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

- **Canberra**: 103.9 FM
- **Sydney**: 630 AM
- **Newcastle**: 1458 AM
- **Gosford**: 98.1 FM
- **Brisbane**: 936 AM
- **Gold Coast**: 95.7 FM
- **Melbourne**: 1026 AM
- **Adelaide**: 972 AM
- **Perth**: 585 AM
- **Hobart**: 747 AM
- **Northern Tasmania**: 92.5 FM
- **Darwin**: 102.5 FM
FORTY-FIRST PARLIAMENT
FIRST SESSION—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

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(1) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. Santo Santoro, resigned.
(2) Chosen by the Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.
(3) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
(4) Chosen by the Parliament of Tasmania to fill a casual vacancy vice Susan Mary Mackay, resigned.
(5) Chosen by the Parliament of South Australia to fill a casual vacancy vice Hon. Robert Murray Hill, resigned.
(6) Chosen by the Parliament of South Australia to fill a casual vacancy vice Jeannie Margaret Ferris, died in office.
(7) Chosen by the Parliament of South Australia to fill a casual vacancy vice Hon. Amanda Eloise Vanstone, resigned.
(8) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Hon. Ian Gordon Campbell, resigned.
(9) Chosen by the Parliament of Tasmania to fill a casual vacancy vice Hon. Paul Henry Calvert, resigned.

**PARTY ABBREVIATIONS**

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

**Heads of Parliamentary Departments**

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

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

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

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

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
Deputy Leader of the Opposition, Shadow Minister for Employment and Industrial Relations and Shadow Minister for Social Inclusion
Leader of the Opposition in the Senate and Shadow Minister for National Development, Resources and Energy
Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology
Shadow Minister for Infrastructure and Water and Manager of Opposition Business in the House
Shadow Minister for Homeland Security, Shadow Minister for Justice and Customs and Shadow Minister for Territories
Shadow Assistant Treasurer and Shadow Minister for Revenue and Competition Policy
Shadow Minister for Immigration, Integration and Citizenship
Shadow Minister for Industry and Shadow Minister for Innovation, Science and Research
Shadow Minister for Trade and Shadow Minister for Regional Development
Shadow Minister for Service Economy, Small Business and Independent Contractors
Shadow Minister for Multicultural Affairs, Shadow Minister for Urban Development and Shadow Minister for Consumer Affairs
Shadow Minister for Transport, Roads and Tourism
Shadow Minister for Defence
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 Opposition Business in the Senate
Shadow Minister for Sport and Recreation, Shadow Minister for Health Promotion and Shadow Minister for Local Government
Shadow Minister for Families and Community Services and Shadow Minister for Indigenous Affairs and Reconciliation
Shadow Minister for Foreign Affairs
Shadow Minister for Ageing, Disabilities and Carers

Kevin Michael Rudd MP
Julia Eileen Gillard MP
Senator Christopher Vaughan Evans
Senator Stephen Michael Conroy
Anthony Norman Albanese MP
The Hon. Archibald Ronald Bevis MP
Christopher Eyles Bowen MP
Anthony Stephen Burke MP
Senator Kim John Carr
The Hon. Simon Findlay Crean MP
Craig Anthony Emerson MP
Laurence Donald Thomas Ferguson MP
Martin John Ferguson MP
Joel Andrew Fitzgibbon MP
Peter Robert Garrett MP
Alan Peter Griffin MP
Senator Joseph William Ludwig
Senator Kate Alexandra Lundy
Jennifer Louise Macklin MP
Robert Bruce McClelland MP
Senator Jan Elizabeth McLucas
Shadow Minister for Federal/State Relations, Shadow Minister for International Development Assistance and Deputy Manager of Opposition Business in the House
Robert Francis McMullan MP

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

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

Shadow Minister for Health
Nicola Louise Roxon MP

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

Shadow Minister for Education and Training
Stephen Francis Smith MP

Shadow Treasurer
Wayne Maxwell Swan MP

Shadow Minister for Finance
Lindsay James Tanner MP

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

Shadow Parliamentary Secretary for Foreign Affairs
Anthony Michael Byrne MP

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

Shadow Parliamentary Secretary for Environment and Heritage
Jennie George MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

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

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

Shadow Parliamentary Secretary for Industry and Innovation
Bernard Fernando Ripoll MP

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

Shadow Parliamentary Secretary to the Leader of the Opposition (Social and Community Affairs)
Senator Ursula Mary Stephens
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The PRESIDENT (Senator the Hon. Alan Ferguson) took the chair at 12.30 pm and read prayers.

PRIVILEGE

The PRESIDENT (12.30 pm)—Senator Nettle, by letter dated 13 September 2007, has raised a matter of privilege under standing order 81.

The matter of privilege relates to seemingly inconsistent answers given by officers at estimates hearings about the government’s knowledge that Mr Mamdouh Habib had been taken to Egypt. Some officers suggested a lack of knowledge or certainty on the part of government that Mr Habib was ever in Egypt, while other answers appeared to indicate a definite knowledge that he had been taken to Egypt.

These apparent inconsistencies were the subject of inquiry by the Legal and Constitutional Affairs Committee, and on 11 September 2007 the committee tabled in the Senate its correspondence with relevant officers.

Under standing order 81 I am required to determine whether the motion to refer the matter to the Privileges Committee should have precedence, having regard to criteria which basically go to the seriousness of the matter. I am not required to give consideration to the strength of the evidence on the basis of which the matter is raised. The matter clearly meets the criteria I am required to consider. The Senate and the Privileges Committee have always taken very seriously any suggestion that misleading evidence has been given to a Senate committee.

I therefore determine that a motion to refer the matter to the Privileges Committee may have precedence.

I table the letter from Senator Nettle and another copy of the material presented by the Legal and Constitutional Affairs Committee. These documents sufficiently explain the background to the case.

Senator Nettle may now give notice of a motion to refer the matter to the Privileges Committee.

It will then be for the Senate, having considered the material which has been laid before it, to determine whether the apparent inconsistencies in the answers by the officers have been sufficiently explained or whether further inquiry by the Privileges Committee is warranted.

Senator NETTLE (New South Wales) (12.33 pm)—I give notice that, on the next day of sitting, I shall move:

That the following matter be referred to the Committee of Privileges:

Whether false or misleading evidence was given to the Legal and Constitutional Affairs Committee or any other Senate committee concerning the Government’s knowledge of the rendition of Mr Mamdouh Habib to Egypt, and whether any contempt was committed in that regard.

TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2007

Second Reading

Debate resumed from 11 September, on motion by Senator Coonan:

That this be now read a second time.

upon which Senator Stephens moved by way of amendment:

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

(a) notes that:

(i) the Economics References Committee handed down its report, The effectiveness of the Trade Practices Act 1974 in protecting small business, in March 2004, and the Government responded in June 2004 and yet the Government is only now introducing its legislative response,
(ii) this failure to act represents a disregard for the importance of promoting competition by preventing anti-competitive behaviour directed against small business and consumers, and

(iii) this bill fails to introduce gaol terms for serious cartel operations, despite the Dawson Review recommending this in 2003 and the Government accepting this recommendation in 2005 and despite the Australian Competition and Consumer Commission (ACCC) consistently calling for such penalties to be introduced;

(b) condemns the Government for the failure to legislate for gaol terms for serious cartel conduct;

(c) further notes with concern that this bill does not give the ACCC power to investigate and regulate ‘creeping acquisitions’; and

(d) calls on the Government to:

(i) legislate for this as soon as possible, and

(ii) closely examine options for introducing a regime dealing with unfair contract terms between businesses as well as between businesses and consumers”.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (12.33 pm)—I am in continuation at present on the Trade Practices Legislation Amendment Bill (No. 1) 2007 and I was explaining to the Senate that, under section 46 as it presently stands before this legislation goes through the House, to secure a section 46 conviction it almost had to be a monopoly taking on a smaller business, and it had to have a substantial degree of market power that was considered a monopoly. Just to explain that, I would like to read the judgement of a member of the full bench of the High Court, and this was his finding. He supported Boral’s appeal. Justice McHugh concluded:

Even though Boral drove down its prices in order to remove competition, this does not mean that it had a substantial degree of market power. That must be proved before there is a breach of section 46. Predatory pricing without a substantial degree of market power cannot result in a breach of section 46.

That, in a nutshell, is why we have to amend section 46 today. There were clear cases—even Justice McHugh recognised that Boral drove down its prices in order to remove competition. And even after it knew that, the High Court could not bring in a breach of section 46.

Since that finding, there have been no more court actions under section 46. The ACCC have just not bothered to take any section 46 cases to the court because they knew that they would be unsuccessful and would have been wasting their hard-to-come-by money. So there was an acknowledgement that Boral may have predatory priced but no way to prosecute because they were deemed not have a substantial degree of power in the market. So the reason we are bringing this legislation in today is to make sure that we do have an effective safeguard for unfair practices of predatory pricing. The Treasurer and the government have now produced this bill and should be congratulated on it.

The major small business groups, NAGA, the NFF, COSBOA and the Fair Trading Coalition, all agree that changes will have significant effect in again making section 46 operational and functional in discouraging and protecting them from a misuse of market power by the large competitors.

Reforms that we are making to section 46 reflect the wishes of small business and really address four major issues. One is threshold, another is predatory pricing, another is cooperative action to misuse market
power and the other is recoupment. This legislation addresses those four issues. I just take a minute to thank Hank Spier, because he did a lot of work with the small business organisations and got this legislation to the point where it became part of the government’s program. Senator Joyce will move amendments that support small business.

Can I substantially address the four issues. On the threshold: a successful section 46 prosecution relies on a business being deemed by the court to hold a substantial degree of market power and to have taken advantage of that power in the market by acting in some way to disadvantage a competitor. Legally, this has become a problem since Boral raised the threshold and made it almost impossible for non-monopoly businesses to reach the required level of market power to proceed on a case alleging breach of section 46.

On predatory pricing: we have already discussed this issue in some detail. The bill enables the court to consider the operation of a business in supplying goods or services below cost and the reasons for this behaviour when deciding that a business holds a substantial degree of market power in the market. The government will also move an amendment to the bill today that will leave no doubt that predatory pricing is a practice that will not be tolerated. It introduces a new prohibition specifically for the practice of predatory pricing within the misuse of market power framework, and that will be welcomed by small business.

On cooperative action to misuse market power: through this bill we will also address this by making it clear in the Trade Practices Act that misuse of power can take place when two or more businesses cooperate or are coordinated in misusing market power. Also, the bill makes it clear that misuse of market power can occur across markets so that, for example, if a business holds a substantial degree of market power in a grocery market, it is being made clear that the business cannot leverage and misuse that market power, say, in a fuel market.

One problem that was worrying small business was that of recoupment. We have included reference to recoupment in the explanatory notes. Recoupment was being given too much consideration in the courts when they were considering predatory-pricing cases. The government maintain that this is covered in the legislation, but we have included clarification in the explanatory memorandum that makes it clear that there is not a legal requirement of recoupment or loss to prove that predatory pricing is taking place. It is not a requirement to prove a breach of section 46.

There is also the addition of a new small business commissioner on the ACCC and improvements to section 51AC to raise the transaction threshold from $3 million to $10 million, something that small business continually asked us to address. (Time expired)

Senator CHAPMAN (South Australia) (12.40 pm)—The Trade Practices Legislation Amendment Bill (No. 1) 2007 has come about because of a review initiated by the Howard government back in May 2002. At that time Mr Justice Daryl Dawson, a former High Court judge, was asked to conduct a review investigating the misuse of market power as defined in the provisions of section 46 of the Trade Practices Act. The Trade Practices Act has been dealt with by this parliament on many occasions and has been examined by committees and specialised groups over a long period of time. There have been a number of cases in which the section that deals with competition has been brought before the courts. A consistent concern raised by small business is that they are not playing on a level playing field. Many
small businesses, when they compare the prices at which they are able to sell, see large corporations as having an unfair advantage. Often small businesses claim that they can purchase products from large corporations at a lower retail price than they are required to pay if they purchase wholesale in the operation of their own business.

Following the report by what has become known as the Dawson committee, which was released in April 2003, the relevant Senate committee had a look at the Trade Practices Act and the Dawson recommendations. In 2004 the then Senate Economics References Committee, now the Senate Standing Committee on Economics, of which I am a member, examined the economic benefits of small business, the effect of the Trade Practices Act 1974 on small business and the way in which the act and small business promote competition together with the need for fair trading. At that time, the committee also looked at the competition laws in part IV of the Trade Practices Act, which promote competition by prohibiting conduct that may lessen competition, and further at the provisions of part IVA of the Trade Practices Act, which promote fair trading by prohibiting unconscionable conduct. The Senate committee specifically looked at the Dawson review recommendations and subsequent case law that considered section 46 of the Trade Practices Act, which covers the misuse of market power and unconscionable conduct, and brought down a report. It was the joint recommendation of the then chair of the committee, Senator George Brandis, and I that further action be taken to amend the Trade Practices Act 1974 to strengthen protections for small business against anticompetitive practices. We did so because of widespread dissatisfaction with the validity of the courts’ interpretation of the misuse of market power provisions.

The bill today delivers for small business in a number of important ways in enhancing the effectiveness of section 46 of the Trade Practices Act. It addresses the issue of predatory pricing, allowing the court to consider sustained below-cost pricing when looking at a breach of section 46. It clarifies the threshold for misuse of market power in a number of important ways. For example, it takes into account leveraging power from one market into another. It specifies that more than one corporation may have a substantial degree of power in a market and further provides that a corporation can have market power without substantially controlling that market. This limit assists in protecting small business from unconscionable conduct. On predatory pricing, the bill puts into law the Senate economics committee recommendation to include reference to a company’s capacity to sell below cost. On the issue of unconscionable conduct, the bill implements the Senate economics committee recommendation on the unilateral variation of contracts and Senator Brandis’s and my recommendation to increase the monetary threshold to $10 million.

Additionally, the bill makes amendments to the unconscionable conduct provisions by raising the transaction limit from $3 million to $10 million. The bill also provides that the court should look at whether a party can unilaterally vary a contract term or condition in considering whether there has been unconscionable conduct. In July and August this year, the Senate economics committee examined the provisions of this bill. The committee’s inquiry attracted a large range of submissions from groups interested in trade practices reform. Several submitters to the inquiry noted that the bill provides greater clarity for the courts in section 46 in relation to both the threshold test for the misuse of market power and predatory pricing.
The bill’s amendments on the threshold test were those recommended by Senator Brandis and me in the report and endorsed by the ACCC. The ACCC remains strongly supportive of these amendments. The current committee believes the bill’s amendments are important in order to state expressly the legal principles that have been established by the courts. A majority of the committee also rejected Labor senators’ claims that the bill’s amendments do not strengthen sections 46 and 51 of the act. In fact, sections 46 and 51 will draw courts’ attention to potential areas of contravention. The bill extends courts’ capacity under the terms of section 51AC to protect a greater range of transactions entered into by small businesses, while enabling courts to continue to rule according to the facts and circumstances of the individual case in question.

There has been a great deal of community interest in this bill. In May this year, I was interviewed on South Australian radio in relation to small business concern about predatory pricing. While the finer detail of the bill was not available at that time, there was a groundswell of interest from the small business sector in my home state of South Australia in the Howard government’s stated intentions to strengthen the law and support small business.

In direct contrast to this, the Australian Labor Party, the opposition, have been caught short on policy on small business. They state that this bill is inadequate and offers little protection for small business. Their concern for small business is utterly disingenuous, coming from a party which intends to reimpose draconian unfair dismissal legislation which will bring about a repeat of the thousands and thousands of dollars in costs to the small business sector for ‘go away money’ and the loss of thousands of jobs, as occurred when it was previously in operation.

Where does Labor’s concern for small business sit with their policies which will overturn the rights that small business people currently have to run their businesses free of interference from the trade union movement? Under Labor, non-union collective agreements would be a thing of the past, and that would open up a million small businesses to potential union control. Labor’s workplace relations policy is not a plan to keep the economy strong and instead will mean more power to the union bosses to push industry-wide wage claims, leading to higher inflation and upward pressure on interest rates. Small business have good reason to be very afraid. If Labor were really serious about doing something positive for small business and standing up for small business, they would not propose to reinstate unfair dismissal legislation and they would not get rid of Australian workplace agreements.

I said at the beginning of my remarks that the Trade Practices Act has been dealt with by this parliament on many occasions. It will be so in the future, because the Howard government is committed to improving and clarifying the operation of the provisions of the act relating to the misuse of market power by corporations, including in relation to leveraging market power, coordinated market power and predatory pricing.

The government shortly will be moving to introduce legislation imposing criminal penalties for serious cartel conduct. The government is concerned about the ability of small businesses to be competitive in markets where there is cartel activity, where they are often the direct victims of cartel behaviour. I also welcome the government’s proposed amendment to this legislation regarding predatory pricing, which will provide clarification about recoupment.

I note the government’s positive response to the work of the Senate economics commit-
tee. I note that Senator Brandis is now in the chamber. He did so much work on this, as I mentioned earlier, having regard to our earlier joint work on this committee. That positive response by the government certainly highlights the willingness of the Howard government to consult widely with interested parties on issues before the parliament. I believe this legislation reinforces the value of the work of Senate committees. On that basis I wholeheartedly commend this legislation to the chamber.

Senator FIELDING (Victoria—Leader of the Family First Party) (12.49 pm)—Family First are convinced that the Trade Practices Act needs to be strengthened to restore fair trading and competition to Australian markets. We are passionate about this issue because fair competition delivers the lowest possible prices to families, which are struggling to make ends meet. Sadly, the government’s bill, the Trade Practices Legislation Amendment Bill (No. 1) 2007, only does part of the job.

Family First introduced its Trade Practices Amendment (Predatory Pricing) Bill 2007 because anticompetitive conduct like predatory pricing can drive small businesses out of the market. Small businesses are particularly vulnerable because of their limited resources. Predatory pricing is where powerful businesses use their substantial market or financial power to drop their prices in one area to drive out competitors. Not only are small businesses affected, with some forced to shut up shop because they can no longer compete, but also Australian families suffer from higher prices in the long term.

Small business has been waiting for the government’s trade practices legislation amendment bill for more than three years, since the Senate Economics References Committee recommended action. The Trade Practices Act states:

The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

The ‘welfare of Australians’ is central, but to achieve that we need a system to protect consumer welfare, and that system is fair trading and competition. There is a danger that, without appropriate regulation, unfair trading and distorted competition can lead to higher prices and less choice for consumers. There is a great social and economic loss to local communities when small businesses are forced to close.

Family First shares the Business Council of Australia’s concern that ‘heavy-handed responses risk stifling competition’ but believes we need to strike the right balance. A lack of effective regulation to stop anticompetitive behaviour can also stifle competition. The government’s bill has support from most, but not all, small businesses. There is also concern, and reluctant support, from many groups representing big businesses and those involved in trade practices law. The Fair Trading Coalition, which represents 30 small business member groups, states that, while some of its members want section 46 strengthened further, it supports the bill, but it also supports Family First’s moves to address predatory pricing.

The Fair Trading Coalition also wants the government to stop ‘creeping acquisitions’, where markets become highly concentrated not by one-off large purchases but by small purchases, shop by shop, that do not attract the attention of government regulators. The Council of Small Businesses of Australia and the National Association of Retail Grocers of Australia have also indicated they want the government to go further with reforms.

It is worth pointing out that not all groups or individuals representing small businesses support the government’s bill, although the
government’s eleventh-hour amendment does have their support. The Southern Sydney Retailers Association declared the amendments ‘meaningless’—that is, the bill itself—while University of New South Wales Associate Professor Frank Zumbo stated that he did not see any merit in the legislation—that is, the existing bill, not the eleventh-hour amendment.

Family First acknowledges that there are significant issues yet to be addressed by the government to ensure fair competition, including creeping acquisitions, defining substantial market power, defining ‘take advantage’, unilateral variation of contracts and ‘take it or leave it’ contracts. The supermarket industry is frequently mentioned as an area of concern. A PricewaterhouseCoopers report commissioned by the National Association of Retail Grocers of Australia, NARGA, found that the two major grocery retailers, Coles and Woolworths, increased their market share from around 35 per cent in the early 1990s to around 80 per cent today. Australia has one of the world’s most concentrated grocery markets.

Family First shares NARGA’s concerns that this enormous market concentration means less choice for families, less competition and higher food prices. It also means small primary producers have less bargaining power with the supermarket giants. The NARGA report found that food prices have consistently grown at a faster rate than inflation for more than 20 years. Last year food inflation in Australia was almost 10 per cent. Continuing rising food prices prove that competition is not working well in the supermarket industry. Families and small businesses are the victims of market power being wielded by some of Australia’s retail giants who dominate key sectors. Family First is certainly not against discount pricing, but, when you undercut for extended periods of time with the purpose or effect of squeezing out a competitor, that is not on. Family First rejects the argument that it wants to protect small business by a method other than by ensuring fair competition.

The government’s bill does not explicitly ban predatory pricing. In fact, it does not even mention predatory pricing. That is why Family First will move an amendment to outlaw predatory pricing. Family First’s amendment applies to all markets and addresses the concerns of small businesses who asked for their industries to be included in Family First’s earlier predatory pricing bill. The amendment adds an effects test, which means those corporations that do have financial or market power need to be careful in how they use that power so they do not substantially lessen competition in a market.

Some big businesses have claimed our action will reduce competition and restrict discounting. But the same criticism could be made of the current section 46 of the Trade Practices Act 1974 or of the eleventh-hour amendment from the government. Family First’s amendment also makes it clear that it is not necessary to prove actual or potential recoupment in order to prove predatory pricing. The government’s amendment still does not make it clear with regard to recoupment, though it is claimed within their explanatory memorandum that it does. Family First, therefore, will still move its amendments.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (12.56 pm)—I want to take this opportunity to thank honourable senators for their contributions to the debate on the Trade Practices Legislation Amendment Bill (No. 1) 2007. This has had, as honourable senators have pointed out, a long history. It gives me much satisfaction that in this, perhaps final, week of this parliament these reforms which had their provenance in the report of the then Senate Eco-
nomics References Committee of March 2004 will come into effect.

The bill delivers for small business in a number of important ways, by enhancing, in accordance with the recommendations of the Senate committee, the effectiveness of section 46. The bill addresses the issue of predatory pricing. As a result of the bill, sustained below-cost pricing can be considered when looking to determine whether there has been a breach of section 46, without going too far by attacking legitimate discounting. It clarifies, in accordance with the Senate committee’s recommendations, the threshold for misuse of market power, in a number of important ways. For example, in relation to the leveraging of power from one market into another, it clarifies that more than one corporation may have a substantial degree of power in a single market, and that a corporation may have market power for the purposes of the act without substantially controlling that market.

Further, the bill makes amendments to the unconscionable conduct provisions of the act, by raising the transaction limit from $3 million to $10 million. It provides that a court should consider whether a party can unilaterally vary a contract term or condition when determining whether there has been unconscionable conduct.

The bill also creates a new position, Second Deputy Chairperson of the Australian Competition and Consumer Commission, which—it is the government’s intention—will be held by a person experienced in small business matters. The government amendments which I will move shortly include a new provision in part 4 specifically targeting anticompetitive low-cost pricing by corporations with substantial market share. Consequential changes are also made to the bill.

It should be noted that the amendment is constrained by the conduct of the corporation that has a substantial share of the market. For example, the corporation must have the purpose of damaging a competitor or preventing the entry of a potential competitor in order to be in breach of this section. The conduct must also be carried out for a sustained period. We the government believe that we have the balance right: the balance of promoting competition, consumers and small business. The government will continue to monitor the changes to the act to ensure that there are no unintended consequences for genuine competition. As the supplementary explanatory memorandum to the government’s amendments makes it clear, the below-cost pricing amendments in the bill make no reference to the need for or desirability of finding recoupment or an intention to recoup losses. Whilst a reasonable prospect or expectation of recoupment can provide evidence that below-cost pricing is being carried out in breach of the prohibition in section 46, recoupment alone is not legally required under the below-cost pricing amendments in the bill, nor is it alone a prerequisite for a breach of subsection 46(1).

The government has consulted extensively with small business groups in developing the bill. Following the passage of the government’s Trade Practices Legislation Amendment Act (No. 1) 2006—that is, the legislation which gave effect to the recommendations of the Dawson review—the government met with a number of groups to discuss section 46 and in particular to address the concerns of small business. Those consultations had the close involvement of the Minister for Small Business and Tourism, the Hon. Fran Bailey, as well as Senator Boswell and Senator Barnett, to whom I pay tribute for their substantial contribution to getting the legislation into the shape it now takes. That consultative process has been long and involved and one that the government has worked very hard to get right.
The government would also like me to record my thanks to the Senate Standing Committee on Economics for its report into the provisions of the bill. I would like to thank the committee, under the very able chairmanship of Senator Michael Ronaldson, for its timely consideration of the bill and for its report. The committee’s inquiry attracted a broad range of submissions from groups interested in trade practices reform and recommended, as honourable senators will know, that the bill be passed.

This bill implements a number of important government announcements in relation to the Trade Practices Act and for the protection of competition. It comes about, as I have said, as a result of extensive discussions with key stakeholder groups. It is a bill that has been developed over a period of years, and I am confident that the shape it now takes reflects, as I said before, the right balance and takes into account all of the appropriate and needful amendments which have been recommended to the government by those groups without going so far as to constrain the operation of free enterprise and competition in Australian markets. I commend the bill to the Senate.

The Senate divided. [1.07 pm]

(The President—Senator the Hon. Alan Ferguson)

Ayes.......... 30
Noes.......... 33
Majority....... 3

AYES
Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Campbell, G.
Carr, K.J.  Conroy, S.M.
Crossin, P.M.  Faulkner, J.P.

Hogg, J.J.  Hutchins, S.P.
Ludwig, J.W.  Milne, C.
Murray, A.J.M.  O’Brien, K.W.K.
Sherry, N.J.  Sterle, G.
Webber, R. *  Wortley, D.

NOES
Adams, J.  Barnett, G.
Bernardi, C.  Birmingham, S.
Boswell, R.L.D.  Brandis, G.H.
Bushby, D.C.  Chapman, H.G.P.
Colbeck, R.  Cormann, M.H.P.
Eggleston, A.  Ellison, C.M.
Ferguson, A.B.  Fierravanti-Wells, C.
Fifield, M.P.  Fisher, M.J.
Heffernan, W.  Humphries, G.
Johnston, D.  Joyce, B.
Lightfoot, P.R.  Macdonald, I.
Mason, B.J.  McGauran, J.J.J.
Minchin, N.H.  Nash, F.
Parry, S. *  Patterson, K.C.
Payne, M.A.  Ronaldson, M.
Scullion, N.G.  Trood, R.B.
Watson, J.O.W.

PAIRS
Evans, C.V.  Kemp, C.R.
Forshaw, M.G.  Boyce, S.
Landy, K.A.  Cooman, H.L.
Marshall, G.  Troeth, J.M.
McLucas, J.E.  Abetz, E.
Polley, H.  Macdonald, J.A.L.

* denotes teller

Question negatived.
Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BRANDIS  (Queensland—Minister for the Arts and Sport) (1.10 pm)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to the Trade Practices Legislation Amendment Bill (No. 1) 2007
which was circulated in the chamber on 10 September 2007.

Senator MURRAY (Western Australia) (1.10 pm)—I move Democrat amendment (1) on sheet 5324 revised:

(1) Schedule 1, page 3 (after line 6), after item 1, insert:

1A After section 6AA
Insert:

6AB Procedures for merit selection of appointments under this Act

(1) The Minister must by writing establish a code of practice for selecting a person to be appointed by the Commonwealth or a Minister to a position under this Act that sets out general principles on which the selections are made, including but not limited to:

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

(2) As soon as practicable after establishing a code of practice under subsection (1), the Minister must publish the code in the Gazette.

(3) The Minister must conduct a review of the operation of the code of practice established in subsection (1) not later than the fifth anniversary after the code has been established.

(4) The Minister must invite public comment on the code when a review is conducted in accordance with subsection (3).

(5) A code of practice established under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

In moving that amendment, I will begin with a general remark. It is my view that this election is going to be contested on four broad fronts covering the issues of the economy, society, the environment and integrity. This particular measure is an integrity measure.

It interested me that, as soon as Mr Brown took over from Mr Blair as Prime Minister of the United Kingdom, almost the very first thing he did was to move a very substantial set of proposals for improving integrity in the United Kingdom political system. If there is one issue on which the Howard government is roundly and commonly condemned, in my experience, throughout the population, it is failure to advance integrity in our political system. That applies whether you are talking about failure to improve freedom of information legislation or whistleblower legislation, or failure to properly control and manage government advertising programs, and, of course, it applies to the issue which I raise here, of appointments on merit.

Appointments on merit are a fundamental integrity issue, and now, as we reach the eleventh and a half year of coalition governmental milestone, I remind the Senate that about three dozen times the coalition has rejected appointment on merit proposals from the Australian Democrats. Labor, too, have rejected quite a number of those, but they have also supported a number of those, because they and we recognise that the issue of avoiding patronage and ensuring independent appointments is a vital and critical one, even if it is just a perception of patronage or a lack of independence. That is not, of course, to condemn or to imply that all appointments made by the Howard government have been poor—they have not. There have been some excellent appointments of some very excellent people. But it is the principle that needs to be laid down. Essentially, the principles that we consistently put before this chamber are built on Lord Nolan’s examination, in 1995, of the issue of appointments and patronage in the United Kingdom and on his proposals that were agreed to by the conservative government of John Major, then
carried through and supported by the Blair government and now to be further enhanced and improved by the Brown government.

We are trying to build on best practice that is emerging in democratic countries with which we have common traditions. It is simply a safeguard that in future governments, under future ministers, the procedures for merit selection appointments will always be conducted to the highest level. Of course, it is not just a federal issue; it is also a state issue, but we are dealing here with federal legislation.

The basic structure of this amendment has been put before us some three dozen times. I am certain the Howard government will reject it. I think that just contributes to its generally low reputation on integrity matters, but that is its lookout, not mine. It is my job simply to try to keep putting forward proposals such as these, which are designed to address an area of concern amongst voters—that is, appointments might not always be made on merit and might be made with regard to other circumstances, such as patronage or political considerations. This amendment calls for the general principles on which the selections are made to be established by a code of practice, including that the selection of the person shall be on merit and shall cover independent scrutiny of appointments, probity, openness and transparency. It is hardly the sort of amendment which is unbearably restrictive or impractical.

Senator SHERRY (Tasmania) (1.16 pm)—Labor support the sentiment of the Democrat amendment. However, we do not agree with particular details that have been laid out. Labor believe in merit based appointments and have announced selection processes for government bodies such as the ABC board—

Senator McGauran—Except in your own preselections.

Senator SHERRY—and our Fair Work Australia, which we believe delivers this. The former National Party member should be the last one to talk about selection processes given his behaviour in jumping parties. Back to the issue: the selection processes that Labor have announced demonstrate our commitment to the Nolan principles. The Nolan rules govern appointments to government bodies in the United Kingdom. Labor have consistently argued for this policy for the last few years. The Nolan rules require that appointments are merit based and the process of appointment is independent and transparent. Labor and all of the other parties, including of course the Democrats, have advocated merit based appointments. This government is tired and out of touch after almost 12 years in government—tricky, mean, stale—and we saw the very worst of that on display last week. It is important that political appointments to bodies, such as the ACCC, are based solely on merit.

The appointment model suggested by the Democrat amendment does not meet the detailed requirements set out by Labor and so, although we support the sentiment behind the Democrat amendment, we believe it requires further development from government and we will not be supporting the detail of this particular amendment.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.18 pm)—The government does not support Senator Murray’s amendment for the simple reason that it is entirely unnecessary. With due respect, Senator Murray—and in mentioning him for the first time in this debate, I acknowledge his very significant contribution to this discussion over many years—has, I am sorry to say, on this particular occasion done what he so often does: he has raised a straw man only to knock it down. The existing provisions of the act, in particular section 7(3), provide in very clear terms the
qualifications requisite to membership of the commission.

I note with interest that neither in Senator Murray’s speech nor in the concurring remarks of Senator Sherry was there any criticism offered or any appointment that this government has ever made to the Australian Competition and Consumer Commission. So, although sentiments emanating from Senator Murray are characteristically very noble, they also raise a straw man. It is an unnecessary amendment in view of section 7 and also the intergovernmental conduct code agreement, which requires that the Australian government consult with states and territories on proposed appointments to the ACCC. There has never been an issue about the appointment of unsuitable people to the ACCC during the lifetime of this government and nor will there be in the future under the lifetime of this government. Therefore, the government sees no merit in this particular amendment.

Question negatived.

Senator SHERRY (Tasmania) (1.20 pm)—I move opposition amendment (1) on sheet 5344:

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

3A After subsection 10(1A)
Insert:

(1B) At least one of the Deputy Chairpersons must have a small business background.

This amendment deals with the deputy chairperson having a small business background. The amendment requires at least one of the two ACCC deputy chairpersons to have a small business background. The Treasurer, in his second reading speech to this bill, said he envisaged the second deputy chairperson position created by this bill to be filled by someone with a small business background, so Labor’s amendment will ensure this happens by inserting a requirement in law in the act.

The act currently requires one of the commissioners to have a consumer background. Therefore, it is not without precedent to require commissioners to have a particular background to ensure that they have the experience and expertise to add to the ACCC. Labor believe it is a very appropriate amendment; we are in obvious agreement with the Treasurer if he is true to his word about envisaging that the second deputy chairperson—are they tricky words or not?

Senator Brandis—No, they’re not tricky words, Senator Sherry; it’s plain English.

Senator SHERRY—Is it just another example of trickiness by the government, trickiness in use of language? ‘Envisage’ does not necessarily mean it will be delivered, as Mr Costello may find out if this government is re-elected. The tricky words of the Prime Minister of last week—

Senator Boswell—You’re overdoing it.

Senator Brandis—This is Mr Costello’s bill!

Senator SHERRY—If I were Mr Costello, I would not be relying on those tricky words of last week that very begrudgingly extracted comment from the Prime Minister that he would be standing down some time well into the next term—more examples of trickiness.

Anyway, if it is envisaged that the second deputy chairperson is to be from a small business background, let us make it a sure bet, Senator Boswell. That is the challenge for the weak and insipid National Party.

Senator Boswell interjecting—

Senator SHERRY—Well, you can laugh. Is it the Howard-V anle government or the Howard-Costello government?

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Please address your
remarks through the chair. And perhaps you should stick to the bulk of the bill.

Senator Sherry—Of course, and I would appreciate the interjections ceasing and your unbiased drawing of attention of the standing orders to Senator Boswell.

The TEMPORARY CHAIRMAN—My advice is unbiased, Senator Sherry. I have let you go on for quite a while.

Senator Sherry—I know it is unbiased. That is why I am drawing your attention to Senator Boswell’s rather insipid interjections.

The TEMPORARY CHAIRMAN—You have said that, Senator Sherry. It does not help the debate.

Senator Sherry—Thank you, chair. We believe that we should confirm in this legislation, through this amendment, that the deputy chair should be from a small business background, full stop.

Senator Murray (Western Australia) (1.22 pm)—The Australian Democrats agree with the sentiment of this amendment but can see some weaknesses in it. For instance, if the chair of the commission is already from a small business background, why would you want another person from a small business background? The use of the word ‘must’ is a mistake. The bill should probably better express the fact that there is this new person, which, by the way, we welcome. We think the nature of the work engaged in by the commission warrants an extra person in the deputy’s role. It would probably be one of those areas of business expertise to which the government should have regard when appointing, but that should not necessarily be an instruction because it might be that the total constitution of the commission is such that that area of expertise is already covered. There is good sentiment on this from both the Treasurer and the shadow, but I suspect that the amendment could have been better worded.

Senator Brandis (Queensland—Minister for the Arts and Sport) (1.24 pm)—The government does not support this amendment on the grounds that it is otiose, for all the reasons which Senator Murray, who has brought his penetrating intellect to bear upon the issue, has just recited. I draw Senator Sherry’s attention, with respect, to the existing provisions of section 7 subsection 3B of the act, which requires consideration of the small business knowledge or experience of any potential appointee to the Australian Competition and Consumer Commission. As I have said, it is otiose and the government has already indicated that it will be amending the legislation to provide for a second deputy chairperson. The government will have regard to the small business background and experience of such a person in making the appointment, as I set out when summing up the second reading debate.

Question negatived.

Senator Brandis (Queensland—Minister for the Arts and Sport) (1.25 pm)—by leave—I move government amendments (1) to (3) on sheet PF441:

(1) Schedule 2, page 5 (after line 5), after item 1, insert:

1A After subsection 46(1)

Insert:

(1AA) A corporation that has a substantial share of a market must not supply, or offer to supply, goods or services for a sustained period at a price that is less than the relevant cost to the corporation of supplying such goods or services, for the purpose of:

(a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market; or
(b) preventing the entry of a person into that or any other market; or
(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(1AB) For the purposes of subsection (1AA), without limiting the matters to which the Court may have regard for the purpose of determining whether a corporation has a substantial share of a market, the Court may have regard to the number and size of the competitors of the corporation in the market.

1B Subsection 46(1A)
Omit “subsection (1)”, substitute “subsections (1) and (1AA)”.

1C Paragraph 46(1A)(a)
Omit “paragraph (1)(a)”, substitute “paragraphs (1)(a) and (1AA)(a)’’.

1D Paragraph 46(1A)(b)
After “paragraphs (1)(b) and (c)”, insert “and (1AA)(b) and (c)”.

(2) Schedule 2, page 7 (after line 26), after item 8, insert:

8A Paragraph 151AJ(5)(c)
Omit “paragraph 46(1)(a)”, substitute “paragraphs 46(1)(a) and (1AA)(a)”.

(3) Schedule 2, page 7 (after line 28), after item 9, insert:

9A After subsection 46(1) of the Schedule
Insert:

(1AA) A person that has a substantial share of a market must not supply, or offer to supply, goods or services for a sustained period at a price that is less than the relevant cost to the person of supplying such goods or services, for the purpose of:
(a) eliminating or substantially damaging a competitor of the person or of a body corporate that is related to the person in that or any other market; or
(b) preventing the entry of a person into that or any other market; or
(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(1AB) For the purposes of subsection (1AA), without limiting the matters to which the Court may have regard for the purpose of determining whether a person has a substantial share of a market, the Court may have regard to the number and size of the competitors of the person in the market.

9B Subsection 46(1A) of the Schedule
Omit “subsection (1)”, substitute “subsections (1) and (1AA)”.

9C Paragraph 46(1A)(a) of the Schedule
Omit “paragraph (1)(a)”, substitute “paragraphs (1)(a) and (1AA)(a)”.

9D Paragraph 46(1A)(b) of the Schedule
After “paragraphs (1)(b) and (c)”, insert “and (1AA)(b) and (c)”.

The government is moving these amendments to include a new prohibition in part IV of the Trade Practices Act that will specifically target anticompetitive, below-cost pricing by corporations with a substantial market share. The reason for this is that, although there was a view held by many, including many with expertise in this field, that the existing provisions in section 46 were in their current terms sufficiently broad to deal with the problem, nevertheless out of a sense of abundant caution the government has decided to agree to the proposition that there ought to be more specific provision made in relation to the issue of below-cost pricing. Amendment (1) amends this bill to introduce a new subsection—subsection 46(1AA). That provision will prohibit a corporation with a substantial share of a market from supplying or offering to supply goods or services for a sustained period at a price that is
less than the relevant cost to the corporation of supplying such goods or services for the same purposes as currently set out in subsection 46(1A) to (1C) of the act. In other words, the existing proscribed purposes will apply but the courts will be given direction to apply them specifically, rather than in the generic framework of the existing section 46, to the particular case of a corporation with a substantial share of market power in the circumstances that I have just recited.

Amendment (1) also introduces subsection 46(1AB). That subsection provides that the court, in determining whether a corporation has a substantial share of a market for the purposes of the prohibition, may have regard to the number and size of competitors of the corporation in the market. This provision is expressed so that it does not limit the matters to which the court may otherwise have regard in determining whether a corporation has a substantial share of a market. To assist with the interpretation of this new provision, consequential amendments are included to ensure that it is subject to existing subsection 46(1A). As a result, for the purposes of the new prohibition, a reference to a competitor will be deemed to include a reference to competitors generally or to a particular class or classes of competitors, and a reference to a person will include a reference to persons generally or to a particular class or classes of person. These consequential amendments will assist in ensuring coherency between the existing prohibition contained in section 46(1)—that is, what I have described as the generic prohibition—and the more particular application envisaged by the new prohibition.

The second set of amendments deal with the application of section 46 to the telecommunications industry. They are consequential amendments to part XIB of the act. Subsection 151AJ(5)(c) of the act presently provides for an amended application of section 46 for the purposes of section 151AJ(3) in the case of a telecommunications carrier or carriage service provider that is not a corporation or a partnership. In particular, the act currently provides that, in determining whether such a carrier or service provider is in contravention of section 46, it is to be assumed that the expression ‘or a body corporate related to the corporation’ is to be omitted from subsection 46(1)(a). The second set of amendments ensures that the same assumption is made in relation to the prohibition which is contained in the first set of amendments—that is, the amendments which will introduce subsection 46(1A)(a) and 46(1A)(b) to provide ongoing consistency between section 46 and part XIB.

The amendments in the third set of amendments are amendments to the scheduled version of section 46. The purpose of these amendments is to make corresponding changes to the version of section 46 found in part 1 of the schedule to the act. That is the version of the act that applies in the states and territories by virtue of the application legislation. The changes in the third set of amendments are identical to those in the second set of amendments, and they ensure that the new prohibition in subsection 46(1)(1AA) and the provisions of section 46(1)(1AB) apply to all businesses in Australia, regardless of their structure—that is, whether they are governed by Commonwealth or state or territory law.

It should be noted that the amendment is constrained by the conduct of the corporation that has a substantial market share. For example, the corporation must have the purpose of damaging a competitor or preventing the entry of a competitor or potential competitor in order for it to be in breach of the new prohibition, and the conduct must also be carried out for a sustained period. In other words, the test in subsections 46(1)(a) to (c) of the existing section 46—the generic pro-
visions about motive—will apply in relation to the amendments to the scheduled version of section 46 as they do to the specific low-cost pricing provisions which I have outlined.

Senator SHERRY (Tasmania) (1.32 pm)—Labor will be supporting the government’s amendments. The amendments insert a specific section dealing with predatory pricing. Currently, predatory pricing is one type of conduct that can be captured by the section 46 ‘Misuse of market power’ provisions. The new specific predatory pricing section prohibits a corporation with substantial market share from supplying goods at a price below relevant cost for a sustained period of time for an anticompetitive purpose. The new concept of ‘substantial market share’ is different from the concept of substantial market power in section 46. A further difference is that there is no requirement to prove that a corporation took advantage of its substantial market share for an anticompetitive purpose. This removes the second hurdle, of proving taking advantage, which currently exists in section 46.

Labor will support the amendments but is concerned that this amendment was hastily cobbled together at the last minute. It was a very last-minute backflip by the government, and that was due to the pressure brought to bear on the government by small business and Labor, the Democrats, Family First and others. The government’s changes are welcomed but only go a small step of the way. There is a lot more the government needs to do to strengthen the act, on matters such as creeping acquisitions, criminal penalties for cartel conduct, and access to justice for small business through the Federal Magistrates Court. Supporting Labor’s sensible and balanced amendments, which we will deal with, would have dealt with these issues. The key is to strengthen section 46, not to introduce new sections. This change does nothing to crack down on anticompetitive conduct other than predatory pricing but it goes some way—a small way—towards what needs to be done and, to that extent, Labor will be supporting the government’s amendments.

Senator MURRAY (Western Australia) (1.34 pm)—This particular debate is not on broadcast and so, for those who are going to be reading the debate, I think it is useful to remark that, in the presence of the duty minister, Senator Brandis, we are fortunate. Sometimes duty ministers do not have particular expertise in the bills they have to run—they have competence but not expertise. In this particular case, Senator Brandis is, of course, a person who deservedly enjoys a high reputation with respect to trade practices matters, which means that we are likely to get responses which do not just accord with the legislative line but hopefully are informed by his background and understanding. I make those remarks deliberately because, of course, I want to put a question arising from these amendments.

Let me say at the outset that the Democrats support the amendments. I understand these amendments now go under the quaint name of ‘the Birdsville amendments’, as proposed by Senator Joyce, and I want to compliment Senator Joyce again on his persistence in getting these amendments accepted and put forward, because they do advance the general cause. I have the view that, in certain respects, there are people who cannot be satisfied by trade practices law—that, in certain respects of the law, perhaps particularly with regard to section 46 matters, that which advantages small business will disadvantage big business, because it restrains their ability to take advantage of their market power to exercise the natural monopolistic instincts of any business faced by opportunities to increase their market share and increase their profitability. I often refer to business behaviour, even where it is
prohibited or condemned, as natural behaviour, because it is the natural desire of businesses to acquire market share, to increase their profitability and to increase their market standing.

