance of this measure and the implications that it has for the income management system that you are putting in place, could you, first of all, tell me: has the government determined what constitutes acceptable school attendance?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.24 pm)—There are two parts to the answer. The first is that there are five unexplained absences in a term. But the definition of ‘unexplained absence’ differs slightly from place to place, and we are accepting the current definitions of ‘unexplained absence’ as they vary throughout the schools. They would be the provisions that are in existence now in each of those schools.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.25 pm)—For clarification, can you tell me how the government intends to collect the data that will determine whether a child has unsatisfactory school attendance and therefore the parents invoke additional income management penalties?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.25 pm)—As you are no doubt aware, Senator, the states and territories are responsible for the education system generally, and we would be relying on them. We are currently in discussions and will be in consultation with each of the jurisdictions about tapping into their existing reporting systems and assessing the reporting systems to ensure that they can provide the data that will give us the objectivity that underpinned your previous question.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.26 pm)—So under normal circumstances state or territory departments of education would, if a child was absent and the school was advised that the child was sick, and there was unsatisfactory attendance, ask for some evidence. Is it the intention that if children are not attending in a satisfactory pattern and the explanation is illness parents will be required to provide a doctor’s certificate?
Senator SCULLION (Northern Territory—Minister for Community Services) (11.26 pm)—As I indicated in my first answer, there are some existing provisions in each of the jurisdictions that provide for the term ‘unexplained absence’. That is the reason principally behind it—that each jurisdiction will have a different rationale. Some might say, ‘If you don’t have a letter from a doctor then it is an unexplained absence.’ Some may have some other process of establishing whether an absence was an unexplained absence or otherwise. We would, again, rely on that jurisdiction for that advice.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.27 pm)—Thank you. I appreciate that general point, but it is quite significant if this regime is being put into place in the Northern Territory, where perhaps it is quite difficult for families to meet some of those requirements. Can I ask another related question: is it an expectation of the government that schools will be required to be notified of an intended absence from school?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.28 pm)—As I understand it, no.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.28 pm)—How is the government going to manage the issue of children who may be absent from school because of a bereavement—they have a family funeral and go back to country? How is that going to be managed?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.28 pm)—I think it is a very important question because this is one of the reasons that many children have spent six months away from school—on the basis of some cultural business. In fact, it is unacceptable that any child should be away for that period of time. That is why we have said that it will be up to the jurisdiction, and it will be five days away without an explanation.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.29 pm)—Sorry, Senator—you just said five separate days, not five separate absences.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.29 pm)—Five separate absences; I am sorry.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.29 pm)—How will the formal warning about unsatisfactory school attendance, which is highlighted in section 123UL, be given?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.30 pm)—Centrelink will provide in writing that warning to the parent.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.30 pm)—Okay. We can see where the problem might be there, can’t we? We would have many parents who might not be able to understand the implicit threat that is in such a formal warning. Do you intend to develop some other culturally appropriate ways in which that message can be conveyed?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.30 pm)—Perhaps I should have been a bit fuller in my response. It has to be in writing and it will be personally handed over. Obviously there are some language and translation difficulties so it will be provided in writing in an interview situation. This ensures that they have actually got it. We appreciate all of those things.
Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.31 pm)—I want to go to a separate issue, which I could make no sense of. It is in relation to Subdivision C—Miscellaneous about the payment of credit balance of income management account accounts when a person ceases to be subject to the income management regime. I will walk through my understanding of the process. Someone subject to the income management regime who receives a baby bonus will receive that bonus in monthly instalments. Am I to understand that the monthly instalments of the baby bonus will also be subject to the 50 per cent quarantining process?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.32 pm)—It will be provided in 13 fortnightly instalments and it will be 100 per cent.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.32 pm)—So the baby bonus will not be quarantined?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.32 pm)—No, that is not correct, Senator. A hundred per cent will be quarantined.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.32 pm)—I will provide a scenario. A parent who has been subject to the income management regime has received the baby bonus and now has a significant credit balance in their income management account. Section 123WJ(7) relates to the repayment of the residual amount in the income credit to account. If a person moves out of the income management regime and is eligible for reimbursement, the secretary may determine that the ‘whole or a part of the residual amount is to be paid to the first person as a single lump sum’. But then in (9) it says:

The Secretary must not make a determination under subsection (7) unless:

(a) the lump sum is $200 or less.

Someone, having moved out of the regime, may have had their 100 per cent of the baby bonus quarantined, and may decide to save the baby bonus so that there is a substantial amount. Am I correct in reading that the lump sum must be $200 or less and that the rest will be paid in some kind of instalments?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.34 pm)—I am advised that in the case of savings it would be paid in instalments.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.34 pm)—Are you telling me that a person who has had 100 per cent of the baby bonus quarantined for a period of time and has not used it is then not going to be able to access that baby bonus if they escape the income management regime?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.35 pm)—I understand that, if they can demonstrate that they have a large expense or something that they have saved towards, then there is some discretion to provide that amount against a lump sum, but the lump sum would reflect a particular amount or an expense that they have.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.36 pm)—Where can I find that in this subdivision?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.36 pm)—I understand that we are dealing under Subdivision C—Miscellaneous,
The Secretary must not make a determination under subsection (7) unless:

(a) the lump sum is $200 or less.

It goes on:

(b) the Secretary is satisfied that there are special circumstances—

for example, a large expense—

that warrant the making of the determination.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.37 pm)—I find it quite extraordinary that, if a person has been able to move out of the regime because they are acting responsibly and caring appropriately for their children, they can continue to be caught in the regime at the behest of the minister. Can the minister advise what other special circumstances might warrant the making of the determination?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.38 pm)—Your second assertion is correct; it is not only within the Northern Territory.

Senator STEPHENS (New South Wales—Parliamentary Secretary to the Leader of the Opposition) (11.38 pm)—So then you are telling me that there is a much broader application of this provision, and the excuse that humbugging perhaps might ensue might relate to the Northern Territory and the designated communities. But we are capturing an extraordinary number of people in this provision, and it seems to me that that is quite an unfair determination for those people who prove that they are capable and caring parents.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.38 pm)—I understand that there is some period of time during which, whilst those people may be able to demonstrate they are out of the system, because of the challenges that often that demographic have in managing lump sums of that nature it is important that those provisions continue to apply for some time after the people move out of their crisis.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.40 pm)—There are a couple of points coming from that. Firstly, the minister mentioned that children are sometimes absent for a long period of time for cultural reasons. I ask the minister: if there are no cultural reasons that would warrant a five-day absence, would that be acceptable to the government? Secondly, there is the business of exemptions. Am I right to assume that these exemptions are particularly aimed at excluding non-Indigenous people from the reach of these penalties rather than Indigenous people?
Senator SCULLION (Northern Territory—Minister for Community Services) (11.40 pm)—One of the reasons we are relying upon the jurisdiction is that the jurisdiction can reflect the needs, particularly the cultural needs within the community. For example, the current Northern Territory government policy and procedures indicate that acceptable reasons for absence include but are not limited to work experience, excursions, school or non-school cultural activities, sickness—which is a standard; sickness is notified by a caregiver or a guardian—and funerals. Those provisions may not be the same right around Australia, but they reflect the circumstances in that particular part of Australia. Could you perhaps ask the second question again?

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.41 pm)—On the exemptions, are these not particularly aimed at giving advantage to non-Indigenous people—for example, those who travel a lot outside their own region—as against Indigenous people in escaping the penalty clauses that this bill has?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.42 pm)—The reasons that are laid out in these provisions clearly indicate that those persons for whom exemptions would be granted would be those people who were not necessarily a part of that community. They may well be travelling, for whatever reason. That is the nature of that discretion. It is not designed to select people by their ethnicity; it is just a decision. It is really based on where they live. We have gone into some of that in previous questions.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.42 pm)—In previous inquiries into Indigenous education, it has been found that there is quite a lot of travel by families and that children will often present at different schools during any given year. One of the problems that arose from this was that schools did not share enrolment data. Presumably we are talking about South Australia, Western Australia and Queensland here. Are you satisfied that sharing of data is now available and that students are known when they turn up at one school and where their principal enrolment is? How does that fit with this regime?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.43 pm)—You raise a very important and a very good point. It is for that reason, and follows that acknowledgement, that we are committed to working with the state and territory jurisdictions to assess, first of all, the current recording mechanism and to ensure that, with any mechanism for recording or capacity to comply, we work with the state and territory governments to ensure that that capacity actually exists.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.44 pm)—How long is it anticipated that will take? It is now probably three or four years since we did that inquiry, and they were struggling at that point to achieve this. What is going to make the situation suddenly doable? Is the Commonwealth funding a special task force or agency to undertake this work? What is the time frame?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.44 pm)—I am able to provide you with a broad framework of what the strategy will include. Obviously, as I have just pointed out, the assistance of states and territories and the non-government schools sector will be called on. Arrangements for the provision of information from schools and education authorities will be the subject of those consultations and there will be assistance from the non-government education authorities in
that regard. The particular consultation strategy that is under development at the moment is expected to include Australian government ministers consulting with state and territory education ministers; information provided to the Australian Education Systems Official Committee—and I understand the next meeting is scheduled for 24 August; ongoing consultations with state and territory governments and non-government education authorities; and Centrelink dealing with individual education authorities and schools as required.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.45 pm)—I understand this does not apply to the Northern Territory because that is a blanket income management scheme, but presumably the government has some objectives about increases in attendance and enrolment in schools. Are there any projections? Is there a time frame within which we can expect school attendance to be improved and just what is that objective?

Senator SCULLION (Northern Territory— Minister for Community Services) (11.46 pm)—I think it would be the vision of all in this place that it should be 100 per cent. That is the goal, and it would be foolish of us to have any lesser target. We will be rolling this out community by community. It will not be that the Northern Territory has X number of people who should be of enrolment age and are not attending; it will be done community by community. Both benchmarks and goals will be set within the community construct. We have a fair idea of how many people should be at school and are not enrolled, and we have an idea of how many people are enrolled and are not at school. With those statistics, we should have a pretty good idea of who is not attending. We will continue to use and build on those statistics. I think we all have to acknowledge that attendance records may not be consistent across the board, but certainly the intervention gives us this opportunity to ensure that the attendance records are taken in a way that can assist us in that matter.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.47 pm)—Minister, you would be aware that the Northern Territory funds students on an average attendance basis. If we are to expect 100 per cent attendance and enrolment in schools in the Northern Territory, it is commonly understood that most schools could not cope. What do you have in place with regard to funding for capital works, for more schools and for more teachers? Have you reached agreement with the Northern Territory government that they will adopt a more appropriate form of funding so that the resources are there in schools to accommodate not the average but the total number of students that should be in school? Obviously this is not going to happen overnight, and it would be useful to know what mechanisms you have in mind and have negotiated with the Northern Territory in this respect.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.48 pm)—We are approaching negotiations with the Northern Territory government on this issue. The Northern Territory government have undertaken to ensure that they take care of the teachers. They will be in a position to assist in the matter of infrastructure—tables, desks and those sorts of things. We have also put in some funding for capital and infrastructure and those sorts of arrangements. Again, we will not be in an ideal position to know exactly what sort of expansion in infrastructure is needed until those assessments are made. We already acknowledge that in circumstances like those at Wadeye, where a lot more people suddenly turn up for school, we do need to have those pieces of infrastructure in place. Again, a fundamental part of our answer is in the
partnership approach with the Northern Territory. We are discussing the circumstances with the Northern Territory, because they are responsible for providing those materials, and they have said that they will supply those materials. We will stand there and be ready to increase our contribution, but we have already made an offer and a contribution in terms of infrastructure.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.49 pm)—Can we assume that the Northern Territory will no longer fund schools on the basis of average attendance but on the basis of enrolments?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.50 pm)—That is a question I might have to take on notice. I am not really sure. That is obviously a policy decision. I am not aware that the decision about how they would go about funding the schools has been relayed back to us from the Northern Territory government—whether it is the average census or how this changes that—but I am happy to take that on notice and try to get back to you very shortly.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.50 pm)—This has been an ongoing problem, Minister. It was identified in those inquiries that I have mentioned already that the Senate has undertaken. It has been brought to the attention of the Commonwealth for at least six years. I think that was the first year in which we did an inquiry into Indigenous education, so it has been a well-understood problem. I am surprised that it has not been at the forefront of your negotiations with the Northern Territory minister.

There are many places in the Northern Territory that have primary schools but do not have secondary schools anywhere near those communities. I know you have in the appropriations bills some money for boarding schools, but it would appear that this is not going to be an option for all students of secondary school age. Can you give the committee a guarantee that there will be a secondary school available to all students where there is currently a primary school?

Senator SCULLION (Northern Territory—Minister for Community Services) (11.51 pm)—Perhaps I could start with the last question first. No, I am not in a position to guarantee that. You would be aware of the arrangements between the Commonwealth and the states and territories with regard to the funding of schools. The Commonwealth assists, not through my department or the minister’s department but through the Department of Education, Science and Training. We would see that those arrangements would continue. But, no, I am not a position to guarantee that wherever there is a primary school we are going to build a high school.

On the question I took on notice, we would see enrolment rather than attendance as a basis for the provision of funding for the schools. I think we would all accept that that is going to be a lot fairer, certainly on the schools in terms of some of the planning. At least with the enrolment we can plan and budget rather than relying on fluctuating attendance levels. There was one other question and I have been informed that the answer to it is yes, but, frankly, I think it would be better if you could repeat the question.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.52 pm)—I would, Minister, just repeat the urgency of dealing with this question of secondary schools because there are many quite large communities where there is a full and functioning primary school but when students reached secondary school level there is nowhere for them to go. I have been into
schools where 14- and 15-year-olds are in classrooms with primary school students because they want to keep learning but there is no option for them to go to a secondary school. I am surprised that this is not central to what you are doing. You appear to be very concerned about those young people who are not employed and have no occupation and not a very good education. One of the reasons they do not have a good education is that there is no education facility for them. There may be a primary school but, as I said, in many communities I have been into there is quite a large community of secondary school age students but no provision whatsoever for educating them. If this whole approach is going to work and we are going to improve the economies of Aboriginal communities then it seems to me this is fundamentally important. I am surprised you do not have a grasp of the extent of the problem, and some sort of solution to fix it.

Senator SCULLION (Northern Territory—Minister for Community Services) (11.54 pm)—I acknowledge that the circumstances you describe exist, Senator. As you would be aware, the provision of schooling in the Northern Territory is the responsibility of the Northern Territory government. We are aware that this intervention may put more pressure on those processes and we will continue to be in discussions with the Northern Territory about how they are dealing with their responsibilities in the provision of secondary schooling for Territorians.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.54 pm)—I just make the point that, just as the *Little children are sacred* report did not reveal for first time the extent of the abuse in Aboriginal communities, it has been well known for the whole of the 11 years of this government, and no doubt for the governments before that, that the Northern Territory has not been providing adequate education for Indigenous students—not even remotely adequate education. The Commonwealth and the states reach agreement over funding for schools, and it shocks, amazes and disappoints me that so little has been done to deal with this problem. The usual excuse that is trotted out is that this is a state and territory issue and it is not something the Commonwealth has jurisdiction over. Well, we know the Commonwealth can intervene in whatever it likes. It funds schools and, in my view, it should have used its leverage of funding to extract from state and territory governments a decent education system for Indigenous students.

It is entirely the responsibility of governments, in my view, that education is so poor in Aboriginal communities. It is because there are no resources there. It is because schools are equipped for a much smaller number of kids than should be there. In the case of secondary school, it just is not available in so many areas. I do not know so much about Western Australia but I do know a bit about Queensland and the Northern Territory. It is a national disgrace that the Commonwealth can have a role to oversee education and ignore this problem, as it has done for decades.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.56 pm)—I think a response to that will require the minister to give the numbers that he alluded to earlier that are in the government’s knowledge—the number of children who are not attending schools who should be there and how many places will need to be created in schools in the Northern Territory to facilitate full attendance by the full population of school aged children in the Territory, both at primary and secondary level, right through to the end of secondary education age. I ask the minister if he can provide those and, if he cannot now, to get those figures overnight. Also, I ask if he can give an indication of the
size of the program needed to provide those schools, what the cost will be and what the
time line is for the government to meet the
responsibility it is taking on here to ensure
that every child has a place in a properly
equipped classroom with numbers commen-
surate with those in other states and jurisdictions so that their education cannot be any-
thing short of the education being given to
to children elsewhere in the country. This is
now the Commonwealth responsibility.
Senator Allison has talked about the long
knowledge the government has had of the
failure to provide proper education facilities
for Indigenous people in the Northern Terri-
tory. The government has now taken that
aboard. We have to say this is a good thing
that this provision is being made. But let us
have the numbers, the cost and the time line.

Finally, on a matter that was canvassed a
little earlier about the unsatisfactory school attendance situation and a formal warning
being given to people which will lead to fi-
nancial penalty: will that be given in their
first language?

Senator SCULLION (Northern Territo-
ry—Minister for Community Services)
(11.59 pm)—On the second question first, I
understand that is the reason that Centrelink
provide a personal interview situation for
that. They ensure that they are able to pro-
vide it in a language that is understood.

Senator Bob Brown—Their first lan-
guage?

Senator SCULLION—That is not always
the language of choice. It is the language that
the individual uses. I am not trying to get
around it but I am not sure about the term
‘first language’. But it is the language that
person is most familiar with this—yes, that is
clearly the intent, Senator.

I do not have to take the other question on
notice. The Northern Territory government
have told us that 2,500 are not attending
school and 2,000 are not enrolled in school.
They go on to say that it is not only their
responsibility, and not the Commonwealth’s
responsibility, but that they believe they are
in a position to be able to fulfil the require-
ments of 2,500 people now attending and
2,000 enrolling and then attending. They say
that they are in a position to meet that de-

Sitting suspended from midnight to
9.30 am

The CHAIRMAN—The committee is
considering Democrat amendment (2) on
sheet 5342 moved by Senator Bartlett. The
question is that the amendment be agreed to.

Senator SCULLION (Northern Territo-
ry—Minister for Community Services)
(9.30 am)—I move:

That the committee report progress and ask
leave to sit again.

Question agreed to.

Progress reported.

Senator SCULLION (Northern Territo-
ry—Minister for Community Services)
(9.31 am)—I move:

That the committee have leave to sit again at a
later hour.

Senator BOB BROWN (Tasmania—
Leader of the Australian Greens) (9.31
am)—The Greens will not be opposing that
motion, but there has been a move to sus-
pend the committee and I want to take the
opportunity here to say that if we are going
to have a sitting on a Friday then it is impor-
tant that we be able to move an amendment to that
motion, and I am considering that, to discuss just that matter. What we have is the Prime Minister of this country flaunting international law to export Australian uranium to India, which frees up Indian uranium to be put into nuclear weapons. They have rockets which shortly will be able to reach Australia. This is the Prime Minister who is going to export uranium to China, which has rockets which can reach Brisbane, Sydney and Melbourne. This is the Prime Minister who next month will sign an agreement with President Putin, of all people, to sell Australian uranium to that autocracy—which in turn is selling nuclear equipment to Iran and possibly Burma.

Senator Barnett—Mr President, I rise on a point of order. My understanding is that we have just moved and passed a motion and are about to start prayers. I seek clarification on that, Mr President.

The PRESIDENT—We have not passed that motion, Senator Barnett.

Senator BOB BROWN—We are debating the motion that the committee sit at a later hour. What I am saying is that with the change being mooted here—the motion that the committee sit later—we should take the opportunity to discuss the Prime Minister’s move overnight to breach international law and to make this world a less-safe place in terms of the future of this country and indeed the whole planet. President Putin has mooted the exchange of nuclear technology with Iran, of all places, and the military junta of Burma. John Howard is feeding uranium into that process. He wants 25 nuclear power stations in Australia. I note that he is not having referenda on those. But, to make some money for some of his mates in the mining industry, he is prepared to put the safety of Australia—and, indeed, this very fraught planet—on the line.

I remind the Senate of Professor Ian Lowe’s calculation that, even with the increased price of uranium, uranium exports from Australia will bring us less income than cheese exports. But the outcome can be much more dangerous—the outcome is that we will be facilitating the building of nuclear weapons in India. We free up their uranium for that. We will be facilitating the increasing arsenal—already standing at 200 nuclear weapons—of China. We free up their uranium for that. We will be facilitating the spread of nuclear technology from Russia. That is what President Putin is committed to doing. So we have this Prime Minister going into an arrangement with an increasingly dangerous suite of nuclear states. What is he going to do next? Will he be exporting uranium to Pakistan? They have requested it. This is a Prime Minister who takes his cue from President Bush every time. President Bush says, ‘I’ll sell $5 billion worth of nuclear technology to India.’ President Bush says, ‘And it’s okay for you, John Howard, to export uranium.’ There you go.

Senator Fierravanti-Wells—I thought you were with the communists, Bob.

Senator BOB BROWN—We have an interjection about the communists. Yes, John Howard is trading with the communists. We say, ‘Don’t do it.’ He is saying, ‘Beijing, here we come with Australian uranium.’ Who is to say what the political outcome will be later this century?

This is a Prime Minister who has lost his sense of long-term commitment to the well-being of this nation of Australia. This is a Prime Minister who has a greater connection with the big end of town than he has with the younger generation of Australians who are going to have to live with the results of this. This is a Prime Minister who has failed to make us the environmentally advanced country that we should be, with the renewable
energy technology that we should have, exporting that safely to the rest of the world, which wants to substitute the climate change fraught energy options with those which are safe.

As we go into this break, we not only have the Prime Minister taking over the Northern Territory communities without consultation with the Indigenous people but have him taking his cue from George Bush on putting uranium into an unsafe world. We object to that. We do not agree with that. If he is going to find one supporter in this country in this matter of increased exports of uranium, he will find it in Kevin Rudd. Kevin Rudd says, ‘Thank goodness, not with India, because it has not signed the non-proliferation treaty, but yes, we’ll tick off on China and we’ll tick off on Russia.’ The Greens say: we want a safer world than that. We think there are values other than money for a few uranium miners—and that includes the future safety of this planet and this country.

Question agreed to.

The PRESIDENT (Senator the Hon. Alan Ferguson) read prayers.

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE PAYMENT REFORM) BILL 2007
NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE BILL 2007
FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE AND OTHER MEASURES) BILL 2007
APPROPRIATION (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE) BILL (No. 1) 2007-2008

APPROPRIATION (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE) BILL (No. 2) 2007-2008

In Committee

Consideration resumed.

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE PAYMENT REFORM) BILL 2007

The CHAIRMAN—Here we are back where we started 10 minutes ago. The committee is considering Democrat amendment (2) on sheet 5342 moved by Senator Bartlett. The question is that the amendment be agreed to.

Senator SIEWERT (Western Australia) (9.40 am)—I would like to ask a few questions, if I may, around this specific provision as it relates to appeals. I know limiting people’s appeal rights to an internal review under part 3B of the Social Security (Administration) Act limits the rights of those people that are under the income management regime in the Northern Territory. Does that mean all their rights of appeal as they relate to anything that happens to their income support are covered under this clause? Does that mean they do not have the same appeal rights if they are breached and get an eight-week non-payment period?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.41 am)—As I understand it—just for completeness—whilst it is the same regime, one regime deals with the management in terms of attendance and the other is in terms of the child or neglect, where somebody has identified an issue from a social worker. The appeal processes are separate. In the first there is simply a Centrelink officer at officer level. They are able then to seek review by the Federal Court under the Administrative Decisions (Judicial Review) Act 1977. I un-
understand that in the second case—in the case concerning the child protection income management regime—a person would be able to appeal the decision under the new part 3B to an authorised review officer, then the Social Security Appeals Tribunal and the Administrative Appeals Tribunal. That is the difference between the two schemes.

Senator SIEWERT (Western Australia) (9.42 am)—So limiting those appeal rights to internal review only applies to those who are on the income management regime in the Northern Territory—in the prescribed areas? Can I take it from your answer that it just applies if it relates to child neglect and school attendance? I thought the NT stuff applied to anybody in those prescribed areas.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.42 am)—It only relates to income management. If it is not related to income management then the normal appeal rights apply.

Senator SIEWERT (Western Australia) (9.43 am)—As everybody is under income management in the prescribed areas, it therefore surely applies to everybody in those prescribed areas. Therefore, if you are in those areas and subject to an income management regime—other than if you are exempt; I appreciate that—surely it applies to all those areas. So, if you have been breached for whatever reason, do you still get your full suite of appeal rights?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.43 am)—Yes, indeed.

Question negatived.

Senator SIEWERT (Western Australia) (9.44 am)—The Greens oppose schedules 1 to 3 as follows:
Schedules 1 to 3, page 7 (line 2) to page 111 (line 7), TO BE OPPOSED.

This essentially covers all of the substantive areas of the bill. I have some questions for the minister around a number of the provisions that we have not explored yet. Regarding CDEP, I think we have established fairly well, both in the chamber and in the inquiry process, that, though the numbers vary, there are about 7,000 people on Community Development Employment Projects who will be moved to income support or Work for the Dole. As I understand it, and there is some dispute over the figures, there are around 2,000 to 2,500 real jobs. I want to know what will be done to assist those approximately 4,000 to 5,000 people who are moving from CDEP to income support not only to find jobs but also to address the gap in income, because, as we identified during the inquiry, there will be a decrease by approximately $76 million in CDEP from the DEWR budget. According to an answer to a question I asked on notice, around $46.9 million is being put into income support. That is a difference of around $30 million that is coming directly out of the pockets of Aboriginal people in these areas. I would like to know how that issue is being addressed, because that is a fairly substantial amount of money.

Senator SCULLION (Northern Territory—Minister for Community Services) (9.46 am)—Senators will no doubt be aware that there are a number of CDEP positions in many of these communities that everybody acknowledges are full-time positions—and those people should not be there. So we are moving those people. If it is a Commonwealth position and it should be paid for by the Commonwealth, it needs to be a full-time position, not a CDEP training position with top-up. In the last budget the Commonwealth committed significant sums of money to pay for that. We would expect it will be the same for those people being paid for local government positions—and for the Northern Territory government, which has
people in those communities. Those people who are employed on CDEP to do a job that should be full time will be transferred to those jobs.

The remaining cohort will move from CDEP to income support, with the provision of employment services. There will be literacy training and job preparation and training, as well as access to the STEP program, which in effect is how CDEP was originally intended. That is the suite of options that people will have, but, principally, much of that cohort will move to income support and employment service providers, with a whole suite of training initiatives to ensure that they can move into employment.

Senator SIEWERT (Western Australia) (9.48 am)—Do the 2,000 real jobs that have been identified include the currently funded CDEP jobs that everybody acknowledges should be full-time jobs? Does the 2,000 include those jobs, or are they on top of that?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.48 am)—No, they are not included.

Senator SIEWERT (Western Australia) (9.48 am)—In that case, could you tell me how many currently funded CDEP jobs the government has identified that should properly be funded by the Commonwealth?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.49 am)—I understand 2,000 people will be moved into real jobs, but the funding for that is not a part of these appropriations.

Senator SIEWERT (Western Australia) (9.49 am)—I understand that. We are talking about the 2,000 real jobs. Are the 2,000 real jobs that we are talking about the ones that have been identified by the Commonwealth as the currently CDEP funded jobs that should be properly funded?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.49 am)—I am not sure; I may be able to seek some further advice on it. I am not entirely sure whether the 2,000 includes the three jurisdictions of local government, Northern Territory government and Commonwealth government or whether that is just the Commonwealth number. Perhaps I will take that on notice.

Senator SIEWERT (Western Australia) (9.49 am)—I would appreciate that; thank you. There are also jobs in the community funded under CDEP that in fact are not Commonwealth. They may not be classed as local government jobs but they are jobs in communities—for example, art centres that are funded by communities but only function because they are receiving CDEP. A lot of communities, as you know, depend on those jobs for some key services. How is it envisaged that those jobs will be funded from now on? I have received a number of letters, and I am sure you have as well, from communities expressing concern that, once CDEP goes, they will not be able to fund those positions any longer—and they are not necessarily Commonwealth positions. How do you intend dealing with those positions?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.50 am)—I think it is all about organisations taking responsibility for their employees, from whom they gain either a great deal of service or a range of profitability, as in any business. Yes, a number of art centres have enjoyed subsidised workers—I think it is reasonable to say that that is the case, Senator. But, most importantly, those are training positions and there is a reasonable expectation that, after 12 months access to a subsidised training position, the employer, which would be an arts centre, would have a plan to move that individual from a training position to a full-time position.
Senator SIEWERT (Western Australia) (9.51 am)—I know we are all tired, so I will try not to get too frustrated about this. But, Minister, as you know—and I am sure many other people know—the rhetoric is all very well but there is in fact not the money to do that. It became plain through the Senate committee inquiry on arts and craft, which we have been talking about throughout this debate, that the arts centres provide many services beyond what would be classed as running as an arts centre. Essentially, they are multifunctional centres. They provide community support, they provide a broad range of training, they support artists—they do all sorts of things beyond just administering the arts centres. That is very well known. So it is all very well for the rhetoric to say that they should be moving on, but the fact is that the money is not there to do that at the moment.

I am using arts centres as an example. There are other services that communities provide based on CDEP as well, and you know as well as I do that it is all very well to say that they should be profitable et cetera, but the fact is that, at the moment, they are not and it is very difficult for them to get there. So communities are going to suffer when the CDEP money goes from those organisations if there is not something to help there. I am glad that the Commonwealth has identified those 2,000 jobs, and, while I am on my feet, I ask: are all the Commonwealth positions that are currently supported by CDEP going to be replaced by full-time positions?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.53 am)—I will answer your last question first, Senator. That is correct. All of the jobs will be replaced with full-time jobs, and we would encourage the other jurisdictions to provide the same leadership. Before I go towards giving you some comfort about those circumstances that I know you are very aware of, Senator, it is important to note that one of the reasons that there is not a bigger capacity in places like arts centres and all those sorts of things is that they are very comfortable where they are because they have this access. They do need to start thinking about their responsibility to move people forward. That is something that is clearly signalled and that we all need to think about.

Despite that, there are going to be a large number of Work for the Dole programs. So, in terms of having an increased capacity to continue to deliver a range of services, the Work for the Dole programs will be available and they will be vastly increased. It should also be noted that there is a net increase in the total services funding of $23.3 million. In terms of the employment programs, there will be a significant impact on ensuring people get that upskilling and a general support network within those communities. But we recognise the importance of the circumstances in the communities with regard to the CDEPs. We do need some sort of a Work for the Dole program, and the Work for the Dole programs will be vastly expanded.

Senator SIEWERT (Western Australia) (9.55 am)—To follow up on that, is the $23.3 million for service funding meant for the STEP program and those sorts of funding programs? Thank you: I can see somebody nodding. My next question goes back to an issue that we identified during the arts inquiry—and I am using arts centres as an example because it is one that we have just been dealing with—which is that some arts centres, because of their area, the access to the artists and all sorts of things, are much more able to cope with moving down to a profitable outcome, and some—because of their areas et cetera—cannot. If I remember correctly without having the recommendations in front of me, we recommended, and certainly discussed, funding being made
available to identify centres that are able to make that jump more quickly. Is that something that the government would consider to help identify organisations that need some extra support to be able to become profitable, to be self-supporting and to do exactly what you have been talking about?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.56 am)—You have basically encapsulated in your question exactly what we are doing. There are a number of organisations that may be on the cusp of becoming profitable. We want to ensure that those supported businesses become real businesses. When I say ‘real businesses’ I mean that they employ people on real wages. There is an expectation that the employee will be able to supply a whole suite of products, like reliability, certainty of outcome and productivity around those things that I know they will have to supply to be in a real business. So the whole nature of that relationship will have to change. But there are many businesses in Indigenous communities, particularly in the arts area, that are at that stage, and we are determined to ensure that they can move to being real businesses. Many people on CDEP have not actually been in training; they are just there or at work. So we will be providing structured training through the STEP program. And, as I have said, there will be an expansion of Work for the Dole.

Senator SIEWERT (Western Australia) (9.57 am)—I am trying not to drag this out, and I thank you for your answers, Minister. I want to go back to the difference between the money that is coming out of CDEP and the money that is now going into income support. On my calculations, it is a difference of $30 million, and that is coming directly out of the pockets of people in the communities. To me, that seems like an awful lot of money. Is that really what is happening? How is the government making up the difference between income support for people and CDEP?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.58 am)—I understand that we have a transition payment. I think that is the best way to look at how we will provide for that gap. In getting some details with regard to the transition payment, I was informed that for a 12-month period we will be ensuring that the gap, or the difference, between what they would have got on CDEP and the training wage will be filled. So, effectively, there will not be a change for a 12-month period. That is to ensure that we maintain income support for that transitional period of around 12 months.

Senator SIEWERT (Western Australia) (9.59 am)—Thank you. I appreciate that some of my questions are budget related, but does that come out of the $46.9 million that you identified in your answer to one of my earlier questions, or is it on top of it?

Senator SCULLION (Northern Territory—Minister for Community Services) (9.59 am)—No, it is part of the $46.9 million.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.59 am)—I want to ask the minister: seeing as this is a national emergency that is being dealt with and that there is to be this massive restructuring of the opportunities available to people who do not have work, what is the reskilling regime to be for those people? Work for the Dole has the connotation of taking people to do work that does not involve reskilling. That would be a lost opportunity because a lot of these people will be young and facing a lifetime ahead. They have lost opportunities through the education system up to now. What is the emergency opportunity being given to all people who are being taken off the CDEP to be reskilled
to go into a worthwhile job that actually capitalises on their potential?

**Senator SCULLION** (Northern Territory—Minister for Community Services) (10.00 am)—I think we all need to recognise that opportunities do exist in communities at the moment. We have identified a whole suite of jobs as part of this process and said: ‘This is a job here. This is needed. Why don’t we have someone here?’ There are opportunities in communities. We have identified some 3,000 job positions that are required. As I mentioned earlier, we have a net increase in the total services funding for Job Network providers of some $23.3 million for 2007-08. The Work for the Dole program is not simply about working for the dole; there are circumstances around that—particularly on-the-job training opportunities, competency based learning opportunities and preparation to understand the requirements of the workplace. Work for the Dole is not just leashing on a shovel and tapping your foot. If it is structured and supervised, it can be a very positive time that prepares people for the workplace in a whole range of ways. It might be on occupational health and safety or language. There are a whole range of ways in which people can be prepared for the workplace. There are jobs available in communities and we have a suite of funding deliverables and training initiatives that we have put in place to ensure that we can put people into those jobs.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (10.02 am)—Will priority be given to people who are not literate, to make sure that they become literate?

**Senator SCULLION** (Northern Territory—Minister for Community Services) (10.02 am)—Indeed. We have a literacy and numeracy package of some $5 million. It is targeted at both literacy and numeracy because they are both essential in the workplace. We have $1.3 million specifically for the English language.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (10.02 am)—Yes, but the question is: will all the people being taken off the CDEP be given access to the $5 million program that you just spoke about? There is a disjunction between those two things. I want to know that they are going to meet up wherever a person who has been taken off the CDEP is and that they are going to be able to gain that literacy and numeracy in their own community and not just be put into a job where the prospect of being able to do something better to tap into their potential is not available because they will not be given the catch-up that is required because of lost educational opportunities.

**Senator SCULLION** (Northern Territory—Minister for Community Services) (10.03 am)—As the senator would appreciate, you cannot just throw a one-sized net across a challenge and fix it all. We need to respect that each individual will have different needs. Some have high literacy and numeracy skills. Each individual will be assessed against a range of benchmarks that will give us an indication of exactly what sort of training they require. It will be done on an individual basis. Anybody who needs literacy and numeracy training will receive it.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (10.04 am)—I just wonder if, at the other end of the spectrum, the government is looking at the opportunities available in Western Australia and elsewhere where there is a skills shortage to give those people who do have literacy and numeracy skills the ability to skill-up to go to very high paying jobs where their
skills will be very much in demand. Has the government looked at that opportunity?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.04 am)—We are working with a number of industries and we have mobility programs to ensure that people can move to where some jobs are—particularly in the mining industry. Just so we do not confuse people who have not been in the debate, this is about the Northern Territory. The CDEP arrangements are in the Northern Territory and not outside of it, so the changes we are talking about will simply be in the Northern Territory.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.05 am)—I think the bulk of people will not want to move, but there may be some who want to take up the opportunity of lucrative vacancies that are available, for example, in Western Australia. Components of this legislation are about the Northern Territory. Other components, such as household surveillance and the draconian coercive powers of the Australian Crime Commission, intrude into Aboriginal communities right across Australia—from Tasmania to Broome—so the government should not be too precious about that. There are estimates of 5,000 to 10,000 people being taken off CDEP and put elsewhere. The point is that that is a one-size-fits-all move. The government is saying, ‘We are going to make a big move on that.’ And so the government has a responsibility to make sure that people move to something better, more productive and—I would say—more lucrative for the work that they produce as a result of it. The CDEP move has the hallmarks of being punitive. It ought not to be. It ought to be aimed at making sure that the individuals involved end up better off.

Senator SIEWERT (Western Australia) (10.07 am)—I would like to ask a few questions about how the payments under the income management regime will work. I put a few questions on notice and got some very short answers. My understanding is that at the moment a decision has not been made by the government on exactly how the income support regime is going to work. I asked whether or not there was going to be a voucher system and you still had not worked out the answer, although I think that one of the answers I got said that the community store would have a voucher system. Given the mobility of people in the Northern Territory, how is it envisaged that the voucher system will work at the community store if people are moving around—when people are visiting other people, for example?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.08 am)—The senator is correct when she asserts in her question that the voucher system will be available in the communities. Because the facilities in each community are going to be different, we are going to have to tailor this program around the differences in those communities. In terms of mobility, we are looking at a suite of issues. We are speaking with the finance sector and with the retail sector, and, with the assistance of Mr Corbett and others who have a great deal of expertise in this area, we are formulating processes so that people will have access that reflects the mobility of people on the program. We will be ensuring that the program will reflect, in the different range of stores that the voucher system will be provided for, the mobility and flexibility needed.

Senator SIEWERT (Western Australia) (10.09 am)—How long will it take to work out that process? I appreciate that, as I understand it, you are rolling these out into areas on a progressive basis. When do you envisage it happening, and what level of consultation will be carried out to ensure that the system is actually going to work? There is
evidence from overseas that it has not worked. I am aware that it took the Tanger-tyere Council in Alice Springs quite a while to get the Centrepay system that they currently operate there to work. When they first got it running they found that it was very difficult to operate it with the major retail chains. Do you intend to enter into some sort of relationship with some of the major retail chains as well, and are you considering going to a private operator to operate this sort of system?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.10 am)—There are discussions underway at the moment, particularly with some of the large stores in Alice Springs, but I am informed that the timing, in terms of the preparation, will be two to three weeks. We have reflected on the existing arrangements that you mentioned and other arrangements and we have a great deal of benefit from hindsight. I am sure that will be reflected in the rollout of the current arrangements.

