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SYDNEY 630 AM
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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 Rela-
tions and Minister Assisting the Prime Minister
for the Public Service
Minister for Communications, Information Tech-
nology and the Arts and Deputy Leader of the
Government in the Senate
Minister for the Environment and Water Re-
sources
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.

**BUSINESS**

**Rearrangement**

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (12.31 pm)—I move:

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;
   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:
      - 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 Datacasting) 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 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 LUDWIG (Queensland—Manager of Opposition Business in the Senate) (12.31 pm)—I do not want to take up a long period of the Senate’s time but I do think this does need some explanation. The government proposes an extension of hours on Tuesday night till 10 pm, with a dinner break, plus an extension of hours on Thursday night. This seems to suggest that Thursday night will be open-ended until we finish the legislative program as outlined, which consists of a considerable number of bills. It is assumed—and the government may want to expand on this—that at a particular late point on Thursday night we may adjourn and resume on Friday. We need a clear indication from the government about Friday. People do have matters for which they need to arrange travel and appointments that they need to keep or abandon, as the case may be. If, so early in the legislative program, we are sitting extended hours to deal with the legislation, the question that has to be asked, and answered by the government, is whether, and why, all of these legislative items are of an urgent nature and are required to be completed in this week or whether they can reasonably be held over till the next sitting fortnight—that is, unless the government says that this is the last week we are going to sit and that it is an end of session period. Up till now, the government, it seems, has been treating each week as a last week of sitting.

Senator Abetz—Business as usual.

Senator LUDWIG—It did that in the past sitting fortnight, and the government has not been able to say that it is business as usual. We now have a case where the government has a significant number of bills that it is requesting be put through, presumably by Thursday night, the early hours of Friday morning or later on Friday, and the government does need to make a case as to whether those bills are in fact urgent for this week and whether they have a start-up date that requires them to be addressed. There is one, the Australian Crime Commission Amendment Bill 2007, which we have received a briefing on, and it could be said that the Quarantine Amendment (Commission of Inquiry) Bill 2007 is one such bill; but, in respect of the remainder of the bills, the government does need to make a case. When you look at the legislative package, you see that even a conservative estimate would put the hours of government business time required to deal with that legislation at somewhere between 21 and 30-odd hours, providing that there are no hiccups. In a less than ordinary week of the Senate, government business takes up about 51 per cent of the time, which means that you are looking at
15-odd hours of government time to be able to deal with legislation. This suggests that there is a huge gap between what the government expects and wants in the legislative program and the hours that are available to do it.

The Senate should not be treated as a rubber stamp. Each bill needs to be considered carefully, debated and put, and amendments need to be argued for and either carried or lost, as the case may be. If the government is going to maintain its position that it requires all of these bills to be passed by Friday without providing a justification as to their urgency and without a full explanation then the government has, whether or not it wants to admit it, treated the Senate as a rubber stamp and it has not ensured that proper debate has been undertaken.

To look at the particular issues, the government has indicated—if not in actual words then in substance—that it has a program that would otherwise be an end of session program. Therefore, the government needs to make clear whether it is in fact saying that this is the end of the session and that it does not expect that the sittings will resume in October. The government should also undertake to prioritise the legislation, because the other question that arises is: if, through the ordinary course of work on Friday, the passage of the bills has not been completed, does the government intend to continue to sit through Friday night or to abandon the remaining bills, and, if so, which ones? In other words, is it going to prioritise the legislation or simply work through the list ad seriatim?

The opposition has always taken the view, and continues to take the view, that we will work diligently with those pieces of legislation to ensure that they are properly scrutinised and dealt with. We will not, as others might argue we will do, filibuster the legislative program. But, when I look at the bills that need to be dealt with, it does seem to me that the government in this instance has bitten off more than it can chew—and, may I say, without a clear justification for every one of those bills. The government does seem to be in a less than desirable position. Either it is not managing the program very well or it is treating it like an end of session. That is the position the government needs to explain to the Senate today.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.37 pm)—This is the government clearing the decks for the election but being rude and noncommunicative in the process. There ought to have been an explanation from Senator Abetz at the start of this debate, not at the end. Senator Ludwig is very right: we should know what the program is for Friday if that is the intention, and if it is not the intention, the Senate ought to have been given the courtesy of being told that. One would expect that from the government, but we do not get that. If ever you needed a further example of why the government deserves to lose its majority and its ability to treat this Senate with contempt, here it is again. So clearing the decks for the election is written into this motion.

When we come back, I expect the government will be on this side of the chamber and in smaller numbers, and we will get back to discussing properly the programming of Senate sittings so that the public gets the best out of them and, at the same time, senators are able to plan the way in which we are able to deal with legislation. Might I add that there are 33 pieces of legislation on this slate, and one or two have already been dealt with.

The role of the Senate as house of review is to be able to go to the electorate and talk about legislation and to come back better
informed, with amendments and with a government that is able to take them into account. None of that is happening here. This is just a directive from the Prime Minister’s office which says, ‘Clear the slate on Thursday night or Friday and get us out of here so that we can get ready for an election.’ There is a list of bills. The ministers are competing; they all want the legislation to go through. This is the way in which the government rides roughshod across this very important part of the democratic system—this Senate, this house of review. This motion says nothing about review. The public is locked out. The input that we should have is not going to be available. There is no excuse for this. We have sitting days in October, November and December if the government is of a mind to wait that long, but of course it is not.

Senator Abetz—And when might the election be?

Senator BOB BROWN—Senator Abetz asks me when the election is going to be. It shows you how much out of the Prime Minister’s circuit he may be. Maybe that is because he mucked up the pulp mill motion so much yesterday.

Senator Abetz—Bob, really!

Senator BOB BROWN—He protests about that, but we all know how badly he went yesterday. The point here is that this is a failure of the government to treat this Senate with the respect it deserves and to give the public the consultation they deserve. It is a pretty poor show for the last sittings in this three-year period of government, which began with the Prime Minister saying he would not treat the majority he had so unexpectedly gained in the Senate with hubris. We have seen hubris, contempt and a dismissiveness about the ability of this Senate to adequately deal with the legislation it has. We will be dealing with it. We are ready. We have got no concerns about that. The government can bring on whatever schedule it likes.

Senator Abetz—So what’s the complaint?

Senator BOB BROWN—Senator Abetz asks, ‘What’s the complaint?’ He has got a very, very short attention span—but there you go. We might have begun with a little bit of common sense and decency here, with an explanation from Senator Abetz about whether there is any intention to sit on Friday. We are not going to get that. We will get a bit of bombast in a moment. Here in this motion, for everybody to see, is the contempt with which the Howard government has treated this Senate. That is another reason why it should lose its majority in here and why it will do so in the coming months.

Senator BARTLETT (Queensland) (12.42 pm)—The Democrats also wish to speak to the motion before us. As has been explained, it extends the hours of sitting this week so that we sit late tonight as well as have an open-ended adjournment on Thursday night and it requires the Senate to consider 30 bills, only one of which I think has already been passed. As mentioned by previous speakers, we have pretty much had this treatment of the Senate since we came back in August. Every week has been treated almost like a de facto final sitting week just in case the government wants to call an election. So, even back in that first fortnight in August, we had extended sitting hours to assist the government to push things through. Last week we had extended sitting hours and this week we have even more extended sitting hours. After a three-week break, the Senate is scheduled to sit on 15 October. We could sit that week and indeed the next one and still have an election before the end of the year on 1 December or 8 December—and some people speculate that that may happen. I am one of those who have the view that it will not, but it does not really matter: it is not
my decision, and it is not Senator Abetz’s
decision or anybody else’s; it will be the
Prime Minister’s decision.

That brings up a key point that really
should be made far more often: if we had
fixed terms, like a number of Australian
states and many other democracies around
the world have, we would not continually be
faced with, ‘Maybe we will; maybe we
won’t.’ with how we manage our business,
with whether we need to rush through all this
stuff now and with whether we have got
more time. If we all knew the election date
well in advance then we would not continually
have this continual abuse of process, using the possi-
bility of an election down the line as a reason
for having to push things through or extend
sitting hours or do all those other things. It is
a cut and dried example of why it is in the
public interest and in the interest of good
governance, let alone the Senate’s interest, to
have a fixed term so that we know when we
are going to have an election, when parlia-
ment will be prorogued and how much
longer we have got to deal with the business
before it.

To some extent, I do not blame the Man-
ger of Government Business in the Senate
for wanting to get through all of these pieces
of legislation before the end of the week,
because it is quite possible that it will be the
final sitting week. The Manager of Govern-
ment Business does not know. Nobody
knows in the government, I am sure of that,
except possibly Mr Howard—and even he
may well not have made up his mind yet. So,
in that very narrow construct within which
the Manager of Government Business has to
operate, it is good practice for him to push us
all through, and I am sure that is what he is
being directed to do, in any case.

But the key question is of good practice
for the public. We are, with these 30 pieces
of legislation that are listed here, making
laws. We are not just passing through some
point-scoring opportunities or some things
that the government can tick on their resume,
saying, ‘We did this’ to help them with the
election, or things for each of the rest of us
here on the other side of the chamber to use
as positioning opportunities to say: ‘We sup-
ported this’, ‘We opposed this’ or ‘We tried
to amend this.’ The key thing we are doing is
passing and considering laws that affect peo-
ple’s lives directly, and it is simply bad proc-
ess and bad governance to be pushing
through 30 pieces of legislation in three
days. On the Thursday night, under this mo-
tion, some of them will be pushed through
probably well into the early hours of Friday.
That is simply bad practice, and I do not be-
lieve that any credible argument can be put
to say that that is a good way to make laws.

It is worth noting that putting through 30
bills in the space of a few days is not just a
one-off for this week. I draw the public’s
attention—if not the Senate’s—to the very
useful information and statistics provided by
the Department of the Senate on the number
of sitting days and pieces of legislation
passed each sitting week in each year. Ac-
cording to the most recent edition, going up
to the end of last week, 13 September, we
had had just 37 sitting days this year so far,
not counting this week, and in that time the
Senate had passed 154 pieces of legislation. I
have not done the maths precisely, but I think
that is about four pieces of legislation per
day. Of course, not all day every day is spent
considering legislation. According to the sta-
tistics, 85 hours and 53 minutes was the total
amount spent on government business up
until the end of last week for 154 pieces of
legislation. On top of that, this week we will
add another four days to those 37 sitting
days—so that will be 41 sitting days—and
we will add another 30 pieces of legislation,
so the statistics will go up to 184 pieces of
legislation in 41 sitting days. That, most
probably, will be it for the year. There is an outside chance that we might come back again after the election, if it is held early, or an outside chance that we may come back again in three weeks time if the election is not held until December. We will potentially go through this again. Quite what legislation we will have left to deal with, if we do come back in three weeks time, I am not so sure about, which is why I am not terribly convinced that we will be coming back—but, as I said, that is a bit of an academic debate.

The Democrats’ core objection is not to any specific piece of legislation on the list. We can outline our objections in the debates on the pieces of legislation, and we can move our amendments, as we will do. Our core objection is that it compounds what is already a very poor record in terms of proper governance, due process and good public administration. We will now have 184 pieces of legislation put through this chamber in 41 sitting days, and that is not adequate. Of course, Senate committee inquiries have looked at some of them as well. It is a matter of public record that some of those inquiries have been grotesquely inadequate and, frankly, contemptuous. The simple, core matter of this Senate as a legislature and as a house of review is that its role is being debauched by the politicisation, the political motivation and the abuse of the Senate majority that the coalition now have. It should not be any surprise that they are doing that. It was predicted that they would do it, and it is not a particular slur on the nature of politics for people who follow the conservative parties. It is a natural commentary on human nature and the nature of politics.

Anytime you give a government control of both houses of parliament, they will use it to suit their own interests rather than look at the interests of the community. That is human nature. It is something that history shows us has happened many times before. It will continue to happen again if the government maintain control of the Senate after the election, or if any government down the track, of any political persuasion, do not have a house of parliament such as the Senate that is able to provide some check and balance and some form of review over what they are doing, however imperfect that may be. I certainly do not suggest that it has operated perfectly in that regard in the past, but it has certainly provided some mechanism for improving legislation. I think ‘improving’ is the key word, not just reviewing and holding up and examining it for an intellectual exercise, but improving the laws that we pass, laws that, I once again remind the Senate and the community, affect them directly—and sometimes quite enormously and comprehensively—often for the good, which is why we do it. I hope, in an ideal world, it would always be for the good, but we would improve the positive impacts of the laws we pass if we actually did our job properly and allowed proper time for scrutiny. You do not get that when you pass 184 pieces of legislation in 41 sitting days. You do not get it when you are passing 30 pieces of legislation in a week. And you do not get it when you are doing it at two o’clock in the morning, basically just shovelling through all of the leftovers so that everybody can get the hell out of here and get back to campaigning again.

It is not adequate. It is a compelling argument for restoring the Senate to being independent of the government of the day. Once again, it is also a compelling argument for why we need fixed terms, something the Democrats have called for many years and certainly will continue to do so.

Senator GEORGE CAMPBELL (New South Wales) (12.51 pm)—I want to briefly indicate that, as far as the opposition is concerned, we do not believe the government has made a case for this proposed resolution or for these extended sitting hours this week.
It has not demonstrated why there is urgency in respect of many of these bills. One has to assume that the only reason that we will be sitting late tonight, late on Thursday night and till Friday afternoon is that there is an intent to call an election sometime between Friday and when the Senate is due to sit again in the middle of October. Otherwise, why is there the necessity to push through these bills, many of which do not have an urgency tag on them?

The government have said, too, that they want to finish by Friday afternoon. We know it is not possible, on the basis of the hours allocated, for these bills to be completed by Friday afternoon, yet they have not identified to us which are the priority bills that they want to have dealt with. They are simply saying that all of them are in the net and their intent is to finish all of them. What that will mean, if that is pursued, is that there will not be sufficient time to give these bills proper consideration by the Senate.

We have indicated that we are not going to be steamrolled into passing legislation; we will deal with each bill on its merits and we will deal with it in a considered way. We are not going to be steamrolled just to ensure that the government meets its objective of getting these 30 bills through by Friday afternoon.

As I have indicated, I do not believe that the government has made a case for having these additional sitting hours, nor has it attempted to make a case for these additional sitting hours. It is simply putting forward this motion because it knows ultimately that it has got the numbers to force it through and the forces to deal with these bills in that way. I want to make it clear on behalf of the opposition that we will be opposing the motion.

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (12.53 pm)—Anybody listening to this debate could be forgiven for thinking that the Howard government has steamrolled legislation through this Senate. I remind senators, and all those who have contributed to this debate have made this allegation, that this is in fact a motion to extend the hours of sitting of the Senate. It will allow the Senate extra time above and beyond that which is usual. If the Howard government is supposedly so determined to use the Senate as a rubber stamp and to not listen to debate, why on earth is it moving a motion, and using its numbers against the opposition, to give the opposition extra hours of sitting? This is the sort of humbug that, unfortunately, continually gets reported to the Australian people: that we are treating the Senate as a rubber stamp, when we are the ones agitating to give the Senate more time to consider legislation.

Indeed, the Howard government’s record is very instructive. Since 1901, in the 106 years since Federation, there have only been 30 packages of bills that have taken more than 20 hours in the Senate—thirty packages of bills or programs that have taken more than 20 hours of debate. Do you know how many of those packages have been under the Howard government, in the past 10 years? Fifteen of them; half of them. So you see, on objective evidence, that the coalition as a government have been more than willing to allow the Senate time to consider matters which are of concern to it and to the Australian people. Half of the measures, out of 30, that have taken more than 20 hours to debate in this chamber have been debated during the past 10 years of the Howard government. The other 15 took place between 1901 and 1996—that is, over 95 years. That is how we as a coalition government have treated this Senate: with the respect that it constitutionally deserves and of course democratically deserves as well.

So it is a very bizarre argument when those on the other side assert, ‘We want
more time; we need more time,’ but then come in here and say, ‘We will vote down the government’s motion giving us more time.’ That is what they need to explain to the Australian people.

In relation to the quite bizarre contribution by Senator Bob Brown—I emphasise ‘Bob’; I notice Senator Carol Brown in the chamber, so I hasten to make that very important distinction—we have become used to such contributions.

Senator Birmingham—Senator Bob Brown has left already.

Senator ABETZ—Yes, indeed; you are right, Senator Birmingham. Having given his spray, he now has left the chamber and that is what we have come to expect from him. He has made some quite bizarre commentaries in relation to this about the ‘rude’ and ‘non-communicative’ nature of the government on these measures. He knows as well as anybody in this chamber that the unsuspecting public listening in would not be aware that we have a very regular meeting of leaders and whips that includes the Greens, the Democrats, Family First, Labor and the coalition, and we seek to go through the measures and the management of the Senate. We had such a meeting, and the Greens were represented. They were given a list of the bills, and we discussed why the government wanted these measures put through. So to mischievously suggest to the Australian people that we have just dumped this motion in without explanation is, unfortunately, misleading. I am not allowed to say ‘deliberately misleading’, but I know that Senator Bob Brown knows the procedures and that he hopes the Australian people listening in do not.

The bills, which we gave notice of some days ago now, that are referred to in the motion contain a lot of budget measures, and most senators from both sides would agree that it is important to get budget measures through. There is a substantial amount of non-controversial legislation as well. It was instructive—and Senator Bartlett did aver this fact; it was a weakly made point, but I accept that he at least had the integrity to mention this—that nobody in the debate averred to a single piece of legislation, in the list that we provided, that required urgent or detailed consideration, or provided objection to the legislation.

We as a government are not treating the Senate as a rubber stamp; we are, in fact, proactively moving to give the Senate more time to consider the legislation. On the one hand, the Labor Party say we are a government that has run out of puff; on the other hand, they say we are putting too much legislation forward. Make up your mind: which is it? We are still legislating for the benefit of the Australian people. All the arguments we heard this afternoon were exactly the same arguments we heard about a fortnight ago, when exactly the same considerations were being put forward. I encourage all senators to vote for this motion, which will give the Senate more time—I stress ‘more time’—to consider the legislation that is before us.

Question put:

That the motion (Senator Abetz’s) be agreed to.

The Senate divided. [1.04 pm]

(The President—Senator the Hon. Alan Ferguson)

Ayes………….. 34
Noes………….. 32
Majority……… 2

AYES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Boswell, R.L.D.
Boyce, S. Brandis, G.H.
Bushby, D.C. Chapman, H.G.P.
[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.

Senator BARTLETT (Queensland) (1.07 pm)—I want to speak briefly to this motion, particularly part (b). I am obviously not objecting to the Manager of Government Business introducing a bill; he can introduce whatever bill he likes, but part (b) is to exempt the legislation from the cut-off order so that it can be considered during this period of sittings, which, as we have just been debating, means considering it during this week. It is amongst the list of 30 bills that was covered by the previous motion. I want to speak to it as a single motion just to reinforce the point that I was making previously.

I am not passing comment on whether the legislation is a good bill or a bad bill, not least because I have not seen it yet; it has not been introduced. I have just been given a 30-second run-down by my colleague Senator Stott Despoja about what may or may not be in the legislation and some of the issues that may or may not be raised. Obviously, being the Australian Crime Commission Amendment Bill 2007, it deals with criminal law. Some important issues of due process could be involved. However completely sure the government are that they are doing the right thing—that it is fabulous stuff and that it is completely necessary to introduce a bill and exempt it from the cut-off forthwith so that it has to be debated in the space of a couple of days—this legislation contains issues that could well require some degree of more careful consideration, if only to ensure that the stated policy intent is actually what will occur and that there are no unintended consequences.

That is the aspect of pushing things through this chamber that is often not given

Chamber
the focus it deserves. It is not just about those of us in the opposition parties saying, ‘We don’t like this bill being rushed through because we don’t like this bill or the policy behind it.’ Sure, that happens from time to time. Often we fully agree with the stated intent, but we are not sure whether what is being put forward will achieve those ends. Even more frequently, we are concerned that, alongside achieving those ends, there may be some other unintended consequences because it has not been thought through enough, we have not had enough time to examine it and we particularly have not had enough time to hear from people in the community with expertise. All knowledge and wisdom does not reside in this Senate chamber, although we all may talk like it does from time to time. There are many people in the community who have expertise in a range of areas, including those covered by this legislation. To not allow ourselves the opportunity to properly hear from those people in order to ensure that the public—the people who we are meant to be doing all this for—are not inadvertently negatively affected by what we are putting through is a dangerous process to follow for good public policy. I raise that concern on behalf of the Democrats.

The cut-off itself is a creation of the Democrats and of my predecessor from Queensland, Senator Michael Macklin, back in the 1980s. It was agreed to back then by the Liberal opposition as a good idea and as a bit of a safeguard against this sort of thing happening unless good enough reasons are put forward as to why it is desirable. Oftentimes good enough reasons are put forward. Maybe there are good reasons on this occasion and the minister thought they were so powerfully obvious that he did not need to outline them, but I think it would be beneficial for those reasons to be outlined before the Senate gives that open-ended tick, even though I accept that, in effect, we already have with the previous motion being passed.

**Senator STOTT DESPOJA** (South Australia) (1.11 pm)—I rise also to endorse the comments of the Democrats Whip, Senator Bartlett, in relation to this debate. There are a couple of key issues here. It is not only the alacrity with which we are dealing with this important, arguably urgent—certainly from the government’s perspective—legislation. This morning the office of the Attorney-General kindly organised and offered my office a briefing. That is still relatively short notice, because we are dealing with a piece of legislation that is being introduced and exempted from the cut-off and that will probably be debated today. The first that my office was aware of this legislation was this morning. The office of the Leader of the Australian Democrats, Senator Allison, was aware at around eight o’clock last night. I believe that a statement of reasons was tabled in this place yesterday, and I acknowledge that, but, regardless of this timeframe, I think the chamber can agree that this is a very fast process.

Now, that would be okay on perhaps two grounds: (1) if urgency is put forward and accepted or (2) if the complex or other nature of a piece of legislation is considered. With the benefit only now of a briefing, a cursory look suggests that this bill is quite controversial and has huge legal implications—and not just for cases that may or may not be underway. It also deals with a fundamentally controversial and debatable principle in this place, certainly from the perspective of the Australian Democrats: the issue of retrospectivity generally and retrospectivity specifically in relation to criminal law. We have put on record many times in this place our concerns with and, in fact, our down-right objection to retrospectivity in legislation. We have often considered it also a fundamental human right to not be subject to retrospective
criminal sanctions. That is what, on my understanding, this legislation is about.

When we are talking about these broad ranging, fundamental and complex concepts, there is a very strong argument that the parliament take some time to analyse and scrutinise this legislation. For me, that means not being informed yesterday, or indeed this morning, and then only now having a debate about exempting a bill from the cut-off provision—I say ‘debate’, but so far there have been two speakers in this debate concerning the exemption, and they are myself and Senator Bartlett. I am not sure what the official position is of the opposition but I think, like us, they are still getting their heads around what is quite a controversial piece of legislation. But when I look on the Notice Paper it is the third bill. Essentially, we will be debating this legislation today. I know that it has been put forward in the debate that has occurred previously through the minister—certainly through Senator Abetz—and more generally and publicly by the government, that there is the principle of the Senate mandate, the dominance of this place, that the numbers are being used wisely and that it is about putting forward a policy agenda. This is not putting forward a policy agenda. This is ramming through legislation. We are back in sausage factory mode and it is unacceptable. It may be that we are all wrapping up because we have an election that is about to take place—

Senator Abetz interjecting—

Senator STOTT DESPOJA—I will take any interjection from Minister Abetz because I do not know if he has read the bill. It may be a seven-page bill but it has huge ramifications. It removes safeguards which are not only procedural but also form a substantial part of the process for an examiner to be satisfied that a summons or notice to produce ought to be issued. They are fundamental legal concepts, people. Mutter, mutter, mutter! The minister may mock and belittle me if he likes, but I care passionately about the role of this place.

Senator Abetz—I rise on a point of order, Mr Acting Deputy President.

Senator STOTT DESPOJA—Then stop interjecting.

Senator Abetz—I was not! The first conversation was with the government whip—

The ACTING DEPUTY PRESIDENT (Senator Watson)—What is your point of order?

Senator Abetz—and the other one was with one of the advisers. What is happening is that, unfortunately, the record is going to be misleading.

The ACTING DEPUTY PRESIDENT—There is no point of order.

Senator STOTT DESPOJA—I am happy to accept that and indeed withdraw the allegation against the minister if, as he said, he was indeed in deep conversation with the whip. But maybe he could stop interjecting or talking while other members of the Senate are speaking. There are some learned legal minds on that front bench—I can see one standing up right now, and that is meant as a compliment. I notice that he took it, too! There are minds on that front bench, as indeed there are on the other side, who will recognise that we are dealing with some complex issues that have wide-ranging obligations.

I understand that the government will put forward a case of urgency in relation to this bill. Then let us have some time to debate it—not just on the floor of this chamber during this cut-off debate and not just in the committee stage of the bill. Give us some time to consult with the legal brains out there, which my office has been doing hurriedly and specifically in dealing with the
case that has brought about this so-called ‘necessary’ and ‘urgent’ change of law. I would like to know what other organisations, like the Law Council, and other learned and community minds think about this legislation. Anyone in this place who has dealt with Crime Commission law or the act that precedes it or who has been on committees like the NCA committee—I was for a period—will understand that even the basis of those acts have some fairly vexed and controversial principles in them, and this deals with one of those very sections, which is quite concerning. I appeal to the Senate, and I am happy to move an amendment to have the bill considered later this week:

At the end of the motion, add:
; and (c) the bill not be further considered until Thursday, 20 September 2007.

I am happy to move that on behalf of the Australian Democrats. We are not seeking to delay this process unnecessarily. We are not seeking to prevent the legislation being debated. I understand that we need to deal with the cut-off provision motion, but I appeal to senators on all sides, in the interests of scrutiny and fair debate and to ensure that this legislation is looked at properly, that we be given the opportunity to consult with relevant authorities, community groups and legal avenues. Will you consider that this legislation be delayed to a later hour of not this day but another day, because it is third on the Notice Paper for today, third on the red. That is unacceptable given that we have just had briefings and were informed less than 24 hours ago of this piece of legislation? I appeal to my colleagues and I am happy to take your advice.

The ACTING DEPUTY PRESIDENT—Neither the chair nor the whips have a copy of your amendment and that is necessary for us to proceed.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (1.20 pm)—I want to speak on the exemption from the cut-off. Labor has been dealing with the legislative program as ordinary pieces of legislation. It is not unusual for the government to ask for an exemption to the cut-off in relation to a bill that they can justify as urgent. I understand that the government has been able to make a case that this is an urgent bill that should be put on the legislative program for this week. I am not going to cavil with that. The exemption from the cut-off is to ensure that the program is not unduly loaded up at the end of the session and it allows, in this instance, bills to be dealt with in the ordinary way. If I take that broad view, then what the government is asking for is that this bill be exempt from the cut-off so that it can be dealt with in that way—therefore, it is not an unusual process.

The more unusual process is that of the motion that we just lost a little while ago, but I will not go there in any substantial way other than to remind the Senate that this adds one more bill to the program which the government sees a need to finalise this week, it appears. Labor has indicated that it will continue to deal with the bills in the usual way and address them on their merits as they arise. I will not go to the merits of the ACC bill itself. That is a matter that will come up in due course and we can then address the substantive issues that are associated with the bill. There is no need in this debate to raise those matters. It is broadly a bill that deals with, as I understand it, an amendment to ensure that the Australian Crime Commission can deal with their usual summons processes. The EM explains that adequately, it appears, and the government will obviously support their position and demonstrate the need for the urgency of this bill. On that basis, Labor will not oppose exemption from the cut-off.
The ACTING DEPUTY PRESIDENT (Senator Watson)—Senator Stott Despoja, having discussed your amendment with the clerks, do you still wish to proceed?

Senator STOTT DESPOJA (South Australia) (1.22 pm)—I think that my verbal amendment is not going to go very far, so I withdraw it, only because I do not think there is a form of words that would satisfy the Senate. Perhaps I could suggest that the onus is now on the government to see if they could accommodate my very reasonable request; otherwise, it may be possible for a fellow colleague to perhaps move to adjourn this debate, but I would rather see an outcome that relies on discussion and negotiation. I am not sure that the minister has something that he could offer us.

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (1.22 pm)—I would like to make a brief statement by leave. I understand that, having moved the motion, I am not necessarily entitled to speak further.

Leave granted.

Senator ABETZ—I thank the Senate. I indicate to Senator Stott Despoja that, as Senator Ludwig indicated, this is a matter of some urgency. I understand that some hundreds of summonses could be impacted by the potential difficulty that is being confronted, as well as a lot of investigations et cetera. That is why it is urgent. There is an urgency in relation to it being introduced here—going to the House of Representatives and then back here. Having said all that, what I will undertake to do is to seek how we can change it within the legislative timetable to give some more time to the senators who want more time. Without making any promises, I undertake to approach the Attorney-General and the Minister for Justice and Customs to see what can be done.
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 the summons was actually issued.

While Justice Smith’s findings in Brereton are confined to the issuance of summonses, his reasoning also has implications for notices to produce issued under the ACC Act.

By clarifying that an ACC examiner may record their reasons for issuing a summons or notice to produce as soon as practicable after the summons or notice has been issued, the provisions of the Bill address potential operational difficulties for the ACC presented by the decision in Brereton.

In particular, the amendments proposed by the Bill will address situations where summonses or notices need to be issued in urgent situations, or where large numbers need to be issued simultaneously.

The Bill will also address potential problems arising from the decision in relation to current operations/investigations, and prosecutions currently before the courts. The Bill ensures that summonses and notices relied upon for current investigations/operations and prosecutions are not invalidated simply because reasons were recorded after they were issued.

Preservation of procedural safeguards

This Bill preserves important procedural safeguards that ensure the integrity and fairness of examinations conducted under the ACC Act, and of convictions secured as a result of evidence obtained through those means.

The Bill, in so far as it provides that a summons or notice will not be invalid merely because it fails to comply with technical requirements set out in the Act, does not remove substantive procedural obligations. The Bill preserves, for instance, the requirement that an examiner be satisfied that it is reasonable in all the circumstances to issue a summons or a notice to produce. Similarly, the requirement that a summons should, other than in limited circumstances, set out the general nature of the matters in relation to which the examiner intends to question the person, is preserved in the Bill.

Retrospective application of provisions in the Bill I note that some provisions in the Bill apply retrospectively to provide that summonses or notices to produce issued after the commencement of the ACC Act, but prior to the commencement of the Bill, are not invalid where reasons were recorded subsequent to their issue.

I understand that the retrospective application of these provisions could be detrimental to persons who might otherwise have had scope to challenge the validity of a summons or notice to produce. The Government considers, however, that this is a just and appropriate outcome. It does not consider that a failure to record reasons for issuing a summons or notice prior to issue of the summons or notice should give a person who would otherwise have been convicted of an offence technical grounds to challenge the admissibility of evidence and escape conviction.

Further measures

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.

The amendments made by the Bill will enable the ACC to continue to play a key role in the investigation and prosecution of serious and organised crime in Australia. The ACC’s intelligence gathering and law enforcement powers are critical to disrupting criminal organisations and significant individuals. Therefore, the Government considers it important that these issues are resolved as soon as possible so that matters before the courts are not unduly affected.

Debate (on motion by Senator Abetz) adjourned.

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

TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2007

In Committee

Consideration resumed from 17 September.
The CHAIRMAN—The committee is considering the Trade Practices Legislation Amendment Bill (No. 1) 2007 and amendments (7) and (8) on sheet 5324 revised, moved by Senator Murray.

Senator MURRAY (Western Australia) (1.26 pm)—I seek leave to withdraw amendment (8). I have spoken to amendments (7) and (9), so I would ask that those be put consecutively. I would remind the chamber, although I am sure that senators are aware of it, that amendment (7) referred to unfair contracts and amendment (9) related to the recommendation arising from the Effectiveness of the Trade Practices Act 1974 in protecting small business—that is, the Senate Economic References Committee report of March 2004.

Leave granted.

Senator MURRAY—I thank for Senate. I just remind the chamber that amendment (9) refers to the Senate committee report’s recommendation 7, which was that subsection 51AC(9) and (10) of the act be repealed. I do not need to say anything further on those amendments.

The TEMPORARY CHAIRMAN (Senator Watson)—Senator Murray, do you wish to move them separately, because you have not moved amendment (9) yet.

Senator MURRAY—I have moved amendment (7) and will move amendment (9) separately.

The TEMPORARY CHAIRMAN—The question is that Democrat amendment (7) be agreed to.

Question negatived.

Senator MURRAY (Western Australia) (1.28 pm)—I move Democrat amendment (9):

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

3F Subsections 51AC(9) and (10) Repeal the subsections.

Just to explain briefly: as I said, it arose from recommendation 7 of the Senate Economic References Committee report of March 2004. I will not recap all the arguments in its favour, but it dealt with unconscionable conduct. The ACCC agreed with the view that the present limit of $3 million was too low. I quote from the report:

The ACCC agreed with this view, saying that subsection 51AC(3)(a) already stated that the courts may have regard to the relative strengths of the bargaining positions of the companies, so no threshold is necessary.

The Committee noted these arguments and further noted that subsections 51AC(1) and (2) exclude publicly listed companies from the protection of the section. The Committee agrees that the removal of the thresholds will not reduce the current protection for small businesses, and will enhance protection for businesses involved in transactions over $3 Million, who are nevertheless subject to unconscionable conduct within the terms of s.51AC.

Government senators rejected that view but accepted the view that the threshold was too low. I cite government senators’ remarks:

Government Senators are not persuaded of the need to lift the ceilings so as to extend the protections in the section to all firms, irrespective of size. On the other hand, we are concerned that the current statutory ceiling may be unrealistically low, given the size of transactions which some small businesses undertake. Accordingly, we recommend that the government consider prescribing $10 million as the relevant amount for the purposes of the section.

We accept that that is a good advance. The government itself has accepted the recommendation of the government senators but we still hold to the view of the original committee recommendation.

Senator SHERRY (Tasmania) (1.30 pm)—I will be brief. Labor will be supporting the Democrat amendment. I gave my
reasons last night. We are under time pres-
sures, so I will not repeat myself.

Senator BRANDIS (Queensland—
Minister for the Arts and Sport) (1.30 pm)—
The government does not support the
amendment because it loses sight of the fact
that the particular purpose of part IVA of the
Trade Practices Act is to provide a code of
protection for small businesses. If there is no
ceiling on the value of transactions to which
the unconscionable conduct provisions of the
act apply, it entirely loses its character as a
set of provisions which are particularly con-
cerned with the problems of small business
and dealing with issues like inequality of
bargaining power and so on. As Senator
Murray has rightly pointed out, the govern-
ment senators did recommend, and the gov-
ernment has adopted the recommendation,
that the ceiling be lifted very substantially, to
$10 million. You can always have a debate
about how high a ceiling should be, but this
is not that debate. This debate is about the
proposition that the provisions of part IVA of
the act ought to be of general application,
whether it is to the biggest multinational
company in the world, trading in Australia,
or the local garage. We think that loses sight
of the purpose of the provision; therefore we
do not support it.

Question negatived.

Senator MURRAY (Western Australia)
(1.31 pm)—I move Democrat amendment
(10) on sheet 5324 revised:
(10) Schedule 2, page 6 (after line 12), after item
3, insert:

3G After section 81A
Insert:

81B Divestiture for abuses of market
power
(1) The Court may, on the application of
the corporation into separate and dis-
tinct entities including directions for
of the corporation, or assets of the corpo-
ration to facilitate the reorganisation or
division of the corporation.

This amendment relates to divestiture pro-
sessions for the abuse of market power. It has
been drafted to deal with section 46 because
that is the direction taken by the majority
Senate report which I referred to earlier. The
chamber is well aware, because it has heard
me on the matter before, that I do in fact ad-
mire the general intent of the American anti-
trust and divestiture provisions. As a reserve
power, they have been extremely effective
and act to allow for circumstances where
great power, used for anticompetitive or mo-
nopolistic purposes, can be reduced. I think
that is an appropriate tool for the ACCC to
have. The Senate committee report stated:

Divestiture powers are powers which enable a
Court to order that a dominant corporation be
broken up into several smaller corporations in
order to prevent the anticompetitive domination
of a market by one player.

Such powers are currently available under s.81
of the Act, but cannot be applied to creeping ac-
quisions, nor to offences under s.46.

I remind the chamber that my amendment
deals with section 46. The report continues:

The Committee considers that the application
of s.81 should be expanded, so that divestiture
becomes a remedy for other breaches of the Act,
including section 46 (Misuse of market power)
and any new section introduced in line with the
Committee’s recommendation 12 (relating to the
regulation of creeping acquisitions).

As divestiture is a quite severe remedy, it is
appropriate to provide “warning mechanisms” to
ensure that a corporation which is expanding its
business is able to comply with its obligations
under the Act. A suitable warning mechanism
could be based around a “trigger” market concen-
tration.

This trigger should not operate as a de facto
cap on market share. Rather it would require
companies proposing acquisitions in concentrated industries to notify the ACCC. The Commission would then assess whether the acquisition would result in a substantial lessening of competition. The Committee notes that this already occurs in the retail grocery industry.

The recommendation of the committee was as follows:

The Committee recommends that s.81(1) of the Act be amended so that s.81 can be applied where a corporation is found to have contravened section 46, section 46A, or any new section introduced to regulate creeping acquisitions.

I have attempted to move towards fulfilling the legislative environment which that recommendation anticipates.

Senator SHERRY (Tasmania) (1.34 pm)—Labor does not support this amendment. Labor believes that the current penalties for breach of the anticompetitive provisions of the Trade Practices Act are adequate, other than the lack of criminal penalties for serious cartel conduct, which were promised by the government back in February 2005. These penalties include fines of $10 million for corporations or half a million dollars for individuals for each breach. In addition, sanctions against company directors and officers of a company—for example, disqualification and a prohibition on indemnity for financial liability and legal costs—may also be imposed by the court.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.35 pm)—The government does not support this amendment. The issue was considered by the Dawson report, and Mr Dawson recommended against it. I should point out, though, to the committee that the act does contain divestiture powers, in section 81, but those divestiture powers apply expressly to section 50. The logic of having divestiture powers for section 50, which deals with anticompetitive acquisitions, but not having divestiture powers for section 46, which deals with misuse of market power, is that by committing a breach of section 50 what the corporation does is, ex hypothesi, acquire an anticompetitive market share; therefore there is a logic in having a power to require it to divest of that additional acquisition, because the acquisition itself is the very conduct which the act in the relevant circumstances stipulates against. But in section 46, what one is looking at is not the anticompetitive acquisition of market power but the anticompetitive use of market power, which is not the product of an acquisition but the product of conduct in a given market.

It is the government’s view—as it was Mr Dawson’s view—that the existing sanctions regime, which, you will remember, Senator Murray, was very significantly tightened by the so-called Dawson amendments, is a sufficient deterrent and corrective for misuse of market power which section 46 would render unlawful. May I remind you that the penalty that can be imposed upon a corporation for a section 46 breach includes a fine of up to $10 million per breach, five per cent of the corporation’s turnover or three times the economic value of the transaction which is attacked in the section 46 proceedings per breach. That is in addition to the remedies under section 80 for injunctive relief and the various other ancillary remedies in part VI of the act. So, for all of those reasons, the government’s view is that the armoury of sanctions in relation to section 46 is sufficient and, indeed, very strong and, for the other reason I gave earlier in these remarks, there is a certain illogic in applying, beyond a breach of section 50, the divestiture powers.

Question negatived.

Senator MURRAY (Western Australia) (1.38 pm)—I move Democrat amendment (11) on sheet 5324 revised:

(11) Schedule 2, page 6 (after line 12), after item 3, insert:
3H After subsection 95ZF(4)

Insert:

(5) The Commission will:

(a) commence monitoring prices, costs and profits relating to the supply of goods or services by a corporation once that corporation has attained a market share of 25% of:

(i) the national market for the goods or services; or

(ii) a State or Territory market for goods or services;

(b) table a report in both Houses of Parliament on the monitoring at six monthly intervals.

Commercial confidentiality

(6) The Commission must, in preparing a report required under subsection (5), have regard to the need for commercial confidentiality.

Commission to send the corporation a copy of the report

(7) The Commission must send the corporation a copy of the report required under subsection (5) on the day it tables the report.

Public inspection

(8) The Commission must also make copies of the report required under subsection (5) available for public inspection as soon as practicable after the report has been tabled.

This amendment too relates to a theme of mine which I have pursued over time in this place, and it relates to some competition law which I admire in other jurisdictions. I am, of course, referring to the device used in the Fair Trading Act of the United Kingdom whereby they use trigger concentrations of market power to institute a process which could be colloquially described as ‘market watch’. They are alert to the fact that great commercial power, when accumulated, may not be illegal—it may not, in fact, be contrary to the interests of the society or the economy—but it deserves to be watched in a manner which allows for the competition authorities to be fully informed in greater detail than is available through the normal market processes of market disclosure, particularly for publicly listed companies.

The amendment as I have attempted to design it—as usual, with legal assistance—only applies to state, territory and national markets. That is an important consideration because, of course, the market definition was quite properly changed in our competition law following a joint house inquiry in, I think, 1997 which recommended that markets, in Australian competition law, no longer be defined as national but as applicable in a regional as well as a larger market sense. In practical terms I would anticipate that the companies involved would provide disclosure of relevant information to the ACCC and the ACCC would assess that information to identify trends which may suggest areas where greater care should be taken with respect to competitive activity. If such trends were identified then a more detailed scrutiny may occur—much in the same way as ASIC monitors particular trends under its jurisdiction.

It is essentially an ACCC watching brief over highly concentrated markets that I am recommending. I think that would be to the advantage, not the disadvantage, of our economy. It would obviously need the ACCC to take note of how other jurisdictions such as the United Kingdom operate. It does seem to be a practical, effective and responsible market measure, as used in the United Kingdom. I am suggesting it could be useful in our own legal context.

Senator SHERRY (Tasmania) (1.42 pm)—Labor does not support this amendment. Labor believes these amendments are just too onerous on the ACCC and may result in unnecessary monitoring of markets with-
out a competition problem. Labor believes that price monitoring should be focused and occur where there is a problem in a particular market.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.42 pm)—Before I begin, can I mention that I think I misspoke in my last contribution when I said that one of the pecuniary penalties for a section 46 breach was five per cent of turnover. It is, of course, 10 per cent of turnover—so allow me to correct myself. The government does not support this amendment for much the same reasons as indicated by Senator Sherry. I might point out that the amendment is not limited as to jurisdiction, so that any market, no matter how small by value or turnover, would appear to be caught by it so long as any corporation operating within that market attained a market share of 25 per cent in the markets to which the amendment is directed, down to state and territory markets. So, theoretically, you might have the market in Alice Springs for snack bars, in which one snack bar had more than 25 per cent of the market share, and, under the terms of this amendment, the ACCC would be required to monitor it. In fact, it would be required to monitor any market in which there was any reason to believe that any corporation trading in it would pass the threshold or trigger point of 25 per cent. It would so vastly expand the obligations of the ACCC as to be—with respect—nonsensical. We regard it, as does Senator Sherry, as not a workable proposition, and we do consider that the powers of the minister to direct price monitoring under section 95ZF work well.

Question negatived.

Senator SHERRY (Tasmania) (1.44 pm)—by leave—I move opposition amendments (4), (5) and (6) on sheet 5344:

(4) Schedule 3, item 7, page 11 (line 4), omit “Omit "$3,000,000”, substitute "$10,000,000”.
(5) Schedule 3, item 8, page 11 (line 6), omit “Omit "$30,000,000”, substitute "$10,000,000”.
(6) Schedule 3, page 11 (after line 6), after item 8, insert:

8A Subsection 51AC (11)

Repeal the subsection.

Labor’s amendments deal with the issue of the threshold for section 51AC on unconscionable conduct. The $3 million threshold for section 51AC on unconscionable conduct is abolished, and the bill proposes to increase this to $10 million. The 2004 Senate Economics References Committee majority report into the Trade Practices Act recommended that the $3 million limit be abolished. Labor agrees with this recommendation, as a threshold is arbitrary and unconscionable conduct should be illegal regardless of the size of the transaction or the businesses involved. Labor’s amendments ensure that all small business transactions will be covered, as there are circumstances in which the transaction may be more than $10 million; hence our amendments to remove it.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.45 pm)—These amendments are substantively the same as the Australian Democrat amendment which was deliberated upon a few moments ago. For the same reasons, the government does not support them.

Question negatived.

Senator MURRAY (Western Australia) (1.46 pm)—by leave—For the record, I mention that the Australian Democrats support those Labor amendments.

Senator SHERRY (Tasmania) (1.46 pm)—by leave—I move opposition amendment (7) on sheet 5344:
Page 11 (after line 11), at the end of the bill, add:

**Schedule 4—Other matters**

1. Subsection 86(1A)
   After “any matter arising under”, insert “section 46,”.

2. After subsection 155(1)
   Insert:
   
   (1A) The power under subsection (1) can be exercised at any time prior to the commencement of substantive proceedings in a matter before the courts.