That is my lead-in, Minister, to discuss a reaction I have noted from big business and big business organisations. Firstly, it is with some pleasure I note antagonism from big business because that means it is actually reflecting some benefit to small business. But I have also seen a particular argument put out in this case by the Australian National Retailers Association—and I am restating their position; I do not want to verbal them—which is essentially that this will severely limit the ability of national retailers to discount and to operate competitively as they have in the past. I personally think that is arrant nonsense. As soon as this bill is passed, big retailers will continue to compete and discount as they have in the past. They will just be restrained if they go too far and breach this particular new provision.

My question to you, Minister, is: are you aware of criticisms of big business surrounding this amendment? Are you in particular aware of the Australian National Retailers Association’s attitudes and are you able to rebut concerns which I think somewhat exaggerate the effect of the amendment?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.38 pm)—Thank you, Senator Murray, for that question and thank you for your acknowledgement. I actually have run predatory pricing cases under the old section 46 in the old Federal Court, in fact, on several occasions. I was of the view—which I think we share, Senator Murray, though it is not shared by everyone—that the decision of the High Court in Boral did change the ground somewhat by reading section 46 too narrowly and, in fact, more narrowly than it had hitherto been read. It was really, as I think you know, Senator Murray, the High Court’s reasoning in the Boral case, the judgements which were handed down on 7 February 2003, which did provoke me and others—including your good self—to agitate for reform of section 46 and the reference to the Senate Economics References Committee, which has been referred to earlier in the debate.

On the other hand, one must, in seeking to deal with and amend a provision as delicate as section 46, be particularly conscious that we do not, as it were, kill the goose that laid the golden egg. The basic proposition that cannot be recited often enough about section 46, Senator Murray—and I think it is shared by both sides of politics—is that the purpose of section 46 is to protect competition, not to protect competitors. It is about process, not individual companies. As the courts both before and after the Boral case have said time beyond number, the fact that an individual firm may as a result of competition go out of business is not of itself a bad thing. Often that is the clearest proof that the competitive process is working and that resources are being allocated efficiently. The necessary condition—as you, Senator Murray, better than most people know—is the consumer getting the best possible deal. The vice is where the conduct which drives a corporation out of a market features some of the maligned purposes which the existing section 46(3)(a) to (c) proscribe and which it is the purpose of this provision to apply more particularly to the issue of predatory pricing.

As I said earlier on, there are different minds as to whether the existing section 46 deals with predatory pricing sufficiently and it is one of the problems in this area of discussion that predatory pricing is not a defined term. Different people throw this term around and it means different things to different people. But it has never been the understanding of either the economists who
write about this area or the lawyers who practise in the area that predatory pricing means discounting per se. It is plainly the intention of the government in drawing this amendment to ensure that it is not so widely drawn that it would have a chilling effect on discounting per se. That is why the language of the amendment is hedged in the various ways, as you can read from the terms of it.

So, Senator Murray, I hope that addresses your question in a somewhat longwinded way, for which I apologise. But let me make it as clear as can be that it is not the government’s intention—nor would it be good policy, nor, in my view, would it be the effect of these words properly construed by a court—to read them as constraining the practice of discounting per se.

Senator Murray (Western Australia) (1.43 pm)—I thank the minister for his answer; I agree with all that he has said. The media release I saw on 11 September 2007—and there was another one today—stated that ANRA, the Australian National Retailers Association, CEO Margy Osmond said:

… amendments to the TPA put forward by the Nationals Senator Barnaby Joyce—they are put forward by the government as a result of the advocacy of Senator Joyce—and being considered by the Government, would deter retailers from offering customers discounts, for fear of being prosecuted.

On the record, I say that I disagree with that. That is not the effect of the law and the minister has confirmed that is not the effect of the law.

Question agreed to.

Senator Murray (Western Australia) (1.44 pm)—by leave—I move amendments (2) and (3) together and amendments (4) and (5) together:

(2) Schedule 2, page 6 (after line 2), after item 2, insert:

2A After subsection 46(3)

Insert:

(3E) In determining for the purposes of this section whether a corporation has a substantial degree of power in a market, the Court may consider the corporation’s degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.

(3F) In determining for the purposes of this section whether a corporation has a substantial degree of power in a market, the Court will at least take into account the following principles:

(a) the substantial degree of power in a market threshold does not require a corporation to have an absolute freedom from constraint, it is sufficient if the corporation is not constrained to a significant extent by competitors or suppliers; and

(b) evidence of a corporation’s behaviour in the market is relevant to a determination of a substantial degree of power in a market.

(3G) For the purposes of this section, without limiting the matters to which the Court may have regard for the purpose of determining whether a body corporate has a substantial degree of power in a market, a body corporate may have a substantial degree of power in a market even though the body corporate does not have the ability to raise prices without losing business to rivals.

(3) Schedule 2, item 3, page 6 (after line 12), at the end of subsection (4A), add:

; and (c) the capacity of the corporation to supply goods or services at a price below its variable cost.

(4B) Where it is alleged that a corporation has contravened subsection (1) by un-
dertaking a strategy of predatory pricing, it is not necessary for the Court to be satisfied that the corporation has the capacity to subsequently recoup the losses which arise from that alleged predatory pricing strategy.

(4) Schedule 2, page 6 (after line 12), after item 3, insert:

3A After subsection 46(4)

Insert:

(4C) In determining for the purposes of this section whether a corporation has taken advantage of a substantial degree of power in a market, the Court will disregard what the corporation could or would have done in the absence of a substantial degree of power in a market.

(5) Schedule 2, page 6 (after line 12), after item 3, insert:

3B After section 46A

Insert:

46AB Anti-competitive price discrimination

(1) A corporation must not supply or offer to supply goods or services at different prices to different persons for the purposes of:

(a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in any market;

(b) preventing the entry of a person into any market; or

(c) deterring or preventing a person from engaging in competitive conduct in any market.

(2) It is a defence to an action under subsection (1) if the different prices are justifiable solely by reference to a difference in the costs of supplying or offering to supply the goods or services to the different persons.

46AC Anti-competitive geographic price discrimination

(1) A corporation must not supply or offer to supply goods or services at different prices in different locations for the purposes of:

(a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in any location;

(b) preventing the entry of a person into any location; or

(c) deterring or preventing a person from engaging in competitive conduct in any location.

(2) It is a defence to an action under subsection (1) if the different prices are justifiable solely by reference to a difference in the costs of supplying or offering to supply the goods or services in the different locations.

I will speak briefly to all four amendments. These amendments have been circulated on sheet 5324 revised. Item (2) that I have raised refers to the misuse of market power. In some respects, I can argue—and those responding to my amendments could argue—that this amendment does not change the law significantly. In my view, that is its virtue, but others may argue that it is not necessary. I am attempting here to provide more guidance to the courts in relation to a substantial degree of power in the market. There are some key words included in my amendment that, in my view, make it slightly more effective than the government’s amendments, which have already been put through the bill.

Although this amendment does look similar to the government’s amendments, it includes additional key words and concepts that the government’s amendments lack. I refer in particular to the phrase ‘at least’, which leaves open to the court to find that there may be other factors that may deter-
mine a substantial degree of power in the market. In other words, I seek to give the courts more leg room. My remarks in that regard refer to (3F).

With respect to (3G), this amendment does not elevate the ability to raise prices to being the sole test of substantial market power, because that is already the test used by the courts through the Boral case. The amendment states that a company can have substantial market power, even though it cannot raise prices without losing business. My amendment attempts to oblige the court to look beyond an ability to raise prices to other determinants of market power. Currently, the High Court has become too focused on an ability to raise prices without losing business and this amendment operates to move them away from that focus, in accordance with the parliamentary intention behind the concept of ‘substantial market power’.

Item (3) covers predatory pricing. I have included this amendment as I was unsure whether Labor would be putting forward the amendments they originally proposed in the House of Representatives. I believe that this is an important point to be made and it should be made again: the court does not need to have regard to the ability of a corporation to recoup its losses when determining whether or not there has been predatory pricing. The issue of recoupment is a huge issue in trade practices cases, trade practices theory and trade practices commentary. My own belief—and, in part, it comes from my extensive business experience—is that the ability of a corporation to recoup its losses is not a necessary condition when referring to the issue of predatory pricing. So they are items (2) and (3), which I put.

I will now discuss items (4) and (5), which I will have moved separately. In introducing item (4)(4C), I suggest that some people may again see this as rather nuanced. Currently, the test for taking advantage is whether the company could have engaged in the same conduct without substantial market power. That is, if a company with substantial market power could have engaged in the same conduct without market power, the firm is currently not considered to have taken advantage of its substantial market power. Up until now, the courts have treated ‘take advantage’ as another onerous hurdle to render section 46 relatively weak. This amendment attempts to stop the courts from using the current onerous test for ‘take advantage’. If this amendment were in place, the test would revert to ‘using market power’.

Item (5), 46AB, is the attempted amendment. Although there has been a move away from using the word ‘anticompetitive’ in the Trade Practices Act—I might say, through the chair, that I have always rather liked the word ‘anticompetitive’—I think it is essential that it is made clear that it is only anticompetitive price discrimination that is prohibited. As we all know, not all price discrimination is anticompetitive. In fact, as the minister recently outlined, price discrimination and price competition are to be desired and encouraged and not discouraged. So being able to buy something on special at one store instead of another is what a competitive marketplace is about. That is why the amendment is framed as it is. There may be different costs in supplying, and there is a defence built into the amendment. The amendment also seeks to stop a firm from engaging in price discrimination and, if a person or company were seeking to induce a person to do so, that person or company would be involved in a breach of this amendment through the operation of section 75B(1B).

Item 5 is an attempt to introduce 46AC, anticompetitive geographic price discrimination. People may wonder why you should have anticompetitive geographic price dis-
The reality is that there can be locations where price discrimination happens to attempt to eliminate the competition in a particular locale, whereas in a different suburb or city there is no price discrimination. In other words, it is particular to a branch or store and not to the chain or organisation. I would point out that ‘location’ here is given its ordinary meaning—that is, Canberra as different from Sydney or from Perth, or it could even be Deakin as different from Belconnen. I think this amendment is potent in looking at situations in suburbs where large supermarket chains charge different prices to try to drive out competitors in the particular suburbs where those competitors still exist.

If prices are different in any location for an anticompetitive purpose—not for a competitive purpose—they will come under scrutiny under this amendment, unless justified by a pro-competitive reason such as clearing perishable or obsolete stock or by higher costs of supplying at different locations. Different prices can therefore fall under this provision. I would point out that this type of behaviour is recognised in Canada and this amendment is modelled on a provision of Canadian law. That is why we have put it up as an idea. From my long experience in these matters, I have no doubt that the government will reject the idea, but I would like to hear on the record why they would reject it.

Senator SHERRY (Tasmania) (1.52 pm)—Firstly, I thank Senator Murray. Labor is supporting Democrat amendments (2) and (3) but not supporting amendments (4) and (5) for the reasons I will outline. Senator Murray—and I thank him—has taken up a suggestion to move amendments (2) and (3) together and amendments (4) and (5) together but separately.

Labor agrees to amendments (2) and (3) moved by Senator Murray on behalf of the Australian Democrats. The amendments lower the barrier to prove substantial market power in a sensible way and also partly overcome the government’s amendments which provide little guidance on what substantial market power really is. The amendments make it easier to prove that a corporation has a substantial degree of market power due to informal contracts, arrangements or understandings. The amendments provide more clarity to what constitutes substantial market power by stating that it is sufficient that a corporation is not constrained to a significant extent by competitors or suppliers. The amendments clearly state a corporation will still have substantial market power if it does not have the ability to raise prices without losing business to rivals. This is aimed at directly overcoming the problems of the Boral case. The amendments also look at a corporation’s pattern of behaviour to determine whether a corporation has a substantial degree of market power.

Labor support Democrat amendment (3). Labor’s amendment to explicitly state that recoupment is not required to prove predatory pricing also covers this issue. This amendment is similar to Labor’s, so Labor is pleased to support it.

I turn to amendments (4) and (5) that Senator Murray has moved. Firstly, on amendment (4)—similar to amendment (3)—Labor believe that our amendment to clarify what ‘take advantage’ means, which we will reach soon, will be more effective and adequately cover the issues of connection between substantial market power and the use of that power for an anticompetitive purpose. Again, if Labor’s amendments were found to be ineffective, Labor would consider this change to the ‘take advantage’ concept in section 46.

Labor does not agree with amendment (5). The amendment has the potential to increase prices for consumers because suppliers
would not be able to offer discounts to some retailers who in turn pass on savings to consumers. Labor wants lower and cheaper prices for consumers and believes that these price discrimination amendments are counter to that aim.

So, in summary and conclusion, Labor will be supporting Democrat amendments (2) and (3) but we will not be supporting Democrat amendments (4) and (5).

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.55 pm)—
The government do not support these Democrat amendments, not because we disagree with the sentiment but because they are otiose—either they merely restate in, if I may say so, less appropriate statutory language the effect of the government’s amendments in any event or they merely state unnecessarily what is uncontroversially the existing law.

In amendment (2) proposed section 46(3E) seems to be based upon recommendation 6 of the 2004 Senate committee report and is comprehended by the government’s amendments to insert section 46(3A) in the existing legislation. This is a point, Senator Murray, if I may be permitted to say so, that Ms Kiefel QC, as Her Honour then was, and I argued in the Federal Court 16 years ago in Dowling v Dalgety. It was a proposition settled by Justice Lockhart in Dowling v Dalgety in 1992. This is nothing new and dramatic. Government senators supported recommendation 6 of the Senate committee because we thought it was just as well to import that proposition into the legislation, but it was already set in law at the time. The government has adopted our support for recommendation 6 in proposed section 46(3A).

Your proposed amendment to insert section 46(3F) is again, with respect, not required because the freedom from the constraint by the conduct of competitors and suppliers which the amendment contemplates is already covered by proposed section 46(3C)(b) in the government’s bill. In fact, the government’s bill goes further than your amendment would, Senator Murray, by dealing with constraint by customers—that is, persons to whom the firm supplies goods and services.

In relation to your amendment to insert section 46(3F)(b), the government’s response to the 2004 Senate economics committee report rejected that amendment on the grounds that it is unnecessary because firm behaviour is already taken into account in assessing market power and nothing in the Boral case changed that. The Boral case, as you know, Senator Murray, did change the judicial interpretation of section 46 in a number of respects but not in that respect. So what you seek to achieve through proposed section 46(3F)(b) it seems to me is entirely unnecessary, given the uncontroversially understood existing state of the law.

Turning to Democrat amendment (3), regarding the capacity of a corporation to sell below cost, once again the amendment is not required because the provisions in the government bill already explicitly provide that the court may have regard to that matter—‘the supply of goods or services for a sustained period at a price that is less than the relevant cost to the corporation’; that is, the provision of one of the two government amendments I moved a few moments ago. Perhaps your amendment was drawn before you saw the government amendments, but I think, Senator Murray, that the mischief that you seek to correct there, if it was not already dealt with under existing section 46, is certainly now covered by government amendments. I see the time, and I might return to your other amendments, Senator Murray.
Progress reported.

QUESTIONS WITHOUT NOTICE

Interest Rates

Senator SHERRY (2.00 pm)—My question is to Senator Scullion, representing the Minister for Families, Community Services and Indigenous Affairs. Is the minister aware that recent interest rate hikes are one of the key reasons why young Australians can no longer afford to buy a home? Didn’t the government promise in the 2004 election campaign that it would ‘keep interest rates at record lows’? Isn’t this promise still on the Liberal Party website, even today, as part of an election advertisement titled ‘Economic Journey’? Can the minister confirm that, instead of being at record lows, interest rates have gone up five times in a row since the election, adding $260 a month to repayments on a $300,000 mortgage? Can the minister explain how a government breaking its promise on interest rates five times over helps young families to buy a home?

Senator SCULLION—I thank the senator for his question. Again, I am always a little stunned when Labor comes to this place lecturing us on interest rates. Opposition senators interjecting—

Senator SCULLION—I would have thought those asking the question would have been interested in the answer. In terms of a record, currently the interest rates today are at the highest they have ever been under the Howard government, at 8.3 per cent. Just for the record, the lowest they ever achieved was 8.75 per cent. So the highest they have ever been under us still has not been anywhere near as low as they have been under those opposite, Mr President.

Senator Chris Evans—What happened to the record lows?

Senator SCULLION—They are record lows. They are indeed record lows. They are far beneath what they were under Labor. Of course, the fundamentals about interest rates are all about how we run the economy. I know that most Australians will not need a reminder that when interest rates were running at 17.5 per cent under Labor, if you could only imagine that, given the tension one feels at around 8 per cent now, how bad it would feel under Labor under 17 per cent. Of course, they talk about housing affordability, they talk about interest rates. It is very hard to buy a home if you do not have a job. Again, one of the single fundamentals today, unemployment, is at 4.3 per cent. Under the other side, it was well over 10 per cent.

It is okay to talk about how people feel the pain, and no doubt people do. It is a very difficult process in terms of buying a home, particularly with respect to your home loan. Of course, interest rates have a part to play in that. But as you would know, Mr President, I have said many times in this process that there are many other aspects that can be controlled by the states and territories. They are stamp duties, land taxes and a whole range of other taxes that have been foisted on the Australian public and have been referred to in this place certainly as a housing affordability tax.

Of course, when we are talking about the economy, there is a whole suite of other reasons why people should look to the choice between the coalition and Labor in the next election. Not only do we provide people with a job but we provide them with jobs under us that have had wage increases—real increases of 22 per cent.

Senator Chris Evans—You provide them with a job?

Senator SCULLION—There are some interjections from the other side. What did they do? It went down by 1.7 per cent, a 1.7 per cent drop in real wages rather than the 22 per cent growth in real wages. A lot of it is
about confidence in the future. I can tell you that someone who is buying a home today and who has a job can be very confident about keeping that job under Work Choices. Those on the other side continue to bring up—and I am very pleased about that—378,000 new jobs since Work Choices. There are 378,000 new families who can now afford to buy their own home.

Senator SHERRY—Mr President, I ask a supplementary question. I do thank the minister for admitting that interest rates today are higher than they have ever been under his government. But that just goes back to the original question: what happened to the promise to keep interest rates at record lows that the government made three years ago? What happened to that promise, if interest rates are at record highs today? After nine interest rate hikes in a row, which have added $457 a month to a $300,000 mortgage, how will our kids ever be able to afford to buy their own home after your broken promise?

Senator SCULLION—Again, I will reiterate the circumstances that the government find ourselves in. We find ourselves in a better position than you would ever be under a Labor government. There is no doubt about that. We will continue to ensure that we run a fantastic economy so people have the best chance ever of having a job, the best chance ever of having an increase in wages and the best chance ever of having the lowest interest rates, if you take the choice between the governments, and we will ensure that people who are buying their first home or need to buy another home are best looked after by running, once again, the greatest economy in the free world.

Farms

Senator NASH (2.06 pm)—My question is to the minister representing the Minister for Agriculture, Fisheries and Forestry, Senator Eric Abetz. Will the minister update the Senate on the current drought situation? How is the Howard government acting to alleviate the serious problems this drought is creating and is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Nash, that very effective advocate for the rural communities of this country, for her question. Australia is facing extremely difficult times with the continuing drought. The drought is taking a huge toll on rural and regional Australia. If we do not get good rain soon, the winter crops are expected to fail. This will have a devastating effect on our primary producers. The coalition government has worked and continues to work with the Australian farming sector to get through these tough times. Since 2001, this government has committed over $2.4 billion to drought assistance. Today the Prime Minister announced an additional $430 million in new funding for drought affected farmers—an announcement I am sure Senator Nash is very pleased about. This includes extending exceptional circumstances funding until September next year for 38 drought declared areas in South Australia and setting aside extra money for parts of Tasmania and Western Australia. All this is only possible because of the strong economic management of this government. If we had not brought the budget into balance, if we had not paid off Labor’s $96 billion in debt, freeing up billions of dollars which were previously being used just to cover the interest on Labor’s debt, how could we have afforded to support our farmers through these tough times? The answer is very simple: we could not have. This is the real human dividend of good economic management. As Labor’s record shows, and as those of the state Labor governments confirm, you simply cannot trust Labor with money.
On top of all that, Labor continues to play politics with our $10 billion plan to secure the future of the Murray-Darling River system and to secure the future of the farmers who rely on this river for their livelihood. The Howard government’s $10 billion National Plan for Water Security would put more water back into the system by piping and lining leaky irrigation channels. However, the Victorian state Labor government continues to play politics with this plan. While Premier Brumby and the Victorian state Labor government stand in the way of a workable solution for Australia’s water situation, Mr Rudd fully endorses this inaction. Mr Rudd pretends he is serious about addressing the looming crisis in the Murray. He pretends that he supports the National Plan for Water Security and he tells us that, if only a Labor PM were elected, relationships with the states would be just dandy. But what has he done to get the Victorian Labor Premier to sign onto the plan? Nothing, absolutely nothing. Indeed, the silence of those opposite confirms that. Mr Rudd is content to let Mr Brumby play politics with a plan rather than to act in the national interest. When it comes to Mr Rudd, what this demonstrates is this: look not at what Labor says but at what Labor does. Senator Nash, her constituents and other Australians can actually say that the Howard coalition government matches its words with actions in support of those in our rural communities who are doing it very tough because of the drought.

Cost of Living

Senator HURLEY (2.10 pm)—My question is to Senator Scullion, the Minister representing the Minister for Families, Community Services and Indigenous Affairs. Is the minister aware that, since the 2004 election, working families now spend 36 per cent more on child care, 18 per cent more on bread, 29 per cent more on fresh fruit and vegetables, 15 per cent more on health care and 28 per cent more on petrol? On top of these cost-of-living increases, aren’t homeowners with a $300,000 mortgage now $457 a month worse off, thanks to nine interest rate rises in a row? How can families plan their budgets when the cost of living just keeps going up? Given that the cost of living for families just keeps going up, can the minister indicate if he supports the Prime Minister’s view that working families have never been better off?

Senator SCULLION—It is amazing that the inference of the question we have just heard was that having unemployment rates at 4.3 per cent instead of at 10.9 per cent, as they peaked under Labor, is somehow bad. In real terms I can say that, between when we came to office and June 2007, some 2,184,000 more people have a job. That is 2,184,000 more people who now have a job and can go out and buy a house. They have a job today that they did not have then. I know you in this place will understand this. We are talking about over 10 per cent unemployed. When we came to government there were 45 federal electorates where more than 10 per cent of the people did not have a job. Of course, now there are no federal electorates in which we have 10 per cent unemployed. We are very proud of that.

I have to say that the capacity to give people jobs is about not only our past record. Of course, in housing affordability we have a plan for the future. On 26 July 2007 the Australian government announced that we would be inviting expressions of interest from state and territory governments, from the non-government sector and from the private sector for their proposals and their ideas for new and innovative approaches to using the available funding for increasing housing supply. Several proposals have been put forward recently that seek to increase the supply of affordable residential land and housing stock. These are innovative processes that
actually engage the organisations we know are going to deliver. We are very interested in examining the proposals as part of our increasing social housing supply request and information processes. The government have consistently called on the state and territory governments to manage the provision of a range of housing options available to Australians and specifically to increase the affordable land and housing available.

Despite almost $1 billion a year being invested with other organisations, principally the state and territory Labor parties, we have managed to go backwards in terms of housing. It is all right for people in this place to look at those who are buying house and at interest rates, but the information I get from those on this side is that people are also concerned about rental issues, and we need to have a comprehensive policy statement that deals with these issues across the board.

In spite of providing $1 billion a year for 10 years—that is, $9.6 billion over 10 years—we do not have a single extra house being provided. The only failure on the part of the government was in trusting state and territory Labor governments. That was our failure. I can tell you, Mr President, that this is not a government that continues to do the same thing while expecting a different outcome. That is why we are looking at alternative policies and engaging in alternative partnership arrangements, to ensure that those Australians who are buying their first homes or who are in the rental market are getting the very best deal they can.

Senator HURLEY—Mr President, I ask a supplementary question. How does the minister’s vague, wandering answer help working families who are struggling with huge mortgages and rents and spiralling petrol, childcare and grocery prices? Is the minister really so out of touch that he agrees with the Prime Minister, who says that working families have never been so well off?

Senator SCULLION—Had I attempted to answer the childcare, vegetables, affordability and interest rate questions, all contained in the one question, I do not think it would have been as useful as sticking to the central point of the question. The fundamental point relates to the capacity of individuals to continue to pay off their mortgages. Perhaps what we should look at is what the Reserve Bank has said. It has stated that about a quarter of owner-occupiers are more than a year ahead in their schedule of payments. That is a fact. I am not making any subjective point about that or about how Australians are doing. I acknowledge that it is difficult from time to time across many demographics, as historically it has been when you are buying your first home. That is the whole point about buying your first home: it can be difficult. But it is tremendous that the Reserve Bank factually estimates that fewer than one per cent of all home borrower households are more than 90 days behind in their repayments. I think that is a record of which to be proud. (Time expired)

Hospitals

Senator ADAMS (2.17 pm)—My question is to Senator Ellison, the Minister representing the Minister for Health and Ageing. Will the minister advise the Senate of new initiatives to deliver hospital based training for enrolled Australian nurses?

Senator ELLISON—I thank Senator Adams for what is a very important question to the public of Australia and acknowledge Senator Adams’s great interest in this area, particularly in her home state of Western Australia.

The Prime Minister has announced that we will provide funding of $170 million to create 25 Australian hospital nursing schools to deliver hospital based training for enrolled
nurses in both public and private hospitals. It is important to remember that we are covering both public and private hospitals with this announcement. We see this as a partnership between both those sectors and a step forward in providing additional nurses and the incentives for people to take up a nursing career.

In relation to this initiative, students will receive practical on-site training at our hospitals and will achieve nationally accredited qualifications at the diploma or advanced diploma level. Selected hospitals will receive infrastructure funding from the Australian government for educational facilities to be developed, and we will provide for training staff for those participating hospitals. The first intake is expected to be in 2008, and we envisage about 500 additional enrolled nurses taking this up.

There are a number of incentives, as I mentioned. Firstly, participating hospitals will pay trainees’ salaries until they attain their qualifications. The Australian government will provide wage subsidies to hospital nursing schools for each student for the first three months of $500 a week to assist the schools to provide their students with a wage. As well, the Australian government will pay the hospital nursing schools a $1,500 commencement fee or bonus and an additional $2,500 on completion for each student. In addition to these payments to the hospital nursing schools, the Australian government will directly pay each student a tax-free bonus of $2,000 once they have successfully completed their first six months of a course and a further tax-free bonus of $3,000 when they have successfully completed the whole course.

These are tangible incentives to get more people into nursing. I might add that this is in addition to the university based system that we have. In fact, since 2005, under the Howard government we have seen an additional 3,700 nursing training places at universities. That will grow to 10,000 by 2012. This initiative builds on the existing university based training and will provide practical hospital based training.

We are desperately short of nurses in this country, and this initiative will act to remedy that. It has been recognised widely. In fact, I saw a statement put out on 15 September by the Western Australian branch of the Australian Nursing Federation welcoming this plan, as do other people involved in the nursing profession in this country. This is a very good initiative which is good news for the administration of health care in this country.

Advertising Campaigns

Senator WONG (2.21 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. I refer the minister to the letter to Australian nurses from Mr Hockey published in newspapers across the nation at the weekend. Can the minister confirm that this full-page advertisement was paid for by Australian taxpayers, not by the Liberal Party? Will the minister now come clean on the full cost of this latest advertising campaign? Can the minister tell Australian taxpayers, who have already footed the bill for $93 million worth of Howard government Work Choices advertising, just how many more advertisements from Mr Hockey the Howard government expects taxpayers to pay for?

Senator ABETZ—As I think more and more Australians are coming to realise, the misinformation campaigns run by the ACTU and aided and abetted by the Australian Labor Party have caused a great degree of confusion within the minds of the Australian public. Therefore, it is appropriate for us as a government to put the facts on the record. And the facts are these: the Australian public has been provided with misinformation and
misleading commentary about how the pay and conditions of Australia’s nurses are set; advertising was placed in the national newspapers at the weekend to clarify the situation with Australia’s nurses so that they know where they stand.

The Australian Institute of Health and Welfare publication titled *Nursing and midwifery labour force 2004* shows that around two-thirds of nurses are employed in the public sector. These nurses have their pay and conditions set by state Labor governments, yet the ACTU, the nurses union and other organisations deliberately mislead the Australian public in relation to that. The publication also shows that around 14 per cent of all nurses are residential aged care nurses. The majority of residential aged care nurses—around three-quarters—are employed in the private sector.

Nurses working under the federal workplace relations system have the protection of the fairness test when negotiating AWAs so that penalty rates and overtime cannot be exchanged without fair compensation. All employees in the federal system have a set of protections which all employers must abide by.

In relation to government advertising generally, can I make this point: state Labor governments around Australia have in fact outspent that which we as an Australian government spend on communications campaigns. Do you ever hear one word of criticism from Mr Rudd about state Labor advertising? Never once! Mr Beattie’s watermelon smiling face appeared in all the national newspapers promoting how well he was running Queensland—despite ‘Dr Death’ and other issues. Queensland taxpayers funded those first advertisements, and guess what? Not a squeak! There was not a squeak from the former mandarin of the Queensland government Mr Rudd. What that shows is that this mandarin is fast turning into a lemon, because he is not able to deliver on his policy with his state Labor colleagues. He says he is going to cooperate with his state Labor colleagues. You know what that means, don’t you? It means huge advertising expenditure way beyond that which has ever been seen.

In relation to nurses, the feedback we have got is that a lot of nurses now feel very satisfied that the misinformation being put out by the Nursing Federation is simply a political ploy to damage the government and does not have the interests of nurses at heart.

**Senator Wong**—Mr President, I ask a supplementary question. I note the minister asserts that it is appropriate for Mr Hockey to use taxpayer funds to advertise his open letter. I note that the minister again refused to come clean with Australian taxpayers and tell them how much they are spending on this latest round of advertising. Why don’t you answer the question, Minister? Can the minister also confirm—

**The President**—Senator Wong, order!

**Senator Wong**—Through you, Mr President—

**The President**—Not through me; to me.

**Senator Wong**—Through you, Mr President—the minister could come clean with Australian taxpayers and tell them just how much they are spending on Mr Hockey’s latest round of industrial relations advertising. Can the minister also confirm that the Howard government is on track to spend nearly $2 billion of taxpayers’ funds on advertising during its term in office? Minister, isn’t it the case that the Howard government will do anything, say anything and spend any amount of taxpayers’ money in an attempt to get itself re-elected?
Senator ABETZ—As the honourable senator well knows, 25 per cent of government communications expenditure is spent on Defence Force recruitment. Would the Labor Party abolish that? Absolutely not.

Would they abolish the advertising that communicates with people about their rights and responsibilities in relation to, say, drugs? Would they do that? No, they would not. What they say, very dishonestly, to the Australian people is: ‘We’re against all the advertising.’ But when you start putting them down campaign by campaign the only one they do not like is Work Choices. The reason they can afford to do that is that the ACTU is outspending the taxpayers in relation to its misinformation campaigns. The Labor Party seek to surf into government on the top of this wave of misinformation. We have a duty to the Australian people to correct the record, and that is what we are doing.

Opposition senators interjecting—

The PRESIDENT—Order! I remind senators that yelling across the chamber is disorderly.

Skills Shortages

Senator TROOD (2.28 pm)—My question is to my distinguished colleague from Queensland Senator Brandis in his capacity as the Minister representing the Minister for Vocational and Further Education. Will the minister inform the Senate of the steps the Howard government is taking to address Australia’s skills shortages? Is the minister aware of any alternative policies?

Senator BRANDIS—I am delighted to be able to inform Senator Trood what the government is doing in relation to the skills shortage. I preface my remarks by saying that a skills shortage is a problem, but it is a problem that has a particular cause. The particular cause of the skills shortage is that unemployment in this country is so low at the moment and therefore the labour market is so tight. I remind the Senate that unemployment in Australia at the moment is 4.3 per cent. When the government came into office in March 1996, unemployment was 8.2 per cent, having peaked at 11 per cent under the Hawke and Keating Labor governments. Unemployment today is at a 33-year low. There are more people in work than there have ever been in this country and, what is more, ever since May 2006 unemployment has been below five per cent and trending downwards.

Senator Trood, that is why we have a skills shortage. Through you, Mr President, I want to tell Senator Trood what the government is doing about it. I might reverse the order of your question and tell you, first of all, what I know about alternative policies. The ALP does have alternative policies to those of the government to deal with the skills shortage. The policy was announced by Mr Kevin Rudd at the weekend. Do you know what it is? It is to set up a task force to look at it. This seems to be the Labor Party prescription. I have been going through the Labor Party’s policy announcements across the whole gamut of public policy. I can tell you that, so far, the Australian Labor Party has committed to establishing 91 reviews, 41 new agencies, 17 new boards and panels, 18 new task forces, five parliamentary inquiries—it is a bit like that Christmas carol about a partridge in a pear tree—and two summits, and we are counting. That is what we know about the alternative policies of the Australian Labor Party: government by conversation; government by talkfest. We know that Mr Rudd can speak fluently under wet cement in two languages, but he never gets anywhere. All he does is refer matters to yet another policy review, task force, agency, summit or parliamentary inquiry.

By contrast, the Howard government has undertaken specific real measures to address the problem of the skills shortage created by the tight labour market, the consequence of
the high levels of good employment which we have brought to the Australian—

Honourable senators interjecting—

The PRESIDENT—Order! There is far too much yelling across the chamber. I ask the Senate to come to order.

Senator BRANDIS—There are so many of these measures. Senator Trood may need to ask me a supplementary question so I can get through them. The Howard government has established 28 Australian technical colleges in 24 regions across Australia, provided a wage top-up of $1,000 per annum for two years for apprentices in skills shortage trades, provided $500 per annum for two years for training fees for apprentices in skills shortage trades, extended FEE-HELP for people studying diplomas and advanced diplomas in the VET sector, provided up to $50,000 for training organisations developing fast-track apprenticeships, established the Australian Institute for Trade Skills Excellence, offered a tool kit worth up to $800 to Australian apprentices in occupations with skills needs—

Opposition senators interjecting—

Senator BRANDIS—It is amazing to hear them knock the tool kit. Almost every last one of them is a union hack. They have never worked with their hands in their life. They serve in here on the basis of having stacked trade union members like Senator Conroy over there from the transport—

(Time expired)

Opposition senators interjecting—

The PRESIDENT—Order! We will not proceed until the Senate comes to order.

Senator TROOD—Mr President, I ask a supplementary question. I must say that I am deeply alarmed to learn that the only response the Australian Labor Party seems to be able to offer to the matter of skills shortages in this country is to set up yet another committee. I wonder whether the minister would be good enough to expand on the very substantive issues to which he was referring in relation to the Howard government’s record.

Senator BRANDIS—I will go on. I was interrupted by the baying contempt by the trade union officials for people who actually use tool kits. As well, Senator Trood, we will provide employer incentives of $4,000 for apprentices and establish a $13,000 wage subsidy for mature age apprentices. We have created work skills vouchers of up to $3,000 for individuals aged 25 years or over who do not have year 12 or equivalent qualifications; created business skills training vouchers of up to $500 for apprentices; provided an additional 5,000 places in the Access Program, which assists job seekers experiencing barriers to skilled employment to obtain and maintain an Australian apprenticeship; provided up to 4,500 prevocational training places in the trades through group training arrangements; worked in partnership with group training organisations to provide an additional 7,000 Australian school based apprenticeships; and increased funding for the Australian apprenticeship centres to allow them to intervene during apprenticeships. (Time expired)

Iraq

Senator BOB BROWN (2.35 pm)—My question is to the Minister representing the Prime Minister. I draw his attention to my statement to the Senate on 4 February 2003 regarding the Iraq war:

This is not Australia’s war. This is an oil war. This is the United States recognising that as the economic empire of the age it needs oil to maintain its pre-eminence.

I also draw his attention to the Prime Minister’s statement of the same day:
No criticism is more outrageous than the claim that US behaviour is driven by a wish to take control of Iraq’s oil reserves.

I ask the minister: in the light of the point of view of Alan Greenspan, the former chairman of the US Federal Reserve, as revealed today, ‘what everyone knows: the Iraq war is largely about oil’, why did Prime Minister Howard mislead this nation? How could he have gotten it so wrong? Will he now face up to the fact that he came behind George Bush to invade Iraq for reasons of oil, not the other reasons spuriously put forward?

Senator MINCHIN—I noticed press reports of Mr Greenspan’s alleged comments and I am not going to suggest that he did not say that, but I have not read all those comments. I would only say that, while he is regarded highly internationally for his record as the US’s central banker, I do not know that he has such a reputation with respect to strategic issues facing the world and the war on terrorism—I do not think that is his expertise. I am, frankly, rather surprised by the reports of him suggesting that the Iraq war was all about oil. From the Australian government’s point of view, and I am sure the US government’s point of view, we totally and utterly reject the suggestion that the effort to liberate the Iraqi people and to ensure that the UN position with respect to Iraq was put into effect had anything to do with oil. One could go so far as to suggest that, if one was worried about oil supplies from Iraq, the last thing you would do would be to invade that country. Rather, you would have done some sort of deal with the former dictator of that country. It would have been utterly naive and idiotic to do what we have done.

If I could go back to the primary position that Senator Brown is putting to us—that we should never have participated in the US action with respect to Iraq—I would remind Senator Brown of the circumstances of that action. For years we had had the dictator of Iraq thumbing his nose at the UN with respect to sanctions imposed on that country by the UN as a result of that country’s invasion of Kuwait. The dictator of Iraq invaded its peaceful neighbour, Kuwait, and as a result of that invasion there was a UN action to repel Iraq, to repel Saddam Hussein and restore peace and liberty to the people of Kuwait. As a result of that, sanctions were imposed by the UN on Iraq and a regime imposed which required inspection of military facilities and weapons facilities in Iraq, to ensure that Iraq was not in a position to develop weapons of mass destruction. The Iraqi government, under Saddam Hussein, expelled the UN, refused to comply with the UN, refused to allow inspection of those facilities and thumbed its nose at the UN.

Even the now Leader of the Opposition, Mr Kevin Rudd, accepted that, in all likelihood, there were weapons of mass destruction being developed by the Hussein government. It was reasonable for the world to assume that the behaviour of Saddam Hussein was consistent with him developing weapons of mass destruction. Therefore, tragically, the UN could not bring itself to enforce its own sanctions. The great tragedy in all of this is that the UN, regrettably, was incapable of enforcing the sanctions that it had imposed and enforcing its rule on the dictator of Iraq and, as a result, the US decided to lead a coalition to impose those sanctions and enforce the will of the UN upon Iraq. It was one of the most difficult decisions that this government has ever had to make. I was a member of the cabinet which made that decision and it is probably the most difficult decision that I have participated in. The cabinet members knew it would be controversial and that people like Senator Brown would oppose it. We continue to believe we did the right thing, we continue to believe that we acted properly, in good
faith and in Australia’s national interests, and it had nothing to do with oil.

Senator BOB BROWN—Mr President, I ask a supplementary question. Dr Greenspan says, ‘It was largely about oil.’ How could the government have gotten it so wrong? And I ask, flowing from that, with the Prime Minister making it clear that 20 per cent of crude oil comes from the Middle East, what is the government’s preparation for this nation as peak oil approaches?

Senator MINCHIN—I am not sure that a discussion about peak oil, which could take at least several answers, has anything to do with the rest of that question. All I would say is that, with great respect to Mr Greenspan, a gentleman whom I do respect for his record as the US Federal Reserve Governor, he is completely wrong on the issue of the motivation for the action that was taken in Iraq. We continue to believe that what we did with respect to Iraq was right, that our presence there is right, and that what we have done is to bring liberty to the people of Iraq and ensure that the dictator of Iraq could not develop weapons of mass destruction to imperil the free world.

Telstra

Senator RONALDSON (2.42 pm)—My question is directed to the Minister for Communications, Information Technology and the Arts, Senator Coonan. As the minister is aware, the continuation of reliable mobile phone coverage is an extremely important issue for regional and rural Australians. Will the minister please advise the Senate of any government action to protect those living and working in regional and rural Australia from the potential for a premature closure of the CDMA network before the Next G network provides at least as good coverage and services?

Senator COONAN—I thank Senator Ronaldson for the question and for his interest in regional and rural telecommunication services and, in particular, the important issue of the closure of the CDMA network. Since announcing its intention to construct the Next G network, Telstra has given public assurances that the CDMA network will continue to operate until the Next G network provides at least as good coverage and services. The government has heard loud and clear the concerns from regional and rural Australia about the problems currently being experienced with the Next G network. After hearing those concerns, I issued Telstra with a draft licence condition that would, if made, require Telstra to keep the CDMA network in operation until the Next G network provided at least as good coverage and services. In accordance with the legislative requirements, Telstra was given 30 days to consider the draft licence condition. Disappointingly, however, before I had a chance to fully consider Telstra’s submission on the draft, it commenced civil action in an attempt to prevent a final decision being made to protect rural and regional Australians from the network being shut down until there was equivalent or better coverage.

This is a very important matter for rural and regional consumers and they deserve better than to be left hanging while Telstra subjects them to a time-consuming, costly and pointless legal dispute. Accordingly, last week I authorised the Attorney-General, the Hon. Phillip Ruddock, to consider the matter and, if warranted, to make the decision in relation to the draft licence condition. I was today advised that the Attorney has in fact made the decision to vary the conditions of Telstra’s carrier licence to protect users in the transition from CDMA to Next G.

Senator Conroy—Oh my goodness, how humiliating!
Senator COONAN—Importantly, it means that regional and rural Australians can be assured that the CDMA network—

Senator Conroy—You are so incompetent someone else had to do it!

Senator COONAN—will not be switched off until Telstra makes good its promise that the Next G network provides at least as good coverage and services. However, regional and rural Australians will be aware of the deafening silence that came from Mr Rudd and the Labor Party in this most important matter—

Senator Conroy—You are incompetent!

Senator COONAN—that affects those in rural and regional Australia.

Senator Conroy—Go on, colleagues. Ask her why Phillip Ruddock made the decision and not her!

The PRESIDENT—Senator Conroy!

Senator COONAN—Not even a task force, not even an inquiry, nothing—deafening silence. So afraid were the Labor Party to interrupt their cosy little relationship with Telstra—

Senator Conroy—Ask her why Ruddock—

The PRESIDENT—Senator Coonan, you will resume your seat. Senator Conroy, I have consistently asked you to stop interjecting! The Senate will come to order.

Senator COONAN—I was in the process of saying that so afraid were the Labor Party to interrupt their cosy little relationship with Telstra that they could not even raise a whimper of support for the protection of rural and regional Australians. Mr Rudd and his union mates should stand condemned today for their abject failure to stand up for consumers around Australia when it comes to mobile phone coverage. In contrast, the government makes no apologies for putting consumers first when considering the regulation of Australia’s telecommunications industry.

The government understands that good mobile coverage is not an optional extra; it is vitally important. People living in regional and rural Australia can be absolutely assured that this government will continue to stand up for their interests and deliver them the services they need and want.

Senator RONALDSON—Mr President, I ask a supplementary question. I refer the minister to her discussions about premature closure of networks. I was wondering whether the minister could tell the Senate what the implications were of the closure of the analog network by this government following the inactivity of the Australian Labor Party when last in government.

Senator COONAN—I thank Senator Ronaldson for his supplementary question. Of course, we all remember the Labor Party’s seminal neglect of rural and regional Australia.

Senator Conroy—Mr President, I rise on a point of order. I ask you to rule—

The PRESIDENT—Wait until I call you. I cannot hear what you are saying.

Senator Conroy—I ask you to rule this question out of order as this decision was made by Minister Ruddock because Senator Coonan had to embarrassingly pass it across to Minister Ruddock to make these decisions because of her own incompetence. The question is out of order and it should be directed to the minister in the other chamber.

The PRESIDENT—Order! You are now debating the issue. There is no point of order.

Senator COONAN—As those listening to this broadcast will know, the Labor Party has a long record of seminal neglect in looking after rural and regional Australia. It will not stand up for rural and regional Australians, whether it is delivering them broad-
band or delivering them mobile phones. We all know that the Labor Party is hand in glove with Telstra. It will ride roughshod over consumers in rural and regional Australia and it will continue this neglect as long as it suits its interests, which is so long as the Labor Party is in cahoots with Telstra.

Advertising Campaigns

Senator CARR (2.48 pm)—My question is to Senator Abetz, the Minister representing the Minister for the Environment and Water Resources. I refer the minister to the government’s $23 million taxpayer funded climate change advertising campaign. I ask: can the minister indicate whether the advertisements will tell Australians that under the Howard government Australia is the second highest per capita greenhouse polluter in the world, our emissions are projected to grow by a further 27 per cent by 2020, and Australia is one of only two industrialised nations to have not ratified the Kyoto protocol? If the government’s climate change advertising campaign really was about providing information, wouldn’t it contain facts like these? Or is it instead just another propaganda campaign, more about cynical pre-election spin than providing factual information?

