INTERNET
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the Senate and committee hearings are available at

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SITTING DAYS—2007

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

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FORTY-FIRST PARLIAMENT
FIRST SESSION—TENTH PERIOD

Governor-General

His Excellency Major-General Michael Jeffery, Companion in the Order of Australia, Commander of the Royal Victorian Order, Military Cross

Senate Officeholders

President—Senator the Hon. Alan Baird Ferguson
Deputy President and Chairman of Committees—Senator John Joseph Hogg
Leader of the Government in the Senate—Senator the Hon. Nicholas Hugh Minchin
Deputy Leader of the Government in the Senate—Senator the Hon. Helen Lloyd Coonan
Leader of the Opposition in the Senate—Senator Christopher Vaughan Evans
Deputy Leader of the Opposition in the Senate—Senator Stephen Michael Conroy
Manager of Government Business in the Senate—Senator the Hon. Eric Abetz
Manager of Opposition Business in the Senate—Senator Joseph William Ludwig

Senate Party Leaders and Whips

Leader of the Liberal Party of Australia—Senator the Hon. Nicholas Hugh Minchin
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Helen Lloyd Coonan
Leader of The Nationals—Senator the Hon. Ronald Leslie Doyle Boswell
Deputy Leader of The Nationals—Senator the Hon. Nigel Gregory Scullion
Leader of the Australian Labor Party—Senator Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy
Leader of the Australian Democrats—Senator Lynette Fay Allison
Leader of the Australian Greens—Senator Robert James Brown
Leader of the Family First Party—Senator Steve Fielding
Liberal Party of Australia Whips—Senators Stephen Parry and Julian John James McGauran
Nationals Whip—Senator Fiona Joy Nash
Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber
Australian Democrats Whip—Senator Andrew John Julian Bartlett
Australian Greens Whip—Senator Rachel Siewert
Family First Party Whip—Senator Steve Fielding

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

<table>
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<tr>
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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 Hon. 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-
ology 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 Inter-generational Finance and Shadow Minister for Banking and Financial Services
Senator the Hon. Nicholas John Sherry

Shadow Minister for Education and Training
Stephen Francis Smith MP

Shadow Treasurer
Wayne Maxwell Swan MP

Shadow Minister for Finance
Lindsay James Tanner MP

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

Shadow Parliamentary Secretary for Foreign Affairs
Anthony Michael Byrne MP

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

Shadow Parliamentary Secretary for Environment and Heritage
Jennie George MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

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

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

Shadow Parliamentary Secretary for Industry and Innovation
Bernard Fernando Ripoll MP

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

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

THURSDAY, 20 SEPTEMBER

Chamber
Women In Parliament Exhibition................................................................. 1
Petitions—
   Live Animal Export ............................................................................. 1
   Capital Punishment ............................................................................. 1
Notices—
   Presentation ........................................................................................ 2
Committees—
   Selection of Bills Committee—Report ................................................ 4
Business—
   Rearrangement .................................................................................. 10
Notices—
   Postponement .................................................................................... 10
Communications Legislation Amendment (Crime or Terrorism Related
Internet Content) Bill 2007—
   First Reading ....................................................................................... 10
   Second Reading ................................................................................... 11
Business—
   Consideration of Legislation ............................................................. 12
Death of Mr Dario de Jesus Torres and Colombia ...................................... 12
Sexual Abuse of Children and Young People ........................................... 13
Sexual Slavery and Japan .......................................................................... 13
Trade Practices (Creeping Acquisitions) Amendment Bill 2007—
   First Reading ....................................................................................... 15
   Second Reading ................................................................................... 16
Death of Mr Vincent Serventy ................................................................. 17
Carteret Islands and Sea Level Rise .......................................................... 17
Australian Nuclear Science and Technology Organisation ........................ 17
Bushfires in Greece .................................................................................. 17
Committees—
   Privileges Committee—Report .......................................................... 18
   Publications Committee—Report ......................................................... 18
   Intelligence and Security Committee—Report ..................................... 19
   Publications Committee—Report ......................................................... 20
   Treaties Committee—Report ............................................................... 20
Budget—
   Consideration by Estimates Committees—Additional Information .... 21
Migration Amendment Regulations 2007 (No. 7)—
   Motion for Disallowance .................................................................. 24
Committees—
   Community Affairs Committee—Report ......................................... 31
Committees—
   Foreign Affairs, Defence and Trade Committee—Report .................... 38
Social Security Amendment (2007 Measures No. 2) Bill 2007—
   First Reading ....................................................................................... 38
   Second Reading .................................................................................. 38
Health Legislation Amendment Bill 2007—
   First Reading ....................................................................................... 39
   Second Reading .................................................................................. 39
Tax Laws Amendment (2007 Measures No. 5) Bill 2007—
   Returned from the House of Representatives ......................................................... 41
   Third Reading ........................................................................................................ 41
Trade Practices Legislation Amendment Bill (No. 1) 2007—
   Returned from the House of Representatives ............................................................ 41
Classification (Publications, Films and Computer Games) Amendment
   (Terrorist Material) Bill 2007—
   Second Reading ...................................................................................................... 41
   In Committee ......................................................................................................... 44
   Third Reading ...................................................................................................... 56
Business—
   Rearrangement ...................................................................................................... 56
National Health Security Bill 2007 ............................................................................. 57
   First Reading ........................................................................................................ 57
   Second Reading .................................................................................................... 57
Families, Community Services and Indigenous Affairs Legislation Amendment
   (Child Disability Assistance) Bill 2007—
   Second Reading .................................................................................................... 59
   In Committee ...................................................................................................... 64
   Third Reading .................................................................................................... 68
Families, Community Services and Indigenous Affairs Legislation Amendment
   (Further 2007 Budget Measures) Bill 2007—
   Second Reading .................................................................................................... 68
   Third Reading ...................................................................................................... 68
   Second Reading .................................................................................................... 68
   Third Reading ...................................................................................................... 76
Superannuation Legislation Amendment Bill 2007—
   Second Reading .................................................................................................... 76
   In Committee ...................................................................................................... 79
   Third Reading .................................................................................................... 82
Financial Framework Legislation Amendment Bill (No. 1) 2007—
   Second Reading .................................................................................................... 83
   In Committee ...................................................................................................... 87
   Third Reading .................................................................................................... 88
Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs)
   Amendment Bill (No. 2) 2007—
   Second Reading .................................................................................................... 88
   Third Reading ...................................................................................................... 108
Questions Without Notice—
   Renewable Energy ............................................................................................. 108
Ministerial Arrangements .......................................................................................... 109
Questions Without Notice—
   Economy ............................................................................................................. 110
   Climate Change ................................................................................................. 111
   Indigenous Communities ..................................................................................... 112
   Renewable Energy ............................................................................................. 113
   Workplace Relations .......................................................................................... 115
   Great Barrier Reef Marine Park: Recreational Fishing ....................................... 116
CONTENTS—continued

Veterans Affairs ............................................................................................................... 117
Mr John Utting ................................................................................................................. 118
Child Protection ............................................................................................................... 119
Iraq ................................................................................................................................... 121
Questions Without Notice: Additional Answers—
Petrol Sniffing ................................................................................................................ .. 122
Questions Without Notice: Take Note of Answers—
Climate Change............................................................................................................... 123
Renewable Energy ............................................................................................................ 123
Child Abuse .................................................................................................................... .. 128
Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs)
Amendment Bill (No. 2) 2007 ............................................................................................... 130
Questions Without Notice: Additional Answers—
Broadband ...................................................................................................................... .. 131
Business—
Rearrangement.................................................................................................................. 132
Ministerial Statements—
Pine Gap Defence Facility .............................................................................................. 133
Committees—
Community Affairs Committee—Report: Government Response ............................. 135
Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs)
Amendment Bill (No. 2) 2007—
Second Reading ................................................................................................................ 156
Committees—
Foreign Affairs, Defence and Trade Committee: Joint—Report .................................. 158
Environment, Communications, Information Technology and the Arts Committee—
Report ............................................................................................................................... 160
Inquiry into the Provisions of the Same-Sex: Same Entitlements Bill 2007—
Report ............................................................................................................................... 163
Australian Citizenship Amendment (Citizenship Testing) Bill 2007—
Assent ................................................................................................................................. 163
Health Insurance Amendment (Medicare Dental Services) Bill 2007—
Second Reading ................................................................................................................ 163
In Committee .................................................................................................................... 177
Third Reading ..................................................................................................................... 180
Health Legislation Amendment Bill 2007—
In Committee .................................................................................................................... 183
Third Reading ..................................................................................................................... 185
National Health Security Bill 2007—
Second Reading ................................................................................................................ 185
Third Reading ..................................................................................................................... 189
Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007—
Second Reading ................................................................................................................ 189
Third Reading ..................................................................................................................... 196
Social Security Amendment (2007 Measures No. 1) Bill 2007 ............................................. 197
Social Security Amendment (2007 Measures No. 2) Bill 2007—
Second Reading ................................................................................................................ 197
In Committee .................................................................................................................... 212
In Committee .................................................................................................................... 218
Third Reading ..................................................................................................................... 224
CONTENTS—continued

Telecommunications (Interception and Access) Amendment Bill 2007—
Second Reading................................................................................................................ 224
In Committee................................................................................................................... 234
Third Reading.................................................................................................................. 239
Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007—
Second Reading................................................................................................................ 239
Third Reading.................................................................................................................. 245
National Greenhouse and Energy Reporting Bill 2007—
Second Reading................................................................................................................ 245
In Committee................................................................................................................... 263
Third Reading.................................................................................................................. 263
Judges’ Pensions Amendment Bill 2007........................................................................ 263
Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007—
Second Reading................................................................................................................ 263
In Committee................................................................................................................... 275
Third Reading.................................................................................................................. 285
Defence Legislation Amendment Bill 2007................................................................. 285
Crimes Legislation Amendment (Child Sex Tourism Offences and Related Measures) Bill 2007—
First Reading .................................................................................................................. 285
Second Reading................................................................................................................ 286
Australian Crime Commission Amendment Bill 2007............................................... 291
National Health Amendment (Pharmaceutical Benefits) Bill 2007—
Returned from the House of Representatives................................................................. 291
Tax Laws Amendment (2007 Measures No. 5) Bill 2007—
Returned from the House of Representatives................................................................. 292
Veterans’ Entitlements Amendment (Disability, War Widow and War Widower Pensions) Bill 2007—
First Reading .................................................................................................................. 292
Business—
Consideration of Legislation .......................................................................................... 292
Veterans’ Entitlements Amendment (Disability, War Widow and War Widower Pensions) Bill 2007—
Second Reading................................................................................................................ 292
In Committee................................................................................................................... 297
Third Reading.................................................................................................................. 301
Higher Education Support Amendment (Extending Fee-Help For Vet Diploma, Advanced Diploma, Graduate Diploma And Graduate Certificate Courses) Bill 2007—
First Reading .................................................................................................................. 302
Second Reading................................................................................................................ 302
Third Reading.................................................................................................................. 306
Documents—
Tabling.............................................................................................................................. 307

Questions On Notice
Inspector-General of the Australian Defence Force: Memo—(Question No. 3370) .... 309
Families, Community Services and Indigenous Affairs: Red Tape and Funding Reform—(Question No. 3376)................................................................. 310
Avian Influenza—(Question No. 3443)........................................................................... 311
Australian Passports—(Question No. 3444).................................................................... 314
The PRESIDENT (Senator the Hon. Alan Ferguson) took the chair at 9.30 am and read prayers.

WOMEN IN PARLIAMENT EXHIBITION

The PRESIDENT (9.30 am)—Order! Yesterday afternoon Senator Crossin asked me whether or not I could give a guarantee that the Women in Parliament display would remain in place. She asked about the display that is in the public area of the Presiding Officers’ display area, near the Parliament House theatrette. Having conferred with the Speaker I can confirm that the display will remain in place for the foreseeable future.

PETITIONS

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

Live Animal Export
Calling For An End To Live Animal Export to the Middle East.
To the Honourable President and Members of the Senate in the Parliament assembled:
This petition of undersigned citizens of Australia calls on the Australian government to end the export of live animals from Australia to the Middle East.

Australia has laws—based on community expectation—to protect the welfare of animals. It is therefore ethically and morally unacceptable to export Australian animals long distances to countries where they will endure practices and treatment that would be unacceptable or illegal in Australia.

We the undersigned therefore call on the Australian government to end this trade and, in so doing, restore Australia’s reputation as a compassionate and ethical nation.

by Senator Bartlett (from 25,706 citizens)

Capital Punishment
To the Honourable the President and Members of the Senate on Parliament assembled.
The petition of the undersigned draws to the attention of the Senate the ongoing practice of Capital Punishment amongst some of our close neighbours and allies. The global trend towards abolition is undeniable, more than half the countries in the world have now abolished the death penalty in law or in practice. Australia currently has six citizens on death row in Indonesia. The death sentence is a cruel violation of the most basic of human rights and there is no evidence that it deters crime more effectively than other punishments. The evolving of a civilized society must include the right not to be killed following a legal sentence.

We ask the Senate to encourage our government in alignment with the Second Optional Protocol signed in 1990 to
• Undertake an international commitment to abolish the death penalty.
• To use our position internationally and in the Asian region to encourage abolition.
• To call on our neighbours to establish an immediate moratorium on all executions with a view to total abolition.
• To protect our citizens overseas and ensure any sentence handed down is compatible with Australia’s human rights protocol.
• To maintain a strong, clear and principled stance against capital punishment in all circumstance.

Your petitioners request the Senate to press for better protection of human rights and awareness throughout the world that there cannot be a justice that kills.

by Senator Trood (from 1,747 citizens)

Petitions received.
NOTICES

Presentation

Senator Milne to move 15 sitting days after today:

That regulation 400 made under item 41 of Schedule 1 to the Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2007 (No. 1), as contained in Select Legislative Instrument 2007 No. 217 and made under the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989, be disallowed.

Senator Watson (Tasmania) (9.31 am)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move that the following delegated legislation, a list of which I shall hand to the Clerk, be disallowed.

The list read as follows—

1. Australian Passports Amendment Determination (No. 4), made under section 57 of the Australian Passports Act 2005.
5. Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2007 (No. 5), as contained in Select Legislative Instrument 2007 No. 224 and made under the Health Insurance Act 1973.
7. Instrument number PB 52 of 2007, Determination under paragraph 98C(1)(b) of the National Health Act 1953.
13. Variation to the Statement of Conditions under subsection 38A(3) of the Defence Service Homes Act 1918.
15. Workplace Relations Amendment Regulations 2007 (No. 2), as contained in Select Legislative Instrument 2007 No. 183 and made under the Workplace Relations Act 1996.
16. Workplace Relations Amendment Regulations 2007 (No. 3), as contained in Select Legislative Instrument 2007 No. 216 and made under the Workplace Relations Act 1996.

[Legislative Instruments Act 2003 provisions apply to the instruments listed above: must be re-
solved within 15 sitting days after today or they will be deemed to have been disallowed.]

Senator WATSON—I seek leave to incorporate in Hansard a short summary of the matters raised by the committee.

Leave granted.

The summary read as follows—

Australian Passports Amendment Determination (No. 4) made under section 57 of the Australian Passports Act 2005

Financial Transaction Reports Amendment Regulations 2007 (No. 1), Select Legislative Instrument 2007 No. 214

Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2007 (No. 5), Select Legislative Instrument 2007 No. 224

Instrument number CASA 222/07 – Direction – number of cabin attendants made under regulation 208 of the Civil Aviation Regulations 1988

Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2007 (No. 1), Select Legislative Instrument 2007 No. 217

Therapeutic Goods (Emergency) Exemption 2007 (No. 3) made under subsection 18A(1) and paragraph 18A(2)(a) of the Therapeutic Goods Act 1989.

Trade Practices Amendment Regulations 2007 (No. 4), Select Legislative Instrument 2007 No. 228

Workplace Relations Amendment Regulations 2007 (No. 2), Select Legislative Instrument 2007 No. 183

Workplace Relations Amendment Regulations 2007 (No. 3), Select Legislative Instrument 2007 No. 216

Section 17 of the Legislative Instruments Act 2003 directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken particularly where a proposed instrument is likely to have an effect on business. Section 18 of the Act provides that in some circumstances consultation may be unnecessary or inappropriate. The definition of ‘explanatory statement’ in section 4 of the Act requires an explanatory statement to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken. The Explanatory Statements that accompany these instruments either make no reference to or provide insufficient information on consultation. The Committee has written to the relevant Ministers seeking advice on this matter.

Corporations Amendment Regulations 2007 (No. 9), Select Legislative Instrument 2007 No. 227

This instrument amends provisions in the principal Regulations concerning access by members of certain types of body corporate, such as credit unions, to the register of members. The Explanatory Statement advises that the amendments introduce a broad discretion for this type of body corporate to refuse access to the register of members where the body is not satisfied that granting access is in the interests of the members as a whole. There is no indication in the Explanatory Statement whether these amendments have been made in response to the decision of the Federal Court in Capricornia Credit Union Ltd v Australian Securities and Investments Commission [2007] FCAFC 79.

The Explanatory Statement also notes that Ministerial Council for Corporations has waived the requirement, found in the Corporations Agreement 2002, to expose the amending Regulations for public comment. The Explanatory Statement does not make reference, as it should, to the provisions concerning consultation found in sections 17 and 18 of the Legislative Instruments Act 2003. The Committee has written to the Minister seeking further advice on these matters.

Family Law (Child Abduction Convention) Amendment Regulations 2007 (No. 1), Select Legislative Instrument 2007 No. 213

This instrument amends the principal Regulations in response to recent judicial decisions.

Item [39] in Schedule 1 to these amending Regulations inserts a new rule 31 which authorises the issue of warrants to enter and search vehicles, vessels, aircraft or premises. It also permits the use of reasonable force in such a search. While noting that this rule is a consolidation of existing
provisions in the Regulations, the Committee has written to the Minister seeking advice as to whether it would be more appropriate for this provision to be located in the Family Law Act 1975 rather than in delegated legislation.

**Instrument No. PB 52 of 2007, Determination under paragraph 98C(1)(b) of the National Health Act 1953**

The definition of “Tribunal Determination” in paragraph 3 of this Determination refers to a determination of the Pharmaceutical Benefits Remuneration Tribunal made on 23 June 2006 as in force from time to time. Section 14 of the Legislative Instruments Act 2003 states that a legislative instrument may apply matter that is contained in another instrument or writing as in force when the first-mentioned legislative instrument takes effect. That matter cannot be applied as in force from time to time unless the contrary intention appears. The Committee has written to the Minister seeking advice about the authority under which the definition in paragraph 3 of this Determination is taken to apply to a determination of the Remuneration Tribunal as in force from time to time.