Labor’s amendment does two things. Firstly, it allows section 155 powers to remain following the commencement of an action seeking an injunction and only cease when the substantive case commences. Labor’s amendment will allow the ACCC’s information-gathering powers under section 155 to remain following the commencement of an action seeking an injunction and only cease when the substantive case commences. This is vital to ensuring that the ACCC has the information-gathering powers for as long as possible to ensure it can act to protect small business and consumers from anticompetitive conduct.

Secondly, it provides the Federal Magistrates Court jurisdiction over section 46 and section 83 cases. The amendment will provide the Federal Magistrates Court jurisdiction over section 46 and section 83 cases. Currently, the Federal Magistrates Court can hear certain matters under the TPA, most notably section 51 cases. However, the Magistrates Court cannot hear section 46 matters. This means that small business wishing to bring an action under section 46 must commence in the Federal Court. The Federal Court is more expensive than the Magistrates Court. The Magistrates Court also provides a conciliation process that would be of particular use to small business.

In addition, under section 83 of the act, a company can bring an action for damages based on findings of fact in another case. For example, if the ACCC brings a successful action against a company under section 46, small business can bring an action for damages based on the findings of fact in the case. However, this section 83 action must be brought in the Federal Court. This amendment would provide small business with better access to compensation and justice when they suffer from anticompetitive conduct.

**Senator MURRAY** (Western Australia) (1.48 pm)—This amendment complies with the thrust of recommendations in the March 2004 Senate Economics References Committee report. Recently there was an inquiry by the Senate Standing Committee on Economics into another trade practices bill, which is on its way, to address the issues of small business in respect of the secondary boycott provisions and representative action. Evidence provided to that committee indicated that small business continues to support the view that the Federal Magistrates Court should be available for trade practices actions to be taken on two counts: lower cost and speedier access to justice.

**Senator BRANDIS** (Queensland—Minister for the Arts and Sport) (1.49 pm)—The government does not support opposition amendment (7), although I find myself a little embarrassed because the government senators in the 2004 report were rather persuaded to that view. Nevertheless, it does involve a very narrow point. You do not define substantive proceedings, Senator Sherry, through you, Madam Temporary Chair. What I take that you mean by substantive proceedings is the proceedings from the time after which an action has commenced by the filing of an application. As you would be aware, Senator, the Federal Court held as long ago as 1980, in Brambles Holdings and the Trade Practices Commission, that once an action
had been commenced under part IV then that was the end of the section 155 powers. There is a reason for that, and that is that under the Federal Court rules there are a suite of interlocutory proceedings including discovery, interrogation, the exchange of witness statements and so on which deal with the matter.

The only occasion on which your amendment might operate is in the very narrow and limited circumstances contemplated by the ACCC in its submission at paragraph 5.27 of the 2004 report, where the ACCC was seeking in a very urgent case an interim injunction—that is, an injunction sought before the substantive application had been filed—and it sought to augment that with section 155 powers as well. That very seldom happens, and one would imagine that the only case in which one would seek an interim injunction, as opposed to an interlocutory injunction after the filing of an application, would be in circumstances of such extreme urgency that there would not be time for there to be a section 155 examination usefully conducted in any event. So I think, theoretically, you may be right, Senator Sherry, but it is the government’s view that, given the almost theoretical narrowness of the circumstances in which the amendment would have any operation, it is scarcely worth doing.

I will now reply to Senator Sherry’s final amendment, the amendment to include matters arising under section 46 within the jurisdiction of the Federal Magistrates Court. The reason you advance—that this would make proceedings under section 46 much less expensive for small business—is illusory. Section 46 proceedings are extremely complicated. Not only do they involve a large amount of factual evidence but they also invariably involve a large amount of expert economic evidence. There have only been a few dozen section 46 cases in the 33-odd years since the Trade Practices Act has been in operation, and you do not get more complicated litigation than a section 46 case, frankly. You would need the same evidence, the same witnesses and the same experts to prove a section 46 case in the Magistrates Court as you would in the Federal Court, so you would not save any money at all. But what you would have is this extremely complicated sort of litigation being adjudicated, with all due respect to the Federal Magistrates Court, by less senior judicial officers. And that is also why the government is of the view that section 46 cases should only be dealt with by the senior federal judicial officers—that is, in the Federal Court of Australia in its sitting as a trial court.

The point that you make about recovery of damages under section 83, Senator Sherry, is a fair point. However, I do not think your amendment would achieve that either. You say in your amendment that it has to be a matter arising under section 46, but there is a great deal of rather arcane law about whether a proceeding to recover damages based on findings of fact under section 83 are proceedings under section 46 or fresh proceedings under section 83. So for those several reasons I do not think amendment (7) meets the mischief that you identify.

Senator MURRAY (Western Australia) (1.54 pm)—My point to the minister is this: I think one of the weaknesses of section 46 has been that it has been so difficult to access and so few cases have been concluded. Without going to the fact that I and the opposition believe that section 46 could be strengthened even more, my belief is that the amendments in the government’s own bill actually improve the opportunity for section 46 cases to be successfully prosecuted and would therefore make it less difficult than it has been in the past. That is one of the reasons why the Magistrates Court option could be considered now under the new regime as opposed to the old.

CHAMBER
Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.55 pm)—I do not want to prolong things, but I thank Senator Murray for that sentiment. It is the intention of the government with this bill to breathe life into section 46, which has been moribund since the Boral case. However, that does not mean that the issues of proof are going to be any easier. The problem with the Boral case is not that it changed the mode of proof but that it changed the threshold legal tests in one particularly important respect—and that is what is addressed by this legislation. The complexity of the trial process is not going to change, but it is the government’s intention that the thresholds that an applicant has to meet should be less onerous than they have been since section 46 has been construed by the High Court in the Boral case.

The TEMPORARY CHAIRMAN (Senator Kirk)—The question is that opposition amendment (7) on sheet 5344 be agreed to.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (1.57 pm)—I move:

That this bill be now read a third time.

In doing so, I thank honourable senators for their contributions in the committee stage of the debate. I particularly thank Senator Murray and Senator Sherry for their penetrating contributions and observations. It is, as I said a moment ago, the intention of the government that, as a result of this bill, the provisions of part IV and part IVA of the Trade Practices Act will be significantly strengthened and that the Australian competition laws will be restored to the reputation that they had, prior to judicial intervention that narrowed their operation, of world’s best practice. We believe the right balance has been struck between maintaining freedom of competition in a competitive market and protecting the legitimate interests of participants in that market.

Question agreed to.

Bill read a third time.

QUESTIONS WITHOUT NOTICE

Interest Rates

Senator SHERRY (2.00 pm)—My question is to Senator Scullion, the Minister representing the Minister for Families, Community Services and Indigenous Affairs. I ask the minister whether he recalls stating yesterday:

... interest rates today are at the highest they have ever been under the Howard government ...

In case not everyone heard it, he repeated it when he said that interest rates were now:

... the highest they have ever been under us.

Didn’t the minister also say: ‘They are at record lows; they are indeed record lows’?

Given this totally confused, repeated and contradictory answer by the minister yesterday, can he explain how it is possible for interest rates to be ‘the highest they have ever been under us’ and, at the same time, ‘at record lows’?

Senator SCULLION—I am sorry that the senator opposite is confused. I will clarify the record for him. Since the question given to me referred to the record, I was simply making a comparison—indeed, a comparative analysis, which is what this place is about—and I made the point that the very best that Labor could come up with was marginally above our very worst. If those opposite would like to reiterate relative benefits regarding the economy—and I think that was the substance of the question—let me
say that we are proud to have led a government that took this country from an appalling state of affairs in 1996 when we took office. That appalling state of affairs was reflected by an unemployment rate of 10.9 per cent at the peak of Labor. Australia now enjoys a 4.3 per cent unemployment rate, the lowest in 30 years. So I certainly enjoy any question from the other side which seeks to genuinely compare the performance of government over the years.

Home mortgage rates have been mentioned a number of times. There is a concern amongst the Australian people about what will happen under Labor should they come to power. I think we all know that there will be a repeat of history. You can be sure of that. Today we have a home mortgage rate of 8.3 per cent; under Labor it peaked at 17 per cent.

Senator Brandis—Twenty-two per cent for business loans.

Senator SCULLION—I am informed that it was 22 per cent for business loans. As we are having this interesting comparison of the performance of government, let me say that, again, it comes down to two things. The first is the capacity to create an economy which provides fantastic growth in jobs and low interest rates. All of those aspects that make up an economy, including inflation, are fundamental to a good economy. When you have those fundamentals you can run a government that everybody in Australia enjoys. People are enjoying the good governance of a good economy at this moment because there are 2,183,000 who have a job today who did not have a job in 1996. The opposition come into this place and say, ‘What about the people who are having difficulty buying a home?’ I have gone to great lengths to inform the Australian people and those on the other side that, whilst the Australian government has done a tremendous job by giving everybody a job and ensuring that interest rates are far lower than they ever were under Labor—and there is more to do—we will continue to implore the states and territories, the Queensland branch of the Labor Party, the New South Wales branch of the Labor Party and the Western Australian branch of the Labor Party to do their bit as well. So, instead of ripping off the people of the states and territories, we must ensure that the relationship between the Labor Party and the Australian people in those places reflects the need to stop taxing the people. We have done the right thing. We have a fantastic economy. We need the Labor Party to talk to their mates in the other jurisdictions to ensure that the full benefits of the market economy flow to all Australians.

Senator SHERRY—Mr President, I ask a supplementary question. Given the minister’s interest in history, is he not aware that when Mr Howard was last Treasurer interest rates hit 22 per cent? Doesn’t the minister’s complete confusion yesterday and again today— he just could not answer the question on the contradictory answers that he gave yesterday—highlight the fact that the government broke its explicit 2004 election promise that it would keep interest rates at record lows? You have broken your promise. After nine interest rate hikes in a row, adding $457 a month to a $300,000 mortgage, how will our kids ever afford to buy their own home, when you break election promise after election promise on interest rates?

Senator SCULLION—I am very proud to be a member of a government that has allowed people to have a job and to buy their own home. There is no doubt about the comparison between those opposite and us. They are happy to come into this place proud of the fact that they had 17 per cent interest rates—22 per cent for business loans—but those people are the ones who sent small businesses broke. They put people on the
dole and they hurt Australians. Those Australians still remember. To those Australians who do not remember let me say this: think about the comparison between interest rates—17 per cent under Labor and 8.3 per cent under the coalition.

Indigenous Communities

Senator EGGLESTON (2.06 pm)—My question is to the Minister representing the Minister for Families, Community Services and Indigenous Affairs, Senator Scullion. Would the minister advise the Senate of the latest developments in the Australian government’s intervention in the Northern Territory?

Senator SCULLION—I thank the senator for his question. I know he has a longstanding interest in Indigenous affairs, and he has been informing me on the need to move the intervention in the Northern Territory and particularly in his state of Western Australia.

I am delighted to inform the Senate that, today, we have announced a $740 million plan involving a range of new initiatives. This is to move beyond the stabilisation stage of the Northern Territory intervention. These new measures are as follows. There is $540 million to repair and build housing in remote communities over the next four years. It is not good enough just to go and do the inspections and evaluations; you need to be a government with some credible policy that moves ahead and actually does the work that it exposes. There is $100 million for more doctors, nurses, allied health professionals and specialist services. We have done over 2,000 health checks in 30 communities, which have been on the public record and have exposed an unacceptable level of serious health conditions, particularly in the youngest of those inspected. We will be investing $100 million to move around the Territory to ensure that we ameliorate those conditions. There is $78.2 million over three years to convert the CDEP positions to real jobs. I am delighted to say that up to $30 million is to be matched, dollar for dollar, by the Northern Territory government. It is rare that I would normally elect to praise the Northern Territory government in this, but it is tremendous to see that they have taken a very sensible approach and a partnership approach. We recognise the difficulties with such a low tax base to take over their responsibilities on CDEP, so we have made an offer to match them dollar for dollar to ensure that people move from effective training positions to real employment. We are providing $18.5 million over two years for 66 additional Federal Police, and that, of course, is to continue the provision of the shield of law and order that so many Australians take for granted.

This funding will be provided to the Northern Territory government on the basis that they agree to certain conditions, including a radical overhaul of the way that we are going to deliver Commonwealth funds to housing programs in the Northern Territory, and that they ensure that sufficient classrooms, equipment and teachers are available to ensure that, as the welfare reform packages become effective, school attendance will increase. We want to make sure that the level of amenity is there to ensure that they have the same education that we take for granted.

This provides an enormous opportunity to Indigenous communities to move forward in a safe manner and with an economic future for those areas. It demonstrates, again, that the Howard government is here for the long haul in relation to the critical issues such as health, housing and policing.

Opposition senators interjecting—

Senator SCULLION—We have had the call of ‘rubbish’ from the other side, Mr
President. If they are happy to go and engage themselves, I would call on Labor to actually enforce these initiatives and not to play this little double game of saying in Canberra, ‘We support this initiative,’ and then, when they are back home in Darwin, they are slowly undermining it, and not to follow the path of the member for Jagajaga, the member for Lingiari or the local Labor member, Karl Hampton, who was reported by a man in Yuendumu as going out there before the intervention team and saying, ‘When they get here, just say “no”.’ I do not appreciate interjections from the other side—this is an intervention that all Australians stand behind and I am, again, very proud to be part of a government that has provided so much change for our first Australians.

**Nuclear Energy**

**Senator MARK BISHOP** (2.11 pm)—My question is to Senator Coonan, representing the Minister for Foreign Affairs. Can the minister confirm that, this week, the government signed Australia up to the US-led Global Nuclear Energy Partnership, joining the great and glorious Kazakhstan in this group? Hasn’t the government committed Australia to joining a group that will see nuclear fuel leased to countries, then returned to fuel suppliers for reprocessing and then potentially stored in other members’ countries? Isn’t that why Canada, another major uranium supplier, declined the invitation to join the group? Can the minister also confirm that the Liberal Party Federal Council, in June this year, overwhelmingly voted in support of establishing a nuclear waste dump in Australia to take spent fuel from other countries? How can voters trust the government on this issue, when its own party members strongly support Australia taking spent nuclear fuel from other countries to be stored at a high-level waste dump? *(Time expired)*

**Senator COONAN**—Thank you to the senator for the question. The Global Nuclear Energy Partnership is a US initiative which seeks to develop a worldwide consensus allowing for expanded use of nuclear energy, whilst strengthening the nuclear non-proliferation regime. We, in fact, welcome the expanded civil nuclear cooperation with the United States. Australia joined the United States initiated Global Nuclear Energy Partnership at a meeting in Vienna on 16 September, and we concluded a joint nuclear energy action plan with the United States on 3 September. Australia supports the Global Nuclear Energy Partnership goal of enabling expanded use of nuclear energy while strengthening nuclear non-proliferation, and Australia has clear interests as a major uranium producer and a strong supporter of the non-proliferation regime.

The Global Nuclear Energy Partnership is still evolving and I would have thought that it makes eminent good sense for Australia to become involved early in the Global Nuclear Energy Partnership’s development. The Australia-US nuclear energy action plan helps ensure that Australia stays abreast of the latest civil nuclear energy developments and, of course, it includes cooperation on research and development, nonproliferation, civil nuclear energy skills and technical training, and regulatory issues. It also provides the framework for Australia’s technical involvement in the Global Nuclear Energy Partnership and the Generation IV program to develop advanced nuclear reactors.

Claims that joining the Global Nuclear Energy Partnership requires Australia to accept other countries’ spent nuclear fuel or endorse their programs, or indeed to accept radioactive waste, are in fact dead wrong. There is no such requirement. The government’s policy is and will remain not to accept other countries’ spent nuclear fuel or nuclear waste. This policy of course is re-
corded in our nuclear energy action plan with the United States. The government’s policy on this matter is both longstanding and well known. Australia does not accept nuclear waste from other countries and this prohibition is enacted in law.

Senator MARK BISHOP—I ask a supplementary question, Mr President, of the minister arising out of her response. Can the minister confirm the government has been in discussions with companies interested in setting up an enrichment industry in Australia which, under GNEP, would commit us to taking back nuclear fuel used in other countries? Didn’t the director of one such company state recently that its plans would only go ahead under a coalition government? Under GNEP, won’t Australia be an ideal fuel supplier country, enriching our uranium and then taking back the spent fuel from other countries?

Senator COONAN—I thought I had very explicitly answered that question. In fact, I will repeat it. Our policy is longstanding and well known, and we do not accept nuclear waste from other countries. This is a prohibition that is enacted in the law and I do not think I can put it in clearer terms than that.

Broadband

Senator CHAPMAN (2.17 pm)—I also direct my question to the Minister for Communications, Information Technology and the Arts. Will the minister update the Senate on the government’s nation building, broadband rollout? What is the government’s response to the use of the court system and the Auditor-General process by Telstra and the opposition?

Senator COONAN—I thank Senator Chapman for his question. I am concerned, as he is, about Telstra and the Labor Party working together to frustrate and delay the rollout of the new high-speed broadband network in Australia. While the government is focused on extending high-speed broadband out to 99 per cent of the population, it is clear that Labor and Telstra have been working hand in glove to try and prevent any independent broadband investment from proceeding.

Embarrassing Telstra documents released in the Federal Court in the past few days show that Telstra and Labor’s tactics included a plan to influence an investigation by the Auditor-General and to commence court proceedings in the hope the rollout of the new OPEL high-speed network build would be delayed. Internal Telstra strategy documents from November 2006 and June 2007 said: ‘The bid for funding will be noncompliant for a range of reasons. A better option than not participating may be to have the government reject our offer. We are taking the view that so long as we have claims that are arguable and will not be laughed out of court, we should run them even if the prospects of success are not great.’ These documents also show that the Labor Party was complicit in Telstra’s plans to derail the OPEL proposal. Pride of place in Telstra’s strategy to influence the Auditor-General is a letter in draft form from the Labor Party to the Auditor-General. Who was this unsigned draft letter from? None other than—

Senator Abetz—Senator Conroy.

Senator COONAN—Yes, Senator Conroy. You have to ask, Mr President, what was this draft letter from Labor to the Auditor-General doing in a Telstra strategy manual about influencing an independent auditor’s review? Was it there for a bit of technical tweaking or was it to give them notice?

The snag in this plan by Telstra and Labor to influence the Auditor-General is that the Auditor-General torpedoed their arguments when he found, ‘It was open to government to agree to negotiations being pursued with the preferred applicant and to commit to in-
crease the program’s funding.’ Here we have it: a Telstra plan to deliberately submit a bid that it knew was not compliant and was doomed to fail, to get the Labor Party to seek to influence the Auditor-General—

Senator Conroy—We wrote to them, you idiot.

Senator COONAN—to try to delay the rollout of the new, competitive, high-speed broadband network—

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

Senator Conroy—I withdraw that she is an idiot.

The PRESIDENT—And that you withdraw unconditionally.

Senator Conroy—Mr President, I withdraw unconditionally.

Senator COONAN—I know that Senator Conroy is desperately embarrassed by being pinged here. Labor has tried to delay the rollout of the new, competitive, high-speed broadband network by OPEL and then tried to publicly attack the government in international forums and in seats all around Australia by talking up the Labor Party. Telstra’s disgraceful behaviour is on display for all to see. The Labor Party’s cynical, sneaky and opportunistic part in trying to delay the OPEL network build has been shown for what it is. Labor has no plan for over three million premises in rural and regional Australia that will simply miss out under its sham plan. Regional and rural Australians know that you cannot rely on the Labor Party. The only true friend of rural and regional Australia is the coalition, which will continue to deliver the services they need and want.

Opposition senators interjecting—

The PRESIDENT—Order! Your colleague is waiting to ask a question.

Broadband

Senator HUTCHINS (2.22 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer to the letters the minister has sent to 500,000 Australians telling them that they are not currently able to access wireless broadband. Can the minister confirm that her letter was sent to both the Tumut and Bega telephone exchanges? Can the minister now explain why she sent a letter to the Bega and Tumut telephone exchanges to tell them that they have no broadband access? Isn’t it the case that both of these exchanges not only have broadband access but actually help to provide it to the local community? Is the minister really so desperate to sell her second-rate network that she is reduced to sending letters to telephone exchanges? How could the minister be so out of touch and, frankly, incompetent?

Honourable senators interjecting—

The PRESIDENT—Order! We will not proceed until there is order.

Senator COONAN—What I could say about that question, of course, is that it seems that Senator Hutchins has gone to the NIDA school for overacting, but, quite apart from that, I can also say that I have been absolutely delighted—

Opposition senators interjecting—

The PRESIDENT—Order!

Senator COONAN—Thank you, Mr President. Of course, this really does show how desperate the Labor Party is that information about the government’s comprehensive broadband plan does not get out to rural and regional Australians who want these services and who will not get them under the Labor Party—certainly no-one in Australia will get them until 2013.

The mail-out, of course, simply informs consumers about new and affordable broad-
band services coming their way. Surely, if the Labor Party were interested in providing Australians with access to fast, affordable broadband, it would have supported this mail-out. I am absolutely delighted that my department wrote to over 500,000 householders across rural and regional Australia to advise them that a new, wholesale broadband network is now being rolled out. This new network will provide fast, affordable broadband to all Australians, regardless of where they live.

Unlike Labor, which need an inquiry to even get out of bed—it is a wonder they have not had one just to decide where they can roll out broadband—the Howard government is about making decisions in the best interests of all Australians and then getting on with the job of making those decisions a reality. A fast, affordable broadband service for all Australians regardless of where they live is a reality that this government has committed to, has costed and is currently rolling out.

The Labor Party, of course, want to shut down the good news. We all know that their response lacks credibility. It is a sham plan. It is uncosted and provides no coverage, and it only covers 75 per cent of the country. No wonder people in rural and regional Australia look forward to getting letters that inform them of not only the availability of services but also the fact that they will be affordable and will be available to them before 2013. It is no wonder that the Labor Party want to stop consumers being informed. They have desperately tried to shut down the OPEL network. They have conspired with Telstra to try and influence, quite improperly, the Auditor-General. They have tried without success to criticise every opportunity to tell consumers about services that are available regardless of where Australians live.

And it is not just Labor who wants to keep consumers in the dark, of course. Telstra, which only has itself to blame, has gone on a capital strike, has failed to provide fast broadband—which it could, at the flick of a switch—and then has the temerity to criticise an alternative provider who steps up to the plate and says, ‘If Telstra won’t do it, we will.’

I think it is an indictment on the Labor Party, an indictment on Senator Conroy and an indictment on all the people over there who he gets to ask his silly questions. The important thing is that all Australians can get fast broadband under the coalition’s plan, regardless of where they live.

Senator HUTCHINS—Mr President, I ask a supplementary question. Does the minister know how many of the 500,000 recipients of her letter either already have broadband or are in fact telephone exchanges? How much public money has been wasted on this propaganda campaign, the sole purpose of which is to help cover up the minister’s incompetence?

Senator COONAN—I must say that I am hardly shattered by that penetrating question! The government is strongly committed to extending high-quality, affordable broadband as far as possible across Australia. That will include a mix of technologies that does include wireless, that does include ADSL2+, that will also extend the subsidy for satellite service and that tells people about the $2 billion Communications Fund that the Labor Party wanted to knock off for a metropolitan service. I am very pleased that the people of Australia know that there is at least one party—and that is the government in Australia—that actually stands up for consumers, understands what they need and is getting on with delivering it, ignoring the sideshow from the Labor Party.

Workplace Relations

Senator LIGHTFOOT (2.28 pm)—My question is to Senator Abetz, the Minister
representing the Minister for Employment and Workplace Relations. Will the minister outline how the government has effectively balanced the role of employees, employers and unions in Australia’s workplaces? Is the minister aware of any alternative policies?

Senator ABETZ—I thank the distinguished and eloquent Senator Lightfoot for his question. The Howard government’s industrial relations laws do strike a balance. Employees are given the ability to negotiate working conditions that best suit them, underpinned by a strong safety net and the fairness test, which ensures conditions cannot be traded without fair recompense. Employers—the people who, may I remind those opposite, actually create the jobs—are given the same ability to negotiate flexible working conditions with their workers. They have also had the job-destroying shackles of Labor’s so-called unfair dismissal laws removed. Despite what Labor and the unions say, the ability of unions to represent their members in the workplace has been retained and indeed enshrined in law.

What we have done is put in place a sensible law to prevent unions from simply barging into workplaces on any pretext to stand over workers and employers. It is significant that our laws, which have seen the creation now of over 400,000 new jobs—87 per cent of which are full time—and further real wage increases, are so balanced that the Labor Party now pretend that they would keep some aspects of Work Choices. The problem is that Labor’s position is just that: pretence. Some 70 per cent of Labor’s frontbench and 80 per cent of Labor senators are former union officials. Some of them in their former trade union lives were part of the rabble trying to break into Parliament House before our first budget—and some of us remember who they are. They found it easier to get in by getting Labor Party endorsement and are now sitting in this chamber. They, might I add, would be senior ministers in a Rudd Labor government. Do you think that they would stand up to union thuggery? Of course they would not.

There is the scary and very real prospect of the extremist Greens gaining the balance of power in this place and making Labor’s retrograde IR policies even more extreme. Here are some of the Greens extreme IR policies, a union wish list if ever you have seen one: an absolutely unfettered right to strike; an unfettered right for union representatives to enter the workplace; and the reinstatement—lock, stock and barrel—of Paul Keating’s so-called unfair dismissal laws. No wonder the unions are now pouring hundreds of thousands of dollars into the Greens’ coffers.

Senator Bob Brown—How about the Exclusive Brethren’s exemptions you’ve provided for?

Senator ABETZ—A few weeks ago Greens Senator Rachel Siewert promised that if the Greens won the balance of power then they would ‘keep a hand on the shoulder of the new government, particularly on the IR legislation’.

Senator Bob Brown—What about the Elect Vessel? He has more than a hand on the shoulder.

Senator ABETZ—Today her hapless and interjecting Leader of the Greens said that they would harden Labor’s IR position. He said, ‘We’ll be negotiating very strongly. I predict we’ll improve Labor’s position.’

Senator Bob Brown—Mr President, I rise on a point of order. The minister heard the question. He should be telling—

The PRESIDENT—What is your point of order?

Senator Bob Brown—The point of order is that he is not giving us the detail about the
Exclusive Brethren’s exemption given by the Prime Minister—

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

Senator ABETZ—What a silly point of order from the very silly Leader of the Australian Greens. The Australian Greens will line up with the Australian Labor Party and bring into this country industrial relations laws worse than we had under the Hawke-Keating regime. It will be job destroying. It will be economy destroying. It will be family destroying. So what I urge my fellow Australians to do is to support the balance of the Howard government’s measures. (Time expired)

United Nations Peacekeeping Missions

Senator STOTT DESPOJA (2.33 pm)—My question is addressed to Senator Coonan, the Minister representing the Minister for Foreign Affairs. Is the minister aware that 14 September this year was the 60th anniversary of the first United Nations peacekeeping mission? Is the minister aware of reports that Australia now ranks 67th in the world in terms of our commitment of troops to UN missions? Can the minister outline how the government can justify committing some 1,575 troops to Iraq among the approximately 160,000 coalition troops there and yet is not willing to commit troops to Darfur, where the presence of professional Australian troops could make a significant difference?

Senator COONAN—I thank Senator Stott Despoja for her question. No, I was certainly not aware of the statistic that Senator Stott Despoja mentioned in her question. She does in fact refer specifically to the situation in Darfur. I have to say that of course Australia welcomes the United Nations Security Council’s establishment of peacekeeping operations in Darfur—the UN-African Union peacekeeping operations, UNAMID—to take over responsibility for peacekeeping in Darfur from the African Union mission in Sudan by 31 December 2007. Australia has also welcomed the Security Council’s authorisation for UNAMID to use force to protect civilians and humanitarian workers and to support the implementation of the Darfur peace agreement.

Australia is encouraged by recent UN-AU discussions with Darfuri rebel groups and by the prospect of negotiations between these groups and the government of Sudan. Australia recognises of course that there are substantial obstacles to a settlement. Australia has made and will continue to make significant efforts to relieve the crisis in Darfur. Since mid-2004 we have provided more than $71 million in humanitarian aid to Sudan and almost $11 million to address the spillover effects in neighbouring countries. Australia certainly has offered to provide doctors and nurses to assist the UN with this peacekeeping force. So, Senator Stott Despoja, obviously aid and efforts in peacekeeping can take different forms. Australia is very willing to step up to the plate in tragic situations such as those that we have seen in Darfur to well and truly do our bit. If there is some further information that Minister Downer can give me to add to my answer then I will most certainly convey it to Senator Stott Despoja.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for her answer and certainly acknowledge the aid provided by our government to Sudan, but I ask the minister to get more information about why the government will not commit ADF personnel not to Sudan generally—but to Darfur specifically? Why will Australia not provide peacekeeping troops as part of that UN mission that we have welcomed so strongly? Given our proud reputation in contributing to peacekeeping missions—something like 73
deployments to 64 countries since the first mission—how does the minister explain our decline in contributions? In fewer than 10 years, from 1999 to this year, we have gone from seventh in the world to 67th. Can the minister explain that decline in contributions?

Senator COONAN—I thank Senator Stott Despoja for the supplementary question. I reiterate the fact that Australia takes very seriously our role in stepping up to the plate with assistance. Just to continue with the case that I was previously engaged in about Sudan, I note that—apart from our $71 million in humanitarian aid since mid-2004, with almost $11 million to address the spillover effects on neighbouring countries—we have also provided 15 specialist ADF personnel to the United Nations mission in Sudan that was established in March 2005 to support the implementation of a north and south comprehensive peace agreement. We have a very proud record of sending our AFP officers on peacekeeping efforts. We sent them to Cyprus, just to mention one mission. We have been involved in over 40 missions in past years. Mr Andy Hughes, a former AFP officer, was appointed head of UN police recently. I will get some further information for Senator Stott Despoja, but I do not think the thrust of her question is supported. Australia steps up to the plate and takes seriously our responsibilities in those particular situations. (Time expired)

Economy

Senator McGAURAN (2.39 pm)—My question is to the Leader of the Government in the Senate and the Minister for Finance and Administration, Senator Minchin. Will the minister inform the Senate of the latest report on the Australian economy from the International Monetary Fund? What lessons can be taken from this report? Is the minister aware of alternative approaches?

Senator MINCHIN—I thank Senator McGauran for the question. Last week the International Monetary Fund, probably the most prestigious international economic agency, released its article IV report on the Australian economy. The IMF’s executive board commended the Australian government on what it described as:

... exemplary macroeconomic management, which is widely recognized as being at the forefront of international best practice.

The report described Australia’s fiscal position as ‘very strong’, noting that we had run surpluses in nine of the 10 preceding years. The IMF stated that sound fiscal, monetary and structural policies had created the conditions for a continued expansion, supported by high employment.

There are several policy implications from this report. The IMF has expressed confidence that the government will continue to implement the reforms needed to spur efficiency, enhance productivity and face long-term challenges relating to population ageing. Secondly, the IMF has stated that:

Additional revenues resulting from the terms of trade boom have been managed prudently ...

That is a statement that completely refutes claims that have been made by Labor that the government has somehow squandered the proceeds of the increase in resource prices. The accompanying staff report noted that, although the government’s management of additional revenues from the strong terms of trade had been prudent, there would be inflationary risks if fiscal policy was loosened.

It is worth quoting from paragraph 16 of the staff report, which says:

Another stimulus that raises concern comes from the States. The States are collectively forecasting a fiscal deficit of around ½ percent of GDP in 2007/08. This constitutes a reversal of the surplus position that the States have been in until 2005/06. The States point to the need for infrastructure improvements as the main reason for the
recent deterioration in their budgets. The catch up in infrastructure spending comes at a time when there is already strong competition for human and capital resources from the private sector. As a result, this is putting more pressure on resources and could begin to bid up prices.

The International Monetary Fund is clearly warning about the inflationary impact brought about by new borrowing of state Labor governments. We know that state Labor governments and their business enterprises are going to increase their combined debt to no less than $80 billion by 2010 to fund projects which risk cost blowouts, project delays and economy-wide inflationary pressures. That is the risk this country faces if we end up with wall-to-wall Labor after this federal election.

We also know that Mr Rudd does not actually have an economic plan. All he has is a long list of proposed reviews and inquiries and an armada of proposed new bureaucracies, quangos, task forces and commissions. He has promised no fewer than 67 new bureaucracies and 96 new reviews if he is elected. Mr Rudd promises to govern just like his state Labor counterparts, inflating the bureaucracy at a great cost to taxpayers and endlessly looking into things instead of getting on with the job of delivering outcomes for the Australian people. Mr Rudd is of course a career bureaucrat whose only experience is in implementing the ideas of others and not any of his own. We have seen Mr Rudd have his policies dictated to him by the ACTU, the Labor premiers and now, as Senator Abetz has said, Senator Bob Brown is telling everyone how he is going to amend Labor’s industrial relations policy to make it even more union friendly. They are simply filling the vacuum created by Mr Rudd’s complete lack of ideas. His ideas are simply to be friendly to the ACTU and to raid the Future Fund. He has no policies to keep this economy strong and to keep people in jobs.

Advertising Campaigns

Senator McEwen (2.43 pm)—My question is to Senator Minchin, the Minister representing the Prime Minister. Can the minister confirm that since the last election the Howard government has spent more than $800 million on advertising? Isn’t this spend five times the amount the government will spend on the mental health program this year and six times as much as it will spend on rural health services? Can the minister confirm that the advertising spend included: $93 million for advertising the government’s extreme industrial relations changes; $27 million for advertising private health insurance; and $52 million for climate change spin, including $23 million worth of advertising? How much public money in total has the Howard government spent on advertising since the start of this year? How much more will the Howard government spend on advertising before the election?

Senator Minchin—These are rather tired old arguments about government advertising from the Labor Party. It well knows that all governments of all persuasions naturally and legitimately are able to advertise government programs and policies. We always get criticism from the other side if people are uninformed of government policies and programs. It is in fact the job of governments to inform their citizens of the policies and programs which governments are implementing on their behalf. All the Labor Party is reflecting is the fact that we are an activist, reformist government and it is our proper role to inform the Australian people of the many exciting programs and policies that we have brought to bear during our 11 years in government. It is our job to let them know of all the good things that we are doing for them—of all the jobs that we are creating.

Opposition senators interjecting—
The PRESIDENT—The Senate will come to order.

Senator MINCHIN—The opposition does not want to hear about the fact that it is our proper prerogative and responsibility to let the Australian people know about all the exciting things that we are doing on their behalf and that is why they have elected us on four consecutive occasions to govern this country. We have no shame whatsoever in ensuring that the Australian people know exactly what we are doing on their behalf.

How dare the Labor Party lecture us about government advertising! Do they watch television when they go back to Adelaide, Sydney and Brisbane and see the shameless behaviour of the state Labor premiers who appear in all the government advertising campaigns run by the state Labor governments? We do not get information when we turn on our TVs back in our capital cities; what we see is Mr Beattie, Mr Rann or Mr Bracks poncing around on screen telling the people what great guys they are. It is outrageous what the state Labor premiers have been doing with their taxpayers’ money, so we are not going to listen to any lectures from the Labor Party about government advertising.

Honourable senators interjecting—

The PRESIDENT—When the Senate has come to order, I will call Senator McEwen.

Senator McEWEN—Mr President, I ask a supplementary question. Is the minister aware of the Prime Minister’s view in 1995, when he said:

In a desperate attempt to find an election life raft, the Prime Minister is beginning an unprecedented propaganda blitz using taxpayers’ money.

Can the minister confirm that the cost of the ‘unprecedented propaganda blitz using taxpayers’ money’ in the year leading up to the 2007 election will be more than $500 million? Why should taxpayers have to spend half a billion dollars of their money on the Prime Minister’s ‘election life raft’?

Government senators interjecting—

The PRESIDENT—Order on my right.

Senator MINCHIN—I am not sure where the senator gets her figures from but the information given to me is that, for the 2006-07 financial year, total advertising placed through the central advertising system was $171 million. If we look at what the state governments are doing—I always think that is quite relevant—we can see that in the course of 2006 state governments, whose total budget is about half ours, actually spent $354 million. So the state governments are not only spending twice as much as us; their total budget is only half the size of ours. They are not doing anything anyway. What have they got to advertise? The state governments do absolutely nothing except fail completely to supply their citizens with public transport. They cannot supply them with water. What do these state governments do?

Climate Change

Senator MILNE (2.49 pm)—My question is to the Minister representing the Prime Minister, Senator Minchin. I ask: does the minister recall that, when scientists were warning this time last year of extreme drought and fires for the summer, the Prime Minister said that he was sceptical about a lot of the more gloomy predictions about climate change? Does he further recall that the Prime Minister said in February of this year that the jury is still out on the relationship between climate change and drought? If so, do the Prime Minister and the government still believe, in the face of ongoing drought and terrible crop failure predictions today, that the jury is still out on the relationship between the intensity of drought on the one hand and the higher temperatures, higher evaporation rates and changed rainfall patterns of climate change on the other hand?
Senator MINCHIN—We know better than most, because we do represent rural Australia, just how severe the drought is. We take that extremely seriously and just this week we announced an extension of exceptional circumstances relief for Australians who are suffering one of Australia’s most prolonged periods of drought. We have extreme concern for the position of farmers and other communities affected by what is a very serious drought. I accept that there is bipartisan concern for the consequences of what is clearly one of Australia’s most severe droughts during the period of European settlement in this country.

The fact is that scientists have made it clear that there have been periods of drought of this order in history in Australia. This is not unique; there have been other prolonged periods of extreme drought in this country. Peter Cullen, a significant scientist who has spent much time in my home state of South Australia, recently made the point that Australians may have been led, unfortunately, to believe that the good seasons and the good period of the fifties, sixties and seventies would go on forever. This was when much of the irrigation licences were issued in the Murray-Darling Basin under the now clear misapprehension that the good periods through that time would simply continue. As Professor Cullen pointed out, what seems to be occurring is a return to the sorts of conditions which prevailed prior to those three decades of exceptionally good conditions. I think it is fair to say that, objectively speaking from a scientific point of view, the period of prolonged drought which Australia is currently experiencing has not yet been proved to be directly linked to global climate change.

That is not to say it is not linked, but I think it is proper for the Prime Minister to objectively state, based on the many scientific statements to that effect, that it is not yet clear that this prolonged period of drought is a direct consequence of or directly linked to overall global climate change. That, of course, does not derogate from the responsibility of state and federal governments to do their utmost to deal with the reality of this drought and to seek to ameliorate its significant effects upon rural Australians and those dependent on rural communities.

On the other hand, it also is a fact that we take seriously Australia’s role as part of the international community to do what we responsibly and sensibly can to deal with global climate change—and we are. We have detailed on many occasions in this place the billions of dollars and the significant number of programs, and the extent to which we are seeking to engage the international community in responsible, sensible, pragmatic, effective programs to deal with and to ensure that the world can adapt to the reality of global climate change. But if the question is, ‘Is the Prime Minister right to continue to say that it has not yet been proven that this period of drought is directly caused by or linked to global climate change?’ the answer is that he is quite right.

Senator MILNE—Mr President, I ask a supplementary question. I thank the minister for his frankness about the ongoing climate change scepticism in the government. I ask the minister to apologise to rural Australians for the ongoing misleading of those people to the view that climate change is not real or urgent and that weather patterns will return to something of the past. Does the government believe that we need to do more than just provide bandaid cheques for drought relief, flood relief and fire relief? Does the government believe we need a new strategy for a transition in rural Australia to adapt to the realities of climate change?

Senator MINCHIN—I think, with respect, Senator Milne has completely repre-
presented the government’s position on this. She asked me a question about the assertions of a link between this drought and global climate change, which, it is asserted, is anthropogenic. I was answering that question. The question was not about the issue of climate change per se. I have detailed to her the extent to which we are taking seriously our responsibilities as members of the international community to address the reality of climate change. Of course the climate is changing and of course this country has the least reliable climate in the world. We have known from the outset of European settlement that this is the driest inhabited continent on the planet—and I live in the driest state on this continent—and it has the least reliable climate. It is right to say that we must all in our farming practices ensure that we continue to live with that reality.

**Commonwealth State/Territory Disability Agreement**

**Senator McLUCAS** (2.55 pm)—My question is to Senator Scullion, the Minister representing the Minister for Families, Community Services and Indigenous Affairs. Does the minister recall Minister Brough’s comment on 25 July that bilateral agreements with Western Australia, the Northern Territory and the ACT under the Commonwealth-State Territory Disability Agreement would be completed very soon after that meeting? Given that it is now two months since Mr Brough made that promise, can the minister explain why no agreements have been signed? Can the minister confirm that none of those three jurisdictions has even received a written offer from the Commonwealth? When does Mr Brough intend to deliver on his promise to complete bilateral agreements under the CSTDA, and how much longer will Australians with disabilities have to wait for Mr Brough to get his act together?

**Senator SCULLION**—Perhaps I can take the last aspect of that question first. I think it is quite misleading to say that Minister Brough has somehow not provided for Australians with regard to disability. This is a minister who has, because of the failure of the Labor states, had to provide the $1.8 billion package outside the arrangement to ensure that Australians with a disability get a fair go. With regard to the three offers, the offer was made on the basis of the states and territories coming up with a submission to identify the particular amounts that they are going to need—and I understand that that is the case—

**Senator McLucas**—They have done that—in July.

**Senator SCULLION**—No, no. The senator interjects with ‘July’. I am sorry to have a conversation without going through you, Mr President. That particular state and the territories have responded at different times. I understand that that is under active consideration. They responded at different times and it is under active consideration. I understand that those negotiations are of the most amicable nature and are being done in the expression of a partnership.

I do understand also that Queensland was not amongst those. We made an offer to them to identify unmet need in areas of respite and supported accommodation, the two most fundamental areas of disability—and of course there was no offer from Queensland; there was stark silence. That is why this government moved to have a partnership with those states and territories that were fair dinkum about this. I have to commend Western Australia, which has a long history of setting the pace in terms of disability, and the Northern Territory and the Australian Capital Territory. I think they have done very well in that matter.
I mentioned that there were a number of issues that we had to deal with outside of the CSTDA. We have a requirement in the existing CSTDA that the states and territories provide us with an evidentiary process about unmet need. We are a government that does not just throw money around; we want to prioritise. We know there is unmet need in supported accommodation and respite. We said to the states and territories, ‘Can you provide us with that over time?’ It simply has not been provided. So, with the support of industry, we have said, ‘We’ll go out and do it ourselves.’ So we have provided $962 million to help carers and their children, and $562 million for supported accommodation. We are rolling that out at the moment. I announced it about three weeks ago in Townsville. It is in the first part of the consultation process, so the money goes where the need is most.

We are helping people with disabilities and their families, with an allocation of $744.8 million. The amount for child disability assistance is $721.2 million, and the amount for children’s services is $23.6 million. I could go on, but I note that this $1.8 billion is above and beyond the Commonwealth-state disability agreements. This government is a government which leads. We would not be able to make this investment if we did not have a fantastic economy. We would not be able to make this investment if we had weak leadership. We are not prepared to muck about. Labor is weak on leadership. The Howard government is strong on leadership, and we have made a decision to help all those people with a disability who are in need. (Time expired)

Senator McLUCAS—Mr President, I ask a supplementary question. I note that the minister could not explain why no agreements have been signed, some two months after the minister indicated that these agreements would be reached very soon. Can the minister confirm that Minister Brough is in fact raiding the disability assistance package announced in June in order to fund the bilateral agreements? If the funding for the bilateral agreements is coming from the disability assistance package, does this mean that non-government providers from Western Australia, the Northern Territory and the ACT will be frozen out of any additional funding to support older carers of people with disabilities?

Senator SCULLION—I reiterate what I said in part of my initial answer, which was quite clear. In terms of the three agreements, this is a partnership approach. It is an amicable agreement. Announcements in terms of that partnership approach will be made shortly. In terms of the so-called ‘raiding’ of the extra funds that the Commonwealth put in, the $1.8 billion will not be directly spent on the state and territory governments; quite the contrary. We are engaging with all the NGOs and all the service providers across the disability community in order to ensure that those dollars are spent in the very best way. Frankly, the inability of the Labor governments to provide for this is frustrating. Again, the simple message is this: we need strong leadership, which the Howard government gives, instead of the weak leadership that is provided by the Labor governments.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

United Nations Peacekeeping Missions

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (3.02 pm)—I wish to add to an answer that I gave earlier to Senator Stott Despoja concerning the United Nations Association of Australia first annual
report card on the Australian government’s performance at the United Nations. I wish to inform the Senate that we are the 13th largest financial contributor to the United Nations and contribute $US100 million to the United Nations annual peacekeeping budget. In 2007-08, Australia will deliver an estimated $3.2 billion in official development assistance, 20 per cent of this through multilateral funds, including 10 per cent through UN agencies and programs. We are, of course, an active and respected participant across a wide range of core UN functions and we are strongly committed to the ongoing reform efforts. In relation to Australia’s commitment in Cyprus over 40 years, I am informed that the Australian Federal Police have served in Cyprus with distinction, and our officers serving there have numbered 1,100.