Senator ABETZ—What the Australian people want to learn through this information campaign has come through very loud and clear to us as a government, because we actually consult with people when we go to our community gatherings. When we talk with people, we get the understanding that all Australians are concerned about climate change and about the environment. What they want to know is not what all the Labor Party’s rhetoric might be, but how can they personally make a difference. That is why, for example, in the information that has gone out to households, we do not tell them that forestry, for example, is the only greenhouse positive sector of the economy. That is an important fact from my point of view, but the people of Australia want to know how they can best make a difference. That is what we are seeking to do in our interaction with the Australian people through this campaign. It is about giving Australians the information they have been seeking so that they can take action in their own homes.

Australian households are responsible for around 20 per cent of Australia’s greenhouse gas emissions, so action at this level, along with government and industry, can make a big impact. Of course what this builds on is the fact that Australia was the first government ever to establish a greenhouse office. It also develops our mandatory renewable energy targets, the phasing-out of inefficient light bulbs, our $200 million global initiatives on forests and climate, and the recent Sydney declaration, which achieved a genuine commitment from leaders within our region to move forward on climate change. We could have incorporated all of that information in the communications with our fellow Australians but they were not really interested in all of that. What they were interested in was how they could personally make a difference, and we have fulfilled that need by this particular communication.

Senator CARR—Mr President, I ask a supplementary question. Hasn’t the government had 11½ years to respond to climate change? Why is it that after all of this time the best that the government can come up with is a $23 million pre-election propaganda campaign? Doesn’t this confirm, once and for all, that this is a government full of climate change sceptics, like the minister himself, who are not serious about tackling climate change and who are only interested in getting re-elected?

Senator ABETZ—If Senator Carr was not interested in getting elected he would not be making such deliberately misleading
statements to the Australian public. What Senator Carr knows is that immediately upon coming into government a previous minister for the environment pursued the issue of whether or not Australia should have an Australian Greenhouse Office, and we established it in 1998—some nine years ago. And yet Senator Carr deliberately seeks to mislead the Australian people by asserting that we had not engaged on the issue of greenhouse gases and climate change until right now, before an election. Senator Carr had better explain to the Australian people why, if his assertion is true, we established the Australian Greenhouse Office nine years ago. The fact is, and I have pointed this out before, of all the questions on climate change, the coalition has asked the most questions since 1996 up until the last 12 months. (Time expired)

Veterans’ Affairs

Senator ALLISON (2.54 pm)—My question is to the Minister representing the Minister for Veterans’ Affairs. Has the minister seen the report of the UK study this week that shows that the veterans who were forced to watch British nuclear tests here in Australia will pass on scrambled DNA and crippling health problems to their families for 20 generations? Doesn’t this make the government’s health cards for nuclear veterans look hopelessly inadequate? Will it now stop fighting these sick veterans in the courts for their compensation? Will the government now do a proper study of the families of Australian veterans and show more compassion than has been apparent so far?

Senator ELLISON—I am aware of the issue that Senator Allison has mentioned. It is a serious issue. I have not have had a briefing on the report and I will advise the senator accordingly. In relation to the health cards afforded to veterans, we have a variety of health programs available to veterans, both the gold and white cards. My own feedback from the veterans community about the health services that we provide veterans in this country has been a positive one. Just recently we made an announcement on the indexation of pensions or allowances, which went down very well. As for the health aspect, we have a good system in place that stands up very well internationally. I fail to see how Senator Allison can impute that in some way we are letting down the veterans as a result of any of the ill effects they might have suffered as a result of the testing concerned.

Senator ALLISON—Mr President, I ask a supplementary question. Can the minister confirm that even those white and gold cards offered to the veterans have been denied to many who have requested them? Is the minister aware of the UK study showing that the children and grandchildren of nuclear veterans suffer limb deformities; tumours; heart, eye and hearing problems; epilepsy; autism; brain deformities; twisted spines; missing organs; extra fingers and toes; and a range of other rare conditions? Is he aware that the grandchildren are eight times more likely to inherit a defect and twice as likely to get childhood cancer? Why would the scrambled DNA found in British veterans not also be present in Australian veterans?

Senator ELLISON—if Senator Allison knows of any particular aspect of someone being refused a white or gold card, and which she has a problem with, she should refer them to the minister or me, and I will pass it on. The medical requirements for that are laid out in the Veterans’ Entitlements Act 1996 and we apply those criteria to anyone who applies for a white or gold card. As to the United Kingdom experience, we will have a look at that and see if we can learn from it but, as I said earlier, I have not had a briefing on the report that Senator Allison
mentioned. I will get back to the Senate with further details on that.

Broadband

Senator CONROY (2.57 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer to the letters that the minister has sent to 500,000 Australians explaining that they ‘have not received a commercial upgrade to enable access to ADSL or wireless broadband’. Can the minister confirm that 3G is wireless broadband? Is the minister also aware of reports that Australians who have received her letter have been informed by her department’s website that they already have access to ADSL broadband? Can the minister indicate whether she is continuing to mail her misleading letters to Australians? Will the minister now commit to reimbursing taxpayers for the cost of the Liberal Party propaganda which has misled the Australian public?

Senator COONAN—Thank you, Senator Conroy, for the question. It comes as absolutely no surprise; in fact it is rather predictable from a Labor Party which is nothing but a puppet and is doing the bidding of Telstra. We know that Telstra and the Labor Party are hand in glove, as we found out from documents produced in the last couple of days. Nevertheless, I am more than happy to continue to respond to the same questions that are asked of me by both Labor and then of Telstra. So, here we go.

Telstra is complaining about a letter sent by my department to households that, according to data held by my department, cannot currently receive a metro-comparable terrestrial broadband service such as ADSL. The letter advises these residents of the government’s Australia Connected initiative and the new OPEL WiMAX and ADSL2+ high-speed broadband network that will cover those particular households in the near future. It is something for them to look forward to. And it is entirely appropriate, I would have thought, to inform the constituents of government initiatives, especially for a program of this nature which involves $958 million of government funding to extend high-speed broadband to 99 per cent of the population at prices they can afford.

The recipients of the letters were persons, based on data held by the department, considered to be not well served with an affordable metro-comparable broadband service. So, once again, Telstra, true to form, has threatened action against the government, and I do not propose to comment any further on that particular point. However—

Senator Conroy—Mr President, I raise a point of order going to relevance. Could you draw the minister’s attention to the question, which was:

Can the Minister confirm that 3G is wireless broadband?

That was the question. And:

Can the minister indicate whether she is continuing to mail her misleading letters to Australians?

And will she reimburse taxpayers? She is over halfway through her time to answer and she has not addressed any of those questions.

The PRESIDENT—Order! The minister still has over two minutes of time remaining to answer the question. It was a question that was broader than you originally suggested. I call Senator Coonan.

Senator COONAN—Thank you, Mr President. So, as those matters go to matters that are, apparently, going to be the subject of some legal action, I am not going to join issue with Senator Conroy, because I prefer to answer it where there is an appropriate place to do so.

What is interesting about Senator Conroy’s question, and the whole line of questioning of the Labor Party when it comes to
telecommunications matters, is the closeness between the Labor Party and Telstra. It is because Telstra has realised that only under a Labor government will it be possible to retain its monopoly, destroy competition, wind back safeguards for consumers, and support a twofold increase in both telephone and broadband prices. The shame of the matter is that Telstra has got the Labor Party where it wants it—a puppet on a string, prepared to do Telstra’s bidding regardless of how it will hurt consumers.

Senator CONROY—Mr President, I ask a supplementary question. Can the minister explain why her media adviser, when asked about the mail-out, claimed in the Australian newspaper on Friday that ‘there is now serious competition in the market, providing choice for consumers’? How can the minister write to Australians about their lack of access to broadband when her own office admits that the OPEL product creates competition in the market?

Senator COONAN—Well—

Senator Conroy interjecting—

The PRESIDENT—Order! Senator Conroy, you have asked the question; now wait for the answer.

Senator COONAN—I hope that those listening to this broadcast understand that the Labor Party have got some fundamental objection to choice for consumers. What an extraordinary admission! And it is clear that Telstra does not like choice and does not like competition, and Senator Conroy and Mr Rudd have not got the bottle to stand up to Telstra, just like they cannot stand up to the trade unions or the state Labor governments, and they are obviously not going to be able to stand up to consumers being ridden roughshod over in the bush.

We will resist Telstra’s sideshows. We will resist Labor’s sideshows. We will continue to stand up for rural and regional Australians. We will not be intimidated by this sideshow that is going on with court actions and questions in question time, and we will continue to roll out the services that consumers need and want. (*Time expired*)

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

QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS
Department of Immigration and Citizenship

Senator ELLISON (Western Australia—Minister for Human Services) (3.04 pm)—Senator Ludwig asked me some questions on the Systems for People program in the Department of Immigration and Citizenship last Thursday, 13 September 2007. I undertook to get back with further information. I now table that information and seek leave to incorporate it in *Hansard*.

Leave granted.

The response read as follows—

(QUESTION TAKEN ON NOTICE)

Question to Minister Ellison, on behalf of the Minister for Immigration and Citizenship, in relation to the Systems for People programme:

**Response:**

(a) The establishment of a single point of access to all information held by the department on a client was a key finding from the Palmer report and is a key component of Systems for People.

(b) The media report does not present the full picture. In October 2006, just four months after the Systems for People programme commenced, an interim client search facility was introduced that provided a single point of access to the department’s four major computer systems. This has been in use by staff with appropriate access to client records since that time. The Client Centric Portal referred to in the article is the long term search facility that has been introduced using new
technology through the Systems for People programme. It represents a more advanced search facility covering the full range of departmental systems which is being rolled out progressively to those staff who need access to client records to do their job. The department’s security protocols provide that only staff who have a “need to know” will have access to every single one of our 91 million client records. The timing of the roll out of this facility is on schedule.

(c) The Government announced the Systems for People programme, valued at $495m over four years, in the May 2006 Budget. IBM was selected as the strategic partner for the programme. The programme is operating to an extremely rapid timeline and has already released a number of improvements to business processes, quality control, decision support and record keeping. It comprises a mix of departmental staff, IBM specialist contractors and other contractors. As was made clear when announced by the Government, the programme runs over four years and is proceeding on time and delivering results.

(d) Actual expenditure for 2006/07 was $202,356,000. The project will be completed over four years as originally planned.

At the end of the reporting year, major improvements to compliance, case management and detention services, through portal releases, were already directly meeting many of the Palmer recommendations. The first changes to visa processing operations have also commenced.

Systems for People is making a major contribution to transform departmental business operations consistent with the Palmer recommendations.

BUDGET
Consideration by Estimates Committee
Answers to Questions on Notice

Senator CARR (Victoria) (3.04 pm)—Pursuant to standing order 74(5), I would ask the Minister representing the Minister for Education, Science and Training for an explanation as to why answers have not been provided to 145 questions on notice from the Senate Standing Committee on Employment, Workplace Relations and Education which were asked at the May budget estimates hearings. I understand they are now seven weeks overdue.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (3.05 pm)—As I undertook to do when Senator Carr raised this matter for the first time on Thursday, I pursued the matter with the minister’s office and I have been provided by the minister’s office with the following explanation.

As is usual practice in responding to questions on notice arising from the Senate estimates process, the department is preparing responses for all senators, not just Senator Carr. Those responses vary in length and complexity. It is frequently the case that responses are submitted to the Senate across the full time period between the estimates sittings, including up to the day of the next sitting. The responses continue to be prepared and will be submitted to the Senate as soon as they are available.

Senator CARR (Victoria) (3.06 pm)—I move:

That the Senate take note of the explanation. I have been seeking answers to 145 questions—of which, I understand, 69 were asked by me—outstanding from this estimates committee. That is 84 per cent of the total number of questions that have been asked by this committee at the May budget estimates. It defies all possible credibility that the government can say that the failure to answer questions is on the basis that there is opportunity for the government to answer these questions up until the first day of the next round of estimates.

The date for the answering of questions was 27 July. That was of the date set by this chamber. It was a date that passed nearly eight weeks ago now. It is not exactly a
stringent timetable. Of the 172 questions which were asked on the day of the estimates hearings, not one question was answered on time—not one question! As of last Thursday, three months after the hearings, 15 per cent had been answered; 145, or 84 per cent, remain unanswered. Of course, to make matters worse, legitimate inquiries to the committee have been stonewalled, as we saw here today yet again. The Minister for Education, Science and Training’s representative here was asked to read out a highly contemptuous response by the minister’s office. Committee staff seeking information are simply told that no timetable for answers can be provided and that all answers are being considered. We ask the simple question: considered by whom? By the minister’s office?

We all understand that we are facing the prospect of an election. It is quite clear that this is a minister who does not want to have this parliament receive answers to legitimate questions taken on notice by the department back in May. Of course, this is not the first time this has happened. There was one particular question on non-government school funding, EOA8. Not only did I ask on the day and was given advice that the information would be provided on the day; I asked again at the time of consideration of the bill in this chamber nearly three months ago and I was told at the time by this minister at the table that every effort would be made to follow up that answer. I do not dispute Minister Brandis’s bona fides on this question. He did give an undertaking in good faith, but it is quite clear that Minister Bishop has a contemptuous attitude towards the Senate and towards the Senate estimates processes.

If we look through them, we will see that these are straightforward questions. There is no issue here about complexity. What is abundantly clear is that the government is seeking to hide information. We are seeing the government floundering around on questions relating to the Australian technical colleges: the CSIRO’s operations, its commercialisations, its IP royalties; the government’s latest attempts to conclude its somewhat tawdry history in regard to the radioactive waste dump; and many others. I do not believe that the department is stalling for time. I think that this department has understood the importance of these questions. We have engaged constructively with this department over a very lengthy period of time. I am therefore obliged to conclude that the problem here is with the minister and the contemptuous attitude that the minister has to responding to legitimate questions from the Senate.

Either way, whether they are from the department or the minister, the Senate is entitled to these answers. I ask the Minister representing the Minister for Education, Science and Training to make further efforts to encourage his colleague to answer these questions before other motions have to be considered by this chamber.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (3.10 pm)—Senator Carr should not infer from anything that I have said that anyone is stalling. What I have said on behalf of Ms Bishop, whom I represent in this chamber, is that the preparation of the answers is proceeding and that many of the questions taken on notice are very complex ones.

There are two obligations, not one. Senator Carr would have you believe that there is merely an obligation to respond in a timely fashion. There is, but there is also an obligation to respond accurately and thoroughly. Sometimes a thorough and accurate response to questions taken on notice will take some little while. Senator Carr, with respect, you should not draw an adverse inference against the minister merely because the answers are still in preparation. Nor can you infer from
anything I said on behalf of the minister that there is a reluctance to answer the questions. I have told you that I have pursued the matter with the minister. I cannot add to that. I thank you for acknowledging my bona fides in the matter, but you should not, Senator Carr, doubt the bona fides of Ms Bishop either. All of us as members of parliament, either of this chamber or of the other place, acknowledge our obligations to the parliament as paramount and those obligations will be fulfilled in due course.

Question agreed to.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Interest Rates
Cost of Living

Senator SHERRY (Tasmania) (3.12 pm)—I move:

That the Senate take note of the answers given by the Minister for Community Services (Senator Scullion) to questions without notice asked by Senators Sherry and Hurley today relating to interest rates.

It is rare that I thank a minister because normally we get evasive, out-of-touch answers that indicate the government’s age and its contempt for the parliament. But I have to say that on this occasion Senator Scullion was remarkably frank in his acknowledgement when he said that interest rates today are higher under this government—meaning his government—than they have ever been. He went on and said again that interest rates today are higher under the Howard government than they have ever been. It was quite a remarkable admission from Minister Scullion in today’s question time. What we got from the Howard Liberal government at the 2004 election was a promise that they would keep interest rates at record lows. Today we have a remarkably frank admission from Senator Scullion that interest rates today are higher under this government—that is, the Howard government—than they ever have been.

This just goes to make the point that Labor has been referring to on many occasions since the last election. We have had five interest rate increases since the last election. We have had nine interest rate increases in a row. And, to really rub salt into the wound of many struggling Australians who are paying higher interest rates on not just home loans but also on credit cards in particular, interest rate increases by some providers after the last increase by the Reserve Bank have been above the quarter-point increase that occurred. They have been above that last quarter per cent increase. There are a number of complex reasons for that, but it does highlight the ineffective and, indeed, false promise made by the Prime Minister, Mr Howard, at the last election that the Howard Liberal government would keep interest rates at record lows.

The fact that Senator Scullion today admitted that interest rates today are higher under this government than they have ever been—today he could actually admit that—is not of great consolation to Australian families that are battling under these higher interest rates. The nine interest rates hikes in a row under this government have added some $457 a month to a $300,000 mortgage. This is what the Prime Minister, Mr Howard, meant apparently when he said that he would keep interest rates at record lows: you would get an increase of $457 a month on your mortgage. That is the outcome of the solemn promise made by Mr Howard at the last election that he, leading this government—an out-of-touch government, a stale government—would keep interest rates at record lows.

It was one of those tricky promises from Mr Howard that we are so used to. It was another of his tricky disposable promises—
say anything and do anything to get you through an election campaign. I think there are some good signs that the Australian public are starting to see through some of the trickiness of the Prime Minister. I will be interested to see whether the current Treasurer, Mr Costello, can see through the trickiness of the cobbled together promise that was given last week.


Senator SHERRY—Yes, L2. We now have a two-person leadership team. We can forget about the National Party, of course, the Howard-Vaile government. It is the Howard-Costello government. I notice Senator McGauran, the former National Party senator, nodding furiously. We can forget about the National Party.

Senator Marshall—He is smirking.

Senator SHERRY—He is smirking about it too—even better. There have been nine interest rate hikes in a row. That is hardly an example of keeping interest rates low. Of course, it is not just interest rates on housing loans; it is also credit card interest rates. So many Australians today depend on the use of their credit card because they are under significant economic pressure. They are paying more for child care, more for fruit and vegetables, more for health care and more for petrol, which is putting greater and greater pressure on Australians through higher interest rates and their credit card use. Of course, we have had so-called Work Choices, which has cut the wages and conditions of workers, particularly in industries such as hospitality and retail.

Senator FIERRAVANTI-WELLS (New South Wales) (3.18 pm)—Senator Sherry, if you want to know why new homeownership is fast becoming the diminishing Australian dream for many people, perhaps you should go and ask your state Labor colleagues. The stubborn refusal of state and territory governments to release enough land for new homes is forcing the price of house and land packages beyond the means of many hard-working Australians. It is a problem that can be tackled. Going back a bit in history—of course, they might say it, but they do not act on it—even one of your former housing spokesmen, Mr Melham, said:

We need to increase the availability of affordable land for the construction of new housing.

Senator Cormann—A no-brainer.

Senator FIERRAVANTI-WELLS—Yes, of course it is a no-brainer; thank you, Senator Cormann. I take the Senate back to 2006, when the Reserve Bank Governor, Ian Macfarlane, told a parliamentary committee that the decline of new home affordability was all about house prices. I would like to quote what he said then, because it is very much still the situation. He said:

I think it is pretty apparent now that reluctance to release new land plus the new approach whereby the purchaser has to pay for all the services up front—the sewerage, the roads, the footpaths and all that sort of stuff—has enormously increased the price of the new, entry-level home.

If you want any further evidence, consider this disturbing fact: the price of land in Sydney between 1973 and 2003 rose by 700 per cent, while the cost of the housing component of house and land packages has increased by just four per cent over the same period. That is absolutely shocking. It is shameless the way that Labor continue to protect their mates in the states and territories by blaming interest rates. This could not be further from the truth. Interest rates have averaged 12.7 per cent during Labor’s 13 years in government compared with the low rates under the coalition. Have we forgotten interest rates of 17 per cent? How many people had to sell their homes when interest rates were at 17 per cent?

Senator Cormann interjecting—
Senator FIERRAVANTI-WELLS—Yes, absolutely, Senator. Yes, interest rates are part of the equation and the Howard government will always strive to maintain economic settings to keep interest rates low. The decline in affordability is further accelerated by the array of state taxes and charges. The act of paying for a new home is just the tip of the iceberg when it comes to the costs that are faced by new homebuyers. Families are hit by a raft of property taxes, stamp duties, infrastructure levies and other development costs levied by state and territory governments, all on top of the purchase price. I think it is time that Labor state and territory governments abandoned the ill-conceived notion of ‘urban consolidation’—a byword, which has now become fact for loading more people on to existing services—and removing the financial shackles from new homebuyers. And why would they? We do not have the power to drop state taxes. The only people who can compel state Labor governments to drop state taxes are their own voters. We cannot make the New South Wales government or the Western Australian government reduce stamp duties. They get an absolute bonanza out of state duties in New South Wales.

If those opposite really are concerned about housing affordability, perhaps they ought to impose on their state counterparts to look at the raft of taxes, the stamp duty and, more importantly, the supply of land. That, in the end, is what is important here. It is simple: if you restrict supply the price goes up. It is all very well for those opposite to bleat; why don’t they take some time and make some effort and try to get their state counterparts to do something about this and not just talk about it?

Senator MARSHALL (Victoria) (3.22 pm)—Today, in answer to questions by the opposition about the cost of living and housing affordability, we again saw a demonstration of how out of touch this government is. Today, in answering a question, Minister Scullion went straight to the point which Labor has been making for some time: that the government has failed to keep its promise to keep interest rates at record lows. We have now had five interest rate increases since the last election, when the government made that dishonest promise to the Australian people. And, of course, it is the ninth interest rate rise in a row—hardly a government with a strong record in this area.

They then go on and tell another mistruth about interest rate rises. They say they will always be lower under a coalition government than under a Labor government. But—oops!—they forget about when Mr Howard was Treasurer in 1982 and interest rates were in fact 22 per cent. Oops! They always seem to forget that matter—the highest that interest rates have ever been in this country, and who was Treasurer at that time? Mr Howard. It gives an absolute lie to the claim that interest rates will always be higher under a Labor government than under a coalition government, because it is simply not true. The government took to the last election a simply dishonest election ploy as part of a scare campaign, and this election will see another scare campaign. This is what the government do: they will try to confuse people with—

Senator McGauran—Consumer confidence is at its highest!

The DEPUTY PRESIDENT—Order!

Senator MARSHALL—Now we are hearing the ex-National Party senator, Senator McGauran, talking about economic policy. What an extraordinary example that is—he has brought over to the Liberal Party the psychobabble that we normally hear from the National Party, and it just keeps going.

It did not take Minister Scullion very long—and we just heard Senator Fierravanti—
Wells do it—to move straight to blaming the states for problems with housing affordability and the increasing pressure that all Australians are under through the governments’ policies. They go straight into blaming the states; they have no answers or policy position themselves. Of course, when interest rates were lower they wanted to take all the credit for the way the economy was going. But, as they get to their ninth interest rate increase in a row and the fifth increase under the government since they made that failed and dishonest promise in the last election campaign, it is everyone else’s problem. They wanted to take all the credit at one stage; now it is everyone else’s problem.

How often do we hear from the government that it is always the states’ fault? They always have to blame the states. When things are not going well, when the levers of the economy at the national level are not working the way the government set out, it must be the states’ fault. But when things are going well we never actually hear them say that it is anything to do with the states. Today I think Senator Brandis acknowledged that the reduction in unemployment had been happening since well prior to the election of the current government. It has been clearly trending downward since 1993. Are they crediting the states for that? No. The government will take all the credit for that, even though in many instances the states’ policies of manufacturing, development and economic growth contributed to that reduction. The complete lie is given to this argument time and time again.

The Prime Minister, John Howard, must have been mocking Australians when he claimed in the other place that working families ‘have never been better off’. He must have been mocking those Australian workers and families when family budgets are under pressure from all sides—childcare costs, petrol costs, grocery costs, rising mortgages and the inability of many families to make their mortgage repayments. Ten years ago the average home cost about four times the average annual wage. Today it costs about seven times the average annual wage. Prime Minister Howard mocks Australian workers; he is completely out of touch. He mocked Australians when he claimed that working families had never been better off. This is simply another— (Time expired)

Senator BARNETT (Tasmania) (3.28 pm)—I rise to take note of answers given by government ministers in question time today, particularly with respect to interest rates, housing affordability and the future for small business in this country. The Labor senators have been waxing lyrical on the other side and talking about the fact that Mr Howard, as Prime Minister, is anti-families. Nothing could be further from the truth. The reason that this government has been so successful over many years—in fact, 11½ years—is that this is a government for families. This government has shown passion, compassion, care and support for families throughout Australia, not only in the big cities but in the rural and regional parts of Australia, including in my home state of Tasmania.

It is quite obvious to me that the Labor senators have become very cocky on the back of some recent polling. They are acting as though they are already government senators. They are very quietly and sneakily acting and strategising to ensure that some of their policies come to fruition.

The only way that the goods and services tax in this country can increase is as a result of wallpaper Labor governments in the states and territories and at a federal level. The only way the 10 per cent GST can go up in Australia is as a result of a Rudd Labor government being elected. I throw out the warning to the Australian people and to those in this chamber that I see the Labor senators
being very cocky. They are sneakily going around and strategising how they can quietly and sneakily bring this GST into fruition if they gain government, and that is something that I am very worried about.

*Senator George Campbell interjecting—*

*Senator Barnett—* Senator Campbell, I am extremely concerned about it. You might deny it, but that is the only way that that can happen—under a Rudd Labor government—

*The Deputy President—* Senator George Campbell!

*Senator Barnett—* when you have wallpaper Labor governments all around this country.

*The Deputy President—* Senator Barnett, address your comments to the chair. Senator George Campbell, you have not got the call.

*Senator Barnett—* Mr Deputy President, I thank you for that and for bringing the attention of the Senate to that very important matter. That is a concern I have, and I am going to continue to highlight those concerns in the lead-up to the election this year, as I will with respect to interest rates.

This is a very important matter. In 1989, we had 18 per cent interest rates under the Labor government. For 1.2 million small businesses in this country—in my home state of Tasmania there are over 34,000 small businesses—this could be crucial. This will be critical. I know what the small businesses and the farmers were paying in interest on their overdrafts at and around that time because I was there. I was aware of it and I was concerned for my colleague small businesses. This government—that is, the Howard-Costello team, the team that is leading Australia—is very much pro small business. Under Labor, businesses are going to get more red tape, and I can assure those in this chamber that the interest rates under our coalition government will always be lower than they are under a Labor government. The record is there. The interest rates are higher under a Labor government. You have seen the averages. I refer to the mortgage interest rates, which are still more than two percentage points lower than their March 1996 levels of 10.5 per cent. For the average new mortgage of $245,000, this reduction in interest rates saves households $449 a month in interest payments. This is the figure that Senator Gavin Marshall was referring to in terms of the increase over the last 11 years, but he did not refer to the average new mortgage and the reduction in interest rates saving households $450 a month in interest payments since March 1996.

That is a great result for Australian families, and I want to thank Mr Howard. The Treasurer, Peter Costello, is the finest treasurer Australia has ever had—and, in fact, one of the finest treasurers in the world today. That is recognised very broadly in many quarters around the world, not only in the OECD countries, and it should be acknowledged.

Finally, the potential Rudd Labor government—the Rudd opposition at the moment—is a policy black hole. There is a black hole on their website with respect to tax and transport. It is a policy black hole. It is a ‘me-too’ response. They are superficial in policy development. There is no substance to it, and it is a complete contrast to the Howard-Costello team.

*Senator Hurley (South Australia) (3.33 pm)—* I also wish to take note of the answers made by Minister Scullion during question time. The Liberal Party are obviously running very scared at the moment. Senator Barnett refers to the GST and raises the scare tactic, which he assures us he will repeat, about Labor state and federal gov-
ernments raising the GST. I really do not think that the Liberal Party should talk too much about the GST, because it might remind people that, on top of the cost-of-living pressures that they have, 10 per cent of every bill that they pay goes to GST. Ten per cent of every item, apart from fresh food, that they pay for goes to GST.

The Labor Party has no intention of increasing the GST because we understand the kinds of cost pressures that households are facing with the high prices and the increase in prices today. The Labor Party, understanding that, has no intention of adding to those cost-of-living pressures, the pressures that in the past year alone have seen a rise in rents by 5.2 per cent, education costs by 4.3 per cent, health costs by 4.1 per cent and housing costs by 3.6 per cent. We know that they are the kinds of pressures faced by working families today.

This Liberal government are so out of touch with that reality that they go off into flights of fancy about how families have never been better off than they are under this government. We know that that is absolute nonsense and that families are really suffering from cost-of-living and housing pressures and are struggling to make ends meet. The minister responds with talk about reduced unemployment levels under this government. It is true that unemployment levels have been reduced. What is also true is that, during this current term of government, the government introduced Work Choices, which makes those jobs far more precarious than they have ever been. Work Choices has made overtime rates a much more precarious proposition, has made casual work much more common and has the prospect of forcing wages down for those workers so that they cannot afford to meet the increases in costs that we were talking about. Far from a job allowing people these days to buy houses, it means that they are unable to be certain that their wage will meet those increased mortgage payments.

The government challenges us to produce policies in response to that. Mr Kevin Rudd, the leader of the Labor Party, has produced policies in response to that. He has said that he would appoint a petrol commissioner to monitor and investigate petrol price gauging and collusion. He has said he would direct the ACCC to monitor grocery prices and to publish a periodic survey of price movements. He has said he would instigate a public inquiry into grocery prices to get a better understanding of what is driving up prices and expand Labor’s price watch to survey supermarket prices and publish them on a website. This is the Labor Party saying that they understand the pressures that families are facing.

The Labor Party also understand housing pressures and, rather than whingeing about the states not responding, they have done something about them. At a housing forum, and later in Adelaide at the Press Club lunch that I attended, Mr Rudd produced policies in response to that. He has talked about having a national affordability housing agreement in conjunction with the state governments. He has talked about Labor’s affordability fund for housing, which would look at infrastructure and reduce the amount that it costs to buy land and to produce housing around Australia. This is a fund that would help up to 50,000 families buying their first home. The Labor Party is looking at practical measures to help families. This government is so out of touch that it has lost any contact with the kind of reality that members of the Labor Party understand very well. (Time expired)

Question agreed to.

PETITIONS

The Clerk—Petitions have been lodged for presentation as follows:

CHAMBER
Workplace Relations
To the Honourable President of the Senate and Members of the Senate assembled in Parliament:
The petition of certain citizens of Australia draws the attention of the Senate to the fact that Australian employees are worse off as a result of the Howard Government’s changes to the industrial relations system.
The petitioners call upon the Howard Government to adopt a plan to produce a fair industrial relations system based on fairness and the fundamental principles of minimum standards, wages and conditions; safety nets; an independent umpire; the right to associate; and the right to collectively bargain.
The petitioners therefore ask the Senate to ensure that the Howard Government delivers:
1. Proper rights for Australian workers who are unfairly dismissed.
2. A strong safety net of minimum awards and conditions.
3. An independent umpire to ensure fair wages and conditions, and to settle disputes.
4. The right for employees to bargain collectively for decent wages and conditions:
5. The right for workers to reject individual contracts which cut pay and conditions, and undermine collective bargaining and union representation.
6. The right to join a union and be represented by a union.
by Senator Forshaw (from 11 citizens)

Dental Care
Petition to the Honourable President and Members of the Senate assembled in Parliament:
This petition of certain citizens of Australia draws to the attention of the Senate, the long dental waiting lists and under funding of our public dental system.
Your Petitioners therefore ask the Senate to:
• Re-introduce the Commonwealth Dental Scheme and restore funding to public dental health,
• Reduce waiting times for public dental health services, and
• Train more public dentists.
by Senator Forshaw (from 112 citizens)

Immigration
The humble Petition of the Citizens of Australia, respectfully showeth:
That we re affirm 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 for the Muslim leadership and community in Australia to reassess their situation so as to reject any attempt to establish a Muslim nation within our Australian nation.
And your petitioners, as in duty bound, will ever pray.
by Senator Sandy Macdonald (from 12 citizens)

Petitions received.
NOTICES

Presentation

Senator Watson to move on the next day of sitting:

That the Joint Committee of Public Accounts and Audit be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 19 September 2007, from 11.15 am to 1.15 pm, to take evidence for the committee’s review of Auditor-General’s reports.

Senator Humphries to move on the next day of sitting:

That the Community Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 20 September 2007, from 3.30 pm, to take evidence for the committee’s inquiry into the cost of living pressures on older Australians.

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes the recommendations of Dr Donald R Rothwell, Professor of International Law at the Australian National University, on the minimum requirements the Government should pursue in its negotiations with the Russian Federation (Russia) on a nuclear safeguards agreement, which include:

(i) Australia requesting Russia to ratify the International Atomic Energy Agency Additional Protocol which it signed in March 2000,

(ii) if Russia fails to ratify the Additional Protocol, Australia seeking to incorporate the essential terms and conditions of the Additional Protocol into the bilateral agreement, and

(iii) Australia seeking to incorporate binding human rights and democracy clauses into any such agreement; and

(b) urges the Government to:

(i) consider also including a clause stipulating a time frame for disarmament in any bilateral agreement, and

(ii) reconcile its wider responsibilities to non-proliferation, disarmament and human rights before any benefits to the Australian economy when negotiating the nuclear safeguards agreement with Russia.

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes that the Metropolitan Transport Forum, comprising of 19 Melbourne municipal councils and 17 associated organisations and members, at a forum at the Melbourne Town Hall on 30 August 2007, has called on the Government to contribute to funding public transport services throughout Australia to meet the needs of public transport users for the following reasons:

(i) public transport contributes to the economic performance and liveability of cities and reduces car dependence and the costs of road congestion, estimated to be $10 billion nationally in 2005 and $20 billion by 2020,

(ii) one suburban train can remove 5 kilometres of cars from congested roads,

(iii) public transport enables Australia to respond to rising fuel prices and environmental sustainability,

(iv) petrol will continue to increase beyond SUS70 per barrel with increasing world demand for oil, and only one barrel of oil being discovered for nine barrels being produced,

(v) public transport assists in access to jobs, education and services for people who cannot afford a car or who are unable to drive, including students, the poor, people with disabilities and the elderly, and helps to reduce socio-economic problems, social isolation and inequity,

(vi) public transport helps reduce health costs by reducing the effect of accidents and pollution on the national health bill and hospitals,

(vii) in-built walking to and from transport nodes contributes to regular physical ac-
tivity, essential in reducing risks of cardio-vascular disease, hypertension, obesity, diabetes, depression, bowel and other cancers,

(viii) by increasing demand—Melbourne’s public transport use increased by 20 per cent in the past 2 years, and

(ix) in an independent Melbourne survey, more than 4 out of 5 respondents (83 per cent) said that the issue of public transport infrastructure would be of importance when deciding who they would vote for in the next federal election; and

(b) urges the Government to reverse its policy of denying public transport any funding in its transport budget determinations.

Senator Siewert to move on the next day of sitting:

That the Senate calls on the Government to:

(a) review all taxes, grants and concessions, including negative gearing, capital gains tax exemptions and first home owners grants, to assess their impact on the housing market; and

(b) work with the states and territories to develop an evidence-based national affordable housing plan.

Senator Siewert to move on the next day of sitting:

That the Senate

(a) notes:

(i) that the Coral Sea is one of the world’s most diverse and pristine tropical marine regions, covering approximately 800 000 square kilometres, more than twice the size of the Great Barrier Reef Marine Park, and is extraordinarily rich in marine life,

(ii) that the region is virtually unprotected and is facing immediate pressures from legal and illegal fishing, as well as long-term impacts from climate change, and

(iii) the urgent need to ensure protection and management of this unique ecosystem; and

(b) calls on the Government to begin the consultation process for the declaration of the entire Coral Sea region as a marine-protected area, which includes a comprehensive network of marine sanctuaries.

Senator Siewert to move on the next day of sitting:

That the Senate—

(a) notes that Tuesday, 18 September 2007 is National Close the Gap Day, a day on which Australians across the nation are coming together to show their support for closing the 17-year life expectancy gap between Aboriginal and Torres Strait Islanders and other Australians; and

(b) calls on all federal, state and territory governments to take action to achieve health equality for Aboriginal and Torres Strait Islanders within 25 years by:

(i) increasing annual Indigenous health funding by $450 million to enable equal access to health services,

(ii) increasing Indigenous control and participation in the delivery of health services, and

(iii) addressing critical social issues, such as housing, education and self-determination, which contribute to the Indigenous health crisis.

Senator Abetz to move on the next day of sitting:

That the government business orders of the day relating to the Social Security Amendment (2007 Measures No. 1) Bill 2007 and the Social Security Amendment (2007 Measures No. 2) Bill 2007 may be taken together for their remaining stages.

Senator Abetz to move on the next day of sitting:

That—

(1) On Tuesday, 18 September 2007:

(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to adjournment; and

(b) the routine of business from 7.30 pm shall be government business only; and
(c) the question for the adjournment of the Senate shall be proposed at 10 pm.

(2) On Thursday, 20 September 2007:
(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall not be proceeded with;
(c) the routine of business from 12.45 pm till not later than 2 pm, and from not later than 4.30 pm shall be government business only;
(d) divisions may take place after 4.30 pm; and
(e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed below, including any messages from the House of Representatives:

Health Insurance Amendment (Medicare Dental Services) Bill 2007
Health Legislation Amendment Bill 2007
Higher Education Endowment Fund Bill 2007
Higher Education Endowment Fund (Consequential Amendments) Bill 2007
Higher Education Support Amendment (Extending FEE-HELP for VET Diploma and VET Advanced Diploma Courses) Bill 2007
Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007
Judges’ Pensions Amendment Bill 2007
Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007
National Greenhouse and Energy Reporting Bill 2007
Quarantine Amendment (Commission of Inquiry) Bill 2007
Social Security Amendment (2007 Measures No. 1) Bill 2007
Social Security Amendment (2007 Measures No. 2) Bill 2007
Superannuation Legislation Amendment Bill 2007
Tax Laws Amendment (2007 Measures No. 4) Bill 2007
Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 1) 2007
Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 2) 2007
Tax Laws Amendment (2007 Measures No. 5) Bill 2007
Tax Laws Amendment (2007 Measures No. 6) Bill 2007
Telecommunications (Interception and Access) Amendment Bill 2007

Australian Crime Commission Amendment Bill 2007
Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Amendment Bill (No. 2) 2007
Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007
Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007
Communications Legislation Amendment (Information Sharing and Data-casting) Bill 2007
Families, Community Services and Indigenous Affairs Legislation Amendment (Further 2007 Budget Measures) Bill 2007
Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Bill 2007
Financial Framework Legislation Amendment Bill (No. 1) 2007
Health Legislation Amendment Bill 2007
Higher Education Endowment Fund Bill 2007
Higher Education Endowment Fund (Consequential Amendments) Bill 2007
Higher Education Support Amendment (Extending FEE-HELP for VET Diploma and VET Advanced Diploma Courses) Bill 2007
Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007
Judges’ Pensions Amendment Bill 2007
Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007
National Greenhouse and Energy Reporting Bill 2007
Quarantine Amendment (Commission of Inquiry) Bill 2007
Social Security Amendment (2007 Measures No. 1) Bill 2007
Social Security Amendment (2007 Measures No. 2) Bill 2007
Superannuation Legislation Amendment Bill 2007
Tax Laws Amendment (2007 Measures No. 4) Bill 2007
Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 1) 2007
Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 2) 2007
Tax Laws Amendment (2007 Measures No. 5) Bill 2007
Tax Laws Amendment (2007 Measures No. 6) Bill 2007
Telecommunications (Interception and Access) Amendment Bill 2007

Health Insurance Amendment (Medicare Dental Services) Bill 2007
Health Legislation Amendment Bill 2007
Higher Education Endowment Fund Bill 2007
Higher Education Endowment Fund (Consequential Amendments) Bill 2007
Higher Education Support Amendment (Extending FEE-HELP for VET Diploma and VET Advanced Diploma Courses) Bill 2007
Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007
Judges’ Pensions Amendment Bill 2007
Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007
National Greenhouse and Energy Reporting Bill 2007
Quarantine Amendment (Commission of Inquiry) Bill 2007
Social Security Amendment (2007 Measures No. 1) Bill 2007
Social Security Amendment (2007 Measures No. 2) Bill 2007
Superannuation Legislation Amendment Bill 2007
Tax Laws Amendment (2007 Measures No. 4) Bill 2007
Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 1) 2007
Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 2) 2007
Tax Laws Amendment (2007 Measures No. 5) Bill 2007
Tax Laws Amendment (2007 Measures No. 6) Bill 2007
Telecommunications (Interception and Access) Amendment Bill 2007
Trade Practices Amendment (Small Business Protection) Bill 2007


Senator Fielding to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to create a culture of responsible drinking, and to facilitate a reduction in the alcohol toll resulting from excessive alcohol consumption, and for related purposes. Alcohol Toll Reduction Bill 2007.

Senator WATSON (Tasmania) (3.39 pm)—The Minister for Ageing, the Hon. Christopher Pyne MP, has amended the Investigation Principles 2007 to meet the committee’s concern. Therefore, on behalf of the Standing Committee on Regulations and Ordinances, I give notice that, on the next day of sitting, I shall withdraw business of the Senate notice of motion No. 1 standing in my name for the next day of sitting for the disallowance of the Investigation Principles 2007 made under section 96-1(1) of the Aged Care Act 1997. I seek leave to incorporate in Hansard the committee’s correspondence on this instrument.

Leave granted.

The correspondence read as follows—

Investigation Principles 2007

14 June 2007
The Hon Christopher Pyne MP
Minister for Ageing
Suite M1.46
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Investigation Principles 2007, made under subsection 96-1 (1) of the Aged Care Act 1997. These Principles specify the process that the Secretary to the Department of Health and Ageing must undertake in investigating complaints or information regarding the responsibilities of a residential or community aged care provider.

Subsection 16A.5(3) of these Principles states that an informant may ask the Secretary to the Department of Health and Ageing to keep confidential the identity of the informant, the identity of a person included in the information supplied to the Secretary, or any other details included in the information. Section 16A.9 requires the Secretary to comply with any request for confidentiality except where the Secretary considers that certain criteria are present. The section does not indicate whether the informant is to be notified that the request for confidentiality will not be complied with. The Committee therefore seeks your advice about whether such a requirement should be added to this section.

The Committee would appreciate your advice on the above matter as soon as possible, but before 3 August 2007, to enable it to finalise its consideration of these Principles. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson
Chairman

25 July 2007

Senator John Watson
Chairman

Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House

CANBERRA ACT 2600

Dear Senator Watson

Thank you for your letter of 14 June 2007, on behalf of the Standing Committee on Regulation and Ordinances, regarding the Investigation Principles 2007 (Investigation Principles) made under subsection 96-1(1) of the Aged Care Act 1997.

The Committee has requested further advice on subsection 16A.9 of the Investigation Principles which requires the Secretary of the Department of Health and Ageing to comply with an informant’s
request to keep his or her identity or other details confidential, except where the Secretary considers that certain criteria are present. The Investigation Principles do not indicate whether the informant is to be notified that a request for confidentiality will not be complied with.

As a matter of procedure, the Department will attempt to contact the informant, where possible, to notify him or her if a request for confidentiality will not be complied with. A specific requirement for the Secretary to contact the informant was not included in the Investigation Principles as it would limit the capacity of the Secretary to act immediately in circumstances where the health, safety or wellbeing of the informant or care recipient may be at risk. In such circumstances, the Department will notify the informant of the Secretary’s actions.

I trust that this information is of assistance.

Yours sincerely

Christopher Pyne MP
Minister for Ageing

9 August 2007
The Hon Christopher Pyne MP
Minister for Ageing
Suite M1.46
Parliament House
CANBERRA ACT 2600
Dear Minister

Thank you for your letter of 25 July 2007 responding to the Committee’s concerns with the Investigation Principles 2007 made under subsection 96-1(1) of the Aged Care Act 1997.

In your response you advise that the Department will attempt to contact an informant, where possible, to notify him or her if a request for confidentiality will be not complied with. The Committee is concerned that no details have been provided on what would constitute an attempt to contact an informant.

You further advise that a specific requirement to contact the informant was not included in the Principles as it would limit the capacity of the Secretary to act immediately where circumstances required. While the Committee acknowledges the need for urgent action in some situations, it suggests that this might be addressed by including a requirement that the Secretary will make all reasonable efforts to contact the informant in the circumstances.

As a precautionary measure, the Committee has agreed to give a notice of motion to disallow these Principles on 15 August 2007 (the last day on which a notice may be given) to allow time for further correspondence on these matters.

In the meantime, the Committee would appreciate your advice on the above matters as soon as possible, but before 31 August 2007, to enable it to finalise its consideration of these Principles. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson
Chairman

13 August 2007
Senator John Watson
Chairman
Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600
Dear Senator Watson

Thank you for your letter of 9 August 2007, on behalf of the Standing Committee on Regulation and Ordinances, regarding the Investigation Principles 2007 (Investigation Principles), made under subsection 96-1(1) of the Aged Care Act 1997.

Your letter was sent in response to my letter of 25 July 2007 responding to the Committee’s comments in relation to subsection 16A.9 of the Investigation Principles. This section provides that if a person gives information to the Aged Care Complaints Investigation Scheme (the Scheme) on a confidential basis then the Secretary to the Department of Health and Ageing (the Department) must keep such information confidential.
unless it will harm an investigation or otherwise pose risks to the informant or care recipient.