**Safety, Rehabilitation and Compensation (Revocation of Declaration and Specification) Notice 2007 (No. 1) made under the Safety, Rehabilitation and Compensation Act 1988**

Neither the instrument nor the Explanatory Statement indicates the legislative authority under which it is made. The Committee has written to the Minister seeking confirmation of the appropriate legislative authority for making this instrument.

**Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007 (No. 2) made under section 8 of the Private Health Insurance (Prostheses Application and Listing Fees) Act 2007**

The Committee notes that these Rules made on 19 July 2007 commenced retrospectively on 14 July 2007. The Rules do, however, operate beneficially by retrospectively imposing a nil initial listing fee, and so, as is noted in the Explanatory Statement, do not raise any issues under subsection 12(2) of the Legislative Instruments Act 2003. However, the Committee seeks your advice on whether any person is entitled to a refund of fees paid and, if so, what steps have been taken to ensure that this is done.

**Variation to the Statement of Conditions under subsection 38A(3) of the Defence Service Homes Act 1918**

This instrument amends the statement of conditions that applies to domestic building insurance under the Defence Service Homes Insurance Scheme.

This instrument operates retrospectively from 9 September 2002 and has beneficial effect. The Committee has written to the Minister seeking advice as to the mechanisms by which persons who are insured under the Defence Service Homes Insurance Scheme will be notified of these amendments and of any entitlements that may have arisen retrospectively.

**Vehicle Standard (Australian Design Rule 23/02 – Passenger Car Tyres) 2007 made under subsection 7(1) of the Motor Vehicle Standards Act 1989**

This instrument specifies revised standards for passenger car tyres.

The Explanatory Statement that accompanies this instrument states that it has been made as a new standard to replace ADR 23/01 as the text as last determined has been substantially altered. The present instrument does not appear to revoke the previous instrument. The Committee has written to the Minister seeking advice about this matter.

**COMMITTEES**

**Selection of Bills Committee**

**Report**

Senator PARRY (Tasmania) (9.32 am)—I present the 16th report for 2007 of the Selection of Bills Committee and I seek leave to have the report incorporated in Hansard.

Leave granted.

_The report read as follows_—

1. The committee met in private session on Wednesday, 19 September 2007 at 4.18 pm.
2. The committee resolved to recommend—that the provisions of the Crimes Legislation Amendment (Child Sex Tourism Offences.
and Related Measures) Bill 2007 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 10 October 2007 (see appendix 1 for statement of reasons for referral).

3. The committee resolved to recommend—

That the following bills not be referred to committees:

- Communications Legislation Amendment (Miscellaneous Measures) Bill 2007
- Health Legislation Amendment Bill 2007
- Lands Acquisition Legislation Amendment Bill 2007
- National Health Security Bill 2007
- Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2007
- Privacy (Data Security Breach Notification) Amendment Bill 2007
- Stolen Generation Compensation Bill 2007
- Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007.

The committee recommends accordingly.

4. The committee considered a proposal to refer the Tax Laws Amendment (2007 Measures No. 6) Bill 2007 to the Rural and Regional Affairs and Transport Committee, but was unable to reach agreement on whether the bill should be referred.

Stephen Parry
Chair
20 September 2007-09-20

Reasons for referral/principal issues for consideration

To examine the provisions of the bill relating to the creation of various offences, particularly preparatory offences contained in proposed section 272.17, including whether the proposed offences contain the necessary degree of certainty required for penal provisions, and whether the new offences are justified on the basis of a deficiency in existing laws.

Possible submissions or evidence from:

- Law Council of Australia
- Gilbert & Tobin Centre for Public Law
- Australian Federal Police
- HREOC
- International Commission of Jurors
- Australian privacy Foundation
- Committee to which bill is to be referred:
- Legal and Constitutional Committee

Possible hearing date(s):

Possible reporting date:

3 December 2007

Andrew Bartlett
Whip/Selection of Bills Committee member

Senator Andrew Bartlett, Australian Democrats

Whip


Senator PARRY—I move:

That the report be adopted.

Senator MILNE (Tasmania) (9.33 am)—

I am appalled that the Selection of Bills Committee has decided not to refer the Tax Laws Amendment (2007 Measures No. 6) Bill 2007 to the Senate Standing Committee on Rural and Regional Affairs and Transport for appropriate consideration. I find it disgraceful that any government should be so keen to rush this through the parliament without appropriate scrutiny. I hope never to hear a Liberal-National Party senator stand up in this campaign and say they are concerned about water or food security in Australia. This tax amendment provides for the
planting of so-called carbon sinks, but there is no definition of a carbon sink. It gives full tax deductibility for any trees that are planted in the next four years and then a different ratio after that. The important thing is that there is no requirement for the trees to stay in the ground for any length of time. This applies for 14 years—which, by coincidence, is the rotation rate for plantations. There is no requirement that the trees planted be biodiverse. There is no analysis of the hydrological ramifications of this legislation.

Already, rural Australia is up in arms because of the managed investment schemes and the distortion those are causing in rural Australia. Now, farmers facing drought are going to have the cement companies, the aluminium companies and the coal industry coming in and making huge investments (a) in water rights and (b) in land. They will be taking agricultural land out of food production and putting in what are effectively plantations to get tax benefits. It does not say these trees cannot be cut down at any particular time. That is the critical issue. It does not even say they have to meet the Kyoto rules. This is going against even the Liberal Party philosophy, I would have thought, because it is potentially distorting the carbon market. It is saying, ‘We’ll put a cap on but we will advantage the forest industry and these large emitters in the context of setting up a national emissions market.’ I do not know whether the government understands what it is doing with this legislation, but there will be a riot in rural Australia when they find out that the cashed-up large emitters—that is, the cement companies, the aluminium companies, the energy corporations—can effectively use their profits to take land out of agricultural production and take water out of agricultural production. Of course, trees need water just as much as crops do. The refusal of the government to allow this to be referred for proper analysis by those who are already concerned about what is going on because of the managed investment schemes is appalling. Everybody knows that, if you really were serious about sequestering carbon in forests, you would stop the logging of native forests and stop the clearing of land across Australia. That is how you would most effectively sequester carbon. Everybody knows that. Instead, we have a government driving deforestation in the Tiwi Islands. It is deforestation when you convert tropical savannah to monocultures.

Senator Abetz—No, it’s not.

Senator MILNE—That is deforestation by anybody’s definition. It is even not allowed under the government’s own policies, but now I hear the minister defending it. You have logging going on in primary forests in Tasmania, Victoria and south-east New South Wales. You are knocking down primary forests and now giving tax deductions to the big emitters to drive farmers off their land and take more water out of the system.

This exposes the government’s failure to realise that you need a whole-of-government approach to climate change. You cannot intervene to distort the carbon market, to porkbarrel the forest industry and the big emitters at the expense of farmers. That is what the government has done. The hubris here of saying, ‘We’re going to drive this through this parliament,’ when in 12 months time they will say, ‘We had no idea that that would be the effect of this legislation.’ Let them not say that. Let them not get up in an election campaign and say that they are worried about the drought or the impact on farmers of lack of water in rural Australia, because this tax deduction will drive that process even more.

This is an appalling piece of legislation, which at the very least needs to go to a committee for appropriate scrutiny so the Bureau of Rural Sciences can at least point
out to the government the error of its ways in terms of sequestration and emission trading. (Time expired)

Senator BARTLETT (Queensland) (9.38 am)—I will say things now that I have said many times before at precisely this stage on a Thursday morning because they do need to be put on the record every single time. I flag that I will move an amendment to address the issue raised by Senator Milne. Just to make clear to the chamber, the report before us is from the Selection of Bills Committee. The committee considered a proposal—obviously, from the Greens—to refer the Tax Laws Amendment (2007 Measures No. 6) Bill 2007 to the Senate Standing Committee on Rural and Regional Affairs and Transport but was unable to reach agreement on whether the bill should be referred, which is a nice way of saying that all of us wanted to refer the bill to the committee and the government did not want to refer the bill to the committee so it did not refer the bill to the committee. So I will move an amendment seeking to bring about that end, purely to have it formally on the record by way of a vote.

I do not know whether all that Senator Milne has just said about what is in the bill is what is in the bill. I heard a few interjections from Senator Watson, who I do know understands tax issues pretty well. At least some of the things she was saying he was disputing, so I do not know. That is why you have Senate committee inquiries—to get all the views that different people have about what the bill will do, to hear from experts who actually know, to make sure there are no unintended consequences, at least as far as can be foreseen, and to see whether it is going to achieve what it said it is going to achieve. Then the committee would recommend that the bill be passed or amended to make sure it will do what it says it will do. Now, that is just good practice, good public policy and good public administration, regardless of your policy views about whether we should be having tax incentives for this type of thing or not.

It is a serious problem that we are rushing through a piece of legislation when obviously there are major concerns being raised by some about the potential impacts of it. Tax Laws Amendment (2007 Measures No. 6) Bill 2007 sounds benign—the name does not tell you very much—but anything dealing with tax deductibility relating to carbon sinks and the like will open up an area where we do need to get it as right as possible. The last thing I want to see is tax deductibility relating to carbon sinks that ends up being just a big taxpayer-funded rort for a bunch of people and does not provide any particularly positive greenhouse benefits. Then people will point to it and say: ‘We tried that and it didn’t work, so we won’t bother doing that anymore. We won’t bother trying incentives anymore.’ Let alone the fact that, if we are going to be giving tax incentives for this sort of thing, it will have a cost attached to it, and is that the best use of that money to produce a carbon gain? So there are all those sorts of questions.

It also raises once again the fundamental issue of fixed terms. All of us around here today are asking each other, ‘Are we going to be coming back in three weeks?’ There are a whole bunch of people, me included, who think there is no way in the world we will be coming back in three weeks and there are other people saying that we probably will. Again, it is just bad public policy and bad practice for a law-making body to be rushing something through just because this might be the last chance. We do not even know. We could be unnecessarily rushing this thing through and saying that we cannot refer it to a committee because we might not get the chance to pass it in three weeks time, so we have to put it through now even though it
may be seriously flawed. A lot of people will make investment decisions on the basis of what is there so that, by the time you try to fix up the flaws, it is already built into the system and it is potentially too late.

If we had a fixed term we would know whether we are coming back in three weeks time and would be able to do our job properly. The ridiculous scenario is that we may rush this thing through now because we think it is the last possible chance and then find out we are back here in three weeks time and we could have had a good look at it, or at least some look at it, and made sure that it works properly. We do not know because of that simple thing. I repeat the Democrats’ long-standing plea for fixed terms for good public policy. I do not have a view on this bill because I have not had a chance to look at it. That is what Senate committees are for. Unless there is a good argument against it, we should be accepting what used to be the longstanding precedent: if somebody wants to look at a piece of legislation to check it out, we accept that and refer it. So I move:

At the end of the motion, add “and in respect of the Tax Laws Amendment (2007 Measures No. 6) Bill 2007, the bill be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 10 October 2007”.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.43 am)—We have heard from Senator Bartlett, who was honest enough to tell us that basically his speech was similar to a speech that he has given on numerous other occasions. I thank him for that. So, without traversing the ground any further, I simply refer people to the Hansard where I have responded to him previously.

Senator Milne’s contribution was once again, if I might say, a bizarre and confused ramble. But it did show how antiforestry and how antitrees the Australian Greens are. It was quite a bizarre contribution. They go around the world telling us all that carbon and greenhouse gases are the most important issues confronting the world and that we have to deal with them and then they say in the next breath, ‘And the Howard government is doing nothing about it.’

Here we are introducing legislation and trying to provide carbon sinks, and what is the Greens’ first stunt? They complain about planting trees and they want to delay the passage of the legislation. Assisting the world’s atmosphere by providing carbon sinks is either important or it is not. But here we go, yet again, with a classic case of the Australian Greens trying to have it both ways. Their mantra against forestry, against trees and against tree plantations is such that all you have to do is mention them and they start salivating like Pavlov’s dog and know they have to oppose it irrespective of how good it might be for the environment.

We have been told a number of things which are just false. The emissions task force will be dealing with some of the further details, but what we want to do is provide certainty to people who want to plant trees for carbon sinks. If we believe that greenhouse gases are a real problem then we should be encouraging this type of activity—but not according to the Greens.

We have heard the bizarre commentary about deforestation on the Tiwi Islands. I have had the privilege of being to the Tiwi Islands, and the Aboriginal land council there actually support what is going on. The income that is being generated is now allowing them to develop their own private school. Do you know why they are using the income generated for their own private school? It is because the leaders of that community—people who are in their 60s and 70s—are concerned that the education they got as young people is not of the same high standard as what their sons and grandsons have
achieved. They have said the education system is letting them down, and they see a real benefit for future generations in this.

Monocultures were mentioned as well. There is condemnation of changing a monoculture pasture to a monoculture tree plantation. But what is the environmental impact of that? It is virtually nil. But once again the bad thing is that there are trees! We cannot have trees being planted! It is a very bizarre position that the Greens continually put.

What the Greens also deliberately avoided in their discussion were other aspects of this bill which deal with grants for tobacco growers. We as a government have taken a stance in relation to tobacco growing. There is a particular exemption being provided to enable these people to get grants to get out of tobacco growing. I would have hoped that we would all support that move, especially the Australian Greens. These people are now putting in their tax returns for the previous financial year, and it is important that they be provided with certainty as well. That is a part of the bill that the Greens would also seek to delay, which would mean that these people could not put their tax returns in.

The other aspects of the bill are not canvassed at all by the Greens. The only thing they oppose is trees. Like the Pavlovian dog that salivates whenever the bell rings, all you have to do is mention trees, plantation and forestry and the Greens go berserk and think they have to oppose it—even if it is good for the environment, as it is on this occasion. (Time expired)

Senator WATSON (Tasmania) (9.48 am)—I rise to respond briefly to certain remarks made by Senator Milne. Firstly, there is an assumption that carbon sink forests would have some benefit for MISs. I myself have sought an assurance that there would be no double benefit for an activity outside the carbon sinks legislation—namely, MISs—which specifically excludes such benefits. I think it is important that this myth that was alleged by Senator Milne does not get wider currency, and I rise today to put at rest that particular issue.

If Senator Milne has a particular problem in relation to prime agricultural lands, maybe the simplest approach would be for her to put up a simple amendment. Amendments are not uncommon to the Greens. I suggest that this would be a far more beneficial, direct and appropriate response to address Senator Milne’s concerns in relation to the issue of further trees being placed on prime agricultural lands.

Question put:
That the amendment (Senator Bartlett's) be agreed to.

The Senate divided. [9.55 am]

(The President—Senator the Hon. Alan Ferguson)
Ayes............ 32
Noes............ 34
Majority........ 2

AYES
Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Campbell, G. *
Conroy, S.M.  Crossin, P.M.
Evans, C.V.  Fielding, S.
Hogg, J.J.  Hurley, A.
Kirk, L.  Ludwig, J.W.
Lundy, K.A.  Marshall, G.
McEwen, A.  McLucas, J.E.
Milne, C.  Moore, C.
Murray, A.J.M.  Nettle, K.
O’Brien, K.W.K.  Polley, H.
Ray, R.F.  Sherry, N.J.
Siewert, R.  Sterle, G.
Stott Despoja, N.  Webber, R.
Wong, P.  Wortley, D.
At the request of Senator Abetz, I move:

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

No. 8 Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Bill 2007.


No. 10 Superannuation Legislation Amendment Bill 2007.

No. 11 Financial Framework Legislation Amendment Bill (No. 1) 2007.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Faulkner for today, proposing the reference of a matter to the Foreign Affairs, Defence and Trade Committee, postponed till 15 October 2007.

Business of the Senate notice of motion no. 2 standing in the name of Senator Siewert for today, proposing the reference of a matter to the Community Affairs Committee, postponed till 16 October 2007.

Senator MILNE (Tasmania) (9.58 am)—by leave—I move:

That general business notice of motion no. 914 standing in my name for today, relating to firearms laws in Tasmania, be postponed till the next day of sitting.

Question agreed to.

COMMUNICATIONS LEGISLATION AMENDMENT (CRIME OR TERRORISM RELATED INTERNET CONTENT) BILL 2007

First Reading

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (9.59 am)—At the request of Senator Coonan, I move:

That the following bill be introduced: A Bill for an Act to amend the law relating to communications, and for related purposes.
Question agreed to.

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (9.59 am)—I present the bill and 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 ABETZ (Tasmania—Manager of Government Business in the Senate) (9.59 am)—I table the 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.

The speech read as follows—

Cyber crime is on the increase globally, with criminals abusing the anonymity of the online world to carry out offences ranging from unwanted sexual approaches to online fraud.

The Government’s recent review of the E-Security National Agenda found that the e-security landscape has changed significantly with the emergence of sophisticated, targeted and malicious online attacks. Many of these attacks are associated with websites used by criminals to perpetrate fraud or circulate malicious software.

This Bill proposes to amend the Broadcasting Services Act 1992 to expand the black list of Internet addresses (URLs) that is currently maintained by the Australian Communications and Media Authority (ACMA) to include crime and terrorism related websites hosted domestically and overseas. Black listing cyber crime and terrorism websites is part of the Government’s comprehensive NetAlert—Protecting Australian Families Online initiative.

Under the current BSA, material that is ‘prohibited content’, determined by application of the National Classification Scheme (NCS) guidelines, can be added to the designated notification scheme (DNS), colloquially known as the black list. The proposed amendments will allow the Australian Federal Police Commissioner to refer additional Internet content that is outside the NCS to ACMA for black listing.

Domestic and overseas hosted sites that encourage, incite, induce or facilitate the commission of a Commonwealth offence, such as ‘phishing’ websites, and websites which promote, fundraise or recruit for terrorist organisations will be added to the black list. For example, a false bank website that is designed to obtain people’s banking passwords to steal money from their account could be added to the black list.

The black list is used by Internet Service Providers (ISPs) to automatically filter sites where customers have subscribed to a filtered service. It is also provided to Family Friendly Filter members of the Internet Industry Association (IIA) so they can upgrade their filter products.

Filter suppliers under the NetAlert—Protecting Australian Families Online program are required to filter the ACMA black list websites. This means that all families that take advantage of the free NetAlert filters will benefit from the expanded black list.