Senator SIEWERT (Western Australia) (10.11 am)—I would still like to address the issue of consultation. From your answer, I take it that you are talking to retail chains. Are you talking to communities to get an idea of how they think this sort of system will best work and what they need to make it work?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.11 am)—I have touched on the fact that we are dealing with this individual community by individual community. We are not going to be rolling this out in any community until these arrangements are in place. We are speaking and consulting with the communities as to how best to achieve that. It is going to be an ongoing rollout. I think the most important thing to say is that we do not want to say, ‘Right, this program is now in place,’ and find that the financial aspects are not there. The commitment is that we will not be moving to the program in a community until those arrangements are effective, in place and well understood.

Senator SIEWERT (Western Australia) (10.12 am)—My understanding from the committee inquiry is that running this system will cost $88 million in the first year. How did you come to that figure, and, as it is anticipated that that is for the first 12 months, how much is it likely to cost into the future if the minister decides to extend it?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.13 am)—Those costings are based on the normal costing processes, but the costing process revolves around the costs for the operation including the Centrelink staff, the interview process—all the processes that hang off that. I understand that that is how the figure of $88 million was arrived at.

Senator SIEWERT (Western Australia) (10.13 am)—I must admit I have been focusing just on the NT component of this. The $88 million is purely for the rollout of this in the NT. The rest of the income management regime, as it extends beyond the Northern Territory, will be rolled out in 2008. Has the government done any costing of the rollout into communities beyond the Northern Territory, because that means rolling out across Australia?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.14 am)—The $88 million will pay for all of the interviews in the Northern Territory, for the period of 12 months. In terms of approximations of costings beyond that, we are working on those matters at the moment, as you would understand. The first 12 months and the rollout in the Northern Territory are our priority.
Senator SIEWERT (Western Australia) (10.14 am)—Sorry; I may have misheard you. So the $88 million covers the cost of the interviews for the first 12 months and it includes the Centrelink staff, the cost of the interviews and setting up the system. Would that be a correct assumption?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.15 am)—Probably the forensic answer would be that it is for the implementation and management of the program in the Northern Territory.

Senator SIEWERT (Western Australia) (10.15 am)—I want to explore very briefly the process for extending this beyond the Northern Territory. The questions I was asking you before were dealing specifically with the Northern Territory. Now I want to explore how it is going to roll out across the rest of Australia. Is it anticipated that, because it is obviously different in the rest of Australia, you would have a relationship with some major retail stores to facilitate the voucher system or the process? Would people have to go and shop in specific shops—or whatever system you come up with—to be able to use the money that is in their account that has been quarantined?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.16 am)—Whilst there have been some discussions with major retailers over a suite of issues, this is just in the exploration stage. We are having discussions and planning and developing strategies to deal with that. That is the stage we are up to at the moment and I am unable to provide any further details.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.19 am)—As I indicated, this is still part of the construction phase, but we have had numerous organisations and individuals
come to us with suggestions and sophisticated potential solutions. We think that we can provide an appropriate system. We have a high level of confidence that the system will provide the outcomes that we require. Some of the larger retailers, certainly Coles and Woolworths, have offered their assistance with the sorts of systems that will ensure that the strategy that we do adopt will be successful.

Senator SIEWERT (Western Australia) (10.20 am)—Can I go back to a question I asked earlier. I apologise; I may have missed your answer with all the other answers you have been giving me. Is it envisaged that you would go into a relationship with somebody to administer this program or is it the government’s intention for it to remain administered by Centrelink?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.20 am)—In the construct of these future programs, we are not setting aside any options or possibilities. As I said, we have a whole suite of options. Some of them are reflected in other jurisdictions and some are from private enterprise. There are a whole suite of things, and I do not think it is appropriate to say we are certainly not going to do this or that. We have an open mind on these matters and I think that is appropriate for this stage of consideration.

Senator SIEWERT (Western Australia) (10.21 am)—So at the moment we do not know how the rollout of the income regime across the rest of Australia is going to be implemented, and we do not know what it is going to cost, because the only costing that we have at the moment is the $88 million for the first year. We do not know how much it is going to cost to roll it out, who is going to operate it or how it is going to operate. This place is being asked to approve this and tick it off to say, ‘Yeah, this is a really good way of reforming our welfare system,’ when we do not know how much it is going to cost, what its impact will be, who is providing it or how it is going to be provided.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.22 am)—To assist generally with the information, the Australian government has indicated that approved non-government service providers may be used to assist with case managing those who are subject to the national income management regimes.

Senator SIEWERT (Western Australia) (10.22 am)—I appreciate that I am not going to get much further on this one. I want to backtrack just a little—I promise it will be for only a very short time. I want to ask about the appeal, where you said to me that people on the eight-week breach regime will not be caught up by the no-appeal system. Could somebody point out to me where that is in the legislation? I have spent time going through it and I apologise that I cannot find it. If somebody could point it out, I would really appreciate it.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.23 am)—I refer you to the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 at page 99, under 123ZO where subclause 18 says:

... a decision under Part 3B of this Act that relates to a person who is subject to the income management regime under section 123UB.

Senator SIEWERT (Western Australia) (10.23 am)—That is the part I have been reading. If you turn to 113UB, which sets out who comes under the income management regime, can you explain how it does not include people who have been breached and incurred a non-payment period?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.24 am)—For clarity, I am seeking more
information, but again, if the issues are associated with income management, then it is a Centrelink officer with the appeal through the Federal Court; if it is any other regime, you have the full suite of appeals including the Social Security Appeals Tribunal and the Administrative Appeals Tribunal.

Senator SIEWERT (Western Australia) (10.25 am)—It may sound as though I am being pedantic but it is a really important point. There are 1,644 people who have been breached and incurred eight weeks non-payment period in the last 12 months. It has gone up by 250 per cent and we know that Aboriginal people already are having trouble accessing their appeals. There is a special support appeals process for Aboriginal people. From anecdotal evidence in some of the answers to questions I asked earlier, I know that they are not accessing that appeals process for a variety of reasons. Given that there is a such a significant increase under Welfare to Work of the number of Aboriginal people being breached, this is a really important point. If people cannot appeal when they have been breached, that has a very serious, detrimental impact on them, their families and their community. That is why I am being so particular about trying to find out about this. The way I read it is that, if you are under an income management regime, I cannot see why you are not breached. That is why I want to make sure it is really clear that people absolutely can appeal if they are breached and incur a non-payment period.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.26 am)—The breach cohort you are referring to has a full sweep of the appeal process.

Senator SIEWERT (Western Australia) (10.26 am)—It is on the record: people can refer to it now, thank you.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.27 am)—I would like to take the opportunity here, because there is not one elsewhere, to ask the minister about a report by Ashleigh Wilson and Patricia Karvelas in today’s Australian which says that:

... 850 indigenous children have received health checks across—

20 communities in—

the Northern Territory in the first phase of the Howard Government’s intervention in Aboriginal communities.

The operational commander of the taskforce, Major General David Chalmers, revealed yesterday that the checks had uncovered a range of medical concerns, including high levels of dental problems and skin, ear, nose and throat infections.

But Major General Chalmers said he was not aware of health workers notifying authorities of any cases of child sexual assault.

No allegations of abuse have been passed to Territory police since the intervention began.

When Mr Brough announced this national emergency, it was on the basis of the threat to children. That is a real threat and the figures used in this debate point to that. I quote from his press release of 21 June 2007:

The emergency measures to protect children being announced today are a first step that will provide immediate mitigation and stabilising impacts in communities that will be prescribed ... The measures include:

... ... ...

Introducing compulsory health checks for all Aboriginal children to identify and treat health problems and any effects of abuse.

Not discounting the devastating impact of child abuse in all communities in Australia—it happens in Canberra, in Sydney and in the Northern Territory—wasn’t the minister, on a racial basis, making a point of child abuse, which he overdid, to facilitate the argument for his intervention? As a result, the whole Indigenous community in Australia has suf-
fered. He said that the point here was to have compulsory health checks. These were held up as an immediate need. We had pictures of doctors with stethoscopes going to the Northern Territory to check children ‘to identify any effects of abuse’—to quote the minister. And the first 850 checks have found zero effects of abuse.

Having been a doctor myself, I understand that, if it does not turn up in the history, you are unlikely to find the abuse, because you are not going to look for it. But on the day this announcement was made I also made it clear that it would be a breach of medical ethics and of the law to compulsorily examine children—those were the terms being used—for sexual abuse. Has the minister had time to review the overstatement and the abuse of Indigenous people right across the country that came out of those statements to proceed with this measure that the government wanted to proceed with, and all the things we have been talking about in this parliament going ahead anyway because the government has got the numbers to do it?

I ask the minister: didn’t his colleague Mal Brough make a very unfortunate mistake in the up-front assertion that there was an urgent need for compulsory health checks of all Aboriginal children—not others, but Aboriginal children—to identify any effects of sexual abuse? In fact, those checks have not discovered sexual abuse. Other means, like policing, are required to discover that. What appalled me about this process was the language used and the implications in the language used to brand Indigenous Australians in this way. I think it was reprehensible and regrettable. It was not needed. The government has the outcome.

The point here was that for the first time the Commonwealth moved to put an enormous amount of money compared to past times—not enough yet—into giving the health services, the education facilities, the community services and the upgrading of housing that are required to help Indigenous people to overcome the enormous disadvantage of neglect by governments at territory, state and federal level over decades. We agree with the government putting the resources at last where they are needed.

What I disagreed with from the outset was Minister Brough using the matter of sexual abuse, which has to be attacked wherever it is—in non-Indigenous or Indigenous communities. I give those figures again of 34,000 reportable cases of child abuse in the last year for which there are statistics, some 6,000 relating to Indigenous communities. That is a disproportionate amount, but nevertheless we are in the situation where the laws here are going to allow the invasion of people’s homes and the surveillance of Indigenous people but not of white people. Sexual abuse of children, wherever it occurs, has the same destructive impact on people’s lives. I think it was enormously unfortunate that Mr Brough and the Prime Minister used that one measurement of distress in Indigenous communities to try and win over the political support that was required for the measures that are going through this parliament today—regrettable and unnecessary. A real concern for Indigenous Australians would not have allowed it to be pitched that way.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.34 am)—There are a couple of indicators that I always see with kids: it is what the parents reckon. Just for the record, Senator, the parents have welcomed these checks.

Senator Bob Brown—I welcome them.

Senator SCULLION—I have not read the Australian this morning. It is terrific to see—if the indications of the health checks are as you say—that perhaps things are not as bad as the Little children are sacred report
indicated. We would all hope that is the case, though I suspect it is not. Senator Brown, you are a doctor and I am not, so again you may be across the indicators of neglect and abuse. This is a necessary process to have a benchmark for the health of young Australians. The parents have welcomed that. Australia welcomes that. The suite of initiatives that this government is providing through these provisions is going to make the lives of Australians in those communities much better. Just living under the veil of safety; feeling happy, safe and comfortable in your own home; and actually having a home that you do not have to share with so many people—the infrastructure issues—are all very positive aspects that are supported by all Australians.

I do not want to get into a bunfight with you about your philosophies. We accept you have made it very clear that you accept we should be doing most of the things we are doing, except in this place every amendment you have collapses and scuttles the bills completely. I have a difficulty and I am sure Australia has a difficulty in understanding how you can stand in this place and say: ‘Senator Scullion, I support everything this government is doing. We think they’re good things. We think they’re overdue. But every amendment we put forward completely scuttles everything, with the exception of the alcohol restriction and a couple of other minor areas.’ Effectively, the provisions that you seek to wipe from this bill wipe out any real impact. I have a bit of cynicism, Senator, that you are fair dinkum about this. Any glance at or scrutiny of the amendments you have put forward shows your attempts to scuttle the bill. I find that a little inconsistent.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.37 am)—You are newer in this place than I am, Senator Scullion. You have to understand that when a sledgehammer is brought in you have a choice of going with it or going against it. This is sledgehammer legislation but there are good components to it. We are making it very clear that long before you came to this place we supported and were calling for the services that should be given to Indigenous Australians—for example, the half a billion dollars a year that is required to help close that 17-year gap in life expectancy that advantages non-Indigenous Australians over Indigenous Australians. To close that longevity gap would cost approximately half a billion dollars according the AMA, and there is a move in that direction but it is not in this legislation.

Let me go back to the point I was making. We absolutely support children having medical checkups as part of that program. As the task force commander, Major General Chalmers, revealed yesterday, the checks have uncovered a range of medical concerns including high levels of dental problems and skin, ear, nose and throat infections. It is long past time that the medical services that would fix those illnesses were available in these communities—for example, there are extraordinary statistics in relation to the loss of hearing because of ear infections in Indigenous communities. They largely come out of the failure to provide adequate medical care—primary health care—and then treatment when the problems arise.

We have heard about the failure to provide adequate education facilities. There are thousands more places needed at schools if there are going to be the same attendance figures at these schools that we have elsewhere. But the point I am making here is that it would have been much better for the honourable Minister Brough to announce that he was going in to attack the dreadful statistics for Indigenous Australians dying young, not just in the Northern Territory but right across this country. You only have to look at the statistics in Redfern to see an example of that,
fantastic though the medical services provided by the Indigenous community there are. Minister Brough did not use those statistics; he chose to pick on the equally appalling statistics of child sexual abuse—and so did the Prime Minister—as a fulcrum for this move.

All I am saying, because it needs to be put on the record, is that that was an extraordinarily damaging way to go about it. It was advantageous to the government but devastating for Indigenous communities. It was surely a political advantage for the government but a very great disadvantage for Indigenous Australians, who have enough to put up with in terms of the way in which they are publicly presented. I am glad that the medical interventions occurred, and I am glad that the high levels of health problems suffered by Indigenous children have been uncovered and will be fixed up. That is how it should have been decades ago, but now at last it is happening because the money and resources are being put in there. We did not need calumny about the Indigenous people to get this action going; that is my point. We cannot undo that now, but thinking about how Indigenous people are portrayed and their need for pride in self—the same need that all of us have—would have been a better way to go, from the outset. There is good coming out of this. I agree with Senator Scullion about that, and I congratulate the government for that, but it was most unfortunate the way that Minister Brough went about it and I hope he does not do that again.

Senator SCULLION (Northern Territory—Minister for Community Services) (10.42 am)—I will briefly respond. I thank you for acknowledging that this is a good program and for recognising the work that the government is doing. I recognise that you also have problems with it. Senator Brown, this government and Minister Brough responded very responsibly in the discussions about why they were moving into the communities. They were responding to an independent report that indicated that there was widespread sexual abuse of children in the Northern Territory—I respect the issues that you have been talking about—and that is why it was declared a national emergency and we moved on it. Nobody is in disagreement about the circumstances that are there. As I said, I do not want to drag this matter on but I do not think I can leave the record unclarified. This was a response to sexual abuse of our most vulnerable First Australians. I am very proud of the government’s intervention in this matter.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.43 am)—It is harrowingly frustrating, given the fact that Indigenous Australians are dying 17 years younger than all other Australians due to a lack of medical care and facilities, proper housing and good education, that that was not seen as a national emergency a decade ago and that it took one of a number of reports on the plight of Indigenous children to trigger this. Mind you, the recommendations of the report on the plight of the children have been ignored in this process—the one on consultation with Indigenous people in particular—and too much of a political point has been made of the distress. We have yet to see how the government is going to handle that particular problem. Let me reiterate this: there are no facilities—zip—in Northern Territory jails, which currently house 900 people, a number of them for sexual offences, to help people overcome the problems which have put them into those jails. I hope the government is looking at that very difficult end of the process. Locking people up without helping them to take a different path into the future is a very wasteful exercise for society as a whole.
The TEMPORARY CHAIRMAN (Senator Barnett)—The question is that schedules 1 to 3 stand as printed.

The committee divided. [10.49 am]
(The Chairman—Senator JJ Hogg)

Ayes………… 46
Noes………… 6

Majority……… 40

AYES
Adams, J. Barnet, G.
Bernardi, C. Bishop, T.M.
Boyce, S. Chapman, H.G.P.
Colbeck, R. Cormann, M.H.P.
Crossin, P.M. Eggleston, A.
Evans, C.V. Ferguson, A.B.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Forshaw, M.G. Hogg, J.J.
Humphries, G. Hurley, A.
Hutchins, S.P. Joyce, B.
Kemp, C.R. Kirk, L.
Lundy, K.A. Macdonald, I.
Marshall, G. Mason, B.J.
McEwen, A. McLucas, J.E.
Moore, C. Nash, F. *
O’Brien, K.W.K. Parry, S.
Patterson, K.C. Payne, M.A.
Polley, H. Ray, R.F.
Ronaldson, M. Scullion, N.G.
Sherry, N.J. Sterle, G.
Trooid, R.B. Watson, J.O.W.
Webber, R. Wortley, D.

NOES
Allison, L.F. Bartlett, A.J.J.
Brown, B.J. Milne, C.
Nettles, K. Siewert, R. *

* denotes teller

Question agreed to.
Bill agreed to.

APPROPRIATION (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE) BILL (No. 1) 2007-2008

APPROPRIATION (NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE) BILL (No. 2) 2007-2008

Bills—by leave—taken together and as a whole.

Senator BARTLETT (Queensland) (10.52 am)—I just have one question for the minister. I have many, but I will keep it to one; some of my questions were asked on notice in the Senate committee hearing. I want to get on the record whether the appropriation bills before us include funding for the extra Centrelink staff that will be required to do all the income quarantine management that we talked about earlier this morning and last night. How many extra staff are anticipated to be required for that role?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.53 am)—The extra Centrelink staff will come from the $88 million, as I indicated earlier. I do not have the numbers but I know that the anticipated number has been covered by the $88 million.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.54 am)—I ask the minister if it is so that the government underspent the allocation for Indigenous measures in last year’s budget by $560 million and, if that is not the case, what is the figure?

Senator SCULLION (Northern Territory—Minister for Community Services) (10.54 am)—I am not able to validate whether your assertion is correct at this moment nor am I able to provide you with how much we spent on Indigenous affairs last year. It is a comprehensive question and I will have to take it on notice. I would also like to take the opportunity to correct a submission I made in reference to an earlier
question. I want to clarify that the CDEP transition payment will continue until 30 June 2008, not, as I incorrectly stated, for 12 months.

Bills agreed to.

Bills reported without amendment; report adopted.

**Third Reading**

**Senator SCULLION** (Northern Territory—Minister for Community Services) (10.56 am)—I move:

That these bills be now read a third time.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (10.56 am)—The Greens are pleased that there is a massive new awakening by government to the needs of Indigenous Australians. After decades of neglect, indifference and failure at state, territory and national levels, these measures bring to the forefront of Australian political concern the need to bring justice in the administration of taxpayers’ money and the allocation of resources to First Australians. We are particularly behind moves in this legislation to bring the much-needed health care, education, housing and security to Indigenous communities in the Northern Territory that have been so wanting for so long. My question a moment ago about underspending in last year’s budget—and if it is not $560 million it is an enormous amount of money—shows how rapidly the failure of government can, for right or wrong reasons, turn into a much more positive outcome.

The Greens will not be supporting this legislation, because the representations to us from Indigenous Australians are that they are being left out of the consultation and presentation of this legislation. That of itself ought to have changed. The government should have adopted not just the report into the plight of children in Indigenous communities and its findings but also the recommendations. It should have consulted with Indigenous people. It should have taken into account their pivotal role in determining their future.

The change that has occurred here of course is that the resources and the wherewithal are being supplied. But the harm from setting Indigenous people aside—not considering them, not consulting them and not intending to do so in the way that they want—will be ongoing. We also deplore the unnecessary racism in the way in which this legislation has been presented to this national parliament. Setting aside the Racial Discrimination Act was not necessary; but it has been set aside, and comprehensively, in breach of international and domestic mores. That debate has been had. We have opposed that. These acts all set aside the Racial Discrimination Act so that the imposition of the government’s will, through appointed people in communities who have total control over what Indigenous people do, in pursuit of the aims of this legislation is going to cause ongoing harm.

In this brief presentation I cannot go beyond one of the racist factors that are so salient here—that is, the use of the coercive powers of the Australian Crime Commission to invade the community and domestic rights of Indigenous people but not non-Indigenous people. In plain language, the government has devised those coercive powers for international drug traffickers, white-slavers and triads. Now, for the first time, they will be used in these communities in Australia. This is unnecessary because good policing, which has been denied to these communities, would do this job. This particular racist approach says: ‘If you’re black and involved in crimes of violence or abuse then the coercive and intrusive powers of the Australian Crime Commission may be used against you, whether you are in Redfern, Brisbane, Perth, Launceston or indeed the Northern Territory.
But if you’re white and involved in the abuse of children or violence against others then the ACC cannot be used against you.’ That is the most flagrantly racist approach, and it is so unnecessary.

It is heartening, however, that in the first 850 medical check-ups of children it has been discovered that they are suffering from a range of maladies which can now be fixed because the resources have been put there. The minister’s initial asseveration that check-ups were for discovering child sexual abuse has been sensibly put aside, because that would have been an illegal approach—which ought to have been known by the government at the outset. No sexual abuse of children has been discovered in these first 850 check-ups. What is so good about this is that those children who have been found to have high levels of dental, skin, ear, nose or throat infections or problems can now be fixed up early and have a chance to have the same life expectancy that the rest of us have.

We Greens will continue, as we have done over the last 10 years in this place, to fight for a fair go for Indigenous Australians. This legislation moves towards giving the resources that are required here, but what it does not do is give rights to Indigenous Australians. It provides extraordinary government powers and for government imposed overseers in communities throughout the Northern Territory to supervise the government’s intentions in a way that no non-Indigenous community would accept outside overseas countries which have autocracies or worse. I put on the record here today that the government, through the minister, has made this commitment, and I quote the minister:

... what is our plan? At the end of five years these communities should enjoy the same level of law and order, the same level of housing and the same level of amenity that the rest of Australia enjoys. Will the land be given back at the end of that period ... Absolutely.

That is a commitment from the Howard government that we Greens will be pursuing right through the next five years. I give this other commitment. We will also be pursuing, because you cannot divorce these things, the right of Indigenous Australians to run their affairs; the right of Indigenous Australians to be decisive about where their lives are going and where their communities are going; and the right of Indigenous Australians to their culture—to their 60,000-plus years of heritage in this country, to their bond with the land which this legislation threatens so palpably, and to their beliefs, their culture and their aspirations—which is an important thing which has been left completely off the agenda in this legislation. These are things which this legislation undercuts because it does not take them into account. Surely we must also pursue their right to their language. This government has defunded language programs for Indigenous Australians at the same time as this legislation is before this parliament. That must be rectified because there can be no greater assault on people’s culture and wellbeing than to deny them their language and turn a living language into a dying or extinct language. We should not be allowing that to happen in Australia in 2007.

There is a plurality of views in this place. The opposition supports the government in this legislation; we oppose it. It is not because we opposed the funding and the measures for better care for Indigenous Australians, as I have said, but because it need not have been put in this way. It need not have sidelined Indigenous consultation. It need not have been after 10 years of inaction. However, we will be supporting the good outcomes while tackling this government and its discriminatory attitude to Indigenous Australians in the months and years ahead. We take that charge seriously. If a Rudd government is elected in November, we will be no less diligent in doing the best we can in a
parliament which has no Aboriginal voice to do, through the Aboriginal community, as the message stick presented to this Senate said: “Sit down and talk with us. Take us into account. Ensure you listen, when dealing with Indigenous issues, to the Indigenous people and do not dispossess us again. After 200-plus years, do not dispossess us again.” And there is too much dispossession in this legislation which was unnecessary.

It was a difficult decision whether to support or not support this legislation. In a government-dominated Senate and with opposition support, the outcome will not be different. Call it symbolic if you will, but we strongly support the notion that, if we are going to debate issues this important to the First Australians, they should be taken into account all the way down the line. They have been dispossessed of their right to a voice in this process over the last two months or so. Our objection to that is very deep and very great and it will not go away.

Senator BARTLETT (Queensland) (11.09 am)—It is important to note at the outset that throughout all of this debate, and indeed debate in the other place, there has been no Aboriginal voice present to be able to contribute. That remains a core problem for our parliament. Obviously none of us here can do anything about that at the moment. We need Indigenous voices present and playing a fundamental and key role in the debates that we have in this place when we are all talking about what needs to be done for them. Their not being able to have their voice present in this debate is a serious problem and something we still need to do a lot more about to tackle.

That makes it doubly disappointing that the one process that would have provided a genuine opportunity for the input of Indigenous voices—the Senate committee process—ended up being such a farcical and truncated process. We obviously did hear from a few Aboriginal representatives—nowhere near enough and for nowhere near long enough. Nonetheless, the Senate has at least through its debate here this week played a useful role in exploring some of the many, many issues—some of them quite complex—that are contained within this legislation.

There are five bills before us. I would indicate that the Democrats will support the two appropriation bills and I would ask that they be put separately when the final vote is taken. We do need more resources, of course. I am not convinced that all of the resources in those appropriation bills will be wisely spent, but certainly we are not going to in any way be standing in the way of those resources going into those communities. Of course, it must be emphasised that many things are happening, and many more things need to happen completely outside the specifics of the details of the other legislation we are dealing with here today and through this week.

However, the Democrats cannot support the other three pieces of legislation. We have tried to improve them throughout the week and make them workable, but we have not been successful. We did support them at the second reading stage because we wanted to genuinely engage with the process and see if we could make them workable, but we have not succeeded in that. I am not surprised we have not succeeded, but I think it was important to make the effort. Consequently, we cannot support them at this final stage. They each contain some measures that are completely unacceptable to the Democrats. The key reason why they are unacceptable is that we do not believe that they will work and I certainly have serious concerns, at least about some of them, that they could well cause further harm.
I am certainly happy to give plaudits when they are due to a politician from any party. I think my record shows that. I am quite prepared to acknowledge the priority and focus which the current minister for Indigenous affairs has given the area. I have for a long time called for all of us to give greater priority to the issues affecting Indigenous Australians. I would hope that this debate is not the start and finish of that—that we do maintain that priority for Indigenous peoples across Australia and on all of the issues of concern to them.

As one of a small number of senators—another is my Democrat colleague Senator Andrew Murray—I have called repeatedly in the Senate for much greater priority to be given to the protection of children. I also welcome the fact that the Indigenous affairs minister is seeking to do that. But, whilst it is important to welcome and acknowledge a determination to act, one cannot be expected to give plaudits to actions that I do not believe will work. Good intentions are not good enough. Ideological frolics or narrowly focused obsessions are no substitute for practical results and evidence based measures. Frankly, we still have not seen a lot of that. We have seen a lot of assertions but not a lot of evidence to demonstrate that these things will work. There is a lot of evidence around to detail why many of these things will not work, because a lot of these things are not new and have been tried before. Certainly we know the enormous damage that has been done in years gone by when governments have basically taken total control over the lives of Indigenous people, often with the best of intentions. I have great fear that the same will happen again.

Also disappointing is the attitude that is prevalent with Minister Brough in particular of that total certainty that he is 100 per cent right about everything and his complete inability, it appears, to listen to or even acknowledge other views. I certainly do not suggest that I or the Democrats have it all right; that is why it is all the more important that you seek to work together. Last night I mentioned the positive results that have been achieved by people working together on the issue of petrol sniffing, for example. We have not seen that here.

Again I draw the Senate’s attention to the very clear cut and quite specific comments made by people like Noel Pearson who are seen as being strong supporters of the government’s actions. He has said that this legislation ‘needs to be decisively improved in some crucial respects’, and that has not happened. He has said that it would be a ‘grave mistake’ for the federal government to be intransigent to amendments to this legislation—well, they have been. They have made a grave mistake and, unfortunately, the consequences of that grave mistake could mean quite a lot more significant harm to Indigenous Australians. I hope that does not happen. I hope that very quickly there will be recognition of the serious flaws here and that amendments will be made. I have no doubt that we will be back amending some of this legislation, possibly quite soon. I certainly hope amendments do come through to improve it, because that desperately needs to happen. But it has not happened here.

One thing I think Mr Brough was right in saying at the Press Club the other day was that if you actually do not think this will work then you should not support it. I understand why the Labor Party are taking the position they are taking, but I think it is a serious problem. There is no doubt that many in the Labor Party have serious concerns about the workability of this package, and so they should. At the end of the day you have to take a stand on what you think is right and whether the legislation will work or not. I do not think this will work. I think it is dangerous and damaging, and for those reasons I
cannot support it. But I and the Democrats will continue to give priority to Indigenous issues, to follow through on what is happening here, to try and provide an avenue for voices to be heard and to encourage the government to listen.

I must mention the example of Minister Brough in the Press Club the other day, where he made comments when talking about the Little children are sacred report that I just find horrendously insulting. There was this continual suggestion that nobody else has done anything and that nobody else cares but him. He asked whether, come the Monday morning after the report was released and the parliament sat, he had heard any questions on this issue asked by the Democrats, the Greens or the opposition. ‘No,’ he said. I know he is in the House of Representatives and we are in the Senate—I think he has probably figured that out—but, as the minister here, Minister Scullion, would know, we quite specifically asked him a direct question. I made a very long late night adjournment speech on the issue and raised it in another speech. My colleagues also put out statements about it and any number of Indigenous and other groups around the country put out statements. I cannot speak for the other parties on that.

When you are getting that sort of slur in front of the entire press gallery at a Press Club function, saying that none of us even raised a peep when we were here directly asking the government ‘what are you going to do about it’ in parliament, apart from it really getting up my nose, understandably—that is neither here nor there; you get used to that stuff in this place—it is a suggestion that no-one is even hearing a word of. There is no recognition that anyone is even saying anything, even when you are asking questions directly in the parliament. To me that is an indication of just how incapable the minister is—certainly that minister; I am not reflecting on the minister in the chamber at the moment—of even knowing what other people are saying. That is the frustration. I said this in my opening comments. This is an issue where there is actually so much common ground. There is so much agreement about the need to do so much more and there is so much potential for people to work together. For the government to take an approach where they actually shun that and put big bazookas right in the middle of the common ground until they can blow it all away and people are stuck on either side of a great canyon is just such a tragedy and almost guarantees it will be a missed opportunity.

It makes it quite hard to sit in the middle ground when you have people firing bazookas from either side of the canyon, because you tend to cop them from everywhere, but I see that as a key part of our role—to continue to rebuild the common ground that is there and that desire that is there amongst Indigenous people. They are the ones who have been calling out for so long for strong action, priority, extra resources and support. The moment that you respond to their calls is not the moment when you should stop listening to them. Simply too much of that has happened. I see it as of key importance from here on in to make sure that that stops happening.

It is also a very unfortunate indication that there is a lot of politics being played here. Again I am talking about Minister Brough’s approach. In passing, I would note that Minister Scullion’s approach throughout this debate has actually been quite a positive one, I think, given the constraints within which we are all having to operate; I am not passing these comments at him. But it just shows how much politics is being played when—again looking at the minister’s Press Club address this week—so much of it is about attacking everybody else; attacking all the other political parties; attacking all of civil
society. Everybody else has failed and he is the saviour. As I said at the start, I welcome the fact that he is giving priority to this, and I think there is still potential to do a lot of good for that reason. You can have all the best policies in the world, but if you are not actually giving it priority nothing will work. You will be distracted, and you have to follow through on something like this because it is an issue where the hard yards are part of what is necessary.

It is an issue in which the inevitable consequence of playing politics is that everybody else ends up having to do the same thing, because it is the only way to engage if that is the way the debate is run. Particularly when we are talking about Indigenous issues and particularly when we are talking about children, it is too important for that. I certainly urge Minister Brough and those within the government who have some influence on these things to seek to change the approach. It is not just about the black letter of what is in the laws that we are about to pass; it is the approach that is taken that is pivotal.

If there is not that respect, that cooperation, then your chances of success are minimised. For example, in September last year the Senate passed a motion unanimously expressing support for child protection to be made a national priority. When I initially put that motion forward, it was voted against by coalition senators because that was what they were told to do by the minister. The minister wanted me to amend the motion to make it beat up on the states more. I was not going to do that, because the motion was about all of us acknowledging that we all need to give it priority.

To their credit, once coalition senators realised what they were voting against, they got on the phone and asked: ‘What the hell are you doing? Why are we voting against this?’ People got in touch and asked: ‘Can we redo that and amend the motion a little bit?’ I could have just said no, jumped up and down and said, ‘All of the coalition senators have just voted against giving priority to child protection.’ It would have made a good press release, frankly, and it would have been something I could have used repeatedly to beat them over the head with. But I did not do that, because my aim is to try and get shared commitment to giving priority to it.

So I recommitted the motion with a few very minor amendments to help people save face, and that is what is on the record. I think it is much better that that is on the record, because I can continually point to the fact that the Senate unanimously expressed support for child protection to be made a national priority. And, frankly, we still have not done enough to enact that across the board. That, to me, is what needs to happen in the approach that is taken, and there simply has not been much of that in the way this whole legislative process has occurred.

I remind the Senate that the call was made by the Combined Aboriginal Organisations of the Northern Territory for this legislation to be deferred just to the next sitting week in September—only for a month. That would have enabled senators and the Senate committee to get out to the Territory, to hear from people directly and to not just have to rely on second-hand anecdotes or five minutes of questioning before a committee hearing here in Canberra. Frankly, I think it is a real insult to the people of the Territory as a whole, as well as to Indigenous people, that the Senate did not provide them with that respect. This legislation will have enormous impacts on everybody in the Territory, and it does go beyond the Territory as well, of course, in some respects.

To deliberately shun the opportunity of hearing from people in the Territory and of going there is totally unacceptable. At no
stage has anything been pointed to in this legislation that means that, by passing it tomorrow, a child would be saved the next day. They are important measures, and we are certainly not wanting to hold them up. Neither were the Combined Aboriginal Organisations of the Northern Territory. That is why they suggested September, and that is why the Democrats did not support the second reading amendment of the Greens that sought to put it off to October and rerun the whole second reading debate.

It is important to get on with it. I do not want to be falsely accused of deliberately trying to hold this up, because we are not. But we want to do it properly, and we should do it in consultation. It is particularly bizarre—and I know that people have made this point, but it does need to be reinforced—that we have had the Prime Minister making huge amounts of play, quite rightly, on the failure of the Queensland government to engage in any consultation with Queenslanders about what is happening with their local councils. We have had the Prime Minister saying things like, ‘It is a total travesty of democracy to refuse to consult people about what you are going to do that is going to affect them.’

Whatever people might think about what is happening with local councils in Queensland, it is nothing compared to what is going to be done to Aboriginal communities, whole towns, throughout the Northern Territory. It is going to affect them in an enormous way. I hope that effect is positive. I am sure it will be a mixture. There will be some things done that will be positive and there will be some that I am very concerned will be negative. But you cannot have that double standard of saying that it is absolutely crucial that people be consulted about what you are going to do that is going to affect them about amalgamating local councils, with all due respect to them, and then have government moving in and taking over virtually every aspect of people’s lives in entire townships and saying, ‘There is no time to consult.’

As was pointed out in the debate yesterday by Senator Siewert, when emergency intervention relief teams go into places in an international setting, one of the first things that they do is consult with people about how to go about things and when to put the first bricks in place. That has not been done and you cannot just say, ‘We cannot do it because it is an emergency.’ If you genuinely believe that you cannot do it because it is an emergency then you do not know what you are doing, frankly.

The other point that has to be made is that this debate has categorically demonstrated that the government have dismissed the Little children are sacred report. They used the failure of the Northern Territory government to respond to it as their justification for intervention—and I am certainly not defending the Northern Territory government, let me tell you that. One of the most consistent messages I heard from people, whether they were for or against what the federal government was doing, was that none of them had a kind word for the Northern Territory government’s actions to date. I am not precious about state rights at all; I am precious about getting results.

Overriding the Northern Territory government does not bother me if it is going to be for good, but the federal government used the fact that the Northern Territory government had not responded to the Little children are sacred report as their justification for all of this. Now the federal government have not responded; they have dismissed the whole thing. But they continue to hide behind it as a justification. Minister Brough did it again at the Press Club, referring to it a number of times. He again referred to the first recommendation, saying, ‘This is why we had to
do this: the first recommendation said it was a national emergency. He again ignored the second sentence of the first recommendation, which talked about doing it in consultation and partnership, and the government have basically dismissed all of the others.

We had the travesty of the Senate committee charged with an extremely brief inquiry into this legislation not even being able to hear from the authors of the report. It is not that the report is perfect but, if nothing else, those people have spent the last year talking to Aboriginal people all around the Territory about precisely this issue of child protection, and to think that they had nothing worthwhile to say to us about this is ludicrous.

In summary, there are measures in the bills that the Democrats do support—measures to do with alcohol, pornography, policing measures, community stores and some aspects to do with governance—but there are fatal flaws within each of them. For that reason, we cannot support them. We are very concerned that they will not work and will do more harm, but we will keep working with the issue and we will seek to try to continue to work together with people wherever possible, because all of us still need to continue to give this priority. We all need to follow through on all of the words that we have been saying this week, and that particularly includes that this has to be an issue for the long haul.

Senator CROSSIN (Northern Territory) (11.29 am)—I rise to say a few things in summing up the debate about these five bills before us today. I know it has been a long week for people. For some people, it has been a long fortnight. For some of us, it has been a long couple of months. It is going to get even longer still once we leave this place and hit the bush first thing in the morning. I think this presents an opportunity for everybody to start to turn things around. I outlined on Tuesday night what I feel about this legislation. My feelings certainly have not changed. I have major reservations about how this legislation is going to be implemented and the implications of it for some Indigenous people. I concur with what Senator Bartlett has said. I think that for this government to hide behind the major recommendations in the *Little children are sacred* report, to not attempt to engage Indigenous people in this major change and to not wait until the Northern Territory government have released their response to this report—which I understand they will do next Tuesday—has been to act in haste and in some ways has meant that people have had the impression that this whole exercise has been politicised.

We are here to appropriate $587 million. Some of us are wondering if that money is the underspend from last year and, if so, whether we are just spending underspent money rather than new money—but let us not go there at this time of the debate. If we are looking at quite a large amount of money for 70 communities in the Northern Territory, then let us make sure that it is spent properly and appropriately. I noticed yesterday that ABC news had the headline: ‘Task force identifies policing, housing needs for NT communities.’ I looked at that and thought: ‘Oh, yeah? Like some of us didn’t know that 20 years ago?’ I have been to all of the 70 communities that have been identified in this legislation and I have known for decades that all those communities wanted more housing, policing where it was needed, youth programs and family support programs. I am not sure why we are seeking to reinvent the wheel. It might have come as a surprise to some people who read the newspaper article claiming that Major General Chalmers has now released one of his further reports after visiting 66 communities. The article said:
He says they have found common issues across the Territory including the need for more policing, youth activities and housing improvements.