Where information is provided in confidence to the Scheme it is critical to the integrity of the complaints process that the confidentiality of the information is maintained as far as possible. However, it is equally recognised that there may be circumstances in which the informant, care recipient or others may face harm if the Scheme fails to release information to, for example, the approved provider, police or other investigating bodies. The most appropriate response by the Scheme will vary according to the particular case in question.

Given the difficulty of prescribing a ‘one size fits all’ approach in legislation, detailed guidelines have been developed on this issue. I have attached for your information a copy of an extract from the Scheme’s procedures manual (Attachment A). This manual is used by all officers that conduct investigations under the Scheme. This extract outlines the procedures that staff must follow when investigating confidential complaints, situations in which these confidential details would be disclosed and the process to follow when it is necessary to disclose confidential information.

If the Committee considers that, in addition to the information included in the manual, it would be useful to include further detail in the Principles, an amendment could be made to the Principles. This could expressly provide that the Secretary must make a reasonable attempt to advise the informant that the Secretary intends to use information given by the informant other than in accordance with the informant’s request for confidentiality. This power would continue to be limited to circumstances where the Secretary considers that complying with the request for confidentiality will harm the investigation, place the safety, health or wellbeing of the informant or care recipient at risk or place the informant or a care recipient at risk of intimidation or harassment.

If the Committee believes there would be some merit in having the Department provide an additional oral briefing on this matter, I would be happy to arrange this.

I trust that this information is of assistance and look forward to the Committee’s response.

Yours sincerely

Christopher Pyne MP
Minister for Ageing

Attachment A

2.3.3 Open, Anonymous or Confidential Information

Information can be provided on an open, confidential or anonymous basis.

Open
In general all information and details provided on an open basis can be released to other relevant people to the case. There may, however, be some restrictions to the exchange of information if any of the relevant people request that some part of the information that they have provided is not released to the other people.

Confidential
When information is provided on a confidential basis, the identity and contact details of the informant are known to the Scheme. However, these details are not passed on to the approved provider or any other person involved in the case without the agreement of the informant.

If the Committee considers that, in addition to the information included in the manual, it would be useful to include further detail in the Principles, an amendment could be made to the Principles. This could expressly provide that the Secretary must make a reasonable attempt to advise the informant that the Secretary intends to use information given by the informant other than in accordance with the informant’s request for confidentiality. This power would continue to be limited to circumstances where the Secretary considers that complying with the request for confidentiality will harm the investigation, place the safety, health or wellbeing of the informant or care recipient at risk or place the informant or a care recipient at risk of intimidation or harassment.

If the Committee believes there would be some merit in having the Department provide an additional oral briefing on this matter, I would be happy to arrange this.

I trust that this information is of assistance and look forward to the Committee’s response.

Christopher Pyne MP
Minister for Ageing

Attachment A

2.3.3 Open, Anonymous or Confidential Information

Information can be provided on an open, confidential or anonymous basis.

Open
In general all information and details provided on an open basis can be released to other relevant people to the case. There may, however, be some restrictions to the exchange of information if any of the relevant people request that some part of the information that they have provided is not released to the other people.

Confidential
When information is provided on a confidential basis, the identity and contact details of the informant are known to the Scheme. However, these details are not passed on to the approved provider or any other person involved in the case without the agreement of the informant.

You will need to advise a confidential informant that if they provide information confidentially, it may limit the scope of any investigation that the Scheme undertakes - for example, it may be difficult to investigate concerns in relation to an individual where the care recipient’s details are confidential. Providing confidential information still allows for the Scheme to keep the informant updated on the progress of the case.

Anonymous
When information is provided on an anonymous basis, the identity and contact details of the informant will not be known to the Scheme. You will need to remind the informant that if they provide information anonymously, then no further contact can be made with them by the Scheme. Providing information anonymously may also limit the scope of any investigation that the Scheme undertakes e.g. it may be difficult to investigate concerns in relation to an individual where the care recipient’s details are anonymous.

If the informant wishes to be kept updated on the progress of the case then they may wish to con-
2.3.4 Maintaining Confidentiality

Section 16A.5 (3) of the Investigation Principles sets out the rights of persons contacting the Scheme to request confidentiality in relation to certain information. As such, all possible measures should be taken to ensure the confidentiality of care recipient/informant details when confidentiality has been requested. In order to maintain confidentiality of the care recipient the following points must be considered:

• When conducting a site visit:
  • request to view the files of several care recipients (e.g. look at the files for the confidential care recipient and four others)
  • interview several care recipients (e.g. the care recipient in question and several others)
  • ensure any paperwork containing the care recipient’s details is secure at all times (e.g. carry paperwork in a document holder, do not leave paperwork unattended).

• If it becomes evident that the service provider may attempt to identify who the care recipient/informant is, notify the informant (e.g. the confidential care recipient is identifiable as the only person in the home with a particular condition).

• If you are concerned about a matter relating to confidentiality speak to your manager.

2.3.5 Disclosing Confidential Details

Under section 16A.9 of the Investigation Principles the Secretary must ensure that any request for confidentiality under subsection 16A.5 (3) is complied with unless the Secretary considers that doing so will, or is likely to:

a) harm the investigation; or
b) place the safety, health or well-being of the informant or a care recipient at risk; or
c) place the informant or a care recipient at risk of intimidation or harassment.

It is anticipated that this provision would only be used in a very limited number of cases.

When you are investigating a confidential case you will need to consider:

• whether the investigation can be completed without releasing the confidential details
• the severity and urgency of the issue/s
• whether the issue/s affect only the confidential care recipient (or are other care recipients affected).

Minor Issues that affect only the Confidential Care Recipient

Steps 1-5 below must be followed if you are investigating a case and you determine:

• that you cannot complete the investigation without disclosing confidential details
• the issues in the case are minor (i.e. they do not affect the care needs of the care recipient)
• the issues only relate to the confidential care recipient

1. All possible attempts should be made to contact the informant to advise them that you can not complete the investigation without disclosing confidential information.

2. Any attempts to contact the informant (whether successful or not) should be recorded in a file note in the IMS.

3. If unsuccessful, more than one attempt must be made to contact the informant. The Investigation Officer should:
  • use all contact numbers supplied
  • contact the informant during the hours they have indicated that they are available
  • contact the informant by mail if they cannot be contacted by phone.

4. If the informant can not be contacted or they do not agree to the disclosure of confidential information you should finalise the case. This decision should be made in consultation with your manager.

Scenario: An informant calls you to tell you that their mother’s favourite cardigan has been put in the dryer at XYZ home and has shrunk. The informant indicates that she wishes her mother’s details to remain confidential.
Action: You are unable to progress the case without revealing the identity of the care recipient. The informant does not agree to the disclosure of this information. The case is finalised.

Major Issues that affect the Confidential Care Recipient and/or other Care Recipients
Steps 1-5 below must be followed if you are investigating a case and you determine:

• that you cannot complete the investigation without disclosing confidential details
• the issues in the case are major (i.e. they affect the care needs of the care recipient)
• the issues relate to the confidential care recipient and/or other care recipients

1. All possible attempts should be made to contact the informant to advise them that you can not complete the investigation without disclosing confidential information.

2. Any attempts to contact the informant (whether successful or not) should be recorded in a file note in the IMS.

3. If unsuccessful, more than one attempt must be made to contact the informant. The Investigation Officer should:
   • use all contact numbers supplied
   • contact the informant during the hours they have indicated that they are available
   • contact the informant by mail if they cannot be contacted by phone.

4. If the informant can not be contacted or they do not agree to the disclosure of confidential information you should consider disclosing the confidential information. This decision should be made in consultation with your manager and approved by the Assistant State Manager.

5. The decision to disclose confidential information and the details of the subsequent disclosure should be recorded in a file note in the IMS.

6. If you were unsuccessful in contacting the informant prior to making a disclosure, you should attempt to contact them again following the disclosure.

Scenario: An informant calls to tell you that they have just visited their mother after an absence and are concerned that she has lost a lot of weight and doesn’t seem to be being fed properly. They do not want the home to know they have called as they fear this may affect her care further.

On investigation you find that, as described by the informant, the mother is not being fed properly and is losing weight. However she is the only care recipient in the home affected by this.

Action: Contact the informant and encourage them to allow you to disclose the care recipient’s details to the home to ensure their mother receives appropriate care. If after repeated attempts to contact the informant you are unsuccessful then you will need to consider providing the care recipient’s details to the home even though this many not accord with the wishes of the informant. This decision should be made in consultation with your manager. If you determine that the care recipient’s details should be disclosed, then you should again attempt to contact the informant to advise them that you have disclosed their mother’s details to the home.

Urgent Issues that affect the Confidential Care Recipient and/or other Care Recipients
Steps 1-3 below must be followed if you are investigating a case and you determine:

• that you cannot complete the investigation without disclosing confidential details
• the issues in the case are critical (i.e. there is immediate risk to the health, safety and/or well-being of the care recipient)
• the issues relate to the confidential care recipient and/or other care recipients

1. Attempt to contact the informant. If you are unable to contact the informant before information is disclosed to the relevant authorities, attempt to contact the informant immediately after.

2. The information should be disclosed to the home and the relevant authorities. This decision should be made in consultation with your manager and approved by the Assistant State Manager.

3. The decision to disclose confidential information and the details of the subsequent disclosure should be recorded in a file note in the IMS.
Scenario: An informant calls to tell you that they are unhappy with the care provided to their mother at XYZ nursing home. The informant indicates that their husband has gone out to the home with the intention of confronting the operator of the home with a gun to get them to do something about the care being provided. The informant requests that you don’t tell the home who they are. You discuss the situation with the informant explaining that you are required to disclose this information to the relevant authorities.

Action: In order to protect the safety of the staff and residents of the home you will need to provide the informant’s details to the home and the police.

16 August 2007
The Hon Christopher Pyne MP
Minister for Ageing
Suite M1.46
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 13 August 2007 in which you provide further information on the manner in which information provided in confidence to the Aged Care Complaints Investigation Scheme may be disclosed.

In your response you advise that it is difficult to prescribe a ‘one size fits all’ approach in legislation that would cover all circumstances and that detailed guidelines have been developed to assist departmental officers to make decisions on a case by case basis. The Committee appreciates receiving a copy of the guidelines that relate specifically to the manner in which confidential information may be disclosed. This information was of great assistance to the Committee’s deliberations.

The Committee recognises that legislation cannot cover all situations but remains concerned that there is no requirement to make every effort to contact the informant before the information is disclosed. In your response you offer to amend the Principles to expressly provide for the Secretary to make ‘a reasonable attempt’ to advise the informant. The Committee welcomes your offer but suggests that the amendment should require the Secretary to make ‘all possible attempts’ to advise the informant in keeping with the wording contained in the departmental guidelines.

The Committee would therefore appreciate receiving a specific undertaking to amend the Principles along those lines.

As advised in our letter of 9 August 2007, a notice of motion to disallow these Principles was given on Wednesday, 15 August 2007 to provide further time for consideration. The Committee would appreciate your advice on the above matter as soon as possible, but before 10 September 2007, to enable it to finalise its consideration of these Principles and to withdraw its notice of disallowance. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman

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

Dear Senator Watson

Thank you for your letter of 16 August 2007 regarding the Investigation Principles 2007 (Investigation Principles), made under subsection 96-1(1) of the Aged Care Act 1997.

Consistent with the Committee’s request to amend the Investigation Principles to require the Secretary to make ‘all possible attempts’ to advise the informant, before releasing confidential information that has been provided to the Aged Care Complaints Investigation Scheme (CIS) by the informant, I am proposing to amend the Investigation Principles and have included for your
information a copy of the proposed amendments at Attachment A. [attachment not incorporated]

As you will note, the amendment requires the Secretary to make ‘all reasonable attempts’ to contact the informant before releasing information which could identify the informant or care recipient. This wording has been developed on the advice of the Office of Legislative Drafting and Publishing (OLDP). The OLDP advised that it would not be appropriate to use the wording ‘make all possible attempts’ as the effect of this could be to frustrate the release of information unless the person could actually be contacted. It could be argued that a requirement to ‘make all possible attempts’ is unreasonable as there is no objective test for when sufficient attempts to contact the informant have been made. I note that the words ‘all possible attempts’ were inappropriately used in the guidelines for the CIS and it is proposed that this be amended to align with the amendment at Attachment A.

I trust that this information is of assistance and look forward to the Committee’s response.

Yours sincerely

Christopher Pyne MP
Minister for Ageing

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.40 pm)—I give notice that, on the next day of sitting, I shall move:

That:

(a) the following bill be introduced: A Bill for an Act to amend the Australian Crime Commission Act 2002, and for related purposes, [Australian Crime Commission Amendment Bill 2007]; and

(b) the provisions of paragraphs (5) to (8) of standing order 111 not apply to the bill allowing it to be considered during this period of sittings.

I table a statement of reasons justifying the need for this bill to be considered during this period of sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement of reasons read as follows—

Purpose of the Bill

The bill amends the Australian Crime Commission Act 2002 to clarify that an Australian Crime Commission (ACC) examiner can record their reasons for issuing a summons or notice to produce after the summons or notice has been issued. The bill also provides that summonses or notices issued in the past are not invalid where reasons were recorded subsequent to issue. Further, the bill also provides that a summons or notice will not be invalid merely because it fails to comply with technical requirements in the Act.

These aspects of the bill have been developed in response to findings made by Justice Smith of the Victorian Supreme Court in ACC v Brereton [2007] VSC 297, which was handed down on 23 August 2007. Justice Smith held that for a summons to be valid, reasons for issuing the summons must have been issued prior to the time it was actually issued.

The bill also makes minor amendments that would allow for a person to appear before, or produce documents to, an examiner who is not the same examiner who issued the summons or notice.

Reasons for Urgency

The findings of Justice Smith in ACC v Brereton have significant implications for current investigations/operations of the ACC, including matters that are currently before the courts. The bill ensures that summonses and notices that are being relied upon for current investigations/operations and prosecutions are not invalidated simply because reasons were issued after they were issued. If this is not addressed, it could call into jeopardy evidence taken in a substantial number of matters, including evidence being used in current prosecutions. It is important that this issue is resolved as soon as possible so that matters before the court are not unduly affected.

The decision also has significant operational implications for the ACC, particularly where summonses or notices need to be issued in urgent situations or where large numbers need to be issued simultaneously.
LEAVE OF ABSENCE

Senator GEORGE CAMPBELL (New South Wales) (3.41 pm)—by leave—I move:

That leave of absence be granted to Senator Forshaw for the period 17 September to 6 December 2007 inclusive, on account of absence due to parliamentary business overseas.

Question agreed to.

Senator PARRY (Tasmania) (3.41 pm)—by leave—I move:

That leave of absence be granted to the following senators:

(a) Senator Kemp from 17 September 2007 to the end of the 2007 sittings on account of government business overseas; and

(b) Senator Troeth from 17 September to 21 September 2007 for personal reasons.

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 20 September 2007.

Business of the Senate notice of motion no. 2 standing in the name of Senator Siewert for today, proposing the reference of a matter to the Community Affairs Committee, postponed till 19 September 2007.

General business notice of motion no. 897 standing in the name of Senator Bartlett for today, relating to National Child Protection Week, postponed till 18 September 2007.

UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS

Senator FAULKNER (New South Wales) (3.43 pm)—I move:

That the sessional order adopted on 6 October 2005 in relation to the unauthorised disclosure of committee proceedings operate as an order of continuing effect.

Question agreed to.

PROPOSED PULP MILL

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.44 pm)—I move:

That the Senate calls for approval of the pulp mill proposed by Gunns Limited to be subject to all environmental considerations being fully satisfied.

Question put.

The Senate divided. [3.48 pm]

(The Deputy President—Senator JJ Hogg)

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Question negatived.
Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.51 pm)—by leave—The government oppose the motion put forward by Senator Bob Brown. The Australian government’s consideration and approval of the pulp mill at Bell Bay can only extend to the environmental issues under the Australian government’s jurisdiction through the Environment Protection and Biodiversity Conservation Act.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.51 pm)—by leave—The Prime Minister, no less, last week made it clear that the government’s policy was that the Gunns Ltd pulp mill should be subject to all environmental considerations being fully satisfied. We have just had the government vote against the Prime Minister’s own reference on the pulp mill. So the question is: who is in control here? Is it Prime Minister Howard or is it the government senators who we have just seen vote? The vote was totally contradictory. Within a week, the government senators have voted against the Prime Minister’s own reference on the pulp mill. We should get this sorted out. Has the Tasmanian Liberal Party got a different point of view to the Prime Minister? It would seem so.

Senator Parry—Mr Deputy President, I rise on a point of order. We gave leave for a short statement relating to the vote. This is going into other areas.

The DEPUTY PRESIDENT—There is no point of order.

Senator BOB BROWN—The point of order that Senator Parry was trying to make indicates how embarrassing this is for the Liberal Party, including, in particular, the Tasmanian Liberal Party. Your Prime Minister says that environmental considerations will be fully satisfied before this pulp mill will go ahead. The Greens endorse that, come in here and say, ‘Let’s have that put to the test,’ and government members vote it down. It is time you did your homework. It is time you joined in solidarity with Prime Minister Howard on this to fully satisfy the environmental considerations outlined by the Prime Minister. There is a split in the Liberal Party. It does not know what it is doing. Senator Abetz should go and see the Prime Minister and explain how he got it so wrong in the Senate chamber today over the pulp mill.

MATTERS OF URGENCY

Indigenous Health

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 17 September 2007, from Senator Siewert:

Dear Mr President,
Pursuant to standing order 75, I give notice that today I propose to move:

That, in the opinion of the Senate, the following is a matter of urgency:

The need to act to ‘Close the Gap’ to achieve health equality for Aboriginal and Torres Strait Islanders within a generation.

Is the proposal supported?

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

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

Senator SIEWERT (Western Australia) (3.55 pm)—I move:

That, in the opinion of the Senate, the following is a matter of urgency:
The need to act to ‘close the gap’ to achieve health equality for Aboriginal and Torres Strait Islanders within a generation.
Tomorrow is National Close the Gap Day, a day on which Australians across the nation will come together at a range of events and forums to show their support for closing the 17-year life expectancy gap between Aboriginal and Torres Strait Islanders and other Australians. They are calling for all Australian governments to take action to achieve health equality for Aboriginal and Torres Strait Islanders within 25 years through: increasing annual Indigenous health funding by $450 million to enable equal access for Aboriginal people to health services; increasing Indigenous control and participation in the delivery of health services; and addressing critical social issues, such as housing, education and self-determination, which contribute to the Indigenous health crisis.

The gap in life expectancy in health outcomes between Indigenous and non-Indigenous Australians is an international embarrassment. We are the only First World country that has failed to make progress on the health and life expectancy of our first peoples. In fact, most developing and so-called Third World nations have made better progress with population health, despite the chronic hardships they face. On average, a person from Bangladesh, for example, can now expect to live for 10 years longer than an Indigenous Australian. As the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, pointed out at the release of his Social justice report 2006, the fact that a wealthy country like Australia cannot fix a health crisis that affects only three per cent of our citizens is simply not credible. The greatest threat to Indigenous Australians is disease, and many of the diseases they face are easily preventable and have long since been eradicated from our non-Indigenous population.

Australia has the dubious distinction of being the only developed country that has not yet eradicated trachoma. Other First World nations have, within the last decade or two, managed to significantly reduce the gap for their first peoples. Canada, New Zealand and the US have all reduced their life expectancy gaps down to between five to eight years, as opposed to our outrageous 17 years. Infant mortality rates for Indigenous Australians are now almost twice as high as those in New Zealand and the US. Indigenous babies in Australia are 2½ times more likely to die before the age of one than their non-Indigenous counterparts. If they are in the NT or WA, they are three times more likely to die. They are also twice as likely to have low birth weight, which places additional stress on their development and makes them more vulnerable to poor health in later life. The WA Aboriginal child health survey reported very high rates of recurring ear infections, recurring chest infections, recurring skin infections and recurring gastrointestinal infection in Aboriginal kids in the west. A comprehensive study would, we believe, likely reflect similarly high rates across the country.

Recent research into the rates of ear infections in the NT carried out by the Menzies School of Health Research showed that 80 to 90 per cent of Aboriginal children have persistent ear infections within the first three years of their lives. Hearing problems as a result of easily prevented and treated ear infections, especially otitis media, are a major factor in poor educational outcomes for Aboriginal kids who simply cannot hear or understand what the teacher is saying.

Let me touch for a brief minute on the Northern Territory intervention. The government, I have no doubt, will come in here and argue that it is their contribution to closing the gap. Let us have a look at some of the material that has come out just today. Today we had a leaked briefing from the Aboriginal Medical Service Alliance of the Northern Territory, on Crikey.com, that suggested that...
medical checks are failing to reach more than 10 per cent of the at-risk population. They claim that the health check component of the intervention is largely incompetent, probably unethical, underfunded and absolutely ignores the long term. They claim that the intervention is in breach of the National Health and Medical Research Council guidelines, the Medicare guidelines and the health screening guidelines issued by the Royal Australian College of General Practice.

It is estimated that, as a consequence of the lack of experience and training in Aboriginal child health of the medical task force, they have a diagnosis rate of about 50 per cent below known disease and illness rates. The rate of diagnosis of ear infections is a whopping 77 per cent below that which would be expected on the basis of expert research. The diagnosis of otitis media, a middle ear infection where kids have fluid behind their eardrums and hence experience significant hearing loss, is particularly difficult, especially if you are not experienced in working with young children, let alone with Aboriginal children.

If you were going into communities where there were known to be high rates of this disease, surely you would ensure that you knew what you were looking for and would be taking along the right equipment. However, this latest report from the NT found that, for 10 per cent of children referred to the ENT surgeon, that had in fact not been done. The level of hype around the NT intervention raises some serious ethical issues because of the manner in which it is raising false expectations within the community without having in place the resources to follow it up. This is hype; it is not actually dealing with the issue. Can you please remember these facts when you hear the government argue that they are doing something about closing the gap because we have this wonderful medical task force in the NT? Now we are starting to hear on the ground what is really happening.

A recent report by the World Health Organisation found that the health of Aboriginal Australians is lagging a century behind the rest of the population. Per capita, access to primary health care remains at 40 per cent of that enjoyed by other Australians. Half of the Aboriginal population over the age of 15 already show signs of chronic disease. Despite the fact that they are three times as sick as other Australians, their access to primary health care, as measured by the Medical Benefits Scheme and the Pharmaceutical Benefits Scheme, is only 40 per cent of that of the general population. That is despite claims by the government that they are spending a large amount of money on Indigenous health. For every $1 spent through the PBS and MBS on a non-Aboriginal Australian, only 40c is spent on an Aboriginal Australian. The work done by Access Economics for the AMA estimates that an additional $460 million a year is needed simply to bridge the existing gap between the health needs of Indigenous Australians and the current spending.

I seek leave to table a report by the National Aboriginal Community Controlled Health Organisation, or NACCHO, and Oxfam titled Close the gap: solutions to the Indigenous health crisis facing Australia. I have contacted all whips about this and I understand that leave will be granted.

Leave granted.

Senator SIEWERT—The Australian Greens believe that this report provides us with a strong basis on which to proceed. I commend this report to the chamber and urge all parties to take on board its recommendations, which relate to access to primary health care, the number of health practitioners working within the Aboriginal Health Service, the responsiveness of mainstream
services, greater targeting of maternal and child health, increased funding and support and actually setting national targets and benchmarks towards achieving health equity for Aboriginal Australians. The AMA put out a very good report in May that provided a long list of successful Indigenous health programs. We recently helped co-host an exhibition in Parliament House of photos by Oxfam which documented some of the successes in Aboriginal health.

The central point here is that the positive outcomes of these successful initiatives show that this is not an intractable problem. It is not a case of not knowing what to do but is simply a matter of scale. The reach of these programs and the level of resources and infrastructure behind them are simply inadequate, given the extent of the problem and the levels of chronic illness that need to be tackled. What we need is a pure and simple commitment to better primary health care on the basis of need; more resources which tackle the issues are essential.

We also need to put more effort into tackling the social determinants of poor health so that we can reduce the level of chronic disease and the massive demands that chronically ill people place on our medical health system. We need to tackle this through prevention, through healthier living, through better homes, through better environments in which people live and also to ensure that people have a sense of control over their lives. We need to set ourselves clear targets that we can measure and be accountable for our progress against. That is why I also believe that the report and the recommendations put forward by Tom Calma, our Aboriginal and Torres Strait Islander Social Justice Commissioner, are essential in helping us to close the 17-year age gap in life expectancy between Aboriginal and non-Aboriginal Australians.

Closing the gap is absolutely essential within the next generation. People are not saying this can be done overnight. What is being said is that we need to do it within a generation and that there needs to be a clear plan for doing that. We urge—beg, in fact—the government to target the resources that are needed to address these issues. As I said, we know that we can do these successful programs; there are successful programs on the ground. We need a commitment to start addressing them properly and to not taking the funding away from groups that are implementing them. (Time expired)

Senator HUMPHRIES (Australian Capital Territory) (4.05 pm)—As one of the co-sponsors of the Close the gap exhibition that was held recently, showing the positive outcomes that have been achieved in recent years, I am very pleased to take part in this debate. Although I appreciate and share with Senator Siewert an understanding of the enormity of the task facing us as a community, I do not for an instant want to downplay the extent of progress in this area and the way in which Australians have, in a very real way in recent years, come to grapple with this issue in a much more tangible and effective way than has been the case in the past. I will spend some time, in my remarks today, talking about the progress that has been made in dealing with the significant disadvantage of Aboriginal Australians with respect to health.

The first thing to put on record, of course, is that the challenge in closing the gap between the standards of health of Aboriginal Australians and other Australians is a truly enormous one. Health outcomes for Aboriginal Australians are, frankly, unacceptable. They are far behind those of other Australians, and it remains a major national challenge to deal with the difference between those two sets of statistics. For example, in 2003 babies born to Indigenous women
weighed, on average, 219 grams less than babies born to non-Indigenous women. Babies born to Indigenous women were more than twice as likely to be of low birth weight—less than 2½ kilos—than were those born to non-Indigenous women. Indigenous babies are more likely to die in their first year than non-Indigenous babies. For example, in 2002-04 the infant mortality rate for Indigenous babies was highest in the Northern Territory, where 15 babies died out of 1,000 births, and in Western Australia, where 14 babies died out of 1,000 births. The rate for the total Australian population is only five deaths per 1,000 births.

It is possible to quote a very large number of areas where those sorts of depressing statistics are replicated—in areas like cardiovascular disease, cancer, diabetes and chronic kidney disease. It will not be difficult for anyone in this debate to quote at great length such statistics, which have been very carefully compiled by a variety of health bodies in this country. Australia needs to confront those statistics with great energy and commitment—with the same kind of energy and commitment that would behave any major national challenge of these dimensions. Our response has to be well informed by the life experience of Aboriginal people and the cultural environment in which those people live.

We must accept that the answers to these problems will be extremely expensive. We must also accept that the solutions go beyond simply putting in place a variety of services which either are not there at the moment or are there at grossly inadequate levels. We must act with the knowledge of the background to the failings of existing services—a background which is very complex and needs to be well understood. There are issues to do with: the remote locations where many Indigenous Australians live; the lack of suitable infrastructure for other social services such as housing and education, which are very much part of the total picture with respect to Indigenous Australians; the low literacy levels that Indigenous Australians experience; the lack of a pattern over several generations of interaction with health services; and lifestyle issues such as high levels of alcohol and substance abuse. Most importantly, in examining the solutions to these problems we have to accept that there have been many generations of dispossession and disadvantage which have severely damaged the capacity of Aboriginal families to address endemic health problems in their communities.

But it is vital for an informed and a fair debate on this subject that we present a balanced view of the health issues facing Indigenous Australians. An approach which emphasises only the distance that we as a nation have yet to go, and does not note and record the progress that we have made on these subjects, runs the risk of persuading many people that the problem is indeed insoluble. The endless trotting out of these statistics about poor results in Aboriginal health will tend to lead people to the conclusion that we simply cannot win. We can sustain better outcomes, and indeed the truth is that we have done just that in a number of key areas in recent years.

Senator Siewert said that we are making no progress. With great respect, that is untrue. The available information about health outcomes for Indigenous people, while still far from acceptable, does point to some real progress in a number of key areas. The all-cause Indigenous mortality rate, for example, in the Northern Territory, South Australia and Western Australia, where such a large proportion of our Indigenous community lives, decreased by 16 per cent over the period from 1991 to 2003. I mentioned the Indigenous infant mortality rate. Again, it is an unacceptably high rate of infant mortality but
that same rate has declined by 44 per cent over the period 1991 to 2003. With great respect, to suggest that because the life expectancy of Indigenous Australians is lower than it is for people in Bangladesh does not establish the proposition that we are therefore not making any progress against that benchmark. In fact, we are improving the position of many Indigenous people, and in many respects we are able to point to ways in which all Aboriginal people have had better outcomes in a variety of areas.

Death caused by circulatory disease declined at a faster rate for Aboriginal and Torres Strait Islander people than for other Australians, and the gap between outcomes for them and for the rest of us have narrowed. New figures from the Menzies School of Health Research show a marked improvement in the life expectancy of Indigenous people born in the Northern Territory. The report, released in April, compares figures from the 1960s with data collected in 2004. That study shows some very interesting things with respect to the life expectancy of Indigenous men and women in the Northern Territory. Life expectancy of Indigenous men in that period has increased by eight years—from 52 years of age to 60 years of age. I do not deny for one instant that 60 years compared with other Australians is still completely unacceptable, but it is real progress and we should note that in a balanced debate about these issues. The increase in life expectancy for Indigenous women in the Northern Territory has increased even more dramatically from 54 years of age to 68 years of age. That is important to note in a debate like this.

Part of the reason for that has been a very substantial additional investment, particularly in the last few years, by the Australian government. In fact, there has been a real increase in spending on Indigenous health of 210 per cent since the 1996-97 financial year. At that time we were spending federally $110 million on Indigenous health; today we are spending $440 million each year on Indigenous health. Even that benchmark is being greatly overshadowed by very significant new announcements with respect to health spending in this area. The most recent budget announced new funding of $112.5 million over four years for three new measures to increase Aboriginal and Torres Strait Islander people’s access to primary health care, to improve child and maternal health outcomes and to improve the quality of Indigenous health services through accreditation mechanisms and support.

The last four budgets—and there were processes such as the budget itself, COAG and the Intergovernmental Summit on Violence And Child Abuse in Indigenous Communities—committed over $470 million to improve Indigenous Australians’ health. Those are real benchmarks of progress. Although I accept that inputs are not the same as outcomes, it is very important that when we talk about these things we look at the ways in which these issues have changed over the last few years. Senator Siewert, it is not true to say that we are going backwards; it is not true to say that we are making no progress. (Time expired)

Senator MOORE (Queensland) (4.15 pm)—The debate this afternoon is a positive one that I think we can share. Oxfam and the National Aboriginal Community Controlled Health Organisation, which is a daunting title, released their discussion paper—which Senator Siewert sought to table this afternoon—in April 2007, earlier this year. We can look at the front page together and see a benchmark from which we can move forward. There is a stunningly beautiful photograph. Oxfam are renowned for their ability to get the message across in photographs, which I think sometimes tell peoples’ stories much better than we can effectively debate
them in this place. Apart from the stunningly beautiful photograph of Mornington Island in Queensland, there is a statement from Professor Mick Dodson, which I will quote. I am sure that people will continue to do this. It is a quote that I live with because I think it is one that we can hold onto as we continue this debate. Mick Dodson stated:

The statistics of infant and perinatal mortality are our babies and children who die in our arms. The statistics of shortened life expectancy are our mothers and fathers, uncles, aunties and Elders who live diminished lives and die before their gifts of knowledge and experience are passed on. We die silently under these statistics.

That quote is important for us to hear, but it is not negative; it is actually a statement that gives us the challenge which we are expected to take forward.

The Close the Gap campaign—which has been so effective across our country in engaging people in the community in effectively considering the issues facing Aboriginal and Islander people in our community—looks at our history. As Senator Humphries said, you cannot just make a simplistic statement about what should happen; what we should do is understand the complexities of what has happened. It is an important year to do that. Firstly, we now have the opportunity to consider the impact of 40 years since the referendum gave Indigenous people the right to vote in this country. Secondly, we can look at the movement forward, taking a snapshot of what has happened before and together facing the negatives that we have heard but we should not be overwhelmed by those negatives because, if we are, we will not move forward.

The statistics are there and, as Professor Dodson said, the statistics about the life expectancy of people, the unacceptable infant mortality rate and the way of life of so many people in our community roll off the tongue. We can have an inordinate number of debates, as we have done, and the Productivity Commission has a huge volume of statistics, most of which are negative, but what we can do is learn from them. We have the ability to learn from those statistics. One of the really effective things about the Close the Gap campaign is the research of processes that have worked, and we can learn from those. It is not just about extra funding, although there must be greater funding. Senator Humphries pointed out the growth in funding over the last couple of years, but it is not enough by itself.

When we have Mick Dodson’s words in mind, we hear what those statistics mean to Indigenous people: they are about their families, the people who mean most to them. You cannot just quote statistics; you have to concentrate on what can be done to address the problems. The problems are known. We have had these debates in this place before and we know the issues that Senator Siewert outlined. So many reports have been tabled in this place and as far away as the United Nations, talking about issues of disadvantage in indigenous populations, not just in Australia. That came out in the recent debates about the international declaration on indigenous peoples. The issues that are confronting indigenous peoples are not peculiar to our country. What we have to address is that the issues for Indigenous people in our country have been bad.

This generation has an opportunity to put in place steps forward, as the Close the Gap campaign is asking us to do, within a generation—a time frame of 25 years. I think that most of us would be thinking positively about being around for 25 years. At the end of that time, we will be able to take another snapshot and be able to objectively assess whether the things that have been put in place in 2007 effectively, objectively and cooperatively made advances. At the end of those 25 years, which is part of the process
around the Oxfam Close the Gap campaign, we will be able to see what advances have been made around the issues of mortality rates, longevity, education and housing—all those things that we know about. It is our hope and our challenge that in 25 years time we will be able to say these plans have worked.

Maybe we will not have solved all the problems. In fact, there has never been any act which has solved all the problems. But the people who are sitting in this place in 25 years should be able to say that, in 2007, measures that were cooperatively agreed—as the Oxfam report says, amongst all levels of government and engaging all the people who are citizens of this country—have made a genuine difference. That is the challenge: to make a difference. Rather than concentrating on the past and what has not worked, we should acknowledge the past and not pretend that it did not happen. Way too often people become too defensive and try and come up with excuses about what happened—how much money was spent and where it could have been misspent. They concentrate on those things instead of doing what Oxfam has asked us to do: look at the workforce; improve access to education and culturally appropriate primary health care; acknowledge what is happening now and the knowledge that we have.

The Productivity Commission report of two years ago left us in no doubt about the state of our nation now. There is no grey in this area. We have the statistics. They have been gathered and will need to continue to be gathered. When we are looking at those statistics, when we are groping to come up with ways to ensure that life expectancy is improved and we are looking at ensuring that maternal and child health statistics are improved, I think it does us good to continue, as Professor Dodson said, to see the people who are behind those statistics. Somehow it makes it a stronger argument when you are looking at those issues and statistics as being people and family members.

One of the encouraging things about the whole discussion around the Close the gap report has been the way that there has been community engagement. I think that things like the photographic exhibition which Senator Humphries referred to in his contribution have a really valuable role to play in ensuring that we see what does work. Many have been able to look at that photographic exhibition and see those glorious, positive photographs of people who are part of our community now. We need to go back in 25 years time and have photographs taken of those same families to ensure that they are still here—and to map the progress of that wonderful little boy who is on the front cover of the Close the gap report to see where he is in 25 years. That is the challenge. There is an understanding about the work that we are doing and the focused funding—the funding that is not linked to punishment.

My concern about what is happening at the moment in the Northern Territory is that any value achieved by the influx of medical help and the influx of people involved in the process is linked to a sense of punishment. That is not the expectation of Close the gap—it is not about people coming in from outside to work on the community. We are well beyond that. The expectation of Close the gap is that we will work with the community to achieve outcomes. When that can be achieved then people can gather together and say that we are part of a wider Australia. All the advantages that any one of us has should be available to everyone—in particular, in this campaign, to Aboriginal and Islander people—no matter where they live. One of things that I think has been the most damming over the last couple of months is that there seems to have been a focus almost exclusively on the Northern Territory. Close
the Gap is not a campaign for people who live in the Northern Territory; Close the Gap is a campaign for Aboriginal and Islander people across the whole country no matter where they live. And that is the challenge for us. In terms of positives, I look to the work that is being achieved by the mums and babies program in Townsville. That is exactly the kind of program that does work. It has been celebrated in Close the gap. I think that if we can work together in that way then in 25 years we will be able to show success and not continued concern about the challenges that we have not met.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.25 pm)—I rise to join this debate. I welcome Senator Siewert’s motion and the Oxfam Close the gap report. I want to talk about two things. On Wednesday last week several parliamentarians went to a dinner which was hosted by Vision Australia. One of the presenters at that dinner was Dr Katrina Rooper from the Department of Health and Community Services in the Northern Territory. She is part of the National Trachoma Surveillance and Reporting Unit in the Northern Territory. She talked about the impact of trachoma on Aboriginal communities. I remind honourable senators here today that trachoma does not exist in any other developed country around the world. But it does exist in our Aboriginal communities, where there are a large number of cases. The most shocking aspect of this is that it can be treated relatively easily. There is an antibiotic which if administered in good time—that is, when children get it; and they do, all the time—can solve the problem. For just $22 million we could eliminate trachoma from every Aboriginal community.

I remind the Senate that trachoma in the end makes people blind. The eyelid becomes so deformed that it turns inward and the action of the eye eventually destroys the eyeball. So this is a hugely debilitating condition. It is hard to believe that, in this day and age when we know that there is a way of curing this problem—as I say, it cannot be cured if you do not get it early—we are not even taking that minimal step forward of providing antibiotics to those at risk. Those can be administered as a preventive measure and have the added benefit of clearing up a whole lot of other infections as well within Aboriginal communities.

The other condition which is almost as debilitating which I often cite is scabies. It is a condition which, again, occurs in no other developed country around the world. But it affects every Aboriginal community. When I travel around with committees I go into schools and ask what the incidence of scabies is. Very often the answer is that it affects 80 per cent of students. Scabies is caused by a mite that gets under the skin. It makes the skin so itchy that you want to tear your flesh off. What happens over time with scabies is that it affects all the major organs in the body. It is a major factor in Aboriginal people not living as long as non-Indigenous people. It too can be fixed. There is a simple ointment that can be applied to people who have scabies. In one wonderful school that we went to some time ago at Elcho Island I asked the principal about scabies and he said, ‘We only have about a five per cent rate of scabies infection.’ The kids were very bright and shiny. They had black hair and black skin and looked fantastic. He said that they hold scabies at bay by closing down the school for one day every term and going into people’s homes with the clinic. They administer the ointment, they clean up dogs and they assist the community generally to keep scabies away. This is utterly crucial. If we want children to learn in schools then they have to be free of scabies. It is appalling that in so many communities 80 per cent of them are not.
We all know that if there were better housing, if there were better sanitation, if kids washed their faces and eyes so that they were less likely to get trachoma, if there were better jobs, if there were a better environment in many of these places, if there were better nutrition and if there were better health services generally—all of those things—then our Aboriginal community would not have such an appalling health record and shorter life expectancy. But the two examples that I have given could be done without fixing all those things. I am not saying the other things should not be fixed, but it is possible to fix those two things and it is disgraceful that this government, after 10 years, has not done so. I might also say ‘the government before it’, because governments have neglected Aboriginal health. This is not something that has happened since 1996. Governments have overseen an appalling record in this country. They pay lip-service to doing better in Aboriginal communities, but even the simple solutions to some of these debilitating problems are not adopted.

Senator Patterson (Victoria) (4.30 pm)—I do not think anybody in the Senate would deny that there is more to do to improve Indigenous health and to reduce the difference in life expectancy between Indigenous and non-Indigenous Australians, but closing the gap will not be achieved by primary health intervention alone. There are a raft of other policies which impact on the health of our first Australians.

Let me remind people about the appalling record that we inherited from the Labor government in 1996, when only 53 per cent of all our children were vaccinated—a level of vaccination that was down around those of Third World countries. That was an appalling situation among not just white Australians but Indigenous Australians. Although I have not had time to find the figure, if I were a betting woman I would bet that the level of vaccination among Indigenous Australians was lower. Through an innovative social policy—not a health policy but a social policy—Dr Michael Wooldridge brought about an increase in vaccinations to a level of over 90 per cent. There is very little incidence of measles infection in Australia, but children were dying of measles before that. The incidence of measles infection has decreased in both the Indigenous population and the general population. The successful control of measles and other vaccine-preventable diseases such as diphtheria, polio, rubella and tetanus underlines the success of universal vaccination programs and their importance to Indigenous health. In addition, before we were able to vaccinate all children against pneumococcal disease, we had Indigenous young people being vaccinated against pneumococcal disease because they were most at risk.

Measure after measure indicates an improvement in Indigenous health since the change of federal government in 1996. Senator Moore was talking about the workforce. In the four years from 2000 to 2004, which are the most recent figures we have, full-time equivalent doctors employed by Aboriginal and Torres Strait Islander healthcare services rose by 50 per cent. There was a 53 per cent increase in full-time equivalent nurses in that four-year period. The number of Indigenous healthcare workers increased by 19 per cent. I predict that we will see similar increases in the four years from 2004 to 2008.

Another measure that Dr Wooldridge brought in was the Rural Clinical Schools Program, which funded the university schools of rural health. It takes a long time for those to have an effect, and that will be one of his lasting legacies. One of the lasting legacies of the Howard government will be that young Indigenous people are now being trained in Broome or Wagga or Traralgon and they are spending more time in their own
communities and more time practising their skills in remote communities. That would never have happened without the innovation of the Rural Clinical Schools Program and the university schools of rural health.

Between 1999 and 2005, the proportion of ATSI primary healthcare services providing specific programs increased. I will give you some figures. Antenatal maternal programs went from 58 per cent to 70 per cent of services, women’s health programs went from 73 per cent to 87 per cent of services, men’s health programs went from 55 per cent to 74 per cent of services, and eye screening went from 57 per cent to 70 per cent of services. Specifically targeted maternal and child health programs have produced declines in preterm births from 16.7 per cent to 8.7 per cent, which is now comparable with the general population, and a decrease in infant mortality.

Senator Moore mentioned the Townsville Mums and Bubs program. I went up to visit that program when I was Minister for Health and Ageing, and they were running it on a shoestring out of the garage, part of what they jokingly called the Taj Mahal—the Townsville Aboriginal and Islander Health Services. They said to me, ‘Can you fund this, Minister?’ It was really the responsibility of the Queensland government—it was an infant welfare program—but it is now funded through the Commonwealth. We managed to increase the funding to the Townsville Indigenous health service for that program to go ahead. When you go in there you see babies who are absolutely thriving. Mums feel confident about their parenting and children are thriving. It is a perfect example but really something that the state should have done something about. Aboriginal people have had increased access to the PBS and the MBS, and specific health checks have been introduced for children and adults.

The recent Northern Territory emergency response will have a significant impact on the health of Indigenous people, in particular children. It will also have an impact on health through the fact that there will be a greater police presence. One of the things that nurses say—and I think that Senator Adams will probably speak about this—is that they are subjected to terrible violence when they go out to remote Indigenous communities. That discourages and dissuades nurses from being there, which would then have a negative impact on health. So we need to have the states, including Western Australia, coming up to the plate. Senator Moore said that we have focused only on the Northern Territory because that is where we have the power to intervene. The Northern Territory should be looking at more police to reduce that threat to nurses.

As I said, primary health intervention is not the only way to impact on Indigenous health. There are other policies which have a positive impact on health. Look at the ‘no school, no pool’ program in Indigenous communities. School attendance goes up and the incidence of ear infections and scabies goes down. Senator Allison did not have time to mention that scabies has an enormous impact on the health of adults. As children grow up and become adults, they may have kidney disease as a result of scabies, and pools have an effect on that.

What happened in Wadeye? We had a ‘no school, no pool’ program, but the kids turned up to school and there were not enough seats and not enough teachers for them. If that had happened in South Auburn, Dandenong, Lilyfield or somewhere else in Sydney or Melbourne, there would have been an outcry. But the Northern Territory government get away with it because they do not have enough places or teachers to look after those children when they turn up. Another example
of an indirect effect of a policy which is not a primary healthcare policy—

Senator Crossin—It’s a Catholic school.

Senator Patterson—Senator Crossin, you will have your chance in a moment. The Cape York financial information management program has seen school attendance go up—an educational outcome; domestic violence go down—a social and health outcome; and better nutrition—a health outcome. The community stores policy recently announced by Minister Brough, which relates to the operation of community stores in the Northern Territory, although not a direct health intervention will undoubtedly have an impact on health. What we are doing is setting up a licensing system for community stores in the Northern Territory. Stores that are licensed will be able to participate in the income management arrangements. A licence will be issued to community stores that are able to participate in the requirements of the income management scheme; that have a reasonable quality, quantity and range of groceries and consumer items, including healthy food and drink, available and promoted at the store; and that can demonstrate sound financial structures, retail practices and governance.