The new arrangements will allow harmful sites to be more quickly added to software filters. Of course the best outcome is for these sites to be taken down and their hosts prosecuted. But this takes time, particularly as most of these sites are hosted overseas.

Rapid black listing means that the damage these sites can do can be more quickly reduced whilst take-down and prosecution processes are pursued, usually overseas. A website only needs to be online for a short period to do harm.

The guidelines for black listing crime and terrorism related websites will be made by the Attorney-General and will be publicly available on the Federal Register of Legislative Instruments and also subject to Parliamentary scrutiny as a disallowable instrument under the Legislative Instruments Act 2003.

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

Consideration of Legislation

Senator ABETZ (Tasmania—Manager of Government Business in the Senate) (10.00 am)—I move:

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

Health Insurance Amendment (Medicare Dental Services) Bill 2007
Health Legislation Amendment 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
National Health Security Bill 2007
Social Security Amendment (2007 Measures No. 2) Bill 2007
Tax Laws Amendment (2007 Measures No. 6) Bill 2007

Leave granted.

I table a statement of reasons relating to the Health Insurance Amendment (Medicare Dental Services) Bill 2007 and seek leave to have the statement incorporated in Hansard.

The statement read as follows:

STATEMENT OF REASONS FOR INTRODUCTION AND PASSAGE IN THE 2007 SPRING SITTINGS

HEALTH INSURANCE AMENDMENT (MEDICARE DENTAL SERVICES) BILL

Purpose of the Bill

The bill amends the Health Insurance Act 1973 to enable implementation of new Medicare Benefits Schedule (MBS) dental care items for dental care services, as announced in the 2007 Federal Budget.

This new measure will increase access to dental services under Medicare for people with chronic conditions and complex care needs, where the patient’s oral health is impacting or likely to impact on their general health. It significantly expands existing out-of-hospital dental care MBS items available under the Enhanced Primary Care arrangements.

Reasons for Urgency

Legislative changes must be passed early in the 2007 Spring sittings to allow the new MBS dental care items to commence on 1 November 2007 as announced in the Budget.

This will enable Medicare Australia to implement the necessary systems changes and for new Medicare items to be made under Ministerial determination prior to 1 November 2007.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.00 am)—I want the Senate to note the Greens objection to this motion. There should be proper consideration of all these bills. That has not been afforded by this motion and we will not be supporting it.

Question agreed to.

DEATH OF MR DARIO DE JESUS TORRES AND COLOMBIA

Senator STOTT DESPOJA (South Australia) (10.01 am)—by leave—I move the motion as amended:

That the Senate:

(a) notes the murder of Mr Dario de Jesus Torres, a member of the San José de Apartadó Peace Community, in Colombia on 13 July 2007;

(b) recognises that the murder of Mr Torres, and threats to the safety of the peace community, are part of the on-going violence against civilians by guerrilla and paramilitary groups that continues to plague Colombia;

(c) notes the calls by relevant international bodies including the United Nations Human Rights Council, the Executive Committee of the Program of the United Nations High Commissioner for Human Rights and the Inter-American Commission of Human Rights
for the Colombian Government to continue to give priority to addressing this situation;

(d) welcomes the efforts made by the Colombian Government to this end so far, and urges it to continue and strengthen these efforts, including by investigation of Mr Torres’ murder and guaranteeing the security of the peace community; and

(e) notes that the Australian Government has raised the case of Mr Torres and continued concerns about the safety of the peace community with the Colombian Government in the context of their on-going dialogue on human rights issues and urges the continuation of this dialogue, including in relation to this case.

Question agreed to.

SEXUAL ABUSE OF CHILDREN AND YOUNG PEOPLE

Senator BARTLETT (Queensland) (10.02 am)—by leave—I move the motion as amended:

That the Senate:

(a) notes the damaging long-term effects to Australian society caused by the sexual assault and abuse of children and young people;

(b) recognises the importance of following up expressions of concern with genuine action to assist survivors of sexual assault and to bring perpetrators to justice;

(c) notes:

(i) recent concerns expressed about an alleged pack rape of a 14-year old girl in the John Oxley Youth Detention Centre in Queensland in 1988, and urges any person with information about this alleged crime to immediately furnish that information to police for full and proper investigation to ensure the alleged victim receives justice, and

(ii) the many petitions tabled in the Senate, expressing the support of many Australians for a royal commission into the sexual assault and abuse of children in Australia and the ongoing cover-ups of many of these matters; and

(d) expresses support for the longstanding call for a comprehensive royal commission into the sexual assault and abuse of children throughout Australia, especially in institutions.

Question agreed to.

SEXUAL SLAVERY AND JAPAN

Senator PAYNE (New South Wales) (10.02 am)—I move:

That the Senate

(a) notes that:

(i) the suffering of the ‘comfort women’ in the 1930s and 1940s was an appalling episode in Japan’s history and that of the Asia Pacific region, and that there can be no disputing the facts of what occurred and the pain that it caused to those affected,

(ii) the position of successive Australian governments has been that the 1951 Peace Treaty, which Australia signed, firmly drew a line under the crimes committed by Japan before and during the Second World War, for which many Japanese were rightly tried, convicted and sentenced,

(iii) Japan has made great progress since 1945 in recognising and atoning for its past actions, and for many decades has been a major contributor to international peace, security and development, including through the United Nations,

(iv) the 1993 statement by then Chief Cabinet Secretary Yohei Kono on the ‘comfort women’ issue (the ‘Kono statement’) fully and officially acknowledged the complicity of the Japanese Government and military in the 1930s and 1940s in a coercive system of sexual slavery in occupied territories, and

(v) the Kono statement has been reaffirmed by subsequent Japanese governments and prime ministers, including by Prime Minister Abe;
(b) commends the Japanese people and Government for the steps they have taken so far to acknowledge and atone for Japan’s actions in the 1930s and 1940s; and

(c) encourages the Japanese people and Government to take further steps to recognise the full history of their nation, to foster awareness in Japan of its actions in the 1930s and 1940s, including in relation to ‘comfort women’, and to continue dialogue with those affected by Japan’s past actions in a spirit of reconciliation.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.02 am)—by leave—I move an amendment to the motion in the words as circulated in the chamber:

Omit all words after “That”, substitute “the Senate—

(a) notes that:

(i) the suffering of the ‘comfort women’ in the 1930s and 1940s was an appalling episode in Japan’s history and that of the Asia Pacific region, and that there can be no disputing the facts of what occurred and the pain that it caused to those affected,

(ii) the position of successive Australian governments has been that the 1951 Peace Treaty, which Australia signed, legally at the time of signing addressed the crimes committed by Japan before and during World War II, and

(iii) the 1993 statement by then Chief Cabinet Secretary Yohei Kono officially acknowledged the Japanese Government’s findings, including its involvement in the comfort women system;

(b) encourages the new Prime Minister of Japan to acknowledge and officially apologise to comfort women by introducing such a resolution in the Diet; and

(c) encourages the Japanese Government to take further steps to recognise the full history of its nation, by taking historical responsibility and accurately teaching the history of comfort women in its schools.
The PRESIDENT—The question now is that the motion moved by Senator Payne be agreed to.

Senator WONG (South Australia) (10.09 am)—by leave—I indicate that Labor will be supporting the motion because it is at least a formal acknowledgement by the Australian Senate of the suffering of these comfort women. We recognise that the motion is not perfect, and we are extremely disappointed that the Howard government has not seen fit to heed the concerns of the Australian victims of these crimes and their supporters in drafting this motion. The Senate will recall that Labor moved a much stronger motion yesterday that had the support of this community, which the Howard government senators voted down.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.10 am)—by leave—The reason the Democrats put up an amendment to this motion is that it contains several errors which were pointed out by those women who are urging the Senate to make a statement with regard to comfort women. The first of those is that Japan, despite being a member of the UN, did not act on the recommendations of the UN Special Rapporteur for Violence Against Women in her report on comfort women published in 1994. Also, Japan has failed to recognise its breach of C29—that is, the convention against forced labour—through forcing comfort women into sexual slavery, despite the campaigning of the ILO by Korean survivors. Furthermore, in the 1970s, the Japanese government at the time buried the remains of proven war criminals sentenced at the Kyoto tribunal in the Yasukuni Shrine and has subsequently honoured them by prime ministerial visits.

The Kono statement in 1993 was an expression of personal remorse and not an official government statement, as stated by Australian survivor Jan Ruff O’Herne, and as academically and legally proven by expert doctor Mindy Kotler, Director of Asia Policy Point. Dr Kotler, who leads a team of international academics seeking a better understanding of Japan, said: ‘A definitive official government statement must fit one of four conditions.’ The reason we will not support this motion as it stands unamended is because it will actually do more harm than good.

Senator NETTLE (New South Wales) (10.12 am)—by leave—it is really important that the Japanese government are asked to make an apology for the treatment of comfort women in Japan during World War II. The Greens have been involved in the campaign with community groups in Australia and around the world, calling for an official apology from the Japanese government. We think it is extremely important that the Australian parliament pass a motion calling for an official apology from the Japanese government similar to what the US congress did last week, when it called for an official apology. That is what we support.

Question agreed to.

TRADE PRACTICES (CREEPING ACQUISITIONS) AMENDMENT BILL 2007

First Reading

Senator FIELDING (Victoria—Leader of the Family First Party) (10.14 am)—I move:

That the following bill be introduced:
A Bill for an Act to regulate creeping acquisitions, and for related purposes.

Question agreed to.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.14 am)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator FIELDING (Victoria—Leader of the Family First Party) (10.14 am)—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—

Family First is introducing the Trade Practices (Creeping Acquisitions) Amendment Bill 2007 to stop big business from acquiring shares or other companies, through buyouts or takeovers, when it has the result of substantially reducing competition.

The problem of “creeping acquisitions” is a significant one for small business and the Trade Practices Act has to be strengthened to deal with it.

Creeping acquisitions refers to where a big company acquires shares, assets or other businesses over a period of time, which results in high levels of market concentration to the detriment of fair competition.

On its own, each acquisition might appear insignificant, but combined, over a period of time, they could create significant changes in a market.

For example, 30 years ago Coles and Woolworths controlled about 35 per cent of the grocery market.

Over the following decades, and due to a series of small acquisitions, more and more Coles and Woolworths stores sprang up, and today, they control a thumping 80 per cent of the market.

It is very difficult for the Australian Competition and Consumer Commission (ACCC) to declare that a small purchase, on its own, leads to a substantial reduction in competition.

But the combined effect of these so-called creeping acquisitions, over time, can result in a substantial reduction in competition.

Less competition in any market is not good. Fair competition is vital as it keeps prices as low as possible for Australian families.

The Trade Practices Act does not adequately deal with this issue, and that is why Family First is introducing legislation to outlaw creeping acquisitions over a six-year period, that have the effect, or likely effect, of substantially reducing competition.

It is a serious concern that the Trade Practices Act does not give adequate powers to the ACCC to be able to prevent a series of acquisitions by considering the combined effect of those acquisitions on competition.

The Act must be strengthened so the ACCC has the powers to be able to prevent creeping acquisitions which substantially reduce competition in a market. This was a recommendation of the Senate Committee that examined the Trade Practices Act in 2004 and must be implemented.

The Senate Economics Committee report “Effectiveness of the Trade Practices Act 1974 in protecting small business” recommended that creeping acquisitions be addressed to stop the further concentration of markets, but the Government’s bill passed this week failed to address this.

Former ACCC Chair Professor Allan Fels stated in the report:

When a big retailer, say, is going to buy a very large number of outlets at a given time, if they bunch them all together it is possible for us to look at them as a whole and say, ‘This could substantially lessen competition.’ But most often acquisitions are made in small parcels or one at a time, so each case as you look at it does not seem to amount to a substantial lessening of competition. It has to be a substantial lessening of competition in a market.

I commend this bill to the Senate.
I seek leave to continue my remarks later.

Leave granted; debate adjourned.

DEATH OF MR VINCENT SERVENTY

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.15 am)—I move:

That the Senate
(a) notes the death of Australia’s grand old man of the environment, Mr Vincent Serventy, aged 91;
(b) expresses its condolences to Mr Serventy’s wife, Carol, family and friends;
(c) celebrates Mr Serventy’s life and achievements, from his early success in saving the Dryandra Forest in Western Australia to his role in helping save the Great Barrier Reef, and his ongoing efforts to establish ten green commandments, through a global bill of rights for the environment; and
(d) recognises that Mr Serventy, as a bushman, educator, author, filmmaker and President of Honour of the Wildlife Preservation Society of Australia, made a remarkable contribution to Australia’s environmental well-being.

Question agreed to.

CARTERET ISLANDS AND SEA LEVEL RISE

Senator NETTLE (New South Wales) (10.15 am)—I move:

That the Senate:
(a) notes:
(i) the current visit to Australia of representatives of the Carteret Islanders of Papua New Guinea,
(ii) that rising sea levels, caused by climate change, threaten the viability of the Carteret Islands, and
(iii) the urgent need to relocate the population of the Carteret Islands; and
(b) calls on the Australian Government to provide financial assistance to facilitate the relocation of Carteret Islanders.

Question negatived.

AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION

Senator NETTLE (New South Wales) (10.16 am)—I move:

That the Senate
(a) notes recent statements by the Australian Nuclear Science and Technology Organisation that it ‘cannot give a firm time as to when the Lucas Heights nuclear reactor would be operational’; and
(b) calls on the Government to use the reactor’s temporary closure as an opportunity to permanently close this nuclear white elephant.

Question negatived.

BUSHFIRES IN GREECE

Senator NETTLE (New South Wales) (10.16 am)—I move:

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;
(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.

Question negatived.
COMMITTEES
Privileges Committee
Report

The PRESIDENT (10.17 am)—As indicated at item 7 of today’s Order of Business, and with the concurrence of the Senate, I shall call on order of the day No. 6 relating to committee reports, which relates to the 131st report of the Committee of Privileges. There being no objection, it is so ordered.

The question is:
(a) agree to the recommendation at paragraph 40; and
(b) endorse the finding at paragraph 41, of the 131st report of the Committee of Privileges.

Question agreed to.

Publications Committee
Report

Senator McGAURAN (Victoria) (10.18 am)—On behalf of the Joint Committee on Publications, I present the report of the committee, Printing standards for documents presented to parliament, together with the Hansard record of proceedings, minutes of proceedings and submissions received by the committee. I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—
Firstly, I would like to acknowledge and thank my colleagues on the committee for their worthy contributions and efforts in compiling this report, particularly the Chair, Mrs Trish Draper MP, and former Deputy Chair, Senator Barnett.

Mr President, as you are aware, many thousands of documents are presented to the Parliament each year; most are required to be tabled by law, to assist the Parliament with its legislative and oversight functions, and contribute to effective and accountable governance. These documents include the annual reports of all government agencies, reports of royal commissions and other government inquiries, parliamentary committee reports, and a wide variety of other material.

One of the responsibilities of the Joint Committee on Publications is to issue Printing Standards for Documents presented to Parliament. These Standards ensure that all documents, particularly those selected for inclusion in the Parliamentary Papers Series, conform to certain requirements.

The current Standards have been effective in ensuring that documents presented to Parliament conform to the requirements of the Parliamentary Papers Series with minimal additional cost to author bodies.

However, developments in printing technology, the needs of a wider audience and alternative means of accessing documents have all made it appropriate to re-examine the Standards.

One of the most significant issues investigated was the use of colour printing. A number of arguments were put to the Committee, supporting the view that the Standards be revised to allow for more flexibility. Such arguments included: the evolving purpose of annual reports; the use of graphs, illustrations and diagrams; web publishing issues; and design matters. The Committee is sympathetic to the wish to include more colour in documents that have an audience beyond the Parliament, particularly where such bodies are in direct competition with private enterprise.

In the past, the Committee’s reluctance to allow the use of full colour in documents has been due to the additional cost involved. In its present inquiry, however, the Committee found that technological advances have made full-colour printing with a white border nearly as cost-effective as two-colour printing.

The exception is colour that ‘bleeds’ to the edge of the page. Colour ‘bleeding’ results in a significant cost increase and represents an inefficient use of government funds. The committee has therefore recommended that colour ‘bleeding’ be avoided in all documents presented to Parliament.

In light of the numerous valid reasons for allowing greater flexibility in the use of colour, and technological advances in recent years, the Com-
committee has issued revised Standards, effective from 1 January 2008, which will provide government bodies with increased flexibility in the use of colour, in certain circumstances.

It should be noted, however, that the Committee expects government bodies to continue to achieve value for money in the production of their documents, and maintains that for most annual reports, black plus one colour is sufficient for text. In determining whether to use additional colours, author bodies should carefully consider the purpose and audience of the document. They should also weigh the additional costs involved with colour printing, against the expected benefits.

The report also deals with several other issues, including possible sanctions for non-compliance with the Standards, potential cost-saving measures, improved communication with print providers, better training for print procurement officers, and environmental issues.

In concluding, I would like to thank all submitters to the inquiry, and particularly the 20 witnesses who appeared before the Committee at its very successful roundtable discussion. I would also like to acknowledge the work of the Committee Secretariat, including the Secretary of the House Publications Committee, Mr Jason Sherd, Secretary of the Senate Publications Committee, Ms Naomie Kaub, and Inquiry Secretaries Ms Peggy Danaee and Mr Andrew McGowan.

I commend this report to the Senate.

Question agreed to.

Intelligence and Security Committee Report

Senator NASH (New South Wales) (10.19 am)—On behalf of the Parliamentary Joint Committee on Intelligence and Security, I present the report of the committee, Inquiry into the proscription of 'terrorist organisations' under the Australian Criminal Code. I move:

That the Senate take note of the report.

Combating international terrorism has become a high priority for national governments since the tragic loss of thousands of innocent lives in the terrorist attacks by al-Qaeda on the US in 2001. Over the past five years terrorist violence has claimed hundreds more lives in attacks in Bali, Jakarta, Madrid and London. These events have signalled an increased threat to Australian interests, and several prosecutions for alleged terrorist activity are currently before the courts.

The power to list a 'terrorist organisation' under the Criminal Code was one element of a package of reforms adopted in 2002. Australia has listed 19 organisations but so far proscription has not been an element in any of the prosecutions for terrorist organisation offences. No listed entity has applied to the minister to be delisted or sought judicial review in the courts. Despite this, it was evident throughout the inquiry that some sectors of the community continue to have concerns about the impact of proscription and, in particular, the breadth of terrorist organisation offences. Several witnesses called for reform that would see proscription transferred to the judiciary or a new advisory panel to advise the minister on possible listings.