Veterans Affairs

Senator ELLISON (Western Australia—Minister for Human Services) (3.03 pm)—Yesterday, Senator Allison asked me a question without notice in relation to a report of a United Kingdom study of the impact of the British nuclear tests carried out in Australia. That report is yet to be presented to a parliamentary committee; nonetheless, I have obtained further information on that. I table that further information and seek leave to have it incorporated in Hansard.

Leave granted.

The information read as follows—

Yesterday Senator Allison asked me a question without notice in relation to a report of a United Kingdom study of the impact of the British nuclear tests carried out in Australia. I have read the newspaper report which appeared in the UK’s Sunday Mirror on 16 September 2007 to which Senator Allison refers. The report indicates that the study, prepared by a Dr Chris Busby of the University of Liverpool, is to be presented to a Parliamentary hearing in the UK next month. The Minister for Veterans’ Affairs has advised me that his Department is unaware of the detail of this study but has undertaken to monitor the outcome of this work. I would note that at this stage the study does not appear to have been subjected to peer review and has not been published in scientific literature. Until this occurs it is difficult for the veracity of the study to be adequately assessed.

I am further advised that on 28 June 2006, the Australian Government released the findings of the Mortality and Cancer Incidence study of Australian participants in the British nuclear test in Australia.

Although the study did not show an association between the elevated cancer rate and radiation exposure, the Government has decided to provide non-liability health care treatment for all cancers to nuclear test participants.

As a result of this, treatment will now be provided to nuclear test participants for all forms of cancer including: throat cancer, prostate cancer; and skin cancer. This treatment is available to all military personnel, public servants and third party civilian contractors who were present at the nuclear test sites. Eligible participants will be given a White Card for free cancer treatment.

QUESTIONS WITHOUT NOTICE:

TAKE NOTE OF ANSWERS

Answers to Questions

Senator CARR (Victoria) (3.04 pm)—I move:

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

I refer in particular to the answers given by Senator Minchin regarding government advertising. Today, we were told by Senator Minchin that he has no shame when it comes to the wanton waste of public moneys with regard to government advertising. In the run-up to this election, $500 million will be spent by this government in a desperate attempt to secure a life raft in the face of increasing levels of public dissatisfaction.
Some $2 billion has been spent on public advertising since this government came to office. This is a desperate attempt by this government to avoid public accountability. This government is seeking to pump out hundreds of millions of dollars in propaganda to hide from the public, in a period when it should have called an election. We all understand this is one of the longest running parliaments in the history of this Commonwealth. This government is desperately running from the Australian people. This government has sought to abuse public advertising in a manner which goes to the heart of the nature of the deceit of and the contempt for the Australian people shown by this government.

In last year’s annual report of the Department of the Prime Minister and Cabinet, they avoided reporting on government advertising. They neglected to report a whole series of sums, including $209 million for 2005-06. Of course, this year’s figures will not be reported until well after the election—this figure of $500 million that the government is spending in the run-up to the election. This government’s deceit and dishonesty have now been visited upon its own ranks. We know about this because the situation arose some years ago, when Shane Stone pointed out to us that this government has a reputation for being mean and tricky. There has been a period of total turmoil while the government has visited upon its own ranks this deceit and deception.

We are now told that Mr Costello will take over from this Prime Minister at some point in the future—on the condition, of course, that the Liberal Party agrees. This is about the fifth time that promises have been issued to Mr Costello by Mr Howard. Going back to 1994, Mr Costello was told that the Prime Minister would serve only two terms and then hand over. Mr Ian McDonald, of course, was a witness to those discussions and kept a note in his wallet for 13 years. He kept the faith for 13 years—the poor hapless fool! He should be able to provide advice about this Prime Minister’s capacity to tell the truth. We had a situation back in 2003—

 Senator Ian Macdonald—Mr Deputy President, on a point of order: I have been misrepresented. I did not keep a note of anything. Senator Carr seems to have confused me with someone else.

 The DEPUTY PRESIDENT—There is no point of order.

 Senator CARR—In 2003 we had the Athens declaration, where the Prime Minister yet again reneged on a promise to Mr Costello. He said that he would hand over when he was 64. We now discover what a deception that was. We are now being told there were further promises made and that Mr Costello would be the first to be consulted about the Prime Minister’s plans. We discovered in just the last fortnight that he was the last to be consulted about the Prime Minister’s plans. Of course, we all understand who was first to be consulted. It was Mrs Howard. We all understand who made the decision. It was not the Liberal Party; it was Mrs Howard. We all now understand that the deputy leader of the Liberal Party was deceived yet again. We are now told that, sometime in the future, at some indeterminate date, if the Liberal Party agrees and if the Prime Minister has not already organised another candidate, then maybe Mr Costello will get an opportunity to serve.

This follows a pattern of deceit by this government. We saw it with foreign debt. The Prime Minister said in 1995, ‘I promise you we will follow policies which will bring down foreign debt.’ What has been produced? The exact opposite. We were told in January 2006 that no worker would be worse off—and how ridiculous that proposition now looks! The Prime Minister said in 2004,
‘Who do you trust to keep interest rates low?’ We were told a lie on Iraq. We went to war on a lie. This is a government that has been founded on one lie after another. *(Time expired)*

Senator JOYCE (Queensland) (3.09 pm)—It is interesting to hear Senator Carr talk about deceit and deception and things that happened in the past. One could draw attention to what has happened in the past in Queensland. On 5 March 1990, documents pertaining to a rape at a correctional centre were shredded with other matters. It is the ultimate deceit and deception when people decide to make themselves party to actions like that. However, moving on to other things, this government has shown an incredible record of good management on interest rates. This government has one of the greatest records of being close to other benchmarks in the world, especially the US benchmark. It is interesting to note that today our official interest rate is at 6.5 per cent. The interest rate in the United States is at 5.25 per cent. There is only 1¼ per cent between them. That is a management figure; that is the capacity of the government to manage. What we can note, however, is that when the Labor Party was in power the differential between our interest rate and the US interest rate was around 8.3 per cent. That also is a management figure. It shows that Labor had in excess of seven times the differential we have now. That comes straight down to their capacity to manage a domestic economy.

One of the fundamental aspects of a domestic economy is having people with the expertise to manage that economy. As I have said before, we are on a political 747 and its capacity to fly is determined by the people in the cockpit. We have left the Labor Party’s cockpit door open and we are having a look inside. The question has to be asked: has any of them ever flown a political 747? The answer, obviously, is no. In fact, none of them have ever flown before. I do not think there is one person on the Labor front bench who has ever managed a business—not one! They have not sourced one person with the capacity to run the economy; they have not even gone close. If you want deceit and deception, it is about being completely errant in getting onto your front bench those with management expertise in business. It is quite obvious that you are not going to be able to have any credentials in running a trillion-dollar economy when there is no-one who has run so much as a corner store. What are they relying on to find these people—divine providence? Do they think the skills to manage the economy will descend upon them?

To see Labor’s management expertise, you need only look at the states. The states are the best reflection of what Labor Party management is like—and my state, Queensland, is probably one of the best examples. At the moment, I think the Queensland government are about $16.4 billion in debt. That is what they have chalked up on the state credit card. They are moving towards being between $40 million and $50 billion in debt. What have they done for the person who was responsible for that, the former Treasurer of Queensland? What prize have they presented to someone who has been completely devoid of management expertise? She is now the Premier of Queensland.

I would counsel Senator Carr very strongly, when he talks about deceit and deception and all the things that are involved in it—all the things that have happened in the past—that there are things that should be addressed and the truth should be tabled. There are some truths that have never been tabled. I hope that some day they might be tabled in here, because there are a lot of answers required. Maybe this government has only another four or five days to go, but it would be another travesty of justice if those
people who have been suffering for so long from so many acts have to once again put aside any hope of those acts ever being dealt with.

Senator Hutchins (New South Wales) (3.14 pm)—Before I speak on the motion, I note that I detect—as maybe you do yourself, Mr Deputy President—in the comments that are being made about the backgrounds of Labor Party shadow ministers and members of parliament that there is some sort of inverted snobbery about what our backgrounds might be. It almost appears, from what Senator Joyce just said, that we should be born to rule, that they are born to rule, that they are better at it and that we should just get on with it and go back to serfdom where our forebears came from. I remind you, Mr Deputy President, that even the House of Lords has now been reformed. Even the House of Lords, Senator Joyce, is elected.

Senator Minchin today gave a pretty hysterical response to questions in relation to government advertising. I suppose that reflects the degree of desperation that the government is experiencing at the moment, particularly with its senior levels of management. I have always—and I have expressed this before—had a lot of time for the integrity of Senator Minchin. But today I thought he was quite shameless in his hysterical, unfounded attack on the state Labor governments in trying to defend a position that is clearly indefensible.

I am assuming that Senator Minchin was a member of the shadow cabinet before 1996. I was going to play the ‘who said this’ game that Senator Abetz plays, but unfortunately Senator McEwen mentioned it in her question to the minister. Let me just quote from a press release of 5 September, 12 years ago, by the then Leader of the Opposition, John Howard. Of course, Senator McEwen has already mentioned this first bit, but I will go with it again and start with the following:

In a desperate attempt to find an election life raft, the Prime Minister is beginning an unprecedented propaganda blitz using taxpayers’ money.

I have already alluded to you, Mr Deputy President, that it was in fact John Howard who said that. He went on further to say:

They—
that is, taxpayers—
don’t want their money wasted on glossy advertising designed to make the Prime Minister feel good.

He went on further to say:

There is clearly a massive difference between necessary government information for the community and blatant government electoral propaganda.

Finally, he said:

The problem for the government is not communication. The problem is that it is tired, it has broken too many promises, it has hurt too many people. This propaganda blitz will make the electorate feel even more angry.

Are they not prophetic words, Mr Deputy President? They could well be the dying words of the government that is presiding over Canberra at this moment.

We could well mention, as has been highlighted by Senator Carr, that since this government has been in power nearly $1½ billion has been spent on an advertising blitz. It appears that in the next period up to $500 million is going to be spent on advertising. Let me make this point, Mr Deputy President, because I know my time is going to expire shortly: if we had applied the money that has been used for blatant propaganda by the government, we could have paid for 28,000 secondary school teachers. We could have paid for 32,000 nurses. We could have taken steps to fix the skills shortage. Yet all we have seen—to give just two examples—has been that shameless ‘unchain my heart’
advertising on the GST and, even now, a planned climate change advertising blitz for a group of people who do not believe in it. (Time expired).

Senator McGauran (Victoria) (3.19 pm)—There is something very phoney about the Labor Party this week—and even previously, but especially this week, as we have what is most likely the last week of parliamentary sittings before an election. It came out through the last two speakers. Two days into this week, they have feigned a concern for—their own words—households of Australia with regard to housing affordability and the pressures households are feeling with increased prices of groceries et cetera. They have not, on a Tuesday afternoon, in what is a most valuable on-air debating period, been able to sustain that debate. They have gone right off the economics and back to what they know best—that is, personal abuse towards and personal attacks on the Leader of the Government in the Senate and the Prime Minister, no less, led by Senator Carr.

If you are going to allow Senator Carr to lead the motion to take note of answers then you are not serious about the economic debate. If there was one message given to the Labor Party at the last election, in 2004, which they ought to carry into this coming election, it was: establish your economic credentials. They are so phoney that they cannot even sustain the economic debate—a debate we will always welcome—for two days. They are so phoney in now calling themselves economic conservatives when we know that throughout the past decade of this government there was not a reform that brought the economy to the sound state it is in today that the Labor Party did not reject.

Now, they want the Australian people to accept them as economic conservatives. It was not so long ago that the Leader of the Opposition, Mr Rudd, declared himself a democratic socialist and said that there ought to be a red line through every policy of government. There is something phoney about a leader who said that no fewer than eight months ago and now wants to be called an economic conservative. There is something phoney about an opposition here in the Senate that cannot sustain an economic debate for two days and feigns a concern for mortgage-paying households but will not get up in this chamber and debate it on air.

There is something very phoney about an opposition who will not recognise that the fundamentals of this economy and this government’s policies, which they say they would support, are in good, sound order. The Leader of the Government in the Senate quoted the International Monetary Fund’s declaration that Australia’s economy is sound and one of the best in the world because of the hard decisions made to bring about those reforms. There is something very phoney about a Labor Party who, when in government, presided over 17 per cent interest rates on housing mortgages, 24 per cent interest rates for small businesses, one million workers unemployed, $96 billion in debt and so on—you know the story. They instituted those policies and now want to be called economic conservatives.

As I said, that is what they did in government. If you want to know what they did in opposition, they voted against every single reform this government introduced so as to bring about the sound economy that is now being praised by the International Monetary Fund. As I said, there is something phoney about the Labor Party, whose leader told us he was a socialist democrat eight months ago and now wants us to believe he is an economic conservative. And there is something even phonier when the shadow minister for industry is Senator Kim Carr, who runs on trust—that was the nature of his comments.
today: trust in the Prime Minister. His own side do not trust him, and you know it. To think that he is the potential minister for industry must send a shiver up industry’s spine. I cannot believe that, if by chance you are elected, you will ever make him minister for anything. It is a disgrace that you have him on the front line. There is something phoney about Senator Carr being the minister for industry, and you know it yourself. It is as laughable as Rasputin’s credibility in the Tsar’s court. There is something very phoney about the other side when they say they are not run by the unions yet 70 per cent of their frontbench is made up of unionists. (Time expired)

Senator KIRK (South Australia) (3.24 pm) — The Howard government has wasted almost $2 billion on government advertising since it came to power in 1996. Since the last election it has spent more than $800 million on government advertising. In fact, $126.3 million was spent on advertising in the last financial year. We have heard today from other speakers that the estimated cost of this government’s propaganda blitz using taxpayers’ money in this election year, 2007, is estimated to be more than $500 million — that is, half a billion dollars. Meanwhile, Australian working families continue to struggle, not only with interest rate hikes but also with the increasing price of food and petrol. This demonstrates just how completely out of touch the Howard government has become with the plight of Australian working families. It also shows the arrogance of the government, which appears to view taxpayers’ money as its own to spend however it sees fit.

In the short time I have available, I would like to take the Senate through a few examples of the government’s expenditure on advertising campaigns in key policy areas. I will begin with the government’s extreme industrial relations laws. This government has spent $93 million advertising its extreme IR laws. The Howard government’s changes to Work Choices have been a further extravagant excuse to spend more taxpayers’ money on advertising these unfair laws in the lead-up to the election later this year. These laws, as we know, have shown themselves to be exactly what the Labor Party said they would be — that is, unpopular, extreme and unfair — and they have hit working families very hard. No amount of taxpayer funded advertising will change the substance of these laws, yet this does not stop the Howard government trying to fool the Australian public with its taxpayer funded advertising. Mr Deputy President, $20.5 million alone was spent on the campaign to promote the Office of Workplace Services and the Employment Advocate. A further $40 million was spent on promoting the employee advisory program, a program designed to encourage employers to promote Work Choices. When Australians see these ads on TV they should shudder at the expense, because every tax dollar that the government spends on advertising is one dollar fewer that can be spent by Australian families on clothing, children’s education, groceries and other essentials of life.

I want to move on to climate change. The government has recently launched a $52 million campaign on climate change, including $23 million in advertising. The campaign includes an expensive series of television advertisements and a booklet to be mailed to every household in this nation. As we know, the government has consistently over-promised and under-delivered when it comes to climate change. Since 1996, the Howard government has failed to deliver on almost $460 million of funding it promised to climate change initiatives. As a consequence, less that 0.05 per cent of the $245 billion federal budget is being spent on climate change initiatives. Mr Deputy President, 0.05
is a blood alcohol limit, not a climate change strategy.

I could go on to talk about money that has been spent on superannuation advertising—$69 million—and private health insurance. The government has spent $27 million on advertising private health insurance. It has spent $6 million on advertising regional telecommunications and $20 million has been spent on advertising government internet policies. A Rudd Labor government will end the abuse of taxpayer funded government advertising. A Rudd Labor government will cut spending on government advertising and ensure that all advertising campaigns costing more than $250,000 would be authorised—

*(Time expired)*

Question agreed to.

**United Nations Peacekeeping Missions**

**Senator STOTT DESPOJA** (South Australia) (3.30 pm)—I move:

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Coonan) to a question without notice asked by Senator Stott Despoja today relating to United Nations Peacekeeping.

I know, especially with an election looming, that we are all very focused, understandably, on key and pressing domestic issues, but I want to raise in this place the issue of peacekeeping, especially when what we are dealing with is not a looming international crisis but a current international crisis in Darfur, in Sudan. We commemorated in this nation last week, on 14 September, the 60th anniversary of the first UN peacekeeping mission. Indeed, Australia has a proud history in peacekeeping missions. Four Australians were the first personnel of a multinational force deployed to Indonesia to monitor a ceasefire between the Dutch colonialists and Indonesian republicans 60 years ago. I am proud to see that since then our country has provided huge contributions to peacekeeping missions. We have participated in 73 missions in 64 countries.

I note today that there was an interjection from at least one senator: ‘Remember East Timor.’ The Democrats, more than most, remember East Timor because of our proud support for East Timorese independence over a long period. We commended not only the government role but the role of our troops in that peacekeeping force. But that was 1999, when Australia was ranked seventh in the world in terms of our contribution to peacekeeping missions. Where are we now? As of last weekend, reports suggest our world ranking is 67. That is completely inappropriate for a nation like ours, a nation that at the moment is committed to a number of conflicts and theatres of war. I used the figures in my question to the minister today—the fact that we have 1,575 personnel deployed to Iraq. Obviously that is the biggest single deployment that Australia has to a theatre of war at the moment. That number is part of 160,000 coalition troops. I am not suggesting that we cannot or are not making a difference there, but think of the difference even a few troops or personnel—some of that number—being deployed to a UN peacekeeping mission such as that in Sudan would make.

I would like the government to answer more specifically—and I note that the minister came back with additional comments today—why our ranking has declined and is so comparatively bad, given our proud history and the resources we currently have. I acknowledge the ADF deployment of around 15 personnel to southern Sudan. But please remember, colleagues, that this is a different conflict. There may be some overlap, but I am referring to a different conflict to that for which Operation Azure, currently in Sudan, has been deployed. I am talking about Darfur, where we know that a crisis is unfolding. We know that we should be playing a bigger
part. Anything from 200,000 to more than 400,000 people are dead and 2½ million have been displaced. I am not sure whether colleagues are aware of the most recent fighting, despite negotiations between warring parties, in the last couple of weeks and even days. Certainly on 10 and 11 September there were a number of civilian deaths as well and there have been recent attacks by helicopter gunships in battles between the Sudanese government and ground forces. These attacks resulted in many civilian deaths. I am not sure if our country is aware of its obligations.

We have all said, ‘Not another Rwanda.’ But this is what is occurring in Darfur. I urge this government, in the midst of all this electioneering: please spare a thought for what is going on in Darfur. We have a proud history of peacekeeping. I want to hear from this government why we are not heeding calls to support what is a UN backed mission, as opposed to Iraq—which, let us remember, was not—why our peacekeeping contributions are declining and, specifically, why we are not involved in Darfur, because we should not have that blood on our hands as a nation. I hope that we do not. I do not want to see another Rwanda. I urge all colleagues to find out what on earth is going on with our government’s deployment strategy in this regard.

Question agreed to.

CONDOLENCES

Mr Peter Robert Cleeland

The DEPUTY PRESIDENT (3.35 pm)—It is with deep regret that I inform the Senate of the death on 16 September 2007 of Peter Robert Cleeland, a member of the House of Representatives for the division of McEwen, Victoria, from 1984 to 1990, and from 1993 to 1996.

PETITIONS

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

Medical Services

Petition to the Honourable President of the Senate and Senators assembled in Parliament:

This petition of certain citizens of Australia draws to the attention of the Senate, the crisis in medical workforce due to the neglect of the Howard Government.

Your petitioners therefore ask the Senate to:

• Increase the number of undergraduate university places for medical students,
• Increase the number of medical training places, and
• Ensure Australia trains enough Australian doctors, nurses and other medical professionals to maintain the quality care provided by our hospitals and other health services in the future.

by Senator Hogg (from 53 citizens)

Internet

The internet is a great educational tool. However children can too easily access pictures of violent cruelty and extreme pornography on the internet. Labor wants a ‘clean feed’ technology that can block access to these kinds of sites.

TO THE HONOURABLE PRESIDENT AND MEMBERS OF THE SENATE IN PARLIAMENT ASSEMBLED:

This petition of certain citizens of Australia draws to the attention of the Senate, the danger of children accessing internet pornography and other harmful internet pages.

Your petitioners therefore ask the Senate to make laws that:

• All Internet Service Providers be required to offer a “clean feed” internet service to all households, schools and public libraries that blocks access to websites containing child pornography, acts of extreme violence and x-rated material.

by Senator Webber (from 25 citizens)

Petitions received.
NOTICES

Withdrawal

Senator WATSON (Tasmania) (3.35 pm)—Pursuant to notice given at the last day of sitting on behalf of the Standing Committee on Regulations and Ordinances, I now withdraw business of the Senate notice of motion No. 1 standing in my name for today.

Presentation

Senator Allison to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) thirteen Melbourne men accused of terrorist-related crimes have been held for nearly 2 years in the maximum security Acacia unit in Barwon prison; segregated, shackled, regularly strip-searched, and confined to their cells for more than 20 hours every day,

(ii) Justice Bongiorno, in a bail application hearing earlier in September 2007, said the conditions lacked any justification and risked undermining the rule of law by treating the men in the same way as the state’s worst convicted contract killers, stating that ‘I find the conditions in Barwon very troubling from the court’s perspective. The state runs Barwon prison. What is the reason why ... people need to be treated in the way that ... the accused in this case have been treated? ... It is extremely difficult not to see this as some sort of pre-emptive punishment being imposed’, and

(iii) the trial, which may last for 6 months, is due to begin in February 2008;

(b) considers that it is unacceptable for accused prisoners to be awaiting trial for 2 years in punitive conditions akin to criminals convicted of the most heinous crimes; and

(c) urges the Government to ensure fair and reasonable remand conditions and the expeditious conduct of trial proceedings for these accused.

Senators Siewert and Milne to move on the next day of sitting:

That—

(a) the Senate:

(i) notes the dire state of agricultural production addressed in the latest report from the Australian Bureau of Agricultural and Resource Economics’, Australian Crop Report: 18 September 2007, No. 143,

(ii) recognises the severe impact of a series of ongoing poor seasons on the livelihoods of Australian farmers and the knock-on effect on the well-being of associated rural communities, and

(iii) notes the need to ensure the security of Australian food production; and

(b) the following matters be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 30 June 2008:

(i) the scientific evidence available on the likely future climate of Australia’s key agricultural production zones, and its implications for current farm enterprises and possible future industries,

(ii) the need for a national strategy to assist Australian agricultural industries to adapt to climate change, and

(iii) the adequacy of existing drought assistance and exceptional circumstances programs to cope with long-term climatic changes.

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

That the Senate—

(a) notes that the Government:

(i) has announced an additional $1 million to help the people of Lebanon clear unexploded cluster munitions, and

(ii) describes itself as taking a ‘leading role’ in negotiating a new treaty to limit the use of cluster weapons; and

(b) calls on the Government to show real international leadership and delay the impending purchase of new cluster weapons until after...
the Oslo negotiations to limit the spread of cluster weapons.

**Senator Milne** to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) the Tasmanian Government is moving to water down its firearms laws,

(ii) the proposed changes, in clear breach of the National Firearms Agreement, would allow minors, aged between 12 and 16 years, to use powerful weapons in Tasmania in the bush, providing they are under adult supervision,

(iii) under the agreement, the states resolved to implement laws requiring ‘genuine reasons for owning, possessing or using a firearm’,

(iv) until the agreement and the gun buyback in 1996, guns were the weapon of choice for suicide in Tasmania, and

(v) Tasmania has a suicide rate 65 per cent higher than the rest of Australia; and

(b) calls on the Government to use the reactor’s temporary closure as an opportunity to permanently close this nuclear white elephant.

**Senator Nettle** to move on 20 September 2007:

That the Senate—

(a) notes:

(i) the tragic loss of more than 70 lives in the devastating bush fires that have raged across Greece since August 2007,

(ii) the loss of livestock, native fauna and flora and thousands of acres of mature trees,

(iii) that the Australian Government has donated $3 million in aid to Greece via the Greek Red Cross, and

(iv) that the Australian Government further promised a number of Australian bushfire experts to assist Greek authorities; and

(b) calls on the Government to:

(i) investigate expanding the scope of Australian aid to Greece, and

(ii) pledge Australian aid for appropriate replacement tree planting programs.

**Postponement**

The following items of business were postponed:

- General business notice of motion no. 897 standing in the name of Senator Bartlett for today, relating to National Child Protection Week, postponed till 19 September 2007.
- General business notice of motion no. 911 standing in the name of the Leader of the Family First Party (Senator Fielding) for today, proposing the introduction of the Alcohol Toll Reduction Bill 2007, postponed till 19 September 2007.

**BUSINESS**

**Consideration of Legislation**

**Senator ABETZ** (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.39 pm)—I move:
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.

Question agreed to.

COMMITTEES

Public Accounts and Audit Committee

Meeting

Senator PARRY (Tasmania) (3.40 pm)—At the request of Senator Watson, I move:

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.

Question agreed to.

Community Affairs Committee

Meeting

Senator PARRY (Tasmania) (3.40 pm)—At the request of Senator Humphries, I move:

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.

Question agreed to.

Privileges Committee

Reference

Senator NETTLE (New South Wales) (3.41 pm)—I 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.

Question agreed to.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (3.41 pm)—by leave—I would like to make a brief statement in relation to this matter. At the outset, I feel obliged to inform the Senate that there are legal proceedings before the courts on related matters. As Senator Nettle well knows, the Senate Standing Committee on Legal and Constitutional Affairs wrote to a number of officials seeking clarification of evidence given in relation to Mamdouh Habib’s detention. Those officials have responded in detail, confirming the accuracy of their evidence. In addition, those officials have offered to address any outstanding concerns the committee may have in relation to their evidence. Rather than identifying a specific concern, Senator Nettle has elected to stand up in the Senate with this motion. One can only assume that her real concern is not in resolving a real issue in a practical way but rather to grandstand in this place. Nevertheless, we do not oppose the reference and will support due process being exhausted.

Senator NETTLE (New South Wales) (3.42 pm)—by leave—I would like to make a short statement. This is a matter that I have been following for some time now—what Australian government officials knew about the rendition and torture of Mamdouh Habib in Egypt. It is a matter that I have followed through all the proper processes with the Senate, with the President and with the Senate Standing Committee on Legal and Constitutional Affairs, to try to get to the bottom of that very important question—what the Australian government and its authorities knew about the transfer of Mamdouh Habib to Egypt and what he experienced there. I was not intending to go on the public record now to talk about the discussions that have occurred in the Legal and Constitutional Affairs Committee, where I have been putting forward the view that I have put forward in...
Senator STOTT DESPOJA (South Australia) (3.43 pm)—by leave—I would like to make a very short statement on behalf of the Democrats. I want to put on the record that the Democrats supported this reference and that, regardless of what some people may think of the motivations in relation to this reference, I am satisfied that Senator Nettle has pursued due process in getting the issue to this point. I also think there are some incredibly important outstanding questions and I am absolutely confident, as I am sure other colleagues are—those who have read the Hansard or looked at Senate estimates and other proceedings—that there are some stark and clear contradictions that need to be resolved, and I look forward to seeing them resolved. For that reason we gladly, and more graciously than some, supported the motion.

NUCLEAR SAFEGUARDS AGREEMENT WITH RUSSIA

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.45 pm)—I move:

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.

Question put.

The Senate divided. [3.49 pm]

(3.49 pm) (The President—Senator the Hon. Alan Ferguson)


Majority: 2

AYES
Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.52 pm)—I move:

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 $US70 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 activity, 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.

Question put.

The Senate divided. [3.53 pm]
(The President—Senator the Hon. Alan Ferguson)

Ayes............ 9
Noes............ 53
Majority........ 44

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

NOES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Bishop, T.M.
Boswell, R.L.D. Boyce, S.
Brown, C.L. Bushby, D.C.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Cormann, M.H.P. Crossin, P.M.
Eggleston, A. Evans, C.V.
Ferguson, A.B. Fierravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Hogg, J.J. Humphries, G.
Hurley, A. Hutchins, S.P.
Johnston, D. Joyce, B.
Kirk, L. Lightfoot, P.R.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Marshall, G.
Mason, B.J. McEwen, A.
McGauran, J.J.J. McLucan, J.E.
Moore, C. Nash, F.
O’Brien, K.W.K. Parry, S. *
Patterson, K.C. Payne, M.A.
Polley, H. Ray, R.F.
Ronaldson, M. Scullion, N.G.
Sterle, G. Trood, R.B.
Watson, J.O.W. Webber, R.
Wortley, D.

* denotes teller

Question negatived.

NATIONAL CLOSE THE GAP DAY

Senator SIEWERT (Western Australia)

(3.56 pm)—I move:

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.

Question put.

The Senate divided. [3.57 pm]

(The President—Senator the Hon. Alan Ferguson)

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

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

NOES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Birmingham, S. Bishop, T.M.
Brown, C.L. Bushby, D.C.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Cormann, M.H.P. Crossin, P.M.
Eggleston, A. Evans, C.V.
Ferguson, A.B. Fielding, S.
Fierravanti-Wells, C. Fifield, M.P.
Fisher, M.J.  
Humphries, G.  
Joyce, B.  
Lightfoot, P.R.  
Lundy, K.A.  
Marshall, G.  
McEwen, A.  
McLucas, J.E.  
Nash, F.  
Parry, S. *  
Payne, M.A.  
Ray, R.F.  
Scullion, N.G.  
Trood, R.B.  
Webber, R.  

Hogg, J.J.  
Hurley, A.  
Johnston, D.  
Ludwig, J.W.  
Macdonald, J.A.L.  
Mason, B.J.  
McGauran, J.J.J.  
Moore, C.  
O’Brien, K.W.K.  
Patterson, K.C.  
Polley, H.  
Ronaldson, M.  
Sterle, G.  
Watson, J.O.W.  
Wortley, D.  

* denotes teller

Question negatived.

HOUSING AFFORDABILITY

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

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.

Question put.

The Senate divided.  [4.02 pm]

(The President—Senator the Hon. Alan Ferguson)

Ayes………….  9
Noes………….  50
Majority……..  41

AYES

Allison, L.F.  
Brown, B.J.  
Milne, C.  
Nettie, K.  
Stott Despoja, N.

NOES

Abetz, E.  
Barnett, G.  
Birmingham, S.  
Brown, C.L.  
Campbell, G.  
Chapman, H.G.P.  
Cormann, M.H.P.  
Eggleston, A.  
Ferguson, A.B.  
Fifield, M.P.  
Hogg, J.J.  
Hurley, A.  
Joyce, B.  
Lightfoot, P.R.  
Lundy, K.A.  
Marshall, G.  
McEwen, A.  
McLucas, J.E.  
Nash, F.  
Parry, S. *  
Payne, M.A.  
Ray, R.F.  
Scullion, N.G.  
Trood, R.B.  
Webber, R.  

* denotes teller

Question negatived.

DOCUMENTS

Responses to Senate Resolutions

The PRESIDENT—I present a response from the former Premier of Queensland Mr Beattie to a resolution of the Senate of 13 August 2007 concerning Queensland local government.

Senator BARTLETT (Queensland)  
(4.06 pm)—I seek leave to move a motion in relation to the response by the former Premier of Queensland that has just been tabled.

Leave granted.

Senator BARTLETT—I move:

That the Senate take note of the document.

This response from the now former Premier of Queensland Mr Beattie responds to the Senate resolution of 13 August, which was supported by the Democrats and the coalit-
tion. It was actually originally moved by Senator Boswell, The Nationals senator for Queensland. It criticised the Beattie government for its forced amalgamations of Queensland local government; expressed concern at the decision to impose fines on councillors who put the amalgamation policy to local citizens by referendum; and noted the International Covenant on Civil and Political Rights, which states that every citizen should have the right and opportunity to take part in the conduct of public affairs. The Democrats supported that resolution, which was opposed by the ALP. I was particularly pleased to see the government and indeed Senator Boswell draw on the International Covenant on Civil and Political Rights and the importance of people having the right and opportunity to take part in the conduct of public affairs, particularly affairs that affect them directly.

The response from the Queensland government is redundant partly because the Senate has now passed legislation addressing the issue of the potential for people to have fines imposed on them for putting a question about the amalgamations to referendum and also because the state government subsequently reversed its position and will no longer take action against local governments which wish to hold a plebiscite. That aspect of the resolution has basically been made redundant by the actions of the Senate and the actions of the Queensland government. The response itself from Mr Beattie says that the state government in Queensland has reconsidered its position and is no longer going to take such action. It does still leave the issue of forced amalgamations unresolved. The Queensland government is still pressing ahead with these—I believe without any change in its stance at all—despite a new Premier, Ms Anna Bligh, coming into the position.

There are a couple of aspects of the Premier’s response therefore that do merit comment. Firstly, the response says that the so-called ‘reform’ of Queensland local government amalgamations occurred in light of reviews conducted by the Queensland Treasury Corporation which ‘demonstrated that a significant number of local governments are in a financially precarious position’. I note, firstly, that that assessment, at least in part, is seriously disputed by some councils and by the Local Government Association of Queensland and, secondly, that I think it is less than the full story, if not misleading, for the former Premier to state that the decision to implement reform came about solely because of these reviews conducted by the Queensland Treasury Corporation. There was already an ongoing and comprehensive reform process that was about a lot more than just amalgamations and that covered a wide range of issues going specifically to improving efficiency and increasing the opportunities for financial stability through a range of measures beyond just amalgamations. That process was already underway, and that has not been mentioned.

The response from the former Premier also states that the Queensland state government had to act immediately to strengthen the local government system because elections were due in March next year. It was widely acknowledged and floated that, to ensure sufficient time to bed down any amalgamations, it would be feasible to postpone those elections until later in 2008. The Local Government Act could have been quite readily amended by the state government to allow amalgamations to be forced through without a referendum—a requirement that previously existed under the law. Indeed, that requirement under the law was used to reassure people at the local government level around
Queensland that there would not be forced amalgamations. That requirement was removed precipitously by the Queensland parliament, which only has a single chamber. It does not have an upper house and is controlled by the government of the day. This shows what happens when a government controls a parliament completely, whether it is a single house or two houses—whatever is in the law one day can be removed the next day when there is a political opportunity or political points to be scored. That is what happened in Queensland. I think the response from the former Premier is less than complete and somewhat misleading. It still leaves open the fact that there is significant community concern in Queensland about these forced amalgamations and there is a real question mark about how adequately they will operate.

Another point I want to emphasise is the noting of the International Covenant on Civil and Political Rights and Queensland National Party senators drawing upon it, which of course the Democrats support. I have not noticed National Party senators in Queensland drawing on the International Covenant on Civil and Political Rights terribly often in the past, but it is always good to see them moving in that direction. It is worth noting, with disappointment, two aspects. One is that, although commentary was made in the resolution and by many in the coalition about the need for referenda and the importance and benefit of them, the National Party in Queensland did not take the opportunity to fulfil its pledge to hold a referendum in Queensland when it was last in government. A key pre-election pledge of the then Borbidge opposition was to hold a referendum to reinstitute an upper house in Queensland. That key pre-election pledge was broken, despite the fact that it was a not insignificant reason various preferences flowed to the coalition and made the National Party the senior party of government in Queensland, probably for the last time ever. They did not fulfil that pledge, they did not hold that referendum and they did not ask the people of Queensland their views. Therefore, the Queensland parliament is still without an upper house. It is no small irony that if there had been an upper house after that referendum had been held, the local government amalgamations would probably not have gone through.

The other point I want to emphasise is that another key right in the International Covenant on Civil and Political Rights, which also dovetails with the resolution passed by the Senate, is the right to self-determination. Part 1 of article 1 of the International Covenant on Civil and Political Rights states that all peoples have the right to self-determination. Again, whilst the Democrats supported the resolution put forward by the coalition and by Senator Boswell and have expressed our dissatisfaction with the inadequate response from former Premier Peter Beattie, it is hard not to see the double standards because just last week the federal government refused to support the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. They gave as a key reason their concern about the article which recognises the rights of Indigenous peoples to self-determination, floating the completely false and misleading suggestion that that might lead to some form of separatism even though there is a clear indication in the declaration that that is not how it should be interpreted.

It seems that demanding and celebrating the right of people to have the opportunity to take part in the conduct of public affairs and decisions directly affecting them is okay when it comes to local councils in Queensland but is not okay when it comes to Indigenous Australians. This is about not only the refusal to support plebiscites for Indigenous communities in the Northern Territory,
an amendment which again the coalition voted against with regard to this issue when the legislation was being debated last night, but also the refusal to support some of the basic components of the International Covenant on Civil and Political Rights—when it comes to other parts that old position of refusing once again resurfaces.

It is unfortunate when you get that double standard because it does undermine the strength of the argument that is put forward. Nonetheless, the Democrats will maintain our consistent position. We will continue to express our strong concern at the Queensland state government’s ongoing insistence on forced amalgamations. I think the key issue from here on is maintaining the focus on what does actually happen and trying to maintain the pressure so that, whatever happens from here, there is maximum opportunity for people to have more potential to genuinely take part in the conduct of public affairs as noted in the International Covenant on Civil and Political Rights and celebrated and supported by the Senate and the coalition via Senator Boswell’s resolution.

Question agreed to.

**QUARANTINE AMENDMENT (COMMISSION OF INQUIRY) BILL 2007**

*First Reading*

Bill received from the House of Representatives.

**Senator BRANDIS** (Queensland—Minister for the Arts and Sport) (4.17 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) (4.17 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—*

As Senators would be aware, there has recently been an outbreak of equine influenza in Australia. The serious effects of this outbreak are being felt across horse related industries. In addition to providing assistance to those people and businesses directly affected by the outbreak, the Australian Government is committed to determine how it occurred.

The purpose of the Quarantine Amendment (Commission of Inquiry) Bill 2007 (the Bill) is to amend the Quarantine Act 1908 (the Quarantine Act) to allow for a comprehensive, independent inquiry into the August 2007 outbreak and spread of equine influenza in Australia.

In summary, the amendments allow the Minister for Agriculture, Fisheries and Forestry to appoint a Commissioner to undertake a Commission of inquiry into matters relating to the outbreak of equine influenza. This includes quarantine related practices and requirements relating to the outbreak, and any other matters that are incidental to these lines of inquiry.

The amendments also provide the Commissioner with all the necessary powers of a Royal Commission, within the quarantine-specific context of the Quarantine Act.

The specific terms of reference for the Inquiry, including the timeframe, will be specified in an instrument of appointment, which will be made public by gazettal.

It is vital that we get to the bottom of this matter and it is the Government’s intention to commence this inquiry as soon as possible. The Government has asked the Honourable Ian Callinan AC, former Justice of the High Court, to commence the Inquiry as soon as the necessary legislation has been amended. Mr Callinan is a distinguished
jurist of the highest order, with a good working knowledge of the horse industry, meaning he is ideally placed to conduct a thorough inquiry into this outbreak.

Mr Callinan has indicated he is comfortable with the broad terms of reference the Government intends to specify in his instrument of appointment. He has also indicated publicly that he is committed to getting to the bottom of this issue and that his report will indeed be independent.

Once appointed, the Commissioner and his assistants will have access both to the necessary quarantine specific powers, and to all the relevant powers and protections of a Royal Commission.

Importantly, the Commissioner will have express permission to hold public hearings and to summon witnesses and take evidence. As provided in the Royal Commissions Act 1902 (the Royal Commissions Act), the amendments allow for certain types of evidence to be taken in private.

The Commissioner’s powers under the Bill will be underpinned by the replication of offences from the Royal Commissions Act. This means that an action could be brought for obstructing the Commission of inquiry in a number of circumstances, including providing false or misleading evidence, destroying documents or contempt.

The Commissioner will not be bound by the rules of evidence in seeking information to inform the Inquiry. This provision gives the Commissioner the flexibility that he will need to effectively seek out and consider all information that he believes to be relevant to his inquiries.

Importantly, the amendments also include provision for the Director of Quarantine to assign quarantine officers to the Commissioner for the duration of the Inquiry. Once assigned, these officers will be solely subject to the direction of the Commissioner in the exercise of any of their Quarantine Act powers that are reasonably necessary for the purposes of the Inquiry.

This means that the Inquiry can utilise the expertise of the assigned quarantine officers with no possibility of conflicting directions.

The Director of Quarantine will make a decision in relation to this matter as soon as the needs of the Commissioner are known. However, it is quite likely that officers who have already been working on internal investigations into the outbreak will be assigned to the Commission of inquiry, to avoid delays and unnecessary duplication of work.

The Bill also allows for independent people engaged by the Commonwealth to assist the Inquiry to be vested with relevant powers under the Quarantine Act. For instance, the Director of Quarantine could determine that an independent investigator assisting the Commissioner could exercise search powers usually reserved for quarantine officers under the Quarantine Act. This will further provide the complete independence of the Commission of inquiry.

As the Commission of inquiry will be able to access these quarantine-specific powers, replication of the search powers from the Royal Commissions Act is not necessary and they are not included in the proposed amendments.

The Bill also extends the High Court-style protections currently contained in the Royal Commissions Act to the Commissioner. Witnesses appearing before the Inquiry, and their legal representatives, will also receive similar protections.

Finally, the Bill also includes consequential amendments to the Freedom of Information Act 1982, the Archives Act 1983 and the Privacy Act 1988. These amendments ensure that the records of this Commission of inquiry are managed in accordance with existing procedures for Royal Commissions.

In announcing Mr Callinan’s appointment, the Government made it clear that “the findings of the inquiry, which will start shortly, will be made public”. The Government remains committed to this and Mr Callinan himself has also publicly indicated his intention to conduct public hearings.

However, consistent with the approach taken for Royal Commissions, the Government has not included a legislative requirement that the report be tabled in Parliament. Doing so could actually narrow the scope of what Mr Callinan can include in his report, as it might contain personal information or commercially sensitive material that could not be made public without unfairly disadvantaging individuals involved in the inquiry.

The outbreak of equine influenza has had, and continues to have, serious consequences for Aus-
The Government is committed to act quickly to ensure that the cause of this outbreak is identified, along with the need for any strengthened requirements and practices to ensure the highest standards of biosecurity are maintained for the importation of horses. These amendments will enable a comprehensive, independent and quarantine specific inquiry to be conducted. As well as providing the Commissioner with all the necessary powers of a Royal Commission, it makes available the unfettered expertise of experienced quarantine officers and other quarantine-specific powers under the Quarantine Act.

The Government is committed to conducting a thorough investigation into the cause of this outbreak. This Bill will allow such an inquiry to commence as soon as possible.

Debate (on motion by Senator Brandis) adjourned.

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

NATIONAL GREENHOUSE AND ENERGY REPORTING BILL 2007

First Reading

Bill received from the House of Representatives.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (4.18 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) (4.18 pm)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.
ent requirements, meaning that a unique report is required under every programme. In some cases, corporations are preparing eight different reports, based on similar data, under eight different programmes. The excessive red tape and unnecessary cost this situation inflicts on the Australian economy will be eliminated under the Bill.

The Government will continue to work cooperatively with state and territory governments to transition towards a single national reporting system that will meet their data needs and deliver streamlining benefits to industry, in time for the 2009-10 reporting period.

The Bill also removes the additional, duplicative greenhouse gas reporting requirements added to the National Pollutant Inventory by the National Environment Protection Council in June this year. Removing this duplication is consistent with the Council’s decision to rescind the greenhouse gas component of the variation once the national mandatory reporting system is in force.

To enable the secure sharing of data between the Australian Government and state and territory governments, the Bill will establish data security and confidentiality protection arrangements. Secure access to nationally consistent data will better inform the greenhouse response and energy policies of all governments in Australia.

The Bill will improve the Australian Government’s ability to meet its international reporting obligations under the United Nations Framework Convention on Climate Change and to the International Energy Agency. It will also, for the first time, provide easily accessible company level information to investors and the general public on greenhouse gas emissions and energy use by Australia’s major companies.

The Bill requires corporations which produce or consume more than a specified amount of energy, or emit more than a specified amount of greenhouse gas, to register with the scheme and report annually on their energy use or emissions. The thresholds for the scheme have been set at a level which will capture a significant proportion of Australia’s emissions, while avoiding significant impacts on small business.