I have been to remote communities in my two roles as Minister for Health and Ageing and Minister for Family and Community Services. It is quite interesting to see the significant differences. Some stores are managed well—and some of them are managed by Indigenous people, who really have a motive to manage them well. They run cooking classes and they prepare meals for people to take away. They prepare school meals for children—and they are prepaid. What you see in those communities is a significant change in their health. Other measures that need to be taken into account—and you see considerable differences across communities— (Time expired)

Senator Crossin (Northern Territory) (4.38 pm)—I too rise to speak on this matter of urgency. Those in this place will remember that, prior to the APEC summit in Sydney, the Anderson-Wild report titled Little children are sacred was widely reported on in the national media. Of course, we all now know that that was the report of an inquiry instigated by the Northern Territory government into the situation of children in Indigenous communities. I think it is fair to say that, since APEC, Indigenous issues have fallen off the national media’s radar. However, Indigenous issues are, as always, of critical importance not only to me but to the Labor Party. In this job, not a year goes by in which we do not see some sort of report into the gap between Indigenous health outcomes and life expectancy and those of non-Indigenous people. We get it from the Australian Medical Association when they hand down their report card. We get it from the National Aboriginal Community Controlled Health Organisation, or NACCHO. In the Northern Territory we have some of the most outstanding Aboriginal community controlled organisations that you will come across in this country. And now, of course, we have the report from Oxfam.

The situation of our Indigenous people continues to be extremely dire. NACCHO and Oxfam Australia have launched a report called Close the gap. It is a policy briefing paper. It states that Aboriginal and Torres Strait Islanders continue to die nearly 20 years younger than non-Indigenous Australians. From a personal point of view, in the last couple of months I have attended a number of funerals for Indigenous people who have died between the ages of 37 and 53 from diseases which would normally strike down non-Indigenous people when they are at least 20 years older than those Indigenous
people. So the facts are there. The real-life experiences are there for us to witness and participate in.

While Indigenous health issues have been problematic for many nations across the globe other than Australia, we seem to have the greatest difficulty in combating these problems. Close the gap states that Aboriginal and Torres Strait Islander infant mortality is three times the rate of non-Indigenous Australians and more than 50 per cent higher than for indigenous children in the USA and New Zealand.

This chamber is no stranger to such horrifying statistics. I and many other senators have raised many similar statistics in other speeches in this chamber time after time and year after year. My colleague Minister Scullion, from the Northern Territory, reflecting on poor Indigenous life expectancy figures, said in this chamber more than five years ago that ‘average life expectancy for Indigenous men is less than my’—that is, Senator Scullion’s—‘current age’. So what have Minister Scullion and this government done with an extra five years of their life? Perhaps that is a question that only that minister can answer. But all I have seen is a fundamental failure to show leadership on addressing Aboriginal life expectancy and a complete inability to work collaboratively with the Northern Territory government to achieve any of the necessary outcomes.

The Australian Labor Party, on the other hand, in the lead-up to the election have recently released a new directions policy paper called An equal start in life for Indigenous children, in which we, as the alternative government, have outlined our policy commitment to helping Indigenous children as a way to make the greatest difference over the long term for Indigenous communities. The policy paper quite clearly articulates our position on this issue. We believe that the life expectancy gap between Indigenous and non-Indigenous Australians remains one of the most stark indicators of inequality in Australian society.

The Howard government has now had 11 very long years to try and minimise this gap. Labor has a plan to focus on the critical years between birth and eight years of age, particularly in terms of support for child and maternal services, early development and parenting as well as literacy and numeracy in the early years. Our plan represents a total investment of $261.4 million over four years, comprising $186.4 million in Commonwealth expenditure supported by $75 million from the states and territories.

Speaking of the states and territories, particularly over the last few months we have seen that the Howard government is more interested in blaming and riding roughshod over the Northern Territory government than working collaboratively. Federal Labor recognises the important role that the Martin Labor government in the Northern Territory is playing in addressing Indigenous disadvantage in the Northern Territory. I think it is about time that somebody in this House recognised the significant resource commitments the Northern Territory government has allocated for addressing Indigenous advantage and publicly recognised the work that public servants—nurses, health workers and those employed by the Northern Territory Department of Health and Community Services—have undertaken in their working life in turning these statistics around.

As I travelled around Indigenous communities in the previous couple of weeks, in relation to the federal government’s Northern Territory intervention, Northern Territory public servants said to me that they feel their work over the last couple of years and decades has been worthless and that there has been no recognition of the substantial role they have played in trying to reduce this gap,
particularly in health services. The Northern Territory government has committed $286 million over five years to implement a closing the gap strategy. This funding package means that there will be 223 real positions created to help close the gap. This is a generational plan of action and it should be applauded. It is to the great disgrace of the opposition in the Northern Territory that they prefer to take cheap political shots at the Northern Territory government rather than working with them collaboratively on this.

The Howard government has demonstrated that it prefers to sit on its hands instead of taking real action in closing the gap. We have a federal government that prefers to play politics instead of showing real leadership, working collaboratively with state and territory governments and putting the money on the table that will actually assist in closing the gap that we are debating today.

The Australian Labor Party have, as I have discussed, demonstrated our commitment to closing the gap. We agree with NACCHO and Oxfam that poor Indigenous health is affected by:

... social and economic factors: diseases triggered by poverty; overcrowded housing; poor sanitation; lack of access to education; poor access to medical care for accurate diagnosis and treatment; and poor nutrition.

These factors are all preventable living conditions and if addressed could have real health implications for Indigenous people.

I cannot let the opportunity go by in my remaining few minutes without mentioning trachoma. I know that Senator Lyn Allison mentioned it. Last week, we were both at a dinner for the parliamentary friends group for eye health and vision care. Vision 2020 Australia, in conjunction with a number of other health experts in the area of eye health, spoke at this dinner last week. I think it might have been the first time that Senator Allison had actually been alerted to the dire situation we have in this country in relation to trachoma. I have been pursuing this issue now for many years. I know that people in OATSIH, in particular one senior public servant, will know that this has been a passion of mine for the best part of six or seven years now.

Trachoma is a disease of poverty. It was eliminated from white Australia 100 years ago, and it is a disease that we know how to handle. It exists in Aboriginal communities. The fact that it does exist is a national shame. We are the only developed country in the world that has trachoma and without some concerted effort we may end up being the last country in the world with it. Countries such as Morocco and Iran have already eliminated blinding trachoma. This year in Niger, one of the most backward of all African countries, 6½ million people will receive treatment for this disease. Some Aboriginal communities have rates of trachoma that are among the highest recorded anywhere in the world.

The Howard government just pays lip-service to interventions on trachoma and has not made any significant commitment or change. Nine hundred thousand dollars to develop a policy, to train health workers and to set up a national database may well be a good start, but it needs to fund the medicine that goes into the eyes of these people. *(Time expired)*

**Senator ADAMS** (Western Australia) (4.48 pm)—I rise to speak on something which is very close to my heart. Being perhaps one of the only nurses in the parliament, I was very fortunate to attend a conference at Broken Hill for the Council of Remote Area Nurses of Australia, CRANA. People who attended this conference came from all over Australia—125 of them plus a number of allied health people. All the things we have
heard from those opposite today on this are actually being tackled by these nurses, and—guess what?—the Howard government actually supports the organisation.

When the Northern Territory intervention was being brought together, health professionals played a very important part. CRANA was the organisation that the government went to, and they were very careful in the way that they asked the government teams to approach the issue. There was to be no ‘big stick’ approach, though we heard from the other side that this was the intention. It certainly was not the intention. These people have done the most wonderful job in briefing the health teams going through the Northern Territory.

This is CRANA’s 25th year of operation and it was their silver jubilee meeting. On top of their agenda was finding solutions to the health issues impacting on remote communities and to the health workforce crisis gripping Australia. It was the most wonderful conference. I could go on all afternoon talking about the different presentations that were made. It is important to note that nurses and midwives—safe providers of primary health care—are living and working in most communities no matter how small or isolated. Remote area nurses provide a model of care that needs to be acknowledged, and I am sure it is acknowledged by the Howard government. CRANA believes that this model can be part of the solution to the healthcare crisis in Australia.

I will identify some of the key recommendations that were made to improve health care in remote areas, but, firstly, I think it is very important to note that the Australian government cosponsored this conference. It recognises the important role CRANA plays in supporting the remote health workforce across Australia. The government put $25,000 towards the funding of the conference. It also funds the CRANA secretariat to enable CRANA to manage its programs as well as to engage with stakeholders at all levels to develop policies, protocols and initiatives that improve and support remote nursing practice. The government has provided $881,000 over three years for this. CRANA provides the bush crisis line, which is a 24-hour free-call telephone service staffed by qualified psychologists. That service provides crisis debriefing and counseling for job related trauma to isolated remote health practitioners and their families. I note that one of CRANA’s recommendations was that by July 2008 no nurse should be left to practice in isolation. Single nursing posts must be abolished. I certainly agree with that given some of the stories I have heard.

A health research education officer who coordinates and teaches in the Remote Health Practice program at the Centre for Remote Health provides mentoring, clinical supervision and assessment of remote area nursing students and provides academic leadership and resources to CRANA. There was a very good presentation by Vicki Gordon and Sabina Knight, and these two people were asked to coordinate the child health check teams and brief them on what to expect and how to go about their role as they move through the 73 communities in the Northern Territory.

Something that is very important and that I would like to see extended is the First Line Emergency Care, or FLEC, program, which aims to increase the access of people living in remote areas to high-quality emergency care through a program of upskilling of remote practitioners. If these practitioners are not upskilled, they will not stay there, so it is very important that this program, which includes remote emergency care and the maternity emergency care program, is delivered by volunteer trainers. These trainers come from a number of our intensive care areas.
Most of them are state employed professionals, but they are there as volunteers to focus on the multidisciplinary advance emergency and trauma management skills.

At the moment this program receives $590,000 over three years, but that amount needs to be doubled. The facilitators are brilliant and it has got to the stage now that defence and mining organisations are requesting that these teams adapt their programs to help them as well. This is recognition of what the Howard government has done in providing this sort of support over the three years, but, as I said, it really needs to be increased. There is also an Indigenous program, which aims to upskill health professionals who service the Aboriginal community controlled health services in emergency care. This includes the production of culturally appropriate teaching resources and simulation material.

With the Prime Minister’s announcement of enrolled nurses now being able to train in hospital settings, I see this as a great way for Aboriginal health workers to become enrolled nurses and have the support and backing of working in a hospital environment rather than trying to sit in a lecture theatre. That is not the way they learn; they learn by hands-on experience. So I think the Prime Minister’s announcement for enrolled nurses to return to hospital based training is very good and I support it.

The comment made after this great weekend by Christopher Cliffe, the President of CRANA, is important:

Let’s mobilise and utilise nurses, the most trusted and abundant of our health professionals. Remote Area Nurses already provide a high level of service to some of the sickest and most disadvantaged people in Australia; with a shortage of doctors their role is even more important. The nursing and midwifery profession isn’t running from the daunting challenges, in fact they are eager to address it head on. I plead with the federal, state and territory governments to meet this call from nurses and midwives, and enable them to tackle the increasing needs of remote and rural committees across Australia. (Time expired)

Question agreed to.

(Quorum formed)

COMMITTEES
Privileges Committee
Report

Senator FAULKNER (New South Wales) (4.58 pm)—I present the 132nd report of the Committee of Privileges, entitled Persons referred to in the Senate: Mr Chalid Muhammad and Mr Nurkholis on behalf of staff of the Indonesian Forum for Environment (WALHI).

Ordered that the report be printed.

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

Leave granted.

Senator FAULKNER—I move:

That the report be adopted.

This report is the 51st in a series of reports recommending that a right of reply be afforded to persons who claim to have been adversely affected by being referred to, either by name or in such a way as to be readily identified, in the Senate. The committee has dealt with several applications from organisations, or persons on behalf of organisations, but this is only the second occasion on which the committee has considered an application from persons outside Australia.

As usual, the committee has approached the matter from the point of view of facilitating access to the procedure by affected persons. On 20 August 2007, the President received a submission from Mr Chalid Muhammad, Executive Director, and Mr Nurkholis, national board member, on behalf of the Indonesian Forum for Environment, WALHI, relating to comments made by
Senator Ian Macdonald in the Senate on 9 August 2007 during general business. The President referred the submission to the committee under privilege resolution 5. The committee considered the submission on 13 September 2007 and recommends that the proposed response, as agreed between the committee and representatives of WALHI, be incorporated in Hansard.

The committee reminds the Senate that, in matters of this nature, it does not judge the truth or otherwise of statements made by senators or the persons referred to. Rather, it ensures that these persons’ submissions and, ultimately, the responses it recommends accord with the criteria set out in privilege resolution 5. I commend the motion to the Senate.

Question agreed to.

The response read as follows—

Appendix One
Response by Mr Chalid Muhammad and Mr Nurkholis, on behalf of staff of the Indonesian Forum for Environment (WALHI)
Pursuant to Resolution 5(7)(b) of the Senate of 25 February 1988

The Indonesian Forum for Environment (WALHI), its National Director Chalid Muhammad and its staff, both Indonesian and Australian citizens, would like to request that an appropriate response be incorporated into the Parliamentary record according to Australian Parliamentary Privilege rules, to correct erroneous and seriously damaging statements made by Senator Ian Macdonald in the Senate on 9 August 2007. Chalid Muhammad and other WALHI staff can be readily identified by virtue of their publicly listed positions within the organisation, and Senator Ian Macdonald’s allegations of connections to terrorism are especially damaging to their reputations and associations with others given the Anti-Terrorism Act 2005 and the current climate of fear in Australia. Besides setting the record straight in the Parliamentary record, we would also like to request an apology from the Senator.

The Indonesia Forum for Environment (WALHI) is the largest forum of non-government and community-based organisations in Indonesia. It is 27 years old, is represented in 25 provinces and is comprised of 438 member organisations. WALHI is a respected community organisation in Indonesia, and counts many key Indonesian public figures including past and present ministers and members of parliament among its supporters. Ms Erna Witolear, former Indonesian Minister of Human Settlements and Regional Development and current UN Special Ambassador for MDGs in the Asia Pacific is a founding member and continuing supporter of WALHI. So too is Mr Emil Salim, former Indonesian State Minister for Population and Environment, UN Eminent Person and member of the UN High Level Advisory Board on Sustainable Development.

WALHI’s staff are frequently called upon to provide expert advice to the Indonesian House of Representatives on policy matters such as climate change, forests and energy. One of WALHI’s deputy directors and two members of its national council have recently been elected members of the National Commission on Human Rights for the period 2007–2012. WALHI’s staff and network of volunteers were among the first organisations to respond with coordinated emergency assistance to the survivors of the 2004 Asian Tsunami and the 2006 Java earthquake.

WALHI’s agenda of work and executive leadership is democratically chosen at a periodical direct meeting of hundreds of representatives of its member community organisations. WALHI’s membership and philosophy is pluralistic and embraces all of Indonesia’s hundreds of ethnic groups and many religious beliefs.

Neither WALHI nor its national director is or has ever been a member of any other mass organisations, religious or otherwise, including Hizbut-Tahrir. WALHI engages in public awareness raising on environmental issues with religious figures from all major Indonesian faiths including Christians and Muslims but certainly does not associate with any radical religious movements, especially those that advocate violence.

In the photo cited by Senator Macdonald, the religious figures he mentions are demonstrating in support of their court case alleging human rights
 abuses by a branch of the Indonesian police. Their court case was being heard on the same day and in the same court as a public interest environmental law civil action brought by WALHI, leading the religious figures to unilaterally link their protest to WALHI’s. The poster depicted in the photo was produced by the Forum Umat Islam and mentions WALHI’s name without permission. WALHI has requested the organisation cease from doing so in future.

Furthermore, the head of WALHI did not take part in a violent demonstration outside the US embassy as alleged by Senator Macdonald. Senator Macdonald’s comment about the head of WALHI wearing “full Islamic robes” at a demonstration is not only false, but raises concerns of religious bias and deserves an apology.

WAHLI notes that, according to its records, no attempt was made to contact WAHLI to confirm any of the facts or assertions in Senator Macdonald’s speech.

False claims of links to terrorism represent a serious escalation of the systematic attacks on civil society groups that dare to criticize the human rights and environmental performance of government and multinational corporations both in Australia and Indonesia. Claims of an “apparent alliance between radical Islamists and the Friends of the Earth” represent an attempt to discredit an organization and the individuals who are a part of it, who work towards protecting people’s rights to their natural resources and in saving the environment for future generations to come.

Jakarta, August 20, 2007
Chalid Muhammad Nurkholis
Executive Director National Board of WALHI

Electoral Matters Committee

Senator FIERRAVANTI-WELLS (New South Wales) (5.01 pm)—On behalf of the Joint Standing Committee on Electoral Matters, I present the report of the committee entitled Review of certain aspects of the administration of the Australian Electoral Commission. I seek leave to move a motion in relation to the report.

Leave granted.

Senator FIERRAVANTI-WELLS—I move:

That the Senate take note of the report.

On behalf of the Joint Standing Committee on Electoral Matters, I have pleasure in presenting the committee’s second report for 2007: Review of certain aspects of the administration of the Australian Electoral Commission. With a federal election approaching, it has been a timely exercise for the committee to review certain aspects of the administration of the AEC. The terms of reference for the inquiry required the committee to direct much of its focus on the staffing arrangements across the AEC’s divisional office network. Currently, there are 150 AEC divisional offices in 135 locations across Australia. The AEC is somewhat unique as an organisation because its business cycle is influenced by the relatively unpredictable timing of key electoral events and federal elections, which determine workload peaks and impact significantly on staffing requirements. The impacts of the election cycle are a key consideration for the AEC in determining the most appropriate staffing model for divisional offices.

The committee received evidence which raised a number of concerns regarding workforce issues in some AEC divisional offices. These concerns related to employment structure, staffing levels, career opportunities for staff, retention issues and the effectiveness of co-located divisional offices. Some of these concerns are a result of the AEC implementing a new divisional office staffing profile. To coincide with this new staffing profile, the AEC also introduced a process of workload sharing in an effort to combat the diversity of workload across each of its divisional offices, where some offices are tasked with
processing up to three times the number of enrolment transactions as others. Specific concerns came from the co-located divisional office in Chatswood, New South Wales, which services four electoral divisions. The committee conducted a site visit of the Chatswood office as part of its inquiry and appreciated the opportunity to speak directly with AEC employees about some of the issues identified in submissions.

Without an extensive body of evidence to draw on, however, it is difficult for the committee to determine whether the concerns raised during the inquiry are symptomatic of widespread issues within the AEC. While the committee is not in a position to draw comprehensive conclusions, it considers the concerns which were raised to be significant enough to warrant further investigation. Therefore, the committee has recommended that the Auditor-General examine the issue of workforce planning in the AEC in further detail.

The committee was also asked to consider whether the national tally room should be maintained beyond the next federal election. The committee supports the continuation of the tally room and is of the view that the abolition of the tally room would have a negative impact on the perception of the transparency of elections. Furthermore, the committee notes the value and logic of having a central tally room in the nation’s capital, which extend beyond any dollar or logistical considerations. The committee has, therefore, recommended that the government ensures the national tally room is retained for future federal elections.

I take this opportunity to thank my committee colleagues, I commend the report to the Senate.

Senator STERLE (Western Australia) (5.06 pm)—I wish to add some comment, following on from Senator Fierravanti-Wells. The inquiry took in a number of submissions. As Senator Fierravanti-Wells mentioned, we did a site visit to Chatswood, but I would like to add a different perspective on it.

When we got to Chatswood, we had the ability to talk to employees. I noticed at Chatswood that there were a number of employees who had been casual for many, many years. We understand that the load of the Electoral Commission is all go at certain stages, and then there is not a heck of a lot of work to do for the employees afterwards, but I had some concern that no-one had a happy story amongst the employees at Chatswood.

A lot of the employees said that they had come from smaller divisional offices before the co-location and they found in the co-location that, for some reason, there were going to be superoffices to look after members, senators and inquiries and to enrol people on the electoral roll. In their presentation, the employers told us what great employers they were and how happy everyone was. When we actually got to speak to the employees, it was a completely different story. The employers had said, ‘We do our best to give thousands and thousands of people some work.’ I understand that the workload of the Australian Electoral Commission is enormous, but you cannot expect workers to hang on by their fingernails, getting a couple of hours a week, and to be waiting on the end of a telephone line for a call from the Australian Electoral Commission.

I commend the report to the Senate. I think there is a heck of a lot more work to do. I note that in the last election, in 2004, there were some 420,000 voters who en-
rolled at the last minute. As we know, draconian laws were passed by the Senate not long ago that overturned the ability to do that. For some reason, and I do not know why, the government wanted not to make it as easy as possible for voters to get on the electoral roll but to make it harder for them. It is a travesty, unfortunately, that under this government it is easier to donate to political parties without too much transparency and accountability than it is, sadly, for new voters to get on the electoral roll. We have a lot more work to do. I will be looking forward to doing a lot more work on this committee after the election. On that note, I commend the report to the Senate.

Question agreed to.

DELEGATION REPORTS

Parliamentary Delegation to Canada and Germany

Senator PATTERSON (Victoria) (5.09 pm)—by leave—I present the report of the Australian parliamentary delegation to Canada and Germany, which took place from 14 to 28 April 2007. I seek leave to move a motion to take note of the document.

Leave granted.

Senator PATTERSON—I move:

That the Senate take note of the document.

I wish to comment on the delegation to Canada and Germany, led by the Speaker of the House. In order to save the time of the Senate, I refer my Senate colleagues to the Speaker's tabling statement for the report. He outlined in more detail than I will the things we did. If anybody wants to see what we did in more detail, they can go to the report.

I want to start by thanking the Canadian and German parliaments, led by their presiding officers, for the warmth of their welcome, the interesting programs they arranged and the hospitality they showed us. Both in Canada and in Germany the hospitality was outstanding. Also, our thanks are due to our High Commissioner to Canada, Bill Fisher, our ambassador in Germany, Ian Kemish, and their staff at the embassies, for the work they put in to make sure the visit was a productive one. The Department of Foreign Affairs and Trade, the Parliamentary Library and parliamentary relations officers also made a significant contribution to our understanding before we went and arranged our plans. They made a significant contribution to this successful delegation.

When he was here last week, the Prime Minister of Canada, despite emphasising the similarities, explained that one difference between Canada and Australia is that Canada has an appointed Senate. Their senators are appointed until they are 75 years of age. He expressed very clearly that he hopes to reform that and that he hopes to have a Senate that is more representative of the Canadian population.

We found that there are similar issues facing Australia and Canada that result from being federations. They have provinces to deal with, and it is similarly the case in Germany. We all expressed the challenges that face any federated country in dealing with provinces or states. We talked at length about that with our Canadian and German colleagues when we met with them.

The Speaker of the House outlined the issue of low unemployment rates affecting rural areas, which is the case in Canada. He said:

The delegation heard about the successful Seasonal Agricultural Workers Program, which sees around 20,000 workers come to Canada from Mexico and Caribbean countries to undertake seasonal agricultural work. The details of the program are outlined in the delegation's report. The key point is that the program works because there are incentives for all participants—workers, employers and the participating countries—to
make it work. Given similar labour issues facing Australian agricultural industries, the applicability of a similar scheme to Australian circumstances would be worth exploring.

We saw a range of things. We were ably assisted by Mr Christopher Paterson, a senior adviser to the Speaker, and Mr Andres Lomp, the delegation secretary. On behalf of the honourable senators and members, I thank them for the work they put in and for putting up with us when sometimes we were a bit overtired. I would emphasise that, when we have these parliamentary delegations, we need to seriously consider that people need to have some time to recuperate after they have been travelling all night. I go on about this at length, but in both the delegations I have been involved with I think we pushed the envelope a little. We are sometimes forced to do this because we have to fit into a program offered by another country.

I would also like to raise another issue while I am on this. In the next parliament, I would like consideration to be given to committees travelling together at least once in a parliamentary session. It is very difficult to meet the needs of everybody on a parliamentary delegation. Somebody will want to go and look at transport, somebody else will want to look at governance and somebody else will want to look at social policy. Sometimes it is hard to meet the needs of everyone. I think it would be valuable for committee members to at least have the opportunity to travel together to look at significant issues that affect their particular interests. That is not to take away from what we learn from these wonderful experiences, where we are exposed to wonderful opportunities that we would not normally be exposed to. They are wonderful learning experiences, but I wonder if consideration should not be given to some areas of interest for delegations that could really go into depth. That is the only way in which I think we can improve these visits.

I will just say, before my colleague on the other side gets up and maybe refers to my love of German white asparagus—she has referred to me as a ‘spargel sister’ ever since we came back—that I enjoyed the delights of Canadian food and German food, particularly because we were there in asparagus season. If anybody wants to go to Germany, they must go when they have those very large white asparagus. I came back looking like an asparagus, I think, because we ate so many of them!

One of the great opportunities on these trips is to break down some of the barriers that exist between parties and learn more about individuals on the other side. It is a shame that the public cannot see the cooperation that goes on in these committees. Whether it be a committee, such as the Senate Standing Committee on Regulations and Ordinances and the Senate Standing Committee for the Scrutiny of Bills, or whether it be a delegation, there are friendships made. I think that learning about each other is just as important as learning about other countries. I commend the report to the Senate.

Senator McEWEN (South Australia) (5.15 pm)—I too would like to make a few comments about the delegation report. The delegation in April this year to Canada and Germany, which I was very fortunate to be able to attend, was a valuable opportunity to see issues of common interest between those two countries and Australia and to get a better understanding of the social, political and economic developments currently taking place in Europe and North America.

Like Australia, Canada is in the midst of a resources boom and is facing a skills crisis. Canada has some interesting initiatives to try and deal with that. In 2005 alone, some 100,000 skilled and unskilled workers sup-
implemented Canada’s workforce. We met some of those at Whistler, in British Columbia, where the delegation learnt how important temporary holiday maker visas are to the successful operation of the ski and tourism industry in particular in that country.

The delegation met a number of young Australian workers—in restaurants, on the ski fields and in hotels—and it was very pleasing to hear the Canadian Prime Minister, in his speech to the parliament last week, say that he would seek to get the agreement of his parliament to increase the number of young Australians who may go and work in Canada under that scheme every year. I think it must be a wonderful opportunity for young Australians to go and have the excitement and adventure of working in a foreign country.

As a participant in last year’s somewhat controversial Senate Standing Committee on Employment, Workplace Relations and Education inquiry into the proposal to have a scheme of bringing in labour from the Pacific Islands to assist in the horticultural harvest in Australia, it was particularly interesting for me to learn about Canada’s experience of a program like that, the Seasonal Agricultural Workers Program, which Senator Patterson has already referred to.

In 2005, 20,000 employees from countries around Canada were employed under the Seasonal Agricultural Workers Program. The Canadians, I have to say, were surprised that the proposal to establish such a program in Australia was so controversial last year. But it was pointed out by the Canadians that such schemes do have the potential for exploitation of workers, and it was only vigilance on the part of the Canadian government and peer pressure within the agricultural industry that ensured exploitation was kept at bay.

Canada requires standardised contracts that ensure employers using the seasonal agricultural workers scheme provide appropriate working conditions, accommodation, stipulated wages and subsidised transportation costs. When we were speaking with the immigration minister about the success of that scheme over a number years, as Senator Patterson has said and as is reflected in the report, the minister said that it only works because the incentives are there for everybody who participates to make it work.

Another interesting aspect of the portion of the time we spent in Canada was meeting with representatives of indigenous communities and members of the parliament who were dealing with indigenous issues in Canada. Obviously, indigenous Canadians face some of the same difficulties that Indigenous Australians face, but those issues are being dealt with differently in Canada. There is a process of treaty negotiations between the federal and provincial governments and indigenous people, and currently some 40 treaty actions are being considered to define the rights and responsibilities of the First Nations and the state and federal governments in Canada.

The Canadian government has also established a $100 million trust to provide practical support for reconciliation—which, I have to say, is in stark contrast to our government, which unfortunately has so far refused to even say sorry to our Indigenous peoples. The aim of the Canadian fund is to provide First Nations with the tools, training and skills so that they can participate fully in land and resource management and land use planning processes and develop social, economic and cultural programs appropriate for their communities.

One other interesting part of our tour in Canada was a visit to a winery near Niagara-on-the-Lake which was being managed by an expatriate Australian winemaker. I have to say that, while the product was good, it will
probably never be quite as good as South Australian wine.

In Germany the delegation focused in particular on climate change, energy, security and environmentally responsible and sustainable industry. There was a lot to learn from the Germans in this regard. Germany, like Canada but unlike Australia, is a signatory to the United Nations agreement on Kyoto, and that does inform the Germans’ progress towards achieving environmentally sustainable manufacture, which is what we looked at in particular.

The delegation was fortunate enough to attend a parliamentary session at which Germany’s environment minister, Sigmar Gabriel, presented a major policy statement on the environment. In his statement he outlined the government’s plan for addressing climate change until 2020. I noted that Germany had cut its carbon dioxide emissions by 18 per cent from its 1990 baseline but the nation is still three per cent away from achieving its climate protection target for the period 2008-12. The minister said in his statement that for Germany to fulfil its Kyoto commitments it would need to cut greenhouse gases by a further 37 million tonnes. That is no small target.

The minister also indicated that the climate protection strategy offers Germany a wealth of economic opportunities. He explained that improving the energy efficiency of power plants, machinery, heating systems and automobiles would create jobs for Germany’s engineers and skilled workers in the long term. It was an important speech to hear and it was heartening to witness a major nation of the EU not only frankly discussing its issues with achieving energy and environmental targets but looking positively at how it could do that while not negatively impacting on economic growth in that country.

The delegation went to both Stuttgart and Frankfurt, where we were given the opportunity to visit important German industries. We visited the world’s largest DaimlerChrysler plant, at Sindelfingen, and saw a range of measures that that company has taken to reduce the environmental impact of the manufacturing plant itself and of the vehicles that it produces. This was particularly interesting for me as a senator from South Australia, which is very reliant on automotive manufacturing.

The delegation was told by DaimlerChrysler representatives we met with that it was important not just for government to impose restrictions on the way manufacture is carried out but also for companies to challenge themselves—to ensure that environmental standards set by the government are met and that industries are actually looking further than those standards and into the future. The company’s somewhat incredible commitment to reducing its environmental footprint impressed all of the delegation.

We were also very fortunate to visit an agricultural community near Frankfurt, a community which has, with subsidies from local, federal and EU sources, been able to construct agricultural facilities that benefit the whole community through cooperative arrangements. In particular, I was very impressed to see the steps taken to use biodiesel to fuel the machinery and vehicles used in that cooperative agricultural venture. There was something to be learned there about how our agricultural industry sectors in Australia can work better together to address issues to do with climate change and energy.

While in Germany we also visited a smaller business—the Hassia mineral water factory. There we had the opportunity to hear from a very old, established family company about how they were dealing with workplace relations issues since the fall of the wall, be-
cause the company had employees in both the former West Germany and East Germany, where conditions were different. They also spoke to us about their opportunities to move into the Asian market.

I also appreciated very much the opportunity to attend an Anzac Day service in Berlin with the rest of the delegation. It was wonderful to see many Australian tourists there who did not want to miss an opportunity to attend a memorial service on that very important day. I too would like to thank all of the people who supported us on that delegation: in particular, Mr Andres Lomp, from the Parliamentary Relations Office; Mr Chris Paterson, from the Speaker’s office; and His Excellency Bill Fisher and staff at the Australian High Commission to Canada. (Time expired)

Question agreed to.

SUPERANNUATION LEGISLATION AMENDMENT BILL 2007

First Reading

Bill received from the House of Representatives.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (5.27 pm)—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 BRANDIS (Queensland—Minister for the Arts and Sport) (5.27 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Superannuation Legislation Amendment Bill 2007 makes a number of enhancements to the Australian Government’s civilian and military superannuation schemes.

The Bill removes, from 1 July 2008, the requirement for contributory members of the Commonwealth Superannuation Scheme, the CSS, to make member contributions to the scheme. As a result, member contributions will become voluntary. This will provide members with the same flexibility and incentives to contribute to superannuation that are available to the broader community.

The Bill also allows, from 1 July 2008, eligible members of the PSS to elect to leave the PSS and join another superannuation arrangement for the payment of future contributions. A member’s eligibility to join another superannuation arrangement will be determined by the choice arrangements that their employer has in place. For example, a member who is able to join the Public Sector Superannuation Accumulation Plan, the PSSAP, will move to that scheme in the first instance and from there will have access to the Government’s broader choice of fund arrangements. The Bill also amends the membership provisions for the PSSAP to allow eligible PSS members who have elected to join the PSSAP to become members of that scheme. These changes will provide eligible members with the flexibility for future contributions that is already available to most of the Australian workforce.

From 1 January 2008, the Bill will enable members of the CSS to obtain early release of their funded account balances on severe financial hardship and compassionate grounds to the extent allowed under the superannuation regulatory framework.

The Bill will also facilitate, from 1 January 2008, the prospective restoration of pensions for persons whose spouse pensions, provided under certain closed Australian Government civilian and military superannuation schemes, were cancelled upon remarriage. Upon successful application, spouse pensions cancelled upon remarriage (prior to 1976 in the civilian scheme and prior to 1977 in military schemes) will be prospectively reinstated.

Changes to the CSS as a consequence of the Government’s Better Super reforms are also included
in the Bill. The main amendment will ensure the continued payment of employer productivity contributions where a member has not provided their tax file number. This is consistent with the arrangements in the broader community where employer contributions would still be payable even though the member has not provided their tax file number. The other amendments are technical and take account of the payment of amounts from the CSS Fund in relation to release authorities issued by the Commissioner of Taxation and to reflect changed superannuation terminology.

Where necessary, changes for the PSS to reflect the measures just described, will be made by a PSS Amending Deed.

The Bill also ensures that the entitlement to benefits in the military superannuation schemes relating to post retirement marriages is consistent with the treatment in the civilian schemes. The Bill also addresses an anomaly in the Family Law provisions of the Defence Force Retirement and Death Benefits Act 1973 to allow the Family Law Orders to be applied as intended.

Debate (on motion by Senator Brandis) adjourned.

AUSTRALIAN POSTAL CORPORATION AMENDMENT (QUARANTINE INSPECTION AND OTHER MEASURES) BILL 2007

NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE AMENDMENT (ALCOHOL) BILL 2007

Returned from the House of Representatives

Messages received from the House of Representatives returning the bills without amendment.

COMMITTEES

Foreign Affairs, Defence and Trade Committee

Reference

Senator MILNE (Tasmania) (5.28 pm)—

I move:

That the following matter be referred to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 3 December 2007:

The Australia-Russia Nuclear Cooperation Agreement signed on 7 September 2007, with particular reference to:

(a) the ramifications of the agreement with respect to global and regional security;
(b) the risk that Australian uranium would be exported from the Russian Federation (Russia) to third states, contrary to agreements;
(c) the 2005 Russian deal to sell uranium to Iran to fuel the Russian-built Bushehr nuclear plant, in spite of widespread fears about Iran’s suspected nuclear weapons program;
(d) the implications of the agreement for the sale of nuclear fuel to India;
(e) the extent to which the supply of Australian uranium would enable Russia to increase its export of nuclear material;
(f) the weakness of the rule of law, including corporate law, in Russia;
(g) the ability to verify Russia’s compliance with any agreed safeguards noting, in particular, the European Parliament’s resolution of 10 May 2007 on the European Union-Russia Summit which expressed concern about, inter alia:

(i) Russia’s lack of respect for human rights, democracy, freedom of expression, and the rights of civil society and individuals to challenge authorities and hold them accountable for their actions,
(ii) the use of force by Russian authorities against peaceful anti-government demonstration and reports of the use of torture in prisons, and
(iii) the restriction of democratic freedoms in the run-up to Duma elections in December 2007 and presidential elections in March 2008; and
(h) any related matters.

This motion relates to the Australia-Russia Nuclear Cooperation Agreement signed on 7 September 2007. I am moving this because I am somewhat concerned that last week I
moved for this matter to be referred under the JSCOT process—the Parliamentary Joint Standing Committee on Treaties—and the Senate voted it down. I am now moving that it go to the Senate committee because I think that this needs considerable examination and consideration. I would appreciate some explanation from the government because, according to the explanatory notes that are on the government website:

The Agreement will come into force when each country has completed its domestic ratification processes, likely to be in the second half of 2008 at the earliest. In Australia the process involves parliamentary and public scrutiny including consideration of the Agreement by the Parliamentary Joint Standing Committee on Treaties (JSCOT).

I would appreciate some clarification from the government that this particular agreement for the sale of Australian uranium to Russia is going to be assessed under the JSCOT process, as the explanatory notes seem to suggest. I can only assume, if that is the case, that it will be examined under that process and that the reason that the government opposed my reference was that it cited, in particular, a need for consideration to be given in relation not only to the strategic and security issues pertaining to the Australia-Russia uranium agreement but also to human rights; the rule of law; the ability to verify Russia’s compliance; the issue of the retreat from democracy, freedom of expression, the rights of civil society and the rights of individuals to challenge authorities; the use of force by Russian authorities against peaceful antigovernment demonstrations; the reports of the use of torture in prisons and, as I indicated, the restriction of democratic freedoms in the run-up to the Duma elections in December 2007 and the presidential elections in March 2008.

This is a particularly significant day to be rising in the Senate to talk about an Australian agreement because I have only just learned that, overnight in Europe, Australia signed on to George Bush’s Global Nuclear Energy Partnership. It has received no publicity in Australia and, if it were not for the *Times of India*, Australians would still be ignorant of the fact that last night Australia did sign to be part of the Global Nuclear Energy Partnership, which is George Bush’s initiative, and which the Prime Minister has been an enthusiast—

**Senator Brandis**—How refreshing to hear you welcome another Howard government initiative, Senator Milne.

**Senator Milne**—I am appalled that Australia has signed up to the Global Nuclear Energy Partnership. I have been a critic and an opponent ever since the Prime Minister went to the United States last year to start talking about it, because we all know that it is about selling more uranium into the global nuclear fuel cycle and taking back the waste. As we also know, the reason Canada has not signed up to the GNEP is that Canada does not want to become an international waste dump. The Prime Minister has now set Australia up in the GNEP and we have learned that from the *Times of India*. It seems as though we have to go to the nuclear states to find out what our own country is involved in around the world.

But I return to the matter of the reference to the committee of the Australia-Russia uranium agreement because I think this is critically important. Less than a week after President Putin left Australia to go home to Russia, we learn that Russia tested the world’s most powerful vacuum bomb last week. An article in the *Sydney Morning Herald* states:

“Test results of the new airborne weapon have shown its efficiency—
in inverted commas—
and power is commensurate with a nuclear weapon,” Alexander Rushkin, deputy head of Russia’s armed force chief of staff, told Russia’s First Channel television.

“You will now see it in action, the bomb which has no match in the world is being tested at a military site.”

It goes on to say:

A vacuum bomb or fuel-air explosive causes widespread devastation.

A typical bomb of that type is dropped or fired, the first explosive charge bursts open the container at a predetermined height and disperses the fuel in a cloud that mixes with oxygen.

A second charge ignites the cloud, which can engulf objects or buildings.

Rushkin goes on to say:

“... I want to stress that the action of this weapon does not contaminate the environment, in contrast to a nuclear one.”

So less than a week after Australia signs on to an agreement with the President of Russia on a nuclear arrangement, the President goes home to welcome the explosion of the world’s most powerful vacuum bomb. These are hardly the activities of a state which is supposedly only interested in peace and disarmament.

We have also reports from Russia about human rights abuses. In particular, I would like to talk about Larissa Arap. I will raise her name in this parliament time and time again because she is a young dissident who finds herself now in a psychiatric facility in Russia, in an asylum reminiscent of the old KGB days. She is a critic of President Putin.

As a result, she was put in a psychiatric institution, and there has been a change in the law in Russia to remove the right of sectioned patients to seek independent assessment. There are dozens of incidents now suggesting that Russia’s psychiatric system is rapidly becoming as unsavoury as it used to be in Soviet times. Larissa Arap is a young woman who has been an outspoken critic of the Putin regime, particularly in relation to the crackdown on dissidents, and that is where she finds herself.

I believe at this stage that Larissa is still alive, unlike the demonstrators outside the Angarsk enrichment facility, where one demonstrator was murdered, bashed to death, recently and a number of others were seriously injured. President Putin suggested that it was just the actions of local hooligans and not state endorsed violence. State endorsed violence is occurring all over Russia as we speak. In fact, there is a great deal of evidence to suggest that the Moscow apartment bombings were the work of the FSB and also that the FSB is supporting fundamentalist Islamic schools in Chechnya to foment the violence there to justify the crackdown. That is what is being said currently about—

Senator McGauran—You are a sad conspiracy theorist if you think that.

Senator MILNE—It is quite interesting that the senator who is interjecting is so ill-read when it comes to what is actually going on in Russia at the moment. That is why it would be extremely useful to have the inquiry as I am suggesting it, because then we could actually test the allegations. From a number of academics in Sydney last week and a number of people from Russia who also work in Russia, there is now a considerable body of opinion to suggest that that is the way that the Putin regime operates.

I think the naivety that has been demonstrated by the government is reminiscent of former Prime Minister of Australia Pig Iron Bob—whom Prime Minister Howard wishes to emulate—who in 1938-39 when the waterside workers tried to ban the export of pig-iron to Japan overrode that. Of course, the pig-iron went to Japan with appalling consequences for Australia and in fact for the rest of the world. I would suggest that, as we have had Pig Iron Bob, our current Prime
Minister could be known as ‘Yellowcake John’—emulating Pig Iron Bob in the dying days of his prime ministership.

I hope we will hear from the Labor Party in a moment. If it is true that there is until the middle of 2008 for a proper assessment of this Russian nuclear agreement, I hope the Labor Party will conduct, under this process, a proper assessment of this deal with the Russians such that the human rights ramifications are taken into account and not just the interests of BHP Billiton and Rio Tinto. We know that they have been talking to the Russians for some time about this particular text—in looking at the agreement it seems that it could easily facilitate the involvement of both those companies in mining uranium in Russia as well as here and also the involvement of private sector investment in the uranium enrichment facility in Angarsk. It could well be interesting because Russia under the current leadership has demonstrated no respect for the rule of law, whether it comes to human rights, civil rights or corporate law, as Shell discovered when it built a large pipeline only to have it nationalised after the event. The same has occurred with Khodorkovsky, who has been jailed and his Yukos assets nationalised. He remains in prison in Russia with what are trumped-up charges such that the Swiss federal court recently has said that it will not provide information to the Russians because it is clearly a politically motivated trial to keep him in jail until after the Duma elections and the presidential elections next year.

So we have an appalling pattern emerging in Russia. President Putin has brought in a new crime of extremism, and it is under that crime that a number of journalists have been found guilty. We know that at least 14 journalists have been murdered in Russia since Putin came to power and to this day there are suggestions that up to 21 have been murdered. Putin has also brought in a law to say that it is legal to kill an enemy of the state outside Russia, which means the murder of Litvinenko becomes a state sanctioned act of violence under the Putin regime. That is a matter of fact.

Only last week I met with Grigory Pasko just before he left to go back to Russia. He was terrified. He was the journalist who reported the dumping of nuclear waste from Russia into the Pacific. He is now a declared enemy of the state. That is the kind of behaviour that is going on under President Putin. It is extremely sobering to consider what is happening there and then look at the political process where President Putin has moved to remove the democratic election of governors. They are now all appointed by the state. We also have a change to the electoral laws that prevent other political parties being able to contest the elections there because suddenly they do not meet the new requirements.

All of these things are actually occurring in Russia at the moment and it has been recognised by the European Union, which on 18 May 2007 passed a long resolution in which it expressed its deep concern about:

... the use of force by the Russian authorities against peaceful anti-government demonstrators in Moscow and St Petersburg ...

And stressed:

... that freedom of speech and the right of assembly are fundamental human rights ...

In fact, the British ambassador to Russia has been treated appallingy because he stood up for free speech and human rights when he addressed a conference in Russia. The Australian ambassador has not shown the same level of courage in terms of speaking out on these issues, and I urge the government to do so.

The Europeans include in their treaties obligations about civil rights and human rights. Have a look at the European treaties that they have entered into. They incorporate into
those treaties those issues. In fact, Don Rothwell from the ANU in a critique of the government’s proposed arrangements says that there should be conditionality clauses at the very least—making the treaty conditional upon human rights.

_Senator Payne interjecting—_

_Senator MILNE—_Apparently, Senator Payne is outraged at the notion that you would have conditionality clauses in such a treaty that cover issues such as human rights, democracy and the rule of law. I urge Senator Payne and other government members to read Don Rothwell’s advice in relation to negotiating positions for Australia with regard to that Australian-Russian agreement because there is obviously room for conditionality and it is not in there. The conditionality clauses on human rights are not in this agreement, nor is there a commitment to the rule of law or to the upholding of democracy and the democracy movement. The European Union went on to express its:

... deep concern at the continuing reports from Russian and international human rights organisations about the use of torture and the commission of inhumane and degrading acts in prisons, police stations and secret detention centres in Chechnya ...