Gee, that is not new. For those of us who live and work with these people, who call them friends and, in some instances, family, this is nothing new. If you picked up the phone and made 70 phone calls you would find that CEOs of most of those community councils would have audit information and be able to tell you exactly which houses need repairs or demolishing. Let us hope that we are not going to waste money by reinventing the wheel.

Major General Chalmers went on to say that, at a meeting in Alice Springs, he was disappointed to find that there were people either deliberately or inadvertently spreading some misinformation. I believe that was because there is still a chronic lack of information out there on the ground about what exactly this all means. Some of that can be displaced by a better communication strategy from this government. The sooner that is up and running, the better.

I have raised concerns about the Elliott community not being amongst the 70 communities. I got a response from the minister about that. In the meantime, I have had further correspondence regarding that community from someone who said: ‘I can’t believe that Elliott is not on the list. Of the 45 communities that were visited during the inquiry, Elliott was the worst as far as alcohol and sexual abuse of children were concerned. This was due to its proximity to the highway. Elliott has an incestual abuse history dating back to the 1960s. In recent times it has been the hunting ground of at least two non-Aboriginal paedophiles who abused numerous children.’ The question I was asked by this person was, ‘Was it stupidity or fear of failure that led to this community being excluded?’ If we want to hold up the Little children are sacred report and say that we are doing this to prevent further abuse of children and because we want all kids to be safe, I put to this government that Elliott should be included on this list as soon as possible. I am not sure what other evidence I need to give you to convince you to do this if not by close of business today then first thing on Monday.

The other concern I have is about the stories that are now starting to come out about this intervention. Robinson River is one of the 70 communities. I understand that at Robinson River there are women who have been undertaking a fencing project. They actually know how to fence out there. Senator Nash can probably relate to this. They completed a fencing contract last week, I understand. The Aboriginal corporation out there was planning to purchase materials so that they could continue with other houses around the community. A couple of things have happened that I have heard about. I understand that Territory Housing, which look after the three staff houses for the education department and the health department, are about to bring in an outside, non-Indigenous contractor to erect new fences around the three houses they control. If the federal government has now taken over the running of the Robinson River community, I would urge them to pick up the phone and say to Territory Housing: ‘Stop that. What are you doing?'

If this is an intervention strategy about empowering Indigenous people then can’t you make sure that the Northern Territory government uses people on the ground to do the work? Why is Territory Housing bringing in an outside, non-Indigenous contractor to erect a fence when there are women in the community who can do it and who could be paid for it? If we are going to have an intervention strategy, let us get serious about this and let us start picking up the phone and saying to other governments and other depart-

CHAMBER
ments, ‘If there are local Indigenous people who can do the job then get them to do it.’

The accountant out there has shown me a disturbing document that has equally bad ramifications. The federal government, through FaCSIA, has a tender document on the government tender website calling for contractors to come in and repair the houses at Robinson River. Looks like our resident Indigenous carpenter and his gang are also about to get the chop. What is going on out there, seven weeks into this intervention, when we have Indigenous fencers and Indigenous carpenters at Robinson River who are capable of repairing houses but we have FaCSIA with a tender on its website calling for contractors to come in and do it?

I would have thought that this would be the start of turning this around. I would have thought that this intervention would stop this stuff happening. I would have thought that people in FaCSIA would be alerted to this and would use some positive discrimination to ensure that, where there were Indigenous people on the ground who could do the job, they would be given the job and encouraged to do it. I would have thought that their capacity to undertake work such as this would be encouraged. Isn’t that what this intervention is about? If that is not what it is about then I think the government will have missed the opportunity that they say is going to turn around the lives of people in this community. So there are a couple of examples already, in the seven weeks, where, unless the government take a very proactive, interventionist role in what is happening in communities, we will not see a significant change; in fact, we will see a significant turnaround.

In the Northern Territory News yesterday concerns came to light about non-Indigenous public servants who think it is a great challenge to get out there in the bush but, once they get out there, find that things are very different. In his column, Barry Doyle writes:

Philosophies and intent aside, there are already whispered reports of problems with the planned logistics of the operation.

He goes on to say:

For instance, some federal public servants who are earmarked to join the incoming team have expressed disquiet about accommodation. The fact that they will be going to some areas where housing is substandard or non-existent for the residents seems not to have registered that it may also apply to them.

Suggestions of tents have not gone down well with some. That is going to be a fact of life for people who volunteer to get out there and help, and somehow this government is going to need to manage that. It is not easy out bush. There is a significant lack of accommodation. If, as I have seen in the papers, demountables are placed at Imanpa for people to live in, it might be fine for a couple of days or a couple of weeks, but it will be pretty hard going for people if they are going to sustain that over many months. I think that also is a concern that this government will need to monitor.

Even though this legislation releases money to be spent on people, I have concerns about whether the children who need further follow-up will get it. In the Senate inquiry, we heard from Major General Chalmers that the names of those kids who needed additional follow-up had been given to NT Health. People in NT Health tell me that those names have been on a list for 11 months. They stay on that list because NT Health need the additional money and resources to bring specialists and outreach services to town. I have not yet heard from the government that this money is going to be spent in that way. If this money is going to be spent health-checking kids and putting them on a list which just sits there—if kids
never get off that list because they are not getting the further operations or other treatment that they need—then this government has missed and wasted this opportunity.

I know that the task force went into Yirrkala sometime in the last week and got short shrift, because one of the problems with this strategy is that it does not recognise good communities. It treats all of the communities the same. It has not sought, first and foremost, to intervene in those communities that need help the most and it has not looked at the way in which it can strengthen existing communities without intervening. Perhaps there needs to be a two-pronged approach to this, but there is not; there is a one-size-fits-all approach. Senator Bartlett is right: that is what you get under this minister. It is his way or no way.

I have heard no mention in the last fortnight of the new Community Schools Partnership agreement that has been signed at Yirrkala between the Yirrkala school and the Northern Territory government. That will see an injection of an additional $5 million from the Northern Territory government over five years, which means that they will get their assistant teacher position allocated to them, even though they are not entitled to it under the staffing formula. It will see two cultural officers and school attendance officers placed at that school, as well as additional resources. In return for that, the school has agreed to attendance targets. It is my understanding that it aims to increase the attendance by 40 per cent over the next three to five years. That is a way in which the Northern Territory government has engaged the Yirrkala community in tackling the nonattendance at that school in a positive way, not in a punitive way by targeting their welfare payments.

It is about engaging parents and the community in being part of the school and realising the value of education, and about getting them involved. I have heard nothing from this government to suggest that that is their philosophy, that they will be seeking to work with the Northern Territory government to roll out 69 more community partnership agreements across the Territory. I have heard no recognition at all from this government that that is a model that they would want to get on board with and duplicate.

Yirrkala is a community that is operating efficiently and effectively. It is a strong community and always has been. I think that the task force going there not knowing that background and not knowing that the partnership had been signed just two weeks before is another flaw in the system as this intervention package is rolled out. There are other communities that are also doing pretty well, like Galiwinku and Maningrida. I think this government needs to say: ‘Perhaps in some of these communities we need to change tack a bit, back off and start to engage people here and recognise that there are some good things happening. We need to seek to build on those rather than destroy them and start from scratch.’

The abolition of CDEP is a very big concern for me, because I do not believe that this government has recognised the strength that exists in Aboriginal CDEP organisations. I have major concerns for the Laynhapuy association and for places like Bowanunga, which I think will struggle to survive after the one year unless there is a recognition from this government that the resources and assets that they have bought as a result of their own business acumen need to be kept with them and enhanced and improved. I have not yet seen this government find a way through the impact the abolition of CDEP will have on organisations and the flow-through that will happen, particularly to outstations. I think that is a gaping hole in this policy of intervention.
I want to reiterate what I said yesterday about the permit system. I gave a number of examples of where I believe that giving the power to traditional owners to issue a permit without having any way in which that permit can be revoked other than by that traditional owner is a fundamental step backwards. I say that only because there have been examples in the Northern Territory where traditional owners and Indigenous people have exploited their ability to provide permits to people; I think the land councils, and even the minister in this case, not having the power to revoke permits so there are some checks and balances over that is a fundamental flaw in the system.

I have not been convinced that all of this package matches the rhetoric of this government. They say that this is about children being safer and happier and about building communities. In some aspects I can see that. If we can limit the amount of alcohol, lift the quality in community stores—having been to those 70 communities, I have to say there is some quality to be lifted out there—and change that and turn some of that around, that will be a good thing. But I think there are some fundamental aspects of this policy that the government needs to rethink. I think a sign of the maturity of a government is where a couple of months after they laid down a policy they might say, ‘Maybe we need to revise aspects of this and do it differently.’ If you do not engage Indigenous people in where you want to go in some of these communities, I think it will be a fundamental failure.

In concluding, I want to provide a quote from an Aboriginal person who has identified himself as a ‘concerned Australian’. Senator Scullion will know this person; it is Eddie Cubillo, a long-time Darwin Indigenous man. He has now relocated out of the Territory. He wrote to all of us. He has a law degree and he has kids who are studying at university. He is a very well-educated person. He says in his letter to me:

If there is anything to come out of this ... other than what the Government proposes I would like to make a recommendation ... that an ongoing fully funded public awareness campaign on Indigenous peoples and their issues in this country. This would assist the wider public to have an understanding of Indigenous peoples issues. This would also ensure that in the future that our Indigenous kids aren’t used as political footballs and their rights eroded even further in the process of democracy in this country.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.50 am)—I want to first of all acknowledge the work of my colleagues in this place on this debate and you, Senator Crossin, in particular, given that this legislation is all about your constituents. We value your opinion and know that you know your communities like perhaps nobody else sitting around here. My colleague Senator Andrew Bartlett has in a very short time been able to express our concerns in an articulate way in this chamber.

However, my deep regret is that the government has not listened to any of the wise words that have been said in this place or in submissions, and so these bills will go through unamended. I think that is an indictment of this government’s arrogance and refusal to listen to what seemed to me to be very sensible proposals and amendments in the very short time available to those who care deeply about this issue and are deeply worried about the implications. We have all heard about how complex and contentious this legislation is. The recommendations of the inquiry on which it was based have been ignored. This has been a process of ignoring other people, and I think that is what worries us most, along with its short-term nature.

We all welcome the intervention. Nobody wants to see Aboriginal children abused in any way at all. We want to see healthy com-
munities and good economies that suit Indigenous communities, and for that reason we applaud the fact that there has been action. But the government has not listened to the complaints about that action and the fact that it may do more harm than good. It is the long term that we are interested in. What will happen when the police, the short-term medical checks, the health workers and so on depart these communities? Will we leave them in a worse situation than they were in before?

One thing that worries me about this—and I have not heard it much in this debate; I hope because it is an aberration and not really what the government has in mind—is a reported comment made by the minister who said that the time had come for some honesty in some of the smaller communities, that they may not be viable, and that perhaps government services and support should be withdrawn from those communities, forcing people to find other places in which to live. We know that a lot of people have moved from bigger centres to the more remote outstations, as they are often called, because of the abuse. They are escaping from alcohol abuse and very difficult, violent environments. The last thing we want to see is this being used as a big stick to force people out of those communities when they may well not be ready and may not want to—we know how important the land is to Indigenous Australians.

I thought, because we are still dealing with the appropriations bill, that it would be useful to pick up on a comment I made last night which generated an email that arrived in my in box at 12.36 am from a teacher who says:

I have been listening on and off all day to the Senate debate and discussion today. This is not my normal habit but I have a vested interest today. I am a school teacher. For the past 8 years I have lived and worked in Central Australia, four and a half of those on a remote Aboriginal Community North East of Alice Springs. It’s probably not one you’ve heard of because life there is pretty peaceful. The leadership is strong, kids go to school everyday and if they’re not at school I’m always told why. Parents look after their children and the kids I know are full of joy. They literally run to school when they see my car arrive each morning.

People at this community spend their baby bonus on cars because they want to have a reliable vehicle if the baby gets sick—that seems to me to be responsible parenting.

People at this community are welfare dependent because, apart from the school and the health clinic, there are no other jobs for them to do. Their only other source of income is through painting and even then they are at the mercy of unregulated art dealers.

Up until 3 years ago the 40-50 students who attended school were all crammed into a small two room classroom. We now have a bigger space but even still we are at capacity, and we still don’t have air conditioners that work properly or water that runs everyday.

I have a class full of ‘Seniors’, a dozen students, all Secondary age who go to school everyday because they love learning and it breaks my heart because I have a sense of what they could achieve if an appropriate form of Secondary school was offered—one where leaving home wasn’t mandatory.

At the moment I am on Study leave, doing research into various aspects of Indigenous Education in the hope that when I return I will have some good ideas about how to work with the Community to continue to improve educational outcomes for their children.

But after listening today I know that next year at least my time will be spent accounting for absences and ringing Centrelink on behalf of adults confused about the letter they cannot read and not understanding why half their money has been cut off or angry that the car they wanted to buy when their baby was born is not an option for them any more.

There is no Centrelink fieldworker in our area, despite my repeated requests for one.
So I will go back next year and I will do all of this because after 4 and a half years I care about those people. They are family to me.

Long after the Parliament has moved on to some other issue, this legislation will continue to affect that the lives of everyday Aboriginal people and it will in directly affect people like me and will prevent me from doing the kind of work that might have actually made a difference out there. Mostly I feel very sad and angry at what has happened in Canberra this week ...

That is both a sad and a positive note for me to end my small contribution to this debate. As one who has travelled with committees to a number of communities—nowhere as many as other people in this chamber—we have seen some fantastic Indigenous communities which work well. So it can be done. The big question is whether this intervention is the right way to achieve that for all communities. We will be watching what happens, to the extent that we can some in these remote communities. I know that there is not going to be much of a media presence in each of them. There are big questions about whether or not we will know what is going on, but we will certainly be keeping it up to the government.

Another area which has been missing from the government response is questions around rehabilitation and detoxification. It struck me that, when we talk about drinking and, indeed, pornography, no-one is talking about addiction. We do not expect people to just stop drinking in our society because we think it is good for them to do so. People need to have a will to kick an addiction. It takes much more than closing down grog supplies to communities and expecting that that will do the trick. We need to treat Indigenous people as we would treat ourselves in this respect and I do not see that happening.

I am sorry; I should have introduced that earlier. I wanted to end on a positive note because it is our hope that this works and the children will be protected. We will be doing whatever we can to keep the government to its word; that is what this is about.

Senator SIEWERT (Western Australia) (11.58 am)—I am not going to go over all the issues that the Greens oppose because by now people are very clear about our deep concerns with this legislation. I want to reiterate what Senator Brown and I have said on a number of occasions. We think that government intervention and government interest in the issues of child abuse, violence and disadvantage in the Northern Territory is absolutely essential. We disagree fundamentally with the way the government is going about it. We do not believe that the government is implementing the findings of the Little children are sacred report and, as became clear here, it does not intend to implement the findings and recommendations of the report. However, I will go over recommendation 1:

That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance—‘urgent national significance’, not emergency response; in my opinion, they are two very different things—and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.

The No. 1 recommendation does not say ‘emergency response’; it says ‘urgent national significance’. If you are following that recommendation, follow all of it and implement the whole thing.

It is specifically important, when you talk about the nature of the intervention that is
occurring, that it is exempting itself from the Racial Discrimination Act, and that the specific understanding of what ‘special measures’ are requires consultation—and you can do that in emergency situations. As I said, the Greens welcome, finally, the government’s interest and involvement in the Northern Territory, as do many people. The government is right when it said that there has been an overwhelming response from the community, because there has been. Every email I have had says, ‘It’s fantastic the government’s getting involved, but we have deep concerns.’

When I first heard it reported in the West that Fred Chaney was supportive of the government’s initiative, I was thinking, ‘I find that a little bit strange,’ because I think there are some real issues with the nature of the intervention. But I think he was expressing the concern and the support that most Australians were feeling—that is, yes, it is really good the government has finally taken this on board. I would like to quote an excerpt—I do not have time to quote the whole thing—from the Vincent Lingiari lecture that Fred Chaney gave:

As one who has in the past asked for a comprehensive national response to the evils of child abuse, and who strongly supports urgent intervention, I am giving this lecture with the living hope that there is a moral compass giving direction to the federal intervention here in the Northern Territory.

I am making what might be seen as heroic assumptions about the goodwill and bona fides of the Government and the Opposition in what they are respectively doing and supporting. I realise many Aboriginal people and many in this audience will find it difficult, if not impossible, to make that same assumption.

But let me make my own feelings on the matter clear. I am shocked at the extent to which the legislation, rushed through the Parliament this week, is contemptuous of Aboriginal property rights and of the principle of non-discrimination; authorises an absurd and unattainable level of micro-management of Aboriginal lives far beyond the capacity of the federal bureaucracy that would permit the notorious protector, Mr Neville, to ride again; provides for desert dwellers to be forced into towns, as they were once emptied out of the cattle stations in the 1960s with devastating social effects; and could see successful communities and families returned to dependence, crushing the engagement that is essential to making progress.

He further talks through his concerns. He says:

Everything I say tonight is predicated on my hope that, away from the hysteria of the election campaign, in a calmer post-election atmosphere, whoever is in government will not use this legislation to create a new regime of injustice and inevitable failure. The legislation would allow that to happen. It must not happen.

I agree with Mr Chaney’s comments. That should not be allowed to happen. In the debate that we have had over the last couple of days we have been talking about five bills that give the government and in particular the minister extraordinary powers. Mr Chaney compares those bills to the notorious Mr Neville of Western Australia. It is undoubtedly that they represent extraordinary powers. Because of the complexity and detail of the legislation, I believe we still have not gone through all of the detail, but the legislation does give the government extraordinary powers. Some of those powers became evident in discussion that we had; for example, there is the ability of the government to acquire assets from community service entities that provide services in the Northern Territory.

I think the non-government organisations and Aboriginal organisations are actually becoming quite distressed and alerted to the fact that this legislation provides the government with what I think would be unprecedented powers. It gives them power to put observers—some people call them spies—onto the boards of these organisations.
that provide services. It gives them power to give those observers every right of a board member except to vote; in other words, they can talk at and participate in the meetings and they are entitled to get all the papers. This is most extraordinary when you are talking about non-government organisations. They can also effectively seize their assets and direct them to be used in the provision of services. It is the same with the infrastructure. Despite the government assuring us that businesses and entities that a community does not want in there will not be allowed in there, throughout our discussion yesterday it became evident that they will in fact be allowed to come into those areas.

The welfare changes are not able to be adequately justified. There is not the evidence that indicates that they will provide the outcomes that government is talking about. We have not been provided with the amount of resources that are going to be used for the rollout of the welfare reforms, particularly outside the Northern Territory. We do not know how much it is going to cost, we do not know how it is going to happen and we do not know who is going to do it. These are all issues that we believe are absolutely essential and that we should have known about, and they only add to our very deep concern about this legislation. We do not think it is going to provide and result in the outcomes the government wants. I think what is going to happen is that it will further disempower communities; it will lead to more people coming off income support and having no income support. It will not lead to the engagement of Aboriginal people.

I am desperately hoping that there will be a continuation of the roll-in of funds to start addressing some of these issues and that the government will engage with organisations like the Northern Territory combined Aboriginal organisations, who have some very clearly worked out plans about where we can go in the future to address child abuse. So, as Senator Brown has said, the Greens will continue to monitor this legislation very closely and will engage with communities to see how it is rolling out.

Just before finishing, I would like to express my thanks to the minister. We have asked some very difficult questions, but we have managed to keep a civil dialogue virtually throughout the whole debate. I appreciate the minister taking the time to answer the questions that we put to him. I think it helped the debate progress significantly. It does not get me over the fact that I do not like the legislation. But the answers did help us to drill down into some of it, which is what I think the role of committees is. If we had had a longer committee inquiry, I think we would have been able to do some of this then but, because of the complexity of the legislation, we were not able to do that.

The Greens cannot support this legislation. The information that we have found through this process makes us even more sceptical about it producing the outcomes that I think the government genuinely wants. I know the government wants to address these issues. The Greens are fundamentally disagreeing with the way it is going about trying to get these outcomes.

Senator MILNE (Tasmania) (12.07 pm)—I too rise at the conclusion of the debate to express my grave concern about the government’s decision to suspend the Racial Discrimination Act as it pertains to the areas in the Northern Territory that have been designated by this legislation. Mick Dodson said in 2006:

There are abundant statistics that speak to the desperate living conditions endured in so many remote Indigenous communities. We are convinced of the need for real, sustainable economic development, access to clean water, sewage, roads, housing, education, medical care, and all of
the basic human rights that most other Australians are able to take for granted.

But he went on to say:

It is salutary to remember in this context the findings of the Royal Commission into Aboriginal Deaths in Custody which concluded that:

dispossession and removal of Aboriginal people from their land has had the most profound impact on Aboriginal society and continues to determine the economic and cultural wellbeing of Aboriginal people.

That is what is so fundamentally wrong with the government’s approach to this legislation. The Greens have argued for more than a decade—for years!—that we should be putting a lot more financial assistance into Indigenous health and Indigenous education. We certainly support the maintenance of Indigenous culture and language. We do not share the view that was expressed by former Minister Vanstone, when she talked about remote communities being cultural museums.

We believe in the maintenance of Indigenous language and Indigenous culture. The problem with this legislation is that it has come at the end of a decade of dismantling Indigenous culture and Indigenous land rights. We all know that land, language and culture are intertwined in a way that is absolutely fundamental to the maintenance of Indigenous culture and community, and Indigenous people’s wellbeing. As a nation, we are failing to recognise that in 1996 the Howard government first took $400 million out of Indigenous programs and has systematically since that time dismantled land rights.

As I mentioned, the former Senator Vanstone talked about a quiet revolution and a total reshaping of Indigenous communities, and she went about doing that in an administrative way, particularly undermining the Aboriginal land rights act. Now we have an end to what people have campaigned for decades for—Aboriginal land rights, self-determination for Aboriginal communities and reconciliation. That is why this is such a profoundly sad moment for people in Australia.

Absolutely nobody wants to see child abuse continue. No-one wants to see the levels of homelessness, poverty, illness and so on continue in Indigenous communities, but we do not have to suspend the Racial Discrimination Act in order to spend money on those programs—on sewerage and so on. We can do all of that without getting rid of Aboriginal self-determination and respect by virtue of the suspension of the Racial Discrimination Act.

This is treating the symptoms whilst worsening the underlying cause of the illness, because the underlying cause of the illness is the profound sadness and dislocation of Indigenous people at having their culture so seriously undermined. If you take away their land, culture, dignity and self-respect you will leave them as people with a lost identity. The journalist Nicolas Rothwell said recently:

Many of the observers of this other Australia—referring to the remote communities—have come to the conclusion that its problems lie much deeper than economics and education, and relate more to loss of hope and purpose, to an almost subterranean ailment of the spirit that besets many small cultures overwhelmed by the outside world; an affliction that may require as much care and compassion as administrative guidance and financial transfusion.

The government is rushing in at the last minute before an election, having taken away funding for so many years, and putting a huge amount of money in, but without looking at the other side. You cannot come rushing in with money to deal with education and health if you do not consult with Indigenous
people, because you need the consultation and collaborative work.

As Senator Crossin said earlier in relation to education, rather than having a punitive taking away of people’s social security we should be injecting into schools the capacity for cultural officers to be there and for maintenance of language. Those are the things that will increase attendance, not punitively forcing people into schools which are not providing what Indigenous people value—that is, language and culture. It is an entirely different way of looking at things. If you take away the connection between Indigenous people and their land—their country—then no amount of money for health or education is going to heal the spirit.

That is the problem here. If anyone goes to a doctor and they just get treatment for the symptoms, they will have to keep going back. It is the underlying cause that is the problem, and that is why so many of us committed so strongly to reconciliation with Indigenous people and self-determination for Indigenous people. That is why we did it. That is why we so strongly adhere to the principle that there is no place for racial discrimination in Australia and no reason to suspend the Racial Discrimination Act in order to treat Indigenous people in this way.

That is why at the heart of the Little children are sacred report the very first recommendation said you have to consult with Indigenous people, you have to do this with Indigenous people, you do not do it to and impose it upon individual people and their communities. I would argue that it is the lack of respect by this legislation for culture, land rights and language that is hurting Indigenous people so much. As Senator Bartlett said earlier, it is so unnecessary. If you had come in here with a budget bill to allocate $560 million or whatever the specific figure is to Indigenous communities for health, education and so on in collaboration and consultation with those communities, everyone would have been delighted. But the fact is you have come in here arguing it is about child abuse whilst at the same time undermining land rights and undermining the provisions of the Racial Discrimination Act. That is what will also devastate Indigenous communities. They have a right, like all the rest of us, to clean water, sanitation, education and health. They have that right; they do not have to give up things. Which other Australian community is forced to give up any of its cultural context in order to have things that everybody else gets as of right? It is ethically and morally wrong to undermine a culture, to go in and say: ‘We know what’s good for you and you are going to have it imposed on you. By the way, the cost to you is something fundamental to who you are as people and who you are in terms of your identity.’

That is what I feel is so gravely wrong about this. That is why I feel so profoundly sad when I see someone like Mick Dodson, who has spent his whole life on this, saying: ‘I’m at a loss as to what to do. I’ve been fighting racial discrimination all my life. I’ve run out of ideas.’ I would be devastated if I had done that to somebody who had given their life to improve the situation of Indigenous people in Australia. You need to listen to what Indigenous people say. As you know yourself, if you feel good about yourself and if you feel good about your culture—so if you feel strongly about those things—then you can address other things. But if your identity is taken away and if you have this ailment of the spirit, then no amount of medicine is going to fix that. It is about self-respect and identify. It is about cultural integrity and the continuance of that Indigenous culture.

Whilst this is an assault on land rights, self-determination and reconciliation, I do
not believe that we cannot get back on track once this government leaves office, when, hopefully, we can spend the money in those communities but get rid of the draconian aspects of this bill. I hope that this will be the last time ever we see the Racial Discrimination Act in Australia suspended and gotten around in the way that this government has done, because there is no place and there is no justification for that. You can never set aside the principle that is entrenched here and you have to recognise that it is an absolute basic principle of the rule of law—and I for one will be campaigning for a bill of rights, as I have for a long time. Central to that bill of rights of Australia will be that you cannot discriminate against people on the basis of race. It is to Australia’s enduring shame that we still do not have that. We need to have that entrenched in our Constitution. I conclude by saying that we have not really come very far from the time 40 years ago when WEH Stanner said:

There are immense pressures of expediency we all understand. But they do not answer the ethical questions. The principles are clear. Is this use of power arbitrary? Is the decision just? And is it good neighbourly? Rigorously asked, and candidly answered, (the answers) will leave many people feeling uncomfortable ... There are positive requirements which compel the Aborigine to give up his own choice of life in order to gain things otherwise conceded to be his of right. The ethics of the policy thus seem very dubious.

That is why we do not support what the government is doing with this legislation.

**The ACTING DEPUTY PRESIDENT (Senator Forshaw)—**The question is that the bills be now read a third time. At the request of Senator Bartlett, the question will be put separately in respect of the appropriation bills and then in respect of the remaining bills. So the question is that the Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008 and the Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008 be now read a third time.

Question agreed to.

Bills read a third time.

**The ACTING DEPUTY PRESIDENT—**The question now is that the remaining bills be now read a third time.

The Senate divided. [12.25 pm]

(The President—Senator the Hon. Alan Ferguson)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>56</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noes</td>
<td>6</td>
</tr>
<tr>
<td>Majority</td>
<td>50</td>
</tr>
</tbody>
</table>

AYES

Abetz, E. 
Barnett, G. 
Bishop, T.M. 
Boyce, S. 
Campbell, G. 
Colbeck, R. 
Crossin, P.M. 
Evans, C.V. 
Fielding, S. 
Fifield, M.P. 
Forshaw, M.G. 
Hogg, J.J. 
Hurley, A. 
Johnston, D. 
Kemp, C.R. 
Landy, K.A. 
Macdonald, J.A.L. 
Mason, B.J. 
McGauran, J.J.J. 
Minchin, N.H. 
Nash, F. * 
Parry, S. 
Payne, M.A. 
Ray, R.F. 
Scullion, N.G. 
Stephens, U. 
Trudel, R.B. 
Webber, R. 
Adams, J. 
Bernardi, C. 
Boswell, R.L.D. 
Calvert, P.H. 
Chapman, H.G.P. 
Cormann, M.H.P. 
Eggleston, A. 
Ferguson, A.B. 
Fierravanti-Wells, C. 
Fisher, M.J. 
Heffernan, W. 
Humphries, G. 
Hutchins, S.P. 
Joyce, B. 
Kirk, L. 
Macdonald, I. 
Marshall, G. 
McEwen, A. 
McLucas, J.E. 
Moore, C. 
O’Brien, K.W.K. 
Patterson, K.C. 
Polley, H. 
Ronaldson, M. 
Sherry, N.J. 
Sterle, G. 
Watson, J.O.W. 
Wortley, D.
ALLISON, L.F. BARTLETT, A.J.J. *
BROWN, B.J. MILNE, C.
NETTLE, K. SIEWERT, R.

* denotes teller

Question agreed to.

Bills read a third time.

WATER BILL 2007
WATER (CONSEQUENTIAL AMENDMENTS) BILL 2007

Second Reading

Debate resumed from 15 August, on motion by Senator Colbeck:

That these bills be now read a second time.

Senator O'BRIEN (Tasmania) (12.28 pm)—In relation to the Water Bill 2007 and the Water (Consequential Amendments) Bill 2007, the evidence is very clear that the health of our rivers is deteriorating. This is particular so for the rivers of the Murray-Darling Basin. There is also an acceptance that the water in the basin has been overallocated, and most of us accept that climate change is real and that we will need to get used to having even less water in our rivers. That is why federal Labor has consistently supported greater national leadership in water policy and water reform. It is for that reason that Labor supports the Water Bill 2007 and the Water (Consequential Amendments) Bill 2007. The bills are not perfect—even the Prime Minister recognises that—but they are a step in the right direction. Labor believes that, by establishing a sustainable cap on water diversions from the basin, the bills are a step towards fixing some of the Murray-Darling Basin's long-term problems. They give the Commonwealth greater control over water planning for the basin and should help deliver greater water security. The bills put in place a planning process to manage the basin and restore its health. It is only by doing that we will secure the ongoing prosperity of the communities that rely on the system.

The Water Bill will help set up some of the structures to fix some of the basin's long-term problems. Under the bill, the Commonwealth will establish a new expert based Murray-Darling Basin Authority to develop and oversee implementation of a basin plan for water management. However, Labor is concerned that having both a Murray-Darling Basin Authority and the Murray-Darling Basin Commission will mean that the basin's management and strategy will be confused. The layers of bureaucracy, coupled with a lack of information about actual program funding for the National Plan for Water Security, strongly suggests that a lot of the planning of this bill is being done on the run. Ending up with two Murray-Darling Basin agencies—the commission and the authority—will confuse decision making, and this should be sorted out. In broad terms, the plan will include a new sustainable cap on extractions of surface and groundwater in the basin, a salinity and water quality plan, an environmental watering plan and trading rules. But we await the details on all of this. The bill sets out processes for accrediting the catchment-level water plans prepared by basin states under their existing legislation to ensure the outcomes of the basin plan are achieved.

Labor are concerned that the separation of salinity from other environmental concerns may complicate management of the basin on a catchment basis. We must improve water security and planning while at the same time help water users adapt to having less water and to climate change. Of course it is possible that the long-term average sustainable water diversion limit for the water resource plan, otherwise known as the cap, will have to be reduced. That means there will be compulsory water entitlement reductions under clause 77 of the bill. But it is an open
question as to how this will, in reality, be
different from compulsory acquisition. Un-
der clause 77 of the bill, when that cap is
reduced it appears that the water entitlement
holder may receive compensation for that
reduction. Clause 77 sets out the way in
which the liability for that compensation will
be distributed. I note that clause 255 of the
legislation does not authorise the compulsory
acquisition of water entitlements. However,
clause 77 sets up a mechanism for paying out
irrigators for a legislated reduction in their
water entitlement. I do not think this is a
word game—and we will see how this works
in practice, of course—but it is certainly ar-
guable that forced acquisition of entitlements
when the cap is reduced is really a compul-
sory process for acquiring water. Of course,
compensation under clause 77 offers much
less compensation than compulsory acquisi-
tion does, so it will be interesting to see how
the government handles that one. It is a good
step forward that the bill establishes a Com-
monwealth environmental water holder to
manage environmental outcomes from the
new water holdings purchased by the Com-
monwealth under the new funding program
of the national plan—and, through the Bu-
reau of Meteorology, the level and quality of
information on water will improve. This will
help our understanding of and ability to
manage water resources on a sustainable ba-
sis.

Labor are concerned that, because of the
haste to develop and pass legislation in an
election year, the Water Bill 2007 represents
a second-best solution on national water re-
form. We are concerned that more bureauc-
raty is being created and that the new
Murray-Darling Basin Authority will have a
very confusing mandate and not much au-
thority. The overlapping and unclear deci-
sion-making structures are a symptom of a
rushed piece of legislation in an election year. Labor deplores the government’s failure
to consult in good faith with state govern-
ments and other stakeholders over the final
version of the bill and the related intergov-
ernmental agreement. We understand that the
legislation we have before us today is very
different to the versions circulated over the
last few months. A key element of the na-
tional plan remains for basin states and the
ACT to sign an intergovernmental agreement
committing them to refer powers for an
eventual basin-wide management structure
and work cooperatively to implement all as-
psects of the Commonwealth’s Water Bill.
The development of the intergovernmental
agreement is critical to the effectiveness of
the basin plan and future water management
in the basin. We are very concerned that the
intergovernmental agreement was not pro-
vided to the Senate committee inquiry into
this bill, and has not been given to state gov-
ernments or any stakeholders in the basin.

The yet-to-be-released intergovernmental
agreement will govern federal and state rela-
tions, guide investment and ensure water
plans function properly—although the de-
partment conceded that the document would
not be legally enforceable.

It is important that the government pub-
licly release and circulate the intergovern-
mental agreement, set out clearly what the
risk-sharing arrangements with states will be
and explain why the states should carry more
risk than was agreed to with the Prime Min-
ister in early July, and explain why the water
needs for towns and cities in the basin and
the other downstream consequences of water
planning are not dealt with in the bill and
whether they will be dealt with in the inter-
governmental agreement. Labor are worried
that the Prime Minister appeared to change
the conditions for the IGA at the very last
moment. We are concerned that, as a result,
states may not sign up. As a commentator
said on The Law Report on Tuesday night,
we may end up with a ‘constitutional Af-
ghanistan’ when this is all over. We truly hope not, but by rushing the bill and playing political games with the IGA that is a risk the government is taking. More broadly, Labor believe the water reform process must continue so that we can properly fix the overall location of water licences in the Murray-Darling Basin. We have to ensure harmony between the environment and consumptive use, and help address the impact of drought and climate change on water supply.

I just want to step back for a minute from the details of the bill and put this debate in a broader context. Water is one of our most valuable natural resources, and the sustainable management of water is one of the most important challenges facing the nation today. It is a challenge that goes directly to the health and sustainability of our planet, to our everyday lives and to our economy. In many ways water is the lifeblood of the nation. It is universally accepted that where there is water there is life, and when the water dries up life itself often perishes. Indeed, when NASA looks for signs of life on the planets in our universe, they look for water.

One of the signs of a prosperous, growing, healthy community, society and economy is one where there is a secure and stable supply of water. But in recent years, with one of the longest droughts on record and the current and future impact of climate change, water supply and storage has been at great risk. We cannot allow sudden bursts of rain and floods to lull ourselves into a false sense of security. Make no mistake, the great global challenge of climate change is inexorably linked with the water crisis now affecting rural areas and our cities, suburbs and towns.

The greatest threat to the security of our water supplies comes from our changing climate: continuing drought, changing rainfall patterns, declining overall rainfall and reduced supplies in our catchments. That is why it is so disappointing that the good work done at COAG in the early nineties was not followed through by the Howard government. Valuable time to help Australia adapt has been lost. Diminished water supplies and restricted use of water impact on almost every aspect of our nation—on our farms and in our factories, in our homes and schools, on our environment and our community. In short, water is one of our most precious resources, but it is a resource that has become threatened—threatened now and increasingly so in the future—demanding new and urgent action. If we ignore this threat and fail to rise to this challenge, we will do so at our peril and risk our environment, our communities and our economy.

You cannot plan for the future if you do not have a plan for climate change—and you cannot begin to address our national water crisis without understanding the powerful driving force of climate change. Surprisingly, some in the government do not believe that climate change is anything to worry about. They dispute the science. They downplay the effects of the changing climate. Looking ahead, we are advised by the CSIRO that we face hotter and drier summers, the devastation of the Great Barrier Reef, the loss of our snowfields, increasing droughts, less water for our cities and more bushfires. Australia needs to be ready for these changes, but the government’s inaction has left Australia unprepared for the dramatic impacts of climate change.

The bill before the Senate is a step in the right direction, and in some ways will help Australia to better plan and manage our water resources. It will help Australia adapt. But why has it taken 13 years for this legislation to come forward? The COAG meeting of February 1994 laid out a framework for national water reform. It is very disappointing that it has taken an election year to get the Prime Minister’s attention on this matter.
Dealing with the water crisis is integral to dealing with the climate crisis. Taking action based on the science and showing leadership is what is needed, not ignoring the state of the Murray for 13 years. And blaming the states is simply not good enough. The blame game is a game for losers. Leadership is required, but it has been in short supply on water and indeed on climate change for many years.

Across Australia, our families, our farmers and our businesses are recognising the effects of climate change on their water supplies. Water restrictions are no longer uncommon; farmers and businesses are starting to realise the need to be more energy and water efficient—indeed, some have taken the challenge up well before this government. Neither water nor climate change are simply environmental challenges.

As with climate change, the water crisis is a fundamental economic challenge. The history of our economic development has been closely linked to water, as most of our cities and towns are located where water could be sourced for personal and economic use. Water is critical to the industries that generate more than half of Australia’s GDP and over 80 per cent of our exports, including our farms and agricultural industries, the mining industry and the manufacturing industry. But the environmental and economic challenges posed by water shortages are not isolated; they are linked. For example, the Murray-Darling Basin provides a good example as to how the shortages of water can have a significant economic impact, as the production of rice, cotton, wheat and cattle account for around 40 per cent of the nation’s agricultural output.