Under the scheme provided by this Bill, it is estimated that around 700 companies will report on their greenhouse gas emissions, energy use and energy production.

Reporting will be managed through a system based on the Australian Government’s Online System for Comprehensive Activity Reporting, developed for the Government’s Greenhouse Challenge Plus Programme. The Bill provides for the creation of a new statutory position, the Greenhouse and Energy Data Officer, to administer the scheme.

A corporation will report emissions or energy use from facilities over which it has operational control; that is, facilities where it has authority to introduce and implement operating policies, health and safety policies or environmental policies. This approach places the responsibility for reporting on entities which have a direct influence on the operation of facilities and is consistent with approaches taken internationally for reporting and emissions trading schemes.

The thresholds at which corporations will be obliged to register and report will be phased in over three years, to provide those companies less likely to be reporting under existing schemes with time to prepare for the scheme. From the third year of the scheme’s operation, corporate groups will be required to report on their greenhouse gas emissions and energy production and consumption for any financial year in which they emit more than 50,000 tonnes of greenhouse gases (measured in carbon dioxide equivalent), or which produce or consume more than 200 terajoules of energy.

The Bill will also require corporations to report on facilities which either emit more than 25 kilotonnes of greenhouse gas (measured in carbon dioxide equivalent) or produce or consume more than 100 terajoules of energy in a single financial year. Regulations on determining control of facilities, and boundaries around facilities, will be very detailed to ensure that industry has clarity on their reporting obligations.

In keeping with the need for the reporting system to underpin emissions trading, the Bill allows for a range of enforcement approaches, including criminal offences for corporations which provide false information. It establishes a system for monitoring compliance with the scheme, including a system of infringement notices and enforce-
able undertakings. These provide a range of possible alternatives to heavy penalties.

It is anticipated that corporations will improve their reporting processes over time. The emphasis of the compliance and enforcement regime in the initial years of the scheme will accordingly be on encouraging compliance, rather than on punitive measures. As the scheme matures, a more stringent approach will be appropriate, particularly with regard to data that will inform emissions trading.

The Government has consulted industry, and the states and territories, on key design elements of the national reporting system to ensure that the system delivers genuine reductions in red tape and business costs.

This Government is serious about addressing climate change and is responding comprehensively, progressing the necessary detailed work underpinning emissions trading. This Bill clearly demonstrates the Australian Government’s commitment to an effective climate change response and the delivery of an efficient energy market based on sound and robust data and analysis.

Debate (on motion by Senator Brandis) adjourned.

COMMITTEES

Employment, Workplace Relations and Education Committee

Report

Senator NASH (New South Wales) (4.20 pm)—On behalf of the Chair of the Employment, Workplace Relations and Education Committee, Senator Troeth, I present the report of the committee on the provisions of the Social Security Amendment (2007 Measures No. 2) Bill 2007, together with submissions received by the committee.

Ordered that the report be printed.

(Quorum formed)
also reduce compliance and administration costs through the removal of the foreign tax credit as a remedy for the double taxation for transferring pricing adjustment in another country, the inclusion of a $1,000 de minimus cap and the removal of attributed tax accounts. The amendment means that taxpayers will no longer be required to quarantine assessable foreign income accounts into four separate classes. Excess foreign income deductions or foreign losses will no longer be quarantined for domestic assessable income. Therefore, in utilising deductions, no distinction is made in respect of the source of the assessable foreign or domestic income, which will reduce compliance costs.

The bill also allows taxpayers with a minority interest in foreign companies to choose to calculate attributable income using the CFC branch-equivalent rules rather than the foreign investment fund—FIF—rules. This should reduce compliance costs for taxpayers and financial institutions that have to deal with the notoriously complex FIF rules and will allow Australian investors to take advantage of the existing exemptions and concessions of the CFC measures.

These amendments go some way to making Australia’s international tax rules more competitive. However, there is so much more that this tired, out-of-touch, stale government could do. They have been sitting on their hands when it comes to ensuring Australia’s financial services sector can grow and become a financial hub within Asia. Labor will reform division 6C and replace it with a specified specific tax regime for managed funds and listed property trusts. This announcement is in addition to Labor leader Kevin Rudd’s announcement in the May budget reply to reduce the withholding tax rate that applies to non-resident investors to a flat and final rate of 15 per cent. These measures, proposals and policies of Labor demonstrate our commitment to Australia’s economic future. They are sensible tax changes that value-add and are welcomed by the financial services sector.

I also note that these changes in schedule 1 were announced in the 2005 budget. It has taken far too long—over two years—to legislate this, which I think again leads to a question mark being put over the government’s general translation of budget announcements into legislation in a timely manner.

Schedule 3 of this bill contains amendments to the Superannuation Industry (Supervision) Act, commonly known as the SI(S) Act, to provide an exemption from the borrowing prohibition to allow superannuation funds to invest in instalment warrants so long as certain borrowing criteria are met. The in-house asset rules contained in the SI(S) Act are also amended to allow for the purchase of an interest in a related trust forming part of the instalment warrant, if certain conditions are met. This measure overcomes the tax office’s and the Australian Prudential Regulatory Authority’s view that instalment warrant arrangements constituted a form of borrowing and that an investment by a self-managed superannuation fund in an instalment warrant is an in-house asset and therefore breaches the borrowing provisions and in-house asset rules of the SI(S) Act. Labor believes that this proposal assists superannuation funds to grow their assets to support Australians in their retirement, and as a result supports the measure.

Schedule 4 amends the Income Tax Assessment Act 1936 so that the trustees of closely held trusts are no longer required to report to the Commissioner of Taxation details of the trust’s ultimate beneficiaries. Instead, trustees of closely held trusts are now only required to report details of the trust’s trustee beneficiaries. The ultimate beneficiary rules were introduced by this government
in 1999 as an anti-avoidance measure aimed at preventing complex chains of trusts being used to avoid or indefinitely defer tax. The measure in this bill goes back on the government’s own closely held unit trust integrity measures of 1999. The amendments will reduce the costs of complying with the ultimate beneficiary rules but may be at the cost of the integrity of the tax system. Labor support this proposal to reduce the compliance burden and the compliance costs but will monitor the operation of this to ensure it does not open up possibilities of tax avoidance.

Schedule 5 amends various acts to assist in the smooth transition to the—

I was going to say ‘simplified superannuation’ regime, but I have noticed of late that the government is no longer describing it as ‘simplified superannuation’. It seems to have morphed into what is called ‘better superannuation’. I wonder what focus group polling has been driving that quite significant change in title description. I have to say that everyone I have met has not particularly seen the ‘better super’ package, as it is now being dubbed by the government, as an exercise in simplification. Schedule 5 makes the following minor amendments to the superannuation rules: it limits strategies which could circumvent the minimum drawdown requirements for accounts based pensions; facilitates the provision of tax file numbers to superannuation retirement savings accounts; changes the treatment of a non-TFN contributions income under the pay-as-you-go—PAYG—regime; and revises the application of the small business capital gains tax relief amendments.

On the issue of tax file numbers, what I do not think is generally known in terms of the Better Superannuation package is that a penalty tax will be payable by the member on their contribution of 42.5 per cent rather than 15 per cent. I do not think most Australians are aware that they will be subject to a higher tax on contributions when their employer fails to provide their TFN.

In questioning the tax office closely during estimates about this, I must say that the tax office were more forthcoming with information than Treasury were. We are looking at perhaps five to eight per cent of the just over 10 million contributors to the system being penalised by this higher tax. These people will be in for a rude shock when they get their fund statement—conveniently after the election, of course. From 1 July next year, hundreds of thousands of people will suddenly discover they have been subject to higher tax, not lower tax. If Labor are in government, I indicate this is an area where we will be keeping a very close eye on the outcomes. Frankly, if we are in government, and if I am privileged to be a minister, I do not want to be sitting next to Treasury and Tax officials and having to defend the position whereby hundreds of thousands of Australians have had an increase in their contributions tax.

Senator Ronaldson—I think you’re pretty safe!

Senator SHERRY—We will see. For the hundreds of thousands of people facing the prospect of higher tax, it is not particularly safe—as they will discover—no matter who is in government. I certainly believe the tax office, on all the evidence to date, are doing their very best to minimise this problem, but it is going to be a significant issue. That is my prediction.

The amendments also improve the readability of provisions rewritten as part of the simplified superannuation reforms and clarify the intended operations of the reforms. These are important changes around the edges of the new regime. The current superannuation regime is built on Labor’s superannuation policy of compulsion, which we
introduced back in 1987, starting at three per cent and rising to nine per cent through the SG. The measures that we are presented with are sensible, and Labor support them.

Schedule 8 claims to provide more flexibility to family trusts by allowing family trust election to be varied or revoked in a broad range of circumstances, and expands the definition of a family to include lineal descendants. Also, distributions to former spouses, widows, widowers and former step-children will be exempt from family distribution tax. These measures come at a cost to revenue of $8 million per annum.

Schedule 8 reflects an out-of-touch government with a strange idea of priorities in tax reform. The measures simply make the family trust rules more generous. It is hard to see how it benefits the average taxpayer or the economy as a whole. I find it particularly hard to see how the lineal descendants of nieces and nephews can be appropriately described as family members for taxation purposes. The shadow Assistant Treasurer, Mr Bowen, moved an amendment in the House of Representatives which sought to remove schedule 8 from the bill. I will not be moving such an amendment in the Senate this afternoon. Time does not permit this to happen; we are under enormous time constraints. But Labor believes that the $8 million per annum that this schedule will cost taxpayers could be better spent on other projects.

Labor supports the measures contained in the Tax Laws Amendment (2007 Measures No. 5) Bill. I will turn first to schedule 1 of the bill, which reforms sections 51AD and division 16D of the 1936 tax act. It is reform which is vital in facilitating private sector investment in infrastructure, and it is long overdue. It has been a long wait—seven years, in fact—since reforms to these provisions to encourage infrastructure investment were first recommended by the Ralph review. We have seen three different Assistant Treasurers in that time. Gosh, doesn’t time fly when you’re having fun in opposition—three different Assistant Treasurers! And each of them successively has promised to introduce this legislation.

Senator Murray—You should try being on the crossbenches, mate!

Senator SHERRY—Yes. But seven years on, we have finally got the measures. I am not having a shot at the tax office or the tax advice from Treasury; it is a shot at the incompetence of this government. We well know the burden and overload on Treasury and the tax office in terms of implementation. I think this extraordinary seven-year waiting period is a product of the churn of Assistant Treasurers and of the government taking its eye off the ball. It is out of touch and a bit stale, and just has not given it the priority it should have been given.

Section 51AD and division 16D in the Income Tax Assessment Act 1936 are replaced with a new division 250 in the Income Tax Assessment Act 1997. If division 250 applies to an arrangement, capital allowance deductions will be denied and the arrangement will be treated as a deemed loan that is taxed as a financial arrangement on a compounding accrual basis. The changes could do with some finetuning. However, Labor will not be opposing these changes. Generally, the sooner they are implemented, the better.

The history of this measure demonstrates a level of failure on the part of this government. The review of business tax, the Ralph review, recommended in 1999 that section 51AD be abolished. In response, the then Minister for Revenue and Assistant Treasurer, Senator Coonan, stated on 14 May 2002:

Further consultation on these issues will be undertaken through the course of 2002-03 and it is
expected that legislation would be introduced in the Autumn 2003 sittings.

I repeat: ‘Autumn 2003 sittings.’ And here we are, in spring 2007. With respect to the 2003 draft exposure legislation that was released for comment by interested stakeholders, on 26 June 2003 Senator Coonan stated:

These provisions are in urgent need of reform ... The Government ... is committed to its early introduction into Parliament in the spring sittings, 2003.

Now, here we are, in spring 2007, with the legislation before the parliament. It is anyone’s guess as to how much investment in infrastructure has been lost because of the delay that has been caused and as a result of the four years it has taken to get what was described by the then minister, Senator Coonan, as urgent legislation.

It is simply not good enough that, at a time of capacity constraints—we all know the pressures on infrastructure in the economy—this government has delayed the reform of tax rules to encourage investment in infrastructure. This is yet another example of this government’s stale, short-sighted, out-of-touch approach and its lack of vision. However, better late than never—and Labor will support the proposal.

Schedule 6 of the bill removes the $100 million total income cap on the same business test. The schedule is particularly pleasing as it implements Labor policy and amendments from 2005. It represents another backflip by a government which would benefit from listening to business and Labor in developing tax policy. The same business test, the $100 million cap, was introduced by the government in 2005. I can recall Senator Murray’s contribution to the debate at that time—both Senator Murray and I have long memories! Both Labor and Senator Murray, on behalf of the Democrats, opposed it in the Senate in 2005. Labor consistently called for the removal of the cap, which had stood in the way of major investments in infrastructure projects, mining and venture capital. How right Senator Murray was and how right the Labor opposition was. Here we are in 2007 and the government is reversing a measure it introduced in 2005.

This approach by the government sends very bad investment signals to industry. The government is dragging its feet on key reforms which will build and assist productivity growth in this country. The measure removes the cap and it was strongly supported by submissions to the inquiry. This cap should never have been introduced in the first place. The Minerals Council, in its submission to the Senate inquiry, stated:

This arbitrary cap was denying legitimate capital allowance business deductions—which ultimately were factored into rate of return assessments, and potentially, discouraging expansion. This at a time when there is a significant need for investment in infrastructure projects in Australia.

The government claims to be pro-business and it introduced this cap, but here we are, two years later, removing it. I am glad the government has recognised the error of its ways and has adopted Labor policy—and, for that matter, Democrats policy.

Schedule 8 provides a CGT rollover for investors in a stapled group where there has been an interposition of a unit trust between the investors in the stapled group and the stapled entities. This will allow certain stapled entities such as Australian listed property trusts to restructure with an interposed head trust without any CGT consequences. There will also be a consequential amendment to division 6C of the Income Tax Assessment Act 1936 to ensure that the restructurings do not result in the interposed trust being taxed as if it were a company. The measures will reduce the barriers for Australian listed property trusts to expand overseas,
particularly in the US. However, the amend-
ments only go a small part of the way to en-
suring that Australian listed property trusts
remain world leaders. The Property Council,
in its submission, stated:
The Property Council views these reforms as the
first stage of a now widely recognised need to
comprehensively reform Division 6 …
Labor could not agree more. As I have al-
ready said, Labor has announced that it is
committed to reforming division 6C and re-
ducing the withholding tax rate to 15 per
cent. Labor is strongly committed to making
Australia the managed funds hub within the
Asian region by increasing the competitive-
ness of what is a truly massive and world-
class financial sector not just in terms of
funds under management—it is the fourth
largest, by volume, in the world—but also in
terms of the quality and the skill of the em-
ployees. I think there are over 300,000 staff
working in the financial services sector. It is
world class in terms of the provision of the
platforms and IT. It is a world-class industry
which needs further encouragement to en-
hance its export potential. Labor supports
this schedule; it makes a small step in the
right direction. Labor also supports the gov-
ernment’s minor amendment to the schedule,
which deals with the technical point raised in
the Property Council submission.
Schedule 10 of the bill reforms the taxa-
tion concessions for Australian films. It in-
troduces a new producer offset, which pro-
vides an offset of 40 per cent for film and 20
per cent for other media and increases the
location offset from 12.5 per cent to 15 per
cent. There are some other changes that are
useful for the industry. The offsets are de-
dergined to support and develop the Australian
screen media industry. They replace the cur-
rent package of tax incentives, which have not
been particularly effective in recent
times. The independent producer sector has
expressed concerns about the new producer
offset, because commercial broadcasters will
be able to access the 20 per cent producer
offset for the television series, documentaries
and other programs they produce. Labor
notes these concerns. Labor will monitor the
effect and the impact on the independent film
industry.

The remainder of the schedules to this bill
enjoy the Labor Party’s support.

Senator MURRAY (Western Australia)
(4.42 pm)—We are dealing with four bills
cognately. I think that is wise, given the
pressure we are under to complete our con-
sideration of a large number of bills this
week—although I would have preferred that
TLAB 5 be dealt with separately, it is appro-
priate that it is dealt with cognately here.
Dealing first with the Tax Laws Amendment
(2007 Measures No. 4) Bill 2007, it is an
omnibus bill containing eight schedules. It is
accompanied by the Taxation (Trustee Bene-
ficiary Non-disclosure Tax) Bill (No. 1) 2007
and the Taxation (Trustee Beneficiary Non-
disclosure Tax) Bill (No. 2) 2007, which in-
troduce amendments to complement the pro-
posed changes in schedule 4 of what I will
describe as TLAB 4 by providing mecha-
nisms to introduce a 46½ per cent nondisclo-
sure tax on certain income.

Schedule 1 of TLAB 4 introduces new in-
come tax offset rules. The income tax law
will be amended to abolish foreign loss and
foreign tax credit quarantining and to stream-
line the remaining foreign tax credit rules.
This is achieved by repealing the existing
foreign loss and foreign tax credit quarantin-
ing rules and replacing them with new sim-
plified foreign income tax offset rules. These
rules also allow taxpayers to claim relief for
foreign income taxes paid on an amount in-
cluded in their assessable income. Transi-
tional rules for the treatment of existing
quarantined foreign losses and credits are
also included. Such an amendment provides
a mechanism to allow the Commissioner of Taxation to give effect to Australia’s tax treaty obligations to provide relief from economic double taxation arising from transfer pricing adjustments. These changes will commence on 1 July 2008, following royal assent. The cost to revenue of this measure is expected to be $40 million per annum over the forward estimates period.

Changes to the foreign income tax offset rules in schedule 1 of this bill are reflective of systemic changes to the taxation system that have removed the original stimulus for the present foreign income tax provisions. The ultimate purpose of these changes is to prevent double taxation for Australian income tax payers, both individuals and corporations, who may earn foreign income. Thus, the changes are equitable and to be supported. I also agree with the government’s view that these changes will reduce compliance and administration costs and increase Australia’s attractiveness as a source of capital investment and as a viable home base for international and regional organisations with both Australian and foreign income streams.

It should be noted that the nature of the offset only enables Australian taxpayers to reduce their income tax liability to zero. There is no mechanism to enable tax rebates through this system. If that had happened, it would have been a concern. In a submission to the Senate Standing Committee on Economics inquiry into this bill, the Australian Bankers Association highlighted a number of inconsistencies with the way double taxation is relieved in respect of offshore banking and non-offshore banking income, a view supported by the Australian Financial Markets Association. In the committee’s view, the bill adequately deals with the ABA’s concerns related to the schedule. I support the committee’s view that trusts with such potential inconsistencies shall be monitored by Treasury with a view to correction should any matters of significance arise.

Schedule 2 proposes capital gains tax rollover relief for medical defence organisations, or MDOs, with proposed amendments to the Income Tax Assessment Act 1997. The rollover will generally be available when a membership interest in an MDO is replaced with a similar membership interest in another MDO and both MDOs have companies limited by guarantee. These amendments apply to capital gains tax events that happen on or after 14 February 2007. There are no forecast costs associated with these changes. This rollover aims to provide a better allocation of the nation’s capital resources by removing capital gains tax as an impediment to mergers and takeovers in MDOs to help facilitate consolidation in the industry where required and/or desired. Those who have followed my career as the tax portfolio spokesperson for the Democrats know that I have tried to assist mergers and acquisitions improvements at every opportunity, because I think a highly flexible market is in the interests of Australia.

Schedule 3 enables investment in instalment warrants by superannuation funds. The amendment as proposed removes a borrowing restriction contained in the Superannuation Industry (Supervision) Act 1993 to allow superannuation funds to invest in instalment warrants of a limited recourse nature over any asset the fund would be permitted to invest in directly. The in-house asset rules contained in the Superannuation Industry (Supervision) Act 1993 are also amended to provide that an investment and related trust forming part of an eligible instalment warrant arrangement will only be an in-house asset where the underlying asset itself would be an in-house asset of the fund if it were held directly. These amendments will apply from the day the bill receives royal assent and are forecast to be a considerable
cost to revenue of $350 million over the forecast estimates period, with these costs expected to escalate each year after that. Notwithstanding the cost, the Democrats support them.

Strict rules naturally apply to the operation of superannuation funds to minimise the financial risks such funds are able to undertake. Superannuation has historically been viewed and regulated as a lower risk investment because of the importance of protecting individuals' life savings and retirement funds. One such risk that has been consistently and justly prohibited is any form of leverage—that is, superannuation funds are prohibited or restricted from borrowing money to invest. This schedule proposes widening a form of asset superannuation funds are able to invest in by including limited recourse warrants within the basket of available assets. Warrants are a form of derivative security which derives its value from an exercisable option on an underlying asset. Some instalment warrants incorporate a borrowing and thus have not been allowed under current restrictions. The AFMA, which I mentioned earlier, welcome the change, and in the aforementioned committee report, they assert that regulatory standards are not eroded by the proposed changes. But I note that they said:

'It seems strange that instalment arrangements that feature a borrowing enjoy a broader exception than those which do not. Accordingly we recommend the subsection 10(1) definition be expanded.

Such a proposal seems common sense to me, and the amendments suggested by the AFMA, despite Treasury comments to the contrary, are worthy of future consideration.

Schedule 4 introduces new trustee beneficiary reporting rules by proposing amendments to the Income Tax Assessment Act 1936 so that trustees of closely held trusts are not required to report to the Commissioner of Taxation the details of the ultimate beneficiaries of trust income. Instead, trustees of closely held trusts may be required to report the details of trustee beneficiaries that are presently entitled to certain income of the trust and tax preferred amounts. These amendments will apply to the first income year starting on or after the day in which this bill receives royal assent and in later income years. The financial costs are unknown. Schedule 4, in effect, substitutes the reporting requirements for closely held trusts from the requirement to report ultimate beneficiaries to a trustee beneficiary statement. This clarifies and simplifies the reporting requirements for applicable trusts by ensuring that all trustees entitled to a share of the trust net income and tax preferred amounts are reported. I am always wary of anything that conceals the identity of ultimate beneficiaries where there are just a few key persons. That always means that there is a desire to be hidden from scrutiny, and the question is: why? What is there to be hidden? Obviously, that is not the case when trustees represent a great number of people or represent minors. Then it is appropriate that the ultimate beneficiaries are not exposed. Notwithstanding the clarification in legislation, such trust vehicles still represent a significant tax avoidance tool, which the Democrats have consistently opposed. I remain wary of this area of tax law.

Schedule 5 introduces a number of legislative updates to the new simplified superannuation system. The bill amends various acts to assist in the smooth transition to the simplified superannuation regime. This schedule limits strategies which could circumvent the minimum draw-down requirements for account based pensions, facilitates the provision of tax file numbers to superannuation and retirement savings account providers, and revises the application provision for small business capital gains tax relief under
the regime. ‘Well done’ is what I say. The readability of provisions rewritten as part of the reforms has also further improved to ensure the policy intent underpinning the provisions is clear. The simplified superannuation regime commenced on 1 July 2007. However, an individual’s tax file number is taken to have been quoted by the individual for notices given to superannuation and RSA providers by the Commissioner of Taxation from 1 June 2007. The amendments to prevent individuals circumventing the minimum draw-down requirements for account based pensions will result in a revenue gain of $20 million over the forward estimates. These amendments clarify the operation of draw-down limits to ensure that the concessional nature of the new simplified superannuation system tax-free status only applies to income stream assets and not assets quarantined for investment purposes. This is a desirable clarification that closes a potential loophole in superannuation law.

The retrospective application of capital gains tax exemptions for small business sale profits invested into super is likewise an equitable and worthwhile amendment. My remarks now are directed to the government advisers so that they can take note of this. I have discovered that people writing to superannuation funds giving their tax file number and signing the letter with their proper signature have not had that advice accepted until such time as they fill in a form which is designated by the superannuation company. I think that is a dangerous practice because if people have taken the trouble to write in with their TFN and their signature, that is prima facie compliance with the law and I would ask you to be aware of that.

Schedule 6 to this bill amends the Income Tax Assessment Act 1997 to update the list of deductible gift recipients to include the Australian Peacekeeping Memorial Project incorporated from 30 April 2007 until 31 December 2008 and Social Ventures Australia Ltd from 4 May 2007 with a forecast cost to revenue of $9.82 million over the forecast estimates period.

Schedule 7 makes technical corrections and other minor amendments to the taxation laws. Schedule 8 increases flexibility for family trusts by amending the trust loss regime in schedule 2F to the Income Tax Assessment Act 1936 to allow family trust elections and interposed entity elections to be revoked or varied in certain limited circumstances. These amendments also broaden the definition of ‘family’ in section 272-90(5) in schedule 2F to the ITAA 1936 to include lineal descendants of family members. In addition, spouses, former widows, widowers and former stepchildren are exempted from the family trust distribution tax by including them in the definition of family group in section 272-90 in schedule 2F to the ITAA 1936. Changes take effect from the start of the income year in which the bill receives royal assent and is forecast to cost $24 million over the estimates period. While these changes to improve the legislation governing such provisions have the Democrats’ support, the Democrats remain opposed to the use of family trusts to avoid or unjustly minimise tax obligations.

I want to turn to my committee stage amendments and to discuss them briefly in my speech to the second reading motion. My amendments, circulated to the chamber, aim to implement the Human Rights and Equal Opportunities Commission’s report Same-sex: same entitlements recommendations. My amendments are drafted in the absence of government initiatives to address those recommendations. This is the first tax bill that I could amend following the HREOC report. I say to the government that I would be delighted were the government to substitute their own amendments for mine, but there is no sign of that moral courage as yet.
I move these today because this issue is urgent and this unwarranted discrimination is overdue for correction. Fifty-eight federal laws were identified by HREOC as needing similar amendments. Specifically, I propose to implement the HREOC de facto relationship definition. Those amendments are in line with HREOC’s preferred approach, wherein a dual system of acknowledgement is able to operate—in this case in tax law—one which recognises heterosexual and marital relationships as one set and one which recognises homosexual non-marital relationships as a parallel set.

HREOC has identified 58 acts as needing amendment to end this unjust discrimination. The Democrats agree with this and have followed HREOC’s suggested form as closely as we can. My amendment proposes to remove this discrimination. If the government decides not to support the Democrats amendments, it will be because it does not support the removal of clauses in taxation legislation that discriminate on the basis of sexual preference. That will mean the coalition will be continuing to uphold homophobic laws. Given the strong cross-party support for ending unjust discrimination, including from a great many members of the cabinet and the coalition, I remain optimistic that the government will recognise the strength of these arguments. At this moment I see no cause for delay whatsoever.

The tax portfolio holder we are dealing with here is the Treasurer. I do not know where the Treasurer stands on these matters. I do not know whether he supports official homophobic policy or not. I do know that if he really insisted that this unjust taxation discrimination should end, it would end. He is, after all, the most senior minister in the government and the deputy leader of the Liberal Party.

I am told by insiders that most Liberal ministers favour ending this unjust discrimination, so the buck stops with the Prime Minister. And the finger will be pointed at him if the coalition policy of homophobia continues after that damming HREOC report, because that HREOC report has said there is no justification for the discrimination that occurs in tax superannuation and other laws.

The flip side of tolerance is hatred. Extremists of many religions and many religious and political sects hate homosexuals. Such extremists undoubtedly support the present coalition policy of inequity in tax matters like these. The coalition and the Treasurer will be keeping terrible company if they keep homophobic tax laws on their books, and I do hope they will have the courage to accept my amendment or to offer amendments of their own.

I now turn to the Tax Laws Amendment (2007 Measures No. 5) Bill 2007. It has 12 schedules. Schedule 1 covers asset financing for public-private partnerships. Schedules 2 and 3 deal with thin capitalisation. Schedules 4, 7 and 8 are capital gains tax rollover changes. Schedule 5 deals with income tax and the Prime Minister’s prize. Schedule 6 is the same business test cap removal. Schedule 9 covers gift recipients clauses. Schedule 10 covers film production offsets, schedule 11 covers the 175 per cent R&D tax deduction extension and schedule 12 covers Innovation Australia.

I must compliment the government on its reaction to the report of the inquiry of the Senate Standing Committee on Economics into this legislation. I note that there are a number of amendments which directly address matters which were raised in that inquiry. I think the government is very wise to have moved rapidly to address issues which were of concern to a number of the witnesses. Obviously, the government has rec-
ognised that it was legitimate concern. So another ‘well done’ for you.

The Tax Laws Amendment (2007 Measures No. 5) Bill 2007 has a big price tag—in excess of $640 million over the forward estimates. The two big-ticket items are a comprehensive rewrite of the current tax subsidies and incentives for Australian film production and the removal of the same business test cap. Schedule 1 amends the income tax law to modify the taxation treatment of leasing and similar arrangements between taxpayers and tax preferred end users, such as tax-exempt entities and nonresidents, for the financing and provision of infrastructure and other assets.

The principal application of the law is intended for what are known as PPPs—the public-private partnerships. These changes to tax laws, which are aimed at encouraging investment in Australian infrastructure, must be considered in the context of some high-profile failures in public-private partnership infrastructure investments. In some ways I think it is hard to criticise governments on public-private partnership arrangements because they have had to learn on the job. But what they have had to learn, I think, is to be extremely careful of some of the actions and activities of some private operators who have had somewhat of a lend of the public sector. Whether or not such past failures affect the future of these schemes I do not know, but I am convinced that there is still a place for purely public sector activity and for public-private sector cooperation and activity.

Schedules 2 and 3 relate to the thin capitalisation rules and their anti-avoidance mechanism, which continues to be of importance. This amending legislation corrects this discrepancy and upholds the original intention of the law. It is supported by the Democrats. I notice my time is up. I wish I could talk much more about tax, Madam Acting Deputy President, but I will have to leave it there.

Senator RONALDSON (Victoria) (5.02 pm)—I am pleased, as Chair of the Senate Standing Committee on Economics, to follow my friend and committee colleague Senator Murray in talking to the Tax Laws Amendment (2007 Measures No. 4) Bill 2007 and related bills. I would like to follow on from some of his comments in relation to schedule 10 of the Tax Laws Amendment (2007 Measures No. 5) Bill 2007, which I will refer to as TLAB5.

Schedule 10, which deals with film production offsets, follows on from a 2007 budget announcement by this government which, quite rightly, received enormous praise from those in the industry. I would like to briefly quote some of the commentary following the budget. I quote from the Australian on 10 May:

"Talk to people in the film industry and the Australian Screen Production Incentives, announced as part of a $282.9 million film package, seem poised to pave a yellow brick road back to Oz, luring home creative talent that has drifted offshore."

"I would like to think that within two or three years the amount of production will lead to an increase of 25 per cent [in] television drama feature films,” says Brian Rosen, chief executive of the Film Finance Corporation.

"The industry got everything it wanted: it’s the biggest change since 10BA was introduced by the Fraser government 25 years ago, which created the strong talent base. Now it’s about creating the businesses to drive the industry. Successful Australian international directors will come back and make more films here.”

In the Sydney Morning Herald on 9 May this year, in the arts section, John Garnaut wrote:

The Arts Minister, George Brandis, gave the film industry almost everything it wanted last night, with a $280 million funding injection over four years.
He continued:

The changes are considered the most important for the industry in more than a decade.

Minister Brandis, I do congratulate you on this extraordinary initiative which will make a huge difference to the arts in this country. In the Sydney Morning Herald on 10 May, in the arts and entertainment section, in an article headed ‘Luhrmann hails budget boost for film “stunning”’, Gary Maddox wrote:

From the set of his epic film Australia, director Baz Luhrmann described the boost for the film industry in the budget as extraordinary.

Driving back from meetings with film-makers, the Village Roadshow managing director Graham Burke said it was “much bigger” than the Division 10BA tax incentives that fuelled an Australian film-making boom in the 1980s.

All round the industry there was marvelling at the scale of the Federal Government’s support—

that is, at the meeting he was at. The article quotes Mr Luhrmann as saying:

“It’s an extraordinary result really and probably a very historical moment,” he said. “The one big idea that they responded to and have completely embraced is that around the globe, we’re in an extraordinary and unique situation when it comes to the cinematic arts ...”

The article continues:

Graham Burke, who is involved in production both through Village Roadshow and the Warner-Roadshow joint venture, said it was “a wonderful moment” in the history of the Australian film industry:

“Australia has a natural skill in this area and for the Government to be encouraging that in a way that is commercial, because it will cause private investment to sit beside the government money, is just stunning.”

There were many more quotes following on from that marvellous initiative.

My colleagues and I on the committee met in relation to all these matters. We took a lot of evidence. I would like to thank colleagues from the government and from the Labor Party, and Senator Murray, for their assistance. We heard some initial issues in relation to the Tax Laws Amendment (2007 Measures No. 5) Bill 2007. Basically they revolved around the following matters. I quote from paragraph 11.9 of the report:

- the potential effect of the bill on the allocation of resources between in-house and independent producers in the television production sector;
- the accessibility of the production offset to animators;
- the depreciation of low value capital assets used in film production ...

In relation to the first of those, the allocation of resources between in-house and independent producers, there were two quite separate schools of thought. The Screen Producers Association of Australia raised concerns ‘over the possibility of Australian commercial television networks exploiting the 20 per cent producer rebate at the expense of the independent television production sector’. Free TV— and I refer now to 11.16 in the report—representing the free-to-air commercial networks, rejected the notion that the legislation should discriminate against in-house producers by limiting their access to the rebate. Free TV also repudiated the claim that commercial networks’ access to the rebate would shift production from the independent sector in-house. It argued that generating quality television content will always take precedence over maximising available tax rebates.

The committee listened very carefully to the Screen Producers Association of Australia, and particularly to the presentation from Mr Geoffrey Brown. Recommendation 3 of the report reads:

The committee recommends that the Government review the implementation of the producer offset scheme in twelve months to ensure it is not being misused to mitigate the intention of facili-
tating a sustainable Australian film production sector, including a vibrant independent sector.

I am very pleased that the government has actually gone further than that. The amendment that will be moved will make it quite clear that the minister must indeed, before the end of 12 months after the commencement of the division, initiate a review of the effect of the division in relation to levels of production by the Australian independent production sector compared to levels of production by Australian television broadcasters. What this means is that in 12 months time we will know exactly what the situation is in relation to any potential swing between outsourced, independent production and in-house production.

We have evidence from Free TV and their representatives that there will not be such a move back to in-house production. There are the legitimate concerns of the independent sector that this will occur. It was the committee’s view that it was a matter that was better dealt with in 12 months time by way of review than, if you like, by the committee picking winners on information that quite frankly we could not judge until it had been put—

Opposition senators interjecting—

Senator RONALDSON—I will take the interjections, because I was actually referring to the committee—and the committee believed that it was appropriate to do so.

Senator Carr—Another review!

Senator RONALDSON—We could have 500 reviews and we still would not get within a bull’s roar of what the Australian Labor Party has nominated. But this is a debate about the film production sector and I will not be drawn in by these inappropriate interjections. I will turn back to this very important report.

The ACTING DEPUTY PRESIDENT (Senator Moore)—That is very wise, Senator.

Senator RONALDSON—I am sure the other members of the committee would very much agree with the government’s amendment in relation to strengthening our recommendations.

Senator Murray—It was unanimous.

Senator RONALDSON—Yes, indeed; it was unanimous. And you agreed wholeheartedly; thank you, Senator Murray. The other matter is the accessibility of the production offset to animators. The committee was very concerned about this matter. We believed the evidence that was given to us was quite legitimate. There were legitimate concerns and we made recommendations in relation to them in recommendation 4. I am very pleased, and I am sure my colleagues on the committee will be equally pleased, that the government has addressed those matters with a further amendment. On behalf of the committee, I thank the government for doing that so rapidly.

The third matter is the depreciation of low-value capital assets used in film production. This is a more difficult issue. We received evidence from Louise Houston, Tax Manager of Warner Bros Entertainment Australia, in relation to this matter. I will not take up the time of the chamber in relation to all the matters detailed by Ms Houston, but I will briefly quote from a letter.

The proposal to include the balancing adjustment of the capital asset in the calculation of qualifying production expenditure for the film production offsets is welcome.

It then goes on to talk about the EM, in paragraph 10.72:

However, it appears that subsection 376-125(7) may not apply to a balancing adjustment for a depreciable asset required to be allocated to a low value pool. This would unfairly disadvan-
tage a production company which for example is a member of a tax consolidated group which has previously elected to allocate assets to a low value pool. This is because such an election is irrevocable and applies to all companies within the tax consolidated group, irrespective of whether they were even in existence at the time the original election was made.

The government believes that work is required to properly investigate their concerns; that, if an amendment were warranted, there would not be sufficient time for it to be drafted; and that it would not be appropriate, in the government’s view, to delay passage of the bill to accommodate that investigation. I can say, however, to those with a concern in this area that the government will look further at the matter and give it appropriate consideration after the passage of the bill—which, in normal circumstances, is entirely appropriate.

I will not take up any further time. This is a very important initiative. The committee—I am sure I can speak on behalf of the committee—thanks the government for moving very quickly in relation to these two matters of great importance to the sector.

Senator CARR (Victoria) (5.13 pm)—I would like to speak to the Tax Laws Amendment (2007 Measures No. 5) Bill 2007 and, in particular, to schedules 11 and 12—that is, those matters that amend the research and development taxation arrangements, and the establishment of an entity known as Innovation Australia. Senator Sherry drew to my attention a moment ago that this is yet another government body. We have heard already more reviews—

Senator Sherry—How many is that?

Senator CARR—I do not think these people know how to open their mouths without initiating yet another review or establishing another government body. I would like to take the issue of the schedules in order. I will start with schedule 11, which implements the changes to the 175 per cent premium tax concession to give access to international firms that hold their intellectual property offshore. I have argued for some time that there is merit in opening up the R&D tax concession to international firms, on the basis that most of the spillover benefits from the R&D conducted in Australia still flow if the IP is held by a multinational’s head office overseas. That is why Labor welcomed the Howard government’s decision, in its May industry statement, to expand eligibility for the premium concession and to remove the beneficial ownership test. We had campaigned on this issue for some time.

It should be noted, however, that that measure alone accounted for some $500 million of the government’s so-called $1.4 billion industry statement—except that this figure of $500 million is made up of a remarkable calculation, which is that a figure of $50 million was flatlined across 10 years. We have a measure here which has had an arbitrary figure of $50 million put in, flatlined for 10 years. So I will be very interested to see just how the actual costings come out over time, given the Howard government’s absolutely appalling record when it comes to the question of costing changes to the tax concession. I do not think there has been a year in which the costings have been accurate—not one year.

I give the officials due notice here that I would like to ask some questions during the committee stage of this bill about how this figure was settled upon. How was it that a figure of $50 million was calculated? And how was it that it was calculated on the basis that it would be the same figure for 10 years—irrespective of the behavioural changes that might occur in the take-up rates for this particular measure? So, given the absolutely appalling answers that I received on these issues in the budget estimates, I think it is appropriate, given that we have
officers here today, that they enlighten us. I think they should be able to enlighten us as to how it was that Treasury came up with these particular costings.

I repeat that Labor welcomed the belated initiative by the Howard government as an attempt, albeit in a limited way, to internationalise Australia’s innovation system. However, this bill makes it clear that the government is simply introducing an even higher level of complexity into the R&D concession scheme. At the time of the announcement, Labor pointed out that the 175 scheme is a bureaucratic nightmare. Yet this bill actually introduces further complexities and red tape.

For a start, the definition of research and development for the purposes of the new regime is different from the rules that apply to companies holding their IP offshore. This was not announced. While it may be done for the benefit of administrative practice, nonetheless it results in companies that are eligible for both types of tax concession having to categorise their R&D spending in two different ways. The bottom line is that this legislation has been described by stakeholders as complex, confusing and bureaucratic.

This creates a second problem, and that is the risk that the policy intent will be undermined by a perception that the new scheme is difficult to access. Not only will international firms have to look at the rate of support they will receive for the R&D; they will also have to take into account the complexity of the system. And it would be hard to imagine a system more complex than that which has been created by this government.

Labor will continue to seek feedback from business about the effectiveness of the premium concession and of this measure in particular. But the fact is that this policy, like the whole industry statement, reflects a half-hearted approach from this government. The last time I had occasion to speak on a bill relating to the R&D tax concession, I made the point that even the Productivity Commission realises that the eligibility criteria for the R&D tax offset provides perverse incentives for small, high-tech businesses to actually limit their R&D spending. But the government has made no attempt to amend the threshold arrangements. One can only assume that, since they have not done it in the industry statement, they had no intention of fixing this particular problem. Beyond that, of course, there is serious potential to improve the R&D concession arrangements overall. However, broadly speaking, there is a serious need to improve Australia’s business R&D performance, and this was yet another missed opportunity to do just that.

With regard to our performance, some disturbing facts about Australia’s R&D have increasingly come to light. The ABS noted in its release of its 2005-06 figures that, at 1.04 per cent of GDP, Australia’s rate of business R&D expenditure ‘remains below the OECD average of 1.53 per cent’. The fact is that Australia’s businesses are still recovering from the savaging of the R&D concession by the Howard government in 1996. In 1996, Mr Howard said that his government would ‘improve Australia’s international ranking in terms of expenditure on business R&D, as a share of GDP’. Instead, he slashed the tax concession in half and sat on his hands while business R&D growth stayed in negative territory for four years—yet another example of a broken promise under this government.

One of the most obvious characteristics of this government is its capacity to fail to implement promises. Of course, this was not a position that we were ever exposed to in the election through which this government came to office. They now have the opportunity to come before the Australian people again, and I look forward to this government coming clean on these issues in this forth-
coming election. I look forward to this government changing its course, going out to Yarralumla and declaring that it is time for the election. Given that this is the longest parliamentary term we have had for some years in the Commonwealth, it is appropriate that the Prime Minister acknowledges that this government is way out of time and that this is the sort of issue that ought to be discussed in the forthcoming election. This is an issue on which the government ought to acknowledge that it has failed.

Four years after that initial savaging of the system in 2000, the government commissioned a report confirming there had been both an absolute and a relative decline in Australia’s business research and development performance since the mid-1990s. Over that same period, 20 of the 28 other OECD countries for which there is data experienced a notable increase in their business R&D to GDP ratio. Over the full 11 years of the Howard government, the overall result is that the real average annual growth rate in business research and development has been a woeful 5.7 per cent, compared to 14.5 per cent for the period when Labor was in office. It is not a bad achievement to cut it by a third, is it? If Australia had maintained the same growth rate in business R&D under the Howard government that it achieved under Labor, investment would now be double today’s figures. Instead of seeing strong growth over the last couple of years, we are only now starting to catch up to the record of achievement in business R&D back in the nineties.

I contrast this with our competitors. You can see quite clearly what is happening. China, for instance, is committed to lifting its overall research and development spending as a percentage of GDP to 2.5 per cent by 2050, up from 0.6 per cent in 1995 and 1.2 per cent in 2002. China is doubling its R&D effort every seven years. The Chinese have in fact overtaken Japan as the second biggest spender on research and development behind the United States, with spending growth of over 20 per cent during the previous year. The Howard government ministers who would like to tell us about selling minerals to China and buying back cheap, low-tech goods do not seem to understand just how far and how fast the Chinese are transforming their economy. They do not seem to get the fundamental principle: China is moving up the value chain at a rapid rate. The only way we can stay ahead of the game is to play much smarter than we are now.

The last schedule of this bill, schedule 12, moves to combine the Industry Research and Development Board with the Venture Capital Registration Board to form a new entity known as Innovation Australia. Labor supports this amalgamation. It makes sense. It is a very small step towards streamlining a national innovation scheme that is now characterised by massive gaps, duplication and red tape. This proposal, though, sends two clear messages about what this government is seeking to do when it comes to innovation. The first message is very clear: the government is half-hearted. When the system needs a fundamental overhaul, we get Minister Macfarlane combining two administrative boards. Where better coordination is needed between the government and the states, the Howard government actually refuses to participate. While we are sorely in need of measures to bridge the cultural divide between the research sector and business, the Howard government has nothing to offer. The second message is that in Innovation Australia we have a clear case of mutton dressed up as lamb. Anyone hearing that name would expect a genuinely new body to drive the revitalisation of a national innovation system. If they think that, they will be sorely disappointed by this government’s inaction. While it is easy to support the
amalgamation of two bodies, we need a much more fundamental policy response if we are to convince anyone that we are actually serious about innovation in this country.

This bill gives us an opportunity to reflect upon the importance of innovation to the future of the Australian economy. It gives us an opportunity to reflect upon the pretty ordinary performance of this government when it comes to innovation. It also gives us an opportunity to look again at what the world’s experts are saying: innovation will drive productivity and prosperity in the 21st century. It makes it crystal clear yet again that the current government is ill prepared to secure Australia’s prosperity for the future because it simply does not understand the fundamental importance of innovation in meeting the challenges ahead.

Senator BRANDIS (Queensland—Minister for the Arts and Sport) (5.26 pm)—I thank honourable senators for their contributions to the debate on the Tax Laws Amendment (2007 Measures No. 4) Bill 2007, the associated imposition bills and the Tax Laws Amendment (2007 Measures No. 5) Bill 2007.