The EU strongly condemned. It called on the Russian authorities to:

... ensure that the rights guaranteed by the European Convention on Human Rights, to which Russia is a signatory, are fully respected in the Chechen Republic ...

It also expressed its concern:

... about social and political polarisation and the restriction of democratic freedoms in the run-up to the Duma elections ...

And called on:

... the EU and on Russia, as a member of the UN Security Council, to assume their responsibility for the Iranian nuclear issue ...

It expressed its concern:

... about declarations made by President Putin in reaction to the United States’ plans to deploy components of its anti-ballistic missile system in Poland and the Czech Republic and calls on all parties involved to engage in dialogue ...

Et cetera, et cetera. So the European Union is very aware of what is going on in Russia. The European Union is also very afraid because when President Putin turned off the gas to Europe he knew very well what he was doing, and it gave all of Europe a sense of the power of Russia as a major energy supplier to Europe, and made the rest of Europe scramble on this issue of energy security, which is why they are going full-on in renewables and trying to develop alternatives so that their dependence on Russia is minimised, given the way things are going.

At the same time, you had the Russians joining in the military exercises under the Shanghai Cooperation Organisation. You had Russian bombers for the first time resuming their long-range flights. Of course, the bombers I am referring to are capable of carrying nuclear weapons. It is in that scenario that Australia rushes with its Australia-Russia Nuclear Cooperation Agreement. I think it is foolhardy in the extreme for Australia to put profits from uranium sales ahead of global security, and that is precisely what is going on here. Nothing in this agreement talks about human rights, the rule of law, freedom of speech or guaranteeing any of those things. There is no reason why all of those things ought not to have been in conditionality clauses. I will be very interested to hear what the opposition has to say because, as I indicated, it is likely to be in government and dealing with the joint house assessment of the process. I would hope that the opposition would take the issue of human rights more seriously than the government does.

I note with interest, of course, that it was the waterside workers who were trying, back in 1938-39, to do the right thing in terms of
the exports of pig-iron to Japan. Under this government, of course, not only have we had the secondary boycotts but we now have the ACCC legislation coming in here to try and prevent even any kind of civil protest. So we have a situation where things have moved desperately backwards in the last 70 years in relation to the capacity of civil society in Australia to take action when governments become so bereft of any kind of ethical stand. There is no ethical framework within which this agreement with Russia has been assessed. There has been no discussion of it except in the context of maximising profits from the export of Australian uranium. That is the only context.

BHP and Rio Tinto have been in there all the way. Through you, Mr Acting Deputy President Hutchins: where has there been the input from the academics and the human rights and civil society groups in relation to this Russia-Australia agreement? They have been nowhere; they have been excluded from the process. The values that are behind this agreement are just putting profits ahead of principle and it will be to our detriment. Prime Minister Howard will have the legacy he wants: he will be reminded that he has emulated Pig Iron Bob by becoming ‘Yellowcake John’.

Senator PAYNE (New South Wales) (5.47 pm)—Let me say at the outset that it is clear to me that there is nothing that the Australian Greens will not do to suffocate Australian business, no matter where it is active. Senator Milne’s remarks this afternoon are just another example of that. What the Australian government has to say in relation to this particular motion to refer the agreement to the Senate Standing Committee on Foreign Affairs, Defence and Trade is what the minister has in fact most explicitly outlined on the record until now anyway. We would not be entering into this agreement if we were not confident that Russia will comply with the commitments given in the Australia-Russia Nuclear Cooperation Agreement.

The position from which Australia starts, as far as reserves of uranium are concerned at the very least, is that we have 38 per cent of the world’s reserves of uranium, which is indeed more than any other country. In the 2006-07 financial year, we exported about $630 million worth of that uranium, which is expected to rise to $814 million in this financial year. Under the arrangement in this particular discussion, Australia will export about 2,000 tonnes of uranium annually, and that will provide about a third of Russia’s imported uranium. It is fair to say that, until this point, Russia has had its own considerable energy resources and has not needed to import uranium, but it does have considerable plans to substantially increase its nuclear fuel capacity—30 new reactors in the next 30 years—and that means it is, in fact, searching for new opportunities.

This particular agreement, the 2007 Australia-Russia Nuclear Cooperation Agreement, will supersede the 1990 treaty, which allowed for Australian uranium to be processed by the then USSR on behalf of third countries which had safeguard arrangements with Australia, but the uranium could not be used domestically by the Soviets. No Australian uranium has been sent to Russia for processing in the 17 years since that agreement was signed. In fact, until recently Russia had not designated which facilities were for military purposes and which were for fuel production, so it was not eligible for the mandatory safeguard inspections upon which Australia insists. Last year, Russia agreed to separate its military and civil programs, paving the way for this particular arrangement with Australia.

Regarding Australia’s economic engagement with Russia, I think it is worth noting for the record that Russia is Australia’s sec-
second fastest growing export partner—only just behind India and ahead of China—with 95 per cent growth in 2005-06 alone. In 2006, Australia exported $656 million worth of goods to Russia, which doubled the amount of the previous year.

Let me make it absolutely clear: in line with standard Australian treaty practice, the Australia-Russian Nuclear Cooperation Agreement and a national interest analysis will be tabled in parliament for consideration by the Joint Standing Committee on Treaties. The government has been clear on this process from the moment that negotiations on the agreement were announced. In fact, in the minister’s press release of April this year, he announced that:

In accordance with Australian treaty-making practice the agreement will be tabled in Parliament for review by the Joint Standing Committee on Treaties when negotiations have been finalised and in advance of binding treaty action being taken.

In terms of the timing of when the agreement and the national interest analysis will be tabled for consideration by the Joint Standing Committee on Treaties, that is indeed dependent on the parliamentary sitting schedule. It is worth noting that, if the agreement were also referred to the Senate Standing Committee on Foreign Affairs, Defence and Trade, it would then be in the situation of being considered by both that committee and the JSCOT in parallel. I understand and would have thought that it would normally be the case that there would be ample opportunity for members of the Joint Standing Committee on Treaties to seek responses to the questions which Senator Milne and other senators raise if they wish to do so—certainly Senate members of that committee, as it is a joint committee.

As I indicated earlier in my remarks, the government is confident that Russia will abide by the terms of the agreement as they are negotiated—namely, that Australian uranium would only be used in facilities covered by Russia’s safeguards agreement with the IAEA. As has been stated elsewhere and also by the minister, it is simply not in Russia’s national interests to misuse Australian uranium. Inevitably they will become increasingly reliant on external supplies of uranium to fuel their growing nuclear power industry and if they misuse it then they effectively cut off that option for themselves. They have no need to import uranium particularly for nuclear weapons. As a party to the nuclear non-proliferation treaty, in the last 15 years they have made a number of statements in relation to their use of uranium. They announced in 1994 that they had ceased production of fissile material for weapons. They have made substantial cuts in their nuclear weapons build-up since the Cold War, with further reduction agreements made with the United States in the 2002 Moscow treaty.

All of Australia’s bilateral nuclear safeguards agreements, which include the existing 1990 Australia-Russian agreement as well as the new agreement, require that Australia’s consent be obtained before Australian nuclear material can be transferred to a third country. I note that that was not adverted to by Senator Milne. Russia, like all parties to the nuclear non-proliferation treaty, has committed to supply nuclear material to non-nuclear weapons states only for peaceful purposes. If one looks at Russia’s record in the Security Council then it is worth noting that Russia has supported international action against Iran’s sensitive nuclear activities, including Security Council resolutions 1737 and 1747, which have imposed sanctions on certain activities, including Iran’s enrichment related and reprocessing activities.

With regard to this particular motion—and it seems to me that the motion is confusing a number of issues—and the points it raises in
relation to the implications of the agreement for the sale of nuclear fuel to India, they are separate agreements, separate matters, and I am at a loss to understand where Senator Milne is endeavouring to draw a comparison. In signing the agreement Russia has, as I said, committed to abiding by all of the agreement’s provisions.

To clarify this for the record, in relation to comments Senator Milne made during her remarks this afternoon, I was indeed appalled by an observation that Senator Milne made, but not the one relating to conditionality at all—and it would be ridiculous to pretend that were the case. What I was appalled by was the cavalier manner in which Senator Milne chose to cast aspersions on our diplomatic representatives, in this case in Russia, and what they may or may not be doing. It occurs to me that Senator Milne is most unlikely to know in fact what they are or are not doing and is even more unlikely to have made best endeavours to determine the answer to that question. Reflecting on their role and their job without even bothering to do that is in my view most ill advised in this chamber.

In relation to the other very important matter of human rights, which Senator Milne raised in her remarks and from which I do not demur for a moment in terms of their importance and in terms of issues which are currently under debate in relation to Russia, there are opportunities in this chamber and in the committees of the parliament to deal with those matters. As I understand it, membership of the Senate Standing Committee on Foreign Affairs, Defence and Trade was available to the minor parties but that opportunity was not taken up. That is a choice that they have made. It is not one which I am obliged to defend or otherwise. But other opportunities do arise and I would commend those to the senators who have raised these concerns and encourage them to participate at that level.

Senator GEORGE CAMPBELL (New South Wales) (5.56 pm)—I wish to indicate briefly that Labor supports this reference to the Senate Standing Committee on Foreign Affairs, Defence and Trade. The reference gives the parliament the opportunity to examine the details of the bilateral agreement signed by President Putin and Mr Howard during APEC. Given that Russia is a signatory to the nuclear non-proliferation treaty, Labor starts from a position of being open to sales of uranium to an NPT signatory. But Labor would certainly like to see Russia ratify the International Atomic Energy Agency’s additional protocol which it signed seven years ago. The additional protocol strengthens the inspections and safeguards regime.

The committee’s scrutiny of the agreement will be an important part of the process of detailed consideration. In particular, the reference to the Foreign Affairs, Defence and Trade Committee will provide the opportunity to examine the adequacy of safeguards being built into the agreement, domestic security issues relating to Russia and the importance of the IAEA additional protocol to the agreement. This is much the same process that was conducted in regard to the sale of uranium to China. Labor therefore supports this reference.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (5.58 pm)—The Democrats also support the terms of reference put forward today to examine Australia’s deal with Russia. We do not think that the parliamentary oversight which Senator Payne suggests will be provided through the Joint Standing Committee on Treaties is adequate. Typically that committee does not undertake a thorough examination of the sorts of issues that have already been raised by
Senator Milne and which I will raise as well. It is doubtful that that could be in any way a thorough going over of this agreement, so why not refer it to a committee for proper examination? I would also ask why it is that we have to have this deal with Russia right now. This is a major departure from the previously cautious approach that Australia has taken to who gets to have its uranium. At the end of an electoral cycle why is it that suddenly this agreement needs to be renegotiated and signed? I think that is something of a mystery. It is also questionable whether, with an election looming, even the treaty process which is being promised will have any effect at all.

The first point I want to make is that we are being sold something of a pup, because it is not clear to me how the government can justify Russia needing our uranium. Russia has its own uranium. Even if Russia were to install 30 reactors over the next 30 years, there would be no need for us to rush into an agreement with Russia to hand over our uranium to it. It does not need it at this point in time. In fact, Russia has 700 tonnes of highly enriched uranium which was extracted from the nuclear weapons that it dismantled in the 1990s. That highly enriched uranium is required to be mixed with uranium in order to make a substance which is then exported to other countries, notably the United States. The real issue here seems to be not so much that Russia needs our uranium but that Russia needs our uranium so that it can pass a product off to the United States. At least half of the United States’ supply of reactor fuel has been sourced from Russia over recent years. But there is, as I said, 700 tonnes of highly enriched uranium still sitting there. Not only that but there are 10,000 weapons.

It has been said that Russia needs to be congratulated on reducing its armaments, its nuclear weapons arsenal. It did; it got rid of mostly obsolete weapons, and that presumably did not pose a problem, but it still holds 10,000 nuclear warheads—probably enough to blow up the planet as we know it. Why Australia has not taken the opportunity to leverage out of Russia an agreement to a time frame within which it will dismantle the remainder of its weapons is anyone’s guess. Since the United States stands to benefit from this deal, or so it would seem to me, then why not put some leverage on the United States as well? These two major powers, together with the other nuclear weapons states around the world, are ignoring the nuclear non-proliferation treaty, which requires them to disarm. The deal was that countries that were not nuclear weapons states would not take up nuclear weapons provided that the nuclear weapons states would begin a process of dismantling their weapons. That has come to a standstill. There has been no progress in the United States, and, as I said, while Russia has almost halved its nuclear weapons, 10,000 remain.

The other thing we should be pressing Russia to do is ratify the additional protocol of the IAEA. Why not do that? Here is a perfect opportunity to make sure that the weapons inspection regime is extended so that the IAEA can properly supervise Russia’s separation, so-called, of peaceful activities and uses of uranium from warlike activities and uses. Again, the government has failed to do the right thing in terms of the security of this material.

On human rights, similarly, the government has chosen to ignore the fact that the human rights regime—in fact, the compliance of the Russian government to its own laws—has been appalling in recent years. The radioactive polonium poisoning of Alexander Litvinenko hit the world’s papers, and the United Kingdom is having great difficulty in prosecuting the KGB agents whom it expects are responsible for his awful death.
Not only that but, at a forum just a couple of weeks ago, Senator Milne and I heard that 14 journalists who were dissidents and critics of the Putin regime have mysteriously lost their lives in violent circumstances. Garry Kasparov, the former world champion chess player, urges Australia not to sell uranium to Russia, saying that it has:

… zero obedience to the rule of law …

We heard lots of evidence about the extent of the corruption in Russia, which gives us no confidence whatsoever that our uranium will be held secure. It seems to me that Russia wants to be a major supplier around the world of enriched uranium for use in nuclear reactors. It is entitled to wish to be in that situation, but the question is whether or not Australia should be allowing it to happen.

Senator Payne said that Russia will have to ask our permission to transfer radioactive material out of the country but she did not say which countries are ‘in’ and which countries are ‘out’. Since we are prepared to sell uranium to China, Russia and India, one wonders which countries would actually be ruled out. Is it okay to send it to North Korea or to Iran? When can we see a list of countries to which Australia would approve the transfer of material which included our uranium? It is not forthcoming now and I somehow doubt that it would be in any short inquiry taken on by the Joint Standing Committee on Treaties.

Our government claims that the agreement will guarantee that our yellowcake is used purely for peaceful purposes, but it is hard to seriously believe that Australian officials are going to have access to Russia’s facilities. It defies all common sense. Russia is either unwilling or unable to stop nuclear material from getting into the hands of terrorists. We know that from 2001 to 2006 there were 183 reported trafficking incidents involving nuclear materials in the former Soviet Union. So why isn’t the government insisting that the level of security over radioactive material be greatly enhanced so that we do not get any further examples of a very lax security approach?

There is, of course, one way of guaranteeing that our uranium is only used to generate power—and that is, as I said earlier, to insist on disarmament and nonproliferation. On both counts, Russia fails miserably. Like all other weapon states, Russia is actively engaged in nuclear rearmament. The euphemism used by Russia, as by other places, is ‘modernisation’. What this means is nasty, more powerful nuclear weapons and very few of the old arsenal being dismantled.

Russia’s nuclear weapons program still generates a lot of international instability. President Putin recently announced that his long-range bombers would resume their routine flights around the globe for the first time since the eighties. Plans are afoot, I understand, to double combat aircraft production by 2025, with more nuclear missiles. The fact is that there is a build-up of nuclear weapons around the world, and Russia’s dismantling of just a few thousand obsolete nukes in favour of these newer ones offers no comfort to the rest of the world. Russia, like all other nuclear weapons states, flouts the nuclear non-proliferation treaty every day.

Most discussion about a nexus between nuclear trafficking and organised crime and terrorism has focused on the former Soviet Union, particularly Central Asia and the Caucasus. According to the US based Arms Control Association, these regions house a large number of insufficiently secured nuclear facilities in close proximity to the trafficking routes for drugs and small arms. Most trafficking is in low-grade nuclear material from medical and industrial facilities abandoned by the military. However, 10 of the known trafficking incidents between
2001 and 2006 involved highly enriched uranium. On three occasions the uranium had an enrichment level of greater than 80 per cent, making it suitable for a nuclear bomb. In 2002, Chechnyan rebels stole nuclear material from a Russian nuclear power plant and, in 2003, two individuals attempted to acquire 15 kilograms of uranium allegedly for use in a radioactive bomb to be detonated in St Petersburg.

Admittedly, significant proliferation cases where kilogram-level quantities of weapons grade material are trafficked have dropped off since the 1990s, but the absence of evidence in more recent cases is not evidence of absence. Investigations of trafficking incidents usually focus solely on the seller of the uranium, with no attempt to uncover wider networks. Communication between governments in the region is poor and many borders are unprotected because of internal disputes. Most customs officials are not trained to recognise the significance of trafficking in nuclear materials.

All of this evidence is well known to the Australian government, so it cannot claim ignorance. The deal with Russia, which seems to be in its final stages, carries very grave risks that no responsible government should find acceptable. Again, I find it amazing that Mr Howard is mystified by how poor his polling is right now. Perhaps he needs to reflect on the fact that his willingness to sell Australian uranium to almost any country that asks for it might have something to do with that.

This agreement needs much more significant oversight than is being allowed. I urge the government, in the interests of transparency and global security, to refer this to a committee for a significant inquiry—not one that start and stops in five minutes but one that can take a thorough look and hear the evidence from those who are expert in this field.

Senator Payne said the treaty’s commissioning will depend on the sitting schedule—and that is the problem. That is why we need to delay this agreement until there has been a proper inquiry which any senator who wishes to be part of can take an interest in and inform themselves of the issues. The Democrats strongly support the reference of this treaty to a committee and hope that the government will reconsider.

Senator MILNE (Tasmania) (6.11 pm)—I thank members for their contribution and I express my disappointment that the government is not going to support a reference to the Senate Standing Committee on Foreign Affairs, Defence and Trade to investigate this agreement. I still did not get confirmation from the government that this process is not going to be assessed until the middle of next year through appropriate process. All we got was, ‘It depends on the sitting schedule’—and the worst thing that could happen, of course, is that the government decides to rush this through in the dying days of this administration.

Senator Payne sounds outraged about the fact that the government is not taking human rights into account—it is not. All she said was she is confident that the Russians will uphold the commitments they have made in this agreement. They have not made one commitment in this agreement to democracy or human rights—not one! To expect that they would uphold an agreement they have not made is just a ridiculous notion. It is about attempting to pretend that the government is doing anything other than entering into a pure and simple trade agreement to maximise profits—and not taking the opportunity to tie this to an additional protocol and additional clauses which would be consistent with Australia’s promotion of human rights.
on a global and regional level and send a clear signal to the Russian Federation that Australia expects its trade partners to adhere to certain standards. Closely linked would be the values of human rights and democracy and the rule of law, without which Australia cannot have any assurance that Russia will in good faith adhere to the principles of the agreement, which is central to the integrity of the safeguards and verification standards to which Australia gives such weight.

Why wouldn’t we include promotion and protection of, and respect for, human rights and democratic values in such an agreement? I put it to you, Mr Acting Deputy President Watson, that the reason we would not is that we have no confidence that the Russians would uphold it, and it would mean that, if they did not uphold it, we would have to suspend the agreement because a breach of the relevant conditions had taken place. They would not want to do that because they would not want to disrupt the profits flowing into those companies.

I think this is a really important issue. Australia ought to take into account the behaviour of the countries we do business with. How is the international community ever going to promote democracy and human rights unless we make our trade conditional upon them? Otherwise, we are saying: ‘We’ll turn a blind eye to what is going on in your country. We’ll just trade and let you get away with whatever you like in terms of human rights and democracy standards.’

Senator Payne also said that there was some confusion in the motion because I had talked about India and that this was about a deal with Russia—which just demonstrates why you need a Senate inquiry. Let me explain to Senator Payne and to Senator Brandis, who are not in the chamber, why this has relevance to the India deal. The India-Russia agreement and Australia’s declaration that it too would sell uranium to India is all very well until you get to the point where India has a nuclear test. Then the US agreement will be suspended and so too will any agreement by Australia to sell uranium to India. But India wants a guaranteed supply. What will it do? It will sign up to the Russian agreement as well and that means, in the event that its supply is cut off from Australia and the US, it can get the enriched uranium it needs from Russia. Furthermore, in the US-India agreement there is an arrangement whereby, if it is suspended, India has to return to the US a certain volume of nuclear fuel. Russia could provide that to India to give back to the US and continue exactly as it had planned. How will it get the uranium in Russia in order to give it back to India to give back to the US? It will get it because Australia will be supplying the uranium into Russia to have it enriched.

We have heard the government say, ‘It won’t be Australian uranium that goes to any other facility.’ Everybody knows you cannot trace uranium. Once it goes into a facility, it becomes part of the mass in that facility. The way uranium is measured is simply by volume—you have to prove you have displaced this much volume or sent this volume somewhere else. That is the link that Senator Payne did not understand. In fact, the Indians understand it very well, as do the Russians. I will cite a particular document I have here. It states:

The main assurance that the initiative should provide is that a country complying with its non-proliferation commitments must be sure that, whatever the turn of events, whatever changes take place in the international situation, it will receive the services guaranteed to it.

That is the Russians telling the Indians that part of the deal is that, whatever changes happen, they will guarantee the supply. The Indian interpretation in this particular document is this:
In the event of an Indian test, the US law banning nuclear exports would become operative and so would the domestic legislations of other potential suppliers such as France, Australia, Canada or the UK, as it happened after the 1998 Pokhran tests. However, if India becomes party to the Russian project, the IUEC could become the source for fuel to be returned to the US. For, the statute of the IUEC only says that its services would be available to any partnering country ‘complying with its non-proliferation commitments’. Further there is no Russian law that prevents nuclear exports in the event of a nuclear test as is evident from the Russian project ...

What we have here, clearly, is a mechanism by which the Russians will be the backstop for the Indians in the event that the Indians go ahead with their nuclear tests. They have said it is part of their undertaking that they will, that the US agreement and the Australian uranium will not subject them to not going ahead with nuclear tests. So all Australia is doing is not only promising to provide uranium to India but also, now with this Russian agreement, sending more uranium to Russia, where it will be enriched and sent on to third parties, as it is currently. President Putin has come out and not only said that the Russians provided the technology for the Iranian reactor but also, on the very weekend they were negotiating here in Australia, announced the timetable for the transfer of enriched fuel from Russia to Iran to that reactor.

As we stand here today, details are just emerging about the recent Israeli flyover of Syria—a hugely significant international incident that was played down because it was so serious. Why did the Israelis fly over Syria? Because a shipment from North Korea was heading to Syria. This was a major international incident just in the last couple of weeks. That is the kind of world into which Australia are saying we are happy to sell our uranium, and we are not even prepared to put a caveat on the deals saying they are conditional upon upholding laws pertaining to human rights, democracy and the rule of law.

If Australia does not stand for human rights, democracy and the rule of law, what do we stand for, apart from maximising profits to companies that donate heavily to political parties? What else do we stand for? Where is our standing globally? We have abandoned multilateralism. We have abandoned international conventions, it seems. We have given up on the Geneva convention, because we supported Guantanamo Bay. We have given up on the refugee convention. We trash the World Heritage convention when it suits us. Whichever way you look, you see multilateralism overturned. Last week, we saw Australia vote against a United Nations resolution in relation to indigenous rights. Week in, week out, Australia stands for less and less in the global community.

This agreement with Russia must be scrutinised appropriately by the parliament. Having heard from the government, I do not have any confidence that that is going to be the case. I hope that Senator Payne and Senator Brandis are listening to what I am saying. It may actually interest them that, when they voted against this last week, when they were busy supporting the Prime Minister’s arrangements, they did not even understand the link with the India deal. They did not understand that they are actually facilitating India moving full-on with its nuclear program. Yet they stand here and say that they are confident Russia will uphold the agreement. There is no provision in it for the rule of law, for human rights or for democracy. I feel ashamed that Australia is not taking the opportunity to be a global leader. As we watch so many countries retreat from democracy, why aren’t we making those conditions?

I hope that the Labor Party in government would see its way clear to have a really good
look at this Australia-Russia uranium deal and repudiate it, and look at the Global Nuclear Energy Partnership that Australia signed up to last night. We had to find that one out through the *Times of India*. Prime Minister Howard is apparently ashamed to tell Australians that last night he signed up to President Bush’s deal. You have to read what goes on in nuclear countries in order to find out what he is up to. The Canadians did not sign because they are worried about having to become a global nuclear waste dump. What did Australia sign up to last night in Europe?

So I would like to hear not only that the Labor Party in government would repudiate both of these deals but that, at the very least, we would get a commitment that Australia reassert itself on the global stage as an upholder of human rights, of the rule of law and of decency in global and international negotiations; otherwise we are no better than a lot of the other states we condemn at various times. We are not taking the opportunities that we are afforded. How must it feel for the Russian dissidents to watch the Australian government shaking hands with President Putin, knowing that journalists have been murdered and that human rights campaigners are in psychiatric asylums as I speak? How must they feel when the news goes back into the state owned television and state owned newspapers that President Putin is legitimised and hailed as a great trading partner in Australia when they are asking for help to repudiate the deals and expose what President Putin is doing in Russia by suppressing freedom of speech and the political democracy movement?

That is what is going on in that country and, if the government do not know it, it is because they choose not to know it. Any cursory examination of what is going on in Russia today will tell you that President Putin is taking that country back to the KGB days and the FSB rules. I hope now we see Senator McGauran go back and start reading about those Russian apartment bombings and what is going on in Chechnya and find that President Putin’s hands are not clean in relation to fomenting uprisings in order to suppress freedom of speech, jail dissidents and return to punitive psychiatry. When we review the period of his presidency in Russia, we are going to see just how rapidly he took that country backwards and how Australia turned a blind eye, to our shame.

Question put:
That the motion (Senator Milne’s) be agreed to.

The Senate divided. [6.29 pm]
(The President—Senator the Hon. Alan Ferguson)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>Noes</th>
<th>Majority</th>
</tr>
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<tr>
<td>29</td>
<td>32</td>
<td>3</td>
</tr>
</tbody>
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AYES

Allison, L.F.  
Brown, B.J.  
Campbell, G.  
Conroy, S.M.  
Faulkner, J.P.  
Hurley, A.  
Kirk, L.  
Lundy, K.A.  
McEwen, A.  
Moore, C.  
O’Brien, K.W.K.  
Sherry, N.J.  
Sterle, G.  
Webber, R. *  
Wortley, D.  
Bishop, T.M.  
Brown, C.L.  
Carr, K.J.  
Crossin, P.M.  
Fielding, S.  
Hutchins, S.P.  
Ludwig, J.W.  
Marshall, G.  
Milne, C.  
Murray, A.J.M.  
Polley, H.  
Stewart, R.  
Scott, D.  
Wong, P.  
NOES

Abetz, E.  
Barnett, G.  
Birmingham, S.  
Brandis, G.H.  
Chapman, H.G.P.  
Cormann, M.H.P.  
Ferguson, A.B.  
Adams, J.  
Bernardi, C.  
Boswell, R.L.D.  
Bushby, D.C.  
Colbeck, R.  
Eggleston, A.  
Fierravanti-Wells, C.  

CHAMBER
Fifield, M.P.  Fisher, M.J.
Heffernan, W.  Humphries, G.
Johnston, D.  Joyce, B. *
Lightfoot, P.R.  Macdonald, J.A.L.
Mason, B.J.  McGauran, J.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
Bartlett, A.J.J.  Macdonald, I.
Evans, C.V.  Minchin, N.H.
Forswah, M.G.  Boyce, S.
Hogg, J.J.  Coonan, H.L.
McLucas, J.E.  Kemp, C.R.
Ray, R.F.  Ellison, C.M.
Stephens, U.  Troeth, J.M.

* denotes teller

Question negatived.

Sitting suspended from 6.30 pm to 7.30 pm

Economics Committee
Report

Senator RONALDSON (Victoria) (7.30 pm)—I present an interim report of the Standing Committee on Economics concerning the inquiries into 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. I seek leave to move a motion in relation to the report.

Leave granted.

Senator RONALDSON—I move:

That the Senate adopt the recommendation of the interim report that the time for the presentation of final reports be extended to the last day of the 41st Parliament.

I want to mention one quick matter on behalf of the committee. I see Senator Murray in the chamber tonight. Our colleague Senator Fielding was reported over the weekend and today as having concern about the lack of public hearings in relation to his bill, which is the subject of the first matter of this motion. I want to clarify the matter for the benefit of the Senate. I have the leave of my committee to disclose and publish the minutes of our meeting on 12 September, if required, and I am requiring that tonight.

I want to indicate quite clearly to the chamber that it was always the intention of the economics committee that there would be public hearings in relation to this matter. Indeed, we facilitated that with various motions. The committee had a choice as to whether we would table this report today based on submissions or whether we would table an interim report and have the reporting date adjourned to a later date to assist Senator Fielding. It was the unanimous view of the remainder of the committee that the committee members would not be available. I will quote from the minutes:

All members of the committee advised that they would not be available for public hearings on this matter during this sitting period or before the election. Senator Bernardi suggested holding hearings after the election.

…

On the motion of Senator Bernardi, seconded Senator Stephens, the committee agreed that public hearings not be held on this bill until after the election period.

The matter was deferred. The terms of the motion before the Senate at the moment are to accommodate those public hearings, and I have every expectation, as chair of the committee, that those public hearings will take place.

Senator MURRAY (Western Australia) (7.32 pm)—I rise to support the remarks of the chair with respect to availability for hearings this week and last week. I indicate that my own legislative schedule is very heavy. On today’s Notice Paper, for instance, I have six bills, and that is the way it is for me every day of the week, so I cannot attend the hearing. We all know it is an election period. Of course, if it were a government bill that
was urgent and had to be passed this week, the committee report might have had to have been brought down. But this is not a bill which will carry urgency; it is not a bill which will be considered during this sitting, so it is preferable, if the bill is to be properly examined, that it be examined when there is time and the personnel available to examine it. Frankly, it has happened in the past that committee inquiries have happened without hearings. My own memory is that in the last 12 months probably two or three economics bills alone have been dealt with on that basis. In this case, a hearing was desired and will be accommodated. It just will not be accommodated this week or in the forthcoming weeks. I want to support the chair with those remarks.

Question agreed to.

BUSINESS

Rearrangement

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (7.34 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 2 (Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007).

Question agreed to.

COMMONWEALTH ELECTORAL AMENDMENT (DEMOCRATIC PLEBISCITES) BILL 2007

Consideration resumed from 13 September.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (7.35 pm)—by leave—I move Democrat amendments (1) and (2) on sheet 5368 together:

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

1A After paragraph 7(1)(fa)

Insert:

(fb) to conduct plebiscites in communities in which a nuclear facility is to be established; and

(2) Schedule 1, item 1, page 4, (after line 5), at the end of the item, add:

(1H) To ensure that communities in which a nuclear facility is to be established have authorised that establishment and have consented to the health, welfare, safety and environmental impacts and risks of the establishment of the nuclear facility, for the purposes of paragraph 7(1)(fb), a plebiscite must be conducted by the Commission in every federal electorate within 0.5km of the boundary of the nuclear facility seeking approval for the establishment of the facility.

I refer to the amendments on sheet 5368. I have asked that the chamber consider the conducting of non-binding plebiscites in communities in which a nuclear facility is to be established. The chamber would be proper in asking me: ‘Why would you need to do that when the bill itself is not specific as to plebiscites that may be conducted? Any plebiscite can be conducted.’ But, of course, the explanatory memorandum is specific, and we know that the explanatory memorandum has weight in these matters. The explanatory memorandum refers to local government amalgamations, and the purpose of this bill is, in fact, to allow for plebiscites on local council amalgamations. If that had not been the case and if the explanatory memorandum had simply been left open-ended, I would have expected that plebiscites on nuclear facilities, or any other plebiscite that a local council or anyone else wanted to conduct, could occur.
These matters are particularly sensitive. I am not prejudging the matter; there may well be shires and councils that would like a nuclear facility. I seem to recall that in my own state of Western Australia there is a shire that is happy to store nuclear waste for its state. People are not automatically against these things, but there are people who are very sensitive about nuclear waste dumps and nuclear reactors being sited near them. I think it is appropriate that, in view of the sensitivity of this issue and the very strong feelings many members of the community have about it, we make it explicit that plebiscites will be conducted in communities in which nuclear facilities are to be established.

Senator LUNDY (Australian Capital Territory) (7.38 pm)—Labor will be supporting these amendments primarily because it is consistent to support amendments that give effect to the view we expressed in our second reading amendment, which is that we believe that communities ought to have the right to have a say on nuclear facilities, be they nuclear reactors or locations for nuclear waste—particularly the 25 nuclear power plants that the Howard government wants to impose on the Australian community. We believe that the location of nuclear facilities will have a long-lasting and possibly irreversible impact on communities and that these special and quite extraordinary circumstances raise questions of public policy that are certainly out of the ordinary and warrant this attention.

Labor believe that if the Howard government were fair dinkum about empowering local communities—and we have heard a lot of comment about that in the context of this bill—they would empower them to have a plebiscite on this matter. We think this stands as quite a strong test for the government as to the credibility of their sincerity on this issue. It certainly came up, along with many other ideas about what a plebiscite could be used for, in the course of the Senate inquiry. This issue was a particular standout because, after all, the Howard government has placed it firmly on the agenda for local communities. For the record, we know that many government backbenchers are opposed to the location of nuclear facilities in their own electorates. I would expect that many of them would indeed support the prospect of allowing those communities to have a plebiscite.

We have good reason to be concerned, because there is a great deal of history of coalition governments considering sites for nuclear reactors, dating right back to 1969, when the then Liberal government considered a number of sites, including Jervis Bay, which is part of my electorate, on the coast close to Nowra; the Murrumbidgee River between Williamsdale and Tharwa; Paddys River in the ACT; Bass Point in the electorate of Eden-Monaro; and the Hawkesbury River site at Spencer, which is in the electorate of Robertson. In 1981 the coalition government’s National Energy Advisory Committee considered sites in Perth, Adelaide, Tasmania and Darwin to be suitable for nuclear reactors. In July 1997 a cabinet submission signed off by the then Minister for Science and Technology, Peter McGauran—now the Minister for Agriculture, Fisheries and Forestry—considered sites in Goulburn; Holsworthy; the Mount Lofty Ranges, in the electorate of Mayo, in Adelaide; the river and lakes region of South Australia; Olympic Dam, in the electorate of Grey, in South Australia; Woomera; the electorates of O’Connor, Pearce, Brand and Canning, in Western Australia; Broken Hill; Mount Isa; and Darwin.

On ABC radio on 5 June 2006, Ian Smith, the head of ANSTO, considered sites for four to five nuclear power plants on the east coast of Australia. A feasibility study by the Uranium Enrichment Group of Australia for the Fraser government considered Western Aus-
tralia, Queensland and South Australia to all have suitable sites. In May 2006 the Australia Institute identified Western Port Bay, in Victoria; Port Stephens, in Paterson, in New South Wales; the Central Coast of New South Wales; areas south of Wollongong, around the electorate of Gilmore; the Sunshine Coast, in the electorate of Fairfax, in Queensland; Port Phillip Bay, in the Corangamite electorate, in Victoria; and Portland, in the electorate of Wannon, in Victoria. On 16 October 2006 Clarence Hardy, the Vice-President of the Pacific Nuclear Council, identified the Gold Coast, Brisbane, Gladstone, Townsville, Newcastle, Cessnock and Perth.

We know the coalition has four decades of form when it comes to advocating nuclear reactors. There have been four decades of determining to impose them on local communities. I call on the coalition to be consistent and to at least allow these amendments. I concur with Senator Murray’s interpretation. While the bill itself is not specific about its application to amalgamations, that is certainly the appropriate interpretation, which therefore justifies inserting these particular amendments into this bill. As I said, Labor will be supporting these amendments and we commend them to the chamber.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (7.43 pm)—The government will not be supporting the amendments. The legislation is to allow plebiscites to take place and also to stop state governments—in this case, the Queensland state Labor government—from legislating against plebiscites. There has been some focus from the opposition on plebiscites on nuclear facilities. I think they were almost successful in naming every electorate in the country—obviously, as part of a scare campaign. The Prime Minister has quite clearly said that there will be plebiscites on nuclear facilities and I think it is quite reasonable for that to occur. The Prime Minister has quite clearly put that on the table. The AEC now has the legislative ability to conduct plebiscites on any issue on a fee-for-service basis, so there is nothing to stop plebiscites of that nature going ahead. The government will not be supporting the amendments.

Question put:
That the amendments (Senator Murray’s) be agreed to.

The committee divided. [7.49 pm]
(The Chairman—Senator JJ Hogg)

Ayes………… 31
Noes………… 33

Majority……… 2

AYES

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

NOES

Abetz, E. Adams, J.
Bernardi, C. Birmingham, S.
Roswell, R.L.D. Brandis, G.H.
Bushby, D.C. Chapman, H.G.P.
Colbeck, R. Cormann, M.H.P.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Fierravanti-Wells, C.
Fisher, M.J. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Senator MURRAY (Western Australia)—by leave—was just getting some advice from the esteemed Senator Boswell, who said that local government need this bill and we must get on with it. I will do that. I move amendments (1) and (2) on sheet 5375 revised 2:

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

1A After paragraph 7(1)(fa)
Insert:

(fb) to conduct plebiscites in Aboriginal communities and townships in the Northern Territory.

(2) Schedule 1, item 1, page 4 (after line 5), at the end of the item, add:

(1H) To ensure that Aboriginal communities and townships in the Northern Territory in which the Commonwealth is to undertake activities authorised by the Northern Territory National Emergency Response Act 2007 have the opportunity to express their views, for the purposes of paragraph 7(1)(fb) a plebiscite must be conducted by the Commission in every Aboriginal community or township in which the activities are to be undertaken to ascertain whether the members of that community or township approve the Commonwealth carrying out those activities.

These amendments from Senator Bartlett arise from the extensive debates that have been had on the emergency intervention in the Northern Territory with respect to Indigenous matters. What I am arguing for here, on behalf of Senator Bartlett, is that, if you accept that it was an emergency and an emergency intervention had to occur, nevertheless there is strong community feeling about this matter. Senator Bartlett has advised me that he sat next to a very senior member of the coalition who advised him that he had visited seven Indigenous communities and all seven were strongly in favour of the government’s intervention. That being the case, of course, a plebiscite such as is being suggested here would not automatically have a negative result; it may well have a positive result. So I do not necessarily presume that a plebiscite would have a negative result—unlike local government plebiscites in Queensland, where I do expect many of them to express a contrary view to what the state government has proposed.

This matter arises really because, if it is the view of the coalition that communities and shires and councils in Queensland are entitled to have their say with respect to a matter which affects their local government, the Democrats think that the same principle should apply with respect to Aboriginal communities and townships in the Northern Territory. It would simply be unacceptable for the principle to apply in one and not the other.

Once again, the government may argue: ‘Yes, a plebiscite could be held. There is nothing in the legislation which prohibits it.’ Again I say that this has been put forward by us deliberately because, unfortunately, the explanatory memorandum only refers to the plebiscites in the context of local government amalgamations. We wish to make it clear that in a matter of high contention, of great drama and of the granting of very con-
considerable powers, we believe that the Aboriginal communities and townships in the Northern Territory should be aware, through legislation, that they can run a non-binding plebiscite with respect to the National Emergency Response Act 2007.

Senator LUNDY (Australian Capital Territory) (7.56 pm)—Labor will not be supporting these or the remaining amendments. We believe that Senator Murray’s initial amendments relating to nuclear facilities effectively encapsulated the view put forward by Labor in our second reading amendment, but these other amendments do not. Our policies and approach to a form of cooperative federalism, we believe, will lead to great benefits, through working together with local communities and effectively empowering them, along with the general right of the AEC to conduct plebiscites. But, for the purposes of the remaining debate, we will not be supporting these amendments.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (7.57 pm)—The government does not support the amendments. I again note Senator Murray’s insight into the thinking of the government. The government does not believe it is appropriate for the Electoral Commission to have its core functions extended to require it to conduct specific plebiscites on specific matters that are not related to the core business of the AEC. The government does not support the amendments.

Question negatived.

Senator MURRAY (Western Australia) (7.58 pm)—by leave—I move Democrat amendments (1) to (3) on sheet 5385:

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

1A After paragraph 7(1)(fa)
Insert:

(fb) to conduct plebiscites in localities where major infrastructure projects are proposed.

Note: Examples of major infrastructure projects include a dam, a desalination plant, a pulp mill, a nuclear facility and harbour dredging.

(2) Schedule 1, item 1, page 4 (after line 5), at the end of the item, add:

(1H) To ensure that communities in which a major infrastructure project is to be established have authorised that establishment and have consented to the health, welfare, safety and environmental impacts and risks of the establishment of the major infrastructure project, for the purposes of paragraph 7(1)(fb), a plebiscite must be conducted by the Commission in every federal electorate within 0.5km of the boundary of the major infrastructure project seeking approval for the establishment of the facility.

(II) A major infrastructure project may not proceed unless a plebiscite has first been conducted in accordance with subsection (1H).

(3) Schedule 1, page 4 (after line 5), after item 1, insert:

1A After section 7A
Insert:

7AB Preparation of arguments for and against an infrastructure project for which a plebiscite is to be conducted

(1) A plebiscite may not be conducted in accordance with paragraph 7(1)(fb) unless an argument in favour of the proposed major infrastructure project (the project) and an argument against the proposed major infrastructure project has first been prepared in relation to the plebiscite for that major infrastructure project.
(2) The argument for and the argument against the project must include a statement consisting of not more than 2,000 words, which includes:

(a) an analysis of the costs and benefits of the project;
(b) an analysis of the environmental impacts of the project;
(c) a consideration of alternative options to the project.

(3) The argument in favour of the project may be submitted to the Electoral Commission by the chief proponent or proponents for the project.

(4) The argument against the project may be submitted to the Electoral Commission by the chief opponent or opponents of the project.

(5) The Electoral Commission must cause to be printed and to be posted to each elector within the area in which the plebiscite is to be conducted a pamphlet containing the arguments for and against the project.

A legislative note says that examples of major infrastructure projects, which are the subject matter of these amendments, include a dam, a desalination plant, a pulp mill, a nuclear facility and harbour dredging. That is not an exhaustive list, obviously. The intention is to indicate to the community at large that issues which the community, any community, considers to be of great importance to them should be capable of being subject to a non-binding plebiscite so that the community as a whole can express their opinion about such matters.

I know, for instance, a desalination plant will produce different reactions in different cities. In Perth our desalination plant is really strongly supported; I might add that I am one of the supporters. It acts in a reserve capacity and it is powered through wind power. Once that wind power argument was made, the community was happy, because the thing they were most concerned about was not the conversion of seawater into potable water but the excessive energy use involved in that conversion. I am well aware that in other parts of the country desalination plants which do not have that background are highly controversial.

There is a similar situation with pulp mills. Personally, I am a supporter of pulp mills being established in Australia, but I am a supporter of those pulp mills which have the lowest energy use, the least environmental impact and which are accepted in the community they are in. I have been intrigued by the arguments in Tasmania. I have found the argument against the pulp mill that is proposed in the Tamar Valley persuasive on my reading of it. I have found the arguments for a different sort of pulp mill in Braddon much more persuasive. I do not claim to be an expert, but the point is that I think a desalination plant in Sydney or a pulp mill in Braddon or Bass or harbour dredging in Melbourne are all the kinds of topics and subjects which should be open to plebiscites. Once again we raise this not because we think the bill excludes them. On the face of the bill, any plebiscite is possible. We raise it because the explanatory memorandum seemed to be exclusive. That is why we are proposing these amendments, based on the precautionary principle, you might say, but also to make the point that we would like to encourage communities to have a more direct say in matters of great moment, such as infrastructure projects.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (8.02 pm)—The government notes the intention of the Democrats with respect to the amendments but, again, will not be supporting them. I think we have made our position clear on the previous amendments, but I note with respect to the pulp mill, for example, there already has
been one electoral plebiscite that has been held and I am aware of another one that is being planned. There quite clearly exists the capacity for these types of plebiscites to occur at the moment. In that circumstance, the government does not support the amendment.

Senator **BOB BROWN** (Tasmania—Leader of the Australian Greens) (8.03 pm)—We have a problem here because Senator Colbeck is saying that he supports municipal councils in Queensland being given assistance by the Electoral Commission but he opposes municipal councils in Tasmania getting that assistance, which is quite extraordinary for a Tasmanian senator. Of course the amendments deserve support. If, as in this legislation, the government says that the people ought to have a say in amalgamations of councils in Queensland, which is about governance and people’s right to decide on governance, then surely the people ought to be able to decide whether they will have a dam which is going to totally eliminate their property or a desalination plant which is going to radically change their environment or a pulp mill which, in the case of the Tamar Valley, according to the Australian Medical Association, is going to increase the death rate of the 100,000 people living in that valley. According to the vineyard owners and many other small businesses, it is going to impact negatively on their businesses. According to the people fishing in Bass Strait, it will threaten their livelihoods and, according to many other people, it is going to be a negative for Tasmania. This includes the business roundtable report showing a $3 billion hit on other businesses. Shouldn’t people have a say about that? Senator Colbeck and the government say no. We say yes, under the same circumstances.