While it is right for the government to focus efforts on finding a solution for the Murray-Darling Basin, we cannot ignore the other 18 million Australians who live outside the basin. The water crisis affects our cities, towns and suburbs just as much. Coming from a part of the country that is well endowed with water, I can sympathise with those that come from more challenged parts of the country, such as the state of South Australia. There are the farmers and agricultural producers who rely on water for their livelihoods; businesses who use a lot of water like restaurants and laundromats; the mining and manufacturing sectors, who use water at various stages of production; our hospitals, universities and research institutions, which are also large water users; families who want to water their garden, wash their car and fill up their swimming pools—it is about lifestyle; and our kids who want to swim in local pools and play on the local sporting fields and are seeing them drying out and their sport cancelled on weekends in some parts of the country.

Our national government can no longer afford to ignore this challenge facing our regional towns and major cities. Labor believes that there is an important role for the federal government in transforming the way we secure our future water supplies and use our water more efficiently. That applies to water use in the Murray-Darling Basin and right across Australia. Labor does not believe that finding solutions to the water crisis should be simply left to the states or local government to tackle alone; it requires all levels of government to work together. Labor supports this bill as a step forward, and we are putting down a very clear marker that more work needs to be done.

**Senator O’BRIEN—**On behalf of Senator Wong, I move:

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

(a) notes that modern national water reform began with the Murray-Darling Basin Act 1993 and the historic Council of Australian Governments agreement on water reform in 1994 led by the Keating Labor government;
(b) regrets that, despite clear warning signals about the health of the river system, it has taken 13 more years to see the next stage of Commonwealth action to address the problems of the Murray-Darling Basin;

(c) is concerned that the legislation before the Senate represents a second best solution on national water reform;

(d) deplores the Government’s failure to consult in good faith with state governments and other stakeholders over the Water Bill 2007 and the related intergovernmental agreement;

(e) believes the water reform process must continue so we properly fix the over-allocation of water licences in the Murray-Darling Basin, ensure harmony between the environment and consumptive use, and help address the impact of drought and climate change on water supply;

(f) notes that:

(i) climate change will have a significant impact on water supply generally and the health of the Murray-Darling Basin in particular,

(ii) the Commonwealth Scientific and Industrial Research Organisation will provide an important report in late 2007 on the hydrology of the Basin and what the sustainable extraction levels are for the Basin, and

(iii) the following is needed for national water reform:

(A) a cooperative and constructive approach with state governments to assist water reform and investment in urban and rural water infrastructure,

(B) full implementation of the national water initiative principles agreed to in 2004,

(C) fixing of the over-allocation of water licences once and for all, and the establishment of coherent, streamlined rules which ensure the problem of over-allocation never recurs,

(D) recognition that economic instruments, including water trading, are necessary to address the fact that water has been over-allocated, undervalued and misdirected,

(E) proper consultation with key stakeholders in the Murray-Darling Basin, including all water users, farmers, water scientists, environment groups and the broader community to ensure the adoption and consistent use of efficient agricultural practices,

(F) returning sufficient water to the rivers in the Murray-Darling Basin to ensure the long-term health of all rivers, wetlands and all connected groundwater systems in the Basin and, as a result, ensure the health of the communities and businesses that rely on the health of those rivers, and

(G) measures to ensure industrial and urban water users adapt to maximise water efficiency”.

Senator BARTLETT (Queensland) (12.44 pm)—On behalf of the Democrats, I indicate that, whilst we have a range of concerns with this legislation, on balance it does limp things forward somewhat and therefore we will not be opposing it. Politics has been the key reason why the Murray-Darling Basin has got into such a terrible mess. Unfortunately, the process that has been followed to get to this point at the federal level has also involved a lot of politics, and that is one of the reasons why it is still far from perfect. That is politics across the board. None of us is immune from all of that, but it is a point that still needs to be made.

The point also needs to be made that the process for consultation with regard to the Water Bill 2007 was once again very poor, with the legislation itself only appearing last week and the holding of yet another one-day, last-minute, rushed Senate committee hear-
I can recall being part of the committee meeting to determine who the witnesses might be for a hearing that was to be held less than 24 hours later, with the apparent assumption that people could actually pull together adequate submissions in less than 24 hours. That sort of thing is ludicrous, and the fact that we are doing it so often that people are actually starting to think it is satisfactory is becoming a real worry.

But that is an individual example of a wider problem. There has obviously been engagement, particularly between the Commonwealth and state governments, and landholders to a certain extent, over the course of this year, but the point still needs to be made about the specifics of legislation. It is one thing to talk through all the issues; it is another to then properly examine the actual legislation when it appears. There has not been opportunity to do that. The one-day, totally rushed Senate committee hearing of last Friday happened to occur on exactly the same day as the one-day, totally rushed, completely inadequate Senate committee hearing into the Northern Territory emergency response legislation. Having both those hearings on the same time made it completely impossible for me, someone who has carriage of both areas, to participate in even that limited, inadequate one-day hearing.

Nonetheless, I was able to read the submissions, such as they were and rushed though they were, and the transcript from the hearing. The Democrats agree with a range of concerns that were expressed, particularly those put forward by environmental organisations and the Wentworth Group of Concerned Scientists. The scientific basis of those concerns should be particularly acknowledged. As I said, there is a lot of politics in this at the state and federal levels and a lot of vested interests among people who rely on the water, particularly producers but also communities more broadly. I say vested interest not in a nasty sense but as a simple statement of fact—people do have a vested interest in maintaining some access to the water, and naturally that can influence their perspective. That makes the view of scientists all the more important. They, as much as anybody and more so than most, are as objective and evidence based as possible.

Their views were that, whilst this legislation has the potential to move things forward, it still has some significant problems and things could certainly be done better. Some of that is due to the fact that agreement has not been reached with all of the state governments, Victoria in particular. I am not passing judgement on who was right and who was wrong in that one. It was a bit hard to tell, frankly, from the information received at the Senate inquiry or from the public arena. To some extent it really does not matter; the Senate has to deal with the legislation before it. But there is no doubt that if we could get a more clear-cut, cooperative approach across all states it would help move things forward.

Another key concern that the Democrats have is that, despite the atmosphere of urgency that has been placed around this legislation—we have to push it through this week after an inadequate Senate committee hearing—there is not actually a lot of urgency within the legislation itself. There is a very long lead time before a lot of the significant shifts in water consumption will be able to be made, which is a concern, along with what appears to be a capacity for too much rubberiness in terms of targets. On top that is the inevitable reality that you still have quite a mess. We will have the new Murray-Darling Basin Authority; we will still have the old Murray-Darling Basin Commission; state governments and the federal government will still have some responsibility. I know the federal government would wish
otherwise, but that is what we are faced with. It really does need to be sorted out.

For me the big question mark with this legislation was whether passing it now would at least move things forward towards sorting this situation out. What can sometimes happen is people put so much effort into getting something in place that they then stop and all further improvements halt there, and you lose the momentum to continue towards the full reform that needs to happen. I think on balance there has been so much difficulty in getting movement in this area over so long a period that even this type of move forward is such that the opportunity should be taken.

Having said that, it would have been appropriate to have had a few extra weeks to properly examine the legislation and allow others to do so and to provide their views and then have the Senate consider it in September. But politics once again intervened and that has not happened.

Another very significant flaw in the legislation is that it does not provide for people to use legal processes to ensure the requirements of the legislation are enforced. In an area that is so politicised, that is a real problem. But there are some positives in the legislation. The linkage and use of powers relating to the protection of Ramsar wetlands and biodiversity protection is a step forward.

I think the legislation could have been strengthened, and I know Senator Siewert has some amendments that seek to do that. In particular, I think it could have been further integrated with the Environment Protection and Biodiversity Conservation Act, which does provide strong and very clear powers at the federal level. Those powers are not used often enough, I might say, but they are certainly there, and to link them more clearly would have been desirable. That includes, as I said, provision for individuals or affected people to have standing, as they do under the federal environment laws. It is only because of those standing provisions in the federal environment act, on a number occasions, that enforcement and proper assessment has occurred. I think that provision really should be in this legislation as well.

There are a range of other aspects to the legislation. As I said, it is certainly an imperfect beast. But, on balance, whilst we still need as the Senate chamber to try and improve it using the opportunity we have before us today, it is not so flawed that the Democrats will stand in the way of it. But we certainly signal that there is still a lot of improvement that needs to happen, and I think that the federal government would accept, at least up to a point, that this needs to be only a first step and that we need to push on with further momentum after this.

Senator GEORGE CAMPBELL (New South Wales) (12.53 pm)—I seek leave to incorporate speeches by Senators Wortley, McEwen, Hurley and Kirk.

Leave granted.

Senator WORTLEY (South Australia) (12.53 pm)—The incorporated speech read as follows—

Labor has consistently supported national leadership in water policy and water reform...there is no doubt that what is required is effective legislation to ensure the restoration and protection of the Murray Darling Basin...

National water reform began with the COAG agreement in 1994 led by the Keating Labor Government, and the Murray Darling Basin Act 1993. Sadly, the situation we are faced with today in many parts of Australia and in my home state of South Australia, with significant water restrictions in our cities and regional country towns, means even young children are concerned about the water crisis we face. There is no doubt about the critical condition of this most precious resource.

I have said previously that if there was a report card presented to the Howard Government, it
CHAMBER

would not be one that you would want to take home.
It would read: ‘Eleven years of inaction in the face of Australia’s greatest environmental challenge.’
Like many of my fellow Australians, I have long been aware of the escalating water crisis gripping our nation.
Everyone in this chamber now must accept that addressing such water issues as efficiency … allocation … quality … research and rights, is crucial and compelling.
Our rivers are overtaxed and because of their degeneration, indigenous animal and bird species and plants are facing extinction.
But while the Murray-Darling Basin becomes an even-more inhospitable host to unique flora and fauna … conversely introduced pests and weeds are thriving.
Almost 3 million people live within the Basin region, which generates approximately 40 per cent of the agriculture dollars earned in Australia.
The blight of climate change is only adding to our water woes … a fact that makes the Government’s unique and disturbing blend of indifference, indecision and infighting on this subject even more incomprehensible.
The situation is dire … we must work for change before even more irreparable damage is done.
The Commonwealth’s Water Bill 2007 is a step in the right direction … a step towards addressing some of the Murray-Darling Basin’s long-range problems.
At the one day public hearing of the Senate standing Committee on Environment, Communications, Information Technology and the Arts on this Bill, the South Australian Representatives, Mr Scott Ashby, Deputy Chief Executive, Departmental Affairs, Department of Premier and Cabinet and Mr Robert Freeman, Chief Executive Department of Water, Land and Biodiversity Conservation made it clear that South Australia supports a national approach to the management of the Murray-Darling Basin through an independent expert based authority.
However, concerns were raised that a number of elements important to South Australia were lost in this version of the bill including that:
- It does not address the issue of critical human needs.
- It does not include an end-of-basin flow target.
- It does not include a deadline for the basin plan.
- It does not include a No-net increase in cost provision for Basin states.
- It does not include compulsory consultation.
South Australia’s position is clearly that as far as possible the Bill and associated IGA should reflect and reinstate the full package of reform principles as agreed by First Ministers in February 2007, and subsequently negotiated at senior officer level.
In his letter to the Prime Minister, South Australia’s Premier, Mike Rann highlighted the following as issues that the legislation and the IGA should enure:
- The establishment of an independent, expert-based authority to prepare a Basin management plan, recommend allocation caps and undertake other functions previously agreed;
- Eligibility qualifications of members of the Authority are reflected in legislation;
- Any decision by the relevant Commonwealth Minister ever-rule the new Authority be tabled in the Commonwealth Parliament;
- Preservation of South Australia’s existing entitlement flow of 1,850 GL per annum;
- Basin States face no-net increase in costs under the new arrangements and agreed arrangements regarding compensation and liability are retained;
- Land use planning decisions remain with state and local government authorities;
- Commonwealth funding is directed on an objective and scientific basis to the areas of greatest need within the Basin;
- All states are treated consistently in the implementation of the National Plan;
- A review of the new arrangements in 2014
As an interim measure, until replaced by provisions of a Basin Plan approved by the relevant Commonwealth Minister, The IGA to provide for an average of 200 Gigalitres per annum of river “health and maintenance” flows to be delivered by the Commonwealth Environmental Water Holder at the mouth of the River Murray.

As an interim measure, until such time as this requirement can be addressed appropriately through the Basin Plan, the Commonwealth to make alternative arrangements for the emergency provision of water to meet critical human needs, which would be reflected in the IGA.

The proposed Bill to set a deadline for the adoption of a Basin Plan by the Commonwealth Minister, not being later than two years after the commencement of the legislation.

Under the Bill before us, a new Murray-Darling Basin Authority will be established to develop and oversee the implementation of a water management plan.

As part of the plan, there will be a new cap on water withdrawals in the Basin … water trading rules … a water quality and salinity plan … and an environmental watering plan.

Other moves will include increasing the amount of water information available nationally, in partnership with the Bureau of Meteorology … regulating the Basin water market … and establishing processes for accrediting catchment-level water plans to make sure Basin Plan goals are achieved.

Our hope is that this Bill will provide a structure under which the Basin can be nursed back to good health.

Only then can we secure a prosperous future for the communities who rely on the river system.

Labor unequivocally supports the need for greater federal leadership in water policy … especially in cases where resources traverse state borders.

But our call for action in this area is not new. For decades we have called for, and backed, moves to improve water planning and resources.

Since the 1980s, Labor has spoken out about the need for national leadership on water.


There was no doubt Paul Keating understood the importance of this network of waterways. In December, 1992, he said:

“The Murray-Darling is Australia’s greatest river system, a basic source of our wealth, a real and symbolic artery of the nation’s economic health, and a place where Australian legends were born. “Nowhere is the link between the Australian environment, the Australian economy and Australian culture better described.”

Here we are 15 years later … and while warning signs on the health of our country’s main river system have been stark and clear for some time … only now is the current Government taking any action.

But while the proposition before us is worthy of encouragement into law … it is disappointing … and I’m disappointed to have to say, anything but watertight.

This recent legislation has been conceived in haste and out of expedience with a Federal election looming large.

Yes … the holes in this potentially lifesaving bucket are worrying to say the least…

The Howard Government has failed to consult in good faith with the stakeholders – including the states – over the final version of the Bill, which has been altered dramatically, and is disappointing in comparison to what it delivers…

The legislation also disappoints on the front of providing pertinent protections to my home state of South Australia …

Professor Mike Young, the Research Chair in Water Economics and Management at the University of Adelaide and member of the Wentworth Group of Concerned Scientists, believes the Basin Plan’s goals list … as in Clause 20 … should be extended to carry “a requirement to consider the downstream consequences and ensure the water flows through the entire system”.

As well as an apparent failure in the field of environmental flows … there’s the mysterious Inter-
governmental Agreement (IGA) associated with the Bill.
The Standing Committee on Environment, Communications, Information Technology and the Arts (ECITA) … to which the Bill was referred … was not given a copy of the agreement.
In fact it has not yet been released …the States have not received a copy of the agreement, despite the fact that the documented intended function of the IGA will be to steer water-based federal and state relations, make sure water plans work well, and to guide investment in the Murray-Darling system.
There are many questions raised by the reviewed Bill … as noted by ECITA committee members, including myself.
Why do we have both a Murray Darling Basin Authority, and a Murray Darling Basin Commission?
How will compulsory water entitlement reductions work under section 77 … which deals with payments to water access entitlement holders … and how are they different to compulsory acquisition?
When will the Government circulate the all-important Inter-Governmental Agreement?
What will the risk-sharing arrangements be with the states and why should the states carry more risk than was agreed to with the Prime Minister in early July?
Why aren’t the water needs for towns and cities in the Basin and the other down-stream consequences of water planning dealt with in the Bill?
Surprisingly people from many vantage points have expressed disquiet about legislation that is aimed in the right direction, is sorely deficient in detail…and lands slightly off target…
These shortcomings have brought together farmers and environment groups, irrigators and academics, Indigenous community representatives and governments.
For the sake of the Murray-Darling Basin…for the people who rely on it for their living and those who rely on it simply for their life sustaining water, Labor will not stand in the way of the passage of this legislation…
But that doesn’t mean that we don’t believe more needs to be done. We have not just sat idly back, we have made plans of our own.
In December 2006, Labor’s Shadow water minister Anthony Albanese released the discussion paper Protecting our precious natural environment and water supplies.
The basis of that paper … and the heart of Labor’s attitude to the water crisis … was to focus “natural resource programs on national priorities, streamline decision making and make sure that it is water that flows… rather than red tape”.
While the Government seems to be overflowing with cynics and sceptics, Labor’s benches are full of believers.
We believe strategies dealing with climate change and with water are inextricably linked.
We believe the nation’s water resources need and deserve more than a spare-change commitment by the Government.
We believe it is essential to work cooperatively with the states and all interest groups to develop and instigate the plans and policies necessary for long-term solutions to the Murray-Darling Basin crisis.
In addition, Labor Senators agree that what is required for ongoing national water reform is:

- A cooperative and constructive approach with state governments to assist water reform and investment in urban and rural water infrastructure;
- The full implementation of the National Water Initiative principles agreed to in 2004:
- Fixing of the over-allocation of water licences and establishing coherent, streamlined rules which ensure the problem of over allocation never recurs:
- Recognition that economic instruments including water trading are necessary to address the fact that water has been over-allocated, under-valued and misdirected;
- Proper consultation with key stakeholders in the Murray Darling Basin, including all water users, farmers, water scientists, environment groups and the broader community to ensure the adoption and consistent use of efficient agricultural practices:
• Returning the sufficient water to the rivers in the Murray Darling Basin to ensure the long term health of all rivers, wetlands and all connected groundwater systems in the basin and as a result, ensure the health of the communities and businesses that rely on the health of those rivers and
• Measures to ensure industrial and urban water users adapt to maximise water efficiency.

We believe meaningful change is worth the hard work it takes.
We believe Australia’s future… the future of children and our livelihood and the survival of some of our most treasured and fragile natural wonders … depends on it.

Senator McEWEN (South Australia) (12.53 pm)—The incorporated speech read as follows—

Labor supports the need for greater Commonwealth leadership in water policy and has consistently called on the Government for action. Consequently, we will support this Bill as a step in the right direction. However, Labor has concerns that this Bill does not go far enough to ensure security of water supplies for the people and businesses that rely on the Murray Darling Basin.

The Murray Darling Basin occupies fourteen per cent of Australia’s total area and produces some 40% of the value of our agriculture. Thousands of households and businesses rely on flows from the Basin. Its wetlands provide habitats for many threatened animal and plant species. If these wetlands dried up, some of those species would become extinct. For all of these reasons and more, we need to implement changes that will ensure the continuing good health of the Basin and the rivers that flow through it.

The health of Australia’s rivers has deteriorated over the last one hundred years due to a number of factors, ranging from over allocation of water for horticulture to planting of commercial and domestic flora that requires more water than native varieties. Rural research has gone a long way towards improving the efficiency of irrigation, yet a proportion of inefficient systems such as unlined channels on sandy soils remain and these contribute to inefficient use of the Murray and other water courses in the Basin that are used for irrigation.

Other significant influences on river health have been:
Our growing population which has increased our water extractions by 500% since the 1920s;
The manipulation and diversion of flows, largely for irrigation, leading to a severe impact on the natural environmental flow. According to CSIRO, the mean annual discharge from the Murray Mouth for the last ten years has been about 2,700 gigalitres, whereas without diversions the average annual figure would be about 12,000 gigalitres;
Salinity, pests and weeds which affect the health of major rivers in the MDB including the invasion of carp which have caused the decline of native fish species; and
Climate change.

The climate change issue deserves special attention. As we have already begun to see, when the Earth’s temperature increases at an accelerated rate, our weather conditions become unpredictable and severe.

The impact includes both devastating floods and long droughts. Numerous reports have been released identifying climate change as a genuine threat to the Murray-Darling Basin’s health, but the Government has taken over ten years to even consider responding to the threat. We need a comprehensive climate change adaptation plan for the Basin so that it can continue to provide for our country through drier and hotter climates.

According to an expert review panel appointed in 2001, the Murray River needs 1,500 gigalitres more water per year to be a healthy, effective river. But we have only seen an approval to purchase 20 gigalitres for return to the Murray. This is evidence that once again, the Government does not see the environment as a priority.

Labor has a much better record on water and on climate change than the current Government. Before the election of the Howard Government, the Labor Governments were dealing with the issue of water, particularly in regards to the Murray Darling Basin. In 1987 Labor created the Murray-Darling Basin Agreement in a partnership
between governments and the community. In 1993 a new agreement was reached and legislation was passed in relation to management of the Murray-Darling Basin. In 1996, Queensland became involved and took part in all discussions. It was also Labor that negotiated the first national drought policy, which we did in 1992. Unfortunately this good work was not carried on or built upon, and 11 years after the election of the current Government we are discussing a water bill for the first time during the term of this Government.

Not only has the Government not introduced water legislation, but in the 2003 budget it cut funding to water initiatives. Though this should hardly be surprising, remembering we are dealing with a Government that refused to acknowledge climate change existed until it was swayed by public opinion. We are, after all, talking about a Government which will still not ratify the Kyoto Protocol.

As a representative of South Australia, the state that is the driest and that is home to the mouth of the Murray River, I feel very strongly about the importance of this Bill. Every South Australian has an affection for the Murray. It is part of our heritage, integral to our economy and a much visited holiday destination. Tell any South Australian that you are “going up the River” for the long weekend and they will know exactly what you mean and where you are going.

There are also many South Australians who live in the Riverland where fruit trees, in particular citrus, are grown as well as grape growing and winemaking. We are fortunate to have the benefits of the Murray Mouth, the Lower Lakes and the Coorong in our wonderful state. We are not as fortunate when it comes to rainfall.

The South Australian Labor Government has attempted to manage current water resources wisely, but is facing an uphill struggle as rainfall is increasingly sparse and unpredictable. According to the Australian Bureau of Statistics, “in the Mt Lofty Ranges catchment areas of South Australia’s main reservoirs, the winter of 2006 was the driest on record, and the first two months of spring were the driest since 1914.”

In South Australia, despite having average rainfalls this year, inflows into rivers are still well below the long term average. July inflows, for example, were 450 gigalitres compared to the long term July average of 1190 gigalitres. Catchments take a long time to recover after severe shortfalls of rain over a period of time. Another reason that water management should have been dealt with consistently by this Government instead of by the legislation-by-press-release method we saw with this Bill, and which seems to be the policy setting method preferred by the Prime Minister when he knows that public opinion is turning against the Government.

Obviously no Government can directly control rainfall, but Governments can decrease and, hopefully, stop the deterioration of our rivers. To ensure all Australians have access to water, it is crucial that we work to save not only the Murray Darling Basin, but all of our water systems.

The South Australian Labor Government supports a national approach to the management of the Murray-Darling Basin, but expressed significant concerns in its submission to the Senate Enquiry to this Bill. The South Australian Government noted the Bill does not implement all of the National Plan for Water Security.

Of considerable concern is the open-ended adoption date for the Basin Plan. The plan places limits on water extractions to provide for long-term sustainability. The SA Government believes “the Water Bill 2007 should set a deadline for adoption of the Plan of two years after the legislation takes effect”. This is necessary because without the Basin Plan in place, nothing will change.

The South Australian Labor Government also stated the Water Bill 2007 in its current form does not include mandatory provisions for meeting critical human water needs. Without this provision, we won’t be able to supply a sufficient amount of water during shortages to towns and cities throughout SA, Victoria and NSW which rely on the river.

Another matter raised by the South Australian Government is the changes to the institutional arrangements. It is concerned that states will have increased responsibilities without being provided with the necessary level of consultation. The South Australian Government believes that it will
be critical that states are appropriately consulted regarding membership of the newly created Murray Darling Basin Authority and key legislative changes.

There is also an urgent need for better research and data to enable the nation to plan properly for water security. The February 2006 CSIRO paper “Water for a Healthy Country : The Shared Water Resource of the Murray Darling Basin”, identified, among other things the need to:

- Establish water requirements for environmental needs (Living Murray)
- Develop hydrology models to consider ecosystem health consequences of changing flow regimes
- Quantify the effects which improved irrigation practices have on the volume of return flow to river systems
- Urgent clarification of such parameters will lead to appropriate allocation of funding to restore the health of the Murray Darling Basin. It will also assist with the framing of regulations and practices to ensure there is sensible use of water resources for agricultural production, clean water supplies, and environmental protection.

Lastly, something that I seem to be mentioning every time I speak on a Bill is the lack of detail provided in the legislation. Unfortunately, this Bill is no exception. In fact, key stakeholders were not even provided with a copy of the legislation before its tabling last week.

I note the additional comments of the Labor Senators who participated in the Senate Enquiry into this Bill with regard to the refusal of the Prime Minister to provide the proposed Intergovernmental Agreement to the Committee to assist its deliberations.

A Bill of such high national importance needs detail, it needs proper examination and it needs to be written with adequate consultation. Rushing the Bill through both houses, allowing people little over a day to make a submission to the Senate Committee does not allow for these things.

This Bill is a move in the right direction, but there are many more steps that need to be taken to help protect and improve our water supplies. The additional comments of the Labor Senators included in the Senate Committee Report of the Bill outline those additional steps.

I look forward to seeing more comprehensive water legislation in the future, however I believe we will need to see a Labor Federal Government for that to happen.

Senator HURLEY (South Australia) (12.53 pm)—The incorporated speech read as follows—

For many decades, Australians ignored clear warnings about the health of the Murray Darling Basin. When I returned to South Australian in 1983, I worked in an office next door to the then Member for Hawker, Mr Ralph Jacobi. Ralph Jacobi was a passionate advocate on several fronts, but one of his major campaigns was redressing some of the damage that had been done to the Murray Darling Basin. He was successful in raising awareness of the need for action by the federal Parliament. He was especially effective in getting a number of influential South Australians interested in the matter. I only regret that not enough of his vision was carried out at that time. Here we are, nearly a quarter of a century later, still trying to get some concerted plan to deal with the management of the Basin.

In my State of South Australia, early action was taken to regulate water use and allocation. South Australia put in place a self imposed cap on diversions from the Murray River in 1969. Successful State governments have worked with agricultural interests and other users to develop more effective management regimes. Some action caused friction and dissent but focus was maintained on the overriding interests of improving the health of the system. So, for example, much more efficient irrigation systems were introduced along the Murray River. Unfortunately, not enough was done, at least partly because users upstream were not able to be brought on board.

As we are on the lower reaches of the system we had early first hand experience of the effects of the over allocation and declining health of the Murray Darling. Salinity affected formerly arable land and the potability of the water, and flora and fauna along the river deteriorated. The Murray Darling Basin is critical to South Australia not only for much of our productive agriculture, and
tourism, but also for urban use including drinking water for Adelaide.

South Australia has therefore been very eager to work with other Basin States to manage the system better. Consequently I support this Bill and am pleased that the federal government is prepared to contribute a significant amount to the budget required. I do share the frustration though of many stakeholders that this new management regime is not optimal. The announcement was made hastily, and the resulting Bill was put together quickly. The government of South Australia in its submission to the Senate inquiry on the Water Bill 2007 identified some significant concerns:

- mandatory provisions for meeting critical human water needs were lost
- environmental returns are not guaranteed
- there is an open ended adoption date for the Basin Plan
- no allowance is made for increased implementation costs faced by states
- more complex institutional arrangements are established.

Again and again, reports have been made and plans prepared with poor results. If the commonwealth government is prepared to take the radical step of assuming management of the whole Basin, then it should put in place sensible and measurable outcomes and deadlines for action. The commonwealth is assuming control, but it will find it difficult to achieve its objectives without putting a reasonable proposal before the States.

It should also put in place the measures required to ensure implementation. I find it difficult to believe that the reforms required will be possible without some form of compulsion but the government continues to dance around this issue because it has political difficulties. Having made the announcement of the takeover and bashed in the political benefit of riding to the rescue of the Murray Darling, the government now finds itself dealing with the negative political consequences. Or rather finds itself trying to avoid the negative political consequences. It suffers from internal divisions and confrontation with some of its National Party colleagues.

This matter is far too important for short term politics to impede progress and once the election is over I urge the government, which I naturally hope will be a Labor government, to direct strenuous urgent efforts to ensure the management of the Basin works effectively, and with the powers it needs to achieve concrete results.

There are many competing interests within the Basin. All can make compelling cases for their use of the water. If the federal government is to intervene to achieve progress and implement reform, using its sweeping powers to make it happen, it must make fair, firm and justifiable decisions. If any decisions it makes, particularly early in the regime, are found to be flawed then management will become very difficult. The only way, I believe, to avoid errors is to base those decisions on sound scientific evidence and make the process very transparent.

One of the best results to come out of the recent focus on water resources is that some money has been devoted to a study of what resources there are and monitoring how they are used. There is probably far more to be learned about the nature of water reservoirs and the behaviour of the Murray Darling river system. The ecology of the area must be very complex, and I am certain that the more that is learned about the nature of the system, the better the decisions will be on how to manage it. There is, for example, still considerable debate about the quantity that should be assigned to the so called environmental flow – that portion of water that is needed to flow unallocated down the river to maintain the health of the ecosystem.

There is also much more to be done in research to assist agricultural interests who will have to cope with a severely curtailed water allocation. Ongoing research and development has been the framework for much of Australia’s agricultural advantage, and I am confident that our scientists and technologists will be able to assist farmers to maintain their crops or switch to more appropriate crops. Adequate funding should be made available to ensure that this research and development is possible, not from the funds made available for the Basin management, but from increased funds for the scientific community.
It is disappointing that after bold statements about taking control of the Murray Darling and getting something done at last, it appears from several submissions to the Senate inquiry that there is a widespread view that the new regime is overly complex. A bureaucratic system chews up funds, and unnecessary complexity runs the risk of having another scheme bogged down in endless discussion and reporting. The time for action really has come.

There is great goodwill in many quarters to ensure this Bill achieves its stated objectives, and many support it despite its flaws. I am one of those, and I hope I live to see the late Ralph Jacobi’s vision implemented.

Senator KIRK (South Australia) (12.53 pm)—The incorporated speech read as follows—

I rise today to speak on several issues raised by the Government’s twin Water Bills. Labor believes in strong national leadership in this area, and acknowledges the step that this Bill takes. We are therefore supporting these pieces of legislation. However, there are several concerns about the manner and form of the particular Bills before us today. Notwithstanding the obstacles appearing in negotiations with the States, there have been some significant shortcomings in the development of this legislation. I would like to speak to some of these as well as outline specific issues affecting South Australia.

Water is, as can be clearly seen by any Australian, especially in recent years, a very serious and important national issue. The Murray-Darling Basin, spanning four States, over a thousand kilometres, and impacting on a myriad of diverse interest groups, is a water resource worthy of careful scrutiny and prudent management.

Indeed the Basin has been on the agenda for a most of our history. As early as 1886 the need for water management was debated in the States. The Shadow Minister, Mr Albanese in the other place, reminded us of the involvement by the Commonwealth in the negotiations with the States in 1915 and later of the 1980s, the landmark Murray-Darling agreement of 1992 and the subsequent Murray-Darling Basin Act 1993. 1994 saw the COAG agreement on national water reform and in 2004 the National Water Initiative. In the same COAG meeting the Intergovernmental Agreement on Addressing Water Overallocation and Achieving Environmental Objectives in the Murray-Darling Basin was agreed.

Perhaps it is obvious to say that there has been much concern and discussion about the need for nationally coordinated water management in this area.

Recently the matter of Global Warming has brought into focus the need to guard our natural environment and resources, especially in areas that have been taken for granted in the past such as air and water supply and quality.

Yet in the face of all this discussion and compelling reality, the Federal Government waited until 25 January 2007, the first month of this election year, to announce a significant commitment to securing the Murray-Darling Basin for the future. It was difficult to criticise Prime Minister Howard when he stood up on that day and pledged 10 billion dollars to save and manage the Murray-Darling. Labor gave our “in-principle bipartisan support”, we have long seen national water security, and national water leadership as being important future-focused issues. That the Coalition needed an election year to address this issue was something forgivable considering Mr Howard’s substantial financial announcement.

Labor’s in-principle support for the Government’s plan reflects our willingness to support the idea and objective of the Government’s policy. But, in our view, measured decisions and prudent management of the Murray-Darling Basin are the only way to move forward on this matter of national importance. Unfortunately we have not seen this reflected in the Government’s actions since the Prime Minister’s January announcement.

We now know that the Prime Minister did not consult either the Treasury or Cabinet before his announcement, demonstrating from the outset the kind of reckless present-minded decisions that have seen the Murray-Darling Basin descend into an environmentally unsustainable state.

Turning the Senate’s attention to the Bills before us today, and specifically the Water Bill 2007, we see another example of abrupt decision making and inadequate consultation. I am referring of
course to the manner in which the Bill was pre-
sented to the Parliament, the pressure exerted by
the Government for a speedy passage of the Bills,
the subjugation of the Bill to just a one day hear-
ing, and the general lack of parliamentary scru-
tiny.

Unfortunately, this approach to law-making is
becoming more the rule than the exception under
this Government. It seems it regards the Parlia-
ment as a mere rubber-stamp – not as a place for
careful scrutiny of legislative measures. This is
exacerbated by the fact that the Government has
the numbers in the Senate and can therefore dic-
tate the timing of debate and ensure that the legis-
lation passes without amendment. This is exactly
what we do not need when it comes to the
Murray-Darling Basin. Almost 250 pages of leg-
islation regarding such an important investment in
the future management of the water supply of
over 2 million people not given the appropriate
scrutiny which is expected by the Parliament and
the Australian people. For the Murray-Darling it
has the potential to be extremely damaging.

Unfortunately this is what we have come to ex-
pect from this Government.

It is no wonder that there have been criticisms
raised by Farmers Federations, Irrigators, leading
environmental scientists and even the Queensland
National Party. Not to mention various State
Governments.

South Australia sits in an interesting position as it
is touched by the very end of the Murray-Darling
Basin. In the one-day Environment, Communica-
tions, Information Technology and the Arts com-
mittee hearing last Friday the South Australian
Government outlined its particular concerns about
this Bill. I would like to reiterate some of those
concerns.

Firstly, as Senators are well aware, Australia is in
the grip of a particularly severe drought. In times
like these there can be serious critical human need
for water, perhaps in larger quantities than may be
sustainable in the longer term. In extreme dry
periods it may be necessary to raise caps or even
suspend them. This has happened this year with
the Murray-Darling Basin agreement and associ-
ated Acts which have been set-aside. It is there-
fore predictable that the same may be necessary
in relation to the Water Act. It would be prefer-
able to have an emergency provision included in
the Water Act to cope with such a situation and to
ensure consistency and preserve the longevity of
the legislation.

Secondly, as I mentioned earlier South Australia
sits at the end of the Murray-Darling Basin. For
this reason and for the practical significance of
having an end-of-basin flow target in achieving
environmental goals, it is preferable that such a
target be incorporated into the legislation. I say
this however while acknowledging that the Basin
plan should contain such a goal as well as general
flow goals and other such targets. Like the South
Australian Government I see no reason why the
Commonwealth Government could not place
some general and important long term goals in
place for end of flow outcomes, as running guide-
lines to direct and coordinate the efforts of the
Basin Authority in creating the Basin plan. Per-
haps they really do have “goal-phobia”.

Thirdly, and related to my second point, there is
no particular deadline attached to the creation of
the Basin Plan. As “the plan” is such a pivotal
instrument in the management of the Murray-
Darling Basin it should not of course be rushed.
However, we should equally ensure that it not be
left to an open-ended deadline leaving the
Murray-Darling in the same unsustainable situa-
tion for potentially several years. Mr Turnbull
spoke of a two year period in his second reading
speech, this is fine, but it would seem prudent to
place some form of deadline in the legislation
itself.

Fourthly, concerns were raised about the costs
involved in the implementation of the Basin Plan.
Again, if we cast our minds back to the 25th of
January, to that grand and impressive figure of 10
billion dollars over 10 years, questions appear
about exactly where that money will be spent.
The Prime Minister outlined that the jurisdictions
would suffer no additional cost as a result of this
plan. There is however no assurance of that in the
Water Bill before us. Similarly, so far we have in
the May budget a mere $53 million of that $10
billion commitment being flagged for the upcom-
ing financial year. There has been no specific plan
outlined for the distribution of funds for this en-
deavour and it once again demonstrates a lack of
sensible practical planning that is so desperately needed to secure the Murray-Darling.

Finally, the South Australian Government submitted their views about the lack of legislated requirement for consultation between the States and the Federal Government. It should be noted that section 93 of the Water Bill requires consultation with the States to be included in any regulation made concerning water charge rules. However, this is the only compulsory consultation in the Act. Given the nature of the Basin, the deep stake that the States hold in its welfare and the significant effects the management of the Basin can have on the people of those States, it would seem appropriate to have some form of legislated requirement for consultation with State Governments regarding any major changes in the operation of the legislation.

In conclusion I would like to state once again Labor’s view that the Murray-Darling Basin and Water generally form some of the most important and precious resources in Australia. It is an issue that affects so many Australians, crosses State boundaries and is so universally appreciated that national leadership is the best and most appropriate way to move forward. In supporting this bill Labor is acknowledging the need of Australia to better manage and preserve our environment. This Bill begins to address these issues and while more can be done and better ways found, it is a step in the right direction.

Senator SIEWERT (Western Australia) (12.53 pm)—The issue of the management of Australia’s shared water resources is one of the utmost importance. This issue is made all the more fraught in the Murray-Darling Basin by the problems of the overallocation of the system, particularly during periods of wet years; the complex governance arrangements within the basin; the sheer number of players involved; significant differences in the complex and varied systems of water allocations and water rights across the different jurisdictions; and the prospect of significant reductions to available water and increasing uncertainty in the face of climate change. While there has been recognition of the problems facing the Murray-Darling system for decades, it is fair to say that governance arrangements in the basin have been characterised by inertia and a lowest common denominator approach to resolving conflict. Quite frankly, it has been a basket case.

The agreement on the National Water Initiative in 2004 was a major conceptual step. However, despite knowing how bad the problem was and what was needed to fix it, the necessary on-the-ground progress in reforming water management in the basin has not happened. The announcement of the National Plan for Water Security by the Prime Minister in January 2007 represented a recognition of the seriousness of the issue, with a commitment of $10 billion, but was another disappointing example of the continuing politicisation of the issue, coming as it did without consultation and with significant strings attached in the lead-up to a federal election.