The committee considers that the current model of executive regulation and parliamentary oversight provides a transparent and accountable system that is consistent with international practice. However, there is clearly room to improve the public information available about the implications of listing and data on the application of the new terrorism laws. The appointment of an Independent Reviewer would make a significant contribution to those efforts.

Mr President, I commend the report to the Senate.

Question agreed to.
Publications Committee
Report
Senator NASH (New South Wales) (10.20 am)—On behalf of the Joint Committee on Publications, I present the 24th report of the committee.

Ordered that the report be adopted.

Treaties Committee
Report
Senator WORTLEY (South Australia) (10.21 am)—On behalf of the Joint Standing Committee on Treaties, I present report No. 89 of the committee, Treaties tabled on 7 August 2007, and move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

Report 89 contains the Committee’s findings on three treaty actions: a Social Security Agreement with Japan, an Agreement with the Philippines on the Status of Visiting Forces, and an Agreement between Australia and the Hellenic Republic on Social Security. The Committee found all three treaties to be in Australia’s national interest and has recommended that binding treaty action be taken.

Mr President, the Social Security Agreement between Australia and Japan will improve access to the age pension for people who have moved between Australian and Japan during their working life. Currently, Australian citizens who have worked in Japan and paid contributions into the Japanese pension system are only eligible for a refund of their contribution of up to three years. In other words, if you work in Japan and make contributions for 25 years you would only be eligible for a limited refund of up to three years. Under the new Agreement Australian citizens will be given a choice of either taking the three year refund or accepting a part-pension based on their years of contribution or a combination of both.

This Agreement is based on the principle that underpins Australia’s other bilateral social security agreements, namely the sharing of responsibility between the Parties in providing adequate social security coverage for residents of both countries.

Mr President, the Committee also reviewed the Status of Visiting Forces Agreement with the Philippines, a reciprocal document affording the same rights to Australian Defence Force personnel in the Philippines and armed forces of the Philippines personnel in Australia.

The Committee is supportive of increased defence cooperation with the Philippines, particularly in the areas of counter terrorism and maritime security contemplated by the Agreement. The Agreement will allow Australia and the Philippines to undertake joint exercises and provide an internationally recognised means to resolve any disputes that may arise from the presence of one country’s forces in the territory of the other.

The third treaty reviewed by the Committee in this Report, the Social Security Agreement with the Hellenic Republic, will improve income support for people who have lived in Australia and Greece. Similar to the Agreement with Japan, the Agreement with Greece allows age pensioners who live in either country to claim their entitlement to pensions from both countries. The Committee tabled its recommendations in relation to this Agreement in Report 88 to allow implementation to proceed quickly.

The Agreement with Greece incorporates the key principle of shared responsibility for providing social security coverage for current and former residents of both countries. It should be noted, however, that the Agreement has a unique formula for calculating the rate of the Australian age pension for those who live permanently in Greece. For the first time, many former Australian residents already living permanently in Greece without the Australian Age Pension will be able to claim the Age Pension upon commencement of the Agreement. Under this formula, people currently residing in Greece without a pension may receive a different rate than to those who return to Greece after the Agreement commences operation. A formula such as this has not been used in any of Australia’s other bilateral social security agreements.

CHAMBER
Finally Mr President, Report 89 also includes the Committee’s decisions on the first treaties tabled in a new category, Category 3.

Category 3 treaties were established recently by the Committee in cooperation with the government. They are non-substantive treaty actions – mainly minor/technical amendments to existing treaties—which do not impact significantly on the national interest. Category 3 treaty actions are tabled with a one-page explanatory statement and the Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

Report 89 lists, in Appendix E, five category 3 treaties that the Committee has resolved not to formally inquire into. The Committee intends to continue to notify the Parliament of its decisions on Category 3 treaties in appendices to its future reports and through the Committee’s website.

The Committee supports the Social Security Agreement with Japan, the Status of Visiting Forces Agreement with the Philippines, and the Social Security Agreement with the Hellenic Republic. The Committee recommends binding treaty action be taken in relation to all three agreements as quickly as possible so that Australians who may access the provisions of the Agreements once they have entered into force will have the opportunity to do so without delay.

Mr President, I commend the report to the Senate.

Question agreed to.

BUDGET

Consideration by Estimates Committees

Additional Information

Senator NASH (New South Wales) (10.22 am)—I present additional information received by committees relating to the following estimates:

Community Affairs Committee—1 volume
Economics Committee—2 volumes
Employment, Workplace Relations and Education Committee—2 volumes
Environment, Communications, Information Technology and the Arts Committee—1 volume
Finance and Public Administration Committee—1 volume
Foreign Affairs, Defence and Trade Committee—2 volumes
Rural and Regional Affairs and Transport Committee—3 volumes

Senator O’BRIEN (Tasmania) (10.22 am)—I seek leave to move a motion in relation to the additional information from estimates for the Rural and Regional Affairs and Transport Committee. I seek leave to incorporate my speech, which I understand has been agreed. In addition, I seek leave to table documents which are referred to in my incorporated contribution.

Leave granted.

The speech read as follows—

Estimates is an important time and often we deal with issues relating to the Civil Aviation Safety Authority and transport safety in particular.

On 13 August I raised my concern about cabin air quality in aircraft operating in Australia. I tabled documents that represented agreements between airlines, aircraft manufacturers and component manufacturers.

These agreements provided for compensation for known defects. They contained confidentiality clauses that kept their existence secret.

At the conclusion of my remarks on 13 August I called on the Civil Aviation Safety Authority to investigate the existence of these or any other agreements between aircraft operators and aircraft or component manufacturers relating to known defects.

I called on the Howard Government to reveal whether information about defects has been withheld from the regulator, the courts or the parliament.

And I urged the Rural and Regional Affairs and Transport Committee to consider whether one or more witnesses before its inquiry into cabin air quality may have given false or misleading evidence.
I regret that CASA, the government and the committee have failed to answer my call.

I consider this an important issue for the very reason stated in the 2000 committee report into cabin air quality—namely, that:

... chemicals introduced into an aircraft cabin can be an important factor in an aircraft’s safe and comfortable operation. Excessive levels of chemical contamination can affect two aspects of aircraft operations: the operational environment and the working and travelling environment; a fact apparent to airline operators, to aircrew and to every airline passenger.

Since my remarks on 13 August I have become aware of documents that shine further light on knowledge of known defects.

Defects that result in contaminated air entering the cabin space of aircraft operating in Australia.

A 1993 document titled ‘settlement agreement’ contains the terms of an agreement between Eastwest Airlines, Ansett Airlines and Avco Corporation through its Textron engine division.

It says this:

Ansett and EWA have alleged that they experienced engine bleed air problems between the date of purchase of the aircraft in 1989 and early 1993 (the “incidents”) and that their experiences with the Engines has shown that various deficiencies and inadequacies exist in the Engines, and that such deficiencies and inadequacies have resulted in economic loss to Ansett and EWA ...

The document provides for a cash payment to East West of one hundred and fifty thousand US dollars.

It additionally provides for a parts credit in the favour of Ansett and East West of one hundred thousand dollars.

Like other agreements to which I have referred, this agreement contains a confidentiality clause keeping its existence secret from parties including aircraft crew, passengers and the media.

Mr President

A critical issue in the Senate inquiry into cabin air quality was whether the compound tricresyl phosphate—known as TCP—had been detected in an Australian aircraft.

At a hearing on 2 November 1999, Dr David Lewis, the chief medical officer of Ansett Australia, told the committee:

... the chemical that everybody is worried about and is surmising is the cause of the problem has never been recorded in an aircraft. This is TCP, tricresyl phosphate.

This evidence is directly contradicted by an email communication from Allied Signal, a manufacturer of auxiliary power units, to Dr Lewis himself on 4 September 1997.

Headed “Preliminary Trip Report for Air Quality Testing at Ansett”, the communication begins this way:

One ground test and five flight tests were performed while at Ansett Airlines in Brisbane, Australia from August 22 to 25, 1997.

It says, in direct contradiction to evidence received and accepted by the Senate committee:

Tricresyl phosphate is being detected by health and safety measurements during and after pack burns. Levels measured on the bleed air contamination pack burn were 4 times greater than we allow for engine acceptance in our APU facilities.

It’s not just evidence about TCP that concerns me. In a facsimile communication to Ansett executive Captain Trevor Jensen on 4 December 1997, Dr Lewis made reference to the receipt of an Allied Signal report later that day.

In respect to the BAe aircraft, Dr Lewis notes that the aircraft fails critical safety standards.

First, the aircraft “fails” the standard requiring compartments used by passengers and crew to be ventilated so there is adequate air distribution to all parts.

Second, the aircraft “fails” the standard requiring precautions to be taken to preclude the contamination of air in occupied compartments arising from the use of fluids liable to give off noxious or toxic vapours.

Third, the aircraft “fails” the standard precluding the use of materials which give off noxious fumes leading to the dangerous contamination of cabin air.

Fourth, the aircraft “fails” the standard requiring that the probability of failure of components,
Mr President

Finally, I wish to bring to the attention of the Senate an email by the toxicologist who prepared Mobil’s submission to the Senate inquiry, Dr Carl Mackerer. He was identified in evidence as Mobil’s “principal toxicologist”.

In an email dated 4 October 2000—the same month the committee reported to the Senate—Dr Mackerer said this:

... we have not moved forward toward solving this problem.

Of course the oils have not received the same amount of testing as a drug would receive because they are not meant for high dose long term health exposures...

Compounding the problem is that, despite extensive research, no acceptable replacement for TCP has been found that will allow an oil to pass the stringent engine tests, and the market for the oil is very small for a large company to pursue, however, only a large company with an existing world wide distribution network can handle such a low volume product (internet notwithstanding). The profit on this product is not high enough to support a very expensive research program by the oil manufacturers...

Mr President

The concerns I expressed in this place on 13 August have been met by silence from the government and CASA.

Last month I called on CASA to investigate the existence of agreements between aircraft operators and aircraft or component manufacturers relating to known defects.

I called on the government to reveal whether information about defects has been withheld from the regulator, the courts or the parliament.

Finally, I called on the Rural and Regional Affairs and Transport Committee to consider whether one or more witnesses before its inquiry into cabin air quality may have given false or misleading evidence.

I reiterate those calls tonight with reference to the additional material I have brought to the attention of the Senate.

Mr President

We all know we are on the eve of an election. Election fever is convulsing those on the other side, but that’s no excuse for the government ceasing to govern.

The executive remains accountable to this Parliament for its actions, whatever the political season.

I want an answer to my questions that concern the health, welfare and safety of aircraft passengers and crew.

This is a matter that transcends partisan politics. It even transcends domestic politics.

As I have previously noted, questions about the existence of agreements with BAe have been raised by a member of the House of Lords. The UK’s Private Eye magazine has recently reported my tabling of agreements in this place, noting that:

Both deals contained secrecy clauses prohibiting disclosure—extraordinary in an industry where issues relating to safety and health should be paramount.

I wholeheartedly agree.

That’s why I am disappointed the government has been silent about corporate deals on cabin air quality—deals that, in my view, should never have been made.

It’s time CASA and the government stopped pointing to overseas studies on cabin air quality and accounted for their own knowledge and conduct over the past decade and more.

Senator O’BRIEN—I move:

That the Senate take note of the additional information from estimates for the Rural and Regional Affairs and Transport Committee.

Question agreed to.
MIGRATION AMENDMENT REGULATIONS 2007 (No. 7)

Motion for Disallowance

Senator BARTLETT (Queensland)  
(10.23 am)—I move:

That items 41 and 72 of Schedule 1 and items 7 and 8 of Schedule 2 of the Migration Amendment Regulations 2007 (No. 7), as contained in Select Legislative Instrument 2007 No. 257 and made under the Migration Act 1958, be disallowed.

The motion simply seeks to disallow four separate items within what is quite a large block of regulations. I emphasise at the start that I realise this is a complex matter and it has been flagged at fairly short notice. I only submitted the disallowance motion yesterday. Once again I make the point that if we had fixed parliamentary terms in this country we would know whether or not we would be sitting in three weeks time. I would have been able to defer the motion until the next sitting period so there would have been a greater opportunity to properly examine the issue before us. That is as frustrating for me as it is for everybody else who has to deal with the issue at short notice. The reality of the situation is that if I do not move this disallowance motion today, that may be it; there will be no further opportunity to debate it—certainly not until after the election, which could mean the parliament not sitting before February next year, by which time the regulations will have been in force for four or five months and it becomes much more problematic to disallow them. So I recognise the less than desirable circumstances. If we had fixed terms we would know when the last sitting was going to be and we could plan and do our business accordingly. We do not have fixed terms so we will have to operate in that air of uncertainty and push forward with things now. I acknowledge that, for the very same reason, we have about 20 pieces of legislation to get through before the end of the week. Therefore, in the circumstances I will truncate my remarks somewhat more than I otherwise would.

The core of the intent of the disallowance—and it is my understanding that it is the effect of the disallowance—relates to changes to the general skilled migration program criteria and, in particular, the impact on family migration and the weight placed on getting sponsorship from a family already in Australia. The Democrats are on record over the years as giving strong support to the family component of migration. The balance of our migration program over the last decade, particularly in recent years, has tilted very heavily towards the skilled program and away from the family program. In very crude terms, when the Howard government came into office, two-thirds of our migration intake was family related and one-third was skilled. It has now pretty much reversed: two-thirds skilled, one-third family. The humanitarian criteria are being put to one side. I think it is out of balance and that we could rebalance it somewhat. But the key issue for me is not to further degrade the importance of the family migration component.

Having said that, it does need to be emphasised that there is quite a bit of overlap. A significant part of our skilled migration program takes into account family linkages and whether or not people are already in Australia. A significant number of people who come here are on skilled visas, both permanent skilled visas that are seen as part of the migration program and long-term temporary ones. These are sometimes seen as separate to the migration program and include spouse visas linked to the skilled visa and that immediate family component. So there is an overlap there which is often not immediately apparent, given how the statistics are put forward.
In short, the changes the government has introduced from 1 September will not provide specific points for applicants whose families are already based here or who are prepared to sponsor them coming to Australia. In the Democrats’ view, this diminishes the importance of recognition of families in the migration program and the migration process. It is quite complex, as is often the case with migration visas, and the basic effect will be to raise the base pass mark by five points because, in effect, it will remove any extra points for having family sponsorship of a visa holder. It is not the most monumental change made to our migration program in the history of Australia, or even in recent years—it is what might be seen as a small change—but it is nonetheless one that I believe is not warranted. Looking through the background to the changes to the general skilled migration stream that came into effect from 1 September, all permanent visa applicants sponsored by an Australian relative were automatically awarded 15 points. Points for sponsorship will no longer be awarded to visa applicants sponsored by an Australian relative, except for those that apply for the skilled regional sponsored visa.

There was an outline in the explanatory statement to the amending regulation that gave some indication as to why the change has been made. There was an evaluation of the general skilled migration categories done by Bob Birrell, Lesleyanne Hawthorne and Sue Richardson, which related to the subclass 138 visa. That visa was closed off by the changes that came into effect on 1 September. The evaluation raised some issues about that but, in the interests of time, I shall not go through all of those.

The report made some recommended changes to thresholds and points. It recommended that the points test and current pass mark required by each visa subclass be maintained at the current levels, which included the points for the Australian sponsored subclass visa 138. Such applicants receive a concession of 15 points for family sponsorship. In effect, by closing off subclass 138 and introducing a different subclass, the government has gone against that recommendation and has removed the concession for family sponsorship. The effect of this disallowance is not to remove the new subclass 176, but simply to restore the old subclass 138 and have it coexist alongside subclass 176, which would restore the concession for family sponsorship.

That is a somewhat messy way of doing it, but that is the nature of doing things by regulation. As senators would know but the general community may not, the Senate is not empowered to add things to regulations. All we can do is delete specific items. We cannot amend, take out bits or add any new parts to an item; all we can do is allow or disallow either the whole thing or specific parts. The intended effect of the disallowance is to restore the pre-existing subclass visa 138. That would also restore the concession for family sponsorship for people under that particular visa, which dealt with one part of the general skilled migration program.

Because of time, I will not go into the wider debate about the broader skilled migration program and all the different components of it, but I would like to take this opportunity to make two key points. I believe there needs to be much wider recognition of the massive increase in the number of long-term temporary visas coming into Australia, particularly in the skilled area but in a whole range of other areas as well. In all of the debates about improving the integration of migrants into our community, I think there has been insufficient recognition of the need to do more for people who arrive here on long-term temporary visas. Settlement assistance focuses on people who are arriving on permanent visas. That is fine. We do that mod-
erately well. We may even do it a bit better than moderately well, but there is a much larger group of people now who first arrived here on long-term temporary visas who do not get access to settlement assistance because, in technical terms, they are not settling. They are basically having to make it on their own. Some of them get support through universities or their employers, but it is very much an ad hoc, potluck type of arrangement. I do not think that is good enough. A lot of people who get a permanent visa have already been here for a number of years on temporary visas, such as student visas or long-term temporary skilled visas. That is something that I believe needs to be focused on much more. That is not a universal view, even within my own party.

We benefit from a very strong and large migration program. I have no problem with the size of it and I would have no problem with it expanding even more. I do have a problem with an excessive focus on skills without the recognition of the importance of family. I think that this change the government is making degrades that little bit more the recognition of the importance and benefit of family sponsorship and family connections. I think that needs some recognition, particularly when we are not doing as well as we need to in regard to settlement assistance and support for people when they first arrive here. When someone is being sponsored by family, they play an absolutely pivotal role. If you have family already here, of course they are going to be, in many cases, the best settlement assistance you can get. They would be better than anything government could provide. So I am not even suggesting, in calling for better settlement assistance, that it is a matter of government doing it all and fixing everything. The longer I hang around this place, the more I feel government is not the solution to lots of things and that government tends to be the problem half the time.

**Senator Mason**—You’re sounding like President Reagan now.

**Senator BARTLETT**—It must be your influence, Senator Mason. I must be rereading your first speech or something. It is just that while you guys have been in government I have realised that you cause all the problems, so obviously government is not the answer.

Quite seriously—and all my comments have been serious—the role of government is to adopt policies that facilitate an outcome. That does not mean the government should just put more and more money into government programs and try to force them on people; it is about recognising what skills, abilities and benefits exist in the community. Family is a key one of those, particularly in this migration context. Improving settlement support and assistance could well mean just more support and facilitation for families and others within the community, such as businesses and universities, to provide that support rather than having some other separate government funded program.