Then there is the government’s proposal—indeed, the Prime Minister’s proposal—for 25 nuclear power stations coming down the line. Should people not have a say on that? Senator Colbeck and the government might say: ‘No, citizens shouldn’t be supported in deciding that. On governance, yes, but on the safety of their neighbourhood, no.’ Then there is harbour dredging. Clearly the case in point at the moment is Port Phillip Bay, where there is a remarkable marine environment at stake. There is not just that but the potential for toxic metals to be lifted off the floor of the harbour and put into the bay environment. I have to part company with the government’s feeling that that is not a matter people should have a say in. It is as important as their municipal boundaries.

It is important to the people of Queensland to have a say, but it is important to people in these other cases to also have a say. This is a patent hypocrisy. It draws the political impulse that is behind this legislation right to the fore that the government can say, ‘Yes, on the matter of governance, people should be assisted to have a referendum, but when it comes to their livelihoods, neighbourhoods, businesses, wellbeing, health, ability to stay alive and so on they should not have a say.’ What nonsense. Of course we will support these amendments.

Senator **IAN MACDONALD** (Queensland) (8.07 pm)—The Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 is not about whether you can have a vote on amalgamations, nuclear reactors or anything else; it is about the Queensland government deciding that if you want to have a say on local government boundaries you will be thrown in jail. That is what it is about. The proposed Commonwealth legislation that we are debating—and the previous contribution bears no relationship to the bill whatsoever—simply says that the Queensland government was going to legislate to make it a criminal offence to have a say on local government boundaries. You could have a say on nuclear reactors, power sta-
tions or anything in Queensland, but if you had a say on local government futures you would be thrown in jail. That is what the bill is about.

As we deal with these amendments it is important that we keep in mind the reality of what this bill is about. At the risk of repeating myself—we are not on broadcast—it is very important to understand that a government in Australia has said that if you want to have a plebiscite, if you, namely the council that is going to be abolished or amalgamated, want to have a say or if you have the temerity to even suggest that the people involved should have a say then you will be fined and if you do not pay the fine you will be thrown in jail. Indeed, Senator Bob Brown, the Prime Minister has clearly stated that there will be a binding plebiscite on nuclear reactors when it happens in 30 or 40 years time—and it will not happen before then. But this bill is about a government taking away a right. This bill overrides a state government that has said that you cannot have that right on pain of being thrown into jail. That is what this bill is about; not about the matters that the previous speaker spoke of.

Senator Bob Brown (Tasmania—Leader of the Australian Greens) (8.08 pm)—In Tasmania—if I am not wrong, supported by the Liberals—there is a law which says you cannot have a plebiscite on the fluoridation of water. The government has let that one go by. By law in Tasmania, if you hold a plebiscite on the fluoridation of water you go to jail. I ask Senator Macdonald whether he will support an amendment if I put it up now overriding that stricture in the law books of Tasmania. Logic says he will have to.

Question put:

That the amendments (Senator Murray’s) be agreed to.

The committee divided. [8.14 pm]

(The Chairman—Senator JJ Hogg)

Ayes………… 6
Noes………… 34
Majority…… 28

AYES

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

NOES

Barnett, G. Bernardi, C. 
Birmingham, S. Brown, C.L. 
Bushby, D.C. Chapman, H.G.P. 
Colbeck, R. Crossin, P.M. 
Eggleston, A. Fielding, S. 
Fierravanti-Wells, C. Fifield, M.P. 
Fisher, M.J. Hogg, J.J. 
Hurley, A. Hutchins, S.P. 
Kirk, L. Ludwig, J.W. 
Lundy, K.A. Macdonald, I. 
Marshall, G. McEwen, A. 
McGauran, J.J.J. Moore, C. 
Nash, F. O’Brien, K.W.K. 
Parry, S. * Payne, M.A. 
Polley, H. Sterle, G. 
Trood, R.B. Watson, J.O.W. 
Webber, R. Wortley, D. 

* denotes teller

Question negatived.

Senator Bob Brown (Tasmania—Leader of the Australian Greens) (8.17 pm)—by leave—On behalf of the Australian Greens, I move amendments (1), (2) and (3) on sheet 5386 together:

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

IA After paragraph 7(1)(fa)

Insert:

(fb) to conduct a plebiscite about the ratification by Australia of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the Kyoto Protocol).
(2) Schedule 1, item 1, page 4 (after line 5), at the end of the item, add:

(1H) To ensure that the electors of Australia have the opportunity to express their opinion a national plebiscite must be conducted by the Commission on whether or not Australia should ratify the Kyoto Protocol, for the purposes of paragraph 7(1)(fb).

(1I) The plebiscite mentioned in subsection (1H) must be conducted in conjunction with any general election held in 2007 or 2008.

(3) Schedule 1, page 4 (after line 5), after item 1, insert:

1A After section 7A

Insert:

7AB Preparations of arguments to be put in a plebiscite to be held regarding the question of whether the Kyoto Protocol is to be ratified by Australia

(1) A plebiscite may not be conducted in accordance with paragraph 7(1)(fb) unless an argument in favour of ratification of the Kyoto Protocol and an argument against ratification of the Kyoto Protocol has first been prepared and provided to all electors.

(2) The argument for and the argument against the ratification of the Kyoto Protocol must include a statement consisting of not more than 1,000 words in support of each case.

(3) The argument in favour of the ratification of the Kyoto Protocol may be submitted to the Commission by the Commonwealth government.

(4) The argument against the ratification of the Kyoto Protocol may be submitted to the Commission by the Opposition.

(5) The Commission must cause to be printed and to be posted to each elector a pamphlet containing the arguments for and against the ratification of the Kyoto Protocol.

(6) Except as expressly provided by this section, the arrangements for the plebiscite are to be conducted in accordance with provisions relating to a referendum provided for in the Referendum (Machinery Provisions) Act 1984.

These amendments provide for a plebiscite to be taken at the next election on the ratification of the Kyoto protocol. We know that the Howard government has determined to not ratify this global treaty, which is the first step towards further global moves to protect the planet from the imminent catastrophe of climate change. We are also aware from opinion polls in this country which have been funded by Greenpeace and other organisations that 80 per cent of Australians want the Kyoto protocol ratified by this nation and that the government has less than 20 per cent support for its refusal to take this country with the rest of the community of nations in ratifying the Kyoto protocol; although in 1997, when Senator Hill was Minister for the Environment, Australia agreed to sign the protocol in Kyoto.

The protocol came into being in 2002. I was in Kyoto for the ceremony marking that. It has simply been a travesty of the democratic system we have that the government shut its ear to the vast majority of Australians, who want this protocol ratified by our country. We have the ability to test that public opinion at the forthcoming federal election. It would involve the government being able to write a submission in support of not signing the Kyoto protocol and the opposition writing a submission in support of the Kyoto protocol. We have put that into amendment (3) because the opposition leader, Kevin Rudd, has made it clear that the opposition is in favour of ratifying the Kyoto protocol, as are the Greens and the Democrats. It can be done rapidly. It would be perhaps the first use, if a Queensland local government entity does not get there first, of the powers that are paraded in the legislation and would show the bona fides of the gov-
ernment in wanting this to be a Democrat plebiscites bill on a matter which affects every Australian, their children and their grandchildren.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (8.20 pm)—The government does not support the amendments. The people of Australia will obviously, as Senator Brown has indicated, get the opportunity to cast their votes in respect of this at the election, given that there is a difference of policy, so the government does not see the need, as we have said before, to inject specific uses or specific tasks to the Australian Electoral Commission that are not its core business.

Senator LUNDY (Australian Capital Territory) (8.20 pm)—It is, of course, the policy of Labor to ratify the Kyoto protocol, and these amendments do not change that in any way. We will not be supporting these amendments. I would like to take this opportunity to reflect on the issue of constitutional recognition, which was also the subject of a second reading amendment and is intimately linked to the issue of the right of communities to have a say through plebiscites for amalgamations.

Before I do that, I take Senator Ian Macdonald’s exhortations to the Senate this evening about the Beattie government and just remind Senator Macdonald, as I know he already knows, that of course the Beattie government overturned the provisions which sought to penalise councillors engaging in plebiscites. That is clear. As I mentioned in my speech in the second reading debate, it means that the original motivation for this legislation is relatively moot. Nonetheless, Labor feel strongly about this issue, and that is why we support this bill.

But there is one issue I want to place on the record—because in moving a second reading amendment last week Labor very clearly expressed the view that all parties ought to collectively support the push for the constitutional recognition of local government. Senators opposite were given the opportunity to vote on that in our second reading amendment. They chose to oppose that second reading amendment, once again formally stating the coalition’s view that they do not support the constitutional recognition of local government. Yet last Friday Mr Vaile reportedly told a local government conference in Queensland that he supported constitutional recognition. So I think he ought to explain to the House and perhaps convey to his representatives in the Senate his explanation for voting against that motion again—they did last year as well on 17 October.

Just last week in this place the government voted against constitutional recognition, and yet government members go out into the electorate and say that they support it. I know that the National Party is quite famous for saying one thing in the electorate and doing another in parliament, but this is a very obvious and classic case of being a lion in the electorate on the issue of the constitutional recognition of local government and a complete sheep to the Liberal Party, which obviously opposes this policy, in the parliament. So I think we are all, particularly local councillors in Queensland and around the country, owed an explanation as to why the National Party says one thing in parliament and another thing out in the electorate. This seems to be a perfect opportunity to provide that explanation.

I suspect that Mr Vaile was not aware that we had not concluded this debate when he made those public statements. I know it was the expectation of local government that this bill would have managed to traverse the challenges of the scrutiny of the Senate last Thursday. Nonetheless, that did not happen. So I now invite National Party representa-
tives—perhaps Senator Macdonald can assist given that he is most vocal this evening—to describe for the Senate exactly what the National Party’s position is on constitutional recognition for local government.

Senator IAN MACDONALD (Queensland) (8.25 pm)—I am not a member of the National Party, so I cannot speak for them. But let me put on the record—and normally I would do it much more fully than I will tonight, because time is against us and we have been asked to be very brief because there is a big program to get through—that I have always supported the constitutional recognition of local government, as have, I think, most of my party; and I know that my colleagues in the National Party are the same. However, we all know how a referendum works in Australia: if you have any state government opposing it then it will not get through. As I said in my speech in the second reading debate, if you want constitutional recognition of local government then that can be achieved very easily today. All you have to do is get every state government to sign up to it. If you can get every state government to sign up to it and you can get a bill that works—that is the challenge for the Australian Local Government Association, but I am sure that they could come up with that—then we will have constitutional recognition.

As I said in my speech in the second reading debate, addressing members of the party to which the previous speaker belongs—which happens to control every state government in Australia at the present time—if you believe in constitutional recognition, get me a document that every state Labor government will support and then we can move forward. But I guarantee you, Madam Temporary Chairman, and the previous speaker that the state governments will not support it. The state governments, regrettably, are comprised of Labor Party majorities in every state in Australia. So that is where the block lies. I just wanted to put that on the record.

I have taken two minutes now and I know that the government whip is not keen on this but I would like to refer to Senator Brown’s amendment. The motion we are dealing with—

Senator Murray—You have your say. You are entitled to have your say.

Senator IAN MACDONALD—Yes, but I respect my colleagues’ convenience—and we do not want to be here on Friday, Saturday or Sunday, so we do want to get this over and done with. But it needs to be said that the substantive part of the bill before the Senate says:

(1E) A law of a State or Territory has no effect to the extent to which the law in any way prohibits a person or body from, or penalises or discriminates against a person or body for:

(a) entering into, or proposing to enter into, an arrangement under subsection (1); or

(b) taking part in or assisting with, or proposing to take part in or assist with, the conduct of an activity (such as a plebiscite) to which an arrangement under subsection (1) relates.

Senator Brown, if any council in Australia wants to have a plebiscite on Kyoto or anything else then it can do that. But if you are a council in Queensland and want to have a plebiscite on your own future then you would be thrown in jail. It is this federal legislation that overrides the Queensland legislation to that effect. So if a council wants to have a vote on Kyoto then it should go ahead and do it. It is free to do it. But if you want to have a vote on the future of that council then you would be thrown in jail. That is the difference.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (8.29 pm)—Senator Macdonald, whose party opposed the recognition of local government
back in the eighties and stymied the referendum outcome there—

Senator Ian Macdonald—They didn’t in Queensland and they didn’t in the Brisbane City Council, which was controlled by Sally-anne Atkinson.

Senator BOB BROWN—The fact is, it was your party—through you, Chair—that stymied local government getting recognition in that referendum, full stop.

On the matter of the Kyoto protocol, which is the subject of this amendment whereby the Greens would offer the Australian people a yes or no on whether our nation should join the rest of the community of nations, save President Bush, in ratifying the Kyoto protocol, the amendment is not about local governments doing that, because that would have no effect; it is about the federal government doing that, because it would have very great moral effect. A plebiscite is not going to dictate what a government can do but it is indicative of how the people of Australia feel.

I can understand that Senator Macdonald, Senator Colbeck and the government do not want that requirement, to give the Australian people a say on ratification of the Kyoto protocol, put on their shoulders. They would face a tirade and potential cuts to funding from the mining industry if they were to do that, so there is no way they are going to do that. I would have thought the Labor Party would support this and I would be very pleased to hear from Senator Lundy why the Labor opposition opposes this.

Senator Lundy—I have already said. You were not in the chamber.

Senator BOB BROWN—Yes, I was here, Senator Lundy, but you did not—

Senator Lundy—I said it earlier on, when I addressed all the amendments.

Senator BOB BROWN—Well, Senator Lundy—

Senator Ian Macdonald—She did. You weren’t here, Bob. Sorry.

Senator BOB BROWN—Here we have Senator Macdonald coming to the aid of Senator Lundy, which is apparently required. I do not want to put you in a spot, Senator Lundy. The fact is that it is extraordinary that the opposition opposes the Australian people having a say at the forthcoming election on this critical matter, because it affects all Australians and all future Australians. Nothing could be more important than for us to give Australians a say on this matter where, for a decade now, this country has been stymied in joining the international community by the Prime Minister and the government. I am amazed that Labor does not support this amendment.

Senator Lundy interjecting—

Senator BOB BROWN—I am sorry? Senator Lundy is not speaking quite loudly enough for me to hear what she says. That does not matter. The Greens support the amendment. We think this is a vital matter which Australians could have a say on and we are very proud to put this amendment before the chamber.

Senator LUNDY (Australian Capital Territory) (8.32 pm)—As I was saying earlier, Labor has a policy of ratifying the Kyoto protocol and, if we are elected at the next election, we will be able to put that policy in place. That is the way we will be approaching this. We have had that on the record now for a very long time.

I feel provoked by Senator Macdonald, who stood up in this place and said that he has always supported constitutional recognition. Indeed, the Liberal Party, I thought I heard him say, has always supported constitutional recognition. In fact, that is not the case. I ask senators opposite: what does the
Prime Minister say about constitutional recognition of local government? In 1988 the Prime Minister said that it would unbalance the Constitution.

Minister Lloyd was incapable of offering the coalition’s support to constitutional recognition when he had ample opportunity to do so at the Local Government Association of Queensland conference just a few weeks ago. Whilst National Party and now Liberal senators run around professing support for this, it is not a policy of the coalition government, and the Labor Party calls on the coalition government to make it a policy. You cannot mouth those words and expect the electorate to have respect for the party if you do not then make it a formal policy. We all know that the way to get constitutional recognition to become a reality in Australia is not through this pathetic blame game on the states that Senator Macdonald offers—the idea that somehow the Labor states do not support this policy.

Senator Ian Macdonald—Well, do they?
Senator Lundy—They do.
Senator Ian Macdonald—Oh! That’s interesting.

Senator Lundy—And I can tell you something else, Senator Macdonald: the Liberal Party does not support this policy. For you to stand up and say that tonight shows, firstly, that you are operating on your own; and, secondly, that you are incapable of delivering the support of the Liberal Party for constitutional recognition. With regard to the issue of state support for constitutional recognition, it is a policy of the Labor Party to support constitutional recognition, and that extends to the Labor Party both state and federal.

Let us have a look at what Senator Macdonald said tonight. He said that the Liberals supported constitutional recognition of local government. Where is the public statement from the minister responsible for the portfolio and from the Prime Minister saying that the government will support a referendum on constitutional recognition once we have the issues of the question before us resolved? Labor has a plan for this. We have a policy, we have a time frame and we have offered to the local government sphere our support for them to work towards this outcome. Please use this opportunity to tell us what the coalition government’s policy is on this matter. You had the opportunity in 1974; the coalition opposed it. You had the opportunity to support it in 1988; the coalition opposed it. The question is: if we are in a position to put a referendum in the future, which will only happen if Labor is fortunate enough to be successful at the next election, will the coalition support that referendum? If the answer is yes then let us see the Prime Minister stand up and say that; otherwise, you are just misleading the people of local government and the sector that cares so deeply about this issue.

Senator Macdonald, I put it to you that it is not your party’s policy at all and that you have decided to come in here this evening and mouth off about your view and purport that the Liberal Party’s policy is to support constitutional recognition when in fact it is not your party’s policy at all—no more than it is the National Party’s formal policy. Unless you can point to formal statements from your leaders that contradict what I am saying, then I think that is the reality. You ought to stand up now and clarify what is going on.

Senator Ian Macdonald (Queensland) (8.37 pm)—I thank Senator Lundy for confirming to me that every state Labor government will support constitutional recognition. I intend to take her at her word. I shall write to every premier tomorrow and seek their assurance on what Senator Lundy has
said, and then the whole debate can really move on. Thank you, Senator Lundy.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (8.38 pm)—I want to ask the minister whether he understands that, firstly, these amendments are not about local government but about having a plebiscite at the forthcoming federal election on support or otherwise for the Kyoto protocol; and, secondly, that this legislation will indeed override the 1968 legislation in Tasmania prohibiting local government from having a plebiscite on fluoridation.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (8.39 pm)—Yes, I do understand the intent of the amendments, and that does not change the government’s position. With respect to the 1968 legislation in Tasmania, my understanding is that if the plebiscite is conducted by the Australian Electoral Commission then, yes, this legislation will override the 1968 legislation with respect to fluoridation.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (8.40 pm)—I move:

That this bill be now read a third time.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (8.40 pm)—Mr Acting Deputy President Chapman, I have just been talking with Senator Murray about this. I think that, maybe for reasons that were not entirely consistent with the outcome I am about to describe, the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 could be the greatest contribution to democracy the government has made in its time in office. The democratic process has been very much wanting over the last 11 years, but here we have a piece of legislation which is going to facilitate local government being able to determine the will of the people on issues which state governments have in the past been able to proscribe. The fluoridation prohibition in Tasmania is an example of that. This will now exercise the minds of many Australians, working through local government, to apply for some degree of determination where that has not been available in the past. So the Greens will be supporting this legislation—not because we do not see the political motivation in the run to the election that saw the Prime Minister suddenly embark on this course but because in the long run, for other reasons, it could be a positive innovation for democracy in Australia.

The Greens have not supported the enforced amalgamation of municipalities and shires—local government—in Queensland. We have more respect for the people of, for example, Noosa and Port Douglas than that. They ought to be able to make some determination in the matter. The government has seen that it is indeed popular—and why should it not be—for people to be able to make a determination on that matter. We are supporting this government legislation. We hope it will lead to people at the local government level being able to determine their future in other ways yet unseen as this legislation passes this House, which may be quite important for people safeguarding their own interests in their own localities in the future.

Senator MURRAY (Western Australia) (8.43 pm)—I wrote some extensive supplementary remarks to the Senate report into the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007. I concur that it is a remarkable bill and a great democratic
innovation, and I again compliment the government for bringing it forward. But my purpose is not to revisit my party’s support for this bill but to again request through you, Mr Acting Deputy President, that the minister have regard to the fact that these plebiscites will be non-binding and that, even if the popular will is very strongly expressed in Queensland against local council amalgamations, the review and appeal process is still proscribed. I think that is a great problem for us in terms of natural justice and due process. I would urge the government to look again at that issue and see whether they could find some way to ensure that reviews and appeals can be carried out where people such as local government wish to challenge a ruling—because there is no provision for them to do that in Queensland with local council amalgamations.

Senator IAN MACDONALD (Queensland) (8.44 pm)—There was never any suggestion in this bill that the Commonwealth could interfere with the local government process in Queensland. This bill is about the Commonwealth government overriding a decision of a state government to ban free speech in that state. It was not meant in any other way. Councils can have a poll on anything at all in Queensland, except on what their future as a local government might be. That was the underlying, core outrage of this particular decision.

Senator Lundy—It has been changed.

Senator IAN MACDONALD—Legislation has been introduced. When I last looked, I found it had not been voted on, although the state parliament has been sitting for two weeks. Perhaps it happened today and I have not caught up with it. They certainly did not rush to it. The whole point of it is that a government of Australia decided that if a council had the temerity to have a plebiscite on its own future it would be fined; if it did not pay the fine it would be thrown into jail. That is what this legislation overrides. I am very proud that Mr Howard and our government took this particular issue on and, hopefully, in doing that, we forced Mr Beattie and Ms Bligh to change their minds. I think they changed their minds because, after threatening to take it to the High Court, they knew that, it did not matter what happened, we would do it. So they said: ‘We’re done for a penny. We’re done for a pound. We might as well roll over.’ They introduced the bill and rammed it through state parliament in one week and they changed their minds the next week. Why? Because the federal government said it would override it. That is what this bill is all about.

I am delighted that for once we have had words of praise from the Greens. I acknowledge that this particular bill has the support of the Labor Party, the Democrats and the Greens, and, of course, that this is a Liberal Party and a National Party bill. It is a delight to see this going ahead. I think it is a major step forward for the freedom of speech in our country.

Question agreed to.

Bill read a third time.

TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2007

Second Reading

In Committee

The TEMPORARY CHAIRMAN (Senator Chapman)—We are considering Democrat amendments (2) to (5) on sheet 5324 revised, moved by Senator Murray.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (8.47 pm)—Where was I?

Senator Murray—You had considered (2) and (3) and you were on (4).
Senator BRANDIS—Thank you very much, Senator Murray. The reason the government will not be supporting proposed Democrat amendment (3) to create section 46(4B) is that, in view of the government’s amendment today in relation to predatory pricing, it is superfluous. Recruitment is not legally required under the government’s predatory pricing amendments. This is clearly set out in the explanatory memorandum.

I turn to Democrat amendment (4), which would define more tightly the circumstances in which a corporation might be held to take advantage of market power. Once again, in the government’s view and in my view this is unnecessary. As the High Court decided as long ago as 1989 in the case of Queensland Wire v BHP, the concept of taking advantage of market power is purely a functional relationship. To take advantage of market power—and this is well settled by the cases—merely means to use market power, that there must merely be a relationship of causality between the conduct and the effect. Therefore, in our view, to gloss that or to further complicate it is both unnecessary and, with respect, unhelpful.

Democrat amendment (5) proposes the amendment of the act by the insertion of a section 46AB for anticompetitive price discrimination and a section 46AC for anticompetitive geographic price discrimination. The government generally does not favour—and I think the opposition is of a common mind here; correct me if I am wrong, Senator Sherry—the re-introduction of price discrimination as a separate stand-alone cause of action under the Trade Practices Act. Senator Murray, you will remember that, some years ago, there was a prohibition on price discrimination in section 49 of the old act. That was repealed years ago, I think, in the time of the previous Labor government. There were several reasons for that. The main reasons are, first of all, that price discrimination is of itself no vice unless it is attended by other conduct which would be independently unlawful as misuse of market power under the existing section 46 and, more particularly, now that there are these additional predatory pricing protections in the act, as a result of the government amendment I moved earlier in the day, a fortiori it is not necessary now to have an additional cause of action for price discrimination.

I ask the rhetorical question, Senator Murray: what conduct can you imagine of price differentiation would or should be caught by your proposed section 46AB that would not already be unlawful, either under the existing section 46 or, more particularly, the augmented section 46 with the predatory pricing amendments that the government has made? The only conduct that would be unlawful would be cases of differential pricing where there was no relevant malign intent or no other economic circumstances which would make the price differentiation anticompetitive.

So, at best, with respect—and I know I have used this word to describe a number of your amendments, so forgive me for using it again—your amendment is otiose. But, if it has any additional meaning, it could only have a chilling effect on price competition, and price competition is one of the very things the Trade Practices Act exists to protect. So for that reason we do not support amendment (5) either.

Senator MURRAY (Western Australia) (8.53 pm)—Through you, Minister, I have taken legal advice about these. They have an opinion, and I have one which of course differs in some respects from yours. Really, I have risen to thank you for your detailed and thorough explanation of the reasons for rejecting the amendments. That is very helpful.
The TEMPORARY CHAIRMAN—The question is that Democrats amendments (2) and (3) taken together be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question now is that Democrats amendments (4) and (5) taken together be agreed to.

Question negatived.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.54 pm)—by leave—I move Family First amendments (1) and (2) on sheet 5333:

(1) Schedule 2, page 6 (after line 12), after item 3, insert:

3A After subsection 46(7)

Insert:

(8) Where a corporation is held to have breached section 46AA of this Act, the corporation shall not be held to have breached this section with respect to the same conduct.

(2) Schedule 2, page 6 (after line 12), after item 3, insert:

3B After section 46

Insert:

46AA Predatory pricing

(1) A corporation must not engage in predatory pricing which substantially lessens competition in any market.

(2) For the purposes of this section, predatory pricing occurs when a corporation that has a substantial degree of power in a market, or substantial financial power in a market, offers goods or services for sale in a market at prices which have the purpose or effect of substantially lessening competition in that market.

(3) Without limiting the generality of subsections (1) and (2), in considering whether a corporation has engaged in predatory pricing, the Court may have regard to:

(a) whether the goods or services are offered at a price less than their relevant cost; and

(b) the price for which competitors of the corporation are offering the same goods or services; and

(c) the period of time for which the goods or services are offered at the relevant price; and

(d) whether the corporation is offering the same goods or services in other markets for higher prices; and

(e) the extent of competition in the market; and

(f) the reasons for its conduct.

(4) In considering whether a corporation has engaged in predatory pricing, regard may be had as to whether or not it has or had the intention or capacity to recoup the costs of its predatory conduct, but actual or potential recoupment is not a necessary requirement of an offence under this section.

(5) The reference in subsection (2) to a competitor includes a reference to competitors generally, or to a particular class or classes of competitors.

(6) This section does not limit the application of section 46.

These amendments were put forward before the government did their eleventh-hour amendments. They do address the predatory pricing specifically, by having another section called predatory pricing.

The issue here is to look at defining predatory pricing that occurs when a corporation has a substantial degree of power in the market or a substantial financial power in the market and offers goods and services for sale in that market at prices which have the purpose or effect of substantially lessening competition in that market. The difference with the Family First amendments compared to the government’s is that the government’s
look at substantial share of market as one of the key sole tests and do not look at the other issue of substantial financial power or even a substantial degree of power in a market, so they are slightly different. There are probably differing opinions about which way is best to make that happen. The other difference is in the purpose or the effect of substantially lessening competition in that market. I submit those points to the Senate and the government to consider.

Senator SHERRY (Tasmania) (8.56 pm)—I rise to indicate Labor’s view on these amendments. Senator Fielding has indicated he had drafted them prior to the government’s eleventh-hour amendments, which— as I mentioned earlier—we do not believe go far enough. But, having examined Senator Fielding’s amendments, we believe they would create some uncertainty because they would make it difficult to distinguish between genuine competitive conduct and anti-competitive conduct, which would discourage discounting and drive up prices for consumers.

Amendment (1) ensures there is no double jeopardy issue arising through the senator’s amendments. Amendment (2) does not provide any criteria as to what constitutes lessening of competition. It is unclear when prices would reduce competition as stated in the amendments. The amendments also introduce an effects test so that conduct can be predatory pricing even if there was no purpose for the conduct to be anticompetitive. But this introduces a concept that could limit rather than encourage competition.

Further, the amendments list some factors for the courts to use in determining whether predatory pricing has occurred. However, these factors do not adequately define predatory pricing and hence introduce further uncertainty into the act. Also, at least in part, the amendments have the same effect as Labor’s amendment to ensure that recoupment of costs is not required to prove predatory pricing. So all in all our conclusion on the amendments is that, whilst in one area there is a crossover with a Labor amendment to be dealt with, the level of uncertainty and difficulty that is created by the amendments as a whole leads Labor to the conclusion that it cannot support them.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (8.58 pm)—The government does not support Senator Fielding’s amendments. There are several reasons for that; let me deal with the three most important. But I should indicate that one of the reasons given by Senator Sherry for the Labor Party’s opposition to your amendments, Senator Fielding, is quite wrong. Senator Sherry, if I understood him correctly, thought that introducing substantial lessening of competition would add uncertainty. Substantial lessening of competition has been a key concept of part IV of the Trade Practices Act since 1974. I do not know who is advising you, Senator Sherry, but that is not the issue here at all.

There are three particular reasons why the government does not support these amendments, Senator Fielding, and they are these. First of all—and I dare say you expect me to say this—in our view the government amendments that were passed by the Senate earlier in the day sufficiently, if that were necessary beyond the existing terms of section 46, deal with the issue of predatory pricing in any event.

Secondly, your amendment would for the first time introduce into section 46 of the act—that is, the misuse of market power provisions—two quite novel concepts. The first is to regard substantial financial power as an alternative test to substantial market power. That, if I may say so, Senator Fielding, really is a heresy when it comes to com-
petition law. The whole point here is to deal with the exercise of power in a market. Part IV of the Trade Practices Act is about the use or misuse of market power so that the conduct upon which the prohibitions in the act fix are the various ways and circumstances in which market power may be abused.

What you are saying, Senator, is, ‘As well as the misuse of market power, we should have a second concept: the misuse of financial power.’ But that concept would only have any operative effect if one could not make out misuse of market power. So, Senator Fielding, you ask yourself the question: ‘In what circumstances could it be anticompetitive for a company which was not misusing market power nevertheless to be constrained in its commercial activity because of its financial power?’ I suppose the only answer to that question would be: if you had a very wealthy company. But if wealth of that company—a company with great financial power—did not translate into the existence of market power, which could very easily be the case, why would we want to attack the company merely because it was a wealthy company?

It is very commonplace. In fact, in any healthily functioning market you will find several players, several corporations, with financial power—if that is to be defined as financial resources or wealth or as ‘deep pockets’—which, nevertheless, do not have substantial market power because it is a competitive market. But, if it is given that it is a competitive market, why would the Trade Practices Act be interested in intervening? That is the very thing that the Trade Practices Act is there to secure, so the premise of your amendment, insofar as it would invoke this additional concept of financial power as a ground of intervention, really is deeply anticompetitive.

Thirdly, we do not agree with the introduction of an effects test into a section which would operate cognately with section 46. There is an effects test, as you know, Senator Fielding, in section 45, but it is about horizontal arrangements. There has been a debate going on for as long as the Trade Practices Act has been the law of the land as to whether or not what the misuse of market power provisions—which are about corporations acting unilaterally, not in concert—should deal with is a purpose, which section 46 does, or also an effect. The reason that most respectable opinion settles upon limiting the operation of section 46, or of any provision cognately operating with section 46, to purpose is that if you said that the operation should settle upon merely an effect absent a purpose to drive competition out of the market then you would potentially be capturing any successful competitive strategy. If you had a corporation which was not motivated by one of the three purposes prohibited by section 46(1), and it was not seeking to eliminate or substantially damage or drive out of the market a competitor but nevertheless an effect of its corporate conduct was to damage a competitor, then that conduct would be prohibited.

As I said earlier in the debate, the basic proposition of part IV of the Trade Practices Act is that it exists to protect the competitive process, not to protect individual competitors. If the Trade Practices Act were to seize upon any occasion in a competitive market when an effect of a powerful corporation might be to drive out of the market a competitive company, albeit that that was not the purpose of the successful company, then I can leave it to you to imagine what a chilling effect that would have on the operation of the market. Ultimately, by its chilling effect on the operation of free competition, it would in fact be deeply anticompetitive, so that is an-
other reason why the government does not go along with your proposed amendment.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.04 pm)—I will have to respond to that, to a certain extent. If the minister were to read that the substantial financial power was not on its own but it was with regard to whether it has the purpose—we will leave out the effect for the moment—of substantially lessening competition in that market, it is not just financial power that, all of a sudden, makes you a target; not at all. In actual fact, the government’s amendment works on substantial share of market. It does not say ‘power in a market’; it works on percentage of share of a market, so you have got to look at those issues in combination, not in isolation, as has seemed to be done there. Item (3) says:

... the Court may have regard to:

(a) whether the goods or services are offered at a price less than their relevant cost; and
(b) the price for which competitors of the corporation are offering the same goods or services; and
(c) the period of time for which the goods or services are offered at the relevant price; and
(d) whether the corporation is offering the same goods or services in other markets for higher prices; and
(e) the extent of competition in the market; and
(f) the reasons for its conduct.

This could be taken slightly out of context. We can debate this ad nauseam, but I will just leave it at that. There is obviously going to be disagreement in views on the issue. I put the amendments before the Senate.

Question negatived.

Senator SHERRY (Tasmania) (9.06 pm)—by leave—I move opposition amendments (2) and (3) on sheet 5344 together:

(2) Schedule 2, page 6 (after line 12), after item 3, insert:

3A After subsection 46(4A)

Insert:

4B A corporation can have a substantial degree of market power even though there is no proof that the corporation has the ability to, or will have the ability to, recoup losses from pricing below the relevant cost to the corporation supplying the goods or services.

(3) Schedule 2, page 6 (after line 12), after item 3, insert:

3B After subsection 46(7)

Add:

8) In determining for the purposes of this section whether a corporation has taken advantage of its market power, the Court shall have regard to whether:

(a) the conduct of the corporation is materially facilitated by its substantial degree of market power;
(b) the corporation engages in the conduct in reliance on its substantial degree of market power;
(c) the corporation would be likely to engage in the conduct if it lacked a substantial degree of market power; and
(d) the conduct of the corporation is otherwise related to its substantial degree of market power.

Firstly, amendment (2) reads:

A corporation can have a substantial degree of market power even though there is no proof that the corporation has the ability to, or will have the ability to, recoup losses from pricing below the relevant cost to the corporation supplying the goods or services.

This means that, where the form of proscribed behaviour alleged under section 46(1) is predatory pricing, it is not necessary to demonstrate a capacity to subsequently recoup the losses experienced as a result of that predatory pricing strategy.
The courts consider recoupment now. The government’s amendments leave it to the courts to decide whether recoupment is an issue or not. Labor’s amendments explicitly state that recoupment is not a factor, as it should be unnecessary to prove in relation to predatory pricing. Stating that it is not necessary to prove recoupment lowers the bar to predatory pricing and removes the need for the courts to look at the future in determining predatory pricing. Labor’s amendments make it clear that recoupment is not a factor and make it easier to prove predatory pricing for small business. Even though the supplementary explanatory memorandum states that recoupment is not necessary, Labor believes that it is best to state this in the legislation to put the issue beyond doubt.

Labor’s third amendment lists four factors the court must have regard to in determining whether a company with substantial market power has taken advantage of that power for an anticompetitive purpose. The need for clarification of ‘take advantage’ arises from the Rural Press case and the Melway case. In the Rural Press case, the court found a company is not taking advantage of its marketing power if it does something it could do without any market power. This interpretation leaves little conduct which could be construed as taking advantage. This amendment would remove uncertainty about the meaning of ‘taking advantage’ by making clear the link between proscribed conduct and the possession of substantial market power.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (9.08 pm)—The government supports neither of these amendments. The reason the government does not support the recoupment amendment, opposition amendment (2), is that it rigidifies the process of proof. A court—and this is uncontroversial—may have regard to the issue of recoupment, but to erect stringent statutory guidelines as to whether or not a court must have regard to a particular criterion or circumstance is, in my view, generally not desirable and certainly not desirable here because, in these cases, it all depends on the particular facts of the operation of a corporation and a market with particular features. They vary from one to another, so I think it would be very bad law to overly rigidify the considerations to which the court might have regard.

With regard to opposition amendment (3), I make the same point that I tried to make to Senator Murray before: the scheme of section 46 of the Trade Practices Act is really very elegant. There are three elements. There has to be a corporation with a substantial degree of power in a market—and there can be a debate about how that is determined and how it raises the issue of thresholds. Then it has to be actuated by a malign purpose—one of the three purposes proscribed by section 46(1). The link between them is taking advantage of the power for the proscribed purpose. The courts have been very clear about this. ‘Take advantage’ means ‘use’. All it means is that there be a causal or functional relationship between the use of the market power and the achievement of the malign purpose. What the court said in the Rural Press case is quite right. It is quite conceivable that you could have a corporation with substantial power in a market which acts for the purpose of eliminating or substantially damaging a competitor in a market but which nevertheless ought not to be caught by section 46 because the functional or causal relationship between the first and the third elements does not exist.

Let me give you a hypothetical example, Senator Sherry. Let us say there was a corporation with a substantial degree of power in a market that decided to eliminate a competitor by surreptitiously engaging some hoodlum to burn down its competitor’s warehouse. That is a corporation with a substantial degree of
power in a market that has done something that is in fact unlawful and that is designed to eliminate or substantially damage a competitor, but it has not used its market power to engage in that conduct; it has done something independently unlawful. For section 46 to work, there has to be a functional or causal relationship between the market power and the proscribed purpose. That is supplied by the element ‘taking advantage’. But what has to be taken advantage of or ‘used’—to use the simplest Anglo-Saxon word you can imagine that the courts have settled on—is the market power in order to achieve that purpose. The four tests that you propose adding to section 46 would really add complications to what is a very simple set of propositions and would make section 46 work much less effectively or thoroughly. For that reason, the government opposes that amendment too.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.13 pm)—I know we are not referring to the government’s amendments but, as recoupment has just come back up again, I was wondering whether the minister could explain why it was mentioned in the explanatory memorandum to the amendments that the government moved?

Senator SHERRY (Tasmania) (9.13 pm)—To maybe save a bit of time, I have one other point that I want to seek clarification on. I just make the point, Minister, that your own amendment gets rid of the ‘take advantage’ element. Perhaps you could respond to that when you deal with Senator Fielding’s question.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (9.13 pm)—I will deal with what Senator Fielding had to say first. Recoupment may be an issue because, if a corporation engaged in conduct of the kind that section 46 or the cognate provisions that have now been introduced are intended to proscribe and can be demonstrated to be intending to recoup its short-term losses by long-term monopoly profits after it has eliminated a competitor from a market, that may very well be good evidence that will supply the wanting proof of the anti-competitive purpose. It might also, in certain circumstances, demonstrate that advantage had been taken of market power too—but it really goes to the issue of purpose primarily.

But that is not always going to be the case. The point that I am making is that you do not do the operation of section 46 and like provisions of part IV of the Trade Practices Act any favours by imposing these structural rigidities in what may or may not be taken into account for the purposes of proof. These cases—and, as you know, I have run them—are very hard to prove. But you do not do yourself any favours by rigidifying the requirements of proof. An applicant in a section 46 proceeding is always better off, in my view, when they can have the full flexibility of the section at their disposal, including the provisions that enable proof by inference that are in section 46(7) of the act, which we have not discussed so far this evening. There are many, many refinements to this argument. People have spent weekends at conferences debating this very point. But in layman’s language, as it were, that is the point: it rigidifies something that does not need to be rigidified.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.16 pm)—If I could just continue with the recoupment issue, could you explain to me why recoupment as an issue was in the explanatory memorandum? Given that it was not mentioned in the amendments on sheet PF441, why is it in the explanatory memorandum?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (9.16 pm)—
It is there because it may be a factor. The recoupment of short-term losses by long-term monopoly profits, which is what recoupment is about, may be a factor. Therefore, it is relevant to advert to that in the explanatory memorandum. Chapter 2.1 of the explanatory memorandum says, in slightly more considered language, what I just said to you a moment ago—that it is not a prerequisite to establish a breach of section 46(1).

The explanatory memorandum states:

In short, the legal position is that recoupment is not required to prove a breach of section 46.

You see, it may well help to prove a breach of section 46, but neither is it the case that you need to show recoupment to prove that section 46 has been breached. Nor will it always be the case that recoupment is the decisive factor in showing whether or not there is a proscribed section 46 purpose. It may be relevant. In many cases, it will be relevant. But to elevate this one consideration above all the other considerations that can go to demonstrate that a corporation has acted in a particular way to achieve one of the three proscribed section 46 purposes is, as I said earlier, not really doing section 46 any favours by rigidifying the circumstances in which a breach may be demonstrated to have occurred.

Senator MURRAY (Western Australia) (9.18 pm)—On the same point, Minister: I have understood the supplementary explanatory memorandum, and it does state in its final sentence:

... that the legal position is that recoupment is not required to prove a breach of section 46.

It is always dangerous to put yourself in the other man’s shoes but, as I read Senator Fielding’s questions and as I read my own position and that of the Labor Party, that is not what is worrying, because recoupment is not required to prove a breach of section 46. The problem is whether the inability to recoup would be an impediment to proving section 46. You might perhaps suggest that the wording of both my previous amendment and Senator Sherry’s amendment is not clear enough. But that, to me, is what we are trying to elicit. Perhaps in your response you could explore that problem: that, if there were an inability to recoup the losses, could a section 46 case still be successfully prosecuted?

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (9.19 pm)—The answer to that question is yes. Conceivably, one can imagine a set of circumstances in which one demonstrated that there was an inability to recoup the losses but nevertheless was able independently, by proof of other facts and circumstances, to demonstrate that one of the proscribed purposes in section 46 was present. Senator Murray, you are dealing with these things in real time too. The recoupment issue is always going to be a retrospective issue. It is always going to be an issue that is addressed by courts and barristers with the luxury of looking at what happened retrospectively. But, of course, at the time at which the conduct is engaged in, which is usually either contemporaneous with or post the time at which the relevant purpose was formed, then it may well be that the malefactors, the people who constitute the corporate mind, are not in any sophisticated or systematic way turning their minds to issues of recoupment at all. So I can well imagine a circumstance in which one could demonstrate a section 46 breach even though, looked at with the benefit of hindsight, as courts inevitably do, it could be demonstrated retrospectively that there was in fact no prospect of their purpose being fulfilled at all.

Question put:

That the amendments (Senator Sherry’s) be agreed to.
The committee divided. [9.25 pm]
(The Chairman—Senator JJ Hogg)

Ayes............ 30
Noes............ 33
Majority........ 3

AYES
Allison, L.F. Bishop, T.M.
Brown, B.J. Brown, C.L.
Campbell, G. Carr, K.J.
Conroy, S.M. Crossin, P.M.
Evans, C.V. Fielding, S.
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.
O’Brien, K.W.K. Polley, H.
Sherry, N.J. Siewert, R.
Sterle, G. Webber, R. *
Wong, P. Wortley, D.

NOES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Boswell, R.L.D.
Brandis, G.H. Bushby, D.C.
Chapman, H.G.P. Colbeck, R.
Cormann, M.H.P. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Fierravanti-Wells, C. Fisher, M.J.
Heffernan, W. Humphries, G.
Johnston, D. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J. *
Minchin, N.H. Nash, F.
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Scullion, N.G. Trood, R.B.
Watson, J.O.W.

PAIRS
Bartlett, A.J.J. Joyce, B.
Faulkner, J.P. Troeth, J.M.
Forsyth, M.G. Boyce, S.
Nettle, K. Fifield, M.P.
Ray, R.F. Coonan, H.L.
Stephens, U. Kemp, C.R.

* denotes teller

Question negatived.

Senator MURRAY (Western Australia) 9.29 pm—I move Democrat amendment (6) on sheet 5324 revised:

(6) Schedule 2, page 6 (after line 12), after item 3, insert:

3C After subsection 50(1)

Insert:

(1A) A corporation must not directly or indirectly:

(a) acquire shares in the capital of a body corporate; or
(b) acquire any assets of a person;

if the acquisition and any previous acquisitions by the corporation in any relevant market in the 5 years preceding the current proposed acquisitions collectively have the effect, or are likely to have the effect, of substantially lessening competition in a market.

(1B) A person must not directly or indirectly:

(a) acquire shares in the capital of a body corporate; or
(b) acquire any assets of a person;

if the acquisition and any previous acquisitions by the person in any relevant market in the 5 years preceding the current proposed acquisitions collectively have the effect, or are likely to have the effect, of substantially lessening competition in a market.