Given the crucial importance of these issues and the significant amount of public money that is now at stake, it is particularly disappointing that so little time has been afforded to proper consultation over these bills, particularly when they have changed so significantly over the last month or so and that the time given for the committee inquiry to review the legislation was so short. Also, as Senator Bartlett said, the inquiry was held on the same day as the Northern Territory emergency response bills inquiry, which meant that for those of us who are on both committees it was extremely difficult. As people can see from our minority report, we are also concerned that during the committee inquiry, although a number of very serious issues were addressed, not all of the significant issues were addressed.

We believe that there are significant amendments that need to be made to the Water Bill 2007. There are very positive aspects...
of this bill, including commitments to determine sustainable extraction levels, a shared planning framework and a whole-of-basin perspective, realising the promises of the NWI and creating greater water security for all stakeholders. There is an opportunity to overcome the inertia and infighting that has characterised basin governance, and a commitment to meeting international commitments by using our treaties power. However, as I have just said, the Greens believe that the bill in its current form has a number of significant weaknesses. We believe that many of these weaknesses could be addressed through legislative amendment, and I welcome a brief opportunity to suggest some constructive improvements that members of the Senate may wish to consider.

To this end, the Greens will be putting forward a number of amendments, which I hope will give us the opportunity to further discuss some of the complexities of this bill. I hope that these amendments will be taken on board, because they address some of the issues that I am about to talk about. The problems that we see with the bill include the long lead time before the basin plan effectively comes into operation, which has been brought about by the recognition of existing plans for the lifetime of those plans. Most of them go to 2014 but some—in Victoria, for example—go to 2019. Other problems include the lack of clear environmental targets and time lines, the risk that the return of environmental flows could be too late to prevent irretrievable damage to some important ecosystems, the creation of yet another large bureaucracy within the basin and the complexity of having multiple agencies and institutions with overlapping jurisdictions, the lack of independence of the new Murray-Darling Basin Authority and the provisions that allow the minister to direct the MDBA in setting the sustainable diversion limit and in developing the environmental watering plan.

Other problems include the risk that institutional arrangements within the bills may effectively freeze reforms, possibly delaying them for many years; the extent to which many of the reforms are now dependent on the content of the intergovernmental agreement, the IGA; the possibility that the process of reaching agreement could drag out and even further delay on-the-ground outcomes; the lack of community consultation and engagement, in particular in the IGA but also in the legislative process; the lack of consultation with Indigenous stakeholders; the manner in which the debate has become politicised, with particular reference to compulsory acquisition, which I will come back to later; and, finally, the risk that investment decisions could be strongly influenced by political considerations.

This is a once-in-a-very-long-time opportunity. We believe that we need to take the time to get this particular piece of legislation right, because it has been a long time in coming. One of the biggest questions for us is: will the response be quick enough? The Australian Greens are particularly concerned by the time frame of the proposed interventions. On the one hand, the government is pressing the urgent nature of the issue and saying that this is the reason that the bills need to be pushed through the legislative process in a short space of time in this session. On the other hand, the decision to recognise and protect existing catchment plans effectively means that there will be little change in the basin until after 2014. For many of our threatened ecosystems and for our rural communities in which our farmers are struggling with uncertain seasonal water allocations, this delay could mean that action is too late to significantly help our farmers, to preserve our precious environmental assets and to protect irrigation industries.
In theory, the Prime Minister has already committed to spending $6 billion to improve irrigation infrastructure and $3 billion to address overallocation and buy back environmental water. However, much of this investment is now contingent on all the states signing up to the intergovernmental agreement. I am concerned that the need to negotiate this complex and fraught intergovernmental agreement could result in considerable delays in undertaking needed water reform and returning environmental flows. This is why the Australian Greens are calling on the government to immediately begin buying back water from willing sellers, which would increase both the amount of environmental water available and the certainty of existing water entitlements by reducing the extent of overallocation. The purchase and return of water to environmental flows needs to be addressed urgently as the combined impact of extended drought and overallocation is severely threatening the resilience of many of our iconic ecosystems.

There is a real risk that we may soon pass thresholds beyond which these systems cannot bounce back. The Greens are particularly concerned that there is nothing within the legislation which guarantees speedy action in implementing both the basin cap and the environmental watering plan. As the Wentworth Group of Concerned Scientists stated in their submission to the inquiry:

We are concerned that if existing plans are protected then little change will be seen within the Basin until after 2014, by which time many of the environmental assets and the rural wealth of irrigation could be destroyed. This task is urgent.

We note that the Victorian government indicated that its recently revised plans, which it expects the government to honour, will run through to 2019—that is, another 12 years. There is nothing within the bill to ensure that the first basin plan is completed within two years of the establishment of the Murray-Darling Basin Authority. I am aware that this was discussed in the committee, but the Greens very strongly recommend that the government addresses this issue during this discussion and that the minister gives an undertaking that he will direct the MDBA to finalise its first basin plan within two years of its establishment.

The Australian Greens are concerned about the lack of consultation and the lack of recognition of Indigenous rights and interests in the bill. We share Indigenous people’s concerns that the Water Bill 2007 should include explicit recognition of traditional owners’ inherent rights to land and water and provide a consistent approach for Indigenous participation in natural resource management. We also believe that the legislation should include provisions of water for cultural purposes.

To save the ecosystems of the Murray-Darling Basin, we need to set a robust and ecologically sustainable limit on diversions. That, quite clearly and simply, is the key task that confronts us in reforming water use within the basin. The bill does not guarantee any environmental outcomes. The Australian Greens are concerned by the lack of environmental goals and time lines within the bill and with its failure to require end-of-basin and end-of-valley targets. While it will be the job of the MDBA to put in place the specifics of these targets and plan how they will be achieved, we believe that the very failure to stipulate that there should be environmental targets and to indicate the principles upon which such targets and plans should be reached is a major shortcoming.

In setting the basin cap and determining a limit on diversions from the basin that is ecologically sustainable, it is essential that we have a good understanding, based on the best possible science, of both the hydrology of the system—that is, how much water is in
the system—and of the ecological requirements for the health and resilience of the system—that is, how much needs to be set aside. This is a very important point. The Australian Greens are concerned that, as it stands, the CSIRO study into sustainable extraction limits is effectively focused primarily on hydrology, only providing half the data needed to set the cap. Determination of the level of sustainable extraction—the cap—must be based on both the knowledge of total available water and the science of what is required for ecosystem health.

We remain concerned that there seems to be an assumption that the cap will be a magic, fixed figure, whereas we believe it likely that the requirements of adaptive management to maintain and enhance resilience will mean that this figure is likely to vary. It is critical in setting the limit on diversions that we ensure that we are accounting for the needs of ecological communities in critically low- or medium-flow years and the need to protect and enhance the resilience of these systems after periods of extended drought, and that we are taking into account the impacts of climate change in both the reduction in the amount of water within the system and its increased variability, including more extreme weather events—that is, more droughts and flooding rains.

This is why the Australian Greens believe that the bill needs to directly address the need for a robust, ecologically sustainable diversion limit for the basin and outline robust criteria to guide the development of those limits. This is why we believe that it is important to use median figures which reflect the reality of flows in the system more effectively than long-term averages, particularly for the more variable, and often ephemeral, event driven systems of the northern basin. This is why we believe that it is critical that we set end-of-system and end-of-valley flow targets. Further, this is why we believe that the MDBA must be given direct responsibility for ensuring environmental outcomes and for systematically monitoring the health and resilience of the system and its dependent ecological communities. Professor Cullen, who gave evidence to the committee inquiry, said:

I fear that the inflows into the Murray-Darling have dropped by about 40 per cent over what has been the reasonably long-term average.

... ... ...

I believe we need to adjust to this water scarcity and learn to live without a number of wet years. It is probably more serious in that we have now run all the storages to empty and it is quite possible that some of those storages will not refill without a run of quite unusually wet years. They will not fill in average years. We are not dealing with a stable system. We are dealing with one that has quite a lot less water and which might be continuing to decline.

There is clearly a need for better science on ecosystem resilience and for more work on its adaptive management. Emerging knowledge on the resilience of our drought adapted ecosystems now makes it seem likely that after a big drought there may be an environmental requirement for a high-flow flushing event onto the floodplains and through the wetlands to ensure recovery and restore resilience. We believe that there are two critical issues that need to be considered: how we manage to protect and enhance the resilience of our riverine, flood plain, wetland and estuarine ecosystems; and whether the proposed governance systems and water-sharing arrangements are flexible enough to deal with the requirements for ecosystem survival in low-flow and critical-flow years in the face of climate change predictions. To this end, the Australian Greens recommend that the government commit to funding the best possible science into how to maintain and enhance the resilience of our river ecosystems and into how to deal with climate
shift. We also recommend that water-sharing arrangements be reviewed to ensure that they are compatible with the requirements for managing resilience. The Australian Greens will be moving amendments to require information gathering on ecosystem health and resilience by the MDBA and to add consideration of these issues to the objects of the bills.

The Australian Greens support the contention of the Wentworth group that the option of compulsory acquisition needs to be kept on the table as an option of last resort. We believe that we need a mechanism to allow acquisition of water on just terms, and that ruling out compulsory acquisition as an option of last resort may not be in farmers’ best interests when they are faced with a need to relocate or restructure. Compulsory acquisition offers the possibility of compensation on just terms—in other words, more than market value—and exemption from capital gains tax. The Greens will be moving to strike out section 255 to enable compulsory acquisitions as an option of last resort.

We are also concerned about the independence of the Murray-Darling Basin Authority. The Australian Greens are particularly concerned by the issues relating to the independence of the MDBA and the proposed powers of ministerial oversight and direction. We are concerned that, as the bill stands, the minister can direct the authority in setting both (1) the sustainable extraction level and (2) the environmental water plan. We believe that the powers of the minister to intervene in the exercise of the authority’s functions in the basin plan and to create exemptions to the basin plan by regulation compromise the MDBA’s independence and authority. We therefore will be putting forward amendments to address these issues. The Greens also believe that a Commonwealth environmental water holder needs to be free from inappropriate limits.

We believe that the responsibilities of the authority also need to be looked at. We support the comments of the Wentworth group on the need to ensure that the MDBA is explicitly given responsibility for meeting the environmental objectives laid out in the objects of the act. The Australian Greens will be seeking to amend the bill to ensure that the authority is given responsibility for meeting these objectives of the act. We believe that this makes sense and is the only reasonable option. We also note the suggestion by the Wentworth group that part 5 of the bill should be amended to direct the authority to progressively establish a central, secure basin register of water entitlements, and we will be seeking to amend section 103 of the bill to that effect. The Wentworth group said:

The commonwealth should build a top class water registry system for surface and groundwater systems, with appropriate guarantees. All commonwealth water should be on such a registry, and irrigators should have the opportunity to migrate to this registry if they wish to have greater certainty as to titles.

In the short time I have left, I would also like to address the issues around international commitments. The Greens welcome the recognition within the legislation of Australia’s commitments to a number of international conventions, including the Ramsar Convention on Wetlands of International Importance, about which I have spoken in this place at length; the Convention on Biological Diversity; and the various migratory bird conventions. We are concerned, however, that the legislation should not merely be consistent with these international obligations but should be seeking to give effect to them. In seeking to use Australia’s commitments to these international conventions as a way of invoking the Commonwealth’s external affairs powers, the Commonwealth has an obligation to ensure that it is fully implement-
The Australian Greens believe that the basin plan and water resource plans needs not only to be consistent with and give effect to relevant international agreements but also to be consistent with and give effect to plans and strategies developed for implementing those commitments under the EPBC Act. We believe that water resource plans should be required to implement relevant Ramsar management, recovery or threat abatement plans. As you would expect, the Greens will be moving amendments to this end. We also believe that the legislation should specifically implement important and relevant elements of the climate change convention, and we will be moving amendments to put this into effect. This is particularly important given the impact that climate change will have—and we contend is already having—on the basin.

The Greens will also be moving amendments to deal with the issue of public-standing provisions. We believe that, to ensure that the authority and the minister can be held accountable in exercising their public interest functions under the legislation, the water legislation should be amended to provide for public-standing provisions equivalent to those in the Environment Protection and Biodiversity Conservation Act 1999. This will allow interested persons to be able to assist in the enforcement of the legislation by applying for injunctions if someone has engaged, is engaging or is proposing to engage in conduct that would constitute a contravention of the act. We believe that the amendments that we are proposing will significantly improve this legislation. I will be talking about the specific amendments in the Committee of the Whole.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (1.13 pm)—I want to speak on the Water Bill 2007 today from a Victorian perspective. The lack of support of the draft bill from the Victorian government and their differences of opinion on it have been well canvassed in the press. I support Victoria’s position on this legislation. The Murray-Darling Basin is in crisis—there is no doubt about that. It is facing ecological collapse, with 90 per cent of wetlands having been lost, and a similar level of loss of populations of waterbirds. Three-quarters of the river red gum forests in the lower Murray are now dead, dying or highly stressed. When we combine this with toxic algal blooms and salinity problems, we have a serious problem at hand. Add to this a 40 per cent decline in the inflows reaching the Murray-Darling Basin and instability in the weather patterns due to climate change impacts and it is clear that the situation is serious. Healthy rivers are obviously vital to our prosperity and economy. A healthy Murray-Darling River basin is vital to both of those.

The Victorian government says it supports national leadership in the Murray-Darling Basin management and it is also committed to the sustainable management of the Murray-Darling Basin. It agreed to negotiate with all governments to improve the management and is proactively implementing the National Water Initiative. Victoria argues that it has established state based processes and policy which have been developed and agreed with the Victorian community. This includes annual water resource planning, annual allocations and control of river flows, land use planning in the Murray-Darling Basin and managing the associated economic development and community impacts. This includes annual water resource planning, annual allocations and control of river flows, land use planning in the Murray-Darling Basin and managing the associated economic development and community impacts. Victoria does, however, object to the removal of state rights and the overriding of the state processes and policy that have been negotiated with the community, have been proven to work and, most critically, have been able to manage urban agriculture and environ-
mental allocations through the worst of the recent drought.

The Victorian government says that it agrees to giving the Commonwealth the constitutional powers and ability to set and reset a cap across the Murray-Darling Basin and to set subcaps catchment by catchment, with compliance to be enforceable through the Federal Court. It also supports giving the ACCC power to advise on water-pricing policy structures and to control market behaviour across the basin. It supports the powers to prevent any changes to water shares amongst states and the ability to hold environmental water in Victoria and to be not hindered in its use for environmental purposes. It accepts the ability to access any necessary information to determine whether the caps are being complied with and the ability of the Commonwealth to enforce compliance via the Federal Court.

A terms sheet establishing these principles and complete drafting instructions was, as I understand it, provided to the Commonwealth so that its legal advisers could see how we plan to alter Victorian laws to allow the Commonwealth to achieve its stated objective of sustainable water management across the basin. All of these terms were outlined in the Victorian terms sheet and provided to the Commonwealth, but so far the Commonwealth has not bothered to respond to those points. The representative of the Victorian government, Mr Peter Harris, said at the 10 August hearing:

The rejection by the Commonwealth of this approach was curiously framed. It did not respond to our proposals. Rather, it issued a demand for compliance with its own draft legislation, to which Victoria had never been a party. We were given no choice but to reject such a demand. I can table this terms sheet if the Senate would like that.

Victoria has rejected complete transfer of powers to the Commonwealth over our water sources because we have a very reliable water allocation system. Victoria’s irrigators and environmental groups agreed with the government that the certainty with which we had endowed their entitlements in negotiations over water reform between 2002 and 2004 was to be preferred to an unknown system of Commonwealth control. The Victorian water allocation system is a reflection of Victoria’s agriculture and relatively dense urban concentration within the basin, just as the more flexible allocation models of other jurisdictions reflect their agriculture and pattern of urban settlement. This is the heart of why state allocation systems vary.

In Victoria we allocate water already in the dam. As a result, we have a very high proportion of our water in high security and we closely restrict water access by providing allocations under bulk entitlements to water authorities. We keep within caps under the Murray-Darling Basin agreements because we simply cannot legally offer entitlements in excess of bulk entitlements, and bulk entitlements in turn match caps. The nature of our high regional population and our higher value permanent planting style of agriculture is vital to Victoria, and thus our system has always been more controlled and more reliable. As I mentioned, neither our farmers nor our environmentalists were prepared to give up this reliability, particularly after water allocations in Victoria held up so well during the worst ever irrigation system in 2006-07.

We believe Commonwealth negotiators never understood the nature of this issue, which is at the heart of Victoria’s objection. This was not ever about money. Victoria did not seek a special deal on funding. The Victorian government is actually spending today the first of more than $1 billion in real funds on irrigation modernising in Victoria over the period between now and 2012.

So I think it is fair to say that Victoria is more advanced with development, water resource planning and water management policy than other states. It has a water allocation system that is reliable and is moving at least towards sustainable practices, balancing consumption of water and the environment.
Victoria also argues that it is more advanced in controlling interception activities and farm dams and including within water planning plantation forestry, farm dams and groundwater, and flood-plain harvesting. Victoria has made commitments to the healthy river agreements and a red-gum policy and systematic assessment of river health.

The Victorian allocation system may be reasonably good, but in my experience the infrastructure in most irrigation areas is still fairly poor. The Victorian government has committed $1 billion to infrastructure, and an irrigation committee will be deciding where and how that will be spent. I understand it will create roughly 225 gigalitres of water savings which will be shared in thirds between the environment, the farming community and urban users. That seems to me to be a good start. Much more needs to be spent, but at least we are on the way.

Victoria’s irrigators and environmental groups are backing the Victorian government, preferring the certainty of the water allocation to the unknown system being proposed by the Commonwealth. The Victorian government reports that there has been a lack of consultation with key stakeholders and there is a lack of involvement of subject matter experts. Of course, allocating only one day to the Senate inquiry has not assisted in the understanding of the implications of this bill.

That there has been no consultation with state governments to discuss and resolve community and state government concerns is, I think, a disgrace. I understand that there has not even been consultation with the National Water Commission, the Commonwealth Department of the Treasury or the Commonwealth Department of Agriculture, Fisheries and Forestry, so I think that the Victorian government is right to be cautious about the haste with which the Commonwealth is passing these provisions. There has been very much an attitude from the Commonwealth of, ‘Trust us; we’ll address that issue in time,’ but that is not an adequate response to what are quite reasonable questions from the Victorian government, such as how the cap would be set and issues of seasonal allocations.

In reality there are a number of key instruments and details missing from this bill. They include the intergovernmental agreement, which has not been developed—certainly no-one appears to have seen it so far. There is no clear statement from the Commonwealth on policy objectives, beyond obtaining the referral powers from the Murray-Darling states. And there is no statement of environmental protection, for example. Victoria wants clear objectives for water resource security for environmental protection and the enhancement of environmental values. There is no clear indicator of the extent of the control and the definition of the Murray-Darling Basin. As it stands, the interpretation could be that the Commonwealth will control the catchment area north of the Dividing Range to north-west Victoria, an area that includes the Goulburn Valley, north Gippsland, Wodonga, Seymour, the Grampians, Western Desert, the Mallee, Mildura, Campaspe, Loddon, Coliban, Ovens and Keilor valleys and catchment areas. That is two-thirds of the landmass of Victoria.

There is no specific plan for improving the health of the Murray River, and the bill fails to recognise mechanisms established by governments under the Living Murray and Snowy River initiatives. We do not know how the Commonwealth will set seasonal allocations. Currently, allocations in Victoria are made under a conservative regime, more conservative and secure than other states. And it is not clear who is going to manage
and set the level of the allocations to the irrigation community. We do not know how the four per cent exclusion from water trading will be handled. The original intent from the National Water Initiative was to retain this four per cent to maintain the integrity and resilience of farming communities; however, that too would seem to have been compromised.

Other problems include the compromising of established water resource planning for a catchment and making allocations outside the longstanding process established between the Victorian government and the Victorian community; making way for ‘interception allocations’ like farm dams and weirs without addressing how these activities will be policed; and the absence of a definition of a sustainable level of extraction of water from the Murray-Darling Basin. A legislated guarantee is needed to protect Victorian irrigators and the environment from any impacts on Victorian water entitlements or loss of production caused by the Commonwealth proposal.

Other concerns include the additional administrative overhead of $1 billion that does not result in any water benefits, protection of water rights or drought management. If this legislation is to be effective, the Commonwealth needs to conduct proper consultation and work cooperatively with state governments rather than rushing to pass the bill in an election year. It is also worth noting that the urgency to pass the Water Bill is not reflected in the time lines set out in the $10 billion funding package, which spans a period of over 10 years.

Because Victoria is advanced in its progress and management of water resources, allocations and resource and development planning, there are differences between state practices, and this may genuinely mean that there is a need to bring all the states into a consistent basin structure. But the Water Bill will be meaningless without a commitment to time lines and targets for water recovery. The Victorian government agreed to the ACCC managing and overseeing the enforcement of water rights. But of key concern is ensuring the Water Bill enshrines the independence and power of the new Murray-Darling Basin Authority to keep water use at a sustainable level and to make sure the environment gets its fair share. We need to see a strong, truly independent authority that has the power to enforce a sustainable cap on the amount of water taken from our rivers and to deliver the water needed to restore river health. Also of critical importance is the need to preserve and capitalise on the expertise, experience and intellectual capital of the personnel from the Murray-Darling Basin Commission to ensure ongoing involvement with the new authority.

The federal legislation still needs more work if it is to deliver on its promise to fix the problems of overuse and overallocation of our river systems. The Murray needs at least 1,500 billion litres by 2012. We need to be able to manage within that figure and define what a sustainable level of extraction is going to be, and also to manage for seasonal and annual variations. The intergovernmental agreement needs to be finalised as soon as possible and in a spirit of cooperation. This will only be achieved if federal and state governments get serious about buying back water entitlements and ensuring that the market works. This will not happen if the Commonwealth takes over all the functions. To be effective and to move to full implementation of the National Plan for Water Security this must be based on a cooperative approach between the states and the Commonwealth. There are still critical roles for the state and local governments in this planning.
Senator McGauran (Victoria) (1.27 pm)—I seek leave to incorporate the speeches of Senators Ronaldson, Kemp and Birmingham.

Leave granted.

Senator Ronaldson (Victoria) (1.27 pm)—The incorporated speech read as follows—

I am pleased to be able to participate in this debate today and to stress my strong support for this Bill and for the Government’s approach to water.

The State Labor Governments’ in Queensland, New South Wales, Victoria and South Australia should hang their collective heads in shame for allowing the situation to deteriorate to such an extent that the Commonwealth is required to step in to address a matter of national concern. That the action required is urgent is not in dispute and on that basis it beggars belief that the Brumby Labor Government in Victoria continues to play cheap politics.

The Victorian community quite rightly judges the Brumby Labor Government as totally abrogating its short, medium and long term responsibilities to the people of Victoria.

I will now turn to the extraordinary decision of the Brumby Labor Government to build what has been called the North-South Pipeline. This is a pipeline running from the Goulburn Valley via the Eildon Reservoir to Melbourne. There is extraordinary and justified anger about this proposal from many regional and rural communities. It is proposed that Melbourne will steal 75 gigalitres of water from the Goulburn system and in doing so will potentially seriously impact on the Bendigo pipeline which will put at risk Bendigo’s future critical water needs.

The North-South pipeline will reduce the water supply available for the Bendigo pipeline which is due to feed Lake Eppalock from next month. The threat to the supply is because there will be less water available in the Goulburn system because of the Melbourne pipeline. This is particularly so until the water savings I am about to refer to are made.

The Brumby Labor Government has justified the theft of the 75 gigalitres on the basis of savings being achieved from the piping of irrigation channels. This work is not even due to start for several years and given the Brumby/Bracks Labor Governments’ appalling record on infrastructure delivery it can be expected that there will be considerable further slippage.

The Brumby Labor Government believe they can achieve 225 gigalitres in water savings with a third of this water going to Melbourne, a third for environmental flows and a third to farmers. It is criminal that Melbourne gets first call on these proposed water savings and it is even more criminal that Melbourne will receive this water before the savings are even achieved.

There is one person who has been strangely silent in relation to the impact of the North-South pipeline on Bendigo. That person is Steve Gibbons who has refused to stand up to the Brumby Labor Government and in doing so he has failed the people of Bendigo. The question that the people of Bendigo will be asking is why their Federal Member of Parliament puts the interests of his State ALP colleagues ahead of the people who elected him.

Senator Kemp (Victoria) (1.27 pm)—The incorporated speech read as follows—

This is an historic Bill and I congratulate the Minister, Malcolm Turnbull, for his bold vision. We now have a genuine opportunity to have the Murray Darling Basin managed in a sustainable fashion.

The Bill has overwhelming support. Of course some would like to make further changes, but it is certainly true to say virtually all stakeholders want this legislation in place.

Four Labor governments, the ALP Federal opposition, farmers organisations and many environmental groups support the Bill.

In short, a remarkable consensus has emerged. But there is one stakeholder that has fought tooth and nail to derail this historic reform. I refer to the State Government of Victoria.

As result of the wrecking activities of the Victorian Government the original proposal announced in January seeking a referral of powers from the States in now not practical and the Common-
wealth has now had to legislate to bring about the necessary changes.

Nevertheless, as Mr Turnbull points out, through this legislation the Commonwealth will obtain about 75% of the reforms we set out to achieve. While we are disappointed with the Victorian Government’s lack of cooperation, this reform, this legislation, represents the biggest, most important reform of water management in our history.

It is 100% better than the current arrangements in the Murray-Darling Basin.

As I indicated, everyone has offered their contributions to the development of the proposed bill. There has been an extensive consultation process prior to finalisation of the Bill.

But, the Victorian Government has been singularly uncooperative in that process. Almost from the word go, it appeared that the Victorian Government was prepared to wreck this proposal.

But, while Mr Bracks was apparently giving early signals Victoria was prepared to support the plan, it is now apparent that they were never going to negotiate in good faith.

And I don’t expect things will be getting any better given the attitude of Premier Brumby.

Premier Brumby’s attitude has been reflected in the attitude of Victorian Public servants.

Numerous meetings have been held with state officials over the last 5 months to finesse the proposal. I understand the Victorian officials made virtually no contribution to the deliberations of these committees.

The Bill was considered by the Senate Environment, Communications, IT and the Arts Committee on Friday. I am sorry to report to the Senate that the performance of Mr Harris, Secretary of the Department of Sustainability and Environment in Victoria, surprised a number of members of the Committee.

Mr Harris’ comments were strangely political for a public servant.

All the senior Public Servants from other states were careful not to enter into political debates. But not Mr Harris. His efforts to score political points were poorly received.

He also made several statements that were hard to reconcile.

For example, he argued that the Victorian Government position enjoyed widespread support from the farming and irrigation communities as well as environmental groups.

But the Victorian Farmers Federation and the Northern Victorian Irrigators—the two peak bodies representing irrigators in Victoria have publicly supported the Commonwealth Bill.

The environmental groups appearing before the committee, while, certainly raising some issues, still wanted the bill to proceed immediately. So Mr Harris’s claim of widespread support for the Victorian Government’s position seems to be totally unfounded.

Mr Harris’s evidence in relation to Victorian initiatives to upgrade infrastructure was also unsatisfactory. He indicated that Victoria had committed $1 billion to a water reform package to upgrade Victoria’s infrastructure.

But when I questioned him on this he admitted that it amounts to just over $150 million per year, over 6 years.

If I was a Victorian irrigator I would certainly want to carefully monitor the delivery on this promise.

Then, by his own admission, he explained that really the Victorian Government needs a further $1 billion to undertake the necessary upgrades. The Victorian Government needs to spend $2 billion to upgrade their aging and very leaky water infrastructure. Yet they have committed to invest half this amount over the next 6 years.

In short the Victorian Government has at least a $1 billion black hole when it comes to investing to upgrade their water infrastructure.

By stalling, by refusing to cooperate, Premier Brumby is rejecting the biggest and most important reform of water management in Australian history.

The weak performance of the Victorian Government on the National scene is not surprising particular given its mishandling of domestic water supplies to Melbourne.
We are now in the tenth year of the worst drought in one hundred years. Victoria is facing a water crisis. Where, has been the forward planning?

What we have is a dog of a project, the North-South pipeline, which is being imposed on the good people of the Goulburn Murray Valley. It is already a huge issue in Victoria.

Prior to the election Brumby and Thwaites strongly criticised the Liberals proposal for a desalination plant. But now they have embraced this concept. But as is the practice with Victorian Government initiatives, there are already problems over implementation including the location of the plant.

Water policy is going to be a major area of public debate in Victoria in the years ahead.

The performance of the Victorian Government to date, in particular its efforts to wreak the National approach to the Murray Darling basin gives little confidence in their capacity to deal with the massive water challenges facing the state.

With an incoherent water policy, despite a desperate lack of water, I cannot see why the Victorian Government is so eager to reject the Commonwealth Water Bill, and the significant investment that comes with it.

Premier Brumby has everything to gain and nothing to lose by supporting the Plan, and were it not for election year politics, he would readily admit this.

This is a vital piece of national legislation, and not just for our generation but for the next as well.

I, for one, commend the Water Bill 2007 to the Chamber.

**Senator BIRMINGHAM** (South Australia) (1.27 pm)—*The incorporated speech read as follows—*

Second Reading of Water Bill 2007 and consequential amendments

I record my support for the Water Bill 2007 and associated legislation, which forms part of one of the most important reform packages as it relates to the state of South Australia in recent times.

The ongoing health of the River Murray and, as a consequence the entire Murray Darling Basin, is of vital importance to South Australia. Our irrigators and many primary producers depend on it, parts of our tourism industry depend on it, and indeed the city of Adelaide depends on it for urban water supply.

Importantly, the beautiful natural environment of our state depends on it too, especially the unique wetlands of the Coorong, which are found at the end of the Murray Darling system, near the Murray mouth. Being at the end of the system, the Coorong is especially vulnerable to the reduced flows the river has been experiencing.

In some states the debate about the river and its usage is dominated by the demands of irrigators and primary producers. And, having worked in the wine industry, where grape growers rely on the river system in many regions, not just in South Australia, I appreciate the importance of treating those whose living is derived from the river, and who generate much wealth for our country from the river, both fairly and equitably.

However, in South Australia we are acutely aware of the need to balance more than the needs of irrigators, we must also balance the needs of those in urban areas who rely on it and, most importantly, balance the environmental demands to sustain the river well into the future. I believe this package and the associated package achieves this balance.

This action is needed because of decades of mismanagement of the river and the emerging realisation that the consequences of this mismanagement will have severe and long term effects.

Our founding fathers—those who established this great Commonwealth of Australia through the federation of states in 1901—got much right, but they got it wrong when it came to the management of our waterways, especially the mighty Murray-Darling system.

By placing the powers of management in the hands of the states, they put the river at the mercy of vested interests. Over the years those vested interests have over-allocated the available water, allowed the prolonged occurrence of inefficient irrigation practices and starved it of effective environmental flows.

It didn’t have to be this way. At the 1897 Constitutional Convention in Adelaide a draft of the
constitution under debate included a proposed clause 50 (XII), which gave the new Commonwealth jurisdiction over:

“Fisheries in Australian waters beyond territorial limits and in rivers which flow through two or more States.”

Regrettably, it was not to be. As one of the founding fathers, Charles Cameron Kingston, a former South Australian Premier and an inaugural member of this parliament, said at the time:

“it augurs ill to Federation that the representatives will not trust the Federal Parliament representing all the States, in which Victoria and New South Wales will have a much larger representation than we can have, in connection with this matter in which we feel so deeply, and on which we have sought so long and vainly to obtain a recognition of our rights. It is a pity indeed that the decision we have arrived at has been reached. I hope it may be reconsidered, and that a measure of hope may be held out that the Federal Parliament will be trusted with federal questions of the gravity involved in the use of the waters of the Murray”.

Yes, even then South Australians were arguing passionately for national control over the Murray. Just as future generations are always beneficiaries of the achievements of those who have gone before them, it also falls to future generations to address the mistakes of the past. That is what the Howard Government is doing with our water reforms.

This Bill must be considered in tandem with the National Plan for Water Security announced by the Prime Minister in January this year. This plan commits the government to investing $10.05 billion to modernise irrigation infrastructure, address over-allocation problems, reform the management of the basin and ensure the collection of accurate, effective data into the future. To make the plan work, the Commonwealth sought a referral of powers from the States.

The plan was widely greeted within the community, especially the South Australian community. As is to be expected with any significant government policy announcement, the Opposition was also quick to greet it and agree with it. In fact it sparked the spectacle of the Opposition Leader going on a national tour to sell the Prime Minister’s plan to the Labor Premiers. This was all part of his claim to being able to achieve a new kind of federalism.

One by one, after discussions with the Prime Minister and Minister Turnbull and media stunts with the Opposition Leader, the states fell into line and committed support for the plan. But not Victoria, where self interest and political opportunism continued to be placed ahead of the national interest and the health of this great river system.

Mr Rudd failed to bring Victoria on board. His new, cooperative federalism was dead before it ever got off the ground. And he has rarely spoken of the water plan ever since. Both he and his other state Labor colleagues have lacked the courage to publicly criticise Victoria’s position. They have put their Labor mates ahead of this important environmental issue.

Without Victoria’s referral of powers a new approach was needed. And so we have the package before us today. This package, which utilises the external affairs and corporations powers of the Commonwealth to achieve implementation wherever possible, remains a good package. It will deliver improvements. The original plan was better and preferable, but with Labor acting as a spoiler we must accept this as a strong, viable alternative.

This Bill will establish the Murray-Darling Basin Authority. An independent, expert body, it is charged with the responsibility of developing an evidence-based Basin Plan that balances the needs of all stakeholders, including the health of the rivers. The Basin Plan will include an Environmental Watering Plan, which section 28 of the Bill says must “safeguard existing environmental water” and “plan for the recovery of additional environmental water”. Further, it must “protect and restore the wetlands and other environmental assets of the Murray-Darling Basin” and “protect biodiversity dependent on the Basin water resources”.

The Bill will expand the role of the Bureau of Meteorology, to ensure that the new authority and other policy makers have accurate data and information at their disposal, and establishes a role for the Australian Competition and Consumer
Commission in managing the market for water trading and water pricing.

These are critical reforms that, when undertaken in tandem with the significant investment announced by the Prime Minister, will save water, put more control in the hands of experts rather than vested interests, improve environmental outcomes and guarantee the water entitlements of South Australia and its urban users. The reforms of this government will increase the chances of the system surviving into the long term, which will be of benefit to all stakeholders, right along the system.

I was pleased to participate in the inquiry into this Bill by the Environment, Communications, Information Technology and the Arts Standing Committee. I note that after hearing from industry, agriculture, environmental, scientific and government interests the Committee concluded that although there was broad support for the Bill, it recognised “the preference of most stakeholders for the original referral of powers model”.

Once again we see just how much the Labor Government in Victoria was out on a limb, standing in the way of progress on this matter. The Victorian Government sent public servants to appear before the inquiry and attempt to justify their position. Yet in a shameful performance these public servants resorted to political points when it suited them, while hiding behind their policy makers at other times. Meanwhile, the other Labor states sat back, muted and unwilling to criticise their Labor mates.

It is also worth noting that those in this place who are always the first to claim the high ground on environmental matters – the Australian Greens and Australian Democrats – failed to ask a single question during the full day of hearings and were almost completely absent during the entire day. These reforms, the approach of the Howard Government and of Government Senators demonstrates clearly who really cares about getting practical outcomes for the environment.

Despite the pathetic performance of the state governments, I would like to record my thanks to the other witnesses for their constructive input into the inquiry, especially given the short time available to them. I also thank Dr Ian Holland and the Committee staff for their valuable work on this inquiry.

I have every faith that this Bill and the associated National Plan for Water Security is a good measure. It deserves to be passed and it deserves the support of all Senators. But, as Labor has forced a compromise upon us, we must ask if it will be good enough? We must question whether the Labor States, especially Victoria, will cooperate with the inter-governmental agreement that will accompany this Bill when the election has passed, or if they will continue to play politics with the river?

I hope we do get the best out of this package and quickly see the benefits of it. I prefer to be optimistic about these things, even though that optimism might be misplaced where the Labor Party is involved. The river needs this to succeed. The surrounding environment needs it to succeed. And the river communities, especially those in South Australia, need it to succeed.

But if it doesn’t, then a future government must take this matter to the people and seek the powers in the constitution that should have been there from day one. If it takes a referendum to ensure sound management of the Murray-Darling Basin once and for all, then ultimately that is what we should have. As Kingston continued to argue, in relation to power over the Murray River, at the 1898 Melbourne Constitution Convention:

“we ought to give to the Federal Parliament which we propose to call into existence the power, when it deems fit, to legislate on this question in order to remove this fertile source of friction between colonies.”

Indeed we ought.

Senator JOYCE (Queensland) (1.27 pm)—I rise to talk about water and to briefly outline a couple of areas. I acknowledge the comments that have been made by colleagues in the Senate today in the debate on the Water Bill 2007 and related bill. The thing about water is that it is a resource. You have to exploit a resource if you want to have a nation of wealth. Here today we are not sitting on a rug on the grass; we are sitting in a building, and it exploits a resource.
Water is political. Water is the ultimate in politics because it is the conduit of wealth, it is the conduit of everything that sustains an area—it sustains jobs, it sustains economies. In a period of drought it also very much reflects the pressures that certain people are under. The financial pressure for some people in this drought is absolutely immense—in fact, I would go so far as to say that for some people it will be terminal.

The issue in Queensland has always been that we were the last to develop our water resources and therefore we have been playing catch-up to where New South Wales, Victoria and South Australia were. It is always important to put on the record that Queensland is the second lowest user of water in the basin. It uses less than five per cent. The only state or territory that uses less than us is the Australian Capital Territory. And one of the greatest uses of the resource in this town is as something to look at—Lake Burley Griffin. So everybody is exploiting the resource, and I would say that everybody is parochial about their exploitation of the resource.

We know that when you deal with an asset that people have borrowed money against the pressures are exacerbated. People have borrowed money against an asset and they have the expectation that that asset will be maintained, and they have borrowed money in a completely legal framework to develop that asset. It is absolutely fundamental in any economy that you underwrite the sustainability and the sanctity of what an asset is. If there is an asset that you have a mortgage against—an asset that you have spent most of your life paying off, an asset that is a conduit of wealth in a family from one generation to the next—and that right is taken away, then we have fundamentally changed the basis of a conservative society; we have usurped the right of ownership. It is very important in this bill that we deal with that right of ownership—and I believe we have—and that inherent belief of so many people that the asset that they own and have paid for is theirs and that, if somebody wants it, they have to buy it; they cannot take it from them.