That is just a very general comment but it goes to an important point. The number of people who come here on temporary long-term visas now far outstrips—I think it is at least double and possibly even triple—the numbers who come on permanent visas. They are a key part of our overall migration program, but they are the part that gets missed out in the migration debate. I have gone off on a bit of a tangent, although it is a related tangent, because I think that point needs to be made as often as possible. It is a key part of the migration debate that is not recognised.

To come back to the core point, the Democrats believe there needs to be more clear recognition of the importance of family and
the component of family, both direct and indirect, in regard to points concessions for family sponsorship in our migration program. We do not believe this change is warranted and it is clearly not—at least on my understanding of the recommendations from the review done by Mr Birrell and others, the Evaluation of the General Skilled Migration Categories report—consistent with that recommendation. In the absence of sufficient justification given by the government, I do not believe that we should proceed with that change.

Senator NETTLE (New South Wales) (10.37 am)—The Greens are concerned that these regulations will make it more difficult for migrants to bring their family members here. We think that is a great shame, because we know that migrants settle best when they are around close family members. We note the comments of various different migrant groups in the community, who believe that these regulations will be an effective way of ending the family reunion program by stealth. That is something that we do not want to see occur, and we are concerned that these regulations will make it more difficult for migrants to settle in Australia and to be surrounded and supported by family members in the process of settling in Australia.

Senator LUDWIG (Queensland) (10.38 am)—In terms of the disallowance of the Migration Amendment Regulations 2007 (No. 7), Senator Bartlett was right when he said that it is a complex issue. It was only put in yesterday and on relatively short notice. As Senator Bartlett recognised, it would have been much better to have been dealt with in the next sitting period to allow all matters to be examined in detail prior to having this debate. I do recognise that this is potentially the last week we will sit before the election unless the government chooses to rule that out and allow us some confidence that we will be able to debate it in the next sitting period. I doubt that the government is in a position to be able to do that, quite frankly. So, notwithstanding that, I understand why Senator Bartlett has brought this matter on, recognising that it is at short notice.

The opposition will not be supporting the disallowance motion. We think it is a complex matter. We think that it is a substantial regulation, and the point that Senator Bartlett was trying to make about this complex regulation is one point within a range of matters. I understand that the way disallowance motions work—and I think Senator Bartlett went to that point—is that you have a matter where you have a blunt instrument and you can only say yes or no to the regulation, even if you disagree with or wish to change only one part of it. It is not like legislation, where you can seek to amend it and change only that part which you might disagree with.

When you look at the change that has been put forward, you see in the explanatory statement to the amending regulations that the new paragraph is 1128B(3)(da). As an aside, someone should go through and try to renumber that to make it more intelligible. Notwithstanding that, it provides that an application by a person seeking to satisfy the primary criteria for the grant of a subclass 138 skilled Australian sponsored visa must be made before 1 September 2007. The effect of this amendment is to prevent further applications being made on or after 1 September 2007 for a skilled Australian sponsored migrant class BQ visa by persons seeking to satisfy the primary criteria for subclass 138. That describes the Australian sponsored matters, following the Evaluation of the General Skilled Migration Categories report.

Senator Bartlett went to that particular report, and it is interesting to note in that report that what seems to be suggested is that where you have subclass 138 sponsored migrants, successful applicants who benefit from this
concession are not required to live near their sponsoring relatives. About half settle in Sydney and 15 to 20 per cent settle in Perth, according to DIMA settlement data. The other issue raised in that report was that offshore migrants who are sponsored, especially those sponsored by family or by region, do least well in obtaining employment soon after arrival. Almost 30 per cent of the latter two groups are not employed. Furthermore, at least a quarter of those who are working are only employed part time. The report stated:

While we cannot be completely certain of the reason for this lower rate of employment, it is likely that it is caused in part by the less stringent selection criteria that these two concessional categories require.

The report went on to state:

The visa categories that do worst on annual earnings are the 138, 139 and 882. These are the Australian sponsored visas, where successful applicants faced a lower pass mark, or were not points tested. The large negative effects for annual earnings reflects the fact that these groups have more difficulty in finding fulltime work, as well as face a wage penalty when they do find a job.

The report did make recommendations. When you look at the overall change, though, the government did not follow those recommendations in the strict sense of the word. They lowered the points in some respects for the skilled portion but have brought a rather complex regulation forward.

We note that the government is dealing with a significant problem in this area, where those who have been relying on sponsorship to meet the points requirement have been least likely to obtain employment soon after arrival. To that extent, Labor is not convinced that the points mechanism is the only way or indeed the best way of dealing with this problem. Nevertheless, Labor does recognise that it is an attempt by the government to increase the likelihood that those arriving under the skilled migration program do in fact enter the workforce. We will continue to monitor the success of these changes to see how they work.

The Ethnic Communities Council of New South Wales strongly urge, as Senator Bartlett has done today, that the government reconsider the proposed regulations. It is recognised that they have a strong voice in the community, representing ethnic communities right across New South Wales. To the extent that the government have the opportunity today, they should be able to provide further justification, their reasons, for the changes that are mooted and how they will ensure that the changes do not adversely impact upon programs that have been important to the ethnic communities of New South Wales. Having said all that, I also say that the position we have adopted is that we will continue to monitor these changes to ensure that they have an impact that is positive rather than negative in those communities.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (10.45 am)—The government will be opposing Senator Bartlett’s disallowance motion. As Senator Bartlett indicated, items 41 and 72 of schedule 1 of the Migration Amendment Regulations 2007 (No. 7) have the effect of closing the skilled, Australian-sponsored visa, subclass 138. This visa has been replaced by the skilled, sponsored migrant visa, subclass 176, during a process of visa rationalisation. This visa has a greater emphasis on the skills in demand in Australia and on English requirements to meet Australia’s skills needs.

Schedule 2, items 7 and 8, has the effect of removing the assurance of support for the subclass 138 visa. In consultation with Centrelink, it was decided to remove the assurance of support for the subclass 138 visa. It was a mandatory requirement but, as the visa
applicants need to be skilled, it was decided that an assurance of support was not necessary and indeed had the effect of limiting the number of applicants for this visa category.

Senator Bartlett and Senator Ludwig have spoken more generally about immigration policy. The government believes in strong immigration management for a prosperous and a cohesive nation. The government’s migration program is keeping our economy strong by keeping pace with the demand for skilled labour while ensuring we have a cohesive and integrated community. The government has increased the English language level required for all skilled migrants. A minimum of year 10 equivalent English, ranging up to university level English, is now required across all skilled visa categories and priority is given to those with the highest level of English.

In general, in relation to Australia’s annual migration program there is now a focus on entrants who can contribute. Australia has an ageing population and, of course, a growing economy. The Howard government believes that it is essential that new migrants bring skills to contribute to the workforce and a commitment to integrate into Australia’s community. Our migration program is focused on skilled migration to ensure that new arrivals can join the workforce and integrate quickly into our society.

The migration program for 2007-08 provides 102,500 places for skilled migration—that is, 67 per cent of the annual migration program. This compares to only 24,000 places under the Labor government, which was 30 per cent of the total. That is an enormous change. In government, Labor did not focus on skills; Labor used the migration program for political gain. Labor allocated 70 per cent of places to family reunions for people with little or no prospect of joining the workforce.

A very interesting speech by Barry Jones, the former Labor minister and of course the former federal President of the Australian Labor Party, was quoted in Paul Sheehan’s Among the barbarians: the dividing of Australia:

The handling of it [immigration] by the previous [Labor] Government was, I’d have to say, less than distinguished. Partly because, I think, it was seen as very important, a tremendously important element, in building up a long-term political constituency. ... There was that sense that you might get the Greek vote locked up, or, from other party-political points of view, you might get the Chinese vote locked up.

The Howard government has refocused its migration family scheme to provide places for all those who will contribute to the economy and our community. Many young professionals travel internationally and develop relationships with other young skilled professionals. We have increased the number of partner visas by 4,000 places to enable these young professionals to live and work here in Australia. The government will be opposing Senator Bartlett’s disallowance motion.

Senator BARTLETT (Queensland) (10.50 am)—I rise just briefly to close the debate. That was a slightly political contribution from Senator Mason, so I probably need to respond to a couple of his points. Firstly, I accept points that people have made. Indeed, I have called a number of times for the streamlining and rationalisation of visa categories. As may be evidenced by people trying to interpret this debate, it is an incredibly complex area and all of the different subclasses, subparagraphs and criteria that flow around the place and are continually changing are absolutely bamboozling.

I think we have about 150 separate visa subclasses in Australia, which I think is an absurd and excessive number of different categories to have for people that are simply trying to migrate to Australia or to come here
for temporary purposes. You need some different criteria, but I think having 150 is getting quite over the top. I support rationalisation; I just do not support one component of this rationalisation, because I think it downplays the family component.

Certainly, it helps people integrate if they have an increased chance of getting a job when they get here—there is no doubt about that—but that does not guarantee effective and comprehensive integration. Having recognition for the family who are here is another key avenue and, I would argue, one more likely to be a solid, long-term, more wide-ranging mechanism for integration.

So it is not a matter of skills being the way to go or of family being the way to go; I think it is a matter of getting a better balance. It may well be that the balance was out of whack under Labor; I think it is now out of whack in the other direction under Liberal. I think we need to balance them out more.

The following point has been made many times, so I shall only make it briefly now. One of the reasons we have to have such a large skilled intake is the lack of investment over more than 10 years by the coalition government in skilling the people who were already here—and that includes many migrants who, after they arrive, need continual reskilling, as do Australian-born people. It is, in part, because we have underinvested in that area that the requirement for the skilled area to be such a big component in the migration program has occurred.

Having said that, we will always need to—and we always should—look to bring skilled migrants here. Australia has been built, in large part, on the contribution of migrant labour, both skilled and unskilled. That in itself generates prosperity, and so creates more demand and more need for those further skills and that further labour. So it is a self-generating process, generating prosperity and the need for more migration. But we also need to do better at skilling the people who are here—migrants who are recent arrivals and long-term members of the Australian community—and we do not do that well enough.

But this is not just about getting people here as economic units and getting them into the workforce. We are undervaluing the family. It is particularly ironic, coming from a government that would normally be seen to be more likely to be spruiking the central role of the family, that we are undervaluing the contribution and the role of family, both in assisting migrants to be grounded in the Australian community and in that wider role of integration—that of maximising the effectiveness of multiculturalism and ensuring that all Australians benefit most effectively and completely from that. So I think we have to do a lot more to get the balance right.

That will not be helped by recycling some of what I think is basically mythology. Even if it is mythology spruiked by Barry Jones himself, it is still mostly mythology. As most people know, the idea of locking up the Greek vote, or the Arab or the Lebanese or the Chinese vote, or any other vote—the gay vote, the English migrant vote, the New Zealander vote—is grossly overstated. It just does not work that way. You might be able to do a little bit here and there, but the notion that there are these big clumps of people that you can shift around as voter blocs is, in my view, grossly overstated. I think Barry Jones, whilst he has lots of skills, is not necessarily most skilled in assessing that aspect of the political process, if I might say so.

So the core concerns of the Democrats remain with regard to this. Certainly, we will continue to push for greater recognition of a family component in the migration program. As an aside, I note that, amongst the many changes the federal government has made
over the last decade and a bit, the one that remains seriously problematic is the major cutback in and continual capping of aged parent migration. There are waiting lists of over 20 years for the non-contributory aged parent visa category. Obviously, a wait of 20 years, in relation to aged parents, is less than satisfactory.

I think that is a terrible undervaluing of the role that parents and families play in integration and of their wider contribution to the Australian community. Even if they are not all going to come here and go out and get jobs and become doctors and nurses straightaway, there are other contributions that migrants make and that parents and grandparents make. I think that is an area that the government needs to reconsider and re-examine.

Clearly, on this occasion, this disallowance motion is not going to be successful. But I think it is important to continue to highlight the need to give greater weight to the role of family in the migration system and also in what is quite a complex point system that applies to various visa categories. To downgrade or remove the family linkage is, I think, a mistake.

The ACTING DEPUTY PRESIDENT (Senator Murray)—The question is that the disallowance of four items of the Migration Amendment Regulations 2007 (No. 7) be agreed to.

Question negatived.

COMMITTEES

Community Affairs Committee

Report

Senator HUMPHRIES (Australian Capital Territory) (10.57 am)—I present the report of the Community Affairs Committee, *Highway to health: better access for rural, regional and remote patients*, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator HUMPHRIES—I move:

That the Senate take note of the report.

This report is reporting on the various patient assisted travel schemes which operate around Australia. In 1978, the federal Patient Assisted Travel Scheme was established and, at that point, it was operated by the Commonwealth government. In 1986, that scheme was devolved to the various states and territories of Australia, and this inquiry was intended to establish how well those schemes serve the needs of Australians living in rural and remote Australia.

The inquiry found that there were serious inadequacies in the various schemes: that the subsidy levels were unrealistically low in many cases, that the thresholds that people had to travel before they qualified for assistance were often too high, that the schemes themselves were complex and obscure, that access to them was difficult, and that there were marked inconsistencies between the way these schemes operated from one jurisdiction to another. And, when so many people were, in effect, crossing state boundaries, by virtue of these schemes, to access services, those inconsistencies became a matter of some vexation to the users of the schemes.

What was also disturbing was that, in conjunction with those facts, there was clear evidence of poorer health outcomes for people living in rural and remote Australia—for example, more depression for people in remote Australia, higher rates of communicable disease, a greater incidence of very low birth-weight babies, and, generally, lower levels of life expectancy.
We might expect that there would be a certain degree of lower or worse health outcomes by virtue of people living a long way from health services, but the question is whether the various PAT schemes are able to mitigate the effect of that distance. Real questions remain as a result of this inquiry as to whether they effectively do that. PAT schemes certainly alleviate some of the financial burden associated with having to travel for medical assistance but only a relatively small proportion of that. Something like one-fifth to one-tenth of the costs usually entailed in travelling long distances for medical assistance is the level of reimbursement that people can expect. That leaves many Australians with significant financial hardship associated with medical illness. Most disturbingly, perhaps, is the fact that the cost of travel actually dissuades some people from seeking medical attention. It actually dampens demands for certain preventative services—for example, breast cancer screening—and it leads others to choose not to be treated or to be treated too late for intervention to be effective. That has led the committee to make a number of recommendations, key among which are: firstly, that there should be a building-in to the next Australian Health Care Agreement of attention to this issue so that it becomes one of the measures whereby Australia gauges the effectiveness of its health and hospital related services; and, secondly, that the Australian Health Ministers Advisory Council establish a task force to look at a range of issues affecting the operation of the PAT schemes, including obviating the differences between jurisdictions and establishing national standards to ensure that a certain amount of consistency can be achieved and the standards applicable in these schemes can be raised across the nation.

I do not propose to speak for any longer than that. I simply want to thank the committee secretariat for its very hard work in putting together this report. I thank the other members of the committee. I particularly thank the senator who was the driving force and inspiration for this inquiry, Senator Judith Adams. It is true that the committee began the task of this inquiry with a certain reluctance based on some view that this might not be an issue of great substance. I have to say that by the end of the inquiry we were convinced that this was an issue affecting very substantially all people who live in rural and remote areas of Australia and did need very serious public policy attention.

Senator Moore (Queensland) (11.02 am)—Most of us on the committee actually always felt that this was an issue of great substance. The reason we felt that way is that for so many people who came to talk to the Senate Standing Committee on Community Affairs at previous committee hearings for inquiries on topics such as cancer—for the report The cancer journey—gynaecological cancer services and even poverty several years ago brought up in evidence the issue of patient assisted travel. If you do a scroll through the website, you will find that so many people who live across our country acknowledge that the cost of travelling to access their right to effective health services was deterring them from making the decisions that could be best for their health and for the health of their families. I think the most confronting thing for all of us in this process was hearing the evidence from people across the country. This was not limited to one state; these issues were common across every state we visited. Those whom we could not visit wrote submissions. The inquiry was long awaited and I know that many people are waiting to see the recommendations and to see what difference we can make as a result of the evidence they gave to us. I particularly—and I think this is a common theme for our committee—want...
to thank the people from across the country who were prepared to be involved in the Senate process, who acknowledged that there were significant issues around the cost of travel and accommodation linked to health services and who were prepared to come and talk with us about those things. These inquiries would not operate if we were not getting submissions and evidence from people. Again, we were overwhelmed by how many people wished to talk with us.

The recommendations, as Senator Humphries pointed out, are focused on putting this issue higher on the priority list. We had evidence from many state governments. My own state government gave a detailed submission but did not feel they needed to come and give evidence at the inquiry. Nonetheless, they did provide a detailed submission to the inquiry process. The evidence that state governments were giving us had a common theme. They all acknowledged that there was a need for a patient assisted travel scheme, they all told us about internal reviews they had undertaken to look at the needs in their own areas and they all reinforced the fact that the patient assisted travel scheme—or whatever it was called in their local jurisdictions—was only ever meant to be a subsidy scheme. They said there was never any intent that it would cover a full reimbursement of costs. That was common. What was also common in the committee’s experience was the comment, ‘We acknowledge there should be a subsidy; we do not think the subsidy is enough.’ That reaction was shared by every state. I also want to give particular credit to Senator Adams, who took the committee with her on her quest to ensure that the issue of patient assisted travel is recognised and brought up to the authorities in each state government. There have been efforts to improve schemes; I think that was common and it should be acknowledged. The evidence we heard was not new to any state authority and there has been some movement forward, but it needs to be coordinated; it needs to be a COAG issue. We need to ensure that the amount of travel and accommodation subsidies are increased. People who are in crisis about their health do not need the extra pain and suffering of financial problems.

I also just briefly want to say that the most worrying aspect for me was the evidence that we received that people were making health decisions based on their economic situation. Although it came up in other places, too, I think that I will be particularly haunted by the evidence that we received in Alice Springs about women who were making decisions about breast screening and subsequent urgent breast cancer treatments based on access to services in their local areas, which were non-existent. As we speak today, there is no effective screening process in Central Australia for breast cancer. Among all the other issues that we are facing in these areas of health care, that one comes closest to my own experience and it is one that I was worried about. I could not help but contrast my own experience—the way that I was supported and taken very quickly through immediate treatment—with that which is available to women in that part of Australia. If we can do anything with this inquiry, bringing that issue and the Patient Assisted Travel Scheme to the awareness of the public will be a start. We can make a difference. There is goodwill. There has to be good action.