Turning first to TLAB4, schedule 1 will abolish foreign loss and foreign tax credit quarantining and streamline the remaining foreign tax credit rules. It also contains transitional rules for the treatment of existing foreign losses and credits. By reducing compliance costs and complexity in the law, these changes will assist businesses operating or seeking to grow internationally. Schedule 2 provides a capital gains tax rollover for membership interests in companies limited by guarantee that are also medical defence organisations. Schedule 3 will allow superannuation funds to continue to invest in instalment warrants, consistent with longstanding practice. Such warrants must be of a limited recourse nature and can be held over any asset a fund is permitted to invest in directly.

Schedule 4 introduces simplified trustee beneficiary reporting rules. These rules will target arrangements where complex chains of trusts are used to obscure the ultimate beneficiary of the assessable trust income. These changes demonstrate the government’s ongoing commitment to reducing red tape and regulatory burdens. Schedule 5 will assist in the smooth transition to the simplified superannuation regime known as Better Super and clarify the policy intent. Schedule 6 amends the list of deductible gift recipients in the Income Tax Assessment Act 1997. Deductible gift recipient status will assist the listed organisations to attract public support for their worthy activities. Schedule 7 implements various minor technical amendments and makes general improvements to the law that will improve the quality of the tax laws and reduce complexity. Finally, schedule 8 amends the trust loss rules which apply to family trusts. The amendments allow family trust elections to be varied or revoked in a broader range of circumstances and also expand the definition of ‘family’.

I now turn to the Tax Laws Amendment (2007 Measures No. 5) Bill 2007. Schedule 1 to this bill significantly improves the tax treatment of leasing and similar arrangements between taxable entities and tax exempt entities, including foreign residents, for the financing and provision of infrastructure and other assets. These changes streamline the existing harsh rules and reduce the compliance costs of Australian businesses. Schedule 2 amends the thin capitalisation rules to ensure that they operate as intended by changing the definition of excluded equity interest. Schedule 3 will allow groups that consolidate for tax purposes to apply the thin capitalisation rules to apply the thin capitalisation rules as if the group did not contain an authorised deposit-taking institution where the only authorised deposit-
taking institutions in the group are specialist credit card institutions. Schedule 4 will provide a capital gains tax rollover upon marriage breakdown to ensure that capital gains tax need not be an impediment to separating spouses wanting to achieve a clean break from each other in terms of superannuation.

Schedule 5 to the bill exempts from income tax the Prime Minister’s prizes for Australian history and science to the extent that the prizes would otherwise be assessable income. Schedule 6 removes the $100 million total income cap on the same business test in the company loss recoupment rules. When determining of prior year losses can be deducted against future income, all companies will have access to the same test. Schedule 7 extends capital gains tax rollover relief for statutory licences. The rollover will apply where a statutory licence ends and is replaced by one or more new licences that authorise substantially similar activity to the activity authorised by the original licence or licences. The measure also provides a partial rollover where a statutory licence ends and is replaced by a new licence or licences and other capital proceeds are also received.

Schedule 8 allows a stapled group of entities to restructure with an interposed head trust without triggering certain tax consequences. Under the measure, a restructure that involves interposing a head trust over a public unit trust that is stapled to a company will not result in the interposed head trust being taxed as a company under division 6C of the Income Tax Assessment Act 1936. These amendments will particularly enhance the international competitiveness of Australian listed property trusts. Schedule 9 updates the list of deductible gift recipients and extends the period for which deductions are allowed for gifts to a fund that has time limited status.

Schedule 10 introduces a package of incentives that will reform and strengthen the Australian film industry, which was announced in the 2007-08 budget. I will return to schedule 10 and make some additional remarks in a moment. Schedule 11 extends the premium 175 per cent research and development—R&D—tax concession to Australian research and development activities undertaken on behalf of multinational companies. Finally, schedule 12 establishes a new board called Innovation Australia to administer and oversee the industry portfolios innovation and venture capital programs.

I would like to say a few additional words about schedule 10 of TLAB5, which implements the film package. As Senator Ronaldson pointed out in his contribution, that has been rapturously received by the film industry.

Senator Carr—Rapturously!

Senator BRANDIS—Yes, it has been received rapturously, Senator Carr. It is the greatest set of innovations of support to the Australian film industry since the Fraser government introduced sections 10B and 10BA in the 1970s.

I want to take the opportunity to place on record the debt of gratitude which we owe my predecessor in the portfolio, Senator the Hon. Rod Kemp. Although I followed Senator Kemp into the portfolio on 30 January, by the time I became the responsible minister most of the work in relation to the film industry package had been done by him and by officials under his instruction. I particularly thank James Cameron and Peter Young from the department for the extremely high standard of work that they undertook both in the preparation and, currently, in the implementation phase of the film package.

As I said before, this is a package that has been very well received. However, when it was reviewed by the Senate Standing Com-
committee on Economics in its hearings on TLAB5, there were a small number of outstanding issues raised which the government, as Senator Ronaldson foreshadowed, will address. Probably the most vexed of the issues concerned the question of access to the producer rebate. A concern was raised on behalf of the bodies representing independent producers that the accessibility of the rebate to broadcasters that might produce products in-house could have a deleterious effect upon independent producers. In the end, the committee recommended, as Senator Ronaldson foreshadowed, in recommendation 3 that there be a review of the operation of the producer offset scheme in 12 months to ensure that it is not being misused to mitigate the facilitation of a sustainable Australian film production sector, including a vibrant independent sector. In the government amendments that will be moved in committee there will be an amendment moved to mandate that review on a statutory basis.

I take this opportunity to affirm on the part of the government its intention that the independent sector should be beneficiaries of the producer rebate. It has not been the view of the government that eligibility for the rebate should be quarantined only to the independent sector, but it is certainly the view of the government that independent producers should be beneficiaries of the producer rebate. Were it to be the case that in the early months of the operation of the scheme independent producers were missing out, it would be the intention of the government to re-look at the matter. In that regard, might I adopt the language of paragraph 11.47 of the report of the Senate Standing Committee on Economics, which says:

It would be the committee’s expectation that were the availability of the scheme for in-house production to have a detrimental effect on the independent sector then the Government on the basis of that evidence should legislate to restrict the producer offset scheme to independent producers.

That is the intention of the government, and if the empirical evidence suggested that that was the effect then that would be our intention; however, we are not persuaded that the scheme, as devised, will have that effect.

Secondly, the Senate Standing Committee on Economics recommended that there be some amendments to change the definition of a qualifying series for the purpose of animated features, and the government has adopted that recommendation and an amendment to that effect will be moved in the committee stage. Finally, the committee recommended that the current restriction on the Film Finance Corporation co-investing in projects produced in-house continue to apply to funding provided by the new body, the Australian Screen Authority—or, as it will be called after 1 July 2008, Screen Australia. I also indicate that that would be my intention.

With those remarks, I once again thank honourable senators for their contributions to the second reading debate. In particular, I thank those who have been the prime movers in this revolutionary, once-in-a-generation reform of the Australian film industry. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

TAX LAWS AMENDMENT (2007 MEASURES NO. 4) BILL 2007

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (5.38 pm)—by leave—I move amendments (1) and (2) on sheet 5328, revised No. 2, together:

(1) Schedule 5, page 98 (after line 17), before item 27, insert:

26A Subsection 10(2)

Insert:
**de facto relationship** means a relationship between two people living together as a couple on a genuine domestic basis, where the relationship is not a marital relationship:

(a) in determining whether two people are in a de facto relationship, the circumstances of the relationship must be considered as a whole. Without limiting the generality of this paragraph, those circumstances may include:

(i) the length of their relationship;
(ii) how long and under what circumstances they have lived together;
(iii) whether there is a sexual relationship between them;
(iv) their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them;
(v) the ownership, use and acquisition of their property, including any property that they own individually;
(vi) their degree of mutual commitment to a shared life;
(vii) whether they mutually care for and support children;
(viii) the performance of household duties;
(ix) the reputation, and public aspects, of the relationship between them;
(x) the existence of a statutory declaration signed by both persons stating that they regard themselves to be in a de facto relationship with the other person;

(b) a de facto relationship may be between two people of the same gender.

Note: A person in a marital relationship is taken to be legally married - see subsection 8A(2) of the *Superannuation Act 1976*.

(2) Schedule 7, page 112 (after line 26), after item 65, insert:

**65A Subsection 995-1**

Insert:

beneficiary relationship—for the purposes of this Act, a person had a beneficiary relationship with another person at a particular time if the person has a marital or de facto relationship with the person and ordinarily lived with that other person on a permanent and bona fide domestic basis at that time.

**65B Subsection 995-1(1)**

Insert:

**de facto relationship** means a relationship between two people living together as a couple on a genuine domestic basis, where the relationship is not a marital relationship:

(a) in determining whether two people are in a de facto relationship, the circumstances of the relationship must be considered as a whole. Without limiting the generality of this paragraph, those circumstances may include:

(i) the length of their relationship;
(ii) how long and under what circumstances they have lived together;
(iii) whether there is a sexual relationship between them;
(iv) their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them;
(v) the ownership, use and acquisition of their property, including any property that they own individually;
(vi) their degree of mutual commitment to a shared life;
(vii) whether they mutually care for and support children;
(viii) the performance of household duties;
(ix) the reputation, and public aspects, of the relationship between them;
(x) the existence of a statutory declaration signed by both persons stating that they regard themselves to be in a de facto relationship with the other person;
(b) a de facto relationship may be between two people of the same gender;
(c) to avoid doubt, two people may still be in a de facto relationship if they are living apart from each other on a temporary basis.

65C Subsection 995-1(1)
At the end of the definition of spouse, add “and includes a person who is in a beneficiary relationship”.

I urge the Senate to accept these amendments. The amendments I refer to arise directly from, and are closely aligned to, the precise and detailed recommendations of the May 2007 Human Rights and Equal Opportunity Commission report Same-sex: same entitlements. That was a national inquiry into discrimination against people in same-sex relationships—their financial and work related entitlements and benefits. This is the first tax bill that I could put these amendments to.

I draw the attention of the chamber to appendix 1 of that report, which lists 58 acts that need amending to comply with the commission’s finding that inequitable and unjust discrimination applies to tens of thousands of Australians who are in same-sex relationships. I draw the Senate’s attention to the chapter headed ‘Summary of findings and recommendations’—that is chapter 18, on page 371. Within chapter 18, on page 384, you will find a list of items used to determine whether two people are in a de facto relationship and the circumstances taken into account to determine that relationship. Those are replicated in my amendment. Discrimination under tax laws is also described in chapter 18 under ‘Summary of findings and recommendations’. It is described under (c) on page 377: ‘Discrimination under tax laws’.

I very much doubt that senators have the report readily to hand, so I will read the section about the discrimination that exists—the homophobic discrimination, might I say—the unjust, totally unwarranted, immoral, disgraceful discrimination that exists under our tax laws against same-sex couples or families. I draw the attention of the chamber to the fact that many people of same-sex persuasion do, in fact, have families—children and, of course, dependants. I will read section (c). Do not despair; it is not so long that it will take forever. The section is headed ‘Discrimination under tax laws’ and says:

The Inquiry finds that federal tax laws discriminate against same-sex couples or families in the following ways:
• A same-sex partner cannot access the dependent spouse tax offset available to an opposite-sex partner.
• A same-sex partner cannot access the tax offset for a partner’s parent available to an opposite-sex partner.
• A same-sex partner, lesbian co-mother or gay co-father cannot access the housekeeper tax offset available to an opposite-sex partner, birth mother or birth father.
• A lesbian co-mother or gay co-father cannot access the child-housekeeper tax offset available to a birth mother or birth father.
• A lesbian co-mother or gay co-father cannot access the invalid relative tax offset available to a birth mother or birth father.
• A taxpayer in a same-sex couple cannot access the higher rate of overseas forces tax offset available to an opposite-sex couple.
• A taxpayer in a same-sex couple cannot access the higher rate of zone tax offset available to an opposite-sex couple.
• A US defence force same-sex couple cannot access tax exemptions available to an opposite-sex couple.
• A lesbian co-mother or gay co-father cannot assert a primary entitlement to the baby bonus.
• A same-sex partner of a person eligible for the child care tax rebate cannot access the rebate in the same way as an opposite-sex partner. And a person eligible for the child care tax rebate cannot transfer the unused value of the rebate to his or her same-sex partner.
• A same-sex couple must spend more than an opposite-sex couple to qualify for the medical expenses tax offset.
• A same-sex couple may pay a higher Medicare levy and Medicare levy surcharge than an opposite-sex couple.
• A same-sex partner cannot access the same capital gains tax concessions available to an opposite-sex couple.
• A same-sex couple transferring property to a child (or trustee) on family breakdown will be taxed at the top marginal rate, unlike an opposite-sex couple.
• A same-sex partner must pay income tax on child maintenance payments received from a former partner, unlike an opposite-sex partner.
• A same-sex partner is not eligible for the same fringe benefit tax exemptions available to an opposite-sex partner.

Chapter 8 of the report provides much more detail about these and other tax entitlements. This kind of discrimination is not about marital relationships; this is about relationships between people who live together, who have an enduring relationship, which is determined on a very exact basis, and who are not allowed the same tax entitlements as other Australians living in the same circumstances. It is an abomination. It is unacceptable. Now that this report is out, there is no excuse for it not being addressed. There is no political advantage in this to anyone refusing or opposing this. There is just a moral vacuum, a moral failure. I have brought these amendments forward because I think it is time the government addressed them. I do hope that the amendments, which I have designed to comply as close as I can with HREOC’s recommendations, find acceptance.

Through you, Madam Temporary Chairman: I know, Minister, that the amendments are likely not to be perfect, but the government could always accept them and improve them in the House and then send them back for the agreement of the Senate. I would urge the Senate to accept these amendments and approve them.

Senator SHERRY (Tasmania) (5.47 pm)—This is not the first occasion in the Senate or, indeed, in the House of Representatives where we have been debating the removal of discrimination as it applies to superannuation provisions as they apply to same-sex couples. It is not the first time and, Senator Murray, I have forgotten how many times we have spoken on this matter in the Senate. The Australian Democrats—and sometimes the Greens, I have to acknowledge—and the Labor Party invariably move amendments time and time again, either in committee or in a second reading debate, that the government remove the discrimination in respect to superannuation provisions as they apply to same-sex couples.

Senator Murray rightly identified a moral failing on the part of the government, but it is actually a double moral failing, because I was here in this Senate chamber about four years ago—Senator Murray would recall—when Senator Cherry, as the superannuation spokesperson for the Australian Democrats, received a written commitment from the
Prime Minister to remove the discrimination in respect of same-sex couples. A written communication was tabled here in the Senate chamber. It was on the superannuation choice legislation. I am sure Senator Murray would recall this.

So we have a double moral failure. We had the Prime Minister of this country—typical tricky Mr Howard at his tricky best, or worst, frankly—some four years ago giving a written letter of commitment to the Senate chamber to remove the discrimination in respect to same-sex couples and superannuation. That was four years ago. And where are we today? It still has not happened. We have a very tricky Prime Minister—who is short-term and who wants a bit of legislation, in that case on superannuation choice, passed—and he gave a written commitment. I think we had Senator Coonan, who was the Assistant Treasurer at the time, brandishing this letter from the Prime Minister.

Senator Murray—She supports him in this.

Senator SHERRY—She may support it, Senator Murray. However, the Prime Minister, Mr Howard, in a serious moral failure, signs up in writing and then fails to deliver. There was an intriguing leak on a cabinet discussion in the Financial Review about three weeks ago. It was intriguing because rarely does a cabinet leak occur. It is a very unusual circumstance and it is very rare indeed for cabinet to leak and for a full-blown report on the issue to be given in the Financial Review. It was a report on the discussion that took place in cabinet about this issue. Apparently, cabinet was split down the middle. As reported in the Financial Review, there was a fierce discussion, they were unable to reach agreement and it was left to the Prime Minister to make the call. But the Prime Minister made the call on this issue four years ago.

I will come back to that Financial Review report shortly. I noticed in some media shots the Prime Minister attending community meetings and addressing questions from the floor. When he was asked by someone in the audience whether he would remove the discrimination in respect of same-sex couples, he very bluntly said, ‘No.’

Senator Carr—Duplicity!

Senator SHERRY—So we had the Prime Minister giving a written commitment four years ago and recently—I do not know the precise date, but it was recent—saying that he would not remove it. It is duplicitious—that is right, Senator Carr. He gave a promise four years ago, a tricky promise to get a bit of legislation through. Senator Murray, I have to admonish you. I warned Senator Cherry at the time: it was a short-term tricky promise—

Senator Murray—We have trusting natures!

Senator SHERRY—Well, they got the super choice legislation through.

Senator Carr—You are dealing with a clever politician, though.

Senator SHERRY—We are dealing with Mr Howard here, the Prime Minister of Australia, giving a commitment four years ago and then still failing to deliver today. Let us come back to the Financial Review leak. We had a very detailed report in the Financial Review of the debate that took place in cabinet no less—which is very rare. I think I can count on one hand the number of times cabinet discussions have been leaked in the past 11-odd years.

Senator Carr—Was there a police inquiry into it?

Senator SHERRY—Senator Carr quite incorrectly interjects, but he quite rightly makes the point: has a police inquiry been called into this leak to the Financial Review
of the cabinet discussion on the removal of discrimination as it applies to same-sex couples and superannuation? Parliamentary Secretary Colbeck, I would like to know whether in fact there has been a police inquiry—we can deal with this in the committee stage—initiated into that leak of a detailed cabinet discussion.

But I will point the finger because we know who leaked it. Mr Turnbull leaked it. He is the one who leaked that cabinet discussion because he is under electoral pressure. I can see some smiles on the advisers’ faces—they know I am right. I hope this police investigation is being undertaken, because Mr Turnbull is playing both sides of the street. He has a part in collective cabinet responsibility and has to follow the lead of the Prime Minister, who will not deliver on the promise that he made four years ago. Mr Turnbull leaked that discussion to the Financial Review because he wants to ensure that his views in that cabinet discussion were communicated to the gay community in his own electorate. That is what it was all about. We would like to know what has happened with the police investigation into that cabinet discussion.

Here we are, four years later, and the government still has not delivered on its promise, solemnly given in writing by the Prime Minister. How often are various people in the community going to be misled by this tricky manoeuvring of the Prime Minister? I just hope that the same-sex community in Australia really do understand at the next election just how tricky the Prime Minister has been on this issue. He has been very tricky indeed. I also hope they realise just how tricky Mr Turnbull was in leaking those cabinet discussions to the Financial Review. We know that he was the one responsible.

Labor will be supporting the amendments moved by the Democrats. It is Labor policy to remove the discrimination in the area. Superannuation is a person’s own money. It is their savings. Why on earth the government continues to maintain discrimination in this area is just beyond me. It is a person’s own money—their own superannuation savings.

I have two specific questions to the parliamentary secretary. Has a police investigation been called into that leak that was detailed in the Financial Review? Where is the police investigation up to?

Senator McGauran—No documents were leaked.

Senator SHERRY—Senator McGauran!

Senator McGauran—It was just an assertion in the Financial Review of a conversation.

Senator SHERRY—I hope all that is on the record.

The TEMPORARY CHAIRMAN (Senator Moore)—Senator McGauran, you have had the opportunity to take part in the conversation.

Senator SHERRY—Thank you, Madam Chair, but I must say I am somewhat taken aback at the intervention of Senator McGauran. There is nothing more important to cabinet solidarity than the preservation of confidentiality in cabinet discussions. It was splashed all over the Financial Review, Senator McGauran. There were full details about who said what on same-sex couples and superannuation. We have no doubt it was Minister Turnbull who leaked it.

The TEMPORARY CHAIRMAN—Senator Sherry, your remarks should be addressed through the chair.

Senator SHERRY—Yes, sorry. What is the status of the police investigation? Has a police investigation been called into that leaking of confidential cabinet discussions?

Senator McGauran—That is a reflection on Turnbull.
Senator SHERRY—It is. It is true, Senator McGauran. He leaked it.

Senator McGauran—you ought to withdraw that.

Senator SHERRY—I am not withdrawing it. I will await the outcome of the police investigation.

Senator McGauran—I raise a point of order, Madam Chair. Senator Sherry agrees with me that that is a reflection on Senator Turnbull—

Senator SHERRY—Senator Turnbull!

Senator McGauran—Yes, Mr Turnbull. I ask the senator to withdraw that comment. It is a serious accusation he makes about him.

Senator SHERRY—I withdraw it. I am magnanimous. But I look forward to an update from the parliamentary secretary about the police investigation as to who leaked that report. Just for Senator McGauran’s edification—

Senator McGauran—There was no report leaked.

Senator SHERRY—Turn it up!


Senator SHERRY—There was a full report in the Financial Review on who said what about it. Turn it up! I can guarantee this committee that the Prime Minister would have been absolutely furious that someone like Mr Turnbull could have leaked it for his own political advantage in his own seat. I hope the Federal Police were called in to identify the perpetrator.

Senator Carr—it was Mr Turnbull.

Senator SHERRY—I do not know. We will wait to hear from the parliamentary secretary about who leaked it. We would like an update on the police investigation into that leak.

Secondly, I notice officials from the ATO are here. Could the parliamentary secretary give us an update on the estimated number of individuals identified by the ATO, at this point in time, for whom tax file numbers cannot be identified? I think the last time I asked about this in estimates around 90 per cent were identified for the purposes of the penalty tax. What is the update on the approximate percentage identified? They are the two questions to which I would like a response from the parliamentary secretary.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (5.59 pm)—The government will not be supporting the amendments, although the government has publicly indicated that it is in favour of removing discrimination against people in interdependency relationships but is not limiting it to same-sex relationships. I think I have said before in the chamber that we do not confine it to same-sex relationships; we look at it in a broader sense in relation to interdependency relationships.

The report of the Human Rights and Equal Opportunity Commission was only handed down on 21 June this year and, as Senator Murray indicated, there are 58 acts to change in respect of the piece of legislation. Turning to Senator Sherry’s questions, there are no officials here who can give us an update on the percentage of tax file numbers that are identifiable, so I will have to take that on notice. I am not sure that the other question warrants a response but, as far as I am aware, there are no investigations into the issue that he raised.

Senator SHERRY (Tasmania) (6.00 pm)—Temporary Chairman Lightfoot, you unfortunately missed the earlier exchange, because this is a very serious matter: a member of cabinet leaked to the Financial Review details of discussions on the same-sex couple.
The TEMPORARY CHAIRMAN (Senator Lightfoot)—This is an allegation, is it?

Senator SHERRY—No, it is not an allegation; it is in the Financial Review. It is true. It happened. Senator Colbeck thinks this is quite a flippant matter, but any time any documents or discussions are leaked from cabinet there is a Federal Police investigation. Could you check with the officials to see whether or not a Federal Police investigation has been initiated into that leak and subsequent report in the Financial Review?

The TEMPORARY CHAIRMAN—I am a bit confused, Senator Sherry: are you asking me to check or the parliamentary secretary?

Senator SHERRY—No, I am asking the parliamentary secretary.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.01 pm)—As I indicated, I am not aware of any investigations in respect of that matter.

Senator SHERRY (Tasmania) (6.01 pm)—The officials are here. Could he check with the officials to see whether or not a Federal Police investigation has been initiated—yes or no.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.01 pm)—Senator Sherry, my response was accurate. There are no investigations in respect of the matter you raised.

Senator SHERRY (Tasmania) (6.02 pm)—I am astounded because, as I said earlier, it is very rare for confidential discussions in cabinet to be leaked to the media. I cannot recall more than a handful of occasions in this government’s 11½ long years in office. I find it extraordinary that there was no police investigation into this matter. But we had a discussion earlier and we have a fair idea who the perpetrator was. On the amendments before us, it is more than disappointing that here we are four years on and the government still has not met the commitment it gave in writing four years ago.

Senator Murray—And after the major report—

Senator SHERRY—And, of course, that was after the major HREOC report that Senator Murray referred to. But we did not need the major report. We had the commitment in writing from the Prime Minister, and he has failed to deliver. Labor will be supporting the amendments moved by Senator Murray.

The CHAIRMAN—The question is that Democrats amendments (1) and (2) on sheet 5328, revised, be agreed to.

Question put.
The committee divided. [6.07 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 33
Noes............. 37
Majority......... 4

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. Hurley, A.
Hutchins, S.P. Kirk, L.
Ludwig, J.W. Landy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. Milne, C.
Moore, C. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Polley, H. Ray, R.F.
Sherry, N.J. Siewert, R.
Sterle, G. Stott Despoja, N.
Webber, R. * Wong, P.
Wortley, D.
Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.13 pm)—I table a supplementary explanatory memorandum relating to the government’s request for amendments and amendment to be moved to this bill. The memorandum was circulated in the chamber today. I move government amendment (1) on sheet QG450:

(1) Schedule 10, item 1, page 161 (after line 16), at the end of Division 376, add:

376-275 Review in relation to certain production levels

The Minister must, before the end of 12 months after the commencement of this Division, initiate a review of the effect of this Division in relation to levels of production by the Australian independent production sector compared to levels of production by Australian television broadcasters.

This amendment addresses a recommendation of the Senate Standing Committee on Economics to establish a review of the effect of the film production offset to compare levels of production by the Australian independent production sector to production levels of Australian television broadcasters. The government accepts the evidence presented and will act on the committee’s recommendation to ensure legislatively that this offset is reviewed in 12 months time. Full details of the changes are contained and outlined in the supplementary explanatory memorandum that has been tabled.

Senator SHERRY (Tasmania) (6.15 pm)—Labor will be supporting the amendment to schedule 10. It allows animated programs of 15 minutes to be eligible for the producer rebate. Without this amendment an animated program would have to be at least 30 minutes in length to be eligible for the offset. So Labor supports the amendment. In concluding my remarks, I do note that we are to have yet another review. I started to count the number of reviews this government has had since the last election, and we are up into the hundreds. Senator McGauran is smiling. There is a bit of an issue being made by the government at the moment—
Senator McGauran—You just plucked a figure out of the air.

Senator SHERRY—Sit down and count them, Senator McGauran. There have been hundreds of reviews and quangos set up by this government since the last election—hundreds of them. And they have the gall to have a shot at us for making a range of commitments in respect of reviews and investigations if there is a Labor government elected. I just make the point that, when it comes to having a track record on reviews, quangos and all these new investigations, this government leaves the Labor Party’s commitments for dead. We will support the amendment.

Senator CARR (Victoria) (6.16 pm)—I have some questions on schedules associated with this bill. Would now be an appropriate time to ask them?

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Yes.

Senator CARR—I turn to schedule 11. I ask if there are officers here who can assist me with inquiries as to the data source that Treasury used to estimate the amount of R&D being undertaken in Australia by multinational companies.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.17 pm)—As Senator Carr would be aware and has previously been told with respect to his questions on notice at Senate estimates, it has been a longstanding practice that the government does not provide a breakdown of costings.

Senator CARR (Victoria) (6.17 pm)—The costing equates to $222 million in eligible expenditure each year. How was that $222 million expenditure calculated? How many international firms have subsidiaries in Australia that could potentially benefit from this change? How would that change if they chose to increase their spending?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.18 pm)—Senator Carr, I take that essentially to be the same question in a different form so I will essentially give you the same answer. But if you want to persist with the question, I am quite happy to take it on notice.

Senator CARR (Victoria) (6.18 pm)—Thank you very much. I would ask that the minister take it on notice. I do note that the departmental officials do not seem to be able to answer any of these questions. How much R&D expenditure do these international companies currently account for? Can you tell me that?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.18 pm)—I will take that on notice as well.

Senator CARR (Victoria) (6.18 pm)—The costings for the proposal indicate that the increase in spending by international companies will be the same for every year—that is, $222 million. Can you explain to the committee what allowances were made for behavioural changes by multinational companies in response to this measure?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.19 pm)—Again, Senator Carr, I will have to take that question on notice.

Senator CARR (Victoria) (6.19 pm)—How did Treasury manage to come up with the estimates of the take-up rate on R&D expenditure and the cost to the budget?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.19 pm)—I do not know that I can provide you with—or if it is appropriate to provide you with—the methodology of the calculation.
Senator CARR (Victoria) (6.19 pm)—On what basis do you refuse to provide that information?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.19 pm)—Senator Carr, I do not know that I am refusing to provide you with information. You are asking me for a methodology of calculation. The Treasury obviously has a methodology of working it out but, as I have said to you previously, it has been a longstanding practice of government not to provide a breakdown of costings. I think that I have covered that matter previously.

Senator CARR (Victoria) (6.20 pm)—What assumptions were made about the inducement effect of this measure?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.20 pm)—I will take that question on notice.

Senator CARR (Victoria) (6.20 pm)—Furthermore, what assumptions were made about the time it would take for this particular measure to have its full effect? Was there to be an immediate take-up effect or a lag effect?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.21 pm)—Again, I will have to take that question on notice.

Senator CARR (Victoria) (6.21 pm)—What I asked was: what were the parameters of the modelling undertaken by Treasury to calculate what would be the best representation of the likely outcome of these particular measures before the committee?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.21 pm)—It is quite apparent that the government has taken all those questions on notice. They are not able to answer these rudimentary questions about a measure for which they have allocated $500 million on a flatline assumption of $50 million a year for 10 years—on the assumption that, for all the international firms in this country, every year for the next 10 years $222 million will be calculated as the basis of the claims against expenditure. What an extraordinary proposition to put to this parliament. That is what is being said here, and there can be no explanation given by the government for the basis on which those calculations have been made.

I did not in fact expect any different. It is quite apparent that this is a matter that has been pulled out of the air. These figures have been pulled out of the air and they have been calculated on a 10-year flatline assumption. The government have never been able to get these calculations right; yet they are only too happy to point the finger at others who seek to establish a policy parameter in this area. It is quite apparent that the government is not able to answer these fundamental questions.

I turn to schedule 12. This is a matter to establish a new innovation board. The minister announced the chair and the deputy chair, but it has not been publicly stated how the rest of the 13 positions will be filled. How
many board vacancies will be created by this measure?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.23 pm)—I am sorry but I am going to have to take that question on notice.

Senator CARR (Victoria) (6.23 pm)—These are simple, straightforward questions. How many vacancies are created by this action by this government? There are officials here, but you are telling me that you cannot give me an answer to that. What will the process be for filling the vacancies on the Innovation Australia board?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.24 pm)—Unfortunately, there are no officials here from the Department of Industry, Tourism and Resources, which is looking after the board. I am going to have to take that question on notice.

Senator CARR (Victoria) (6.24 pm)—Mr Parliamentary Secretary, how did you allow a situation to arise where you do not have appropriate officials in the chamber to answer simple questions such as these? Why was it not your responsibility to ensure that officers were here to answer these questions?

The TEMPORARY CHAIRMAN—Senator Carr, would you be kind enough to ask your questions through the chair.

Senator CARR—I think the parliamentary secretary heard the question. I ask him again: how is it that—

The TEMPORARY CHAIRMAN—Senator Carr, I will disallow that question unless you ask it through the chair. That is all I am asking for.

Senator CARR—Mr Temporary Chairman, it is quite clear that the government is not able to do fundamental tasks that are required of an executive. These are simple questions. I ask again—through you, Mr Temporary Chairman—Mr Parliamentary Secretary, how did you allow a situation to develop where you do not have officers here to answer these basic questions?

The TEMPORARY CHAIRMAN—I have not allowed that question but you can answer if you wish to, Senator Colbeck.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.25 pm)—Thanks, Mr Temporary Chairman. I am not sure it is a case of whether or not I wish to answer; I think it is reasonable that I respond to Senator Carr. I am disappointed that I am not able to provide answers to the questions that he is asking. I think he is asking reasonable questions of the government and I am not happy that I am not able to give him that advice. I put that on the table as part of the debate. My action in taking the questions on notice is quite genuine. It is so that I can provide him with the information.

Senator CARR (Victoria) (6.25 pm)—I take the parliamentary secretary’s answer in the spirit in which it has been offered. I think it would also be appropriate for him to point out that there are other more senior people in the government who should have made sure that officers were here to answer these basic questions. Given that, I ask him this: in the event that these appointments are made immediately, what will be the length of time for these appointments? Parliamentary Secretary, would you be prepared to take that question on notice in view of the circumstances?

The very last section of the bill states that the appointments of members of the committee under section 22 of the industry R&D act are revoked when this new act takes effect. Firstly, there are currently nine committees operating under the industry R&D board act.
Is it the government’s intention to immediately re-establish equivalent committees under the new act? Secondly, does the government intend to establish any additional committees relating to the venture capital responsibilities? Thirdly, what is the process for the establishment of new committees? Fourthly, what is the process for appointing members to those committees and what would be the length of those appointments?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.27 pm)—I undertake to take those questions back to the Minister for Industry, Tourism and Resources and get the answers to you as soon as I can.

Question agreed to.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.28 pm)—I move:

That the House of Representatives be requested to make the following amendment:

(2) Schedule 10, item 1, page 137 (lines 17 and 18), omit subparagraph 376-65(5)(b)(ii), substitute:

(ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and

Statement of reasons: why certain amendments should be moved as requests

Section 53 of the Constitution is as follows:

Powers of the Houses in respect of legislation

53. Proposed laws appropriating revenue or monies, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government:

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Amendments (1) and (2)

The effect of each of these amendments is to increase the number of films that may be eligible for a refundable tax offset under Division 376 of the Income Tax Assessment Act 1997. This will have the effect of reducing tax payable by claimants of the offset, and may result in refunds of tax to some claimants. The appropriation of any such refunded amounts is made by section 16 of the Taxation Administration Act 1953. The amendments are covered by section 53 because they potentially increase those appropriations.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

Amendments (1) and (2)

The Senate has long followed the practice that it should treat as requests amendments which would result in increased expenditure under a standing appropriation.

On the basis that these amendments would result in increased expenditure under the standing appropriation in the Taxation Administration Act 1953, it is in accordance with the precedents of the Senate that these amendments be moved as requests.
Senator SHERRY (Tasmania) (6.28 pm)—Labor supports the amendment.

Question agreed to.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (6.29 pm)—I move:

That the House of Representatives be requested to make the following amendment:

(1) Schedule 10, item 1, page 137 (lines 10 and 11), omit subparagraph 376-65(5)(a)(ii), substitute:

(ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and

Senator SHERRY (Tasmania) (6.29 pm)—Labor supports the amendment.

Question agreed to.

Bill, as amended, agreed to subject to requests.

Tax Laws Amendment (2007 Measures No. 4) Bill 2007 reported without amendments; Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 1) 2007 and the Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 2) 2007 be now read a third time.

Question agreed to.

Bills read a third time.

Sitting suspended from 6.31 pm to 7.30 pm

THERAPEUTIC GOODS AMENDMENT BILL 2007

NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE AMENDMENT (ALCOHOL) BILL 2007

Assent

Message from His Excellency the Governor-General was reported, informing the Senate that he had assented to the bills.

AUSTRALIAN CRIME COMMISSION AMENDMENT BILL 2007

Second Reading

Debate resumed.

Senator LUDWIG (Queensland) (7.30 pm)—I rise to speak on the Australian Crime Commission Amendment Bill 2007. Can I say at the outset that this bill has been rushed in, which is particularly evident in the preparation—perhaps you could call it that—that has gone into the bill to date.

I will go to the purpose first. The purpose of this bill is to amend 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 before, at the
same times as, or as soon as practicable after, the summons or notice has been issued.

It also seeks to protect those summonses already issued from being challenged—that is, these summonses are not invalid merely because the reasons were not recorded prior to their issue. This has arisen, as we are informed by the government, from a court case with the Australian Crime Commission against Brereton in 2007. The judgement was handed down on 23 August 2007, as I understand it.

Smith J said basically that, for a summons to be valid, reasons for issuing the summons must have been issued prior to the time the summons was actually issued. That case dealt with the issue of two subpoenas, and I will come to those shortly, but it does seem to demonstrate a couple of things. One thing is that the government has taken a view that this matter needs to now be progressed urgently, and it has introduced the bill at very short notice. The bill has not had the opportunity of going to a Senate committee, as many of these bills might otherwise. The opposition was given notice of this bill only last night.

I will give some background. The Australian Crime Commission is a Commonwealth statutory body working nationally with other federal, state and territory agencies to counter serious and organised crime. It aims to bring together all arms of intelligence gathering and law enforcement to fight against serious and organised criminal activity. The powers of the ACC are large. The ACC, through an examiner, may summon a person to appear before them at an examination to give evidence and to produce such documents or other things as are referred to in the summons. And, of course, an examiner has a special role under the legislation. An examiner has the power, under the ACC Act, to conduct an examination for the purposes of a special intelligence operation or special investigation. Examiners are independent statutory officers appointed by the Governor-General, and the purpose of an examination is to inform an examiner on matters that may relate to the subject matter of the special intelligence operation or investigation.

The government, as I have said, has rushed this bill to the parliament in response to the Australian Crime Commission v Magistrates’ Court of Victoria (at Melbourne) & Brereton [2007]. Briefly, perhaps it is worthwhile going to the circumstances of that case. Mr Brereton attended but refused to be sworn or make an affirmation of the truthfulness of the evidence. This was a matter that examiners had requested he attend. Brereton was then subsequently charged, as I understand it, under section 30 of the ACC Act regarding that refusal. Section 30 relates to a failure to answer questions. A person who contravenes section 30 subsections (1), (2) or (3):

...is guilty of an indictable offence that, subject to this section, is punishable, upon conviction, by a fine not exceeding 200 penalty units or imprisonment for a period not exceeding 5 years.

It is, in fact, a serious offence. The counsel for Mr Brereton sought to subpoena two lots of documents from the ACC. The first lot was any documents pursuant to section 28(1A) of the Australian Crime Commission Act 2002 which record evidence that the examiner was satisfied that it was reasonable to issue an examination summons. The second lot was any document pursuant to section 28(1A) of the Australian Crime Commission Act 2002 which records the reasoning for the issue of the examination summons on Mr Michael Brereton. The ACC sought to have both subpoenas struck out as an abuse of process on the grounds that they served no legitimate forensic purpose and constituted, in fact, a mere fishing expedition.
To cut to the chase, the magistrate rejected the application to have the subpoenas struck out, but it also transpired during those proceedings that to demand the person to take out an oath or affirmation, say, in the context of the proceedings there must first be a summons properly issued in compliance with the powers pursuant to section 28 of the Australian Crime Commission Act 2002. It is legitimate for a concern to be raised in relation to the exercise of that power, particularly when there is no record within the material as to whether or not the examiner has put his reasons in writing. When that occurs, it may affect the legality of the summons itself. The decision was appealed to the Supreme Court of Victoria, where the Supreme Court upheld the magistrate’s decision. The substance of the bill is to address those circumstances that were raised in the Supreme Court.

The first point is that the bill allows an examiner to execute a summons or notice to produce documents who may not be the same examiner who issued the summons or notice to produce. That in itself does not arise directly from the proceedings, but it is something that I will come back to. The second point is in respect of the matter that is at least on point with the decision. Labor understand that situations in respect of that first point may arise—for example, when there is leave for urgent duties—and where you can imagine that is a requirement that can be sought, and we do not cavil with that provision.

The issue is that the bill allows an examiner to record the reasons for issuing a summons or notice to produce after the summons or notice has actually been issued. It is important to note in that context that the report released in November 2005 of the Parliamentary Joint Committee on the Australian Crime Commission into the Australian Crime Commission Establishment Bill 2002 recommended at recommendation No. 14—and it is worth going to—that:

... the bill be amended to explicitly provide that examiners must satisfy themselves in each case that before they exercise special powers under the Act that it is appropriate and reasonable to do so and that they indicate in writing the grounds for having such an opinion.

The PJC also noted in the report that the independence of the examiners can be made more evident if the bill is amended to make specific provisions for examiners to assure themselves, before exercising their coercive powers, that it is appropriate and reasonable to do so and that they indicate the grounds for forming such an opinion. Some members of the PJC believed that the reasons should be recorded in writing. Although there was no formal government response to the PJC’s report, the government’s response, if you look, seems to be found in Senator Ian Campbell’s second reading speech on 15 November 2002, which also specifically addresses recommendation 14. He said:

The government agrees to this recommendation. The bill—that is, the Australian Crime Commission Establishment Bill 2002—has been amended to provide that examiners must satisfy themselves that it is reasonable in all the circumstances to exercise powers to issue a summons or a notice to produce and will be required to reduce to writing the reasons for taking the decision.

These amendments are outlined in items 9 and 10 of the Australian Crime Commission Establishment Bill 2002 supplementary explanatory memorandum. They do require an examiner to be satisfied that it is reasonable in all the circumstances to issue a summons or notice to produce. The provisions also require the examiner to record in writing the reasons for the issue of the summons. It does seem, though, even at that point that neither Senator Ian Campbell’s second reading
speech nor the amendments in the supplementary explanatory memorandum to the 2002 bill unambiguously stated when the reasons in writing to issue a summons or notice to produce should be provided by an examiner.

Clauses 2 and 7 of the bill before us amend sections 28(1A) and 29(1A) of the ACC Act to expressly provide that an examiner may record their reasons for issuing a summons or notice to produce before, at the time or as soon as practicable after the summons or notice has actually been issued. It is concerning to Labor, as it would be to the wider community, that the government does not appear to have had an understanding of how the practice of providing a record of reasons subsequent to the issuing of a summons or notice to produce actually operates within the ACC. In working through this, there are a range of matters that we will take the opportunity in the committee stage to examine, but hopefully it will not take too long this evening. They relate to the issue of how many summonses have been issued; how they have been audited; how they have been checked against the process of ensuring whether the summons was issued with written reasons at, prior or subsequent to the issue of the summons; and how the government has managed that process to date.

Labor understands that there are a significant number of cases that are currently before the courts and that information would also be helpful to understand how many cases can be affected by this decision. It does provide a situation where it appears a legal technicality surrounding the recording of reasons rather than the actual existence of a substantive reason would of itself allow those guilty of serious organised crime to, in fact, escape. That is of concern, especially where these are significant cases or could be potentially significant cases where significant time and effort has been employed. Labor understands why the amendment has been sought.

Clause 5 of schedule 1 ensures that the failure of an examiner to comply with the technical requirements of recording reasons for the issuing of a summons or notice to produce does not affect the validity of such an action. It is important to note, though, that the bill also provides for retrospective operation. Clauses 10 and 12 validate summonses and notices to produce retrospectively since the commencement of the ACC Act. Those matters do require a clear demonstration by the government. They can take that opportunity in the closing debate to demonstrate the reasons for retroactivity, because it is a fundamental rule of law that generally in Westminster systems retroactivity is not permitted and that most people should be aware of what the law is at the time that they are charged or that it is sought to have the law exercised.

But in this instance, weighing the matter itself, Labor will support the legislation. It does that with the knowledge that the government does have a heavy and clear onus upon it to be able to demonstrate, through these proceedings this evening, that for those matters that have been raised there are clear and unequivocal answers. Labor recognises that in addition, in certain circumstances, urgent action is necessary due to operational requirements that the practice of issuing a summons and then subsequently reasons to be written down can occur. It should really be standard practice that in all circumstances you can form reasons, write those reasons down, issue the summons and at least ensure that you then have a proper audited process.

Given that this is the last week in which parliament is likely to be sitting before a federal election, Labor will agree to facilitate passage, but we will continue to have a look at the operation of this provision. We are not
going to provide unqualified support for it. We need to ensure that it does operate as fairly as it is able—that it is in fact a technical hitch that has occurred and that it can be remedied without causing grave injustice to individuals—and that the law itself works properly and appropriately. From a broader perspective, when you examine the issues in detail you can see that the matters raised in the Victorian case do provide some substantive reasoning for the government to have now sought to provide this amendment.

There are a range of issues that go to the matter itself. This matter was ventilated in the decision of the Victorian Supreme Court. The matters I have adverted to were provided with some reasoning within the decision. It does not appear to be—although I am open to correction on this—the substantive point that was made by Justice Smith on the issue, but it does appear to be a subsidiary point or a collateral point that was made. Having said that, what is important to understand is that there are matters that do need to be carefully considered. Page 9 of the decision reads:

… the clear purpose of s 28 (1A) is both to focus and enhance decision making and to provide an accountability mechanism by requiring the creation of an ‘audit trail’. Under s 59 of the ACC Act that record is potentially available on request to the portfolio Minister and to the Parliamentary Joint Committee on the Australian Crime Commission, constituted under Part III of the ACC Act: ... as is not uncommon with investigative agencies, the Parliament has counter-balanced the secrecy regime it has erected to ensure the effectiveness of the ACC’s investigations with a measure of public accountability through a dedicated parliamentary oversight committee ...

It may also be a matter that should be returned to the ACC parliamentary committee for further monitoring, oversight and examination. It would be encouraging for the minister to advise on that. Justice Smith’s comments seem to have been made in the context of this issue. It is not raised as the primary point, but it is still an important point that the government cannot ignore.