If there is a strong community belief in and aspiration for the water to be allocated to other resources and a belief that that is for the betterment of the nation, then the nation must be prepared to put the money aside to purchase that asset. There cannot be an expectation that it can take that asset, because that is theft. We have had to deal with that in Queensland under vegetation laws, where assets owned by the individual have been vested in the state. Once they are vested in the state without payment—the belief in communal ownership of assets—that is communism, and I do not believe anybody supports that idea anymore. So, if you want it, you should buy it.

I would like to thank the minister for his support throughout debate on this bill. I will be completely frank: at times it was a very robust relationship, and I suggest that some of the 27 amendments before us today have resulted from pressures that were conveyed to me and Senator Boswell by the Queensland Nationals in relation to issues that they wanted brought to the fore. We have given of our best endeavours to do that, and those issues are reflected in some of the amendments that we have here today.

This has been an arduous and drawn-out process. In reality we note that this plan has bipartisan support. It is through consultation and discussion with the minister that the property rights of Queensland irrigators had to be secured. I would like to thank the minister for his work; he never closed the door to further consultation. It is also a reality—and I have to say this on the record for those in Queensland who are listening—that, in relation to some of the amendments that you
may have wished me to pursue, I would possibly be the only voice; they would not get any further. There is a bipartisan feel behind this and there was no point of leverage that we could express. We had to do it through consultation and negotiation; it was the only alternative at our disposal.

There is at the end one issue, and I have notified the minister that I will put on record how it should be addressed. Of the 26 resource operation plans, 22 finish before the Commonwealth liability comes into place on 1 January 2015. This includes all four plans in South Australia, all four plans in Queensland, 14 out of the 18 in New South Wales, and because Victorians are not listed they will not be scheduled to the act. We need to allay the fear of this timing difference between the cessation of a plan and the start of the Commonwealth compensation on 1 January 2015. There is an inherent black hole in there, and it has to be addressed because that is the uncertainty that drives bank managers to be concerned and to start putting a discount on your asset. It has to be addressed.

We need to allay the fear that this timing difference has been carefully protected as an outclause for government responsibility for compensation over a government decision to reduce entitlement. I ask the minister to put on record how we will deal with this, as has been suggested by an intergovernmental agreement, and to commit the government to a bona fide resolve to pursue resolution on this issue. I will not ask a question in committee on this issue, as I expect the issue to be addressed in the minister’s closing remarks. I believe that, from negotiations that have been held over a period of time, that is the last outstanding issue that needs to be addressed, and I look forward to that comment. I look forward to the commitment by this chamber and the government to make sure that what we have is a future of sustainability and a future of the enshrinement of the property rights of water.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (1.35 pm)—The coalition federal government has taken the difficult and brave step of putting its hand up to fix the Murray-Darling water system. This is a historical, nation-building move backed by $10 billion. For over 100 years the Murray-Darling Basin has been managed between four states, with each state competing against the other to obtain the best outcome for their state. Over time this has led to a host of problems, including overallocations and neglected infrastructure.

For the first time there will be one Murray-Darling Basin Authority for the whole Murray-Darling Basin to plan the basin’s water resources, making decisions for the benefit of the basin as a whole rather than just for a state interest. The authority will prepare the basin plan in consultation with the basin states, including Queensland, and the wider community. This plan and the funding of the plan would not have been possible if not for the responsible economic management and disciplined policies of our federal coalition government—and I would like to mention that Labor has opposed every one of the government’s reforms and policies that have made our economy strong.

So far Labor and Kevin Rudd’s only ‘visionary’ input to Australia’s water solutions has been to cancel the construction of the Wolfdene Dam in Queensland in 1989 when he was an adviser to Wayne Goss, who at the time was the Labor Premier of Queensland. I am sure those in the south-east corner of Queensland, who are now on level 5 water restrictions, are still thanking him for that little piece of insight.

The Minister for the Environment and Water Resources, the Hon. Malcolm Turnbull, has worked tirelessly with representatives
from involved industries on a day-to-day basis to ensure that the Water Bill 2007 was workable and acceptable. He and his staff have also always been available for discussing and resolving the issues that my Queensland constituents and industry representatives have raised with me and Barnaby Joyce over this legislation.

The bills follow on from and incorporate the principles of the National Water Initiative and deliver on key proposals as per the National Plan for Water Security, which was announced by the Prime Minister on 25 January this year. From the announcement, there were some concerns from Queensland irrigators and their associated representatives. Since the announcement was made, Barnaby Joyce and I, and other coalition members, have been working constantly with them to address their concerns.

Water rights, as assets, underpin the value of any farming property. Without the surety of their water assets, their property values do not hold up. This issue is important to their future. As legislators, we need to ensure that we put a high value on these assets as an investment in the future of whole regions. With this in mind I requested the Prime Minister to write a letter to the Premier of Queensland confirming that resource operation plans that were negotiated with the Queensland government would be honoured. The Prime Minister wrote that letter on 25 March 2007. The letter was the basis of our commitment to Queensland irrigators. When the Water Bill first came out, it did not meet the commitments detailed or implied in the letter. After many amendments and many consultations that Barnaby Joyce, the Queensland irrigators and I held with the office of the Minister for the Environment and Water Resources, we now have a Water Bill that meets our commitment to Queensland irrigators.

It came down to two remaining concerns, which we resolved the other day. The first concern was that the Queensland resource operation plan would finish in September 2014 and the Commonwealth would not accept the risk liability until the beginning of 2015, leaving what the irrigators believed would be a three-month gap. As we cannot amend the state legislation, the Commonwealth will be requiring the agreement of the states—through intergovernmental agreements—to bring forward the risk liability. In Queensland’s particular case this will be to September 2014. That is the best that we have been able to do and I believe it should give the irrigators sufficient comfort—but it was not for the want of trying that we did not push it further.

The other remaining issue was an overland flow issue. There are a whole range of different water entitlements in Queensland and the irrigators were worried that some of these entitlements, including overland flows, were outside the national water plan’s definition of ‘tradeable entitlements’. The Commonwealth was sure that they were covered by the definition in the legislation but, in good faith, to remove all doubt we have included the word ‘authorised’ in 26 different parts of the legislation to ensure that the definition of ‘entitlements’ is covered. It now complies with the way that it is written in the Queensland legislation—so there can be no doubt. We have also included a further explanation of the definition in the explanatory memorandum just to be absolutely certain.

Around 15 to 20 issues have been addressed since the drafting of the Water Bill. We now have written confirmation from the QFF and the NFF of their support for the amended legislation. We have done our best—we can go no further. I believe that we have done our bit for the irrigators. We have achieved our commitment.
I will clearly state that the bill ensures that there will be no compulsory acquisition of water entitlements or allocations. The National Plan for Water Security underwrites property rights pertaining to water entitlements and prohibits compulsory acquisitions. Existing water entitlements will not be affected. The current state water share plans under the Murray-Darling Basin agreement will be guaranteed. This includes the resource operation plans in Queensland. The bill will establish a new role for the Australian Competition and Consumer Commission to monitor and enforce rules for water charges and market rules in the basin.

The bill gives us funding of over $3 billion to address overallocation and overuse of water resources in the basin. An amount of $1.6 billion has been allocated to on-farm efficiencies in irrigation in the Murray-Darling Basin. This is a comprehensive bill encompassing a range of sensible, practical initiatives for water reform that will benefit the Australian community long after we are all gone. It is not a quick political fix to a popular issue, as indicated earlier. We have worked hard to create this bill. It is yet another example of how the federal coalition’s good management will secure the future for the environment, the communities and the industries that rely on the Murray-Darling Basin.

Senator IAN MACDONALD (Queensland) (1.42 pm)—I want to briefly address the Water Bill 2007, which is the first water reform program that has been introduced into the parliament in 106 years. This is a nation-building bill, not just for our generation but also for generations to come. This bill will ensure the sustainability of one of our great national assets—one of our great natural assets. It will underpin our nation’s water resources and secure the future of industries and communities and the environments on which they rely.

I want to congratulate my Liberal colleague Malcolm Turnbull on his consultation, his determination and his ability in getting this bill to the parliament. It has not been easy. He consulted with all forms of politicians, with various industry groups, with the states—which is something in itself—and he has come up with this bill. I am proud that my Liberal colleague has been able to deliver a bill that many before him have not been able to. This bill contains the key proposals that are outlined in the National Plan for Water Security, which was announced by John Howard on 25 January this year. It addresses the modernising of irrigation and the overallocation and overuse of water resources in the Murray-Darling Basin, and it is supported by a $10 billion investment.

Forgive me: I get very frustrated and angry when I hear some of the speeches in this chamber from people who allegedly have some idea about this bill. Senator Allison did not even bother to attend the committee hearings on this bill, and her speech was loaded with inaccuracies. It seemed clear to me that her speech had been written by the Victorian government. She went on at length about the problems in the Murray-Darling Basin system and why they had not been addressed before this. But when there is a piece of legislation before the parliament that actually addresses the problems, she says, ‘There’s not enough consultation and it should have been delayed.’ She was also inaccurate in suggesting that the Victorian farmers were opposed to the bill. Clearly, if she had been at the committee hearing she would know that the Victorian farmers support the initiatives and the direction of the bill.

Everybody at the committee was concerned that the bill did not go as far as it could, but the only reason that it did not was that the Victorian state Labor government would not come in and play ball. Every other
state government in the basin was prepared to cede its powers. Victoria would not, for what I can only determine, having heard the evidence, were pretty cheap political purposes. It should be rammed home: yes, there are some deficiencies in this bill; yes, everybody would have liked it to contain other things—and it would have contained other things had the Victorian government been prepared to cede powers as every other government did.

Senator Allison was criticising the bureaucracy and the duplication. Sure, we all know that. Most of that duplication and additional bureaucracy would have gone had the original intention been put into place. As for suggestions by several of the opposition speakers that there was not consultation, the consultation on this bill was enormous; in fact, the consultation—a bit like the with Aboriginal children’s legislation we have just been dealing with—has been going on for the last 20 or 30 years. But people have not been prepared to go ahead with it because it might offend some sensitivity; someone might not have been spoken to. Here is a government that on two issues this week has addressed the difficult positions, the difficult things, that people have been talking about for decades. We are doing it this week but what do we get from those who profess an interest in and a concern for the Murray-Darling Basin system? A criticism and an urge to delay it till we have yet further talks—more talks, more consultation; don’t do anything.

I was pleased in the committee session to be able to say to those who were sort of mirroring or predicting the concerns that Senator Allison was raising: ‘If this bill is this bad, do you want me to vote against it? Do you want me to propose that the bill be put aside, bearing in mind that there will be an election before the end of the year? By the time the new government led by Mr Howard is put in place and starts consultation you’ll be in the middle of next year, and it’ll be this time next year before we think about passing a bill; is that what you want?’ To a man, to a woman, the people at that inquiry all said: ‘No, do not talk anymore; do not delay. Go ahead with this because, while it is not perfect because of the Victorian government’s intransigence, it is a great start.’

I have often said I think we have been a bit wimpish. I would much rather have had a referendum put to the Australian public on this question—that the national government should take over management of our Murray-Darling Basin system, which crosses four states and is so important to all four. I have for several years attended meetings of the Murray-Darling Basin Ministerial Council, and my attendance at those meetings simply confirmed that people were not interested in the Murray-Darling Basin system. The national government was, but the states all went there with particular agendas that were very parochial or, worse still, political. The state Labor ministers would gang up on the Commonwealth, hijacking them at times, just to score political points. As I sat through those meetings, I used to think: if only we could get a national arrangement that looked after the health of the river, the interests of those who are served by it, then we could get something done. And this bill does it. It establishes an independent authority which will have considerable powers, but not as many powers as we would have had if Victoria had come on board. We are still hopeful that, once this bill is passed and the intergovernmental agreement is made, Victoria may come on board and we can fix some of the difficulties in this bill that have been caused by the Victorian government’s intransigence.

We have the constitutional power for this bill. It is not as good as it would have been had the states ceded their powers, but we have been able to get this bill on the back of
the Convention on Biological Diversity and the Ramsar Convention on Wetlands. The new authority will be one basin-wide institution. It will be responsible for planning the basin’s water resources and making decisions in the interests of the basin as a whole, not along state lines. As a Queenslander and one who travels widely in the Murray-Darling Basin part of Queensland, I know that most people in the basin—and Australia—want to have a system that is fair and healthy and that serves all of those that it is meant to serve.

The basin plan will be one of the tasks of the new authority, and the central element will be the introduction of a sustainable, integrated cap on groundwater and surface water diversions. The basin plan will set the limits on the quantity of water that may be taken from the basin water resources as a whole and for particular water resource plan areas. The cap will be enforceable by the authority in the interests of everybody. A Commonwealth environmental water holder will be established to ensure that water recovered through the rollout of the irrigation efficiency program and structural adjustment program of the national plan will be used for environmental water purposes, and this independent person or body will hold the water for the environment.

The Australian Competition and Consumer Commission will be involved, as my colleagues have mentioned. The Bureau of Meteorology, which I once had the honour of leading in a ministerial sense, will also be very involved. They will be putting their expertise into collecting up-to-date, accurate and comprehensive information on water use and availability across Australia. This is going to be critical to the input to the basin plan.

The bill provides for metering of stock and domestic water use under the basin plan. As the minister has previously confirmed, there is no intention to require metering of stock and domestic bores, except in very special circumstances where a groundwater system is under stress or where there are local disputes about water sharing. Those issues were canvassed in the National Water Initiative. In very rare cases where the metering of stock and domestic bores is warranted, the cost will not be borne by the landowner other than with his or her agreement. Governments will pick up the bill there.

Our objective remains to have a comprehensive Commonwealth water law. We will seek to negotiate that law through the intergovernmental agreement with the basin states. Under that agreement, the states will refer powers to underpin this comprehensive legislation within 12 months of signing.

Senator Sterle—That is a long 10 minutes.

Senator IAN MACDONALD—Senator Sterle, your understanding of the time is about as good as your understanding of procedures in this parliament—very poor and very wanting. In spite of the interjections that seek to delay my speech beyond the 10 minutes that I allocated myself, I want to applaud the bill, applaud the minister and congratulate the Prime Minister on at last doing something about one of the major issues that have been confronting Australia since Federation. I commend the passage of the bill to the Senate.

Senator HEFFERNAN (New South Wales) (1.54 pm)—Firstly, I have to put on the record that I am a farmer and declare my interest—I have a water licence, unlike probably most people who are speaking to the Water Bill 2007. I strongly support this bill and the minister. I am aware that over many years—I got a water licence in 1968—water has been catastrophically mismanaged in Australia by governments of all persu-
sions. We are now going through the routine again of trying to find someone to blame, as we did with the Indigenous matter. We are all to blame. Every government in New South Wales has mucked up water, and a lot of that has been due to the fact that they did not understand the science of water—even the simplicity of the connectivity between ground-water and overland river water. We are just coming to terms with that now. In the US, that issue has been locked up in the courts for 20 years; it has provided a lawyers’ feast.

The Murray-Darling Basin, which this bill is about, represents 6.2 per cent of Australia’s run-off and 23,000 gigalitres, of which 13,000 gigalitres is extracted. It is seriously overallocated. So, whatever way you want to do the sums, the sums are not going to add up. So this legislation is very important to enable us to come to terms with that. In the committee hearing the other day, we were very grateful that all state governments were represented, with their correct bureaucracies, but not one of them has done any modelling on what it means if the CSIRO science is right and we lose between 3,500 and 11,000 gigalitres of run-off over the next 30 or 40 years. No-one has even thought that through, which is all the more reason why we need this legislation.

Victoria owned up that they were prepared to put in $1 billion and that they needed a further $1 billion. But, as I said many weeks ago, they are bloody stupid for not signing up. They can pretend that they are representing the interests of the irrigators but the fact is that the two representative bodies for irrigators at the hearing said that they agreed with the government’s position. You can hide behind all the bloody garbage in the world you like, but the fact is that this is very important legislation.

At the hearing the other day, I asked Peter Cullen to describe what an irrigation area in 2020 might look like. Also, given that there is a 50 per cent vagary in the science, the best of the worst-case scenarios is that somewhere between 3,500 gigalitres and 11,000 gigalitres will disappear from the system. What does that mean? I know what it means: it is going to be a catastrophe. We need to come to terms with that. If I can put in a little plug for the north, that is why we are looking at developing it.

I would also like to talk about some of the things in the legislation that are wrong and some of the things that might have to be handled federally, which is going to take more than political courage and require some robust use of this process. As we are not going to talk about this legislation in committee, I want to mention two things that ought to be changed in the legislation. I am not a lawyer. I am a worn out wool classer and a welder. In section 172(1), we should insert ‘The authority has the following functions: (a) to pursue the objectives of the act’ so as to give it more power. All those layers of lawyers out the back here might think there is something flawed with the English in that statement. It is a very simple statement. If we do not want this new body to turn into another Wheat Export Authority, which is a complete bloody failure, we need to give it some teeth. Also, in section 178(6), which refers to appointments, why can’t we say that members ‘may be’ and not ‘must be’ part time? If the right bloke comes along in the right circumstances, why wouldn’t we give ourselves the option to make him a full-time member? Best of luck to the wordsmiths.

For many years we have had a group of people in New South Wales above the wetlands and the Macquarie Marshes thieving water. We all know who they are. I asked the question in the committee hearing the other day, and the people from New South Wales said, ‘Senator, we’re working on that.’ Everyone knows who they are. You can go there
and take beautiful colour photos of the water being diverted. As they send the water down to the Macquarie wetlands, you see it being diverted out onto pastoral properties. These are the sorts of things which, despite the politics, we have to have enough courage to deal with, and that is why I support this bill.

Another concern—and I will not describe the sort of sandwich which we have been given by the states, but is a pretty messy sandwich—is the hideaway of the problem that has occurred in places such as the Hay Shire. Because of the separation of the water title and the land title, the rate burden will be taken from the people with the most capacity to pay the rates and given to the people who have the least capacity. The state government in New South Wales have no idea what to do about it. They put a moratorium in place for two years, they have provided no solutions and, I presume, they are hoping that under this act it will be the Commonwealth’s problem, which we will inherit from them—and I guess it will be. I can give one example of that for rate based purposes. A picture paints a thousand words. For example, a place in the Hay district—and I must confess that I have had a place there since 1967—has a 28,000-megalitre water licence. It has thousands of acres of irrigation in country that naturally and normally is dryland. There would be a sheep to four acres. It is beautiful sheep country. But now, it is probably four sheep to the acre, with the irrigation water.

Because of what is occurring in New South Wales with the separation of land and water titles and many of those water titles disappearing into office blocks in Sydney and all over the place—people up on the Gold Coast making a living out of them and all sorts of carpetbaggers—the people of Hay will be asked by the Shire of Hay, after the moratorium has been lifted, to pay rates for the wealth that is created by those water licences. So this particular property will get an 80 per cent reduction in its rating notice, and in the bill it has to pay, and that will be loaded onto people who have no water on their land. That is a crazy situation. As some members on this side of the chamber will be aware, I raised that issue in the party room the other day and the best we could get out of it was, yes, it is a problem. I would like to know what we are going to do about it.

Senator Barnaby Joyce will not be surprised to hear me say that the draft ROPs in some of the river systems in Queensland have had no science applied to them. They pretend the science has been applied. Peter Cullen was present in the committee hearing the other day. He is the standard bearer for the ROP in the Balonne, and he has been the most misquoted scientist in Australia. I think there should be a corruption inquiry if the draft ROP for the Balonne is implemented. I cannot see how an independent chair of the process can be a co-owner of the largest water licence that will be issued under the draft—it is still in draft form—with no science applied to it, for overland flow, in a system where the land flow eventually returns to the main stream, so it is the riparian right of someone downstream. This is a national disgrace. Do not ask me how it is compliant with the National Water Initiative, the ROP and the water resource plan of 2003. Do not ask me how it is compliant, because it is not. I asked John Cherry, who represents the Queensland farmers, that question the other day in the committee hearing—and, Senator O’Brien, you heard him—and he said, ‘We can’t answer that.’ And, when I asked the Queensland bureaucrats, they said, ‘We can’t answer that.’

How do you get an entitlement conversion to a licence, based on earthworks and capacity to harvest water when you do not have that capacity? What do you do? You have a commercial-in-confidence arrangement with your upstream neighbour and do it that way.
I think it is a disgrace. As Peter Cullen said the other day, before that ROP is implemented there should, at the very least, be a full scientific study of that system. I have spoken to people such as Bobbie Brazil at the top of the system. They have given up. They said, ‘We couldn’t work it out with the bottom mob, so we just let them go.’ We need a full scientific review of that ROP before it is implemented. I think it would be a catastrophic fraud of the public purse to issue a licence for some 400,000 gigalitres and have to then retrieve it because we do not have the science. These sorts of issues will have to be dealt with under this plan and it will take a lot of guts to do it.

There are all sorts of state planning decisions, which is pretty scary. Given the emergency circumstances at present—and there is a catastrophic circumstance confronting many of our permanent plantings in the Murray Valley—you cannot help but feel overwhelmed by the concerns that farmers would have down there, given what Mother Nature is dishing out, according to the science. If you have a little mole on your arm and the doctor says, ‘It’s a melanoma, son; you’d better get it taken off,’ I think I would get it taken off. The scientists are telling us there is going to be a decline of between 25 and 50 per cent in the run-off in the Murray-Darling Basin, and we ought to have a plan to deal with that.

We had the announcement in Albury that they will tip the outflow from the Albury paper mill into the river, so the people down at Corowa, I presume, will be drinking the outfall. I do not know what science has been applied to that decision, but it sounds mighty odd to me. Much of this comes about because of the economic intimidation argument, so everyone is scared of the politics of it all. I understand there will be a full scientific review of the outfall of the Tasmanian pulp mill. I will look with great sensitivity at what it all means. I know that 200 tonnes a year of the most serious carcinogens and chemicals, out of 60,000 tonnes a day, will flow into Bass Strait. If I were a fish swimming around there, I would probably grow three heads and five legs.

So there is a lot of stuff that has to be dealt with. No-one should be in denial that we need this bill, and I commend the courage of the government. To say that it is somehow a political exercise is incorrect. This is another thing that is in the national interest for us to do. Obviously if there were no state borders we would not be here having this legislation; we would manage the system as Mother Nature designed it. Mother Nature did not design it to change the rules when it got to the bloody border. So there you go. I fully endorse the bill. I am very grateful to the minister for the way he has accepted approaches from people like Senator Boswell and Senator Joyce and for being patient with people like me. But my plea is that it just does not turn into another bureaucratic process that eats its head off.

Senator Patterson—I think Senator Heffernan should withdraw the word ‘bloody’.

Senator HEFFERNAN—I withdraw it.

Senator FIELDING (Victoria—Leader of the Family First Party) (2.07 pm)—Family First believes Australia needs a plan to help fix the nation’s water problems and the key to that is fixing the Murray-Darling Basin. That plan needs to strike the right balance between the needs of all water users, including the main water users, who are the irrigators. Seventy per cent of water use is for irrigated agriculture, so there is a good argument that investment in infrastructure to help irrigators save water is one of the most important things we should do.

The Murray-Darling Basin is the home of Australia’s largest river system and the 15th largest river system in the world. It provides
Australia with 40 per cent of its food supply and is often referred to as ‘Australia’s food bowl’. In a time of climate change and on what we hope is the tail-end of one of our worst droughts on record, the need for us to ensure that the Murray-Darling continues to be the lifeblood of Australia’s food bowl is all the more important.

We face a real problem within the Murray-Darling Basin. The amount of available water is falling and demand for water by irrigators, farmers, towns, industry and for environmental flows exceeds supply. Something needs to be done to address this problem. Currently the Murray-Darling Basin Commission sets a cap on the amount of water that can be taken out of the basin each year. These caps are not sustainable. They do not take into account all water sources, such as surface and ground water, and there is no way for the commission to enforce these limits. It is clear the system is broken and it needs to be fixed. We need a holistic strategy that treats the entire basin as one water supply and not just the sum of many parts. We need a strategy that can put an end to the difficulties faced by states, catchment areas and other groups that depend on the Murray-Darling Basin for their livelihoods. We need a system that can enforce caps on the amount of water taken out of the basin each year, with penalties that ensure compliance.

Family First believes this bill addresses many areas of concern. The plan proposes a single authority and sets a sustainable and enforceable limit on the amount of water that can be taken out of the basin. The government would give the Bureau of Meteorology power to assess and set the water information standards. It would also appoint the Australian Competition and Consumer Commission, the ACCC, to take control of water market trading with the aim of ensuring a fair and equitable market administered by an independent body.

While all states acknowledge the need for the federal government to assume control of the Murray-Darling Basin, there is obvious disagreement from some of the states, notably my home state, Victoria. Family First understands the Victorian government’s position. There is some merit in the Victorian government’s argument that it should not refer its powers to the Commonwealth. Simply, the state does not want to refer its powers to the Commonwealth because it has worked hard to establish a good irrigation plan. Over many years Victoria has built a reliable and highly structured water allocation system. It has kept its end of the bargain and has stayed within the set caps. Victoria’s farming industry is different from other Murray-Darling states. To have a successful dairy and horticulture industry, as Victoria has achieved, you need to secure water. Victorians cannot easily change to other crops to adjust to a water shortage. As a result, the Victorian government is concerned that the federal plan would replace its existing system with an inferior version that would not cater for these special needs in Victoria. Family First encourages both federal and Victorian governments to continue working towards reaching an agreement as soon as possible. Victorian farmers are concerned that because they have managed their water well they are at the greatest risk of losing from a national water deal.

It is important to have an overarching authority to look after water in the Murray-Darling, but changing the system is a risk to Victorian irrigators. They need to be convinced that change is worth while, and you cannot convince people of that unless you are willing to give them enough detail so they can see that for themselves. Why should the farmers and irrigators sign up to a deal where they bear the risk and have no guarantee of benefits? Seven months after the fed-
eral government’s announcement they still do not have that detail.

Family First is also concerned about the concept of water markets. What happens to farming families when they sell their water and their land is separated from water? Does the trading of water rights undermine the family farm? Does it mean that big business farms that can afford to buy water will survive while smaller family farms will not? Family First believes the Murray-Darling Basin plan sets out a direction for the future of our most important water asset. Without action, the Murray-Darling faces an uncertain future and therefore the irrigators and towns that draw their water from the system face a similar uncertain future. The government is likely to face significant hurdles in the adoption of this plan with the states, especially through challenges to the constitutional right of the Commonwealth to assume the control detailed in the bill.

While the bill is significant, the pending intergovernmental agreement will be almost as important, as it will address many of the details of the operation of the plan. It is disappointing that the IGA is not available so we can all scrutinise that detail. Family First has consulted widely on this legislation with irrigators, the Victorian Farmers Federation, the Victorian Premier, the minister and other groups. There is room within this plan for a positive outcome for all players, from the federal government through to the individual irrigators. Even though this plan is not the complete solution, it is a start. Family First will, therefore, support this legislation.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.15 pm)—In the summing up, I will talk generally and then will seek to deal with some of the matters that were raised by honourable senators. The reforms embodied in the Water Bill 2007 before the Senate today represent the most significant reform to water management in the Murray-Darling Basin in over 100 years. For the first time in the basin’s history, one institution will be responsible for planning the basin’s water resources, requiring planning decisions to be made in the interests of the basin as a whole and not along state lines. The Water Bill and the National Plan for Water Security will accelerate the 2004 National Water Initiative, signed by all Australian governments. This bill will greatly enhance the Commonwealth government’s capacity to implement its commitments under international agreements such as the Ramsar Convention on Wetlands and the Convention on Biological Diversity.

The current governance model for the basin, which has remained largely unchanged since 1915, requires the agreement of all basin jurisdictions before any reforms can be implemented. It enables the parochial interests of one state to stand in the way of the common good. The waters of the basin do not respect state borders, nor should the way we manage them. The Water Bill establishes an expert independent Murray-Darling Basin Authority. The authority will develop a basin plan that will enable the waters of the basin to be managed as one interconnected system. The central element of the basin plan will be the introduction of a sustainable and integrated cap on groundwater and surface water diversions. The basin plan will set enforceable limits on the quantity of water that may be taken from the basin’s water resources as a whole and from particular water resource plan areas. The authority will consult widely with communities, irrigator groups and other stakeholders in the exercise of its functions, including the formulation of the basin plan.

The bill establishes a new role for the Australian Competition and Consumer Commission in developing and enforcing consistent rules for water charging and operation of the market across the basin, con-
sistent with principles agreed in the National Water Initiative. A Commonwealth environmental water holder is established by the bill. It will be the custodian of water access entitlements obtained by the Commonwealth through the savings generated under the irrigation refurbishment program and the over-allocation funding provided for in the national plan. Under this bill, the Bureau of Meteorology will collect up-to-date, accurate and comprehensive information on water use and availability across Australia. The cooperation of basin states remains an integral element of this reform and for the effective implementation of the Water Bill.

I take this opportunity to thank the members of the Senate Standing Committee on Environment, Communications, Information Technology and the Arts for their work on the inquiry into the Water Bill as well as the representatives of stakeholder groups, scientists and officials who appeared before the committee and made submissions to the inquiry. The bill has enjoyed strong support from a wide range of groups, including environmental interests as well as irrigators, which I think is a reflection of the government’s commitment to consultation throughout the formulation of this legislation.

Let me say that this is the first reform of its kind—the first time the Commonwealth government has reformed water management in Australia to give the Commonwealth powers over water management. This is the first fundamental reform of its kind and this historic legislation is only possible because the Howard government had the courage to implement it. Where the Victorian Labor government would not cooperate in the interests of the basin, the Howard government was determined to move forward with this much-needed reform. The reforms in this bill are needed to meet the future challenges facing water management in the Murray-Darling Basin, one of this nation’s great natural assets. With scientists predicting a hotter and drier future for southern Australia, these reforms will ensure the viability of the basin’s water-dependent industries. They will ensure healthy and vibrant basin communities and they will ensure the sustainability of the basin’s natural environment.

I will turn to some of the contributions that were made. I did have a few notes that I jotted down in relation to the Greens and Democrat contribution but, if I might say, Senator Ian Macdonald dealt with them quite well. I thank him for that contribution and remind honourable senators of that and indicate that I say, ‘Hear, hear!’ to that.

In relation to one other matter, I remind honourable senators that we have three-year parliamentary terms. As soon as you are in the last year of a parliamentary term, according to the opposition, everything that the government does seems to be election driven. It really seems, according to those opposite, that, after two years have clicked over, the government ought to just free-wheel, not introduce any new initiatives and not do anything. Of course, if we did that it would be a tired old government without any initiatives and without any legislative programs. So you do have a legislative program, you come up with new initiatives and of course then, according to the opposition, it is all election driven. What I would invite honourable senators to do is actually look at the legislation, see what is in it and judge it on its merits.

Senators Joyce and Boswell made contributions. I will respond to the matters raised by Senator Joyce. The Commonwealth will meet the commitments it made with the adoption of the national plan in February, but on the basis of the full referral of powers for implementing the plan. The Commonwealth has no intention of exposing irrigators or the states to liabilities they would not have as-
sumed had the original intent to implement the national plan with full referral of powers by all basin states been realised. We intend addressing the issue of the National Water Initiative liabilities for new knowledge applied to water plans through the intergovernmental agreement. It is not appropriate that these be dealt with in the legislation. We are fully aware that in the case of Queensland, relevant water plans expire in September 2014. The challenge for the IGA will be in ensuring an appropriate share of liabilities between the Commonwealth and the states ahead of 2015. We will present the draft IGA to the states this week. Senator Joyce asked what is to guarantee that a future government will respect these arrangements. As the senator will know, we in this place—unfortunately, we think sometimes, but chances are it is fortunate in the total scheme of things—cannot commit future governments to any policies, programs, intergovernmental agreements or even legislation. Historically governments have respected commitments made through intergovernmental agreements.

Senator Ian Macdonald—Except Western Australia in relation to the regional forest agreement.

Senator ABETZ—Yes—a point that I do acknowledge, but I will move on. Senator Heffernan raised some issues. I indicate to those opposite that my dealing with these matters in the second reading debate will mean that they will not be contributing through the committee stage. The Murray-Darling Basin Authority’s main role is the preparation and enforcement of the basin plan. Clause 20 of the bill sets out the purpose of the basin plan, which is to provide for the integrated management of the basin water resources in a way that promotes the objects of the act. The government considers that this requirement gives the MDBA responsibility for meeting the objects of the act within the scope of its functions. The government notes that meeting some of the objects of the act is more a responsibility of the ACCC or the Bureau of Meteorology than a responsibility of the MDBA.

In relation to clause 178, I indicate to the honourable senator that the structure of the authority reflects the workload and functions of the body. Should a full referral of powers be made then the structure of the authority would be reconfigured consistent with its expanded functions to include full-time membership. Retaining part-time membership of the authority will ensure that expenditure on its resourcing is commensurate with its functions.

In relation to Senator Fielding’s contribution, the final contribution, I engage with him in relation to the assertion that no detail has been presented. This is wrong. There have been seven months of consultation. There were over 50 meetings on the detail of the bill, including with irrigators across the basin. It would be fair to say, unfortunately, that the Victorian state officials provided little or no contribution. My colleague Minister Turnbull met several times with the National Farmers Federation, who represented the irrigators across the basin. Having made those comments, I commend the bill to the Senate.

Senator Joyce (Queensland) (2.26 pm)—by leave—I want to make a brief correction to something I said, just so it is on the record. In my speech I referred to amendments in the Senate; they were amendments in the other place, not in the Senate.

Question negatived.

Original question agreed to.

Bills read a second time.
In Committee
WATER BILL 2007
Bill—by leave—taken as a whole.

Senator SIEWERT (Western Australia) (2.28 pm)—by leave—I move Australian Greens amendments (1) and (2) on sheet 5361:

(1) Clause 3, page 4 (line 1), after “to provide for the”, insert “regular and systematic”.

(2) Clause 3, page 4 (line 4), at the end of paragraph 3(h), add:
; and (iii) the long-term health, resilience and sustainability of Australia’s rivers, wetlands and estuaries.

There are a couple of questions I would like to ask. But I would also like to make a few comments. I am disappointed with the way the government responded to the Greens amendments. Our amendments are the result of a well thought out, very strongly considered analysis of the bill and what people said during the limited inquiry. Unfortunately, I missed the end of Senator Ian Macdonald’s comments. I did hear him commenting on the Democrats’ contribution. I was called away to the phone and I missed what he said about the Greens amendments.

Senator Ian Macdonald—I did not say anything, actually.

Senator SIEWERT—Thank you for that interjection. In that case, I am extremely disappointed that the government did not even bother to respond to the Greens amendments in their summing up. As I said, these are the result of a carefully thought out analysis of the bill. Although I could not be at the committee hearing personally because I was in another committee hearing, a member of my staff sat in all day, listened to everybody, read every submission and has read the bill very carefully. We believe these amendments contribute significantly to improving this bill. I would have thought that the government would have given them more attention than to sling off at them, implying that they had already been dealt with when in fact they had not, and would have given them due consideration.

Having said that, I would like to ask the government for the clarification that I indicated in my second reading debate speech I would be seeking. As I understood it, during their evidence to the committee inquiry the department gave a rationale about why it would not be advisable to include a requirement in the bill that the plan should be finalised within two years. That rationale was because of the question of what happens if you do not get it done, and that leads to all sorts of complicated legal issues. As I understood it, there was an implication that the government would be clarifying, during the discussion, that the minister would undertake to direct the authority to finalise the first basin plan within two years of establishment. Is the government prepared to make that commitment so that the community can be assured that the intent is for the first basin plan to be completed within two years?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.31 pm)—The minister in the other place committed to the plan being prepared and finalised within two years. If it were in legislation, the whole scheme could potentially fall over because, due to extra consultation, the plan took two years and one day to put together. The government are very much committed to this. It is our anticipation that everything will be in place within two years. But the view was
that, if we were to legislate it and it took two years and one day, it would require further amendments et cetera and that would delay proceedings.

Senator SIEWERT (Western Australia) (2.32 pm)—I thank the minister for that answer. As I said, I understand the arguments that were being put, but we were keen to ensure that the plan was done within two years. As I said earlier, the Greens are concerned about the time delays that are built into this process, so we want to make sure that that is underway. Minister, could you also give us clarification of the time line involved in the IGA? I appreciate that that is not entirely under your purview—there is a negotiation process—but what is the time frame the government would ideally like to work towards?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.33 pm)—As I indicated, a certain plan is being provided to the states and, hopefully, being released this week. I will refer to that in the summing-up. To a large extent, it will depend on the response of the states. Like you, Senator Siewert, we would like to see this go forward as quickly as possible, but, at the end of the day, there is the requirement of cooperation.

Senator SIEWERT (Western Australia) (2.33 pm)—I have some other questions but they will come up during the discussions over the amendments. Our first amendment relates to monitoring an evaluation of the plan. The objects of the bill are actually quite comprehensive with regard to most issues. This deals with the issues around river health. We are concerned about the issues relating to collection and analysis of data. While the previous points make the responsibility of the act quite clear for managing river ecosystem health, it actually leaves out the issue around collection of information needed to undertake this management. Professor Peter Cullen pointed this out quite clearly in his evidence to the committee, so we have actually included two amendments.

One amendment provides for the regular and systematic collation, analysis and dissemination of information about that. Also, clause 3(h) is amended to include the long-term health, resilience and sustainability of Australia’s rivers, wetlands and estuaries. We want to make it crystal clear, under the objects, that information will be collected. At this stage, the bill says, ‘To provide for the collection, collation’ et cetera—I will not go into all the details—including information about Australia’s water resources and the use and management of water in Australia. That is actually different to the issues around long-term health, resilience and sustainability of Australia’s rivers, wetlands and estuaries.

The government probably does intend for that information to be collected, but it is not actually detailed in the objects of the bill. The Greens think it is much better if that is spelt out very clearly, because Australia’s water resources are different to the long-term health, resilience and sustainability of Australia’s rivers, wetlands and estuaries. We propose these amendments to make it crystal clear in the objects that that is the information that should be collected. I ask the government: why is it not clearly spelt out in the objects that that information should be collected for those issues, when, as I said, it is clear that the objects of the bill also include managing the river’s ecosystem and health?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.36 pm)—I indicate that the government will be opposing both amendments. In relation to amendment (1), I draw the honourable senator’s attention to part 7 of the bill which is headed ‘Water information’. It deals with those issues quite comprehensively, I might
say, and therefore we do not believe that there is any need for that to be included in the objects as well.

In relation to amendment (2), the matters proposed to be added are already included through paragraph 3(h)(i) at page 4, line 3, which provides for the collection of information about Australian water resources generally. ‘Water resource’ is then defined in clause 4 to include all components and ecosystems that contribute to the physical state and environmental value of the water resource. We believe that what Senator Siewert is saying is correct, but it is already all in there and therefore it is not necessary.