Senator BOYCE (Queensland) (11.08 am)—As a relatively new senator, this was the first inquiry that I have had the opportunity to participate in from beginning to end. I would like to thank the secretariat and the members of the committee, particularly Senator Judith Adams, for the very worthwhile experience that this inquiry produced. Probably the first thing to say about the PAT...
programs as they are used in each state is that they are very little programs trying to do a massive job. They are trying to provide equity of access to people from rural and remote areas with a very small subsidy. One of the things that particularly struck me with regard to the submissions that we received from the state governments was the very cautious nature of those submissions in terms of trying to control the money. We heard evidence that often towards the end of the budget year people would be refused subsidies when earlier in the year the very same set of circumstances would have resulted in a subsidy being received. There was not only a lack of consistency between states but a lack of consistency within states in terms of the subsidies given to people.

To me, the very real value of this inquiry was the fact that it put a human face on the decisions—for example, a mother not being given a subsidy to travel to donate an organ for her son’s welfare—a son in his thirties and with children and obviously someone who this community needs to be as healthy as he can be. One of the images that will haunt me, Senator Moore, was the image of a very sick Indigenous man from remote Australia arriving at Adelaide airport for treatment and not being met by anybody and not understanding how one might get from the airport to the hospital. Obviously, there is a lot of work to be done to improve this. I support the comments of my fellow senators and join them in recommending that COAG is the place to do the work that is needed to give real access to health facilities to remote and rural Australians.

Senator POLLEY (Tasmania) (11.10 am)—I rise to also speak on this report of the Senate Standing Committee on Community Affairs. I share the views of my fellow senators. I thank Judith Adams for her contribution. She ensured that we followed through with this inquiry. It would be fair to say that Senator Adams, coming from Western Australia, knew only too well the issues facing her fellow Western Australian citizens in trying to access adequate medical services. From living in Tasmania, I do, too. Although we are geographically not as large as Western Australia, the landscape of Tasmania makes it difficult to access services at times. Most states and territories were represented on this committee. This is a national issue. This is one of those issues that we cannot afford to play the blame game with. It is a responsibility of state governments and the federal government to address this.

There were many instances of very emotional evidence given about the hardships suffered in cases in which PATS did not allow family members to travel. People talked about going to cities which they did not know. There were many issues relating to the lack of financial assistance through this scheme. As Senator Moore said, it is there to subsidise people. We have to address the concerns that were raised in this inquiry in relation to the money that is afforded for accommodation. We have to look at other options for accommodating people when they have to travel either interstate or intrastate, as they do in our great country. The concerning issue that confronted me and, I am sure, my fellow colleagues was that families are now making decisions about their health based on financial circumstances. That is something that we all need to be reminded of.

We need to ensure that these 16 recommendations, which are very good recommendations, are followed up on. I feel very strongly that we have to follow up on this inquiry. Too many reports gather dust in this place. I for one would like to be able to participate in continuing to monitor this scheme. I want to place on record my thanks to the secretariat for their hard work. If I dare say it, without a doubt, the secretariat of the Sen-
ate Standing Committee on Community Affairs work harder than most other secretariats. I also want to particularly thank those people who came before us and gave evidence and thank people for all the written submissions that we received. I commend the report to the chamber.

Senator CAROL BROWN (Tasmania) (11.13 am)—I too would like to express my support for all the contributions that have been given here today on the Patient Assisted Travel Scheme inquiry. I will start by expressing my support for our leader in this inquiry. I apologise to the chair, Senator Humphries, and the deputy chair, Senator Moore, but it was quite clear that this inquiry was driven and led by Senator Adams.

What also became clear from these hearings is that there are some fundamental problems. One of those problems is the promotion of the scheme. In Tasmania, we heard two stories of where changes made to the Patient Assisted Travel Scheme were actually beneficial to the patients. One of those stories was to do with renal dialysis and the change to the strict 75-kilometre travel rule. There did not seem to be a view that, other than making the change, it should be promoted. The Tasmanian branch of Kidney Health Australia knew nothing about the change, and I understand most of the patients affected knew nothing about the change. It was left to the coordinators in Burnie.

In Tasmania we have a review committee—a standing committee, I believe—which encompasses the coordinators and other managers of the scheme, but it does not have a consumer advocate on it. It is clear that consumers are concerned that they are being left out; they believe they are not being listened to and they want their concerns addressed. This inquiry provided to many witnesses, particularly the users, the advocates and their carers, an invaluable opportunity—some for the very first time—to voice their concerns and put forward to a national audience their views on the benefits, shortcomings and fundamental importance of the Patient Assisted Travel Scheme.

The terms of reference with regard to the operation and effectiveness of the travel scheme allowed us to range over all aspects of the scheme, such as the need for greater national consistency and uniformity, the need for national minimum standards, the current level of utilisation of the scheme and, of course, the level of unmet need. The depth of interest in this inquiry is indicative of the depth of engagement on health issues in this country.

My home state of Tasmania has the most dispersed population of any state. The percentage of the population that is located outside the capital city is higher in Tasmania than in any other state. Given Tasmania’s low population relative to other states, a range of services are not available intrastate, which means assistance with travel is essential for many Tasmanians.

It became clear from the committee’s work that we need increased patient liaison and better communication to ensure continuity of care for patients. It also became clear that the demand for PATS would increase and other pressures would also impact on the demand for the scheme. We have heard that there is a great need, but there is also a massive job to be done. That is why I fully support the recommendations, particularly recommendation 2, which states:

That as a matter of urgency, the Australian Health Ministers’ Advisory Council establish a taskforce comprised of government, consumer and practitioner representatives to develop a set of national standards for patient assisted travel schemes that ensure equity of access to medical services for people living in rural, regional and remote Australia.
It needs to be a national approach. It was clear from all the submissions we received that that is what the patients need and want.

I would like to commend the secretariat for their work; as usual, they have done a very good job. I commend the report *Highway to health: better access for rural, regional and remote patients* to the Senate, and I hope that its very important recommendations will be taken up and acted upon.

**Senator ADAMS** (Western Australia) (11.19 am)—I rise to speak on the Senate Standing Committee on Community Affairs report *Highway to health: better access for rural, regional and remote patients*. I would like to sincerely thank my Senate colleagues for agreeing to the community affairs committee holding this inquiry. As the chair of the committee said at the start, certain members were a little dubious about whether this was a very important inquiry. But I think we have probably proven with this report that it was important. Those who read the report will certainly realise that there is a problem in rural and remote Australia. The committee members have certainly supported me very strongly, and I thank them for their remarks. I thank the committee secretariat, because it was no easy task. There were 196 public submissions and four confidential submissions. We held hearings in Canberra, Alice Springs, Melbourne, Perth, Launceston and Brisbane. That meant the secretariat had to leave their homes and travel and put in some rather horrific hours. When we went to Alice Springs we were able to look at the Aboriginal congress and also visit the hospital and speak to those people who are actively involved with policing the PATS. I think doing that gave everyone an idea of just how important the PATS is. I would like to quote from my first speech in this place on 11 August 2005. I said:

I firmly believe that the Patient Assistance Travel Schemes in each state need best-practice national guidelines to ensure rural patients have flexibility in accessing the best possible medical assistance. Since the Commonwealth handed the responsibility of the Patient Assistance Travel Scheme, PATS, over to the states in 1987, this issue has been reviewed many times. Recommendations from five recent parliamentary committee reports have highlighted the problems associated with these travel schemes. We have the evidence and data to tackle the problem, and I will be strongly recommending to the Senate Community Affairs References Committee—
as it was then called—that the administration of PATS must be dealt with urgently. It is a complex issue, as it falls within the states’ jurisdiction, but something must be done.

So, after two years of really annoying my colleagues and pushing very hard, we have finally tabled our report—and that is no mean feat.

I thank the people who put forward submissions. We had support from many organisations. I was a member of the National Rural Health Alliance for six years, as a councillor representing the Australian Healthcare Association. That has 27 organisations, which include rural nurses, doctors, allied health groups, service providers such as the Royal Flying Doctor Service, consumer groups like CWA and academics. We had support from national bodies such as the AMA and the Australian General Practice Network, state governments, local governments, cancer groups, Aboriginal health organisations, teaching hospitals, consumers and health service boards. It goes to show that this really was a national inquiry. Everyone is concerned about it. As there are fewer and fewer of us living out in rural, regional and remote areas, I think we have done a service. We have the evidence now. It is there for someone at a higher plane to act on. There has to be coordination of all the states.
At the moment we have—excuse the pun—a ‘dog’s breakfast’ as far as the different PATS areas go.

I was pleased to receive a flyer from the AMA called *Bridging the gap*, which we celebrated several days ago. The fifth item on their flyer is very good. It is about the Patient Assisted Travel Scheme. I think this is important, as it is coming from a body such as the AMA. It says:

The Australian healthcare system is based on the principle that all Australians are able to have access to the same level of health care regardless of where they live. Those who live in regional, rural and remote Australia should not be disadvantaged if they must travel to larger centres to access quality health care.

They go on to say, and this is one of our recommendations:

The AMA believes that the Commonwealth should work with the States and Territories to expand PATS to cover other treatments available under the Medical Benefits Schedule (MBS)—including access to allied health professionals where a doctor coordinates the patient’s overall care.

In this climate, PATS has become very much out of date since it was handed over to the states in 1987. We need to look at how we organise health. Primary health care is very important, but no longer is it just the bailiwick of the doctor, the GP or the specialist. It is the multidisciplinary team that sit behind them as their support. This might be with our remote area nurses. It is definitely with our allied health people.

I think it is important—and it is part of one of our recommendations—that the patient is not necessarily sent to the nearest specialist, who may not be the most appropriate specialist. If the patient has to go to someone that is not quite the person they should be seeing, they are probably going to create a much larger debt to the health system than they would have if they had been able to access the most appropriate specialist. So this has been one of my very strong pushes. That is contained in one of our recommendations.

I spoke in my first speech about the development of national standards. This is our recommendation:

Development of the national standards should include (but not be limited by) consideration of the following areas:

- patient escorts including approval for:
- psycho-social support;

At the moment it is only for medical support. Many people are sent to the city areas by themselves to undergo radiotherapy, chemotherapy and treatment for other symptoms. They are alone. This is completely unfair; it is cruel. It is not on at all. When we went to Alice Springs and spoke with our Indigenous people we heard some horrific stories. English is not the first language of a number of these patients. They are sent off to a city by themselves on an aircraft or in a bus, probably never having been in an aircraft before. Nobody meets them; nobody takes them anywhere. Where do they stay? What happens? There have been some dreadful instances. In the Northern Territory an elder, a very old gentleman, was dropped off at the airport very early in the morning and had nowhere to go. He was found deceased seven days later. These are the sorts of things that just cannot happen in this day and age. We have other instances, especially in my home state of Western Australia, where the bus will drop off a patient who is a mother with a baby at three in the morning, when she has another 400 kilometres to go and she is hoping someone will come and collect her. They do not come and collect her. These are the sorts of things that we just have to do something about. Patient escorts are very important.
The second problem is obstetric services in rural and regional areas being limited for safety’s sake to prevent litigation. You have to have an operating theatre and an anaesthetist standing by. I seek leave to continue my remarks at a later date.

Leave granted; debate adjourned.

COMMITTEES
Foreign Affairs, Defence and Trade Committee

Senator PARRY (Tasmania) (11.28 am)—On behalf of Senator Payne, I present the report of the Foreign Affairs, Defence and Trade Committee on its examination of annual reports tabled by 30 April 2007.

Ordered that the report be printed.

SOCIAL SECURITY AMENDMENT (2007 MEASURES No. 2) BILL 2007

First Reading

Senator ELLISON (Western Australia—Minister for Human Services) (11.29 am)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Human Services) (11.29 am)—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—

This Bill contains amendments to the Social Security Act 1991 and the Social Security (Administration) Act 1999 to give effect to policy announcements made in the Budget and other measures. These measures build on the Welfare to Work reforms already introduced, ensuring better arrangements for principal carers, improved consistency in income support decisions and greater clarity in the application of social security law.

The Bill recognises the significant responsibility that relatives sometimes take on with regard to the care of a child, extending exemptions from participation requirements already in place for some principal carers. The amendments ensure grandparents and other relatives who take on the responsibility for the care of a child as principal carers, but not as formal-foster carers under State or territory law, have access to an automatic exemption from their participation requirements. Recipients of Parenting Payment, Newstart Allowance, Youth Allowance (Other) and Special Benefit, who care for a related child as a result of a family law order under the Family Law Act 1975, will now have access to this exemption.

Single principal carers receiving Newstart Allowance or Youth Allowance (Other) who are eligible for this exemption, will also access a higher rate of payment for the duration of the exemption. The higher rate is equivalent to the Parenting Payment (Single) rate of payment.

The Bill improves the operation of social security provisions governing a person’s transfer between one income support payment and another. These provisions currently enable a person to be transferred from one payment to another, without the need for a claim form, where the person becomes newly eligible for the other payment and the Secretary considers it appropriate to make the transfer. The amendments will further reduce the administrative burden in transferring people from one payment to another, by placing restrictions on the time frame in which a transfer can be made. This will ensure a recipients’ qualification for payment will be assessed in a similar time period as the claim was made. In addition, transfers to the closed payments of Mature Age and Partner Allowance, will no longer be possible.

The amendments provide for new guidelines to be made regarding assessments of partial capacity to work, current or continuing inability to work, application of the impairment tables and incapacity exemptions from the activity test. In addition,
outdated references to ‘medical officers’ in the impairment tables have been replaced with the term ‘assessors’. These changes will ensure continued consistency across decision makers for income support decisions and reviews.

The Bill also makes a technical amendment to clarify that waiver of a social security debt recovery due to special circumstances is not available to a person who knowingly fails or omits to comply with social security law.

These amendments provide even further support to people assisted under the Government’s Welfare to Work reforms. There are minimal financial implications associated with this Bill.

Debate (on motion by Senator Ellison) adjourned.

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

HEALTH LEGISLATION AMENDMENT BILL 2007

First Reading

Bill received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Human Services) (11.30 am)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Human Services) (11.30 am)—I present 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.

The speech read as follows—

HEALTH LEGISLATION AMENDMENT BILL 2007

The Health Legislation Amendment Bill 2007 will amend the Private Health Insurance Act 2007 and the National Health Act 1953.

The amendments to the Private Health Insurance Act 2007 are technical in nature and remedy some unintended consequences. Currently, a broad offence provision may have the unintended effect of penalising insurers who are offering some types of insurance products. For example, accident or disability insurance offered by a general insurer, or insurance cover such as overseas students’ health cover offered by private health insurers. To ensure that no one is unfairly affected, the bill will narrow this offence provision so that it only covers complying health insurance products that are subject to the private health insurance rebate. The narrowing of this offence provision will be retrospective to 1 April 2007 when the Act commenced.

The Act currently provides that all the operational rules of a private health insurer are subject to improper discrimination requirements. However, it was only intended that these requirements apply to the core business of private health insurers—complying health insurance products. The bill will provide that the improper discrimination requirements only apply to complying health insurance products.

Private health insurers can offer insurance cover to overseas visitors. The Act currently allows private health insurers to offer this cover as part of their core health insurance business. From 1 July 2008, overseas visitors’ health cover is to become a general insurance product, and as such will able to be offered by both private health and general insurers. In the period from 1 April 2007 to 30 June 2008, these overseas visitors’ health products are subject to other requirements usually only intended to apply to the core business of private health insurers—the offering of complying health insurance products. A transitional provision in this bill provides that private health insurers offering overseas visitors’ health cover will not be subject to the requirements of complying health insurance products. This amendment is proposed so that overseas visitors’ health cover does not have to be offered as a complying health insurance product and there is no offence for not offering this insurance in such a form.
The Government’s original intention was to make the Australian Prudential Regulation Authority (APRA) and the Private Health Insurance Administration Council (the Council) the regulators for health related business, including overseas visitors’ cover, when operated through a health benefits fund from July 2008. After consultation with APRA and the Council, the Government now has decided that, from July 2008, all health related business operated through a health benefits fund will be regulated solely by the Council. All business operated by private health insurers outside the health benefits fund will be regulated as general insurance business by APRA. This parallel approach will remove any confusion and unduly costly and onerous compliance burdens on the relatively few health insurers who now offer the service, while not stopping potential new providers from entering the market.

There are special provisions in the Act for overseas students’ health cover. These provisions are to encourage private health insurers to enter into a deed with the Commonwealth to ensure that there are sufficient offerings of insurance to overseas students (and some other specified temporary visa holders). Since the Act commenced on 1 April 2007, insurers offering overseas students’ and specified temporary visa holders’ health cover have been subject to the Australian Prudential Regulatory Authority and Financial Services Reform Act 2001 requirements. To allow time for the proposed new regulatory approach whereby overseas students’ health cover, as health related business operated through a health benefits fund is regulated by the Council the bill provides a period of grace until 1 July 2008.

The Act includes provisions which relate to the disclosure of interests by the Council. These provisions in their current form are so restrictive that they prohibit participation in discussion and decision making by individual Council members who are insured by a particular health insurer when that insurer’s affairs are being considered by the Council. The legislation will now allow that where a member does disclose a pecuniary interest the Minister or the other Council members may determine that the member can still take part in discussions and decisions.

The amendments to the National Health Act 1953 relate to the Pharmaceutical Benefits Scheme. On 1 August 2007, legislation came into effect which implemented a very significant package of reforms to the Pharmaceutical Benefits Scheme. These reforms put in place structural changes to the pricing of medicines that enable the Australian community to achieve better value from medicines that are already listed on the Pharmaceutical Benefits Scheme, while delivering long term savings to support future listings of cost-effective medicines.

This Bill will correct an unintended narrowing of subsection 103(2A) that occurred during the drafting process of the National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2007. The consequence of this is that pharmacists are now unable to substitute between brands of different pharmaceutical items that are flagged as equivalent in the Pharmaceutical Benefit Scheme Schedule, a practice that was provided for prior to the amendments. Narrowing this provision was not the intention of the Pharmaceutical Benefit Scheme reform legislation. The Bill also makes a number of consequential amendments to the Act as a result of the correction of that provision.

In considering the Pharmaceutical Benefits Scheme amendments in this Bill, I want to clarify the process which underpins the ‘a’ flagging of a pharmaceutical benefit in the PBS to show that it can be substituted for another equivalent pharmaceutical benefit or benefits. The practice for determining equivalence is that a sponsor has submitted evidence to the Therapeutic Goods Administration that a medicine has demonstrated bioequivalence or therapeutic equivalence against another medicine. The Therapeutic Goods Administration may also conclude bioequivalence between two medicines on the basis of the route of administration and the formulations of the products concerned. Bioequivalent and therapeutically equivalent medicines can be expected to produce the same clinical effects and to have the same safety. This is a technical assessment. It is the Government’s intention that this practice will continue in effecting the provisions outlined in the Bill.