They are not the only stakeholders in this. The Law Council has raised with me legitimate concerns about the impact of the bill. The Law Council suggests and believes that the government intends to pass in haste a bill which is specifically designed to perpetrate an injustice. The government does need to explain how their concerns will be allayed.

Of course, we know that Michael Brereton is currently being prosecuted in Victoria for refusing to be sworn or take an affirmation after he answered a summons to appear before the Australian Crime Commission and we wait to see how his rights will be affected. But we also cannot put aside the issue that these sorts of matters should not be attacked on mere technical grounds. It is important, in the interests of justice, that justice is not only done but seen to be done.

I will take an opportunity during the committee stage to raise some of the more specific matters. I suspect the minister will be able to take it on notice to provide answers if he is not able to do so this evening, but fundamentally Labor has indicated that it will support the legislation.

I remind the minister, in closing, that he does have a statement of expectation from the Australian Crime Commission where he, as the Minister for Justice and Customs, has indicated his expectation of the Australian Crime Commission—and he goes through a range of eight points.

I encourage the minister to also include the issue of ensuring that there is oversight and audit of these types of work, because without a clear audit trail, without clear oversight, without the figures being provided and collated, areas like this can unfortunately creep in. You can see how easily they can be perpetrated over a significant amount of
time. The legislation was first introduced in 2002 and was again reviewed in 2006 and the issue has only really come to light as a collateral matter in a Victorian case. That occasionally does happen. In this instance it has happened and it does have serious implications for the ACC’s current procedures. I encourage the minister to advise how he will resolve—(Time expired)

Senator STOTT DESPOJA (South Australia) (7.50 pm)—The government and the chamber will not be surprised to hear that the Democrats are at best a little peeved at the process before us. Certainly I attempted to convey that in my remarks this afternoon when we debated the idea that this bill should be exempt from the cut-off provision. That had little to do with, although it was related to, the complex or controversial nature of this legislation—legislation that the government refers to as dealing with a technical matter. It was partly, and primarily at that stage, because of the process. It is not acceptable in this house as a house of review for senators to receive legislation of a controversial, even urgent, nature—we received it this morning and we received a briefing, for which we are thankful—and then have it exempt from the cut-off provision and debated the same day.

I understood from the debate earlier that Senator Abetz, who was on duty in the chamber, was to endeavour to not delay unnecessarily this process for the benefit of the chamber—not just for the crossbenches, not just for the Democrats, but so that there could be some pretence of consultation and debate within the broader community, namely the legal community. My understanding was that there was going to be some attempt to delay this process. The government may suggest that there may have been a couple of hours—for which we are pathetically grateful and thank you because it did enable us to make some phone calls and consult with relevant authorities and groups—but to deal with this legislation on the same day that it is sighted is not acceptable. I know it is par for the course these days, and I hope that will change regardless of who is in power. This is an unacceptable use of the Senate’s powers, and the government could at least have waited until tomorrow morning.

Having put on record my concerns with the process, I am happy to turn to the substantive nature of the legislation before us. In the time the Democrats have had to be briefed on, analyse and scrutinise this bill—and of course consult with relevant groups in the community—we believe this bill amounts to a government patching up its mistakes; and doing so at the expense of fundamental legal principles and showing absolute contempt for the law-making procedures in this place. The bill, as we have heard, amends the Australian Crime Commission Act 2002. It is clearly a direct response to the decision of Justice Smith in the Victorian Supreme Court in ACC v Brereton [2007]. Its intent is to rectify a perceived deficiency in division 2 of the act, exposed by the court’s decision. As we know, division 2 deals with the coercive powers of the ACC—and these powers are by no means uncontroversial. So, before we even get to the point of debating the legislation and the change before us, we already start with the recognition and from the premise that the current powers and the relevant division are indeed controversial.

Division 2 allows an ACC examiner to compel witnesses to give evidence, including in circumstances where that evidence may be self-incriminating. Of course, various peak legal bodies have consistently opposed the extensive, widely used and wide-ranging coercive powers of the ACC examiners on the basis that they do represent an unjustified abrogation of the privilege against self-incrimination. I am aware of some of the
debates that have taken place on this matter, whether through the National Crime Authority committee days or the ACC committee and the relatively new legislation, but these powers are controversial—and they are questioned at best and condemned at worst by a number of groups in the community.

In ACC v Brereton the court ruled that section 28(1A) of the act required an ACC examiner to record in writing the reasons for the issue of a summons or notice to produce, issued under section 2 of the act, prior to the issue of a summons. Indeed, counsel acting for the ACC in that case was up-front to the court. He conceded that the existence of a document regarding the examiner’s reasons for issuing a summons was a condition precedent to the issue of the summons—in other words, a summons could not be issued unless the ACC had first justified its reasons for doing so. At this point, it is interesting to reflect on what the judge hearing the matter said. His Honour Justice Smith said:

The preconditions are no doubt specified because of the significant in-roads made to the right to silence and the need to ensure that the power is properly exercised.

The bill proposes to amend the act such that the reasons for the issue of the summons, required to be recorded under section 28(1A), will now be able to be provided as soon as practicable after the issue of the notice. The government is telling us that this amendment is justified and necessary because the situation as it stands is problematic where a summons has to be issued urgently or where a large number of summonses may be issued at one time. The government says, therefore, that this is a technical amendment.

We have heard this as a justification and we have seen this as a justification, and I am sure it will be put forward again. But a lot of groups do not agree that this is merely technical—and, I tell you what, the Australian Democrats beg to differ on that point. I consider that the explanatory memorandum is another in a long line of explanatory memoranda which are arguably misleading in a similar manner.

It is clear from Justice Smith’s reasoning that he did not view as a perfunctory exercise the requirement for an ACC examiner to issue reasons. On the contrary, Justice Smith considered that reasons are a necessary and substantive requirement of the decision-making process undertaken by the examiner. I am sure that when Justice Smith made this finding he did not envisage a legislative fix to the problem that simply removed the protective element.

I have discussed the extraordinary nature of the ACC’s coercive powers to compel a person to produce documents, to attend an examination and to answer questions even when the information sought may be self-incriminating; but, in addition to this, the ACC’s extraordinary powers are exercised, as we know, behind a veil of secrecy. We should expect in these circumstances that the power is exercised according to the letter of the law. As the Law Council puts it:

Strict compliance with the law is the least we can expect from enforcement agencies exercising extraordinary powers. Parliament would send a very dangerous message if it rewarded agencies which ignore the requirements of the law by passing retrospective legislation which not only shields the offending agency from the consequences of their past noncompliance but reduces the safeguards they must comply with in the future.

That is from the Law Council, the peak representative body for the legal profession in this country. They have put out a statement today with the same—or arguably much shorter—level of notice as the rest of us. They are not impressed by this legislation.

Section 28(1A) of the act contains dual requirements which are inherently linked: (a) that an examiner only issue a summons if
they are satisfied that it is necessary to do so and (b) that they record their reasons in writing. The second item is not a mere technicality as the government suggests—far from it. The requirements operate together as a safeguard against the misuse of the coercive powers and to deliver a degree of tangible accountability each time the powers are exercised. After the Brereton decision, the government was caught between a rock and a hard place. It is apparent that for some reason the ACC decided that it did not need to record its reasons—at least prior to any summonses or notices to produce being issued. This was despite the wording of section 28(1A) as it stands, which I think pretty clearly states that written reasons should be recorded.

Senator Johnston interjecting—

Senator STOTT DESPOJA—I am not sure what the minister’s interjection was, but maybe he will respond on that process. If people, especially the government, are frustrated by this debate, they have absolutely nothing on the rest of us. We have had less than 24 hours to look at, scrutinise, analyse, debate, potentially amend and pass this legislation—and then it is going to committee. If we are going to embrace retrospectivity, we may as well embrace it for all things and have retrospective committee references for retrospective legislation. It is extraordinary.

The result, the government says, is that a raft of evidence obtained under the ACC’s coercive powers is now subject to legal challenge. We are not dismissing that; we are not disputing that. We are not suggesting that that is not an important thing, but it would have been nice if the government had ensured that people had time to digest that and to look at the myriad of potential solutions available to the government or at least to look at the myriad of fundamental implications as a consequence of going down this particular legislative path. But what does the government do? It attempts to legislate retrospectively to remedy the ACC’s problems and incompetence. That is a big deal in this place, and I am sure that most senators, in dealing with a range of legislation—let alone legislation that deals with issues of criminality—find that legislation dealing with retrospectivity is controversial generally. And, specifically in this case, you bet it is controversial. The effect will be that any summonses or notices issued prior to the bill being enacted and prior to the decision in ACC v Brereton will be valid. We understand that there are up to 30 prosecutions currently on foot. I am sure that the government will outline the issues for us in those prosecutions involving evidence obtained in accordance with division 2 and those that will be affected by the bill.

Again, the Democrats do not underestimate some of the issues at stake here. There is not just the issue of those prosecutions or other cases that may be pending but also issues relating to fundamental legal principles that are potentially breached as a consequence of this legislation. As the Law Council has stated, this will have the effect of suddenly making valid summonses which were previously invalid. As a consequence, people who had previously committed no offence in that they had failed to comply with an invalid summons will suddenly be retrospectively liable to criminal sanction. That is what the Law Council is saying. So I ask the government to respond to those particular accusations, because the situation is quite dire. The right to certainty before the law and to not be subject to retrospective criminal sanction is a fundamental legal right. It is actually a basic human right. Article 7 of the European Convention on Human Rights provides that no-one shall be held guilty of a penal offence made so retrospec-
tively. Article 15 of the International Covenant on Civil and Political Rights provides:
No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.

My opposition to this legislation is obviously evident, but I am not alone. I am not alone in having concerns about the process and the policy that we are debating today. I think it was summed up well today by the Law Council when they commented:
The Law Council believes that the Australian Crime Commission Amendment Bill, which the government intends to pass in haste, is specifically designed to perpetuate an injustice. The government is inviting the parliament to be complicit in this act. The parliament should reject the proposals.
The Democrats agree with this sentiment. The bill will abrogate a fundamental human right—that is, to not be subject to retrospective criminal sanction. If that is acceptable, if that is the new mode or the new acceptable form in this place, then we need to know about it. Is this standard across the board or is this just in relation to the particular powers—and the arguably coercive powers, at that—of the ACC?

Clearly for some it is not that serious. The bill deals with very controversial provisions which abrogate the right to remain silent, yet we have been given a day to consider it. Moreover, the bill removes safeguards which are not only procedural but form part of the substantive process in an examiner being satisfied that a summons or notice to produce ought to be issued, thus invoking the jurisdiction of the ACC, to use its coercive powers. I do acknowledge that the government, including the minister’s office, and the ACC have made attempts to explain their understanding of the purported urgency of the legislation before us. And, my goodness, of course we acknowledge that the Crime Commission has an incredibly tough time in combating organised crime and without doubt, in some cases, the powers that it has have been and are justified. This is not about the Democrats going soft on crime or wanting people to get away with things. This is us doing our job as legislators in terms of debating legislation in a way that ensures proper time for scrutiny and reflection.

I acknowledge that the government, and certainly the minister’s office today, were very happy to provide briefings. Thank you for that; it was very helpful. But in terms of the government’s role—the government of the day doing this in such a hasty manner—we need more justification. I believe there has been a pattern in this place of government members on occasion paying lip service to the scrutinising role of this particular chamber. There are times when it is more evident than others. Having less than 24 hours to deal with legislation that has wide-ranging impacts, is such a highly contentious piece of law and is arguably offensive to principled sections of law means that on a day like today the Senate is not doing its job.

I realise this debate has obviously been brought on quickly. There are not many speakers on the list—I think there are three of us from non-government parties. I am assuming the intention is to move into the committee stage immediately after this, so there will be minimal time. I note that, in his comments, Senator Ludwig indicated that on behalf the opposition he would be asking the government some questions, some of which he expected they would take on notice. I am assuming Senator Ludwig is confident of getting answers tonight, because, given the bill will go through tonight, when he says ‘take questions on notice’ I am not quite sure of the time frame he is allowing.
In conclusion, I do not doubt the importance of this bill. I do not doubt the government believes that there is urgency and that there is a matter which needs to be resolved. I do doubt that this is merely technical. I do believe this has broad-ranging implications and I really think the government could have acceded to our request not to give us a token hour or two in relation to this legislation. It pretty much stayed in the same place on the Notice Paper, let’s face it—it has not moved up. They could have given us another night. I wonder what consultations have taken place between the government, relevant authorities and the affected communities—and by that I mean the legal sector. I wonder what discussions and negotiations have taken place, because my reading of the Law Council’s attitude is that they have nothing but contempt for this process and the legislation before us. On those grounds, the Democrats will not be supporting the legislation.

Senator Parry—Mr Acting Deputy President, I want to correct the record. There is not a ‘token hour or two’; it is totally dependent on how many speakers there are on the bill.

Senator NETTLE (New South Wales) (8.10 pm)—I want to echo Senator Stott Despoja’s comments in relation to the process by which we are dealing with this legislation. The Australian Crime Commission’s role is to address serious and organised crime in Australia. Over time it has acquired extremely draconian coercive powers that have eroded fundamental legal principles such as the right to silence and the privilege against self-incrimination. The Australian Crime Commission’s special coercive powers include the ability to summons a person to an examination to give evidence under oath or affirmation and the power to obtain documents. Penalties for failing to comply with the Australian Crime Commission’s coercive powers include fines and imprisonment. It is this power to issue summonses, requiring people to answer questions with a limited right to silence and no privilege against self-incrimination, that this bill seeks to expand.

The Australian Crime Commission Amendment Bill 2007, which the government is seeking to rush through parliament, will remove one of the few mechanisms of accountability over the use of the Australian Crime Commission’s coercive powers. The bill will operate respectively to validate any and all summonses that have been issued unlawfully by the Australian Crime Commission. It will also mean that any future summonses issued by Crime Commission examiners will not have to conform to the existing accountability for the issuing of summonses. The impetus for this extraordinary legislation was the recent case before the Victorian Supreme Court that others have referred to. The case was part of an ongoing legal proceeding that arose from Operation Wickenby, which is part of a very large investigation and prosecution of alleged tax evasion associated with various participants in the media, entertainment and sporting industries.

Before I canvass the issues that arose in that case and that arise in this bill, I want to make clear that the Australian Greens are very supportive of the work of the tax office and others to detect, to prevent and to punish tax evasion. Integrity of the tax system is crucial to ensuring the government’s capacity to provide services and programs for all Australians. However, that is not the issue before the Senate today. We are considering what powers and what limitations on those powers are proper for the Australian Crime Commission. I make that point because the government have sought to justify this bill primarily by reference to the particular high-profile tax evasion case, which they say may be hampered because of the failure to follow the existing forms of accountability set out in the Australian Crime Commission Act. It is not
and should not be the role of this parliament to rush through special legislation to make up for the shortcomings or failings of investigators in particular tax evasion cases.

The government says that the bill will provide that a summons on notice will not be invalid merely because it fails to comply with technical requirements of the act. These so-called technical requirements are the need for a Crime Commission examiner to record reasons before issuing a summons. The recording of reasons is not, as the government says, merely technical but one of the few mechanisms of accountability that there is over the Crime Commission’s coercive powers. The Victorian Supreme Court pointed this out in its judgement in the Brereton case, quoting the decision of the magistrate in the original hearing, in which His Honour said that the requirement to record reasons:

... is both to focus and enhance decision making and to provide an accountability mechanism by requiring the creation of an ‘audit trail’.

Under section 59 of the Australian Crime Commission Act, that record is potentially available on request to the portfolio minister and to the Parliamentary Joint Committee on the Australian Crime Commission, constituted under part III of the Australian Crime Commission Act.

As is not uncommon with investigative agencies, the parliament has counterbalanced the secrecy regime it has erected to ensure the effectiveness of the Australian Crime Commission’s investigations with a measure of public accountability through a dedicated parliamentary oversight committee. The court then went on to say that the production of such records is also important because the question of access to a record of reasons might occur:

... in the context of a criminal trial where an issue is raised as to satisfaction of a precondition to a valid examination summons and the document recording the reasons is sought using a subpoena.

That is the present context and is very different. There is every reason to allow the usual trial procedures to operate. There would be little comfort to an accused person, sitting in jail after sentence, to find out subsequently, through the actions of a parliamentary committee, that the conviction is invalid.

The government also seeks to justify this bill by claiming that the existing act does not require the record of reasons for the issuing of the summons to be made prior to the issuing of the summons. This is a tortured argument given that, if the government thought that was the case, why is the bill being brought forward? In any event, this is clearly not the view of the Victorian Supreme Court or, indeed, counsel for the Australian Crime Commission in the Brereton case. His Honour found:

There was, as Counsel for the plaintiff properly conceded in this proceeding, a condition precedent to the validity of the issuing of the examination summons—namely, the existence of a document recording the examiner’s reasons for issuing the examination summons, such document to be in existence before the examination summons was issued.

His Honour then went on to say:

The pre-conditions—

that is, the production of a record of reasons—

are no doubt specified because of the significant in-roads made to the right to silence and the need to ensure that the power is properly exercised.

Contrary to what the government is saying in this place today, the courts clearly believe that the present act requires a record of reasons to be produced before a summons is issued. Let us then be clear about why the government is bringing forward this bill. It is doing so because it wants to override the views of the Victorian Supreme Court and the existing accountability under the act and further loosen the limits on the coercive powers of the Australian Crime Commission.
It is doing so retrospectively because it seems clear that at least some of the warrants issued by the Australian Crime Commission have not been issued in the manner that was required by law, which, as the court has said, requires a record of reasons to be made prior to the issuing of the summons.

The Australian Greens do not support this bill. We do not think this important mechanism of accountability should be removed and we do not believe that it should be removed retrospectively. It is not the first time in recent history that the government has brought forward ad hoc amendments to the Australian Crime Commission Act to reduce accountability. Most recently, for example, it used the pretext of the intervention in the Northern Territory to lengthen the tenure of Australian Crime Commission examiners. This bill should not be rushed through the parliament at the end of this sitting, on the eve of an election. It is a further example of the cavalier attitude of the government to fundamental rights and liberties in this country, and it is further evidence of why we need a bill of rights in this country. The Greens will not support this bill.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.17 pm)—I thank members for their contributions to this debate. The Australian Crime Commission Amendment Bill 2007 clarifies that the Australian Crime Commission examiner can record their reasons for issuing a summons or notice to produce before, at the same time or as soon as practicable after the summons or notice has been issued. I say that to clarify very clearly that section 28(1A) of the act has a provision which says:

Before issuing a summons under subsection (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so.

The section goes on to say:

The examiner must also record in writing the reasons for the issue of the summons.

The technical issue at stake here in this amendment is when—that is, when the examiner should record in writing the reasons for the issue of the summons. We have recently had His Honour Mr Smith in the Victorian Court of Appeal stating that he should do that before the issue of the summons. Nowhere in the section is that made clear.

It is not practicable to await a parliamentary committee inquiry into the Australian Crime Commission Bill before proceeding to debate and passage. As I have said, as a result of the findings of Justice Smith in the Brereton matter, there is a pressing risk of collateral challenge to the validity of quite a large number of summonses and notices issued by the Australian Crime Commission examiners. Significant prosecutions could be derailed or delayed, based on challenges to the validity of summonses and notices if we do not make these amendments now.

The government does support, as I support, having the maximum degree of parliamentary review of amendments of this kind that is possible. I will therefore write to the chair of the Parliamentary Joint Committee on the Australian Crime Commission to invite the committee to review these amendments, albeit after the event. If deficiency is found or the degree of protection, safeguards, checks and balances is not found to be sufficient, the government will then consider those findings and seek to address those points raised, whilst seeking to preserve the integrity of the intent of the legislation.

I also briefly mention an issue that I feel strongly about and that, of course, is retrospectivity. I note that some provisions of this bill apply retrospectively to provide that the summonses or notices to produce issued after the commencement of the ACC Act but prior to the commencement of the bill are not in-
valid where reasons were recorded subsequent to their issue. I understand that the retrospective application of these provisions could be detrimental to persons who might otherwise have had scope to challenge the validity of the summonses or notice to produce. Those persons would, no doubt, in the practical reality of defending their position, instruct their counsel to take proceedings in line with the precedents set out in Brereton. They would incur considerable cost. They would incur expense and time, and, indeed, court time would be taken in the pursuit of this recently elicited precedent. We seek to stop them doing that whilst also providing for the integrity, as I say, of the intent behind these provisions.

The government considers, however, that through amending this act at this time this is a just and appropriate outcome. It does not consider that a failure to record reasons for issuing a summons or notice prior to the issue of the summons or notice should give a person who would otherwise have been convicted of an offence the technical grounds to challenge the admissibility of evidence and thereby escape conviction. Prosecutions need to turn on facts and evidence, and I for one, in the scope of these provisions, do not believe that they should turn on matters of a technical nature. We seek to clarify an apparently equivocal provision because it has now been construed and I am respectful of His Honour’s decision.

We seek to clarify that so that the Crime Commission can move forward with confidence and, indeed, so that those people who may come under the purview of this legislation as citizens will know precisely where they stand. Need I say that the government will always be vigilant. Where there is a technical issue that seeks to allow for a defence issue to be raised on the basis of a misinterpretation, vagueness or an uncertainty within the legislation, the government in these circumstances will be ready to act.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland) (8.23 pm)—I will try and confine my remarks to eliciting some response to the issues at hand rather than going to the details of substantive submissions. Is the minister able to say how many matters are affected by the invalidity? Can those summonses that have been issued which would fall to this technicality if the legislation was not passed be ascertained? The second part of that—and I will try and encapsulate the broader issues as well—is indicated in the Law Council’s submission, which states, ‘Also, as a consequence, people who had previously committed no offence in that they had failed to comply with an invalid summons will suddenly be retrospectively liable to criminal sanction.’

Is there also a class of individuals who have failed to comply with an invalid summons and could be attacked for the technical reasons that have been highlighted by His Honour Smith? How do the processes of the ACC operate in terms of the examiner dealing with the issue of the summons? Perhaps the minister could confirm whether the examiner forms the reason and then, by and large, takes the opportunity of issuing the summons because the operations might be live, happening or unfolding, and then, subsequently or contemporaneously to the issue of the summons, he prepares his written reasons—the written record. Prior to an examination those written reasons would be available and could be challenged by a counsel for the person who is the subject of the summons for a range of reasons. Of course, the government could argue public interest immunity and the like.

CHAMBER
Are statistics available which demonstrate that the examiner might do it prior to the summons, at the time of the summons or after the summons? If none of those statistics are kept, is there an intention to ensure that there is an audit trail under the proposed new regime? What you are now suggesting is that those three distinct possibilities will be available to the examiner in the new regime—that is, that the record be made before the issue of the summons, at the same time as the issue of the summons or as soon as practicable after the issue of the summons.

In addition to that, what does 'as soon as practicable after the issue of the summons' mean? Will another problem be created in determining when that point is? Can it be collaterally attacked on the basis of a technicality with regard to the meaning of as soon as practicable after the issue of the summons? I know it has been difficult to determine the length of time, but it is likely that at some point it will be outside as soon as practicable. You could end up with another opportunity for a collateral attack in respect of the summons, in that it may be more than a practicable time afterwards. Of course, that would turn on the facts and issues of the case itself. It concerns me that another technical point might open up down the track. When you read the original section 28(1A) and go back and look at the records, you will find that it did not seem to seize the issue of when the examiner for the ACC should reduce the reasons that they had already formed to writing—whether it was an oversight or whether in fact it was already in their mind how the process would work and nobody sought to turn their mind to it. I will pause at that point and give the minister an opportunity to answer.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.28 pm)—In excess of 600 summonses have been issued that would be subject to section 28(1A). However, of course, arising from those there are potentially approximately only 30 prosecutions. I am advised that in almost all cases there are reasons written shortly after the affirmation of the issue of the summons. Reasonably practicable in terms of the time to provide those reasons is a matter for the court. The simple reason for that is that in each of these circumstances there may be different issues to deal with, different reasons, different urgencies and different contexts. Indeed, what in one case may be almost contemporaneous for reasons which would be justifiable may be some long time or some short time after the issue of the summons. As soon as practicable after the issue of the summons is a matter for determination and adjudication by the court, should there be a challenge.

Senator LUDWIG (Queensland) (8.30 pm)—The other finer point went to whether that class—you indicated there were 30 prosecutions on foot—is those who had failed to comply with a summons. In other words, if we put Mr Brereton in a class of his own, are there any individuals who have failed during that period to comply with the summons where the reasons were then reduced to writing after the summons? That may not be able to be ascertained, but it might be. I will see whether the minister can shed light on that.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.30 pm)—I am told that all of those summonses have been attended by circumstances of a summons with reasons at some short time afterwards, although there will be some that have been at the same time. But the vast majority—the 600—have yielded only 30 prosecutions that are currently on foot.

Senator Ludwig—Therefore failure to comply?
Senator JOHNSTON—No, they are not failure to comply.

Senator LUDWIG (Queensland) (8.31 pm)—I thought the 30 prosecutions were prosecutions at large on matters they are in strife about. The point I am trying to ascertain is: how many, if any, of the 600—relate to people who have failed to comply with a summons and have then been charged with failure to comply with the summons? In other words, they have then suffered either a 200-unit penalty or a five-year term, as the case may be, and been prosecuted for failing to answer the question.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.32 pm)—There are very few prosecutions for failure to comply. The 30 are the substantial cases wherein the summonses, with the annotated reasons attached a short time after, have yielded a superior prosecution; that is, charges flowing with respect to those 30 major matters. But there have been in excess of 600 summonses executed.

Senator LUDWIG (Queensland) (8.32 pm)—That is what I was alluding to earlier in respect of taking it on notice, and of course that information could be passed to the Parliamentary Joint Committee on the Australian Crime Commission when it does look at this. You can take this on notice, but in terms of those matters that the Law Council and I have raised, while I understand the number of persons is relatively small, how many people fit into that class where they have failed to answer the summonses—

Senator Johnston—Refused.

Senator LUDWIG—I should say 'refused to answer the summons' and have therefore been subsequently prosecuted for refusing to answer the summonses in some way, shape or form and have suffered a penalty?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.33 pm)—There are not very many: approximately, but do not hold us to it, half-a-dozen would have refused and would have the benefit of this particular case—or may have the benefit; I do not know, but may have the benefit—and would have a live issue to explore in terms of justifying the refusal on the basis of this case.

Senator Ludwig—On a technical ground?

Senator JOHNSTON—Yes.

Senator LUDWIG (Queensland) (8.34 pm)—It would turn on the factual matrix of the case if it was pursued. The other matter goes to the advice provided to other states and territories. I understand the ACC is a body that does liaise with various states and territories in its operations. Have the states and territories been advised of this issue? What is their response to date?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.34 pm)—There has not been a response to date because I have not written to them, but I will shortly.

Senator LUDWIG (Queensland) (8.34 pm)—As I understand it, the states and territories have complementary legislation in their respective states and territories. As such, is the minister able to identify whether the same issue arises within those states and territories and whether or not the minister intends to take action to assist the states or to find out what the states will do? That is also a matter that I would expect the parliamentary joint committee could also monitor.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.34 pm)—We are not aware of any matters in the states and territories that are directly on point with respect to the problem here but we will write to them. We will seek that they amend
and have harmonious legislation to our legis-
lation following this amendment.

Senator STOTT DESPOJA (South Aus-
tralia) (8.35 pm)—A quick query on the
process relating to the joint committee: I un-
derstand that the minister will write to the
parliamentary joint committee in order to
facilitate this process but is there a time
frame that the minister envisages? One of
the reasons we are dealing with this legislation
and other legislation so quickly is the fact
that this could be our last sitting week for the
parliament, so obviously that has some im-

Senator JOHNSTON (Western Austra-
lia—Minister for Justice and Customs) (8.35
pm)—I anticipate writing to the committee if
not this week then early next week. What the
committee does is for the committee. They
will either reject my letter and say they are
perfectly happy, or they will take it and con-
duct an inquiry. It is a matter for the commit-
tee as to whether or not it is a narrow inquiry.
I would anticipate the committee would re-
port possibly in the New Year.

Senator LUDWIG (Queensland) (8.36
pm)—Is the minister able to explain the cur-
rent auditing procedures for the 600-odd
summonses that have been issued and in par-
ticular how the ACC ensure that the warrants
are tracked in the process? It struck me that,
with the way the summonses are issued, you
could track the summons itself. I would like
to know whether the ACC track when the
written reasons are reduced, published and
dated and whether that is prior to an exami-
nation taking place. Or can the minister rule
out that at no point an examination takes
place before the reasons are reduced to writ-
ing?

Senator JOHNSTON (Western Austra-
lia—Minister for Justice and Customs) (8.37
pm)—They did not centrally review the mat-
ters with respect to those details prior to this
case; they do now.

Senator LUDWIG (Queensland) (8.37
pm)—Thank you, Minister, for that answer.
So, as I understand it—I did not want to put
words in the department’s mouth—there is
also no record as to whether the reasons were
reduced to writing prior to the examination.
Or can you say that the ACC can confidently
say that, for every one of the examinations
by an examiner that took place, the reasons
were already written down so that they were
there for the usual challenges, I guess, based
on the reasons themselves, subject of course
to the matters being argued or brought before
a court in respect of some matter about the
reasons themselves?

Senator JOHNSTON (Western Austra-
lia—Minister for Justice and Customs) (8.38
pm)—The ACC is reviewing that with re-
spect to ascertaining exactly what has been
the historical disposition and context of that,
obviously initiated by the case.

Senator LUDWIG (Queensland) (8.38
pm)—The reason I also put that on the re-
cord is so that the Parliamentary Joint Com-
mittee on the Australian Crime Commission
can take that and also examine that with the
ACC at some point so that these issues are at
least ventilated more clearly and, if remedial
action needs to be taken, it can be taken ef-
effectively. I did not want to second-guess
what that outcome might be or what the cur-
rent situation is, so I put that in a frame that
asked the question rather than made an alle-
gation about these issues.

Of course, the other matter I think it is
important to highlight is that this amendment
does not affect Sankey v Whitlam—and I put
this as a question for the minister—in the
sense that the challenge that could be
mounted that goes to whether or not written
reasons are made available is still a large
issue. In other words, it does not put it be-
beyond the challenge of parties to then seek to argue that the reasons should be made available to the parties and tested in some way against the public interest.

While the minister is taking advice on that, I can go to the particular matter in more detail. In Alister v R, a High Court case, that went to the general principle:

The general rule is that the court will not order the production of a document, although relevant and otherwise admissible, if it would be injurious to the public interest to disclose it. However the public interest has two aspects which may conflict. These were described by Lord Reid in Conway v Rimmer... as follows: ‘There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done.’

In short, this does not put beyond challenge those issues that someone may want to ventilate about the written reasons that are provided. Of course, it is still open for the government to argue public interest immunity and all those other matters, but it is about ensuring that this only deals with the technical matter.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.41 pm)—The amendment at the end, subsection (8), which sets out that ‘a failure to comply with any of the provisions does not affect the validity of a summons’, answers the question. It is still open for a defendant or prospective defendant, as the case may be, to raise the threshold issue and explore the reasons, but a failure to comply with the provisions of (1A) after the passing of the bill will not render the summons ineffective or invalid—in other words vitiates it—by that failure, so that the provisions wherein a person is entitled to explore the legal veracity of the various instruments are there, but a failure to comply, in this instance, will not invalidate the summons.

Senator LUDWIG (Queensland) (8.42 pm)—So, as I understand it, the right still exists. This is simply a matter that goes not to the substance of the written reasons but to the issue of not invalidating the provision because they are not written.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.43 pm)—It does not limit what a defendant can try and get hold of. But, if there is no compliance, the summons is still valid.

Senator LUDWIG (Queensland) (8.43 pm)—I think it is helpful in this debate to ensure that those sorts of matters are clear—that we are not intruding in respect of the argument that was raised in Sankey v Whitlam, in that the public interest still remains as a balance between that which might be available and that which might not be available to these types of matters, and in that this amendment is narrowly cast to fix what has been quite a long issue. The question which also raises itself, which should be asked, is: when did this first come to light, and when did the ACC—that is, the Australian Crime Commission—advise the minister of the issue?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.44 pm)—It obviously came to light when the magistrate refused to strike out the subpoena for the reasons. So you will note that a prerogative writ was issued to the single judge of the Victorian Court of Appeal alleging error on the face of the record with respect to the adjudication by His Worship—now maybe His Honour; I do not know whether they have changed that. But the point is that the amendment is narrowly cast. It is a technical amendment and indeed, as some senators have commented in the speeches in the debate on the second reading, it is not as
broad as they have anticipated, with great respect.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (8.45 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

QUARANTINE AMENDMENT (COMMISSION OF INQUIRY) BILL 2007

Second Reading

Debate resumed.

Senator LUDWIG (Queensland) (8.46 pm)—I was going to speak on the third reading of the last bill, the Australian Crime Commission Amendment Bill 2007, but I did not. But I will speak on the Quarantine Amendment (Commission of Inquiry) Bill 2007. This is a matter that does have a devastating effect on Queensland. The breakdown or what appears to be a breakdown of quarantine such as has been articulated in the press and at large affects not only the racing industry per se but also broader interest groups and stakeholders in this area. It affects not only those who go to the races themselves—and who might place a bet every now and then—but also those who attend riding schools, the strappers, the trainers and those who have stud farms. All of those people are adversely affected. Of course when you go back and look at the issues to do with AQIS you see that a lot of them were raised in the Nairn report. The issues around the breakdown of our border security were ventilated at that time. It is important to make sure that we do have integrity of our borders. It is important to maintain our borders to ensure that these breaches do not occur.

It is particularly encouraging to see that the government have moved to provide an inquiry. That inquiry should be wide ranging enough to ensure that all the matters that are brought forward by people can be clearly articulated and properly examined during the inquiry. This area of course has many stakeholders, and it is incumbent upon the government to ensure that those stakeholders have the ability to put forward their submissions and the ability to articulate their concerns. It is important that the system has integrity to ensure that the outcomes are also respected. What the government should also take on board is that any findings or recommendations made by the inquiry be provided with sufficient support and encouragement so that the industry can examine those. What this industry does seem to have been characterised by—which you see especially when you look at the Nairn report itself—is a series of breaches of quarantine over the last couple of years. Issues such as whether or not the department keeps statistics on these things or a frequency graph to ensure that it manages its border protection should also be ventilated to ensure that the industry does gain a valuable insight into the operation of AQIS and how it maintains our borders.

Having said that, I will end my contribution at this point. I see that the shadow minister has turned up to provide a contribution to this debate.

Senator O’BRIEN (Tasmania) (8.49 pm)—Thank you, Mr Acting Deputy President Macdonald. I know that you have a strong interest—indeed, a vested interest—in equine issues, as a keen rider. At least you were in the past; I am not sure of the current status of your equestrian pursuits. I think the reality is that this is an issue which pertains to anyone with an interest in the various
breeds of horse within the equine population of Australia, as well as some other animals that are affected by this disease. So far as the opposition are concerned, we have long been of the view that Australia needed a rigorous and secure quarantine system and that our island status effectively equipped us to resist the introduction of a great many diseases, including the equine influenza disease. This is a disease that exists in horse populations in every significant country around the world where such populations exist—until recently with the exception of Australia and New Zealand. This is a disease which has caused havoc in the countries in which outbreaks have occurred—closing down racing industries; significantly affecting breeding industries; limiting the movement of horses; and occasioning significant expense because of the need, where the disease widely penetrates the equine population of a country, for the introduction of vaccines. These vaccines have a high cost, mask the presence of the disease and make it more difficult to ultimately detect and therefore control in terms of its spread.

We were free for quite some time of this disease that has caused significant problems for racing industries in South Africa, Hong Kong, Japan, the United States, the United Kingdom and France. The situation that we found ourselves in from about 24 August this year was one that shocked Australia’s racing and breeding industries. Thoroughbreds and standardbreds in the racing industry have been affected, and there has also been a significant impact on the breeding industry.

We have seen the introduction of a disease. Whilst it has not been absolutely proven, there have been a variety of comments which I think allow me to say that the overwhelming probability is that the disease was introduced by stallions flown into Australia on 8 August this year that had spent some time in Japan. Japan experienced an outbreak of equine influenza that was first noticed around 14 August, which means that it was present before that time. The horses that came from Japan arrived on 8 August, so there was a significant overlap.

One would have thought that, with horses coming from a country where there had been an outbreak of disease, we would have had barrier arrangements and quarantine arrangements in place to prevent the disease from escaping. As I understand it, those horses arrived from Japan in a box or crate, were lifted off the aircraft and walked from the crate into a float and were moved from Mascot airport. Some horses were moved to Eastern Creek in Western Sydney and some to Spotswood in Victoria. It turned out that it was the Eastern Creek horses which were carrying the disease, apparently. There is a possibility that the disease found its way onto the truck which carried the horses from the airport and that it was not properly cleaned when the horses were disembarked at Eastern Creek and that the disease was spread that way, but it is much more likely, given other material that is in the public domain, that the disease spread from Eastern Creek. I will come to my reasons for saying that shortly.

This would have to be the worst instance of a breakdown of Australia’s quarantine in living memory. This disease has an impact upon equine industries which can only be measured in millions of dollars, in thousands of jobs and in lost opportunities. Let me extrapolate from a couple of those propositions. The disease has now moved extensively into the Hunter Valley. The Hunter Valley is the home of a number of thoroughbred studs. Those thoroughbred studs house stallions with the most expensive service fees in this country. Within that region are the young horses from the previous crop and mares that are expecting to foal down and conceive during the current season. The disease may
mean that the Hunter Valley is isolated for a period of months and, depending on how long that lasts, that might mean that the yearlings in the Hunter Valley will not be able to be sent to the yearling sales coming up early next year. The impact of that will be enormous, let alone the impact of the disease on racing carnivals and on the stallions that are detained at the Eastern Creek quarantine centre. One of those stallions has a stud fee of $225,000 a service. I am told that he would be expected to cover 50 or more mares a month whilst in service from the beginning of September. It does not take much to work out that there will be millions of dollars lost to the owners of that animal, let alone any others.

How did this come to pass? We are not sure. The Labor Party was first in calling for a judicial inquiry into this matter. When the outbreak in Japan was known, the Minister for Agriculture, Fisheries and Forestry said on 19 August in relation to this matter that:

Australia will not take any risks with horses being imported from countries where EI is present.

On 24 August, he said:

It is likely that the infection has originated from another horse in quarantine that has contracted the disease but has not shown any clinical signs of it.

While it’s too early to be certain, we suspect this to be one of the horses from Japan, given there has been an outbreak of EI in that country.

On 27 August, because there had been an outbreak at Maitland, the minister said that the Maitland event might have been the source of the domestic outbreak. On 28 August, the minister said:

We still cannot track the actual source of the infection and therefore blame or liability cannot be assigned …

We just don’t know - there has been no breach of the impenetrable quarantine barriers at Eastern Creek, our focus has shifted to Maitland where a couple of hundred horses passed through and have passed it to other horses.

On 28 August, when talking about whether the disease had come from overseas, the minister then said:

You would assume that because we’ve never had it in Australia before … but it might have been dormant and come to the surface.

That is a remarkable contribution! On 31 August, he said:

We want to identify what went wrong so it can never happen again and so we can repair the breach.

He also said:

It’s going to be human error, there’s no question, but were the quarantine procedures adequate?

The minister bounced around all over the place between 19 August and 31 August in relation to whether the disease came from overseas, whether it got into Eastern Creek or whether it originated magically out of nowhere in Maitland. That is a remarkable set of contributions, all in the context of an industry facing a dramatic circumstance, millions of dollars in losses and the inevitable discussion about the possibility of a massive legal case being taken against the Commonwealth because of a breakdown in the Commonwealth’s quarantine arrangements in this country.

Something that has been little noted in public commentary about this was published by AAP on 30 August. It is not sourced to an individual; it is sourced to an unnamed person. It is very interesting to read, and I propose to put it into Hansard. The story reads:

Quarantine procedures at the federal government’s Eastern Creek facility in Sydney have been regularly breached, according to a stallion groom formerly employed by a leading US stud.

The groom, who declined to be named, told AAP today he and other grooms of overseas shuttle stallions were allowed to come and go from Eastern Creek without using strict biosecurity and
quarantine measures while caring for their horses at the facility in 2001 and 2003.

The groom was employed by a leading Kentucky stud and was in charge of seven stallions during his first trip in 2001 and four stallions in 2003.

The groom revealed he and other stallion grooms were allowed to leave Eastern Creek on numerous occasions, without changing clothes or “scrubbing down”, to attend race meetings, play golf and to eat and drink at local hotels and restaurants.

The Eastern Creek centre is one of the possible sources of Australia’s first equine influenza (EI) outbreak which has shut down racing in Queensland and New South Wales.

Later on the article goes on to say:

The groom was required to stay at Eastern Creek by his employers, but conditions for the stallions and their handlers at the time were so bad he and others frequently left the quarantine centre.

“I unloaded the horses from a national transport truck into the facility and was supposed to stay there with the horses all the time,” the groom said.

“But the conditions for the horses were only just acceptable. If they were my stallions I wouldn’t be taking them there.

“They didn’t wash out trucks after horses were unloaded and drivers used to help unload horses and then drove off after they were in contact with horses.

“There was no scrubbing down. Not once.

“I was there for two weeks each time and I never saw a foot-bath—which you are supposed to use all the time.”

The groom said walking out of Eastern Creek was easy and he did it often to eat at a local pub.

“We had to let them know when we were going out but no one enforced any of the quarantine protocols,” he said.

“They knew what was happening but we were free to do what we liked.

“I even went to the races at Randwick with five other grooms and played golf on a few occasions without scrubbing down.

“A well-known breeding stud had a big marquee at Randwick one day and I was invited and went along ...”

It is remarkable that a person who was in a quarantine facility with horses coming from a country that might carry diseases can come and go without any quarantine procedures. Not only that, he can go to the local pub, go to the races and attend the marqueses of people running studs in other parts of the country. The potential for disease spread was enormous.

That is one of the reasons we need a thorough and rigorous examination of this matter. Who was in charge of quarantine facilities, if these were the circumstances that existed? The minister last week was asked a question in the House of Representatives. It was to the effect that, in the last two weeks, procedures were tightened at Eastern Creek, and, to go to the local pub for lunch, grooms and handlers were required to change and shower both coming in and going out. That was a new procedure that had not previously applied, although there had been regular visits by those handlers from the quarantine facility to the local pub. There has not yet been an answer to that question. I think we are entitled to draw the conclusion that, if the minister cannot rule it out, that is exactly what has happened—that the arrangements, rules, regulations and requirements of contractors, probably, at Eastern Creek have not been appropriate for a quarantine facility.

If horses were introduced from another country and a disease as infectious as equine influenza came into the facility, and if the arrangements that were described by the unnamed person in that AAP story are an accurate reflection of what has been going on, the only thing that is remarkable is that we have not had a disease outbreak in horses from that facility earlier. There may be other issues with the operation of that facility and with other animals or plants there that have
not been securely kept, and we may have other problems which we do not yet know about or which have not been sourced to that environment. But, as I said earlier, we now have a situation where it is almost certain that a disease has been introduced into this country, in all likelihood by procedures which have not been appropriate or rigorous enough to meet the requirements of a modern, world’s best practice quarantine facility.

We called for a judicial inquiry very early in the piece—I think on 24 August, shortly after it was known that the outbreak occurred. It was very clear to me and to other members of the opposition that the consequences of this outbreak, if it spread, would be enormous. Unfortunately, that has been the case, and we do not wish that upon the industry. We now need to conduct a rigorous inquiry which examines all of the matters relevant to the protocols, procedures and rules which applied to the importation of horses and to any decisions which have been taken from a ministerial level to a managerial level and down to assess the impact of those decisions on the practices, procedures and protocols that apply to facilities such as this and determine their impact on the circumstances which we, and these industries, find ourselves in now.

We support the concept of a judicial inquiry with all of the powers of a royal commission because that is what we are told this legislation creates—that is, the taking of the royal commission powers from royal commission legislation and introducing them to the quarantine legislation with one exception, which we understand is to do with the powers of search, because those powers already exist in the quarantine legislation. We support those measures. We believe there should be a rigorous, thorough, open, transparent public inquiry. There should be the opportunity for interested parties to present evidence and to cross-examine witnesses. We believe that the relevant ministers should give evidence at such an inquiry and be available for cross-examination. Certainly, so far as we are aware, the two relevant ministers are Minister Truss, who was the relevant minister going back to 2003-04, when correspondence from the Australian Racing Board suggested that there were problems with the quarantine arrangements and those problems could well lead to the introduction of equine influenza—quite prophetic predictions by the Australian Racing Board—and the current minister, Minister McGauran, who was presiding over the regime when the outbreak actually occurred. We need to understand the role that the minister played and whether there were any deficiencies in the role the minister played in relation to the disease.