Senator O’BRIEN (Tasmania) (2.37 pm)—The opposition’s position on these two amendments is the same as our position on all other amendments. We received them this morning. We were not previously consulted about them. There was no consultation before today. We have been critical of the government for the short time that we have had to deal with the bills. To be even handed, we would be critical of the movers for the short time that we have had to consider these amendments—although we do concede that everyone has been under pressure in this week to deal with a very extensive and tight legislative program. We do not believe that it is appropriate to effectively shoot from the hip in relation to this legislation by supporting amendments that we have not had an opportunity to completely investigate, especially in terms of any broad consequences that might arise from amendments that are set out in detail. I understand that Senator Siewert was not able to be at the committee hearing for other reasons. I recognise that Senator Siewert’s staff member was present, as far as I could tell, for most if not all of the committee’s hearing, as was I.

It may be that this is a valiant attempt to give expression to noble principles in relation to the legislation. We would be sympathetic in a general sense to a number of the amendments on sheet 5361. However, we do not believe that it is appropriate, as I said, to shoot from the hip and make amendments to the legislation now which we might regret later given more of an opportunity to scrutinise them and a better chance to understand the broad implications that each would have. So we will not be supporting these two amendments; we will not be supporting any of the amendments on sheet 5361, for the reasons that I have outlined. That may not be satisfactory to Senator Siewert, but that is the position that we find ourselves in and that will be the position reflected in our votes on all of the amendments in that package.

During the committee, I referred to clause 35 of the legislation in proposed subdivision D and the fact that, where a state or an operating authority or an infrastructure operator established water-sharing arrangements that were not consistent with the basin plan, the legislation appeared to give the Commonwealth the opportunity to effectively bypass those entities and to prosecute an individual holder of a water access right as a means of applying pressure to the other entities mentioned in subclause 1 of clause 35—in other words, the least well-resourced part of the chain might be prosecuted, applying pressure to others above that person or entity in the chain. The officers of the department indicated that they would be prepared to undertake that such a practice would not be observed. I indicated that I would ask that the Commonwealth, through the minister, would give such an undertaking on the record. I repeat the request and ask whether the minister is able to give that undertaking today.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (2.42 pm)—I want to respond to the criticism from Senator O’Brien. Senator Siewert has
brought in some very compelling and important amendments to this legislation. Senator O’Brien ought to have been introducing amendments. The Labor Party has enormous wherewithal that the Greens do not. The pressure cooker situation here is an outcome of the government putting major legislation without time for proper Senate scrutiny and without time for proper Senate consideration—we all understand that. Notwithstanding that, Senator Siewert and her staff have been able to look at the 233 pages of legislation and at the evidence before the committee and its findings and come up with a suite of very important and sensible amendments. Then Senator O’Brien comes in and says, ‘I haven’t had time to look at them,’ although they were circulated and available yesterday and we sat here until 12 o’clock last night. Most senators were waiting on the deliberations of the Northern Territory legislation, and yet he says he has not had time to look at them and so he is going to vote against them all. The Labor shadow minister has a decision to make here. The legislation—

**Senator O’Brien**—I am not the shadow; Mr Albanese is the shadow.

**Senator BOB BROWN**—The shadow minister’s shadow has a decision to make here. The legislation was brought in with totally inadequate time for the parliament to deal with it. Senator Siewert has diligently come up with recommendations to make it better. Senator O’Brien says he cannot handle that and he will vote against them, but he has as much responsibility in voting against those amendments and passing up the opportunity as he does in voting with the government for the government legislation. He cannot duck out of it as easily as that. Senator Siewert has done a remarkable job here—quite astounding, considering that she was also handling the Northern Territory legislation for the Greens. She has been up burning the midnight oil. She is smart; she is intelligent; and she knows this topic.

**Senator Ian Macdonald**—She should be the leader.

**Senator BOB BROWN**—The senator opposite is suggesting that she should be leading the opposition benches. I would agree with that. But when you come to a parliament here you have to deal with what comes before you. It is no good saying, ‘I can’t deal with that, so I’m going to vote no on everything.’ That is not a responsible way to deal with the pressures that are put upon us by the government in the way it runs its schedule and the fact that we are sitting here on Friday, so I do not accept that. Labor takes all the responsibility and must accept all the responsibility for simply dismissing these amendments and saying that it will vote against them. The legislative outcome by missing some of these amendments will be its responsibility as much as the government’s if it denies the amendments.

**Senator SIEWERT** (Western Australia) (2.46 pm)—I would just like to quote a little bit from Peter Cullen, from the *Hansard*. I would also like to point out that nearly all the amendments that the Greens are presenting are a result of submissions, evidence and consultation with community organisations. They are a result of actually listening to people—a result of evidence to the committee that everybody heard at the committee hearing, and everybody has had an opportunity to read the submissions. We had taken the time to consult with organisations, but that is on the basis of what they have been saying in their submissions and the evidence. Peter Cullen said this at the hearing so everybody could hear it:

As to the mission in the document, there are a lot of good requirements for water information, and I strongly support all of that. But there is no requirement for regular information on the health of the rivers, and yet we are doing all of this to
restore river health. I believe the bill would be better if we could include in it a commitment to accelerate and to report regularly on the sustainable rivers audit that the Murray-Darling Basin Commission has been doing. We need to get a routine, regular, systematic measure of river health so we can see whether we are getting on with the task.

This is the scientist’s opinion. I agree that there are good information requirements, but they are not specific enough, in the expert’s opinion, to deliver on ecosystem health and on river health. This is a scientist saying this, not just us greenies going off half-cocked. This is the scientists saying that there is not enough provision here to report properly and to require the information collection for river health. That is why we think this amendment should be made, to make it crystal clear that information can be collected and why we are collecting it. We think it is a sensible addition. This bill is about the Murray-Darling system’s river health. Why not be explicit about it? If you think it is there already, make it explicit, because it is not explicit in the bill.

In relation to Senator Siewert’s comments, I simply indicate that the whole drafting of this bill has been as a result of months and months of consultations, discussions and negotiations. In conclusion, I refer the honourable senator to the meaning of ‘water information’ in clause 125 and then also to clause 130, dealing with national water information standards, including 130(2)(j), ‘any other matter relating to water information that is specified in the regulations’. So if there is deemed to be a need to further enhance these things then that can in the future potentially be done by regulation.

Question negatived.

Senator SIEWERT (Western Australia) (2.50 pm)—by leave—I move Greens amendments (3), (7) and (8) on sheet 5361:

(3) Clause 20, page 36 (line 5), after “quantities of”, insert “and shares of”.

(7) Clause 22, page 41 (table item 6, column 2), after “quantities of water”, insert “or share of water”.

(8) Clause 22, page 41 (table item 7, column 2), after “quantities of water”, insert “or share of water”.

These amendments relate to the definition of a long-term sustainable diversion limit. Given the time, I am not going to go over the issues that I have talked about not that long ago in my speech in the second reading debate. These amendments, we believe, help define the long-term sustainable diversion limit better. We are also introducing the concept of a share of water. That is based, again, on evidence that Professor Mike Young presented. I thought he made a very useful contribution and also a very valuable suggestion. I will just read you the bit from the Hansard. Senator Heffernan had asked him a question about allocations and water use. Professor Young said:

That is very difficult to do quickly. Let me firstly make a very clear distinction between the
northern half of the basin and the southern half of the basin. The northern half is best thought of as an event driven system where storages are largely on farms, and that is a very different situation from the southern system, which is a regulated system. In the north, if there is 35 per cent less water, then 35 per cent less would be taken, if the entitlements are defined as shares. I suggest and recommend that the committee consider amending the bill to talk ... more about shares and sharing the system.

He went on to say that he thought that could be done quite easily. That is what we are attempting to do here: introduce this concept of sharing the water. As I articulated in my speech on the second reading, we are very concerned to ensure that we do have a proper definition of a long-term sustainable diversion limit. These three amendments seek to define that and to put that in place.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.52 pm)—Briefly, the amendments are opposed. The cap—or, more formally, the long-term average sustainable diversion limit, as defined in the bill—already provides for a variable limit on water use between water years, and this can potentially be expressed as a share under clause 23(2)(c) where the Murray-Darling Basin Authority determines that this is appropriate. As a matter of practicality and enforcement, all shares must be converted to a quantity, as this is what is monitored.

Question negatived.

Senator SIEWERT (Western Australia) (2.53 pm)—I move Greens amendment (4) on sheet 5361:

(4) Clause 20, page 36 (after line 7), after paragraph (b), insert:

(ba) the maintenance of essential ecosystem functions by ensuring that minimum flows of water regularly pass through the Basin’s river systems; and

This amendment expands on the purpose of the basin plan to include a requirement to consider downstream consequences and to ensure that water flows through the entire system. What we are trying to do is put in place an amendment that is to do with the maintenance of the entire ecosystem to ensure that the functions are ensuring that minimum flows of water regularly pass through the basin’s river system. We are trying to ensure that the whole of the system is looked after through this amendment.

This amendment is the result of recommendations from scientists who believe that the current bill does not necessarily ensure that the whole system is looked after. They very strongly recommended that we put in place end-of-basin flow targets so that we can ensure that we get water down through the length of the river and we look after the whole of the river. As I said, it was Mike Young’s recommendation that this sort of amendment be made to ensure that we are looking after the health of the entire river.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.55 pm)—The amendment is opposed. Clause 20 already provides for basin-wide environmental objectives for water dependent ecosystems to be set. Further to that, clauses 28(2) and 28(3) provide for the specification of targets to be set as part of the environmental watering plan, including flow targets. Setting targets of this nature should be on the basis of best available science and that is precisely what the independent expert Murray-Darling Basin Authority will be charged with doing, on the basis of the merits of the case for the use of the water available.

Question negatived.

Senator SIEWERT (Western Australia) (2.56 pm)—by leave— I move Greens amendments (5) and (12) on sheet 5361:
(5) Clause 21, page 36 (lines 23 to 28), omit subclause (1), substitute:

(1) The Basin Plan (including any environmental watering plan or water quality and salinity management plan included in the Basin Plan) must be prepared so as to provide for giving effect (to the extent to which they are relevant to the use and management of the Basin water resources) to:

(a) relevant international agreements;
(b) the Australian Ramsar management principles as prescribed by section 335 of the Environment Protection and Biodiversity Conservation Act 1999; and
(c) plans and strategies developed for implementing commitments under relevant Agreements in accordance with the Environment Protection and Biodiversity Conservation Act 1999 including:

(i) any management plans for a Ramsar wetland under section 328 or section 333 of that Act;
(ii) any recovery plan or threat abatement plan prepared by the Commonwealth under Chapter 5 of that Act or any recovery plan or threat abatement plan developed by a State or Territory;
(iii) the China Australia and Japan Migratory Birds agreements and any wildlife conservation plans under section 285 of that Act.

These amendments relate to integration with the Environment Protection and Biodiversity Conservation Act. The amendments are to ensure that the basin plan and the water resources plan are consistent with, and give effect to, not only relevant international agreements but also plans and strategies developed for implementing these commitments under the EPBC Act.

At the moment the bills are being consistent with, for example, Ramsar, the migratory bird conventions and the biodiversity convention. What we seek to do with these amendments is to ensure that the plans and the strategies that are developed to implement these are given effect under this legislation. It is quite an extensive amendment, which talks about how those plans should be implemented through amendments and to give effect to those under the EPBC Act. The Environmental Defenders Office, which made a submission to the inquiry, also talked about this quite substantially. In its submission it talked about how to improve the integration with the EPBC Act. It said:
The Bill could be improved by better coordination and integration with the implementation of international agreements under the ... the EPBC ... without limiting the Bills general scheme of giving effect to relevant international agreements.

What we are seeking to do here is to ensure that these international conventions are implemented, and that they are implemented through the plans and strategies—the ‘doing’ side of things. That is what we are trying to do here: ensure that the government is implementing the conventions through their strategies and plans. I know that the department is undertaking a review of Ramsar site management—I am hoping it is around Australia—because we know that the states are not implementing the plans. That comes back to the Commonwealth, because the Commonwealth is the signatory to these international conventions. These amendments seek to give effect to those plans and strategies so that we are actually doing what we say we are doing. This takes it one step further than just not being consistent with the conventions but in effect is implementing these conventions.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (2.59 pm)—Greens amendments (5) and (12) are opposed. In relation to amendment (5), we say that the provisions of clause 21(1) already provide the appropriate reflection of these treaties, and it would be inappropriate for the basin plan to be required to implement the requirements of domestic instruments such as those made under the EPBC Act. The instruments made under the EPBC Act should be implemented under that particular act.

Senator SIEWERT (Western Australia) (3.01 pm)—So, if I understand the argument, what the government is saying is that you should not be referring to the EPBC Act here; this just ensures it has been consistent. But what is actually implementing it is the EPBC Act, so we should not be amending it. Is that the argument?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.01 pm)—I think I have got a quick answer; it is yes.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.01 pm)—But the matter is too important to be left with a one-word answer like that. What Senator Siewert’s amendments do, on behalf of the Australian Greens, is require the basin plan to abide by international agreements—that includes the Ramsar agreement, to which we are signatories, as prescribed in section 335 of the Environment Protection and Biodiversity Conservation Act. Then there is the follow-through under that act for
other treaties, including those with China and Japan for migratory birds. I might add here that, even though a promise was made back at the turn of the century by the minister for the environment at the time, Mr Kemp, that there would be a migratory bird agreement struck with South Korea, we still have to see that one in evidence.

This amendment is very critical. It says that we should abide by the nation’s one major environmental law, the Environment Protection and Biodiversity Conservation Act, that we should take it into account in drawing up the Basin Plan. There can be no worry with the government if it intends to do that. But this government’s performance is not one of abiding by the EPBC Act. It is not one of implementing its intent or even the letter of its outcome. Just this week a motion before the Senate calling for the environmental laws to be upheld with regard to protecting the habitat of rare and endangered species in this country was voted against by both the major parties, extraordinarily enough.

This is a crucial amendment and the Greens are very strong that the strictures of environmental law in this country be applied to the Murray-Darling Basin. That is what it is about. The practice so far is to ignore the environment and put it last. We are saying here: simply abide by the relevant international agreements we have signed and this nation’s single major environmental law. Surely the government—or the opposition, for that matter—cannot cavil with that.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.04 pm)—Senator Bob Brown made some quite complimentary comments about Senator Siewert’s contributions, and I think they are appropriate for the work that she has done. But the submission we have just heard from Senator Bob Brown would indicate that he has not done that degree of work. I refer him to page 15 of the bill, just in case he did not get that far. It states:

*relevant international agreement* means the following:

(a) the Ramsar Convention;
(b) the Biodiversity Convention;
... ...
(g) ROKAMBA

There is a long list, including the ROKAMBA convention. Further down, it states:

**ROKAMBA** means the Agreement with the Government of the Republic of Korea on the Protection of Migratory Birds done at Canberra on 6 December 2006.

All of those matters are in the bill.

Question put:
That the amendments (Senator Siewert’s) be agreed to.

The committee divided. [3.11 pm]

(The Chairman—Senator JJ Hogg)

Ayes……………… 4
Noes……………… 48
Majority……….. 44

AYES
Alison, L.F.        Brown, B.J.
Milne, C.           Siewert, R. *

NOES
Abetz, E.          Adams, J.
Barnett, G.        Bernardi, C.
Bishop, T.M.       Boyce, S.
Brandis, G.H.      Campbell, G.
Chapman, H.G.P.      Colbeck, R.
Cormann, M.H.P.    Crossin, P.M.
Eggleston, A.       Evans, C.V.
Ferguson, A.B.     Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Fisher, M.I.       Forshaw, M.G.
Hogg, J.J.          Humphries, G.
Hurley, A.          Hutchins, S.P.
Kirk, L.           Lundy, K.A.
Macdonald, I.       Macdonald, J.A.L.
Marshall, G.        Mason, B.J.
McEwen, A.          McLucas, J.E.
Minchin, N.H.  Moore, C.
Nash, F. O’Brien, K.W.K.
Parry, S. * Patterson, K.C.
Paxye, M.A. Polley, H.
Ray, R.F. Ronaldson, M.
Sherry, N.J. Stephens, U.
Sterle, G. Trood, R.B.
Webber, R. Wortley, D.

* denotes teller

Question negatived.

Senator SIEWERT (Western Australia) (3.15 pm)—I move Greens amendment (6) on sheet 5361:

(6) Clause 21, page 37 (after line 3), subparagraph 2(a)(ii), insert:

(iii) the need to take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects; and

(iv) the need for sustainable management, conservation and enhancement of sinks and reservoirs of all greenhouse gases including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems; and

(v) the need for adaptation to the impacts of climate change including appropriate and integrated plans for water resources and agriculture; and

Specifically, this amendment implements important and relevant elements of the climate change convention, which I referred to in my speech in the second reading debate. We believe that this is particularly important. Through this amendment, consistency with the Ramsar and biodiversity and various migratory bird conventions is maintained. We think it is also important that consistency be maintained with the climate change convention—because, as we know, climate change will have a pretty devastating impact into the future. In fact, we contend that it is impact-

ing already on the Murray-Darling Basin. Therefore, we believe it is important that we maintain consistency with that convention. In addition, the environmental defenders organisation, in its submission to the committee, said that it felt it was important that we give effect to the climate change convention.

As we are aware, some people still believe that climate change is not impacting on the Murray-Darling Basin—but we believe it is. In fact, Bryson Bates of CSIRO has said that he believes climate change fingerprints are all over the Murray-Darling Basin’s decreased rainfall. In addition, many of those who made submissions and presented at last week’s hearing pointed out that they feel it is very important that we build resilience into the Murray-Darling system and that implementing the climate change convention would help answer the need for and give effect to the ability to build resilience into this plan. Did the government consider including the climate change convention into the bill; if not, why not?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.18 pm)—I refer the honourable senator to section 21(1), which says:

The basin plan must be prepared so as to provide for giving effect to relevant international agreements.

Going to the definition section on page 15, line 14, you will see that ‘relevant international agreement’ means the following, including the climate change convention. So I think on this we are in heated agreement, and it is already all in there.

Senator SIEWERT (Western Australia) (3.18 pm)—Yes, I am aware of that. Perhaps I should have indicated that in my comments. It gives more effect to the bill, compared with the other conventions it gives effect to. We are trying to give effect to the recommendations of the EDO, as the bill is
silent on how the plan ought to give effect to the climate change convention. The others—which are in clause 21(2) and 21(3)—talk specifically about biodiversity and Ramsar but are silent on climate change. Is there a reason for that?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.19 pm)—The plan will deal with all of these matters. We are of the view that the climate change convention, along with all the other conventions and other matters listed in the bill, should be considered to ensure that the plan ultimately has the impact, and effects the purposes, for which it was established. I am not sure of exactly how that could be further enhanced, given that it is specifically referred to.

Senator SIEWERT (Western Australia) (3.20 pm)—There are specific clauses—clauses 21(2) and (3)—that give effect to the biodiversity and Ramsar conventions but do not go as far as the climate change convention. If I understand what you have just said, the plan will also give effect to the climate change convention.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.21 pm)—On the right-hand side of page 40 of the bill at section 2, item 3, ‘specific requirements’ are listed. On the other side of the page it states:

An identification of the risks to the condition, or continued availability, of the Basin water resources.

That matter is to be included in the plan. If you go down to ‘(b) the effects of climate change’, you will see that it is specifically addressed.

Senator SIEWERT (Western Australia) (3.21 pm)—Believe me, at this time in the afternoon I am really trying hard not to be pedantic. Clauses 21(2) and (3) specifically take out articles from the Ramsar convention, and then the other one takes out clauses from the biodiversity convention. I am interpreting you as saying that, because there is reference to climate change and broad reference to international conventions, the climate change convention will be given effect through those clauses, even though it is not specifically referenced in one of the clauses. The advisers are nodding their heads. Is that correct?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.23 pm)—The terminology that I am told I am looking for is that clause 22 is a non-limiting clause and, therefore, the senator’s concerns are thereby addressed.

Senator SIEWERT (Western Australia) (3.23 pm)—I thank the minister. As you would appreciate, the Greens feel strongly about this convention; it is very important. If the minister can assure us that, even though the conventions are not named, they will be included and taken into account through that non-limiting clause then the substance of what we seek to include would be dealt with. I am chasing this up so that we can be assured that these issues will be included in any subsequent planning, despite the fact that that convention is not specifically named. So that answer does reassure me somewhat.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.24 pm)—I understand that the climate change convention requires there to be a plan for water resources, and this bill deals with a water plan and is dealing with water resources and, therefore, to the extent that the convention is applicable to this piece of legislation, its terms are to be pursued.

Question negatived.

Senator SIEWERT (Western Australia) (3.25 pm)—by leave—I move Greens amendments (10), (11), (25) and (26) on sheet 5361:
(10) Clause 44, page 61 (lines 1 to 3), omit subparagraph (3)(b)(ii).

(Amendment (11) is an alternative to amendment (10))

(11) Clause 44, page 61 (line 12), omit subparagraph (5)(b)(i), substitute:

(i) items 1, 2, 3, 6, 8, 9 or 10 of the table in subsection 22(1); or

(25) Clause 175, page 167 (line 29), after “directs”, insert “, which must be consistent with the objects of this Act,”.

(26) Clause 175, page 168 (line 13), at the end of subclause (2), add:

; or (e) those aspects of the Basin Plan excluded from Ministerial direction under subsection 44(5).

The Greens oppose clause 38 and clause 62 in the following terms:

(9) Clause 38, page 56 (lines 8 to 18), TO BE OPPOSED.

(13) Clause 62, page 75 (lines 9 to 19), TO BE OPPOSED.

Again, I am not going to drag the chamber through the arguments about the independence of the authority, which I mentioned in my contribution to the second reading debate on the bill. These amendments specifically relate to the independence of the authority. They address concerns about the level of ministerial intervention in the operations of the authority, which is intended to be, as we understand it, an independent decision-making body, operating on the basis of the best available science. We believe the amendments address ongoing concerns about the potential politicisation of the basin planning process.

In moving these amendments, I would like to clarify some of the issues that I raised in the briefing we had. When the minister reports back to parliament, I want to clarify the issue of where they are following or diverging from the advice of the authority. During the discussions around the development of this legislation, public statements were made on when the minister would be reporting to parliament. From what I have been told and from reading certain documents, I understand that, where the minister diverges from advice given on policy and where the minister directs on the basin plan, that advice will be tabled in parliament but that where that advice is about finances it will not be. Is that a correct understanding?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.27 pm)—I was just being briefed in relation to aspects of the FMA Act, but I assume that the honourable senator is seeking information not about that but more about the science and things of that nature. I do have some information for her. The government believes the bill strikes the right balance between the independence of the authority and government accountability to the electorate. The minister’s capacity to give directions to the Murray-Darling Basin Authority has been appropriately limited to reflect the independent and expert based nature of the authority, while ensuring that the democratically elected government has an appropriate role, if required, in important decisions such as those involving trade-offs between economic, environmental and social objectives. However, the minister cannot give directions on any matters of a scientific or factual nature. This means, for example, that the minister could not direct the authority to change its assessment of the water needs of particular ecosystems within the basin. However, the minister may direct the authority on priorities in circumstances where trade-offs need to be made. In all cases where the minister gives direction to the authority, which it is anticipated will be rare, the minister must table the reasons for such directions in parliament.

In the case of directions relating to the basin plan, the minister must include reasons
for not following the advice of the authority. I think the senator was also asking within what time frame that work had to be tabled. I am advised that that information would be tabled at the same time as the plan is tabled. The minister is also prevented from giving any directions to the authority in respect of any enforcement related action the authority decides to take. If there are any other matters in this bracket of amendments, I am happy to try to answer them.

Senator SIEWERT (Western Australia) (3.30 pm)—If I understood your answer correctly just then, if the minister makes a direction that will be tabled when the new plan is tabled, I do not know whether this is the appropriate time to raise this issue—people who made submissions to the inquiry raised it as an issue—but I will raise it because it affects the independence of the ministerial council authority that will, as I understand it, be set up under the IGA. I am confused about the ministerial council. Will there now be one ministerial council or two?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.30 pm)—There will be two.

Senator SIEWERT (Western Australia) (3.31 pm)—Will they have the same people on them?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.31 pm)—Potentially so but, undoubtedly, with different functions. One will be dealing with the Water Bill matters and the other one will be dealing with the Murray-Darling Basin matters.

Senator SIEWERT (Western Australia) (3.31 pm)—So one will be the Murray-Darling Basin Authority Ministerial Council?

Senator Abetz—Yes.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that

Greens amendments (10), (11), (25) and (26) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that clauses 38 and 62 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (3.32 pm)—by leave—I move Greens amendment (14) on sheet 5361:

(14) Page 97 (after line 15), after clause 77, insert:

77A Acquisition on just terms

In order to maintain the reliability of water access rights and water access entitlements or return water use to sustainable limits, the Minister may acquire a proportion of every water access entitlement and water access right in a water resource area on just terms.

Note: This would mean that water could be acquired only in a manner that is consistent with the principles established under the Lands Acquisition Act 1989.

The Greens oppose clause 255 in the following terms:

(28) Clause 255, page 220 (lines 22 to 31), TO BE OPPOSED.

These amendments relate to the issues around compulsory acquisition and just terms acquisition. I do understand why the government moved to rule out the issues around compulsory acquisition. As I understand it, they largely relate to the politics of the basin. Some people believe that there should not be any compulsory acquisition. Some pretty compelling arguments were put forward by way of submissions and in evidence to the hearings about acquisition on just terms, to keep as a last resort compulsory acquisition and use the just terms provisions, which we have just extensively debated in the previous legislation. Has the
government considered that? It seems to the Greens, from the evidence that we received—and despite the fact that we have always said that, as a last resort, we will not necessarily rule that out as being one mechanism in the basket of mechanisms that you may want to use—that some pretty compelling advice was given around the use of ‘just terms’ and how that will potentially be beneficial to the farming community. Was that talked about at all and considered? If it was not and you did not proceed with it, can you enlighten us as to why you did not think those were useful provisions?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.34 pm)—Section 255 makes it quite clear that the government, through the act, will not authorise compulsory acquisition of water rights. The reason for that is that, as part and parcel of our consultations over that seven-month period, there was a degree of opposition to that prospect. We also believe that that clause in the bill will provide integrity and security to water rights and will assist in the overall development of the markets in relation to water rights. That is why we came to that conclusion, and it is now in the legislation.

Senator SIEWERT (Western Australia) (3.35 pm)—I do understand why the government has ruled that out. The evidence that the committee received revolved around issues of just terms and the fact that, by excluding it, you are excluding a mechanism that may be useful to farmers. I have taken on board what you said, but I do not necessarily agree with it. But did you look at those issues around just terms compensation and the fact that it may be useful to help farmers exit from what in the future could be difficult circumstances in the basin, if what we fear occurs—that is, there is an overall reduction in the amount of water in the basin? Obviously, there will be a reduction in the cap at some stage, but that may be much more significant in the future than we are anticipating if climate change does have the impact on water resources that some suspect it might. It might be a useful tool for government and the community to actually have. Was that considered?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.37 pm)—It would be fair to say that over that seven-month period many things were considered, and I would be surprised if all the issues that the senator has raised were not put into the mix and considered. One thing that I would point her to is the $10 billion National Plan for Water Security. Five billion dollars of that is set aside for modernising irrigation in Australia and $3 billion is to address overallocation, which will enable purchasing of entitlements and structural adjustment. We believe that that can and will be done on a voluntary basis and, without delaying the Senate, I suppose it is the same approach we had to Securing Our Fishing Future. We had money made available to buy back licences, albeit on a voluntary rather than a compulsory basis. We believe that that would work in these circumstances and we do not see the need to go down the route of compulsory acquisition.

Senator SIEWERT (Western Australia) (3.38 pm)—I suspect that answers my question. You mentioned the $10 billion package and the money for overallocation. In a briefing I did raise again—and heaven forbid that I should have something in common with Senator Heffernan, but it is an issue that he has raised on many occasions—the issue of the MISs, and I have also raised it here on previous occasions. As we are told, there are a number of larger corporations that hold a significant amount of water that they have bought up through MIS investment. How is the government planning to deal with big entities that hold large amounts of water?
what the people in the water market tell me is true, they have already distorted the water market by buying those large allocations. These big entities or corporations may not now want to go ahead with their MIS investment because the rules have changed. Has the government given consideration to how they are going to deal with that major amount of water that is on the market through the big corporations? I am told that they have got a lot of water that they have bought from farmers and that they may be looking to offload that.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.40 pm)—I do not know where to start on that one. I will sidestep the MIS issue, because it would be fair to say that Senator Heffernan and I might have disagreeing views in relation to that. Coming back to the issue at hand, which is water, the water market will be guided by the ACCC. They will have input into what is occurring. In general terms, one would assume that the market would operate, but of course it does have the ACCC’s involvement as well.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that Greens amendment (14) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that clause 255 stand as printed.

Question agreed to.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.41 pm)—At the request of Senator Siewert, I move Greens amendment (15) on sheet 5361:

(15) Page 106 (after line 12), at the end of Part 2, add:

Division 5—Investments

86A Investment decisions

The Minister, in making investment decisions related to the Murray-Darling Basin, including but not limited to investments relating to modernising on-farm and off-farm irrigation infrastructure, major engineering works and the purchase of water allocations, must:

(a) ensure consistency of the investment with the Basin Plan; and

(b) ensure consistency of the investment with the National Water Initiative commitments, giving effect to the principles of full-cost recovery, user pays and pricing transparency; and

(c) provide transparency and accountability in the expenditure of funds; and

(d) monitor and measure the effectiveness of the investment in meeting the objectives of the Basin Plan; and

(e) assess the cost effectiveness of the proposal.

This is to ensure that the minister in making investment decisions relating to the Murray-Darling Basin has consistency in the investment with the basin plan and with the National Water Initiative. It also makes sure that those decisions on the investment by the minister give effect to the principles of full cost recovery, user-pays, transparency, accountability, effectiveness and cost-effectiveness of the investment in meeting the objectives of the basin plan and cost-effectiveness of the proposal. So it is a motion for good accountability and to ensure that the minister in making these quite enormous investment decisions abides by these principles in making those decisions.

Question negatived.

Senator SIEWERT (Western Australia) (3.43 pm)—by leave—I move Greens amendments (16) and (17) on sheet 5361:
(16) Heading to Part 5, page 120 (line 3), at the end of the heading, add “and Register”.

(17) Page 121 (after line 30), after clause 103, insert:

103A Progressively established Basin Water Register

(1) The Authority may establish a guaranteed Water Rights Register in a manner that is consistent with the Basin Plan.

(2) The Authority may establish a process enabling the voluntary transfer of registrable water rights issued by States to the Register established under subsection (1).

Items (16) and (17) relate to the establishment of a basin water registry. Again, this was put forward during the committee process. I did articulate the reasons for that in my speech on the second reading in that it was recommended that it was a good way to ensure good water management. Mike Young, as I think most people will know, is a very strong advocate for good water management in the basin. He made some pretty compelling arguments for such a register. He said:

What I am envisaging is that there will be a step on from where we are now, and I hope there is. There must be for the sake of Australia. To me that means that we need to have an authority that is enabled to grow, expand and be proactive. That is why I suggest they should be responsible for pursuing the objects of the act and, in stepping forward, starting to build really good entitlement registers that are much more secure and that give everybody confidence, progressively working through the many issues.

We believe that a register will, in fact, build the basis of a much more secure and robust water market. I think people will be aware that Mike Young has been advocating something of this nature for some time. We think it is an eminently sensible idea and that is why we are moving these amendments to put in place such a basin water register.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.45 pm)—If I may briefly return to the previous amendment that was put as I was still seeking some advice. I indicate that we understand the intentions in relation to the investment decisions, we can understand what is behind it, but at the end of the day a minister would be required to make those investment decisions on that basis, and of course for transparency and accountability any investment made by the minister would potentially be able to be discussed at Senate estimates. So we believe it would be inappropriate to put restrictions on the investment decisions by the government and the decisions, of course, will be guided by the basin plan.

In relation to the amendments that are currently before us, the difficulty is that water resources are vested in the states, which therefore have the authority to grant entitlements to take the water. The Commonwealth does not have this power and is, therefore, unable to grant entitlements or to protect the entitlement. Registers provide the legal security for people with legal interests, including ownership, in the entitlement. Consultation with the states has clearly demonstrated the need for unique and complete registers. The development of multiple registers would likely lead to uncertainty and, while it would be possible to establish a central single register for the basin, this would require a referral of power and considerable disruption to the current development of secure registers. The Commonwealth and state governments prefer to retain compatible state registers with a common central information system that will provide easy access to the state registers. This is provided for in part 5 of the bill.

Question negatived.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.47 pm)—I move Greens amendment (18) on sheet 5361:
(18) Clause 110, page 126 (line 1), before “using”, insert “acquiring, holding or”.

This amendment would alter clause 110, Application of state laws to the Commonwealth environmental water holder. Subclause (1) of that is:

(1) Any requirement of a law of a Basin State that prevents a person from:
   (a) using, on land that the person does not own, water available ...

This amendment changes that to ‘acquiring, holding or using’ to ensure that it is spelt out that the clause applies to the acquiring or holding of water, that a person does not own the use of that water. It makes that clear so that the acquiring or holding of water does not escape the clause.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.48 pm)—The clause as it stands is appropriate for the needs of the environmental water holder. It addresses the key limitation in state laws. The Commonwealth has taken the view that it should override state laws only to the extent absolutely necessary to achieve the objectives of the environmental water holder. Limitations on acquiring and using water are often imposed by state laws to achieve legitimate environmental outcomes and the Commonwealth does not wish to legislate to override such restrictions.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.48 pm)—The intent here is to make sure that water being used on land that a person does not own becomes available for those purposes, and that use should include acquiring or holding, and that is the point of this. Can I just point out too that, under the terms of this clause, when we come to (d) we come to this sentence: ‘that it does not apply to the Commonwealth environmental water holder in relation to the use of Commonwealth water holdings to water water dependent ecosystems’. I have never seen the word ‘water’ used three times out of four words in the one sentence ever in my acquaintance with the English language. I think that might be a record. I note at the start we are referring here to the basin states and I do hope there is a good outcome from this legislation so that we do not have basin state blues further down the line.

Question negatived.

Senator SIEWERT (Western Australia) (3.50 pm)—by leave—I move Greens amendments (19), (20) and (21) on sheet 5361:

(19) Clause 140, page 142 (lines 5 to 9), omit subclause (1), substitute:

(1) If a person has engaged, is engaging or is proposing to engage in conduct consisting of an act or omission that constituted, constitutes or would constitute a contravention to which this Part applies, an application to a Court for an injunction may be sought by:
   (a) the appropriate enforcement agency; or
   (b) an interested person (other than an unincorporated organisation); or
   (c) a person acting on behalf of an unincorporated organisation that is an interested person.

(20) Clause 140, page 143 (after line 18), at the end of the clause, add:

(7) For the purposes of an application for an injunction relating to conduct or proposed conduct, an individual is an interested person if the individual is an Australian citizen or ordinarily resident in Australia or an external Territory, and:
(a) the individual’s interests have been, are or would be affected by the conduct or proposed conduct; or
(b) the individual engaged in a series of activities for protection or conservation of, or research into, water resources or dependent ecosystems, at any time in the 2 years immediately before:
   (i) the conduct; or
   (ii) in the case of proposed conduct—making the application for the injunction.

For the purposes of an application for an injunction relating to conduct or proposed conduct, an organisation (whether incorporated or not) is an interested person if it is incorporated (or was otherwise established) in Australia or an external Territory and one or more of the following conditions are met:
(a) the organisation’s interests have been, are or would be affected by the conduct or proposed conduct;
(b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:
   (i) the organisation’s objects or purposes include the protection or conservation of, or research into, water resources or dependent ecosystems; and
   (ii) the organisation has been engaged in a series of activities related to the protection or conservation of, or research into, water resources or dependent ecosystems;
(c) if the application relates to proposed conduct—at any time during the 2 years immediately before the making of the application:
   (i) the organisation’s objects or purposes include the protection or conservation of, or research into, water resources or dependent ecosystems; and
(2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:
   (a) the individual is an Australian citizen ordinarily resident in Australia or an external Territory; and
   (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, water resources or dependent ecosystems.

An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:
(a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and

(b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, water resources or dependent ecosystems; and

(c) at the time of the decision, failure or conduct, the objects or purposes of the organisation or association included protection or conservation of, or research into, water resources or dependent ecosystems.

(4) A term (except person aggrieved) used in this section and in the Administrative Decisions (Judicial Review) Act 1977 has the same meaning in this section as it has in that Act.

170B Applications on behalf of unincorporated organisations

Applications for a review of decisions under the Administrative Decisions (Judicial Review) Act 1977 may be applied for by a person acting on behalf of an unincorporated organisation that is a person aggrieved for the purposes of that Act by:

(a) a decision made under this Act or the regulations; or

(b) a failure to make a decision under this Act or the regulations; or

(c) conduct engaged in for the purpose of making a decision under this Act or the regulations.

This is about public standing provisions and seeking to incorporate into the act such provisions. I think the environment movement has, and in fact other non-government organisations have, put the longstanding arguments for public standing provisions in many bits of legislation. Of course, there are such provisions in the EPBC Act. I will move these amendments, but I have a question for the government: why were such provisions not included in the act?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.51 pm)—We believe that it should generally be the responsibility of governments to enforce the law. In this context where we are setting up an authority made up of independent experts, specifically to make and enforce the plan, which cannot be directed with respect to enforcement action, it is particularly appropriate that it have the sole enforcement role. This argument is even stronger, given that the basin plan will represent a balancing of competing interests.

The government does not agree there is a need for public standing provisions in the bill. Such provisions would run the risk that the basin plan, a central factor in providing certainty over water access entitlements, could be held up in the courts, and we believe that not to be appropriate. Rather, the government has included in the bill a comprehensive framework to ensure that all interested parties may have input to the basin plan and that the Murray-Darling Basin Authority and the minister must take account of all issues raised during the consultation process.