This is one of those amendments which have been terribly difficult to design. The Senate Economics References Committee, in March 2004, in its report on the effectiveness of the Trade Practices Act 1974 in protecting small business, referred to the issue of ‘creeping acquisitions’. Those people who have participated in competition law discussions over probably a decade or more would know that creeping acquisitions have been the bane of the grocery retailing sector in particular. Eve-
Everybody understands the problem of creeping acquisitions. It is an easy one to express and an easy one to understand—that is, the cumulative effect of acquisitions over time can result in the accumulation of market power such that it will threaten competition—but how to deal with it has been the topic of major discussion. At page xviii of the report of the Senate committee I referred to, it stated the following:

Submissions before the inquiry suggested that in the retail grocery sector and the retail liquor sector, large chains are acquiring the stores of independent competitors in a program of ‘creeping’ acquisitions. Witnesses expressed concern that s.50 of the Act, designed to prevent acquisitions that would have the effect of ‘substantially lessening competition in a market’, is inadequate in dealing with piecemeal acquisitions because no single purchase is likely, by itself, to lead to a substantial lessening of competition.

The ACCC itself expressed concern about this issue, but also noted that it has not yet determined whether creeping acquisitions in general (as opposed to specific case) do substantially lessen competition and so cause economic detriment. Further, if they do have this effect, the ACCC expressed uncertainty about whether the current section 50 provisions would be adequate to deal with that issue.

The Committee considers, as a matter of logic, that creeping acquisitions must, if continued indefinitely, at some point result in a very concentrated market. The clear consensus of evidence before the Committee supported this view, and no substantial arguments were raised to oppose it. Current merger law does not effectively address this issue. Section 50 of the Act should be strengthened to take account of the cumulative effects of acquisitions which over time may substantially lessen competition.

Recommendation 12

The Committee considers that provisions should be introduced into the Act to ensure that the ACCC has powers to prevent creeping acquisitions which substantially lessen competition in a market.

Easy to say but hard to do. The government senators said at page 89:

Government Senators do not support this recommendation. In our view, the existing provisions of Part IV, subject to the amendments we have recommended above, adequately deal with such competition issues which ‘creeping acquisitions’ might raise.

With respect, I disagree with the government senators. There are a number of government senators I know who are extremely concerned about creeping acquisitions, and some of them might be sitting near me in this debate.

The Democrats have attempted to address this issue. We have created amendment (6). There may be those people who cannot see this amendment working, because it does use the time period of five years as the period in which creeping acquisitions can be taken into account or when they may or may not impact on an acquisition made in another state. That may be, but there needs to be some time based recognition of the creeping acquisition phenomenon.

Everybody knows that the definition of ‘market’ in the Trade Practices Act is an integral part of a case getting up. So, if the relevant market is recognised as a national market, this amendment allows a court sufficient flexibility to review the pattern of acquisitions over five years in any relevant market to get a better fix on their collective or aggregated impact on competition. If the pattern of behaviour demonstrably substantially lessens competition then this amendment allows the ACCC to deal with them. At the moment, the ACCC cannot.

More importantly, this amendment allows creeping acquisitions in local and regional markets to be considered, and that is where the adverse impact on competition from creeping acquisitions over five years may be much more pronounced. One only needs to
think about the changing media landscape, for instance, to see the validity of this argument. I freely confess to the minister that this is a difficult one to design; it is a difficult one to attack. But the principle that I wish to see expressed is that creeping acquisitions, in the same way as substantial acquisitions, should be seen as potentially capable of creating the same effects as a substantial acquisition could, and that is the mischief we are seeking to remedy through this amendment.

**Senator BRANDIS** (Queensland—Minister for the Arts and Sport) (9.36 pm)—I understand entirely, Senator Murray, what you are saying. This is, if I may perhaps describe it this way, the straw that broke the camel’s back problem. There is nothing in the language of the existing section 50, though, which in the government’s view would not be adequate to deal with the problem that you raise. The effect of your amendment is to introduce into section 50 some additional words:

... and any previous acquisitions by the corporation in any relevant market in the 5 years preceding the current proposed acquisitions collectively...

Now, it is the interposition of those words, because the other part of your two proposed subsections merely replicates the existing language of 50(1) and 50(2). So the question one has to ask, Senator Murray, is: is the effect you are seeking to achieve by the insertion of those words not already achieved by the existing language of section 50? I respectfully submit to you that it is, particularly if you look at the very broad language of 50(3), which sets out a non-exhaustive list of nine factors to which the court may have regard in determining whether an acquisition has the effect of substantially lessening competition. Those factors include, by subparagraph (c) of 50(3), ‘the level of concentration in the market’; by subparagraph (g), ‘the dynamic characteristics of the market’; and by subparagraph (h), ‘the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor’.

Senator Murray, I do not think logically it is possible to say that it adds anything to enjoin a court to have regard to acquisitions over the previous five years when already, under the existing language of the section, one of those factors to which the court may have regard is the level of concentration. If the level of market concentration has been built up cumulatively over the previous five years or even longer than the previous five years, that is something to which the court can have regard under the existing provisions of 50(3)(c). So the amendment, it seems to me, if I may say so, is unnecessary.

There is also, though, the not unimportant problem that the draftsman has used the expression ‘any relevant market’ without defining what the relevant market is. For those reasons the government will not support the amendment—not because we disagree with you but because we think the mischief which you identify is already dealt with by the current language of the act.

**Senator SHERRY** (Tasmania) (9.40 pm)—I indicate that, with respect to Democrat amendment (6), Labor agree that creeping acquisitions need to be taken into account. We did move a second reading amendment outlining this rather than making detailed amendments because this is a major change. We believe it is better to consult on the precise wording before drafting the amendments. Action on creeping acquisitions is something that Labor will be implementing in government if we are elected later this year, following consultation on that detail. For that reason we are unable to support this amendment tonight.
Senator MURRAY (Western Australia) (9.40 pm)—I appreciate the response from both the minister and the shadow minister. The minister’s response is that the government is of the view that the act as it is presently constituted, if I understand his answer correctly, does take into account creeping acquisitions. However, my view from the evidence I have received over time both in the Senate and prior to my coming into the Senate is that those who are most aggrieved by creeping acquisitions have found themselves unable to pick the timing or the circumstance which would entail them bringing a case before the courts—is it 100 stores minus one or 100 stores plus one at which you finally make the move? I am pleased that Labor are willing if elected to address this issue. I have freely confessed how difficult this is to design and I am pleased that they intend to consult and take further advice on this matter before settling on the way in which this should be done.

Question negatived.

Senator MURRAY (Western Australia) (9.42 pm)—The running sheet suggests I move amendments (7) to (9) on sheet 5324 revised together. But I seek leave to move amendments (7) and (8) together, and then (9), but I am happy to speak to all three amendments in the debate.

Leave granted.

Senator MURRAY—I move:

(7) Schedule 2, page 6 (after line 12), after item 3, insert:

3D After subsection 51AAB

Insert:

51AAC Unfair contract terms

(1) A corporation must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to a person (other than a listed public company); or

(b) the acquisition or possible acquisition of goods or services from a person (other than a listed public company);

include in a contract, arrangement or understanding, or proposed contract, arrangement or understanding, an unfair term.

(2) A person must not, in trade or commerce, in connection with:

(a) the supply or possible supply of goods or services to a corporation (other than a listed public company); or

(b) the acquisition or possible acquisition of goods or services from a corporation (other than a listed public company);

include in a contract, arrangement or understanding, or proposed contract, arrangement or understanding, an unfair term.

(3) A term is to be regarded as unfair for the purposes of subsections (1) and (2) if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, arrangement, or understanding, or the proposed contract, arrangement or understanding, to the detriment of the consumer or small business.

(4) An unfair term is void.

(5) The contract will continue to bind the parties if it is capable of existing without the unfair term.

(6) This section only applies to a contract, arrangement or understanding, or proposed contract, arrangement or understanding entered, or proposed to be entered into, on or after the commencement of this section.

(8) Schedule 2, page 6 (after line 12), after item 3, insert:
3E After subsection 51AC(1)
Insert:

(1A) For the purposes of this section unconscionable conduct includes any action in relation to a contract or to the terms of a contract that is unfair, unreasonable, harsh or oppressive, or is contrary to the concepts of fair dealing, fair trading, fair play, good faith and good conscience.

Item (7) refers to unfair contract terms with respect to 51AAC. This amendment is based on the unfair contract terms legislation which operates in Victoria. Under that legislation consumers have a private right of action in the courts. It appears from what I am told that it has worked fairly effectively in Victoria—there have been no floodgates opened for litigation and the legislation has had the effect that was intended when it was constructed. The amendment utilises both the Victorian and United Kingdom legislation to define ‘unfair’, and the courts have had no problems interpreting the concept in a way that does not undermine the certainty of contracts. Since courts now routinely deal with the word ‘fair’ I cannot see why they would have any difficulty dealing with the word ‘unfair’. The United Kingdom legislation has been operating for over 10 years and the Victorian legislation for a few years. As I say, it has been reported to me that there are no problems in those jurisdictions.

With respect to item (8), 3E refers to unconscionable conduct in 51AC(1). The important aspect of this amendment is that it covers any action in relation to a contract which has a broad notion that would cover conduct as well as the actual contract terms. It was deliberately drafted in that manner. As somebody who has dealt with hundreds of contracts in my business life, conduct is a vital area to cover when determining matters such as these.

Item (9) is based on the recommendation from the Senate committee that I outlined earlier—the March 2004 Senate Economics References Committee. I would hope that my Labor Party colleagues would be able to support this in view of the fact that they supported the original recommendation, and I would hope that some government members might reconsider this matter. This is to do with the transaction value. The divestiture power in 3G in this amendment has been drafted to deal with section 46 because that is what the majority Senate report recommended. I think I should leave it at that at present.

Senator SHERRY (Tasmania) (9.45 pm)—I thank Senator Murray for his cooperation in agreeing to split amendments (7) and (8) from amendment (9). Amendment (7), similar to amendment (6), would make a major important change to the Trade Practices Act. I have indicated how Labor would deal with that in the context of the second reading amendment. Labor does not agree to amendment (8). Labor believes that the current, well-settled case law outlining the meaning of unconscionable conduct, while strict, is appropriate. Finally, Labor indicates its support for amendment (9). We support this because it is effectively the same as Labor’s amendment to remove the $3 million threshold from section 51AC, regarding unconscionable conduct, which we will get to shortly.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (9.46 pm)—The government does not support these amendments, Senator Murray. We remain to be persuaded that section 51AC, in its current form—which operates upon the controlling concept of unconscionable conduct, with the assistance of subsection 51AC(3), which identifies 11 different categories of circumstances to which the court might have regard in making decisions about unconscionabil-
ity—does not work perfectly well at the moment. It is not to be forgotten, of course, Senator Murray, that section 51AC of the Trade Practices Act builds upon an existing body of equitable doctrine, which goes back many centuries as to what unconscionable conduct means.

What you would do, if I may say so, with respect—and Senator Sherry is quite right: the case law on this is quite settled; it is quite searching—is upset the structure of section 51AC by replacing it with a provision such as 51AC(3) in your proposed amendments, which would have it that:

A term is to be regarded as unfair ... if, contrary to the requirements of good faith—
I pause to say that, although good faith has rhetorical meaning, it also has a technical meaning in the law—
and in all the circumstances—
which is an open-ended category which invites an infinity of considerations to be brought into contemplation—
it causes a significant imbalance in the parties’ rights and obligations arising under the contract ...
Well, for goodness sake, Senator Murray, if that means that whenever there is a negotiation as a result of which there is a significant change, which you might characterise as an imbalance in the party’s rights and obligations under a contract, the contractual term can be set aside by a court, then it seems to me, with respect—and you as a businessperson should understand this, I think, better than most—that it attacks one of the core principles of commercial law: the security of transactions.

There is no controversy. Where there is unconscionable conduct—which, as I said before, is a well-understood notion in the law—there ought to be circumstances in which a contractual term is set aside, but if, absent of unconscionable conduct, there is a carte blanche for courts to set aside contractual terms merely because one side gets the rough end of the deal, that is the end of security of transactions or contractual certainty, which is such an important commercial desideratum.

It only gets worse, with respect, when we go to item 8, which would define unconscionable conduct as anything that is:
... unfair, unreasonable, harsh or oppressive, or is contrary to the concepts of fair dealing, fair-trading, fair play, good faith and good conscience.
Heavens above, Senator Murray: what a cornucopia of adjectival extravagance that is. Can you tell me what the concept of fair play is in commercial law? I bet you cannot. Nobody can because there is no such thing as the concept of fair play in commercial law. It troubles me when people substitute settled legal concepts for political rhetoric.

Progress reported.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT
(Senator Crossin)—Order! It being 9.50 pm, I propose the question:
That the Senate do now adjourn.

Heiner Affair and Lindeberg Grievance

Senator JOYCE (Queensland) (9.50 pm)—I would like to read two letters onto the record tonight. The first letter is from the Hon. Jack Lee AO QC, Retired Chief Judge at Common Law Supreme Court of New South Wales; co-signed by Dr Frank McGrath, Retired Chief Judge, Compensation Court of New South Wales; co-signed by Alastair MacAdam, Senior Lecturer in Arts Law, Law Faculty, QUT Brisbane, and Barrister-at-Law; co-signed by the Hon. Justice RP Meagher QC, former Justice of the Appeal Court of New South Wales; co-signed by Alex Shand QC, leading QC in Australia; and also co-signed by Barry O’Keefe, former Chief Judge, Commercial Division, Supreme Court of New South Wales and former
Commissioner of the Independent Commission against Corruption in New South Wales. It is addressed to the Hon. Peter Beattie MLA:

Dear Premier

THE HEINER AFFAIR - A MATTER OF CONCERN

We, the undersigned legal practitioners formerly on the Bench, currently at the Bar or in legal practice, seek to re-affirm our sworn duty to uphold the rule of law throughout the Commonwealth of Australia and to indicate our deep concern about its undermining as the unresolved Heiner affair reveals.

We believe that it is the democratic right of every Australian to expect that the criminal law shall be applied consistently, predictably and equally by law-enforcement authorities throughout the Commonwealth of Australia in materially similar circumstances. We believe that any action by Executive Government which may have breached the law ought not be immune from criminal prosecution where and when the evidence satisfies the relevant provision.

To do otherwise, we suggest would undermine the rule of law and confidence in government. It would tend to place Executive Government above the law.

At issue is the order by the Queensland Cabinet of 5 March 1990 to destroy the Heiner Inquiry documents to prevent their use as evidence in an anticipated judicial proceeding, made worse because the Queensland Government knew the evidence concerned abuse of children in a State youth detention centre, including the alleged unresolved pack rape of an indigenous female child by other male inmates.

The affair exposes an unacceptable application of the criminal law by prima facie double standards by Queensland law-enforcement authorities in initiating a successful proceedings against an Australian citizen, namely Mr. Douglas Ensbey, but not against members of the Executive Government and certain civil servants for similar destruction-of-evidence conduct. Compelling evidence suggests that the erroneous interpretation of section 129 of the Criminal Code (Qld) used by those authorities to justify the shredding of the Heiner Inquiry documents may have knowingly advantaged Executive Government and certain civil servants.

This serious inconsistency in the administration of Queensland’s Criminal Code touching on the fundamental principle of respect for the administration of justice by proper preservation of evidence concerns us because this principle is found in all jurisdictions within in the Commonwealth as it sustains the rule of law generally.

The Queensland Court of Appeal’s binding September 2004 interpretation of section 129 in R v Ensbey; ex parte A-G (Qld) [2004] QCA 335 exposed the erroneous interpretation that the (anticipated/imminent) judicial proceeding had to be on foot before section 129 could be triggered.

We are acquainted with the affair* and specifically note, and concur with, (the late) the Right Honourable Sir Harry Gibbs GCMG, AC, KBE, as President of The Samuel Griffith Society, who advised that the reported facts represent, at least, a prima facie offence under section 129 of the Criminal Code (Qld) concerning destruction of evidence.

In respect of the erroneous interpretation of section 129 adopted by Queensland authorities, we also concur with the earlier 2003 opinion of former Queensland Supreme and Appeal Court Justice, the Hon James Thomas AM, that while many laws are indeed arguable, section 129 was never open to that interpretation.

Section 129 of the Criminal Code (Qld)—destruction of evidence—provides that:

“Any person who, knowing that any book, document, or other thing of any kind, is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour, and is liable to imprisonment with hard labour for three years.” (Underlining added).

It concerns us that such an erroneous view of section 129 was persisted with for well over a decade despite the complainant, supported by eminent lawyers, pointing out the gravity of their
error consistently since 1990 when knowing its wording and intent were so unambiguous, with authoritative case law available for citing dating back as far as 1891 in R v Vreones.

Evidence adduced also reveals that the Queensland Government and Office of Crown Law knew, at the time, that the records would be discoverable under the Rules of the Supreme Court of Queensland once the expected writ/plaint was filed or served. With this knowledge, the Queensland Government ordered the destruction of these public records before the expected writ/plaint was filed or served to prevent their use as evidence.

Such scandalizing of these disclosure/discovery Rules by the Executive also concerns us. So fundamentally important is respect for these Rules that the Judiciary’s independent constitutional functionality depends on it.

Under the circumstances, we suggest that any claim of “staleness” or “lack of public interest” which may be mounted now by Queensland authorities not to revisit this matter ought to fail. Neither the facts, the law nor the public interest offer support in that regard.

Senator George Campbell—Mr President, I rise on a point of order. I am not trying to restrict Senator Joyce from reading what he is reading, but if this is a public document then why are we going through the process of reading it into the transcript when it is already on the public record? If it is not, what is the purpose of this?

The PRESIDENT—There is no point of order, Senator Campbell. If Senator Joyce wants to read something already on the public record into the Hansard, he is quite entitled to.

Senator Joyce—I will continue. The letter says:

This affair encompasses all the essential democratic ideals. The right to a fair trial without interference by government and the right to impartial law-enforcement, to say nothing of respecting the rule of law itself rest at its core. Respecting the doctrine of the separation of powers and our constitutional monarchy system of democratic government are involved.

We believe that the issues at stake are too compelling to ignore.

We suggest that if the Heiner affair remains in its current unresolved state, it would give reasonable cause for ordinary citizens, especially Queenslanders, to believe that there is one law for them, and another for Executive Government and civil servants.

We find such a prospect unacceptable.

We urge the Queensland Government to appoint an independent Special Prosecutor as recommended by the House of Representatives Standing Committee on Legal and Constitutional Affairs in its August 2004 Report (Volume Two—Recommendation 3) following its investigation into the affair as part of its national inquiry into “Crime in the community: victims, offenders and fear of crime”.

Such an independent transparent process we believe will restore public confidence in the administration of justice throughout the Commonwealth of Australia, more especially in Queensland.

I turn now to another document that I table. It is from Ryan & Bosscher Lawyers. It says:

Dear Mr Beattie,

RE: THE “HEINER AFFAIR”

We act on behalf of Mr Kevin Lindeberg in relation to a series of events and allegations referred to commonly as the Heiner Affair.

A leading Sydney Queens Counsel, Mr David Rofe QC, assisted by our client, has prepared over the last two years a detailed chronology of matters and events commencing with the alleged pack rape of a fourteen year old Aboriginal female inmate from the John Oxley Youth Detention Centre ("JOYC") in late May 1988; the setting up by the Cooper Government of a Departmental Inquiry presided over by retired Magistrate Noel Heiner in November 1989; the extraordinary and unexplained destruction of documents said to be Cabinet documents during February and March 1990 by the new Goss Government; together with ancillary conduct which appears to
have been a “cover up” of the above events by the Goss Government’s Cabinet, certain ministerial staff and public servants holding senior positions in the Queensland Public Service.

It is the case, despite all of the information available, that the alleged rapists of the fourteen year old inmate are still at large and have never been charged with this offence.

Mr Rofe QC, as a result of Mr Lindeberg’s efforts in collecting and collating relevant material over many years, had been able to identify no less than 67 prima facie cases of alleged breaches of the Criminal Code, and other statutes by members of the Goss Cabinet, other ministerial staff, senior public servants and other persons all of whom have been complicit in the destruction of the Heiner documents and the apparent suppression and cover up of these activities.

I note that you are on record in the Parliament stating that if politicians and/or public servants are reasonably suspected of being involved in possible breaches of the criminal laws of this State, whether they be of your political persuasion or otherwise, you would do nothing to stand in the way of ensuring that they are bought to account before our Courts.

Mr Rofe believes that there is prima facie evidence that members of the Goss Cabinet, certain of their staff and certain public officials in March 1990 illegally authorised, and/or were complicit in, causing the destruction of the Heiner documents knowing that they were evidence realistically required for a judicial proceeding (inter alia litigation involving Mr Coyne and the physical and sexual abuse of children held in care and custody of the State of Queensland at the JOYC).

It is Mr Lindeberg’s view, and that view is shared by this office and Mr Rofe, that neither the former CJC, the Queensland Police Service or the Crime and Misconduct Commission (or any other body for that matter) has ever conducted a full and proper investigation/enquiry investigating this matter to completion.

The purported “exoneration” of relevant persons by the CJC in January of 1993 has clearly been discredited by the material collated by Mr Lindeberg and the review conducted by Mr Rofe. We note it is on the public record, at an earlier time when considering the same facts, that other eminent jurists such as Mr Ian D F Callinan QC (as he was then) in 1995, and former Chief Justice of the High Court, the late Hon Sir Harry Gibbs GCMG AG KBE in 2005, have also discredited the CJC’s January 1993 “exoneration.”

On the material available, combined with the relevant law, it is our opinion that the conduct of these arms of Government in the handling of this matter over the years demands a full and open investigation by an independent examiner for justice to be afforded not only to our client but to the citizens of the State of Queensland. It is clearly in the broad public interest for such an inquiry to occur due to the conduct having involved so many persons in senior positions in various arms of Government over many years in this State.

The PRESIDENT—Order! Senator Joyce, your time has expired.

Senator JOYCE—I seek leave to have the remainder of the speech incorporated in Hansard.

Leave not granted.

Senator Heffernan—Just show it to them.

Senator George Campbell—On a point of order, Mr President, Senator Heffernan is not sitting in his seat. He is interjecting. He is trying to direct the chamber. If he wants to make a point, he should go back to his chair and make it from there. We are not granting leave until we see what Senator Joyce wants to table.

The PRESIDENT—Senator Heffernan, you are not in your seat and you are not entitled to interject when you are not in your seat.

Hasluck Leadership Award

Senator ADAMS (Western Australia) (10.01 pm)—Tonight I would like to provide the Senate with an overview of a great initiative by one of my Western Australian colleagues in his electorate. The member for Hasluck, Stuart Henry MP, has created a
vehicle for inspiring and developing the leadership potential of Year 11 students who are progressing on to their Year 12 studies. With four daughters, two of whom are still in their teens, Mr Henry has a strong interest in the youth of his electorate. The member for Hasluck wanted to provide an opportunity for high school students to better understand the parliamentary process and our system of democracy and provide them with the chance to visit our national capital and discover politics in an environment where they are free to form their own impressions.

The Hasluck Leadership Award was launched in 2005, Mr Henry’s first year as a federal parliamentarian, and is named in honour of the highly respected and influential Liberals Sir Paul and Dame Alexandra Hasluck. Dame Alexandra was a noted historian, and Sir Paul succeeded in several careers, including as a journalist, diplomat, academic and bureaucrat, before being elected as a federal member of parliament in 1949. During his time in successive Menzies governments, he held the portfolios of Territories, Defence and External Affairs. The Haslucks were known to people of all political persuasions as deeply intelligent and compassionate people. Sir Paul was appointed Governor-General in 1969 and served until 1974. His standing in public life and his reputation was as a well-informed, thoughtful man of enormous integrity.

In the seat of Hasluck, which runs from the southern suburb of Gosnells, along the foothills behind the airport in Perth to Midland, and encompasses areas within the Darling Range, has 12 high schools located within it. Each school is asked to nominate one Year 11 student who best exhibits leadership and citizenship skills. Seeing that the Hasluck Award has been running for three years, it is a highly competitive award, and the schools have all embraced it. Those students who have been lucky enough to win have come back to their schools and advised their colleagues and it has become highly sought after. This year, I would like to name and recognise each of these outstanding students who were nominated by their schools for the 2007 Hasluck Leadership Award. They are: Sarah Foster from Lesmurdie Senior High School, Tom Wale from Guildford Grammar School, Philip Beckett from Governor Stirling Senior High School, Marina Maclean from Thornlie Senior High School, Mathew French from Kalamunda Senior High School, Arielle Cooper from La Salle College, Kirsten Kamperman from St Brigid’s College, Jarrod Lomas from Lumen Christi College, Jessica Allerdrige from Southern River College and Joshua Oorshot from Mazenod College.

Once nominations have been received, each student is judged on their ability to demonstrate their leadership and citizenship skills through both written and spoken presentations before a panel of four judges. This year, the judges were selected from the community and included: Mayor Pat Morris from the City of Gosnells; Dr Scott Hollier from the Association for the Blind of WA; Helen Dullard, Chief Executive Officer of the Hills Community Support Group; and Andy Farrant, General Manager of Country Arts WA. As you can see, this panel comprised a highly professional and skilled group of people.

The 10 nominees were required to give presentations on two issues vital for the future of this country: leadership and citizenship. The standard of presentations was extremely high and, as a result, the judges recommended that a special commendation be included. The year 2007 marks the third year of the Hasluck Leadership Award and the first time a special commendation award has been included.
At a ceremony held in July at the Agonis Centre in Gosnells, the guest of honour, the Minister for Education, Science and Training, the Hon. Julie Bishop MP, announced that Mathew French, from Kalamunda Senior High School, had received the special commendation award while Arielle Cooper, from La Salle College in Midland, and Jarrod Lomas, from Lumen Christi College in Gosnells, were named as the recipients of the 2007 Hasluck Leadership Award. The students arrived in Canberra on Sunday, 12 August and immediately hit the ground running. They were here in the House for four days and I was privileged to act as co-host for the students. It was amazing to see how, on the day they arrived, they were shy and absolutely overawed by the parliament, but, after being here for four days, they were real professionals posing for photographs and making impromptu speeches. It really gave me great regard for 16- and 17-year-olds. They were absolutely amazing ambassadors for Western Australia and the electorate of Hasluck.

In four days the students met the Prime Minister, the Treasurer and the immediate past-President of the Senate, the Hon. Paul Calvert. A photo was taken at 6 pm on the night before the President retired from his position, so they had the honour of being the last students to have their photo taken with him. Unfortunately, we could not catch up with the new President in time to get a photograph—that was a bit sad. The students met the Speaker of the House, the Hon. David Hawker; the Sergeant-at-Arms, Mr David Elder; the Hon. Julie Bishop; Senator the Hon. Chris Ellison; Senator the Hon. David Johnston; Mr Pat Farmer MP; the Hon. Judi Moylan MP; and Senator Alan Eggleston. They witnessed the swearing in of the new President of the Senate, Senator Alan Ferguson, and my Western Australian colleague Senator Mathias Cormann, and they listened to the first speech given in the Senate by Senator Cormann. It was a historic occasion on which they saw a Senate President leave, a new President sworn in and a Western Australian senator present his first speech to the Senate.

When the students met the Prime Minister, they asked for his advice to anyone considering entering politics. The Prime Minister suggested getting out into the world and gaining some life experience on which to call before entering the public sector. This point was brought home when they met the Hon. Pat Farmer MP and found his past achievements very inspiring. Between these meetings the students also visited places of national and cultural importance such as the War Memorial, the National Museum and Art Gallery, Duntroon, the Institute of Sport, the High Court and Old Parliament House.

I was delighted to meet these outstanding young people and very pleased to be involved with their program, having had the great pleasure to co-host them in Parliament House. My special thanks go to Alyssa Hayden for her excellent coordination of the students’ program and for being their house mother. The students proved to be fantastic ambassadors for their respective schools and always conducted themselves in a mature and responsible manner. Before the students left, I asked them what they had learned during the program. They commented that the hours worked by politicians were incredible and not what the media would have you believe. After attending question time in the House of Representatives they were amazed to see how answers from the government were reported by the media. They were impressed that every member, minister or senator they met had a strong career background before entering politics. Above all, seeing the true inside workings of politics was a genuine eye-opener.
The Hasluck Leadership Award has facilitated greater communication between Mr Henry and the high schools in Hasluck and has become a talking point for the students. The winners go back to their schools with such great tales of their experiences in Canberra and Parliament House that the award has become something that all students strive for. Both Mr Henry and I have been invited to attend each of the students’ school assemblies, where they will address their peers and teachers, further embellishing their experiences in Canberra. (Time expired)

Aged Care

Senator McLUCAS (Queensland) (10.12 pm)—It gives me great pleasure to speak in the adjournment debate tonight about the challenges that we face in aged care in Australia. It was my good fortune today to address the Aged and Community Services Australia national conference in Melbourne—and I thank the Senate for giving me leave to do so. In my speech at the conference today, I said the aged-care sector faces a number of challenges that we have to embrace so that we can deliver a quality aged-care system into the long-term future, not just past the next election. It is my view and Labor’s view that the 11½ years of this government have been an enormously wasted opportunity. We have known since 1945—perhaps not quite 1945, but very soon after—that we have an ageing population. We have known that planning for aged care was required. We have known not for the last week, not since February, but for at least 10 years that we need a robust and sustainable aged-care system so that we can deliver the services we expect for our current older generations and for my generation as well.

In my view, we face three challenges in aged care. The first is the immediate and pressing issue of the workforce in the aged-care sector. Over the last 10 years, the number of nurses working in residential aged care has decreased by about 6,000. In the same period, the number of people living in residential aged care has increased by about 20,000. We have fewer nurses, both enrolled and registered nurses, working in aged care and they are caring for more and more older people who are frail and vulnerable with higher levels of dementia. So the first challenge that we must deal with in the short term is that of the workforce.

The second issue that we have to deal with in aged care is the sustainability of residential care and community care. We have to make sure that the aged-care system we have will be sustainable into the future. If we do not, any confidence that we have as a community in the delivery of aged-care systems will be seriously challenged. We must not do what the current government has done, which is to basically pay lip-service over time to a concern that there is a capital raising issue in aged care. They called an inquiry. I think it cost $6½ million for Professor Warren Hogan to conduct his inquiry in 2002. It took longer for the government to respond to his inquiry than the government actually gave him to undertake the inquiry. We had a patch-up job in the budget that followed the receipt of Professor Hogan’s report which tided us over for a little longer. Then we had the so-called ‘securing the future’ package in February of this year. It has been put to me by very well-respected leaders in the aged-care sector that it is ‘Securing the future—not!’ It has not provided a sustainable way of moving forward.

The third issue is that I do not think this government have addressed in the last 11½ years the opportunity to shape the nature of aged care into the future. We still have much the same ratio of allocation of aged-care beds and Community Aged Care Packages as we had 23 years ago. A lot has happened in 23 years. The longevity of the Australian
population has increased quite considerably. We are living longer and we are living healthier lives. That should be applauded. We should be congratulated for that. But, because we are living longer, the level of dementia as a result is much higher. We are living longer and healthier during our young older years and we are getting dementia at a higher rate in our old older years. That has not been factored into a decision about the mix of aged-care services we need in Australia.

Add to that the fact that we have had considerable growth in the retirement village sector. That is something to be applauded and something I think that the market itself is leading and directing. And it is something I think that governments should be watching very closely to make sure that we can support appropriate growth in the retirement village sector. The market is directing that sector, and that is all well and good, but let us be sure that all sectors of our community can be part of the style of living that a retirement village offers. It gives a sense of security. It gives a very comfortable living arrangement. It suits older people quite well. Let us not forget that if you have had a life that has not afforded you the opportunity to have the $350,000 to $380,000 necessary to buy into retirement village living, you may miss out on that quality older life simply because you cannot afford to buy into the system. I am very aware—and I am sure a lot of us are aware—that a range of services provide rental options for retirement village living. I would like to see a mix of purchase and rental options in the same village.

All these things have been happening while, at the same time, the government have stuck with a ratio of provision of aged-care services that is essentially based on a formula that was established, not very academically, some 23 years ago. It is time that we looked very closely at the type and form of aged-care services that are provided. Currently in Australia we provide 40 low-care, 40 high-care and 25 Community Aged Care Packages for every 1,000 people over the age of 70. But we cannot answer the question: why that number? It is because that is the way it has developed over time. There is no robust reason for that split in aged-care services in Australia. That is why I am particularly proud that Labor have already announced that we will review the ratio of aged-care allocation services. We will make sure that we have an aged-care system that is sustainable, that is the right mix of community aged care, low care and high care, and that reflects the aspirations of older people themselves. We need an aged-care service that is well-staffed—and it is not at the moment. We need an aged-care service that is well designed—and in my view we do not have it at the moment. We need an aged care-service that is financially sustainable not only post this next election but a long way into the future. I am proud that the policies that Labor have announced at this point in time will deliver those outcomes.

Heiner Affair and Lindeberg Grievance

The PRESIDENT—I call Senator Boswell.

Senator George Campbell—Mr President, I rise on a point of order. Normal practice in the adjournment debate is for there to be two speakers from this side of the chamber and two speakers from the other side of the chamber. We have had two speakers from that side of the chamber; we have had one from this side of the chamber. You have now called the third speaker from that side of the chamber. Convention would suggest that the next speaker should be from this side of the chamber.

The PRESIDENT—Senator Campbell, in fact there was a speaker from your side listed for the second speaker; however, that speaker
was not there, so I called the only speaker that stood in her place, which was Senator Adams. The normal practice in the chamber is to go from one side of the chamber to the other. I am going to Senator Boswell now.

Senator George Campbell—Mr President, I rise on a point of order. I understand what you have just said and what you have ruled, but I did not know that what is on a bit of paper is what determines the conventions of this chamber. I thought the convention in this chamber was that there would be two from one side and two from the other side.

The PRESIDENT—Resume your seat, Senator Campbell. I have heard enough. On most adjournment nights when I have been sitting in the chair there have been two speakers from the government, one from the Labor Party and one from the Australian Democrats.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (10.23 pm)—I would like to read from a letter from Ryan and Bosscher to the Hon. Peter Beattie, dated 10 August 2007. I continue from where Senator Joyce left off. The letter says:

We are aware also that you have earlier declined our client’s request of 15 October 2004, in the wake of the Queensland Court of Appeal’s decision in R v Ensbey, to appoint a Special Prosecutor to fully inquire into this matter. Thus our client is forced to consider the legal process open to him to obtain justice and the bringing to account those persons who may have breached the law. Of particular recent concern is the fact that you have recently declined to make public the advice provided by Mr Royce Miller QC (former Director of Public Prosecutions) dated 6 January 1997 and your refusal to make public your Government’s report to Her Excellency the Queensland Governor, on your Government’s handling of our client’s allegations. Further you have also declined to table in the Parliament relevant Cabinet Attendance Registers for February and March 1990 and to provide reasons for such refusal.

Given the material that has been collated, and the view of Mr Rofe of the existence of prima facie criminal activity, we now seek from you access to the records referred to in the paragraph above. The documents to which access is sought, because of their apparent relevance to prima facie breaches of the law, are the following public records held by the Queensland government:

1. A copy of the Cabinet attendance register(s) for 12 February 1990, 19 February 1990 and 5 March 1990;

2. A copy of the 1997 instructions provided to Mr Royce Miller QC and the advice from Mr Miller to the Queensland Government on the findings and recommendations of the 1996 Morris/Howard report into the Heiner Affair (that documentation we understand was referred to in correspondence from the then leader of the opposition, Mr Springborg, to yourself informing you of the fact that there was no objection from the former Borbidge Government to those documents being released into the public domain); and

3. A copy of the 25/26 April 2005 Queensland Government report to Her Excellency Governor Quentin Bryce AC on its handling and findings in respect of the Lindeberg allegations following Her Excellency’s request for same on 21 October 2003, and a copy of all documents and correspondence relating thereto.

Should you maintain objection to now releasing any of that material then we would seek from you a statement of your grounds for such objection. Given the obvious relevance of the above documents sought by our client in this matter and to the maintaining of public confidence in this State’s judicial system (to say nothing of open and accountable Government in Queensland), we anticipate you would now be prepared to release that material forthwith.

Our client has instructed us that should you continue to refuse to make this material publicly available then he reserves his right to bring appropriate action through the Court system in order to compel the provision of that documentation.

Yours faithfully
RYAN & BOSSCHER LAWYERS
MICHAEL BOSSCHNER
Managing Partner
The government proposes to table the 3,600 page report tomorrow.

**Senate adjourned at 10.27 pm**

**DOCUMENTS**

**Indexed Lists of Files**

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2007—Statements of compliance—

Department of Communications, Information Technology and the Arts.

Department of Prime Minister and Cabinet.

Environment and Water Resources portfolio agencies.

Immigration and Citizenship portfolio agencies.

Office of the Official Secretary to the Governor-General.

**Departmental and Agency Contracts**

The following document was tabled pursuant to the order of the Senate of 20 June 2001, as amended:

Departmental and agency contracts for 2006-07—Letter of advice—Department of Defence.

**Tabling**

The following documents were tabled by the Clerk:

*Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number*

Aged Care Act—Residential Care Subsidy Amendment Principles 2007 (No. 2) [F2007L03627]*.


Class Ruling CR 2007/83.

Commonwealth Authorities and Companies Act—Notice under section 45—Forest and Wood Products Australia Limited.


Environment Protection and Biodiversity Conservation Act—Amendments of Lists of—

CITES Species, dated 2 September 2007 [F2007L03587]*.

Specimens taken to be suitable for live import, dated 5 September 2007 [F2007L03653]*.


Migration Act—Migration Regulations—Instruments—

IMMI 07/007—Minimum Salary Levels and Occupations for the Temporary Business Long Stay Visa [F2007L03586]*.

IMMI 07/069—Exemptions to the English Language Requirement for the Temporary Business (Long Stay) Visa [F2007L03570]*.

National Health Act—Instruments Nos—

PB 68 of 2007—Amendment declaration—drugs and medicinal preparations [F2007L03609]*.

PB 70 of 2007—Amendment determination—responsible persons [F2007L03613]*.

PB 71 of 2007—Amendment—price determinations and special patient contributions [F2007L03618]*.

PB 75 of 2007—Determination—drug in Part A of F2 [F2007L03632]*.

PB 77 of 2007—Amendment—conditions [F2007L03626]*.

Navigation Act—Marine Order No. 4 of 2007—Measures to enhance maritime safety [F2007L03599]*.

Veterans' Entitlements Act—Statements of Principles concerning—

Hallux Valgus No. 91 of 2007 [F2007L03566]*.
Hallux Valgus No. 92 of 2007 [F2007L03567]*.
Ingrowing Nail No. 93 of 2007 [F2007L03568]*.
Ingrowing Nail No. 94 of 2007 [F2007L03569]*.
Ischaemic Heart Disease No. 89 of 2007 [F2007L03564]*.
Ischaemic Heart Disease No. 90 of 2007 [F2007L03565]*.
Lipoma No. 97 of 2007 [F2007L03573]*.
Lipoma No. 98 of 2007 [F2007L03574]*.
Malignant Neoplasm of the Bladder No. 95 of 2007 [F2007L03577]*.
Malignant Neoplasm of the Bladder No. 96 of 2007 [F2007L03578]*.
Malignant Neoplasm of the Endometrium No. 99 of 2007 [F2007L03575]*.
Malignant Neoplasm of the Endometrium No. 100 of 2007 [F2007L03576]*.

* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Defense: Appropriations
(Question No. 3348)

Senator Sherry asked the Minister representing the Minister for Defence, upon notice, on 15 June 2007:

1. Was there any appropriation receivable included as an asset in the balance sheet at 30 June 2006.
2. Is there an appropriation receivable included as an asset in the estimated balance sheet at 30 June 2007.
4. With reference to the estimated actual results and the financial position for the 2006-07 financial year, what amounts have been identified, for the 2007-08 financial years and for future years, for funding employee entitlements or asset replacements from the appropriation receivable.
5. For the 2007-08 financial year and future years, what other items have been identified for funding from the appropriation receivable.
6. What tests are applied by the Department of Finance and Administration over access to the appropriation receivable.

Senator Ellison—The Minister for Defence has provided the following answer to the honourable senator’s question:

1. Yes, equal to $348.614m.
2. Yes, equal to $199.628m.
3. Movement in the appropriation receivable is the result of:
   - Reimbursement for expenditure in 2005-06 for Operation Astute (+$18.600m);
   - Cash used to reduce employee liabilities (-$43.643m);
   - Operation Slipper 2005-06 re-phasing (-$17.200m);
   - Carry forward of Operation Catalyst funds to 2006-07 (-$38.916m);
   - Carry forward of Operation Slipper funds to 2006-07 (-$3.653m);
   - Operation Slipper 2006-07 expenditure for International Campaign Allowance (-$10.294m);
   - Operation Slipper 2006-07 expenditure for increased deployed ADF numbers (-$17.044m);
   - Operation Catalyst 2006-07 expenditure for increased deployed ADF numbers (-$4.388m);
   - Operation Slipper 2006-07 expenditure for expansion of ADF deployment (-$32.448m).
(4) The following amounts have been identified in the appropriation receivable balance for funding employee entitlements:

<table>
<thead>
<tr>
<th></th>
<th>Budget Estimate</th>
<th>Forward Estimate</th>
<th>Forward Estimate</th>
<th>Forward Estimate</th>
<th>Forward Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>$m</td>
<td>2008-09</td>
<td>2009-10</td>
<td>2010-11</td>
<td>2011-12</td>
</tr>
<tr>
<td>Cash used to reduce employee liabilities</td>
<td>50.000</td>
<td>55.000</td>
<td>60.000</td>
<td>65.000</td>
<td>33.802</td>
</tr>
</tbody>
</table>

No funds have been identified for asset replacement from the appropriation receivable balance.

(5) $243,000 has been identified in 2007-08 for funding from the appropriation receivable. This amount is the result of an appropriation transfer from the Department of Foreign Affairs and Trade to the Department of Defence for the relocation of an overseas mission. While this increases Defence’s appropriation receivable by $243,000, Defence will be drawing down this amount from the appropriation receivable in 2007-08 to meet the expenses associated with the mission relocation.

(6) The Minister for Finance and Administration will respond to this part of the question.

SIEV X

(Comment No. 3407)

Senator Milne asked the Minister representing the Minister for Defence, upon notice, on 17 July 2007:

(1) In regard to the answer to question W56 taken on notice during the 2006-07 additional estimates hearings of the Foreign Affairs, Defence and Trade Committee, can answers be provided to paragraphs (i) and (g), regarding the department’s knowledge of the rescue position of Suspected Illegal Entry Vessel X (SIEV X), given that the response referred to information being publicly available and that this was apparently in regard to paragraphs (a) to (e), relating to the activities of Operation Relex.

(2) Was the department, or any of its agencies, informed that the location of the rescue of SIEV X survivors was reported to be 07 40 00S / 105 09 00E; if so: (a) by whom was this information provided; (b) on what date; and (c) can copies be provided of any file notes and other documents relating to the provision of this information to the department or agency.

(3) Was the department or any of its agencies informed of an Indonesian Police report dated 24 October 2001 which included the location of the rescue of SIEV X survivors; if so: (a) by whom was this information provided; (b) on what date; and (c) can copies be provided of any file notes and other documents relating to the provision of this information to the department or agency.

(4) Did any Defence personnel stationed at the Jakarta post view pages of any Indonesian report, by Indonesian National Police, or otherwise, dated 24 October 2001 which contained the rescue coordinates for SIEV X; if so: (a) which personnel; and (b) on what date.

(5) Did any Defence personnel stationed at the Jakarta post view pages of a Harbourmaster’s report dated 22 October 2001, which was submitted as an attachment to the answer to question no. 113 taken on notice by the Australian Federal Police (AFP) during the 2007-08 Budget estimates of the Legal and Constitutional Affairs Committee; if so: (a) which personnel; and (b) on what date.
(6) In regard to the Indonesian Jakarta Harbourmaster’s report dated 22 October 2001, did the department, or any other government agency, attempt to locate Mr Majid, the Captain of the Arta Kenccana 38, mentioned in the report as the captain of the vessel that brought 44 of the 45 survivors to Jakarta on 22 October 2001; if not, why not, given that the information the captain could provide on the rescue position could have been used to estimate the probable area of sinking; if so, can details be provided of the officials involved, what actions were undertaken and the dates these actions occurred.

(7) Given that the answer to question no. 138 taken on notice by the AFP during the 2003-04 supplementary budget estimates of the Legal and Constitutional Affairs Committee indicated that ‘RAN personnel were making enquiries with the harbourmaster in Jakarta to ascertain a name of the vessel [SIEV X]’: (a) on what date did Royal Australian Navy (RAN) personnel make contact with the Jakarta Harbourmaster; and (b) as a consequence of these enquiries, did the RAN ascertain the name of the vessel and the location at which SIEV X survivors were rescued.

(8) What was the earliest date that any Defence official heard, by any means, that the location of the rescue of SIEV X survivors was reported to be 07 40 00S / 105 09 00E.

Senator Ellison—The Minister for Defence has provided the following answer to the honourable senator’s question:

Please refer to the answer to question W56 taken on notice during the 2006-2007 Additional Estimates hearings of the Foreign Affairs, Defence and Trade Committee. The answer was tabled with the Committee on 8 May 2007.