Debate (on motion by Senator Ellison) adjourned.
Ordered that the resumption of the debate be made an order of the day for a later hour.

TAX LAWS AMENDMENT (2007 MEASURES No. 5) BILL 2007
Returned from the House of Representatives

Message received from the House of Representatives informing the Senate that the House has made the amendments requested by the Senate.

Third Reading
Senator ELLISON (Western Australia—Minister for Human Services) (11.31 am)—I move:

That this bill be now read a third time.
Bill read a third time.

TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2007
Returned from the House of Representatives

Message received from the House of Representatives agreeing to the amendments made by the Senate to the bill.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT (TERRORIST MATERIAL) BILL 2007
Second Reading
Debate resumed from 19 September, on motion by Senator Colbeck:
That this bill be now read a second time.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (11.32 am)—I believe that one of the speakers in the second reading debate has not completed her speech. I thought Senator Kirk had not finished. (Quorum formed)

In closing the second reading debate, at the outset I want to express my disappointment that the Labor Party has chosen to pursue their amendment to this bill. It clearly demonstrates a lack of understanding of the important issue and it shows the depth of inexperience the Labor Party has when it comes to issues of national security—and, may I say, a high degree of naivete. This disappointment does not extend to surprise. I am not surprised that the Labor Party has once again pushed an agenda that is not in the best interests of the nation.

On the one hand, you have a government doing everything it can to improve security and deal with potential terrorism threats in Australia and, on the other hand, you have the Labor Party and opposition in this place supporting measures that would be inadequate to protect the Australian community. They want to water down this important initiative. They are clearly not serious about dealing with terrorism and the genesis of terrorism. I will deal with the opposition’s amendment in more detail in the coming committee stage. Waiting for a terrorist attack to occur, of course, is utterly unacceptable. Prevention, anticipation and doing something to avert the event are the top priority and the new battleground.

The government is concerned about influences within our society that lead people into terrorism. Our laws must deal adequately with material that encourages people to commit terrorist acts, and that is what this bill is about. The Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007 amends the classification act so that material that advocates the doing of a terrorist act must be refused classification. Things could not be simpler and more welcome. Material that has been refused classification cannot be legally sold, exhibited or displayed in Australia. There is significant doubt and uncertainty about whether current classification laws adequately capture material that advocates the doing of a terrorist act. What is clear is
that something needs to be, and must be, done with respect to such material.

I thank honourable senators for their contributions to the debate, and I would like to respond to some of the points raised. With respect to Senator Ludwig, the accusation against the Attorney-General of delay in responding to this issue is totally wrong. Of course, what we do in the Commonwealth domain is to consult the states. There is no point in having federal legislation that is in contradiction to state legislation, so we consult the states. We consult the state Attorneys-General at six-monthly meetings, we consult the ministers of police, we consult corrective services ministers—we consult all the necessary state ministers to make sure there is national, harmonious, concise, consistent legislation. The Attorney has been seeking to herd cats in terms of the state ministers. They have a very limited understanding of what national security is really about and, as is typical of most Labor Party ministers in this country, no interest whatsoever in responding to these threats.

Senator Ludwig is fully aware of the facts regarding what has gone on here. Subsequently I will table a chronology of events that the Attorney-General has put before the various state ministers, only to be rebuffed out of ignorance and naivete. The Attorney, in tabling this chronology in the other place, was quite surprised and shocked by accusations similar to what we have heard from Senator Ludwig being raised in the House of Representatives by the member for Brisbane. Senator Ludwig is aware that it is his state and territory Labor colleagues who are responsible for the delay, and he did nothing to bring them to account.

I note that Labor supports this legislation, yet it seeks to take the opportunity to argue that there has been a delay. The delay is at Senator Ludwig’s feet, having no goodwill with his state colleagues, obviously. It seems that Labor has a very relaxed attitude towards the facts in this matter. I table the chronology in order to highlight the significant inconsistencies in the arguments put forward by the honourable senator.

It is indisputable that the Attorney-General has been working tirelessly on this important initiative since the existence of this material first came to light in July 2005. It is the state and territory Labor governments that have frustrated the process continually, refusing to be cooperative or constructive, and hiding behind their bureaucrats while repeatedly opposing any proposal put forward by the Australian government. Of course, Senator Ludwig, representing Rudd Labor, has been the epitome and personification of that dilatory conduct.

I do not intend to take up the Senate’s time by going through the chronology of events once again. It is there for all to see. The document I have tabled speaks for itself, and I think it is important to make the point that, immediately after it was clear that the AFP, the DPP and the Classification Board were unable to deal with this kind of material under the current regime, the Attorney-General did act decisively and urgently to obtain the agreement of the state and territory censorship ministers to take material that advocates terrorist acts off the streets. They said no, many times, and here we are now, late in the electoral cycle, seeking to repair something that responsible state ministers should have switched on to a lot sooner than they did. So the Attorney has been forced to take action. The Attorney should be commended for his leadership on this point.

I now turn to some of the commentary in the second reading debate. Senator Nettle made some outrageous commentary in her speech last night, comparing the current government to the Hitler and Stalin regimes.
These sorts of comments always say more about the person uttering them than the person or institution they are trying to criticise. I was disappointed by Senator Nettle’s attitude to these matters. It shows that she and Labor have not been paying attention to what has happened in the world since September 11, 2001. Senator Nettle, in one of her more lucid moments in the debate yesterday, claimed that these measures further erode human rights in Australia in the name of national security. She mentioned that freedom of expression and freedom of speech will be further eroded. The government rejects this. The former Canadian Attorney-General and former human rights lawyer Irwin Cotler, who is a strong proponent of the concept of humane security, recently told a Canadian parliamentary committee:

... terrorism constitutes an assault on the security of a democracy and the most fundamental rights of its inhabitants—the right to life, liberty, and security of the person. In seeking to prevent terrorism, counterterrorism laws are in fact protecting these basic rights and freedoms. Therefore, if counterterrorism legislation is proportionate, its security objectives are not so much in conflict with human rights but supportive of them. The Australian government has put great time and effort into getting the balance correct. We maintain that this legislation goes a long way towards achieving the perfect and right balance.

Freedom of expression is an important part of Australian society and merely holding and asserting strongly opposing views should not attract censorship. This law is designed to strike an appropriate balance, as I have said, between freedom of expression and the need to protect the community, and, as I said, I think it achieves that balance. There is another right which must be protected—the right to be protected from the pernicious influence of material that advocates that the naive and impressionable go out and commit terrorist acts against other human beings. The inclusion of proposed new section 9A(3) in the bill will ensure that the new provisions will operate effectively against unacceptable material but will not infringe or impinge on freedom of speech or mainstream popular culture.

Senator Nettle mentioned article 19 of the International Covenant on Civil and Political Rights and said that this provides for freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds through any kind of media. I could see where she was going at the outset of those comments, and I thought: how naive can you get? However, this article also states that this right carries with it special duties and responsibilities. It may therefore be subject to certain restrictions—and I underline this—as provided by law and are necessary for reasons which explicitly include national security. Of course, the Greens have an absolute anathema towards national security. Refusing classification of material that advocates that people commit terrorist acts is consistent with this obligation.

I will conclude by saying that the Attorney-General has unambiguously stated that this bill would not have proceeded if state and territory governments agreed to amend the classification code and guidelines individually in their states. This point needs to be made clearly. The government has been forced to resort to this bill because the state and territory governments have refused to cooperate, and here we are with the Labor Party attempting to weaken this measure. The Attorney has pursued this issue with state ministers for over a year. This is very disappointing, but also very indicative of the fact that they have no interest, no responsibility and no understanding of what we are seeking to do here. I would like to acknowledg-
edge that, at the most recent meeting of the Standing Committee of Attorneys-General, New South Wales and South Australia indicated their support for the proposal, and so my remarks are tempered with respect to those jurisdictions. However, the amendments to the code and guidelines require unanimous support of all governments, so the initiative, once again, failed.

The bill is not about restricting freedom of speech. It is about ensuring that material advocating terrorist acts is not legally available. The bill takes into account submissions received during widespread consultation conducted by the Attorney-General’s Department on this proposal. It is important to note that there is a provision in the bill that puts beyond doubt that material that is merely part of a public discussion, debate, entertainment or satire will not be captured by the bill. The explanatory memorandum also clearly states that the provision is only intended to capture material which goes further than that and actually advocates the doing of a terrorist act. These are clearly defined terms, taking their meaning from or directly adapting the Criminal Code provisions which were agreed by the Council of Australia Governments when introducing the antiterrorism laws in 2005.

Terrorism acts are a specific and highly dangerous threat to Australian society, which is obvious to all of us. The government firmly believe that material which advocates people undertaking such acts should not be legally available, and the measures contained in this bill will achieve that objective. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.
empirical justification for some of the changes before us and that there is a defective definition in relation to these and to other bills or acts.

It is not just me; it is not just the Democrats; it is not just people in this place. Broader organisations have been critical of the legislation before us and of other counterterrorism measures that have been adopted by this government. It is not because we do not care about national security; it is because we do care passionately about reaching that proportionality to which the minister refers, and because there are a number of ways in which we recognise that we address issues such as terrorism. In light of September 11 and of the anniversary that we commemorated last week in this place—not that we really commemorated it, to be quite frank—as I said on record afterwards, I was a little surprised to see that the recognition of September 11 was done in the context only of national security. Nowhere did I see an acknowledgement of the fact that Australians died. Ten Australians died. Friends of people in this place died. I get very frustrated that sometimes we lose that aspect of this debate when attacks take place in the chamber against the state or territory governments or Rudd devotees or apparatchiks or whatever it may be. Anyway, I put in that plea.

I acknowledge the minister’s concerns with the state and territory governments. I do not necessarily endorse them. I note from the second reading address by Minister Ruddock, the Attorney-General, that he also devoted more time in his second reading address to attacking his state counterparts than he did necessarily to putting forward an argument for justifying the need for the legislation. Perhaps, if he had addressed more comprehensively the issue of this power grab and some of the constitutionality questions relating to legislation, it would have been more productive.

I now move amendment (1) on sheet 5373 revised:

Schedule 1, item 3, page 3 (after line 15), after subsection 9A(1), insert:

(1A) Before making a classification in accordance with subsection (1), consideration must be given to the likely impact of the material, based on an assessment of the class of persons to or amongst whom the material is to be, or is intended to be, or is likely to be published.

This amendment, which has been circulated in plenty of time, is based not on some arbitrary judgement of the Australian Democrats but on a Law Council submission. It means that any material that might be refused classification because it concerns terrorist material must be viewed in context. So the inclusion of the phrase ‘regardless of his or her age or any mental impairment’ in clause 9A(2)(c) suggests that material must be assessed according to how it may be understood by any person and not necessarily an ordinary or reasonable member of its intended audience.

The Democrats and others consider this to be a marked departure from usual practice, and it would place classifiers in the awkward position of placing themselves in the shoes of, say, a child or someone with a mental impairment—a scenario that the Classification Review Board itself raised issues with. Mr Temporary Chairman Barnett, I think you are on record in this place as having queried this. I believe you were satisfied with the government’s response, but I still think there is room for some qualification in relation to the legislation before us. That is why I am seeking to amend clause 9A(1A) to require that decision makers should assess the likely impact of the purported terrorist material ‘based on an assessment of the class of persons to or amongst whom the material is to be, or is intended to be, or is likely to be pub-
lished’. That is our intent. I do not believe this amendment has the support of the other parties, but it was important for us to attempt to change this proposed section. I commend the amendment to the chamber.

**Senator LUDWIG** (Queensland) (11.53 am)—The opposition will not be supporting the amendment. This item provides that, when making a classification regarding a publication, film or computer game that advocates the doing of a terrorist attack, ‘consideration must be given to the likely impact of the material, based on an assessment of the class of persons to or amongst whom the material is to be, or is intended to be, or is likely to be published’. Currently no such requirement exists in the material and its likely impact vis-à-vis certain groups is uncertain. Labor is opposed to this amendment on the grounds that, although the material may be likely to be accessed by only one group, it does not mean that it cannot be accessed by other groups as well. It is far better that the classification laws take a more universal test by looking at material in the whole context, rather than through the lens of a certain group. It is not a matter that was explored significantly in the Senate Standing Committee on Legal and Constitutional Affairs and it did not eventuate in a recommendation from them.

**Senator JOHNSTON** (Western Australia—Minister for Justice and Customs) (11.55 am)—I congratulate Senator Stott Despoja on addressing ADFA last night. I suggested that the topic she was to talk about should be entitled ‘to fight and win’. I think she may well have rejected that theme at ADFA. Nevertheless, I congratulate her on going into the lion’s den, to some extent, to teach good things to the people at ADFA.

I might also say, in not such a harmonious spirit, that every time the government does something in terms of a budget initiative, the crossbenchers and the opposition call it a pork barrel. Due consideration by the government is entitled a failure to act, and when we seek national consistency it is called a power grab. Let us address the facts. Can we take some of the emotive politics out of it? I know we are getting to the end of the cycle, but can we maintain some semblance of balance? This amendment is totally unnecessary. Section 11 clearly sets out the provisions that deal with this issue. The government does not support the amendment.

Question negatived.

**Senator STOTT DESPOJA** (South Australia) (11.56 am)—On behalf of the Australian Democrats, I move:

Schedule 1, item 3, page 3 (line 18), after “if”, insert “it is intended or might reasonably be regarded as intended by the creator of the material that”.

We believe this amendment reflects the need to exclude instances where material clearly has a purpose other than advocating terrorism. We believe that the bill is confused, because in some respects it asks the classifier to focus on the intention of the person who created the material and in other respects it clearly focuses on the effect of the material, intended or otherwise. The amendment will ensure that only material that might reasonably be regarded as intending to advocate terrorism—so acknowledging that intention role—will be refused classification. The amendment reflects HREOC’s view. It is one of the organisations that have been critical of the legislation before us. I quote from HREOC’s submission:

... a way of ensuring that legislation in this area is carefully targeted and proportionate—there is that word again—is to expressly require both a specific intent to incite the commission of a terrorist act and a concrete danger of this act being committed as a result of incitement.
In putting that comment from HREOC on the record, I remind the government that a number of organisations have been critical of the legislation; once again, it is not just the crossbenches. There are organisations and groups like the Law Council, the Gilbert and Tobin Centre, the Federation of Community Legal Centres, the Australian Publishers Association—obviously we are dealing with some really vexed and important issues relating to freedom of speech and academic pursuit—the Classification Review Board, the Australian Press Council, the Sydney Centre for International and Global Law—which has given some helpful points on issues in this debate or surrounding issues, including a bill of rights—and the New South Wales Council for Civil Liberties. I suspect that organisation might be regarded as a usual suspect by some in the government, but nonetheless their concerns have been duly noted.

There is a very strong argument from a number of groups that the law as it currently stands is sufficient; hence the concerns that the government have not provided sufficient justification. So, if you get away from the issue of constitutionality or the so-called power grab or anything to do with the state, territory and Commonwealth dilemmas or arguments, there are many other arguments in relation to this legislation, including the so-called empirical or lack of empirical justification. HREOC recommended that the proposal be reconsidered on the basis that it was not convinced of the necessity for tighter censorship laws in order to combat incitement and/or glorification of terrorism. The current provisions of the Classification Code provide that material must be refused classification if, among other things, it promotes, incites or instructs in matters of crime and violence. That is what we are talking about.

While I know the minister implores us to strip emotion away from the politics, I once again put on record that terrorism is emotional. Yes, we have to be clear-headed and hard-headed legislators in addressing and coming up with responses to terrorism, but we also have to be careful that we do not become political for the sake of it and, once again, incite fear in the community when we could be addressing in very clear and rational ways not only the causes but the perpetuation of violence, be that terrorism violence or any other violence in our community. Hence, the intent of our motion is to deal with intention and effect. I hope that the Labor Party and the government will duly consider the amendment before them.

Senator LUDWIG (Queensland) (12.00 pm)—Unfortunately, you are to be disappointed, Senator Stott Despoja. The Labor Party will not be supporting the amendment. One of the difficulties with your amendment is that it requires, for material to be considered to be advocating the doing of a terrorist act, that that must have been, or could be reasonably regarded as, the intention of the creator of the material. A piece of material should be looked at in a complete context, not just at that point. You are trying to look at only the point at which it was created. It is far better to have a more functional approach and to look at its actual likely impact rather than its intended one. You could certainly get into a range of debates about what the intention was at the time of creation. Putting that aside, the legislation will allow a functional approach. It will ask questions about the impact rather than what the intention of the creator may or may not have been at the time of creation, which would tie up a lot of legal experts for some time.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.02 pm)—The introduction of the notion of intent for the person advocating the type of material that we are talking about here obviously severely undermines the purpose
of this bill and is unacceptable to the government. The bill is about taking out of circulation material that, on the face of it and as a fact, advocates the doing of a terrorist act. The objective assessment of the material itself, not what the creator intended, is what is important. We do not support this amendment.

Question negatived.

Senator STOTT DESPOJA (South Australia) (12.03 pm)—by leave—I move together:

(3) Schedule 1, item 3, page 3 (line 19), omit "or indirectly".

(4) Schedule 1, item 3, page 3 (line 21), omit "or indirectly".

As honourable senators can see, the two amendments remove the words 'or indirectly'. These amendments will ensure that only materials which directly counsel or urge the doing of a terrorist act will be refused classification. These amendments are required because the inclusion of the notion of indirect advocacy of terrorism draws a blurry line between material that may, on the one hand, be legitimate in the context of a struggle for liberation or independence and may, on the other hand, be a terrorist act. The Democrats consider that more leeway should be afforded to classifiers to reflect this political reality. This goes back to the broader issue of respecting the freedom of expression.