Senator SIEWERT (Western Australia) (3.52 pm)—The minister will be aware that under the EPBC Act public standing provisions have been used on a number of occasions to enforce the legislation. The Greens have held the longstanding position that it is in the interests of the environment that the public have standing under various bits of legislation. We think it is particularly important for this piece of legislation in terms of enforcement. I take the minister to issues around a number of areas where environmental provisions are not being enforced. For example, water is being stolen, illegal
bunds are being built and illegal drains are being dug et cetera. The Greens believe that the community having the ability to enforce legislation is a positive addition to such legislation and in fact holds government accountable. If the government is not prepared to act, this gives the community the capacity to act. There are instances in the Murray-Darling Basin where—and I have raised this issue in this place—water being provided for the environment is being stolen; it is not making it to the site that is supposed to be watered. That is just one example of why we think such public standing provisions are important. Again, that is a recommendation made by a number of organisations that made submissions to the inquiry, believing that this would strengthen this act. Again I ask the government: is giving the community the ability take these positions a positive in helping to empower communities and get positive environmental outcomes?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.55 pm)—There are always general considerations and specific considerations in determining the approach that should be taken with any particular set of facts. I suppose the general approach is that, if somebody is aware of illegal activity, rather than they themselves bringing the court action or seeking to enforce the law they should report it to the relevant authority to undertake the prosecution. In this particular case, we have an independent body that by its very nature will have had to make a number of on-balance decisions. We believe that the enforcement role is best left up to this particular authority in these circumstances.

Senator SIEWERT (Western Australia) (3.56 pm)—If the world were perfect, I might agree with you; but the fact is the world is not perfect. The most recent example is that community organisations have documented evidence—photos, times et cetera—of water being siphoned off and stolen. That information has been provided to the authorities and no action has been taken. These particular organisations would welcome the opportunity to take action themselves if the relevant authorities were not prepared to do it. In the past that information has been provided to the authorities and no action has been taken. As I said, if it were a perfect world I might agree with you, but the world ain’t perfect.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.57 pm)—I fully agree with you. If it were a perfect world there would be no need for legislation and, guess what, there would be no need for this place. That would be heaven! I dare say the senator is referring to the Gwydir situation. That is the responsibility of the New South Wales government. I confess I am not fully across all the detail of that. I know that people are, from time to time, frustrated that they provide information to relevant authorities and prosecutions do not take place or there are considerable delays before a prosecution is laid. Before making comment on that, it is necessary to be fully briefed in relation to the facts so that we can be assured that any criticism levelled is valid. I know of the Gwydir situation, courtesy of the media, but I do not have a detailed brief as to what information has been provided and whether the New South Wales authorities are pursuing it in an appropriately diligent manner. I cannot assist the senator further.

Senator SIEWERT (Western Australia) (3.58 pm)—I will now go to a hypothetical case rather than that specific case, but I will use the nature of that case as an example. Going to a different scenario: if various plans agree that environmental flows are to be released into a Ramsar wetland, and that water is stolen and evidence of that is collected by the community, whom do they take it to? Do
they take it to the state? Do they take it to the Commonwealth? Do they take it to both?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.59 pm)—As I understand it, the stealing of water would be the crime of stealing under the various criminal jurisdictions of the various states, so that would remain in place. In the event that there was no satisfaction in relation to that aspect, I understand that if the same information were to be provided to the authority they could launch a prosecution. In fact, there would be two potential avenues to pursue a prosecution in the event of water stealing if this legislation gets through.

Senator SIEWERT (Western Australia) (4.00 pm)—That brings me to my next question. Again, I raised this in the briefing. I think I said that I would raise it here so that we could get clarification. Very recently, in April, when the clearing went on in northern New South Wales, there was an issue around notification and when the Commonwealth was actually notified. The states are not required to tell the Commonwealth when they get a licence to clear; they tell the Commonwealth, as I recall, only when the illegal activity has happened. So, although it was impacting on a Ramsar area, the state did not tell the Commonwealth—it was not required to tell the Commonwealth. When I asked about it at estimates I was told that there was an informal network that provides information, but there was not a compulsion to inform the Commonwealth. Is that going to be corrected? Have provisions been put in place to correct that?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.01 pm)—The honourable senator told us earlier that we do not live in a perfect world. Clearly, that is the case. We would like to think that this legislation might make it a little bit closer to being perfect. There will be, hopefully as a result of the IGA and other matters, greater consultation and information sharing, which will hopefully overcome that. But, at the end of the day, it is still largely a state jurisdictional issue.

Senator SIEWERT (Western Australia) (4.02 pm)—I will push my luck, and I am watching the clock. I ask the minister to give a commitment that he will try to address this under the IGA so that there is actually a clear information-sharing process. That process fell down because there was not an information-sharing process until after the event. I would hope, given that you are now giving greater emphasis to, or are being consistent with, the Ramsar convention et cetera—which is good—that there are even more compelling reasons for you to be able to get that information-sharing process right.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.02 pm)—I can assure the senator that, as with all things, the Howard government will do its very best. Clearly, the IGA is related, but we are straying into the IGA with these matters and we are, in fact, considering the Water Bill. But, of course, I accept that the two are related.

Senator SIEWERT (Western Australia) (4.03 pm)—Obviously it has an effect on the IGA. I will not go through all the arguments that we have been through, but obviously the Water Bill is absolutely dependent on an effective IGA. I put on record that a lot of the community organisations are extremely concerned that, because of the way the nature of the IGA is being negotiated, there is a lack of consultation through that process. A great deal of this bill is being delivered through the IGA and it is not subject to the consultation process, and we have some issues with some of the consultation that the bill was subject to.
Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.04 pm)—We would assert that the bill stands alone. The IGA will seek further reform, but a delay in signing by the states will not impact on the bill and its implementation.

Question negatived.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.04 pm)—by leave—I move Greens amendments (22), (23) and (24) on sheet 5361:

(22) Clause 172, page 164 (after line 10), before paragraph (1)(a), insert:

(aa) to pursue the objects of this Act as set out in section 3;

(23) Clause 172, page 164 (line 17), after “quantity”, insert “and the threat to the long term health”.

(24) Clause 172, page 165 (line 32), at the end of paragraph (1)(h), add “with specific attention to river, wetland and estuary health”.

These come under part 9—‘Murray-Darling Basin Authority (administrative provisions)’—clause 171, and clause 172, which goes to the authority’s functions. It has a list of the authority’s functions but, indeed, it is very light on the reference to the requirement under the objects of the act and the matters that we have been discussing today to ensure the environmental health of the Murray-Darling Basin. These amendments point more specifically to that. Firstly, it would say, ‘The authority has the following functions,’ and, rather than just going to the functions confirmed for the authority under parts 2, 5 and 10, it would begin with new clause (aa), which says: ‘to pursue the objects of this act as set out in section 3’—and those objects specify, amongst other things, the environmental requirements.

It also amends clause 172(1)(b), so that it would read: ‘To measure, monitor and record the quality and quantity and the threat to the long-term health of the basin water resources’. The insertion of ‘threat to the long-term health’ in the clause will ensure that the authority is looking at not just where the basin is now but where it will be down the line, taking into consideration the overview that it must have of the future. Under subclause (1)(h)—’to collect, analyse and interpret information about the basin water resources and water dependent ecosystems’—we add ‘with specific attention to river, with land and estuary health’ to make sure that those matters are given the priority they deserve.

I might just add that I went to the Macquarie Marshes a year or so ago and saw the appalling state of this internationally renowned wetland and bird breeding place—tens of thousands of birds used to breed there. It is in an appalling state because it has been deprived of water. At that time, egrets, which had reproduced in their thousands each year, had not reproduced at all for the preceding six years. That was the impact of not just climate change and drought but the diverting by irrigators of the water away from that system without adequate government assurance that the ecosystems got the water which is their lifeblood. These amendments simply point more directly to the need for the ecological considerations to be given the priority that they deserve.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.08 pm)—This batch of amendments is opposed. We say that the authority’s main role is the preparation and enforcement of the basin plan. Clause 20 of the legislation sets out the purpose of the plan, which is to provide for the integrated management of the basin water resources in a way that promotes the objects of the act. The government considers that this requirement gives the MDBA responsibility for meeting the objects of the act within the scope of its functions. The government notes that meeting some of the objects of the act are more a responsibility of
the ACCC or the Bureau of Meteorology than a responsibility of the authority.

In relation to amendment (23), we say that that matter is in fact covered by clause 172(1)(c). The addition of the words ‘long-term health of basin waterways’ is covered by the generality of the clause, which deals with the condition of the water dependent ecosystems. In relation to amendment (24), which seeks to add the words ‘with specific attention to river wetland and estuary health’, there is the potential to assert that that in fact constrains the clause and that emphasis would be given to these particular issues as opposed to the generality of basin water resources and ecosystems. We do not think that there is a need to stress some particular aspects over others. We believe that the totality of basin water resources and ecosystems should be considered.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.10 pm)—There is just a difference in emphasis. Clause 172(1)(c) does not address the need to draw the authority’s attention to its function to ensure measuring and monitoring and therefore provide against threats to the long-term health of the river and its ecosystem. That is not there; it is not going to be there. We want it there.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.11 pm)—Very briefly, the term ‘health’ is more limiting than the term ‘condition’. ‘Condition’ is a lot broader and therefore potentially has a lot greater impact for the benefit of the environment.

Question negatived.

Senator SIEWERT (Western Australia) (4.11 pm)—I move Greens amendment (27) on sheet 5361:

(27) Clause 178, page 170 (line 29), omit “must”, substitute “may”.

Basically, this is a rather small amendment. It is to change—

Senator O’Brien—It is Bill’s amendment.

Senator SIEWERT—Yes. It changes the word ‘must’ to ‘may’ in the section regarding the composition of the Murray-Darling Basin Authority. This amendment would enable more than one member of the authority to be full time. The original plan was to require all the members to be full time in the early phase. But then when the nature of the authority changed there was a decision made to make only one of the members full time and to make the others part time. This change from ‘must’ to ‘may’ will enable more than one member to potentially be full time. The Wentworth Group highlighted this issue in their submission. The National Farmers Federation recognised that the decision was made that there should be only one full-time member. The role of the authority was somewhat reduced because of the changes that came after Victoria refused to refer its power and therefore there was not necessarily a requirement for everybody to be full time. However, what the NFF pointed out was that where we go from here is largely dependent on the IGA. What they were saying is that the role of the authority might get bigger in the future. The legislation at the moment restricts the authority by saying that only one member can be full time. This amendment puts in place a provision to enable members to be made full-time members if in the future that is required. Rather than the government of the day having to come back here to make an amendment to change ‘must’ to ‘may’, we can do it now to enable more members to be full-time members if that is required.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.14 pm)—I hear the arguments in relation to this
matter, but we as a government will resist delaying the bill for the sake of this one particular amendment—despite the great oratory in support of it by Senator Siewert.

Senator SIEWERT (Western Australia) (4.15 pm)—Does that mean that the other place does not feel like coming back at a quarter past four on a Friday afternoon?

Question negatived.

Bill agreed to.

WATER (CONSEQUENTIAL AMENDMENTS) 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) (4.16 pm)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

APEC PUBLIC HOLIDAY BILL 2007

Second Reading

Debate resumed from 15 August, on motion by Senator Colbeck:

That this bill be now read a second time.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (4.16 pm)—I rise to speak on the APEC Public Holiday Bill 2007. I indicate that Labor will be supporting the bill because it relates to the security arrangements surrounding APEC. Australia was a foundation member of APEC and Labor were a driving force behind its establishment, so we are strong supporters of APEC and we welcome its return to Australia. But we acknowledge that there are serious security implications with holding it in Australia. This bill provides for a public holiday on 7 September 2007 to allow for the smoother and safer running of the event in Sydney. We will be supporting the bill so these arrangements can be put in place, which include the public holiday in the relevant local government areas. This bill seeks to recognise the public holiday for people under federal industrial instruments, to ensure that they are entitled to the public holiday. I understand that the state parliament will be doing a similar thing for those who are under state industrial arrangements.

Of course, the complexity of this is multiplied by the WorkChoices legislation and the concerns about those whose entitlement to public holidays has been affected. We are moving a second reading amendment which seeks to highlight the concerns about WorkChoices and, more importantly, about protection of public holidays and penalty rates for working on public holidays. I move:

At the end of the motion, add:

“but the Senate condemns the Government’s failure to:

(a) ensure fairness at work and fairness beyond work through its inherently unfair WorkChoices laws;
(b) provide proper protections from important Australian national public holidays, such as Anzac Day; and
(c) recognise the adverse impacts these unfair laws have had on working Australians, their families and the wider Australian community”.

Given the time, I will not delay the Senate by speaking to that at any length. I note, however, that the government have a range of amendments, which seems to indicate that there are still some concerns about this legislation and whether they have got it right. I will reserve my remarks on that until I hear what the minister has to say about that. Perhaps those amendments have already been incorporated—I am not sure. Anyway, Labor
will be supporting the bill, and I have moved the second reading amendment.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.19 pm)—The Australian Greens also support the APEC Public Holiday Bill 2007, which is to ensure that public servants who are in the area affected by APEC on 7 September when it is officially declared a holiday get their due entitlements.

However, it is a proper time to assess whether or not this enormous disruption to the city of Sydney is warranted when there were such good alternatives available. Australia is much bigger than downtown Sydney, but to close down downtown Sydney—and there will be added disruption now because President Bush is coming two days early: it turns off your mobile phones automatically in some places as he sweeps by—

Senator Chris Evans—Thank goodness.

Senator BOB BROWN—‘Thank goodness,’ says Senator Evans, but I suspect he will not be in Sydney. The cost of closing a city of the size and importance of Sydney, including its financial district, is extraordinary. It will run into hundreds of millions of dollars. It ought to be accounted for. APEC is a conference which could be described as, amongst other things, having a commitment to globalisation and market forces—that is, user pays—but there is no user pays involved in this at all. There is going to be an enormous cost on the community but no recompense for that. Part of the cost is involved in this legislation before us today. As an amendment to the opposition’s second reading amendment, I move:

At the end of the amendment, add:

“and considers that businesses should be compensated by the Federal Government for the economic loss caused by holding APEC in Sydney”.

On behalf of Senator Nettle I foreshadow a further second reading amendment, which is:

At the end of the motion, add:

“but given the enormous disruption and cost, the Asia-Pacific Economic Cooperation Conference should not have been held in the central business district of Sydney”.

This is common sense. There has to be some common sense brought into play, particularly in an age when such enormous security measures are taken. We have a fence being built in Sydney now. In the olden days they had the Great Wall of China. Then somebody came up with the Berlin Wall. Now Israel is partitioning Palestine. So Sydney suddenly gets a wall because President Bush is coming. Really? It is all so avoidable. Australia has such splendid places for conferences like this to be held without shutting down the business district of its major business city—excuse me, Melbourne. Maybe the supply of four-star hotels would do, if there were not enough five-star hotels. I understand that is one of the problems—really.

When the public domain, and the private domain on this occasion, is taken over in this way, there has to be some consideration taken. The Prime Minister is good on plebiscites. I wonder whether he considered a plebiscite with the denizens of central Sydney over this particular proposal. No, he did not—no consultation was taken here at all. I think we could have got a much better outcome, and a much more comfortable time here for the leaders from overseas, at other venues in this wonderful, great country of ours.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.24 pm)—To briefly recap: to facilitate the holding of the Asia-Pacific Economic Cooperation meetings being hosted in Sydney over the week of 2 to 9 September 2007, the New South Wales government has declared—and
I stress: the New South Wales government has declared—a one-off APEC public holiday for the Sydney metropolitan area on Friday, 7 September. This bill ensures that all employees in the federal workplace relations system to whom the APEC public holiday applies receive on that day the public holiday entitlements provided under their industrial instrument.

The bill provides that any reference in federal industrial instruments to a public holiday is taken to include the APEC holiday. That is, it deems 7 September this year as a public holiday for these instruments. This means that all federal system employees who are affected by the APEC holiday will receive the same public holiday entitlements for this day as they would receive for other public holidays under their instrument.

Can I refer to the contributions that have been made in the form of the amendments. First of all, the amendment moved by the Leader of the Opposition in the Senate referred to industrial law changes. Part of that referred to the failure to recognise the adverse impacts that these laws have had on working Australians. I suppose such impacts include the creation of 380,000 new jobs in this country, the lowest rate of industrial dispute since records were taken and a 20.8 per cent increase in real wages under this government. If they are failures, we are glad to own them.

In relation to the foreshadowed amendment by the Greens, can I say that, as I understand it, the Mayor of Sydney is supportive of APEC and the New South Wales Premier is supportive of APEC. You have the three levels of government—local, state and federal—supporting it being held in Sydney. In those circumstances clearly it does have the support of the people, albeit that there will be some inconvenience associated with it.

The Greens are suggesting that businesses should be compensated for the economic loss caused by holding APEC. It will be interesting to see whether they are also supportive of businesses that make substantial economic gains as a result of the bonanza they will be reaping from APEC—such as the transport sector, restaurant sector, hospitality sector, hotel sector—somehow having to make an extra contribution to the Australian government. I think not.

In relation to the question of user pays with these conferences, basically it is user pays, because you do not have APEC in Sydney each and every time; it goes around all the various countries, so at the end of the cycle each country has borne, if you like, the financial burden—if there is such a burden. I think there are many positive economic spin-offs. If I can use this term, the love is shared around all the various APEC member countries. As a result I do not think that is a valid argument, with respect.

I indicate that the government commends the bill to the Senate and opposes the second reading amendment and the foreshadowed amendment.

The ACTING DEPUTY PRESIDENT (Senator Moore)—The question is that Senator Bob Brown’s amendment be agreed to.

Question negatived.

The ACTING DEPUTY PRESIDENT—The question now is that Senator Evans’ amendment be agreed to.

Question negatived.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.28 pm)—I move:

At the end of the motion, add:

“but given the enormous disruption and cost, the Asia-Pacific Economic Cooperation Conference should not have
been held in the central business district of Sydney’.

In moving this amendment I point out, for Senator Abetz’s assistance, that the estimation of the cost of the APEC conference to Australia by the New South Wales Business Chamber has been put at over $1 billion and the negative impact on business has been estimated to be as much as $327 million.

Question negatived.
Original question agreed to.

Bill read a second time.

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

PRODUCT STEWARDSHIP (OIL) AMENDMENT BILL 2007
SOCIAL SECURITY AMENDMENT (2007 MEASURES No. 1) BILL 2007
COMMUNICATIONS LEGISLATION AMENDMENT (INFORMATION SHARING AND DATACASTING) BILL 2007
INTERNATIONAL TRADE INTEGRITY BILL 2007

First Reading
Bills received from the House of Representatives.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.31 pm)—Before moving the motion for these bills, I thank senators for their cooperation with the water and APEC bills. I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.
Bills read a first time.

Second Reading
Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.31 pm)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

PRODUCT STEWARDSHIP (OIL) AMENDMENT BILL 2007

The Product Stewardship (Oil) Act 2000 is designed to ensure the environmentally sustainable management, recycling and reuse of Australia’s used oil. It provides for the payment of benefits to used oil recyclers as an incentive to increase the volume of used oil collected and recycled in Australia.

The Product Stewardship (Oil) Act 2000 establishes the Oil Stewardship Advisory Council, and provides that an independent review of the operation of the Product Stewardship (Oil) Act 2000 be undertaken every four years.

The purpose of the Product Stewardship (Oil) Amendment Bill 2007 is to amend the Product Stewardship (Oil) Act 2000 to give effect to the recommendations of the first review of the Act.

In particular, this Bill gives effect to the recommendations arising from that review concerning the constitution and operation of the Oil Stewardship Advisory Council which provides advice on matters relating to product stewardship arrangements for oil.

The Bill provides that the members of the Oil Stewardship Advisory Council, other than the members appointed to represent the Commonwealth and the Commissioner for Taxation, will be appointed on the basis of their knowledge of, or experience in, a range of prescribed subject areas relevant to product stewardship arrangements for oil. Currently members are appointed to the Council as representatives of specified bodies relevant to the product stewardship for oil ar-
rangements. This amendment will enable members with a wider range of expertise to be appointed to the Oil Stewardship Advisory Council than is the case at present.

In addition, the Bill provides that the members of the Oil Stewardship Advisory Council appointed to represent the Commonwealth and the Commissioner for Taxation will become non-voting members. This amendment will remove the potential for these members to have a conflict of the interest between their roles as Commonwealth employees and as members of the Oil Stewardship Advisory Council.

Finally, the measures contained within the Bill will provide clear and more rigorous procedures for the disclosure of pecuniary interests by members of the Oil Stewardship Advisory Council and for ensuring that any pecuniary interests that members disclose do not compromise the advice provided by the Oil Stewardship Advisory Council.

This Bill will strengthen the Oil Stewardship Advisory Council’s role as a source of independent expert advice which in turn will enhance its contribution towards ensuring that the objects of the Act are met.

SOCIAL SECURITY AMENDMENT (2007 MEASURES NO. 1) BILL 2007

This Bill contains amendments to the Social Security Act 1991 to give effect to policy announcements made in the Budget. These announcements build on the Welfare to Work reforms already introduced, ensuring even greater fairness, consistency and equity between groups with similar needs, in line with the Government’s commitment to make it easier for unemployed people to engage with the labour market.

This Bill makes eligibility for Mobility Allowance more consistent and provides greater assistance for people with disability to obtain or retain employment. It extends eligibility for standard rate Mobility Allowance to people participating in a Vocational Rehabilitation programme, provided base qualifications for Mobility Allowance are met. The current standard rate is $74.30 per fortnight. People participating in a Vocational Rehabilitation programme are already eligible for higher rate Mobility Allowance, if they meet base qualifications and work, or look for work of, 15 hours or more at or above the relevant minimum wage.

Higher rate Mobility Allowance was introduced as part of the Welfare to Work reforms to encourage people with disability into the open labour market. Eligibility for the higher rate of Mobility Allowance is now being extended to Parenting Payment recipients working 15 hours or more at or above the relevant minimum wage. Eligibility for the higher rate of Mobility Allowance is also being extended to people working for 15 hours or more in open employment and receiving wages assessed in accordance with the supported wage system. The current higher rate is $104.00 per fortnight.

The Bill makes treatment of people receiving Youth Allowance more equitable by ensuring fast connection with employment assistance, and encouraging greater engagement with the labour market for young people once they cease study. Partnered parenting payment recipients who have a partial work capacity due to disability will be treated more consistently, with the extension of access to a range of benefits including the pharmaceutical allowance, pensioner education supplement, pensioner concession card and telephone allowance. This is consistent with benefits received by disability support pensioners.

The Bill removes disincentives in the income support system for people with shared care of a child, without reducing incentives to take up paid work. Increased access to payment rates is provided for people with dependent children, reflecting the important recommendations of the 2006 Ministerial taskforce report on child support.

A minor amendment is also included to ensure that mature age job seekers can combine self-employment, as well as other types of employment, with voluntary work in order to meet their income support participation requirements.

These amendments continue the focus on supporting people being engaged by the Welfare to Work reforms. The changes will improve access to assistance, ensuring fairness and consistency in treatment, and making it easier for these groups to engage with the labour market.
There are minimal financial implications for these measures, with the total impact of the Bill over four years being $18.2 million.

The Bill also contains minor technical corrections to the social security law.

COMMUNICATIONS LEGISLATION AMENDMENT (INFORMATION SHARING AND DATACASTING) BILL 2007

The Australian Communications and Media Authority (ACMA) frequently receives information through the performance of its functions and the exercise of its powers as the Australian Government regulatory body responsible for broadcasting, telecommunications and radiocommunications matters.

The Minister for Communications, Information Technology and the Arts, and certain other Australian Government regulatory bodies have a legitimate interest in receiving information that is obtained by ACMA.

At present, the circumstances in which ACMA can legitimately pass on information are uncertain. The amendments in this Bill will provide ACMA with an appropriate level of certainty and in so doing, will enhance the efficiency of the regulator’s enforcement activities.

The amendments will be of particular benefit to ACMA in the context of its role in the Government’s media ownership reforms that took effect from 4 April 2007.

In dealing with industry in relation to a proposed merger, both the Australian Competitions and Consumer Commission (ACCC) and ACMA are likely to receive evidence relating to the question of control of commercial broadcasting licences. As arrangements currently stand, ACMA would be unable to share such information with the ACCC, even though it is relevant to the performance of the ACCC’s statutory functions under the Trade Practices Act 1974 in considering and approving proposed media mergers.

Amendments to the Trade Practices Act 1974 to provide the ACCC with powers to disclose protected information have also been brought before the Parliament. However, no similar powers exist for ACMA.

ACMA has also established close relationships with overseas regulatory agencies in developing cooperative arrangements for the regulation of the Internet industry. The global nature of the Internet means that liaison with regulatory and other relevant bodies overseas is a vital part of addressing offensive Internet material and working towards securing child-safety online.

This Bill will make clear ACMA’s ability to share important information it has gathered pursuant to its online content responsibilities with overseas regulatory agencies. It will also authorise ACMA to share relevant material with domestic law enforcement agencies, including the Australian Federal Police and the Director of Public Prosecutions.

In addition, the removal of potential barriers to information sharing with regulatory and other agencies will go some way to helping reduce duplication and the reporting burden on industry. There have been instances in which regulators have requested similar information from industry, creating an undesirable overlap and otherwise avoidable burden for industry.

The kinds of information that ACMA will be authorised to share will include information given in confidence to ACMA in connection with its regulatory activities, with the Minister. The range of ACMA’s regulatory functions often necessitates close consultation and liaison across
a range of ministerial portfolios. Accordingly, ACMA will also be able to disclose information to another Minister, if that information relates to matters arising under an Act administered by that Minister. ACMA will also be able to disclose that information to the Secretary of the relevant Minister’s department, or an authorised officer of that department.

The Bill also makes provision for ACMA to disclose information to a Royal Commission where that information will assist the Commission in its inquiries.

Clearly, the information ACMA receives from regulated entities has the potential to be commercially sensitive and it is therefore appropriate that the list of agencies ACMA will be authorised to share information with will be limited to those with which ACMA has an ongoing cooperative role.

Furthermore, disclosure will only be permitted in circumstances where the ACMA Chair is satisfied that the information will assist or enable the other party to perform any of its functions or exercise any of its powers. The Bill also makes provision for the Chair of ACMA to impose conditions to be complied with in relation to the disclosure of information.

The provisions in this Bill will enable ACMA to cooperate to the greatest extent possible with the Minister, government Departments and other key regulatory agencies in performing its vital functions in relation to the regulation of broadcasting, the Internet, radiocommunications and telecommunications.

The public interest in good governance would not be served by restricting the ability of regulators to work cooperatively and share information on related issues.

The Bill also includes provisions to relating to the Government’s decisions concerning Channel A and Channel B datacasting transmitter licences.

Channel A licences can be used for fixed, in-home, free to air digital services, while Channel B licences can be used for a wider range of services, including mobile TV.

The Bill will give ACMA greater flexibility in carrying out its spectrum management functions in relation to these licences.

The provisions in this Bill will permit ACMA to vary a condition of a datacasting transmitter licence that relates to radiofrequency spectrum after such a licence has been allocated.

This will allow ACMA to address a range of technical issues as they arise.

Such technical issues could include addressing potential interference with existing services and optimising spectrum for particular services such as mobile TV.

The Government announced that Channel B licences would not be subject to an annual licence fee.

However, under the Datacasting Charge (Imposition) Act 1998, an annual licence fee could potentially be imposed on a Channel B licensee.

Therefore, the Bill includes provisions to ensure that the datacasting charge would not be imposed in relation to the provision of services under a Channel B licence.

INTERNATIONAL TRADE INTEGRITY BILL 2007

The International Trade Integrity Bill 2007 continues Australia’s tough stance against foreign bribery and contravention of UN sanctions. Australia is a significant player in international trade. We have a reputation as a corruption free trading partner and an important participant in enforcing UN sanctions against states which seek to avoid their international responsibilities.

This Bill creates new offences and penalties against those who seek to get around UN sanctions and further restricts bribery of foreign officials.

The International Trade Integrity Bill 2007 contains the legislative changes arising from the recommendations made by Commissioner Terence Cole QC, who chaired an Inquiry into certain Australian Companies in relation to the UN Oil-for-Food Programme. Commissioner Cole’s inquiry led the world as an open, transparent and independent public inquiry with Royal Commission powers into corruption of the UN Oil-for-Food Programme in Iraq.
The Report of the Cole Inquiry was tabled in Parliament on 27 November 2006, with five principal recommendations.

On 3 May 2007 I presented the Government’s response to Parliament on recommendations 1-3 of the report.

The Bill in fact goes further than the Cole Inquiry recommendations, which focussed on Australian law in the context of the Iraq sanctions regime.

The Government considers that Commissioner Cole’s recommendations can apply to all UN sanctions enforced in Australia regardless of what countries or goods they apply to.

Enforcement of UN Sanctions

The Bill introduces a new offence to the Charter of the United Nations Act 1945 for contravening a Commonwealth law that enforces UN sanctions, with severe penalties as recommended by Commissioner Cole.

The Bill also increases penalties for existing offences for acting in contravention of UN Security Council sanctions relating to terrorist financing.

The Bill introduces a separate criminal offence for providing false or misleading information in connection with the administration of a UN sanction enforcement law.

Companies and their officers must certify the accuracy of information provided in connection with trading activities subject to UN sanctions.

If false or misleading information is provided it will be grounds for invalidating any authorisation to conduct business under UN sanction regimes.

As Commissioner Cole recommended, criminal consequences can also apply.

Agencies that administer UN sanction regimes in Australia will be granted an information gathering power for the purpose of investigating whether companies and individuals are complying with UN sanctions.

Customs Act 1901

The Bill introduces new offences to the Customs Act for individuals or companies who import or export prohibited goods without proper authorisation.

These offences carry identical penalties to the new offences in the Charter of the UN Act, to effectively deter and punish any contravention of UN sanctions by Australian companies or individuals.

Applications for authorisation to import or export UN sanctioned goods will be made on approved forms and false or misleading applications will attract criminal liability and invalidate authorisations.

Bribery of Foreign Officials

Criminal Code Act 1995

The Bill amends the Criminal Code Act 1995 to clarify the circumstances in which a payment to a foreign public official is not a bribe.

In future, a payment to a foreign public official will be allowed only if that payment is required or permitted by the written law of the place or country that governs the foreign official.

This will be so regardless of the outcome of the payment or whether it was purported to be necessary for any other reason.

Income Tax Assessment Act 1997

The Bill will similarly amend the Income Tax Assessment Act 1997 to provide that an amount paid to a foreign public official is not a bribe only in circumstances where it was required or permitted by the written law that governs the foreign public official.

The failure to obtain the advantage sought by the bribe will not be relevant to determining whether a benefit paid is a bribe to a foreign public official.

The definition of ‘facilitation payment’ in the Income Tax Assessment Act 1997 will also be aligned with the definition in the Criminal Code Act 1995.

Facilitation payments are tax deductible and are not a bribe to a foreign public official.

This will clarify the current law by ensuring that a benefit paid to a foreign public official will be considered a facilitation payment only if it is minor in value and for the sole or dominant purpose of securing a routine government action of a minor nature.

Consultation

These are significant changes to the law but they accord with common sense.
Australian exporters and importers must obey sanctions and not make false and misleading statements.

To inform the public about these changes the Government will commence a consultation program, focussing particularly on the financial sector and those businesses importing and exporting goods and services.

To allow sufficient time for this consultation to take place, amendments to the Charter of the UN Act and to the Customs Act will commence on a day to be fixed by Proclamation or six months after the Bill receives the Royal Assent.

The Government will also refer the Bill to the Senate Legal and Constitutional Affairs Committee for consideration.

The Government is committed to promoting a culture of ethical dealing in connection with UN sanctions and international trade.

Legislation alone cannot accomplish this and it falls on Australian businesses to maintain their reputation of ethical dealing and integrity. Australia and our trading partners will benefit from seeking to eliminate the cancer of corruption in international trade.

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

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

COMMITTEES
Membership

The ACTING DEPUTY PRESIDENT (Senator Moore)—Order! The President has received letters from party leaders seeking to vary the membership of committees.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (4.32 pm)—by leave—I move:

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

Community Affairs—Standing Committee—

Appointed, as a substitute member:
Senator McGauran to replace Senator Boyce for the committee’s inquiry into the cost of living pressures on older Australians, on 23 August 2007

Finance and Public Administration—Standing Committee—

Appointed, as substitute members:
Senators Joyce and Ian Macdonald to replace Senators Fierravanti-Wells and Watson, respectively, for the committee’s inquiry into the provisions of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007

Appointed, as participating members:
Senators Fierravanti-Wells and Watson

Foreign Affairs, Defence and Trade—Joint Standing Committee—

Appointed: Senator Fifield

Foreign Affairs, Defence and Trade—Standing Committee—

Appointed: Senator Cormann

Intelligence and Security—Parliamentary Joint Committee—

Appointed: Senator Sandy Macdonald

Procedure Committee—

Appointed: Senator Nash

Publications—Standing Committee—

Appointed: Senator Fisher.

Question agreed to.

Senate adjourned at 4.33 pm

DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Australian War Memorial Act—Select Legislative Instrument 2007 No. 238—Australian War Memorial Amendment Regulations 2007 (No. 1) [F2007L02340]*.
Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—
AD/ENST 28/39—Main Rotor Blade Retention Pin [F2007L02481]*.
AD/F406/17—Landing Gear Emergency Blowdown Bottle [F2007L02563]*.
AD/HU 369/118—Landing Gear Fairing Support Assembly [F2007L02564]*.
AD/SD3-60/68 Amdt 2—Elevator Trim Tab Balance Weight Brackets [F2007L02565]*.
AD/TBM 700/47—Passenger Door Locking Handle [F2007L02567]*.
AD/TECNAM/2—Seat Rail Stops [F2007L02568]*.
AD/TECNAM/3—Rudder Pedal Torque Tube [F2007L02569]*.
AD/TECNAM/4—Rudder Pedal Torque Tube Steering Levers [F2007L02570]*.
AD/TECNAM/5—Rudder Interference [F2007L02571]*.
AD/X-TS/8—Flap Hinge and Flap Hinge Support Bracket [F2007L02573]*.

Customs Act—
Select Legislative Instrument 2007 No. 234—Customs (Prohibited Exports) Amendment Regulations 2007 (No. 2) [F2007L02476]*.
Tariff Concession Orders—
0618078 [F2007L02533]*.
0702241 [F2007L02529]*.
0703032 [F2007L02534]*.
0704678 [F2007L02530]*.
0705495 [F2007L02493]*.
0705862 [F2007L02489]*.
0706070 [F2007L02501]*.
0706138 [F2007L02535]*.
0706216 [F2007L02512]*.
0706221 [F2007L02536]*.
0706228 [F2007L02497]*.
0706456 [F2007L02539]*.
0706512 [F2007L02541]*.
0706737 [F2007L02545]*.
0706739 [F2007L02521]*.
0706915 [F2007L02520]*.
0707017 [F2007L02546]*.
0707023 [F2007L02548]*.
0707036 [F2007L02549]*.
0707037 [F2007L02550]*.
0707143 [F2007L02551]*.
0707246 [F2007L02522]*.
0707310 [F2007L02523]*.
0707395 [F2007L02525]*.
0707645 [F2007L02527]*.
0707661 [F2007L02528]*.
0707863 [F2007L02526]*.

Tariff Concession Revocation Instruments—
124/2007 [F2007L02552]*.
125/2007 [F2007L02553]*.
126/2007 [F2007L02556]*.
127/2007 [F2007L02557]*.
129/2007 [F2007L02559]*.

Electronic Transactions Act—Select Legislative Instrument 2007 No. 235—
Electronic Transactions Amendment Regulations 2007 (No. 2) [F2007L02443]*.
Financial Management and Accountability Act—Adjustments of Appropriations on Change of Agency Functions—Directions Nos—
3 of 2007-2008 [F2007L02544]*.
4 of 2007-2008 [F2007L02543]*.
Medicare Australia Act—Medicare Australia (Functions of Chief Executive Officer) Amendment Direction 2007 (No. 2) [F2007L02583]*.
Migration Act—
Instrument IMMI 07/048—Substantive Visa Classes [F2007L02531]*.
Migration Regulations—Instrument IMMI 07/059—Travel Agents for PRC Citizens applying for Tourist Visas [F2007L02581]*.
National Environment Protection Council Act—Variation to the National Environment Protection (National Pollutant Inventory) Measure 2007 (No. 1) [F2007L02572]*.
Primary Industries (Customs) Charges Act—Select Legislative Instruments 2007 Nos—
230—Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 6) [F2007L02466]*.
231—Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 7) [F2007L02474]*.
Primary Industries (Excise) Levies Act—Select Legislative Instrument 2007 No. 232—Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 8) [F2007L02465]*.
Quarantine Act—Select Legislative Instrument 2007 No. 233—Quarantine Amendment Regulations 2007 (No. 2) [F2007L02427]*.
Social Security Act—
Social Security (Personal Care Support —Direct Payments Project) (FaCSIA) Determination 2007 [F2007L02532]*.
* Explanatory statement tabled with legislative instrument.

Departmental and Agency Contracts

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended:

Departmental and agency contracts for 2006-07—Letters of advice—
Attorney-General’s portfolio agencies.
Australian Research Council.
Finance and Administration portfolio agencies.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Iran**

*Senator Allison* asked the Minister representing the Prime Minister, upon notice, on 27 April 2007:

1. Can assurances be provided that the United States of America (US) will not take military action against Iran.

2. What communication, if any, has the Government had with the US Government regarding possible military action against Iran.

3. Has the Government provided advice to the US Administration on Australia’s position on military action against Iran; if so, what was the advice.

*Senator Minchin*—The Prime Minister has provided the following answer to the honourable senator’s question:

1. The Australian Government is not able to make assurances on behalf of the Government of the United States of America. With regard to Iran, the Australian Government is deeply concerned by that country’s recent failure to meet previous United Nations Security Council (UNSC) and International Atomic Energy Agency obligations. This includes Iran’s non-compliance with the terms of UNSC Resolution 1696, as well as those of UNSC Resolutions 1737 and 1747 which were both unanimously adopted. The government remains committed to diplomatic efforts to resolve issues relating to Iran’s nuclear programme and believes that United Nations processes should be given every opportunity. The government will continue to work with its international partners to encourage Iran to meet its obligations and take the necessary steps to restore international confidence in its nuclear programme.

2. and (3) The Australian Government does not reveal publicly the contents of confidential discussions with other governments.

**Petition: Dr Andrew Theophanous and National Crime Authority**

*Senator Allison* asked the Minister representing the Prime Minister, upon notice, on 21 June 2007:

With reference to a petition presented to the Prime Minister by Dr Kathryn Eriksson in relation to her husband, the former Federal Member of Parliament, Dr Andrew Theophanous and the National Crime Authority (NCA):

1. Has the Prime Minister considered the petition.

2. Does the Prime Minister believe the evidence provided by the petition warrants further investigation.

3. Will the Prime Minister commission an independent inquiry into the NCA and its dealings in this particular case, as requested by the petition.
Senator Minchin—The Prime Minister has provided the following answer to the honourable senator’s question:

(1) to (3) The government has received the petition and is considering the matters raised in it.