We do say that the terms of reference contained in the legislation are not adequate and we will be dealing with that proposition in the committee stage of this legislation. We think that it is appropriate for those terms of reference to be binding and not optional to the minister, as the current legislation provides, because although the legislation lays down three so-called terms of reference it allows the minister to allocate all or any of those terms to the commissioner, Mr Callinan, to deal with the matter. We do not think that is appropriate. The other matter we will be addressing in the committee stage is the issue of the publication of Mr Callinan’s report. We do not accept that that should only be the province of the minister. We think that the legislation is deficient in that respect. It should require the tabling in the parliament of that report, and we will be moving an amendment to that effect as well. I intend to have more to say in the committee stage of this legislation.

**Senator MILNE** (Tasmania) (9.09 pm)—I too rise this evening to support the Quarantine Amendment (Commission of Inquiry) Bill 2007 in order that there be an appropri-
ate investigation into this outbreak of equine influenza in Australia. I was interested when this was first reported, having spent the last few years in this place on the Senate Standing Committee on Rural and Regional Affairs and Transport looking at issues of quarantine. I was immediately conscious of the fact that, if this had come from a quarantine centre, it was a major breach of Australian quarantine protocols and regulations. It is just another reminder of how vulnerable Australia is to the outbreak of disease and how important it is for us to maintain disease-free status in as many areas as we possibly can.

I welcome the fact that the government has decided to have an inquiry which is effectively a royal commission inasmuch as it has all the powers of a royal commission but is set up under Quarantine Act because it will allow for the additional powers that the act also affords investigating authorities. I am hopeful that this inquiry under Justice Callinan will get to the bottom of how equine influenza got to Australia and how it got from the quarantine centre into the broader population.

I certainly concur with remarks to date on the massive impact equine influenza has had in the Australian community and the rural community in particular. Not only has it had an economic impact but you only have to listen to the stories of people involved in eventing, for example, people involved in getting their horses ready for the Olympics, to hear of the heartbreak suffered by people who innocently have been caught up in the disaster that has been equine influenza. That, of course, is not to mention those people who have huge investments in the racing industry. Whilst the government has moved to offer some income compensation, you can never compensate people adequately for the loss of opportunity. Of course, racing is a gaming industry as well and you can never compensate people for the fact that they may have had their animals in preparation for a certain race at a certain time and that opportunity will not come again. It will present in different ways but not under the same sorts of circumstances. There are a lot of people around Australia whom I would classify as being in the amateur field around horses and who have been devastated by this in the same way as those who are involved in a professional capacity. Of course, in rural communities it has had a significant impact as well.

My initial response to this was to be quite mystified as to how horses that had arrived in Australia on 8 August could have been carrying the disease when the protocol, as it is set down, means that those horses had to have been in quarantine in Japan for four weeks before they started their journey to Australia. Assuming that their journey to Australia took a maximum of 24 to 48 hours, they had already been in Japanese quarantine for four weeks. So I am glad to see that this inquiry is also going to enable an investigation into the appropriateness of protocols at the Japanese end. With the way that the horseracing and breeding industries are these days, you have horses in Eastern Creek and probably in Japan which have come from, for example, the United States and Ireland. They are going to be servicing the breeding industry in Japan and then moving on to Australia and back and so on. It is very indicative of how difficult it is to try to contain a disease of this kind once it begins.

At the Japanese end, I am particularly keen that there be an investigation of the appropriateness of the time response. Certainly, when I looked on the internet to see when this was first reported in Japan, I found that the Japanese racing authority had had a press conference on 16 August to say that 20 thoroughbreds in Japan were infected with equine flu. At the press conference they admitted that the day before, 15 August, 200
vets had been despatched across Japan to look at various racing facilities, and presumably quarantine facilities as well.

Yet the Japanese government did not officially report the disease until 24 or 25 August, some considerable time—at least 10 days—after vets had been dispatched in Japan because there was a suspicion of the disease. We have got to ask ourselves: ‘Do Australian authorities wait to be officially informed when the internet will tell you that the racing authorities in the home country have had a press conference and told the whole country that they have this disease and that there is a lockdown and cancellation of races?’ The Kanazawa racetrack did not hold its races the weekend after that because of the symptoms of disease in horses in Japan. All international trade depends on countries being timely in their notification of globally notifiable infectious diseases. Countries also rely on timely, authoritative and accurate certification when they give export or import permits. Australia relies on that system globally, and every other country does as well.

In this case, the Australian embassy would be reporting back, one would hope, to the Australian government on a daily basis on anything that is reported in the Japanese press—and any other press around the world where we have an embassy—on issues that may well affect Australian trade or interests. There would have been an awareness, you would have thought, once that press conference was held, that that was the situation in Japan. If those horses had been in quarantine for four weeks before that in Japan, we should have been able to make some calls to the Japanese government fairly quickly to establish where those quarantine horses had come from and whether any of the horses stabled there had in fact already come down with the disease.

This is not to excuse the fact that this disease has escaped from Eastern Creek. We all know that is the case and there has been a breakdown of quarantine at the Australian end. We also have to look at the protocols under which we agree to import and export permits of live animals around the world to make sure that we have immediate notification the minute there is a suspicion of a notifiable disease—and not just at the point at which finally it is officially confirmed some 10 days after a domestic announcement. That is not good enough and it is not fair to the international community.

One would wonder whether there will be another move now in the breeding industry to have artificial insemination in the thoroughbred industry. I know it is a very contentious thing to say, but realistically we are dealing with very valuable animals moving around the world. When people assess the losses to the breeding industry because of this outbreak and the likelihood of this continuing they may have to reconsider the definition of what constitutes a thoroughbred horse. That will be a debate for another day. I am aware of the smiles in the chamber about opening a Pandora’s box, and I know that is the case. But if you own a valuable stallion, like those that are being transferred around the world, you would have to be asking yourself at the moment about the risks associated with the international movement of animals in this way.

I do not wish to delay the Senate further, except to say that I support the establishment of the inquiry. I am hopeful that it will be as comprehensive as is required to get to the bottom of how the disease was spread, looking at the existing protocols and the rules which govern the movement and control of the quarantine facilities in Australia. But, as with the comments made by Senator O’Brien, I do not believe it is appropriate that the report, when it is finally completed,
simply goes to the minister. I think it is essential that it be tabled in each house of parliament so that the community can read the report in full and therefore be in a better position to both assess the government’s reaction and, I would suggest, assist the government in coming up with improvements to the protocols to make sure that this does not happen again and that we have a better process in place. It is in the government’s interest as well to engage in an open and transparent partnership with the community, particularly the horseracing and breeding community, which will need to be involved in such a response once we get a full investigation and analysis of what has occurred. I too have an amendment asking that once the report goes to the minister it be tabled in the parliament within 14 days of receipt of the report. I look forward to hearing what Justice Callinan finds out during this inquiry and hopefully to seeing some amendments over time to improve the protocols internationally and domestically to try to maintain Australia’s disease-free status.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

**Senator O’Brien** (Tasmania) (9.21 pm)—Before we come to the amendments, I want to ask the Minister representing the Minister for Agriculture, Fisheries and Forestry to respond to a question I referred to earlier to which he has not responded. Minister, has there been a tightening of the arrangements for handlers coming and going from the Eastern Creek facility, particularly to the local pub, since the outbreak of equine influenza? The handlers at Eastern Creek have been leaving and re-entering the facility, for the purposes of going to lunch at the local pub, without any appropriate quarantine arrangements. Those arrangements have been tightened since the outbreak, to the extent that those handlers are now required to shower and change both on exiting and re-entering the quarantine facility at Eastern Creek. I would appreciate it if the minister could respond to that question as an initial matter in relation to the committee stage of this bill.

**Senator Abetz** (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.24 pm)—The advice I have is that no specific changes have been made, but of course vigilance is always vital in this area. Undoubtedly, given the circumstances we face, the protocols in place are being followed very strenuously. But at this stage my advice is that no specific changes were made, other than that additional security and quarantine measures have been put in place at quarantine stations. These measures include a requirement for all persons entering the horse quarantine area to undertake disinfection of their footwear with Virkon, to shower on arrival at the station, to shower when leaving and to wear AQIS supplied protective clothing at all times while in the station.

**Senator O’Brien** (Tasmania) (9.25 pm)—Should I take it that those measures did not apply prior to this outbreak?

**Senator Abetz** (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.25 pm)—The advice is that these were changes made since 24 August. As I read it, that would be the additional security and quarantine measures that were implemented as a result of this particular outbreak. I am not sure of the extent to which those practices were undertaken before 24 August and whether that was part of the protocol. As to whether things may have been somewhat more lax prior to 24 August, I am unable to assist in that regard.

**Senator O’Brien** (Tasmania) (9.26 pm)—Is the minister aware of the article
issued by AAP on 30 August that I referred to in my contribution in the second reading debate? It is about a former groom who says he carried out work at the Eastern Creek facility in 2001 and 2003. He revealed that he and other stallion grooms were allowed to leave Eastern Creek on numerous occasions, without changing clothes or scrubbing down, to attend race meetings, play golf and eat and drink at local hotels and restaurants, to attend racetracks and to attend pavilions run by thoroughbred studs. There were allegations about trucks unloading horses at the facility and then leaving without washing down. Is the minister or the department aware of those allegations, and what do you say to them?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.27 pm)—I personally am not aware of the article, but the department is. We as a government treat very seriously those particular allegations and indeed all other allegations that people might have. That is why we have this legislation before us this evening. We want the Callinan inquiry to get underway ASAP. As soon as it does get underway, people like this groom will be able to provide evidence to the inquiry, and the veracity and details of those allegations can be tested. I would encourage anybody with such stories and such concerns to come forward and provide evidence to Mr Callinan’s inquiry so that we can get a full picture. We as a government look forward to the advice and suggestions of the inquiry as to what changes ought to be made.

Senator O’BRIEN (Tasmania) (9.28 pm)—If a former contractor such as this person were to come forward and reveal breaches in the quarantine arrangements at Eastern Creek, what would be the personal consequences for such a potential witness? Are there any potential penalties which might apply to a person who reveals deficiencies in a system in which they have participated? If that is the case, is that a barrier to getting all the necessary evidence that we might obtain in the conduct of a thorough, rigorous and transparent inquiry?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.30 pm)—Witnesses at the commission of inquiry will have the same protection as witnesses before a royal commission. The Royal Commissions Act protections are based on the immunity provided to justices presiding and witnesses and legal representatives appearing before the High Court of Australia. One of the main protections provided to witnesses is in relation to defamation. The protection extended to High Court justices is based under the general law rather than legislation and, basically speaking, protects them from civil liability in relation to anything they say or do in their judicial capacity. Having read that, I must say that I do not think that is necessarily responsive to Senator O’Brien.

This is always one of the difficult areas and, if I understand Senator O’Brien’s question correctly, it is really a question of a witness potentially self-incriminating and how one protects those people. That is always a difficult situation. The royal commission has the power of subpoena, so, if information is provided, witnesses can be subpoenaed and required to give evidence. Where people have particular evidence that they are reluctant to give in circumstances where they might self-incriminate, undoubtedly they would need to seek legal advice and approach the commission as to the appropriate way to handle that. I am not sure what the exact procedure would be, but hopefully one of the advisers might be able to assist at a later stage in relation to that. It is, I might say, a very fair question that is being asked by Senator O’Brien. We will try and find that out.
Senator O'BRIEN (Tasmania) (9.33 pm)—I appreciate the undertaking to try and find that out so that I can be clear as to how I pursue this. I am concerned that there may have been protocols more observed in the breach, particularly by contractors who have from time to time attended and worked at the facility as handlers for particular imported horses, probably thoroughbred stallions—they seem to be the most valuable commodity in the context of this inquiry that would require handlers to attend. I really do think that if there is a barrier to those individuals coming forward and giving their evidence then we need to understand how those barriers might be overcome if that were to prejudice the obtaining of evidence which would indicate what the culture was, particularly at Eastern Creek during all relevant times since, let us say, the Olympics.

I think the Olympics was the last occasion on which there was a major change in horse importation protocols. Minister, you will be aware that in question time you were under the misapprehension that I was asking about foot-and-mouth disease concerns that were raised. They were raised before 2000 in relation to horses being imported for the equestrian events of the Olympics, and there was a debate as to whether horses could carry foot-and-mouth, there having been considerations about foot-and-mouth coming from Europe in particular but also from other parts of the world where foot-and-mouth disease was endemic. Of course, changed protocols and the more frequent importation of horses, both breeding and racing horses, are circumstances which would have exerted some pressure on our import protocols. And, of course, it is very important that any inquiry looks at the development of those protocols, maybe from before the Olympics but certainly since that time.

So, whilst that other matter is being considered, I wonder if the minister can advise us whether the terms of reference in the legislation require Mr Callinan to have regard to matters which go to the protocols that underpin the rules that apply to the importation of, let us say, horses. I think there are other animals that are affected by the same protocols, but let us say horses for the sake of the debate. Is the minister able to assure the Senate that there is no impediment in those terms of reference as contained in the bill which would prevent Mr Callinan from taking evidence as to the history of the protocols and the involvement of ministers in the development of policy underpinning those protocols?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.36 pm)—In relation to the letter that was referred to, we may have been at cross-purposes. I was referring to one letter, and clearly Senator O’Brien was referring to another in relation to the exchange at question time a few days ago. In relation to the powers that the royal commissioner may have, generally I can indicate to the Senate that Mr Callinan has indicated that, in the event that he thinks the powers are not broad enough, he would not be constrained in any way, shape or form in approaching the minister to extend the powers. The minister has indicated that he would be willing to grant that. But in relation to the specific matter, if I can refer the honourable Senator’s attention to the bill, proposed section 66AY(1) says the terms of reference are to:

(a) conduct a Commission of inquiry into matters specified in the instrument of appointment relating to all or any of the following:
   (i) the outbreak of equine influenza in Australia in 2007;
   (ii) quarantine requirements and practices relating to the outbreak ...

That seems quite specific to the matter raised by Senator O’Brien, but in any event we have included:
(iii) any matters incidental to the matters referred to in subparagraphs (i) and (ii) ... Then there is the report to the minister. I think the terms of reference are both specific in relation to the particular issue raised by Senator O’Brien and also very wide and broad inasmuch as the commissioner is given power to inquire into matters incidental to those first two paragraphs.

Senator O’BRIEN (Tasmania) (9.39 pm)—Can the minister explain why, in the preamble in 66AY, the minister is able to authorise a person, in this case Mr Callinan, to inquire into all or any of those matters that he referred to? What is the relevance? It is effectively at the discretion of the minister to decide. After the parliament purports to set the terms of reference, the minister might constrain it to something less than the provisions in the bill. What is the purpose of that provision?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.40 pm)—As I understand it, it is common legal phraseology to cover the field to allow all or any matter to be inquired into. The legislation says:

(1) The Minister may, in writing, appoint a person to:

(a) conduct a Commission of inquiry into matters specified in the instrument of appointment relating to all or any of the following ...

And then we have the terms of reference. It is quite clear from the minister’s public statements that he is very much interested in all matters being inquired into. Mr Callinan has indicated that, in the event that the terms of reference are not wide enough or broad enough and Mr Callinan is somehow constrained in his inquiry as a result of some limitation in the terms of reference, he will ask the minister to broaden the terms of reference. The minister has indicated that he will very willingly broaden the terms of reference to ensure that any avenue of inquiry that Mr Callinan considers to be important can in fact be pursued.

Senator O’BRIEN (Tasmania) (9.41 pm)—Do the terms which constrain those terms of reference that the minister can establish for Mr Callinan omit the reference to the spread of equine influenza for any purpose? Or should we understand the term ‘outbreak’ to refer to the discovery of the disease and its occurrence in a variety of different places? My question is: do these terms constrain the inquiry to what happened at Eastern Creek, or is Mr Callinan to be equipped with terms that will allow him to trace the spread of the disease upon establishment at Eastern Creek? We know, and the minister has said—and I assume he is being accurate and truthful—that the disease was discovered at Eastern Creek on or around 24 August. The purpose of my question is to understand why there is no reference to the spread of the disease in the terms of reference. Or should we understand that the term ‘outbreak’ takes us from the point of it first being observed to where it subsequently occurred in other parts of the states of New South Wales and Queensland at this stage?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.42 pm)—The terms of reference do refer to the outbreak of equine influenza, not in Eastern Creek but in Australia. That would be interpreted as referring to the outbreak anywhere in Australia but, in the event that somebody were to seek to argue that the outbreak actually occurred in Eastern Creek and therefore the inquiry should be limited only to Eastern Creek, I dare say Mr Callinan’s judicial mind would allow him to have reference to (iii), which refers him to any matters ‘incidental to’. I think everybody would agree that, as a matter of construction, if somebody were to seek to say that the outbreak can only have...
occurred in one place, clearly a matter incidental to the initial outbreak is its spread through to other parts of Australia. Therefore, Mr Callinan would be clothed with full authority, on the current construction of the terms of reference, to make the sort of inquiry that Senator O’Brien refers to. Once again, having said that, in the event that some argument is to be brought forward or sought to be maintained to restrict Mr Callinan’s inquiry, then we do have the assurances of both Mr Callinan and Minister McGauran that I have referred to previously, which indicate they would both pursue as broad a reference as possible to ensure that all matters are appropriately inquired into.

Senator O’BRIEN (Tasmania) (9.44 pm)—I wonder if the minister has an answer to my first question, so I will raise that now. Whilst I am on my feet, I will raise another issue that arises and that is that, in the conduct of the commission, as I understand it, the existing powers under quarantine legislation with regard to search have been retained, rather than those from the royal commission. As I understand it, inquiries are being conducted by officers of the department, AQIS or both into the circumstances around the outbreak or outbreak and spread—depending on your preference for how it should be expressed—and those officers’ inquiries will be able to be included in the evidence of Mr Callinan’s inquiry, without any other special provision, if this legislation is passed. Is the legislation sufficient to allow Mr Callinan to conduct separate and independent inquiries—that is, independent of officers of the department, AQIS et cetera—to be certain that the evidence is being pursued without fear or favour in relation to what might have been a performance, or lack of it, by departmental officers or the agency or whatever? There are two questions there.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.46 pm)—In relation to the latter—we are still getting some information in relation to the first matter—there have been some questions about why this has not been dealt with completely under the Royal Commissions Act. The aspects of the royal commission legislation which will apply will provide all powers and protections necessary to conduct the inquiry, and so Mr Callinan will have power to hold public hearings and compel the production of witnesses. However, it is also important for a range of existing powers in the Quarantine Act to be accessible to the inquiry. Right on point, if I understand Senator O’Brien’s question correctly, for example, there is provision for independent investigators to be empowered to utilise the quarantine search powers that were specifically created to deal with quarantine offences and that are already contained in the Quarantine Act. Mr Callinan will be able to avail himself of the benefits of those independent investigators to assist the inquiry.

Senator MILNE (Tasmania) (9.48 pm)—I want to get on the record from the minister that the nature of the terms of reference, when read in a strictly literal sense, do not refer to the matter that I raised, which is essentially about what happened at the Japanese end before the horses left Japan and came to Australia. In the briefing I had in relation to the bill, it was explained that the terms of reference, particularly in relation to matters which were incidental to the matters referred to in the first paragraph regarding the outbreak and the quarantine requirements, would include pre arrival as well as post arrival. I notice that somewhere in the bill—I cannot find the exact place now—it says that there can be hearings either inside or outside Australia.

I wanted to get on the record from the minister, because it is not stated in the second reading speech, that this inquiry into the outbreak of equine influenza in Australia will
not just be confined to circumstances, post arrival, of any horses to Eastern Creek or anywhere else and that it will allow for a full investigation of all the circumstances that led to the outbreak, especially since we know that the horses arrived at Eastern Creek on 8 August and that the equine influenza was established by about 24 August—but the Japanese had known, as I said, as early as 15 August that there were horses in Japan with the disease. We know those horses were quarantined for four weeks. I think it would be important that the commissioner have the power he needs to have a really good look at the circumstances before there was any transmission, as well. I just want the minister to put on the record that those matters are capable of being investigated under the terms of reference as stated.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.50 pm)—Yes, they are. I want to sound a note of caution. I do not want to be too petty in this, but Senator Milne said ‘We know.’ I suppose it might be a fair assumption, a fair hunch, but until Mr Callinan reports I do not want to be trapped or seen as affirming any suggestion about where the equine influenza may have originated from et cetera. That is simply from an overabundance of caution.

Having said that, the Royal Commissions Act, at sections 7A and 7B, clothes royal commissioners or people that are given those powers to undertake inquiries overseas and outside of Australia. So Mr Callinan would have those powers courtesy of the reference to that legislation. I also draw Senator Milne’s attention to proposed section 66AY(1)(a)(ii), which refers to quarantine requirements and practices relating to the outbreak. As I understand it, there is a quarantine protocol which requires testing in a quarantine situation in the country of origin, other than New Zealand, so that would definitely be a requirement in Japan. Therefore, all the matters that Senator Milne has referred to would definitely be within the purview of Mr Callinan’s inquiry.

Senator MILNE (Tasmania) (9.52 pm)—Whilst I take the minister’s point that the disease came from Japan, I did not actually say that. I said that what we knew was that on 15 August 200 vets were despatched in Japan to look at horses there for suspicion of influenza. That was reported in the Japanese press. On Thursday, 16 August, the Japanese racing authority officials held a news conference to announce 20 thoroughbreds were infected with equine influenza. So when I say we knew, it was certainly reported in the Japanese press that there had been an outbreak there. But I also take the point that it is yet to be proven that the disease outbreak at Eastern Creek originated in Japan.

Senator O’BRIEN (Tasmania) (9.53 pm)—Another question I have is a matter I raised in my second reading contribution and in the committee stage. It concerns the impact of the government’s policy settings on quarantine protocols, practices and arrangements. Can the minister assure the Senate that the terms of reference for Mr Callinan’s inquiry will be wide enough to enable Mr Callinan, and indeed those who seek to put submissions before the inquiry, to canvass the minister’s role in any policy settings, practices or procedures relevant to the equine influenza outbreak and the protocol surrounding it?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.54 pm)—I would have thought that the clause ‘any matter incidental’ would clearly capture the matters raised by Senator O’Brien. From the government’s point of view, these protocols have been in place for some time. Whether they are good enough or, indeed, whether they were breached are matters about which we will listen to the Callinan
inquiry for any assistance. Having said that, as a government, we are anxious to make sure that we are as well informed as possible to ensure that such a breach is unlikely to occur again.

In relation to the question which Senator O’Brien has been very patient with me in obtaining an answer on, I now have the advice that there is no formal protection for people who may self-incriminate in giving evidence to a royal commission. That is a matter that undoubtedly the royal commissioner and counsel assisting would need to consider on a case-by-case basis. If someone is willing to come forward and say, ‘I’ve got some evidence that you may be interested in, but I need some protection against self-incrimination,’ I think that may be a matter, potentially, for the Director of Public Prosecutions to deal with. But, as I understand it, there is no blanket protection against people self-incriminating. Of course, if there were people who had done activities that might see them being prosecuted, they would run in and confess all, knowing that as a result of that they could not be prosecuted. That is one of those difficult situations, I agree. The advice I have is there is no formal protection for people who may self-incriminate.

Senator O’BRIEN (Tasmania) (9.56 pm)—That is a concern and it is perhaps an issue that ought to be considered. Let us go to the circumstances at Eastern Creek. At the start of the thoroughbred breeding season there is an influx of horses. Those horses are usually accompanied by contractors who are engaged sessionally for the period those horses are at Eastern Creek. They do not necessarily have an ongoing connection with or any special training in protocols, or perhaps even an understanding of why special protocols are needed. For this inquiry to completely understand what has occurred, I would suggest that those individuals should be able to give evidence. I regard those people as perhaps more the victims than the cause of the problem because of their circumstances, whether it be in relation to training or whatever else, or just existing within a culture at the facility. If they have no expectation that their evidence may lead to some prosecution for a breach of a rule that they may or may not be aware of, that is going to be an impediment to the inquiry. Is any consideration being given to equipping the royal commissioner with the power to pursue those sorts of indemnities in return for evidence?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.58 pm)—I suppose how this inquiry unfolds will largely depend on the way it is conducted. As I understand it, Mr Callinan will hold an initial public hearing scoped the way that he intends to deal with the matter and then he will adjourn for a while. I also understand that people will be able to make submissions. I understand inquiries of this nature can also take evidence in private. I am not sure that that would necessarily assist in certain circumstances, but the general rules that apply to royal commissions and people self-incriminating would apply to this inquiry as well.

Senator O’BRIEN (Tasmania) (9.59 pm)—I take it from that contribution that no consideration has been given to that matter and the government does not intend to make any special arrangement for that circumstance. It may be because that is the precedent.

Progress reported.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Kirk)—Order! It being 10 pm, I propose the question:

That the Senate do now adjourn.
Senator FISHER (South Australia) (10.00 pm)—I rise tonight to talk about an issue of vital importance to Australians at large and to people from my home state of South Australia in particular—water security. It is vital to city people and to country people. Efficient water collection, storage and use are economically and environmentally sensible, but the South Australian Labor government’s current nonsense is neither efficient nor sensible. South Australia is the driest state on the driest continent; yet we have the Rann Labor government dithering in critical planning for our future water supplies whilst letting the country’s driest state dehydrate. It is a state government which has sat on its hands and prayed for rain and done little else to prepare for either the shorter or longer term.

In recent weeks my fellow South Australians and I have had to endure the state government’s attempts to deflect to the Howard-Costello government the blame for water woes, when we know that the state government is in charge of our water supplies. We have had to put up with condescending messages from the South Australian government about saving water, from a state government progressively forcing South Australians to abandon their gardens whilst it abandons the watering of our state. Without rain, water restrictions alone mean little. We know that water restrictions will not solve our state’s water crisis and that water restrictions are like trying to solve the crisis from the end of a hose. But we have had stern messages about how state taxpayers must fund water cops on the beat and about how it is good to dob in your neighbour.

Whilst the state government tries to tell us it cares, it says we do not care enough to be responsible. In March this year, the South Australian government was lauding the success of water restrictions in South Australia. The state minister was daily telling South Australians they had saved thousands of megalitres of water with drippers and hoses with a nozzle. Then suddenly something must have changed, because the state government slammed the people of South Australia, accusing us of using sprinklers for the maximum period allowed whether our gardens needed it or not. The state government said that householders had been given a chance to prove they could responsibly use drip irrigation during level 3 restrictions last summer—and had failed.

What had changed in a matter of months? We were told it had not rained but we were told little more. For that, the Rann government told us we were to have buckets, and buckets only. What is the empirical evidence for buckets? None, bar that buckets are burdensome. In short, they are pretty hard work. So we got buckets and saved even more water, as the state government quietly continued to pocket increasing amounts by way of a property charge assessed independently of the amount of water used. People living in suburbs like Kilburn, Burnside, Dulwich, Unley and Ashford were burdened with carrying buckets of water to keep their gardens alive. Senior citizens and pensioners staggering about their gardens at night watering plants with buckets of water they have saved would be ludicrous if it were not so tragically real.

According to the state minister, forcing people to bucket water was apparently the result of South Australia’s superb negotiations with the eastern states to release more water from the Murray to South Australia. When people started to question the quality of negotiating skills shown by the South Australian government, it supposedly became the fault of the Prime Minister and Minister Turnbull. On 29 August this year, in the face of the Rann government’s ongoing...
failure to secure South Australia’s water supplies, the state opposition released their comprehensive 19-point plan to secure and waterproof South Australia. Opposition leader Martin Hamilton-Smith outlined initiatives to end water restrictions, to reduce South Australia’s reliance on the River Murray and to secure South Australia’s water supplies for generations.

But a backlash against buckets continued to fuel public anger at state government dithering. We were told we had best be grateful for buckets, because the state government could ban buckets too. Responsible South Australians were offended.

Senator Bernardi—Hear, hear!

Senator FISHER—The community expressed its indignation—indeed, colleagues—to Liberals, including the Liberal candidate for Adelaide, Tracy Marsh, as well as the member for Sturt, the Hon. Christopher Pyne, whose petition calling on the state government to develop a comprehensive water infrastructure plan has since gathered more than 10,000 signatures. On 31 August this year, two days after the state opposition’s outlining of its 19-point plan to waterproof the state, the state government still stood steadfast and strident. South Australia’s water minister announced that only rain would change the state government’s policy.

Senator Cormann—Shame.

Senator FISHER—Ah! Less than a fortnight later Labor Premier Mike Rann announced the breathtaking backflip: drippers would again be allowed and, following the state Liberal lead, a desalination plant would be built to supply water to Adelaide.

As commentator Mike Smithson noted in the Sunday Mail on 16 September, rattled Rann ‘was forced’ into an early announcement:

The timing and delivery of this week’s news that Adelaide will receive a desalination plant was bewildering, but one thing is certain – it’s the right decision ... Despite the Government claiming that desalination has always been its idea, the simple fact is that the Liberals have led the charge for many months ...

Where are the state Labor government’s details? Where are the plans? Where will the desalination plant be sited? Premier Rann says the desalination plant will supply 25 per cent of Adelaide’s fresh water, will cost more than $1.4 billion and take up to five years to build. It took Western Australia two years, and New South Wales says it will take 26 months to be up and running. So why five years? Where are the costings?

Senator Bernardi—They’re hopeless.

Senator FISHER—You may well suggest, colleagues. Scant details suggest that Adelaide will pay three times as much as Perth for its desalination plant, and water rates are tipped to rise by $300 annually—some six times Perth’s annual rise of $43 per year.

We can all see that water prices should and will go up. But the South Australian government must justify why about one-third of everybody’s water bill currently goes into general revenue and explain why the numbers add up about as well as the cost estimates on the North Terrace tram extension and the opening bridge at Port Adelaide. The Rann Labor government are not really committed to the idea. They are probably still hoping they will not have to build it.

Of course, a desal plant is part of the solution. Indeed, farmers and those who live along the Murray, through the Riverland, the Murrayslands and the Lower Lakes, must be happy to see that, in future, Adelaide may not have to take 90 per cent of its water supply from the Murray, like it currently does during very dry periods.

Most amazing was that the Premier did not need the Prime Minister’s permission to
change his policy. The state government’s botched attempt to blame the Prime Minister for South Australia’s water woes is ill-concealed by the state government’s subsequent attempt to claim credit for a long-overdue backflip under community and Liberal Party pressure. But where are the Rann government’s short-term plans to secure the state’s water supplies—the short-term plans in advance of long-term plans being completed?

Senator Bernardi—You’d have to ask Don Farrell about that.

Senator Fisher—We may well. Where are their realistic plans for more storm and waste water recycling infrastructure?

That brings us to the federal election. To see the hallmarks of what a Rudd administration would be, look no further than the Rann administration and its withering and dithering dehydration of South Australia. Labor administrations lack the experience to govern responsibly. They lack the vision to plan for the future and the ability to generate resources to afford to build for the future. Where they do attempt the right initiatives, they echo Liberal initiatives. Labor administrations play politics with issues like water because winning elections is more important than governing. And, if they get to govern, they flounder, because they do not know how to do it. Australians recognise that the job will not get done unless Liberals do it.

Persecution of Jews

Senator Hutchins (New South Wales) (10.10 pm)—I intended to make a contribution later this week in relation to some historical events. Unfortunately, due to a number of circumstances, I am unable at this stage to do that, but I do intend to at the next sitting of parliament.

During the break, I read a book by a lady called Lynne Olson entitled Troublesome Young Men: The Rebels Who Brought Chur-

chill to Power and Helped Save England. As a result of that, I inquired of the Parliamentary Library as to what was happening in the Australian parliament in that period between 1935 and 1939. I cannot go into detail this evening as a result of the shortage of time, but I do want to refer specifically to the responses within the Australian parliament in that period in relation to the persecution of Jews in Germany. And I am particularly disturbed by an article in the Australian today by Victor Davis Hanson, which outlines again the insidious anti-Semitism that is about in the Western community, particularly amongst the intelligentsia and probably on my own side of politics.

It was disturbing to look at the responses in the Australian parliament in that period. As I said, I will comment on them later, when we come back. But it is also concerning that here we are on 17 September 2007, and only 72 years ago, two days earlier, the Nazis stripped German Jews of their rights with the Nuremberg race laws. As a result of that, going in chronological order, on 9 and 10 November 1938 there was an infamous event called Crystal Night, where murder, harassment and other terrible things were done to people of the Jewish faith.

I inquired as to what the Australian parliament was saying in that period. I must say that I am not very proud of the contribution of my own party in highlighting the events that occurred. Indeed, the non-Labor parties also have a bit to answer for. I thank Ms Janet Wilson from the Parliamentary Library for assisting me in this. She cannot be held accountable for my interpretation or the use of documents that I refer to. Only on 17 and 18 November 1938 did a member of parliament ask a question about the treatment of Jews in Germany. He was a non-Labor member of parliament, a Mr Francis.
To the credit of our side, the Labor Party, there was a very old member of parliament who I think was born in 1850 or so, Dr Maloney, the member for Melbourne—who Arthur Calwell succeeded—who made an impassioned speech on 18 November 1938 imploring all of us to treat fairly people of the Jewish faith, or Jews, if we want to call them that, and to look after them because of the persecution that they were suffering in Germany. They were about to suffer the same fate in Poland. But there were no other instances of parliamentary contributions on this. On the same day, 18 November 1938, a Mr Hutchinson asked a question of the Prime Minister in relation to the treatment of Jews in Germany. He would have been well aware of Crystal Night—which was, as I said, on 8, 9 and 10 November—which was clearly highlighted in the press at that time. The only other time that this issue was mentioned in the Australian parliament in that period before the outbreak of war in 1939 was on 17 May 1939, by Senator McLeay. He was from your state, Mr President—South Australia. In his speech as the Minister for Commerce he said, ‘Also, the organised ill-treatment of the Jews and the violent turn of public utterances and officially inspired press articles indicated the strong influence of extremists in the councils of the Reich.’

As I said, I well intended to make a more detailed contribution in relation to this area because I believe that we as members of parliament should always be conscious of the fact that in our lifetime and in our period here in parliament these events may be occurring—and we should also comment on them. I should also say that Sir Charles Marr, who was a member of the House of Representatives, on 9 May 1939 referred to the atrocities being committed against Jews. To my concern, a member of the Labor Party—Mr Jack Beasley, who was also known as ‘stabber Jack Beasley’, a member of the New South Wales Labor Party—thought that this was no different to the way the British were treating people in India and Palestine.

I say all this because, as I said, it is only 72 years ago that the Nazis passed these laws in Germany and the Australian parliament said very little about it. We saw in today’s Australian an article by Mr Victor Davis Hanson. He outlines again, to my concern, the insidious anti-Semitism that is about. Mr Hanson quotes the former Prime Minister of Turkey and his anti-Semitic comments. He quotes a former US senator and his anti-Semitic comments. He quotes a current member of the British parliament, a Labour member, Clare Short, and her anti-Semitic comments. Let me finish by quoting this article. It says:

This new face of anti-Semitism is so insidious because it is so well disguised, advanced by self-proclaimed diplomats and academics, and now embraced by the supposedly sophisticated Left on university campuses.

(Time expired)

Illicit Drugs

Senator Murray (Western Australia) (10.20 pm)—The motivation for my adjournment speech this evening is the release last week of the House of Representatives Standing Committee on Family and Human Services report titled The winnable war on drugs. In line with Prime Minister Howard’s statements, the tenor of this report is uncompromising in its tough on drugs message. This approach is not necessarily welcomed by all—for instance, the peak body for alcohol and drug issues in Victoria, the Victorian Alcohol and Drug Association, issued a media release on 14 September stating: ‘The report completely ignores the evidence of the vast majority of drug treatment providers and researchers who gave evidence to the inquiry.’ But that is not the purpose of my speech tonight.
The biggest reaction has been reserved for the astonishing recommendation to almost automatically take children from their parents and give them to strangers. The Victorian Alcohol and Drug Association media release also attacks this controversial proposal that young children of illicit drug-using parents be put up for adoption. It claims that implementing the report’s recommendations would inevitably lead to the creation of a second stolen generation of Australian children. Recommendation 5 of the report states that when a child protection notification involves the use of illicit drugs by parents, any children aged zero to five years then become subject to adoption as a default care option.

There seem to be at least three suppositions here: firstly, that the existing situation in all states and territories allowing for the removal of children at high risk is unsatisfactory and insufficient; secondly, that permanent adoption is better than placement in what might be temporary foster care; and thirdly, that there are legions of suitable adopters out there.

Ignored is the evidence that this disturbing recommendation could have disastrous outcomes for families and children so affected. Ignored is the evidence of how unhappy many adoptees have turned out to be, with blemished adult lives as a result. This recommendation is unnecessarily punitive and very out-of-date and old-fashioned in its highly judgemental approach.

No-one disputes that children at very high risk cannot be left with unsafe parents. All states and territories have laws allowing for this. No-one disputes that adoption is an important mechanism for providing good homes for unwanted children. All states and territories have laws allowing for this too. But for adoption to be an automatic default option is undoubtedly going too far. There is no sign that the members of this committee really understand the long-term social and economic problems emanating from children either forcibly taken from their families or voluntarily placed into out-of-home care. How many of them know of or have read the trilogy of national reports that attest to this? These reports are: the 1997 Human Rights and Equal Opportunity Commission’s Bringing them home report on the Aboriginal stolen generation; the 2001 Senate Standing Committee on Community Affairs child migrant report, Lost Innocents: righting the record; and the 2004 Senate Standing Committee on Community Affairs Forgotten Australians report on Australians who experienced institutional or out-of-home care as children. These are but three reports of many others and a plethora of research literature that clearly attest to the enduring problems of children being raised away from their families of origin.

Many a submission to the Senate inquiries I have just mentioned revealed the trauma of being removed from families. Removal, for the most part, was justified on the grounds of alcohol fuelled family violence. Although many recalled memories of this violence and general neglect, the evidence of most was that they would have preferred to remain with their families as the bonds of attachment were stronger than their dismay at the circumstances they were in. Having spent their childhoods in care, the greatest hardship for them was a sense of dislocation and loss of identity.

Many witnesses told of how the loss of contact with their parents, siblings and place of origin had a lasting impact well into their adult lives. As adults, most have sought the information vital to reconnecting them to their families and to piecing together their childhoods. One former child migrant stated in a hearing that:

Former child migrants have spent their entire lives feeling lost or separated and even aban-
doned. From my own point of view, I have lived my life with a hole at the centre of my being.
A care leaver wrote in her submission:
Not only did I lose my identity, but I lost my Mother, my Father, Brothers and a sister, my family home, my bedroom, my toys, my family photos, my friends ... Aunties, Uncles, my hometown and connections ... all blown away like points off the stock market just as though it never existed.
These are but two quotes of many that I could give. They reflect major findings of these inquiries. In fact, each of these reports incorporates whole chapters on the search for identity.

I should mention here too that the irony is that this profound sense of dislocation felt by those raised away from their biological families has resulted in many resorting to illicit drug and excessive alcohol use as adults to quell the pain of their loss and identity confusion. This would be repeated for some adoptees, should adoption become the default option for young children of illicit drug using parents. Where is the logic in such a proposal? Why implement a measure that the evidence shows produces psychological problems for some that can lead to substance abuse and create a new generation of licit and illicit drug users? The evidence showed that there is a generational cycle that needs to be broken, but not in this way. Many alcohol and drug abusers to be targeted to lose their children to adoption were themselves taken away from their families as young kids. Empathy, understanding and working out how to change the cycle is what is required, not persecution and punishment of the children.

This recommendation appears to be a low-cost solution made by economic rationalists. The parents are to be treated as criminals. The children are to be dragged before those who will make the judgement that they are in moral danger and that removal is the punishment. It turns out that the kids have a value. There is a demand for kids, so here is the supply. The problem is over; end of story. Instead, what is needed is a huge long-term financial and policy commitment to help individuals and families to get themselves right, to end the intergenerational problems and to address the causes not the effects. Have a look again at the Senate report recommendations and the report itself.

There are practical issues of feasibility too. Dr Alex Wodak, President of the Australian Drug Law Reform Foundation and Director of the Alcohol and Drug Service at St Vincent’s Hospital, was reported in the Canberra Times on 15 September as describing the proposed adoption measure as ‘absolutely outrageous’. He stated:

We have several hundred thousand people a year using heroin. We have about 2.5 million Australians each year using cannabis ... So we’re going to find adoptive parents for the children of 2.5 million cannabis users a year?

It’s just ludicrous. This is just extremism.

Apart from the fact it’s wanton cruelty, this is stolen generation mark two.

Dr Wodak’s response cannot be ignored. It must not be ignored, because there is ample evidence that shows early intervention with children can produce much better outcomes than this automatic adoption proposal. The government itself has paid attention to Dr Fiona Stanley’s views on early intervention. She is from my home state of Western Australia and is a former Australian of the Year. In this sense, the House of Representatives Standing Committee on Family and Human Services The winnable war on drugs report appears to disregard the fact that family focused rehabilitation options can and do work.

As I said earlier, I do acknowledge that in some instances there is no alternative but for children to be removed from their parents. Media reports of the accidental deaths and ill-treatment of children whose parents were
users are harrowing to read, but to go down the road of automatic adoption is just not the answer and nor is it practical or feasible.

To conclude, I would like to quote from the editorial of the Canberra Times published last Saturday, 15 September. It reads:

It is to be hoped that Bishop’s demand for a rethink on drug rehabilitation is recognised for what it is—an unreasonably harsh and punitive approach that is more likely to drive drug-users underground than to Naltrexone clinics—and that the minister for Families and Community Services, Mal Brough, gives it the response it deserves.

There is hope a coalition government would let this report recommendation slide. There is even more hope that Labor will do better, because Labor members of the committee have rejected many of the inquiry’s conclusions in their dissenting report, including rejecting the view that automatically taking children from their parents is a good idea. Should they form government after the coming federal election, I trust Labor will turn to the Senate committee reports for inspiration and not to this retrogressive suggestion by some coalition members of the House.

Kimberley Region

Senator EGGLESTON (Western Australia) (10.31 pm)—Senators may have heard recently the news by the Bureau of Meteorology highlighting that an early break of a possible La Nina, or drought-breaking event, has not occurred. This again brings to the forefront the stark realities and impacts of our ever-changing climate and weather variability, and it means that there will continue to be a drought across most of Australia.

In their announcement, the bureau has again emphasised the importance of Northern Australia, where there is an abundance of water. I have been a long-term advocate of the north being the new frontier for Australia. Having lived in and been associated with the north of Western Australia for over three decades, I am very much aware of the opportunities and, may I say, the limitations the north presents. During the eighties and nineties, I attended several North Australian development conferences held under the auspices of the Northern Australia Development Council, which was set up jointly by the WA, Queensland and Northern Territory governments. When attending the NADC conferences, I was struck by the fact that the issues and challenges faced were much the same across the whole of the north of Australia and that the north was, and remains, a very different place to the south.

Accordingly, unlocking the potential of the north requires that solutions be appropriate to the local conditions and an understanding that what may have worked in the south may well not be suitable for the north. A good example of this is cotton farming. Cotton in the south is a summer crop, whereas the Ord River agricultural research station has shown that, in the north, cotton is a winter crop, when the temperatures are cooler and the amount of water in the fields can be controlled. In my opinion, there is no doubt that the north is going to be critical for the future of agriculture in dealing with the challenges of climate change and reduced rainfall in southern areas of Australia.

While today mining, gas and oil dominate the economic landscape in the north of Western Australia, we must prepare a secondary economy. Tourism was always regarded as the second string in the bow of economic development in the north. However, according to Mark Lewis of the WA Department of Agriculture, who is the manager of NRM and industry development for rangelands in the Western Australian department, agriculture is the obvious alternative industry, given that it has the highest multipliers of most sectors in terms of jobs and value-added and export income. In Lewis’s view, agriculture
can build on the back of, and enhance and create, additional tourism related experiences. Over the years, he says he has been personally aware that there have been numerous high-profile concepts, studies and feasibilities espoused for the north, most of which have failed due to lack of local research and capacity. To this end, we must build on our local knowledge and local skills and ensure that there is the wherewithal in local areas to carry these projects through.

With this in mind, Mark Lewis is of the view that we need to undertake a number of very obvious, simple and pragmatic steps. These steps will create the foundation planks for growth in the region. Firstly and clearly, as a fundamental plank, Ord stage 2 is a priority. Mark Lewis believes that we must continue our dialogue with the government of Western Australia and the government of the Northern Territory, which, rather sadly, has shown a rather disappointing lack of real interest in Ord stage 2. The dialogue must be outcomes based and achieve benefits for all Australians.

Secondly, while the Ord tends to dominate discussion, Mr Lewis strongly believes we must focus on opportunities to the west of the Ord. Lewis’s view is that we must define strategies for the sustainable development of the west Kimberley and eastern Pilbara. There are many opportunities and obvious synergies between agriculture and mining to create sustainable communities in this area in the future. One of the benefits includes considering the opportunities the north presents in reducing greenhouse gases. Mark Lewis believes that this is a sleeper and that agriculture and the mining industry can provide some solutions, both in terms of carbon sequestration and offsets through the use of biofuels, particularly biodiesels.

Thirdly, we must do whatever is humanly possible to ensure Indigenous Northern Australia assimilates and engages in the real economy that is Australia in 2007. Reliance on land rights and cultural autonomy in the past has clearly not worked for the Indigenous people. Any literature on rural development, regional development or Indigenous development has at its core the need for education, both conventional education in terms of literacy and numeracy and, most importantly, job skill education.

While long-term plans are being developed for issues like Ord stage 2 and broader Indigenous engagement, I believe we need to act in the short term and get some other projects underway. As I said earlier, we must not just focus on the Ord but look beyond it to the other great river basins in the North. Significant potential also exists in the wider constituency of the Kimberley and eastern Pilbara, and these areas deserve just as much attention as the Ord catchment area. Mr Lewis advised me that he saw four key activities that the government should immediately address while the Northern Australia Land and Water Taskforce develops a long-term plan for the area. Mr Lewis gleaned these key strategic issues from local people currently working in the area and said he could see no point in reinventing the wheel when these issues have already been identified through a rigorous consultation and technical review.

Key opinion leaders in the north must understand the value of irrigated agriculture and the concomitant multipliers that it offers. This will be a key for understanding how irrigated agriculture will underpin regional economies and allow Indigenous Australia to be a part of the real economy. It is also critical for these key opinion stakeholders to understand contemporary sustainable irrigated agriculture and how technologically advanced the fertigation systems are. Having been to Carnarvon and seen irrigated agriculture at world’s best practice standards, a key
action would be to ensure that all key opinion leaders from the north do likewise.

One of the big issues in northern development is headworks. There is a need to create incentives to ameliorate the initial high up-front capital cost with bore fields, power and roads through regionally based headwork schemes. Paying off the cost of headworks over a long period, as already is the case in the Northern Territory, is also another way of substantially ameliorating their cost.

Thirdly and most obviously, market drivers need to be identified and connected to specific development opportunities. Mr Lewis says market pull must be the driver of any new development and Austrade and our overseas offices will play a key role in identifying gaps in supply. Working with the large importers and distributors in our major trading blocs and matching these up with our production windows and niche climate advantage will, he says, be instrumental in dictating what we grow.

Fourthly and finally, governments should be urged not to stop development while longer term plans are being put in place. Work is being done to identify eight to 12 small-scale sustainable precincts. These precincts should be the subject of further investigation that could potentially open up to 10,000 to 20,000 hectares across the north outside the Ord. I am confident the above works have been identified with sufficient rigor to warrant short-term investment and should be supported as soon as possible. To this end, I would encourage the responsible ministers and agencies to work with the local stakeholders on these activities. We have an opportunity to be truly pioneering again. It is time for positive action and commitment. It is time for northern Australia to achieve its potential as the new food bowl of Australia.

Diabetes

Senator WORTLEY (South Australia) (10.39 pm)—I rise tonight to speak on the issue of type 1 diabetes. As a member of the Parliamentary Diabetes Support Group, I met recently in Adelaide and again here in Parliament House with representatives of the Juvenile Diabetes Research Foundation who brought me up to date on research developments and the latest statistics on this increasingly common disease. I also had the opportunity to join with my state colleagues in a bipartisan event, Kids in the House, where young children and teenagers had the opportunity to sit in the House of Assembly chamber along with their parents and tell members of parliament of their life, living with juvenile diabetes.

I have learned from speaking to the parents of these children that, as a parent of a child with type 1 diabetes, there is no beginning or end to the day. Life is a constant, relentless, stressful, sleepless, unforgiving cycle of monitoring and management, watching and worrying. Easing up on this strict energy- and emotion-sapping regimen can prove fatal. If a child’s blood sugar levels dip too low, he or she may lapse into a coma. If this happens during the night, they simply may not wake up.

Parents must administer up to six insulin injections a day and check their child’s blood sugar levels with a finger prick up to eight or more times every day. It is not uncommon for a parent to have to check their children at 7 am, lunchtime, 4.30 pm, pre-bed, midnight, 1.30 am, 3 am and times in between. It never ever stops; there is no respite and no rest. This is the message that I was given. Monitoring a child’s blood sugar levels and watching for signs that their health is deteriorating is never ending, and there often is no choice but for a parent to become a full-time carer even as children grow to ages at which they
would normally have more and more independence. For example, during a birthday party, a child with type 1 diabetes is likely to need three finger pricks.

One of the parents I met at the Kids in the House event was Lorraine, mother of five-year-old Thomas who is a type 1 diabetic. She told us that a simple sleepover at grandparents’ or friends’ homes just is not an option for most children and families living under the diabetes cloud. It is a devastating disease that does not discriminate; it cannot be controlled by diet or lifestyle. Lorraine and other parents I met with on that day wanted this point highlighted: it cannot be controlled by diet or lifestyle. The hope for these children, whose futures otherwise promise a shortened life span and may include severe health complications such as organ failure and amputation, is to find a cure.

Lorraine, who gave up a position as a corporate account manager for a telecommunications company to become a full-time carer to Thomas, says that a lack of public awareness of the disease is a big issue. While she and her husband, Douglas, were familiar with type 1 diabetes because his twin brother was diagnosed at age 21, she knows it is a mystery to much of the community, including those who are newly diagnosed. Lorraine chairs a family forum, a parent family voice, which meets monthly. Established to keep families of children with juvenile diabetes informed, it provides information on daily living experiences within kindergartens and schools and acts as a support network for parents and children.

It is often the case that children with diabetes look well and so the complexity and severity of the disease and the impact it has on families living with it may not be obvious. Lorraine said: ‘I can’t even begin to describe to you the worry that we, as parents, carry around with us every day and night. There are no days off. Every day rolls into the next. Type 1 diabetes doesn’t give a person or the family a choice to manage this disease—it demands it. The constant monitoring and adjusting of a person’s sugar level governs every hour of every day. To maintain a constant and balanced sugar level is impossible for a person with type 1 diabetes.’

Within the past few months, Thomas, who was diagnosed at age two, had an episode that could be repeated any night. Lorraine had checked his sugar levels before going to bed, but later in the middle of the night checked him again on a feeling, on an instinct. He registered a reading of 2.2—dangerously low as a night-time level. Had she not done this, Thomas most likely would have slipped into a coma. Thomas’ twin sisters are so far not showing signs of the disease, but they need to be screened for it regularly—another source of fear, stress and worry for their parents. Lorraine said, ‘I am completely torn, because I am desperate to know that they are okay but terrified to find out if they might get it.’

From the time of diagnosis of juvenile diabetes the life of the child and parents, especially in the early months and years, is a whirlwind of hospitals, doctors, dieticians and diabetes educators. Every few hours, often more frequently, the child’s blood sugar levels must be monitored—day and night. The parents must learn to measure the appropriate insulin dose up to six times in 24 hours, and to manage a syringe or an insulin pen. Later, some children are fortunate enough to be suitable for, and have access to, an insulin pump at a cost of around $8,500. Not all families, however, are in a position to afford the cost of a pump, and so their child misses out on the health and social benefits that an insulin pump can bring. This is an issue that needs to be addressed.
Parents plan ahead, manage the financial issues as best they can, source equipment and supplies, and read the labels on food products incessantly to find the right balance of carbohydrates and other dietary requirements. They are constantly vigilant, checking their child for signs of low or high blood sugar levels. New concerns arise as time goes on: visiting family and friends, travel, starting at school, self-testing and self-administering. Adolescence brings new challenges. Emotional and physical support, education, and safe, effective self-care protocols are all paramount issues. This is the reality that a family of a child with type 1 diabetes faces. There is to date no cure.

The effects of the disease on quality of life are not only immediate but cumulative. Over time, chronically high levels of blood glucose permanently damage blood vessels and the tissues and organs they supply. Affecting almost every organ in the body, diabetes can lead to serious complications, including diabetic eye, kidney and nerve diseases, and cardiovascular disease. The early onset of type 1 diabetes means that children and young people—those at the start of their lives—may face serious complications while they are still in early adulthood.

None of us can ever assume that this cannot happen to us or our families. In fact, the reverse is true. Some 80 per cent of people diagnosed with type 1 diabetes have no family history of the disease. There are now 140,000 Australians living with type 1 diabetes; 8,665 of these range in age from newborn to 18 years. This figure is expected to rise to 12,241 in three years, with five new diagnoses each day. A new report by the Australian Institute of Health and Welfare shows that the rate of new cases of type 1 diabetes in Australian children, already high relative to other countries, is increasing. Diabetes is now one of the most prevalent chronic diseases in Australia, representing an enormous health, social and financial burden for individuals with the disease, their families and the community as a whole.

There is only one way for people with type 1 diabetes to achieve the quality of life and the life span that those who do not suffer this disease can reasonably expect—and that is a cure. Research is the key to finding a cure. The Juvenile Diabetes Research Foundation is the world’s leading non-profit contributor of funds to diabetes research and has been closely associated with almost every crucial step forward in diabetes research since 1970. Today I have invited my South Australian federal parliamentary colleagues from all political parties to join together for the foundation’s 2007 Walk to Cure Diabetes, which will take place in Adelaide on Sunday, 14 October from Wrigley Reserve, Glenelg to North Brighton and back. Many South Australian state members of parliament have already indicated their commitment to participate. Similar events are planned for Perth, Brisbane, Sydney, Melbourne and in regional areas on the same day. In Canberra it will be on Sunday, 21 October.

Hundreds of South Australians are expected to join in the walk, raising funds—some as individuals, some as teams, all dedicated to raising funds to support ongoing research. There is hope for the future with the extension of research into islet transplantation hopefully leading to a pathway for a cure. Research and adequate funding for that research are crucial to finding the cause, which may lead to prevention and a much wanted cure for those that live their lives with type 1 diabetes.

Italian Australian Film Festival

Senator FIERRAVANTI-WELLS (New South Wales) (10.49 pm)—I rise this evening to speak about an exciting initiative between Australia and Italy. Having had a longstand-
ing and active involvement in the Australian-Italian community, I am very pleased to speak on the Italian Australian Film Festival. As the first Australian woman of Italian origin elected to the Senate and the first person of Italian origin elected to the Senate from New South Wales, I am particularly delighted to see activity between Australia and Italy in so many different areas. It is a vibrant relationship based especially on strong person-to-person ties. With first-, second- and third-generation Australians of Italian origin making up about 10 per cent of our population, it is a relationship which has manifested itself across a diversity of ventures and enterprises. It is a relationship, of course, that I know well and one which is dear to my heart. In Italy, Australia is seen as a wonderful destination, and we here in Australia enjoy so many things Italian. Indeed, many things Italian are now a feature of our daily lives.

This evening I would like to speak about one such significant event this year. On 3 June, I had the pleasure of attending the inaugural Italian Australian Film Festival gala dinner with the special guest being the incomparable film icon Sophia Loren. The event was held at the stunning Miramare Gardens in Terrey Hills in the northern beaches of Sydney. It was a great success. The Italian Australian Film Festival has been a showpiece of both Italian and Australian cultures. It is another example of the already strong connections between Italy and Australia.

In September 2006 the festival directors, Gabriella Matacchioni and John Bomben, travelled to the Venice Film Festival, at the invitation of Cinecitta, to present and launch Spettacolare 2007. The gala event, held at the Excelsior Hotel on the Lido, was attended by about 200 guests, including the then Australian Ambassador, Peter Woolcott; the Austrade Commissioner in Milan, Tim Gauci; Carlo Alberto Balestrazzi, the director of one of Italy’s oldest and biggest production houses, Tiatanus; and other notables in the film industry. As well as promoting Spettacolare, the occasion was used to showcase the beautiful Sunshine Coast in Queensland, where the festival was originally to have been held.

For the film industry itself, the festival was an opportunity for significant networking between the Australian and overseas film industries and for sharing expertise and promoting the industry across wider markets. This outcome fits with the coalition government’s overall goal of supporting our industry through the arts portfolio and the recent measures announced in the 2007-08 budget. I would like to congratulate Mrs Matacchioni and Mr Bomben, the main organisers of the festival. Their personal commitment, financial investment and passion for this project—believed to be the first of its kind between the two countries—ensured that, despite the various hurdles, it was a great success.

As indicated, one of the main highlights of the festival was the gala dinner with Sophia Loren. I was honoured to have been present at this event along with a number of my federal and state parliamentary colleagues, who I am sure, like me, found this a very memorable evening. What made the event particularly special was the decision by the organisers to not only praise Ms Loren for an outstanding career but to also use the opportunity to introduce her to the inspirational six-year-old burns survivor Sophie Delezio. The event was used to raise awareness of burns injuries and to raise funds for the Day of Difference Foundation, which was established by Sophie’s parents to assist in promoting valuable research into paediatric burns. It was a particularly poignant moment when Ms Loren spoke to young Sophie and told her that she wanted to give her a very special gift which she wanted young Sophie to wear.
on her first date. Ms Loren then took off the beautiful earnings she was wearing and gave them to young Sophie. It was a magnificent and very generous gesture by Ms Loren.

After the success of the festival and the undeniable generosity and commitment of the organisers, I was disheartened to learn that those behind this event had received undeserved criticism from a member of the Queensland bureaucracy. I understand that Mr Michael Denton, who is the Chief Executive of Queensland Events and was then a member of the Maroochy Tourism Industry Advisory Board, criticised the festival organisers in an interview on ABC Radio in Queensland on 7 June 2007. I understand that Mr Denton made the comments in his capacity as Chief Executive of Queensland Events, a body administered directly by the Queensland Department of the Premier and Cabinet, which coincidentally was itself seeking to promote its ambitious plan for an annual film awards event for the Asia-Pacific region.

While the current Queensland government has a less than impressive record when it comes to its management of the public sector, the conduct of the premier’s department raises real concerns. I am advised that Mr Denton intimated in his interview, and on other occasions, that the Italian Australian Film Festival received significant amounts of public funding to assist in organising a film festival event on the Sunshine Coast in Queensland. I am informed by Mrs Matacchioni that the organisation did not receive funding from the Queensland government for the festival. Indeed, I also understand that the funding given by the federal government for the festival was reimbursed to the Commonwealth when the event regrettably had to be relocated to Sydney.

Mr Denton’s comments while speaking in his capacity as Chief Executive of Queensland Events have unnecessarily damaged the reputation of the festival and its organisers. Indeed, I understand that legal action has been undertaken by the festival organisers with regard to these comments. I am also very concerned that at no stage were the organisers of the festival afforded a right of reply by the ABC. Indeed, the ABC failed to even contact the organisers for any comments.

I take this opportunity to comment on the appalling behaviour of another component of the ABC, namely The Chaser. Andrew Hansen disrupted Ms Loren’s press conference in Sydney on 1 June 2007 by asking 10 very inappropriate questions of Ms Loren that were deliberately designed to embarrass her. At the gala dinner that I attended, Ms Loren expressed to me her absolute displeasure at the conduct of Mr Hansen. As usual, The Chaser simply do not care whom they offend and the effect that this may have. In this case, they had no regard for the potential embarrassment to the organisers and supporters of the Italian Australian Film Festival. Rest assured that I intend to raise this matter again in another forum.

I would now like to look at what is being proposed for Spettacolare in the future. The directors of the festival are currently in negotiations with major corporate sponsors and partners in both Australia and the European Union. They are also having discussions with various levels of government in both Italy and Australia to deliver the 2008 event. I am advised that the event should include a visit to Australia by Isabella Rossellini with a personal photographic exhibition, a retrospective of her father’s films, a concert performance and various other trade and cultural activities. It is anticipated that the event will take place in Sydney in early September 2008. The aim is to make Spettacolare an annual trade and cultural exchange between Australia and Italy in particular and then
Europe and Asia. The hope of the organisers is that, within the next two to three years, Spettacolare will be able to tour to other major Australian capital cities and eventually return to its home base on the Sunshine Coast in Queensland. I conclude by congratulating the organisers and supporters for their efforts with Spettacolare 2007, and I wish them all the very best for a successful Spettacolare in Sydney in 2008.

Proposed Pulp Mill

Senator Barnett (Tasmania) (10.59 pm)—I rise tonight to place on record my strong support for the pulp mill project in northern Tasmania, subject to strict environmental conditions. I wish to speak about this project and the process to approve it and to make some suggestions on the way forward.

I believe a lack of confidence in the state government’s approval process has led to a lack of confidence in the pulp mill project, and this is regrettable. However, there is a way forward and, like the Prime Minister, the Hon. John Howard, I am hopeful and optimistic that the pulp mill can be approved and can deliver many benefits for Tasmania. I support value adding and downstream processing—a pulp mill and then a paper mill. This should be our future. Continuing to export raw woodchips from Tasmania is an undesirable waste of our resources. It is not a clever strategy.

The woodchip export industry started in Tasmania in 1973 and was supposed to be a temporary industry while we developed value-adding industries. Here we are, 34 years later. It is time we stopped exporting an estimated five million tonnes of woodchips each year. I recall a meeting in my office some 4½ years ago, soon after I became a senator. I was meeting with Barry Chipman and others from Timber Communities Australia, urging them to get on and to support the establishment of a pulp mill in Tasmania.

This pulp mill is actually the third attempt by the Tasmanian community to build a pulp mill, the first being Wesley Vale in 1988-89 and the second a proposal by the Taiwan Pulp and Paper Corporation in 1992-93. Now there is the Gunns proposal. The first attempt failed amid the politics of the environment. The second proposal was withdrawn on purely economic grounds. During the Wesley Vale saga I was senior adviser to the then Tasmanian Premier, Robin Gray, and saw the politics of the controversy firsthand.

The state Labor government, and Premier Paul Lennon in particular, through his ham-fisted approach to the approval process, have, in my view, nearly lost this pulp mill project to Tasmania. The state Labor government have compromised the state’s proper approval processes in the most cavalier fashion, with rules made up or broken as they went along. Their actions have been foolhardy at best, but I would describe them as ham-fisted. They have resulted in the dramatic resignation of two heads of the Resource Planning and Development Commission. That was the independent assessment body established to oversee the approval process. Both heads, Julian Green and Mr Justice Wright, angrily resigned, citing political interference and pressure from the Lennon Labor government. Gunns withdrew from the RPDC process on 14 March 2007, and on 20 March 2007 Premier Paul Lennon introduced the Pulp Mill Assessment Bill, thus avoiding his own agreed method of independent assessment.

From the Australian government perspective, the proposed mill remained a controlled action and therefore still required assessment and approval under the Environment Protection and Biodiversity Conservation Act, the EPBC Act. The Australian government has undertaken a full and rigorous assessment of matters that relate to the Gunns pulp mill under that act, independent of any state as-
assessment. The development cannot proceed unless these approvals are obtained. It was on 16 August that Minister Turnbull invited public comment on his department’s draft approval and conditions. Then, on 29 August, Minister Turnbull decided under the EPBC Act to specify 30 business days from that date for a decision. The next day, Minister Turnbull announced a scientific panel headed by the Australian government Chief Scientist, Dr Jim Peacock, who would consider the draft approval and public comments and report with recommendations regarding approval. That report is due later this week, I understand.

Interestingly, on 9 August this year the Federal Court dismissed challenges to the federal assessment process from the Wilderness Society and a group called Investors for the Future of Tasmania. This further confirms the vigour and appropriateness of the federal approval process compared to the state approval process. As I have said, the $1.7 billion pulp mill project will have the capacity to produce 800,000 tonnes of air-dried, bleached craft pulp per annum, generating annual export revenue in Tasmania exceeding $350 million. Directly and indirectly, the project is expected to generate up to 8,000 jobs during construction and up to 1,500 jobs once the mill is operational. In 2005 I visited Sweden, the home of 44-odd pulp mills. Knowing of the Gunns pulp mill planned for Tasmania, I met with both the forestry and environment committees of their parliament. Both committees confirmed that there were no significant issues with pulp mills or their establishment in Sweden. I am confident that our federal approval processes will ensure proper scrutiny, and I am hopeful of a positive decision as soon as possible and preferably before the election is called.

We can go further, and there is always room for improvement. The compromised approval process at a state level requires solutions at a national level so that proponents of major developments are not deterred by sovereign risk concerns from presenting projects for assessment in the future. We need to rebuild and restore public confidence in the approval process for not only major projects in Tasmania but projects of national significance. Accordingly, I make three suggestions for the future. Firstly, at the state level, I suggest a tough and thoroughly independent environmental protection agency—an environmental watchdog proposed by the Tasmanian Liberal opposition leader, the Hon. Will Hodgman, and also promised by the Tasmanian Labor government at the 2006 election but so far not implemented despite Mr Hodgman’s constant reminders. This agency would give comfort to the community where there is concern about a development polluting the environment. The community would have more confidence in the Gunns pulp mill if they had confidence in the monitoring of its operations once constructed, and the state Liberal team’s new EPA would strike a more sensible balance between development and protecting our natural environment by upgrading the identification and policing of environmental breaches, if any.

Secondly, at the federal level, I propose a formalised, independent, objective assessment process for projects of national significance. To my knowledge, most states have an independent, objective assessment process for projects of state significance. This is a proposal for an independent, objective assessment of projects of national significance. I might add that COAG has done some work on this already. Last year on 14 July at the COAG meeting and again this year on 13 April, COAG committed to reducing the regulatory burden across all three levels of government and to addressing the environmental assessment and approvals processes. COAG agreed to develop a proposal in consultation with states and territories for a more
harmonised and efficient system of environmental assessment and approval as soon as possible.

COAG supports the work of the major project facilitator, and already this Australian government funded entity has assisted 32 projects worth $41.7 billion and will deliver around 11,280 jobs if they proceed as planned. The projects include the Visy Industries’ $450 million expansion of its Tumut pulp mill. So we need to go further, either with or without COAG support. The nation needs an approval process whereby the Australian government is able to declare a project of national significance so that, for projects of a certain size, such as the Gunns pulp mill, the approval process is undertaken independently and objectively within agreed time lines. I believe such a reform would go some way to avoiding the Wesley Vale and Tamar pulp mill controversies that have dogged my state over the last 20-odd years.

To remain a buoyant and competitive economy on the world stage, Australia cannot afford to be regarded as a nation where environment approval processes vary markedly between eight state and territory jurisdictions and industry’s sovereign risk is always at stake. Such a process would include rigid time frames so that the proponents would be able to plan and budget for the approval process and not fear that their plans may be tied up in courts or tribunals for years. Special parliamentary legislation would be required to alter time frames or any part of the assessment process. Is this heavy-handed? No. If a project is big enough, if its costs run into billions of dollars, then the nation has a role to play in ensuring its proper assessment and monitoring.

Thirdly, and finally, we need a comprehensive education and information campaign on the benefits of the mill but also how, when and where it will be monitored. The structures and initiatives in place to achieve this and the time line involved in rebuilding confidence in both the mill and the process will be critical. Public affairs management of the project, informing and educating the public on the mill development and the process, has unfortunately not been up to scratch. So we can still do better. These are suggestions for consideration.

Workplace Relations

Senator CORMANN (Western Australia) (11.09 pm)—Mr President, I seek leave to speak for more than 10 minutes.

Leave granted.

Senator CORMANN—Today, at this late hour, I would like to speak about the importance to the Australian economy of a modern and flexible workplace relations system—a workplace relations system that helps deliver more jobs and better paid jobs; a workplace relations system that is particularly important to the ongoing success of the resources sector and the building and construction industry in Western Australia.

The resources sector in Western Australia has led the charge when it comes to implementing workplace reform. In fact, that is because it knew that, if it wanted to take advantage of increasing world demand and world prices for our resources, we had to improve our productivity, we had to reduce our levels of industrial disputation and we had to develop a better relationship between employers and their workers. The resources sector in Western Australia has been able to benefit from modern, flexible workplace arrangements since 1993, when the Court state government first introduced individual workplace agreements. And, of course, since winning government in 1996, the Howard government has successfully reformed workplace relations nationally through a series of significant reforms like the introduction of Australian workplace agreements.
And thank goodness we did, because when Labor won government in Western Australia in 2001 they had to deliver on a promise. They had to deliver on a promise they had made to the majority shareholders of the Australian Labor Party. Without flinching, the incoming Gallop Labor government did everything they could to hand control of workplaces back to the union heavies—to the Kevin Reynoldses, the Joe McDonalds and all their cohorts. The result? For a start, an immediate 300 per cent increase in the take-up of Australian workplace agreements by workers in the West Australian resources sector alone. The result today—more importantly—is a thriving resources sector in Western Australia driving our economy. In fact, Western Australia is driving much of the success of the national economy, with the result of unemployment at 3.1 per cent in Western Australia, with the result of strong wages growth, 21.5 per cent growth in real wages since 1996—compare that to the decrease of 1.8 per cent under Labor—and with the result of industrial disputes at the lowest level since records were first kept.

With that sort of record you would think that anyone would want to keep the reforms that brought this about, would in fact want to strengthen them and develop those reforms further. So what do Labor want to do? They want to abolish Australian workplace agreements and abolish the Australian Building and Construction Commission. Okay, after a public outcry they now say they will only abolish the commission over time. There are, of course, different ways to skin a cat. They will now do it from within. They are now saying that they will not delete the name until 2010. But undermine it from within and abolish it they will, make no mistake.

As a Western Australian I have heard all of this before. The parallels are very disconcerting and they should worry the Australian people. In 2001, the Western Australian Labor Party, pushed along by the vested interests of a union movement in decline—a union bureaucracy fighting for relevance with workers and for their survival—ran on exactly that same agenda. They ran on an agenda to abolish individual workplace agreements and—wait for this—on an agenda to abolish the Western Australian construction and building industry taskforce, which was set up by Graham Kierath, the then minister, as a problem solver in the workplace to help protect employers from union intimidation and threats.

Labor in WA back in 2000-01 gave the unions a wink and a nod and said: ‘Help us get in. Do what needs to be done to help us win—be quiet and maybe attack us from time to time so we can look tough—and we’ll sort it all out in government.’ Of course that is exactly what happened. And sort it out for them they did. They delivered on both: they abolished individual workplace agreements and they abolished the construction and building industry taskforce. The result: union thugs running amok across building and construction sites in Perth. The people of Western Australia would well remember. The people in the remainder of Australia—and I think that is one of our challenges—may not remember, which may in part explain the support for the Howard government’s workplace relations reforms in Western Australia. It was a huge issue in Western Australia between 2001 and 2003.

Have a read of some of the stories in the West Australian at the time. On 23 February 2001, less than two weeks after the state election, which Labor won, an article entitled ‘It’s war on Perth’s building sites’ said:

WAR is being waged on Perth’s construction sites. Bosses and workers claim that carloads of up to 30 union heavies at a time have been doing the rounds of sites, closing them and intimidating workers.
At least five sites were visited this week, the latest a West Perth site where access was blocked from 6am yesterday, glue poured into gate locks and construction stopped.

At the non-unionised Bluewater Apartments site in South Perth on Tuesday, workers and project manager Gerry Hanssen said about 20 unionists went on to the site, tore down a flag, erected their own flag and intimidated workers.

Workers at the Bluewater site spoken to by The West Australian yesterday said the visit was not made on the grounds of safety or worker representation but intimidation.

Claims included “no ticket, no start” threats, demands that workers sign union-based pattern enterprise bargaining agreements, using “safety breaches” as an industrial weapon and strike action without consultation with workers.

Despite all that, according to the article Mr Kobelke, the then new relevant Labor state minister:

... confirmed that Labor’s pre-election pledge to disband the Construction and Building Industry Taskforce would go ahead.

I believe that even the Gallop Labor government was embarrassed by the extent to which union heavies like Kevin Reynolds and Joe McDonald ran roughshod over non-union workers and employers in WA at the time. They did not quite know how to handle it, what to do about it and how to stop it, but I am sure that they would have been privately embarrassed.

Later, the CFMEU Assistant Secretary, Joe McDonald, told a royal commission that, yes, of course he would shut down a work site just because he found non-union workers there. So much for freedom of association, which of course includes the right not to associate. So much for complying with the law.

Shopfitters at the Floreat Forum redevelopment are reported to have been forced to pay CFMEU memberships for all their workers. They also had to pay for at least one of the CFMEU’s safety labourers, whether they were needed or not and whether they turned up or not. Who paid for that at the end of the line? Ultimately, the everyday Western Australian consumer.

Later in 2001, the West Australian ran another story titled, ‘Building dispute falls on Gallop’ and in it Kevin Reynolds is quoted as saying that the CFMEU would hold back affiliation fees owed to the Labor Party until it produced its industrial relations reforms. Of course, it was not long before Kevin Reynolds had to pay up, because the Labor state government had delivered. The government was sitting back while business and workers across WA were threatened and intimidated by unions. Again, on 22 June 2002, the West Australian reported how the CFMEU would use fear, intimidation and coercion to get its way. The article read:

A WA building union used fear, intimidation and coercion to get its way, lawyers for the Cole inquiry have submitted.

In January, the CFMEU threatened to stop refurbishment work at the WACA Ground to convince workers from a non-unionised demolition company on the site to join its ranks.

The commission counsel said the union had operated in an atmosphere of fear and intimidation in order to compel union membership.

The consequences of continued harassment and intimidation on the site at the WACA could have been devastating for the WACA and WA. Too big a delay to the project might have put at risk WA’s hosting of the England Test match in November and its $10 million spin-off for the WA economy.

Who saved the day? Who fixed up the mess? Have a guess! Tony Abbott, as the then federal minister for workplace relations and the Howard government, who first set up the Cole Royal Commission into the Building and Construction Industry. Tony Abbott, Kevin Andrews and the Howard government, who ultimately set up the Australian Build-
I bet that, privately, the Gallop Labor government was relieved when the Australian Building and Construction Commission came onto the scene. Somebody else was there to fix up the mess and to stand up to the union movement, because they could not. All of them, as compulsory members of the union movement, beholden to the vested interests of the union movement, could not do the job. They could not do what was right by the people of Western Australia.

This, of course, brings us to the next federal election. The Australian people need to consider that, at that election, should Labor win, there is nowhere left to hide. With Labor in government coast to coast there would be nowhere to hide when it comes to those sorts of economy-destroying activities. People like Joe McDonald are on the public record in Western Australia as salivating at the prospect of a Rudd Labor victory in a few months time, and allegedly have already used it as a threat on Perth building sites. In the scenario where Labor wins, they—quite possibly with a union-friendly and union-funded Greens movement controlling the balance of power in the Senate—will abolish Australian workplace agreements and will, in time, abolish the Australian Building and Construction Commission, which has been so successful in keeping union thuggery in check. It would not only have a devastating effect on the national economy but would put a stake through the heart of the Western Australian resource based economy.

This brings us to the union Labor pantomime. Labor and senior union bosses will play out a little game in front of the Australian people over the next few weeks. In fact, it has already begun. The aim of the game is to make us believe that union hardheads like Kevin Reynolds disagree with Labor on their workplace relations policies. They will try to make us believe that Kevin Rudd and Julia Gillard are standing up to the union movement. Only last week, Kevin Reynolds was quoted in the West Australian attacking Julia Gillard. Senators should have a read of page 4 of the West Australian last Tuesday. It will make you laugh. Page 4 read:

Upping the ante in his attack on the Federal Labor leadership, Mr Reynolds left hundreds of builders at a public forum stunned when he said that Ms Gillard’s relationship with the unionist was just one of many secrets that would be revealed about Labor’s inner circle.

Mr Reynolds has made it clear he does not support Labor’s leadership team, partly because it would retain the Federal Government’s Australian Building and Construction Commission at least until 2010.

Why do I know that this is a charade? Why do I know that it is all made up to make us all believe that the Kevin running for PM is standing up to the Kevin who will be running him as PM? Because it is part of a well-used, well-established formula. They have done it before—they have followed exactly the same modus operandi.

Mr President, I take you back to a couple of weeks prior to the 2001 state election in Western Australia and to an article in the West Australian of 25 January 2001. Here is what Kevin Reynolds said then:

Controversial union boss Kevin Reynolds yesterday attacked Opposition Leader Geoff Gallop, saying Dr Gallop may not know what to do if he became premier.

‘We will see if he is like the dog that captures the car—when he does win he mightn’t know what to do with it.’

Sound familiar? Have you heard things like that from Kevin Reynolds since about the current federal Labor leadership team?
Let’s go back to history. What happened afterwards in Western Australia? Geoff Gallop and the Labor state government delivered on all of the vested interest demands of the union bureaucracy—lock, stock and barrel. They abolished individual workplace agreements. They abolished the construction and building industry task force, which had been successful in keeping union thuggery in check. They gave no support to employers and non-union workers faced with appalling union thuggery. Of course, the federal government was forced to step in to save those employers and those workers but, more importantly, the thriving Western Australian economy from being suffocated.

Should Labor win at the next election there will be nowhere to hide when it comes to Labor policies on workplace relations. There will be nowhere to hide when a future Labor government moves to prop up the union bureaucracy ahead of promoting economic growth and development. And, of course, to make absolutely sure an incoming Labor government would do the right thing they are sending all of their top union bureaucrats into this parliament after the next election, even if it means walking all over their comrades. Take former Australian Manufacturing Workers Union National Secretary, Doug Cameron, for example, who is expected to replace Senator Campbell. The former Australian Council of Trade Unions Secretary, Greg Combet, will replace Comrade Kelly Hoare in Charlton. And there is the Australian Workers Union National Secretary, Bill Shorten—and the list goes on. The union heavies are on their way to take over the Labor side in this parliament, joining the 70 per cent of members of the alternative government who are former union bureaucrats already. They will make sure that a future federal Labor government will do what is required for the union movement.

Mr President, I repeat this message through you to the people of Australia: make no mistake, those top-level union bureaucrats will make sure that an incoming federal Labor government will deliver to the union movement, even if it is to the detriment of your jobs and the ongoing strength of our economy. With coast-to-coast Labor, the opportunity is just too good. The fact is that Labor in Australia has not yet done the hard yards when it comes to reforming its structural relations with the union industry. And it shows. Tony Blair had to do those hard yards before the British people were prepared to give Labor another go in government.

Quite frankly, it is inappropriate and out of date that, by virtue of the Labor Party constitution, unions still have majority control of the Australian Labor Party organisation, controlling its policies and its preselections. It is inappropriate and out of date that Labor members of parliament are forced to join a union. It is absolutely incredible that 70 per cent of the alternative government of Australia are former union bureaucrats.

I often ask people across Western Australia: whose interests do you think an incoming Australian government will be focused on, considering that 70 per cent of its members are former union bureaucrats? When in doubt, when decisions are hanging in the balance between the vested interests of the union movement, which is fighting for its survival, and your interests, and between the vested interests of the union movement and the national interest, where do you think decisions by such an Australian government would go?

I put it to the Australian Labor Party that they have a responsibility to the Australian people to seriously review their structural relationship with the union movement. Until they have done so, it is unsafe for the Australian people to give them their confidence.
The Australian people at the next election ought to consider very carefully what is in their interest and what is in the national interest when it comes to voting at the next election. The Howard-led coalition government has not only a strong record but also a plan for the future. The alternative government has 12 years of promises to their union leaders to pay back.

**Senate adjourned at 11.26 pm**

**DOCUMENTS**

**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—Investigation Amendment Principles 2007 (No. 1) [F2007L03718]*.

Australian National University Act—Fees Statute 2006—Tuition Fees Order 2007 [F2007L03667]*.

Broadcasting Services Act—

Broadcasting (Hours of Local Content) Declaration No. 1 of 2007 [F2007L03668]*.

Broadcasting (Hours of Local Content) Declaration No. 1 of 2007 (Amendment No. 1 of 2007) [F2007L03725]*.

Census and Statistics Act—Statement No. 2 of 2007—List of businesses for the Australian Institute of Criminology.

Civil Aviation Act—Civil Aviation Safety Regulations—

Airworthiness Directives—Part 105—

AD/AS 355/85 Amdt 4—Sliding Door Rear Fitting Pin [F2007L03660]*.

AD/ATR 42/19 Amdt 1—Fuel Tank Safety Fuel Airworthiness Limitations [F2007L03663]*.

AD/BELL 206/171—Tail Rotor Blades [F2007L03708]*.

AD/BELL 222/43—Tail Rotor Blades [F2007L03710]*.

AD/BELL 407/30—Tail Rotor Blades [F2007L03711]*.

AD/BELL 430/11—Tail Rotor Blades [F2007L03712]*.

AD/DAUPHIN/85 Amdt 2—CPT 609 Crash Position Transmitter Beacon Antenna [F2007L03662]*.

AD/DHC-8/133—Main Landing Gear System [F2007L03681]*.

AD/ECUREUIL/109 Amdt 4—Sliding Door Rear Fitting Pin [F2007L03661]*.

AD/SD3-30/23 Amdt 2—Propeller Attaching Bolts [F2007L03714]*.

Instrument No. CASA EX45/07—Exemption – Airbus 380 runway and taxiway width [F2007L02697]*.

Environment Protection and Biodiversity Conservation Act—Conservation theme for prioritising nominations for listing Threatened Species, Threatened Ecological Communities and Key Threatening Processes for the assessment period commencing 1 October 2008 [F2007L03593]*.

Family Law Act—Family Law (Superannuation) Regulations—Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2007 (No. 1) [F2007L03687]*.

Food Standards Australia New Zealand Act—Australia New Zealand Food Standards Code – Amendment No. 93 – 2007 [F2007L03630]*.

Health Insurance Act—

Health Insurance (Gippsland and South Eastern New South Wales Mobile MRI Trial) Determination HS/05/2007 [F2007L03671]*.

Health Insurance (Positron Emission Tomography) Determination HS/05/07 [F2007L03685]*.

Higher Education Support Act—

**CHAMBER**
Higher Education Provider Approval (No. 10 of 2007)—Sarina Russo Schools Australia Pty Ltd [F2007L03647]*.

Other Grants Guidelines 2006—Amendment No. 5 [F2007L03649]*.


Northern Territory National Emergency Response Act—
Northern Territory National Emergency Response (Other Areas) Declaration 2007 (No. 1) [F2007L03682]*.
Northern Territory National Emergency Response (Other Areas) Declaration 2007 (No. 3) [F2007L03683]*.
Northern Territory National Emergency Response (Town Camps) Declaration 2007 (No. 1) [F2007L03684]*.

Social Security (Administration) Act—
Social Security (Administration) (Declared relevant Northern Territory area —Finke or Aputula) Determination 2007 [F2007L03693]*.
Social Security (Administration) (Declared relevant Northern Territory area —Imanpa) Determination 2007 [F2007L03689]*.
Social Security (Administration) (Declared relevant Northern Territory area —Titjikala) Determination 2007 [F2007L03692]*.
Social Security (FaCSIA) (Exempt Northern Territory Persons) Determination 2007 [F2007L03694]*.

Telecommunications (Interception and Access) Act—Telecommunications (Interception and Access) (Staff members of Western Australia Police) Declaration 2007 [F2007L03688]*.


Veterans’ Entitlements Act—Statements of Principles concerning—
Anxiety Disorder No. 101 of 2007 [F2007L03579]*.
Anxiety Disorder No. 102 of 2007 [F2007L03580]*.
Peritoneal Adhesions No. 103 of 2007 [F2007L03581]*.
Peritoneal Adhesions No. 104 of 2007 [F2007L03582]*.
Shin Splints No. 105 of 2007 [F2007L03583]*.
Shin Splints No. 106 of 2007 [F2007L03585]*.

* Explanatory statement tabled with legislative instrument.

Tabling
The following government documents were tabled:


Crimes Act 1914—Authorisations for the acquisition and use of assumed identities for 2006-07—Australian Federal Police.


Health Services Australia Ltd (HSA Group)—Statement of corporate intent 2007-10.
IIF Investments Pty Limited, IIF (CM) Investments Pty Limited, IIF BioVentures Pty Limited, IIF Foundation Pty Limited and IIF Neo Pty Limited—Reports for 2005-06.

Migration Act 1958—Reports for the period 1 March to 30 June 2007—

Section 91Y—Protection visa processing taking more than 90 days.

Section 440A—Conduct of Refugee Review Tribunal (RRT) reviews not completed within 90 days.


Sydney Airport Demand Management Act 1997—Quarterly report on the maximum movement limit for Sydney Airport for the period 1 April to 30 June 2007.

Treaties—

Bilateral—Text, together with national interest analysis and annexures—

Treaty between Australia and the State of the United Arab Emirates on Mutual Legal Assistance in Criminal Matters (Hobart, 26 July 2007).

Treaty on Extradition between Australia and the State of the United Arab Emirates (Hobart, 26 July 2007).

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Uranium Exports
(Question No. 3433)

Senator Allison asked the Minister representing the Minister for Foreign Affairs, upon notice, on 8 August 2007:

In regard to the potential deal that would see the export of uranium from Australia to India:

1. Considering obligations under the Nuclear Non-Proliferation Treaty, how does the Australian Government reconcile selling uranium to India.

2. (a) In any agreement regarding the export of uranium, what safeguards will be included to guarantee exported uranium does not end up supplying India’s nuclear weapons program; and (b) how will these safeguards be policed.

3. Can the Government rule out the creation of a nuclear waste dump in Australia.

4. Is the Government preparing to take control of uranium reserves in non-mining states.

5. Does the sale of uranium to India compromise Australia’s obligations under the Treaty of Rarotonga.

6. Is the United States of America (US)–India nuclear technology deal consistent with the Nuclear Non-Proliferation Treaty and the provisions of the principles and objectives decided on in 1995.

7. Under either the Australian or the US deal with India, will India be able to keep its nuclear weapons program without adequate safeguards.

8. Are these arrangements consistent with United Nations Security Council Resolution 1172 which refers to transfers that ‘could in any way assist’.

9. Will any agreement between India and Australia include Indian support for a verifiable global treaty to ban the production of fissile material for weapons and a ban on testing nuclear bombs.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

1. The supply of uranium to India would not contravene Australia’s international legal obligations under the Nuclear Non-Proliferation Treaty (NPT) provided the uranium is covered by IAEA safeguards. As the Prime Minister announced on 16 August 2007, conclusion of a bilateral safeguards agreement with India is conditional on a number of other steps, including India concluding a suitable safeguards agreement with the International Atomic Energy Agency (IAEA) covering all designated civil nuclear facilities.

2. If Australia concludes a safeguards agreement with India, the provisions within the agreement would follow Australia’s long-standing policy requirements for bilateral safeguards agreements, as outlined in the Annual Reports of the Australian Safeguards and Non-Proliferation Office, including that Australian uranium must be used exclusively for peaceful purposes, and must be covered by IAEA safeguards. The precise nature of safeguards provisions in any Australia-India nuclear safeguards agreement would depend on the exact nature of India’s safeguards agreement with the IAEA, which is yet to be concluded.

3. This question is best directed to the Minister for Education, Science and Training, the Hon Julie Bishop MP.
(4) This question is best directed to the Minister for Industry, Tourism and Resources, the Hon Ian Macfarlane MP.

(5) No.

(6) The NPT, and the principles and objectives decided on in 1995, do not prohibit the transfer of nuclear material and equipment to India provided appropriate safeguards are in place. Under the US-India civil nuclear initiative, India has committed to enter into expanded safeguards arrangements with the IAEA for this purpose.

(7) The US-India nuclear deal is an initiative regarding civil nuclear energy cooperation. The initiative addresses the separation of India’s civil nuclear energy sector from its military sector and the placing of the civil sector under IAEA safeguards in perpetuity. If concluded, an Australian bilateral safeguards agreement with India would ensure that any Australian uranium sold to India would be used for exclusively peaceful purposes.

(8) Australia’s decision to allow the export of uranium to India, subject to conditions being met, does not violate United Nations Security Council Resolution 1172. The application of IAEA safeguards to India’s peaceful nuclear facilities and a bilateral safeguards agreement between Australia and India would ensure that Australian nuclear material supplied to India would be used for exclusively peaceful purposes.

(9) Under the US-India initiative, India has committed to work on conclusion of a Fissile Material Cut-off Treaty and to continue its unilateral moratorium on nuclear testing. While Australia welcomes India’s testing moratorium, the Government continues to encourage India—and all states whose ratification is required for entry-into-force of the Comprehensive Nuclear Test Ban Treaty (CTBT)—to sign and ratify the CTBT without delay.

Western Sahara
(Question No. 3439)

Senator Allison asked the Minister representing the Minister for Foreign Affairs, upon notice, on 16 August 2007:

With reference to the recent visit of a parliamentary delegation from Morocco to Australia, which coincided with renewed talks at the United Nations in New York in relation to Western Sahara:

(1) Was there any discussion between the Moroccan delegation and the Australian Government on the subject of Western Sahara; if so, was the matter of the referendum in Western Sahara raised.

(2) Was the matter of the continuing reports of human rights abuses by Moroccan forces in Western Sahara raised.

(3) What were the outcomes of the discussions referred to in paragraphs (1) and (2).

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) to (3) My discussions with foreign parliamentary delegations, which occur very frequently, are treated as confidential and are not a matter for the public record.