Senator LUDWIG (Queensland) (12.04 pm)—Labor does not support these amendments. The Democrats are not going to get much joy out of us in this area. The amendments omit the phrase 'or indirectly' from proposed subsection (2)(a) and proposed item 4. Currently that proposed subsection provides that material must be banned if it directly or indirectly counsels or urges the doing of a terrorist act. These amendments would remove the phrase 'or indirectly' to mean that material can only be banned if it does those things directly. As I have said, Labor does not support the amendments. I do not want to draw this out longer than we need to, but the main reason is that, if you look at much of the hate language these days, you will see that much is obviously conveyed directly but it can also be and has been conveyed through code words and dog whistles. You have to look at the whole of the material and its indirect impact. You need only look at many European neofascist movements to know that terrorist organisations are unfortunately not always up-front about their intentions. That is why, I suspect, ‘indirectly’ is included in the bill. It is to ensure that there are no gaps or loopholes in the legislation. We do not think it is appropriate to allow those so that terrorists can circumvent them and therefore escape refusal of that type of material.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.05 pm)—The government is keen to get consistency across the law and across jurisdictions. This amendment seeks to narrow the definition of advocates in contrast to that already set out in the Criminal Code. It is entirely counter to what we believe should be the case. Of course, the government, in those circumstances, could not possibly support these amendments.

Question negatived.

Senator STOTT DESPOJA (South Australia) (12.06 pm)—I move:

(5) Schedule 1, item 3, page 3 (lines 23 to 28), omit paragraph 9A(2)(c).

This amendment deletes proposed section 9A(2)(c), which deals with the praise of terrorist acts. As senators may be aware, in my speech in the second reading debate I referred to some of our concerns relating to this provision and the use of 'praise' rather than 'promotes' or 'incites'. The Democrats have put on the record a number of times
now that we believe that ‘praise’ is a fairly nebulous, vague concept—especially if there is no requirement of intent. Left unamended, we believe this section of the bill has the potential to be misinterpreted by classifiers and, once again, to unduly restrict freedom of expression.

On that note, I acknowledge Senator Ludwig’s comments about the Labor Party’s view on ‘indirect’ as well as ‘direct’. I am starting to feel incredibly sorry for the classifiers in some of the interpretation of this legislation and indeed of some of the material before them. This amendment is to remove that notion of praise, and I commend it to the Senate.

Senator LUDWIG (Queensland) (12.07 pm)—This amendment would completely remove clause 9A(2)(c). That clause provides that material must be banned if it directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person—regardless of his or her age or any mental impairment, within the meaning of section 7.3 of the Criminal Code, that the person might suffer—to engage in a terrorist act. Labor believe there are some problems with this clause and will be moving an amendment to that effect. We prefer our position to that of the Democrats. However, I will not take the opportunity of making those points at this time. This amendment is to remove the notion of praise, and I commend it to the Senate.

Senator LUDWIG (Queensland) (12.10 pm)—I move:

(1) Schedule 1, item 3, page 3 (lines 25 to 27), omit “(regardless of his or her age or any mental impairment (within the meaning of section 7.3 of the Criminal Code) that the person might suffer)”.

The Labor Party is moving one amendment today in respect of this bill. It is in line with a majority recommendation proposed by both Liberal Party and Labor Party senators in the Senate committee report on the bill. It was proposed not in anger or in the making of the bold assertions that Senator Johnston has made but in an attempt, as I understood it, to improve the legislation, to make it ef-
ective and to ensure that it does what it is designed to do well and appropriately. To that end, it is supported by the Labor Party if it achieves that end. Senator Johnston clearly takes a different view, but in these areas it is not a matter of the Labor Party beating its chest on terrorism or in fact the Liberal Party or the National Party beating their chests on terrorism and how good we are at fighting it. Labor have given the coalition bipartisan support in the chamber on many pieces of legislation dealing with antiterrorism. Our credentials are on the table, quite frankly, as are the coalition's, in ensuring that the fight against terrorism is effective and that the AFP have effective tools to be able to fight terrorism.

The amendment that I have moved is one that I have already touched on in the second reading debate. The bill, as it stands, would provide that a publication, film or computer game must be refused classification if it directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person—regardless of his or her age or mental impairment, within the meaning of section 7.3 of the Criminal Code, that the person might suffer—to engage in a terrorist act. Section 7.3 of the Criminal Code defines mental impairment as including senility, intellectual disability, mental illness, brain damage and severe personality disorder. The use of that is not good law; it is bad law. It requires the Classification Board and the Classification Review Board to stand in the shoes of a person with potentially any form of mental impairment and attempt to decide how they might react to some material.

At this point, I take the opportunity of addressing some comments that have been made in the media by Mr Philip Ruddock, the Attorney-General, especially since it seems that he is trying to find a hook in this issue. Let us put that aside and look at the facts in the cold light of day. Mr Ruddock has said: 'Labor is saying it should only be taken into account how a reasonable person might see it. I think that is a major weakness.' That shows how little the Attorney-General understands his own law, quite frankly. He seems to have not even read the submission of his own review board. Labor do not want to import a reasonable person test into the legislation or, as the out-of-date Mr Philip Ruddock talks about, a reasonable man test. We merely seek to delete the part of the bill which would be virtually impossible for the Classification Review Board, rather than importing a new test into the legislation, as Mr Ruddock seems to suggest. We want to leave it to the discretion of the review board to decide on.

Indeed, the Senate committee was convinced by the submissions from the Classification Review Board itself. It highlighted how difficult this would actually be to police. The convener of the review board stated in evidence to the committee:

... the Classification Review Board ... has discussed the proposals and, as far as we can see, if we made a determination that there was praise of a terrorist act then we would have to refuse the work classification. We cannot work out any other way that we could, on a consistent basis, without some anomaly arising with different panels, apply any criteria which would lead to a consistent application of the Act, apart from simply saying that, if there is praise, it must be refused.

What the government has not addressed is how the Classification Review Board will in fact deal with the issue. It is difficult, if not impossible, to effectively implement, as evidenced by the submissions of the government's own review board. This is, as I understand it, why the Senate committee, including coalition senators, was persuaded to adopt that. If there is a reasonable basis to say that that position was wrong, what Senator Johnston can do, in a rational, cool sense,
is explain that. It might be persuasive. What he has not been able to do is articulate it in that way. What he has preferred to do is rely on an exhortation about Labor not being as tough on terrorism as the coalition. And that is disappointing, to say the least, because it is exhortation only, quite frankly.

With regard to Senator Johnston’s efforts in this chamber in respect of this bill, the bill has been available in the Senate since mid-August. The actual tabling of the committee report was on 30 July. If the government was that wedded to moving it quickly to allow matters to be dealt with by the Classification Board or the Classification Review Board, then Senator Johnston should explain why he has let it sit on the Notice Paper for so long before dealing with it. It is been more than a month. This is not a matter where he can easily say, ‘It is the states we can blame.’ If he were wedded to an amendment to the legislation, he has had it on the Notice Paper for a month to be able to move quickly and deal with it.

Labor have been ready and did, at that point, indicate that we would support the legislation. Senator Johnston seems wedded to looking at the narrow picture rather than the broad picture—but, there again, that is what you might expect from the coalition. The broad picture is that Labor do support the legislation; we do see the need for it. The coalition seem to have missed that point entirely in their contributions to try to find a hook.

If you go back and look at the chronology of events, if the government was wedded to a legislative fix, it was available from about 10 July 2006. If the government was intending to move this as a legislative fix as urgently as possible to ensure that we would have firm protections in place, then why did it not do it from 10 July 2006? From that point onwards the Classification Review Board classified two publications RC, six publications unrestricted, and a film PG. At that point in time, if you were going to move, you could have moved. You have ended up effectively at the same place, in any event. In other words, you cannot argue that you have said, ‘We’re all about process,’ if you are now going to say, ‘We’re all about action today,’ because you have let it sit on the Notice Paper for a month, and from 10 July 2006 you could have moved it.

Let us also look at some of the issues that come out of that. Of course, it is the Classification Review Board where these matters first raised their heads to the extent that they were classified as PG rather than refused classification. Let’s look at four out of seven members of the Classification Review Board. Perhaps the government can respond individually or collectively about this. The convenor, Maureen Shelly, was a Liberal candidate for Blaxland in 1998—perhaps the coalition can confirm that for us. The problem seems to surround the Classification Review Board itself. If it had refused classification of the material, we certainly would not be dealing with this matter here today. The deputy convenor, the Hon. Trevor Griffin, is a former Liberal South Australian Attorney-General. The review board member Mr Robert Skilkin is a former member of the WA Liberal state executive. The review board member Ms Gillian Groom is the wife of a former Tasmanian Premier, Ray Groom. She may have different leanings—I am sure Senator Johnston may be able to advise.

So, what you have is a Liberal Party stacked review board picked by the Attorney-General and not producing the results that he wants. Or are they? Now you have had to come in here with that to try to overthrow their decisions. To this extent, when you go back and look at the arguments that have been presented by Mr Ruddock about his categorisation of the Labor Party in this,
you see that we perhaps ought to take him back to first-year law to help him get the reasonable person test right as it pertains to this legislation.

The submission by the Classification Review Board itself seems to have been ignored as well. The government is not choosing to respond to the Classification Review Board but is in fact trying to answer the Labor Party in looking at that in a sensible way and looking at the Senate Standing Committee on Legal and Constitutional Affairs—which reached a majority resolution with both coalition and Labor Party members on it. The government is saying: ‘They have suggested that. If there is a way forward, why don’t you pick that up? If you don’t pick that up, your answer to that is to simply argue, perhaps even badly, not the issue that is currently before us but how the Labor Party is viewed on its stance on terrorism.’ I think that is impermissible.

The Labor Party has been firm on this issue since the first inquiries I attended of the Senate legal and constitutional affairs committee in 2002, when we dealt with the first six pieces of legislation, and the next tranche in 2004. Senator Johnston and the coalition may not be aware of all of those matters. They may not be aware of the positions we have adopted throughout. The senator might be forgiven for not being involved back then, but perhaps I could invite him to look at those to see how the Labor Party has addressed these issues in the past, as it continues to do so, to ensure that we end up with good, effective law that operates so that the AFP and crime- and terrorism-fighting elements have the effective, appropriate tools to do their job and we are not coming back here to make further amendments as we go because of the government in some instances having legislated in haste.

We only have to look at the way the government are trying to use this debate—not to answer the critical issues that are contained within the Senate report itself but to try to spin the argument elsewhere. They should be pulled up for that and they should correct themselves.

Senator Johnston (Western Australia—Minister for Justice and Customs) (12.25 pm)—With respect to the matter being on the Notice Paper, if Senator Ludwig were really earnest and genuine in his approach to the government on those sorts of matters, he would, of course, be able to say that he had read the chronology that was tabled in the lower house, which answers every inquiry he has had about that. What he is seeking to hide is that the states have been offered an opportunity to come with us on this and they have simply dragged the chain unacceptably. Senator Ludwig is complicit in that because he knows Queensland is one of the principal offenders. But I would not expect him to advert to that in here.

This amendment by the Labor Party relates to material that directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might lead only the average or reasonable person to commit a terrorist act. It is unacceptable to the government. Let me explain for the benefit of Senator Ludwig what he is suggesting. He is suggesting that an adjudication be made based upon the reasonable person test. This is a lawyers’ feast. The Labor Party and the opposition in this place have very limited understanding of the practical workings of the judicial process, particularly the civil judicial process, and the money involved in these sorts of matters. He is advocating the lawyers’ feast approach. Let us argue what is reasonable; let us call all the evidence. The government says, ‘No, terrorist organisers do not respect age or mental capacity. It is those who are younger, impressionable and with
diminished mental capacity who are more frequently targeted to engage in terrorist acts such as suicide bombings.’ This is not about the reasonable man test. This is about enabling the adjudicators to look at the people targeted and to make a more subjective assessment. We need to protect the more vulnerable in the community in matters as serious as this. But, of course, I would not expect the ALP to understand that.

The government also believes that consistency is important across state law. Senate scrutiny committees have indicated on numerous occasions that they are concerned that statutory language should wherever possible have the same meaning when used in different legislation. I do not think I can take it any further. The fact is that the deletions to the bill that the opposition seek really disclose higher and higher levels of naivety.

Senator STOTT DESPOJA (South Australia) (12.27 pm)—Democrat amendment (7) standing in my name is identical to the Australian Labor Party amendment we are debating, so I will not move it. As senators would be aware from the running sheet before us, both the amendment that I withdrew prior to this and, indeed, the amendment that was lost, amendment (5), dealt with the issue of praise of terrorist acts. In amendments (6) and (7) we were putting forward some alternatives to try and deal with some of the issues that have been raised today.

Obviously, the Labor amendment is entirely acceptable to us, for reasons that I have outlined. It deals with the inclusion of the phrase ‘regardless of his or her age or any mental impairment’. Again, I put on record that this suggests that material must be assessed according to how it may be understood by any person and not necessarily an ordinary or reasonable member of the intended audience. Senator Ludwig has outlined the details. The Democrats believe that this is a departure from usual practice. We again have concerns about how the classifiers will judge some of this material in that context—how they will be able to put themselves into the shoes of someone with a mental impairment, for example. This is of grave concern to us; hence the discussion during the committee process and at present. The Democrats will support the amendment moved by Labor. Indeed, had we not been debating their amendment we would have been debating our identical amendment.

Senator LUDWIG (Queensland) (12.29 pm)—I will take the opportunity to clarify a couple of points that people seem to have been getting hot under the collar about. Labor is not saying that there is a reasonable person test requirement. Perhaps we can deal with it in this way: does the government say that currently, prior to this amendment, there is a reasonable person test requirement in the guidelines that the Classification Review Board need to deal with?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.30 pm)—No.

Senator LUDWIG (Queensland) (12.30 pm)—That is right; there is not. The amendment that Labor is proposing does not insert a reasonable person test into the legislation. Or does the government have a different view?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.30 pm)—The amendment talks about advocating. When you withdraw, limit and take out what the government seeks to do, you are leaving nothing.

Senator LUDWIG (Queensland) (12.30 pm)—I take it from that that the answer is: ‘No, we’re not importing a reasonable person test.’ Therefore, in those instances we are not importing a reasonable person test. The At-
Attorney-General maybe needs to go back to the start of law school, because he said:

Labor is saying it should only be taken into account how a reasonable person might see it—I think that’s a major weakness.

That is wrong, both in your view and in my view. What we now have is the government saying that in this instance the Attorney-General can put himself in the position of a mentally impaired person to determine whether that legislation would work and how the Classification Review Board would view it. I cannot do that, quite frankly. Maybe Senator Johnston can. In that respect, I cannot add any more. Our position would be to allow the Classification Review Board to determine it, as they argued in their submission.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.32 pm)—I really do not want to delay the Senate by having to show Senator Ludwig how the legislation functions. I am really surprised that he asks the questions that he does, because it discloses quite a high level of ignorance. I have said that the reasonable man test is what is left with respect to advocacy if you do not specify or prescribe it. We are prescribing it and we want to stick with that prescription.

Senator LUDWIG (Queensland) (12.33 pm)—You could try again. I invite you to at least make it clear. What you are arguing is not clear; it is opaque, quite frankly.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.33 pm)—It is clear to us, Senator Ludwig. Indeed, if we have to go back to lecturing you on what we are doing here, I have said to you that what you propose would mean that material would advocate if it directly praised the doing of a terrorist act in circumstances where there is a risk that such praise might lead only the average or reasonable person to commit a terrorist act. Clearly, that is unacceptable. I cannot put it more clearly than that. What we are prescribing is the power for a consideration of advocacy where there are people affected who are mentally impaired, naive, impressionable and young, as I have said. It could not be clearer.

Question negatived.

Senator STOTT DESPOJA (South Australia) (12.34 pm)—On behalf of the Democrats, I move amendment (8) on sheet 5373:

(8) Schedule 1, item 3, page 4 (after line 6), at the end of section 9A, add:

9B Exemption for access to material Refused Classification

(1) A person (the applicant) may apply to the Classification Review Board for access to material which has been classified RC if the purpose of the access is to review or analyse the material for educational or scholarly purposes and the Classification Review Board may grant access in accordance with the subsection.

(2) An application may be made to the Administrative Appeals Tribunal for the review of a decision of the Classification Review Board under subsection (1).
The regulations may prescribe:

(a) the procedures for application and review; and

(b) conditions for the release of material which will safeguard the capacity to undertake educational or scholarly review or analysis while limiting the circulation of RC material.

This amendment relates to a review for educational purposes. We believe this amendment will prevent the unnecessary restriction of public analysis and discussion of such material. A decision by the Classification Review Board is of course reviewable by the AAT. The amendment that we have proposed allows regulations to prescribe:

(a) the procedures for application and review; and

(b) conditions for the release of material which will safeguard the capacity to undertake educational or scholarly review or analysis while limiting the circulation of RC material.

In my remarks in the second reading debate I put on record the Democrats’ concern at what we perceive as the failure of the legislation to address whether or not academics and indeed policymakers may be able to access banned material for academic or policy research. Certainly, there were a number of insights provided to the Senate committee, in various submissions to the Senate inquiry, which highlighted the positive need to provide academics with access to banned materials for study purposes. The examples included: the removal of books from university library shelves, where the books had been introduced by a historian to help his students to understand jihad; and the questioning by the AFP of a university student studying the prevention of terrorism. We thought they were completely extraordinary examples.

Limiting access to books on terrorism, we believe, will hinder the ability to understand and criticise the ideas expressed in them.

This is clearly a problem not only for academics and scholars but for the community at large, which depends upon quality research to understand better the social and security challenges facing our nation. The Democrats oppose the restriction of materials for genuine academic or policy research. Hence the amendment before us, which is an attempt to deal with what we consider to be some clear, obvious and important exemptions.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.37 pm)—The government consider this proposal to be ill-conceived, premature and inadequate. We are working with the states and territories through the Standing Committee of Attorneys-General to establish mechanisms for appropriate access for legitimate purposes to material which has been refused classification. As state and territory laws provide for the offences relating to the use of refused classification material, it is appropriate that they be part of developing suitable mechanisms with appropriate limits and controls. This is what the Attorney-General has been saying from the outset to no avail, and it has been rebuffed by the Labor Party. There are fundamental flaws in this Democrat approach. The proposal contains no limits on the type of refused classification material which may be the subject of an application. It would also designate the Classification Review Board, a merits review body, to override state and territory law. To use the honourable senator’s words, this would be a ‘power grab’. It would enable Commonwealth regulations to set out procedures which would rightly belong with the states and territories. The government clearly, in these circumstances, given what we have been through in seeking to engage the states, could not accept this amendment.
Senator LUDWIG (Queensland) (12.38 pm)—The Labor Party will not be supporting Democrat amendment (8). It would add a new section 9B, which would provide an exemption for RC material if the purpose of the access is to review or analyse the material for education or scholarly purposes. This matter was raised in the Senate committee, and I understand that the matter is currently before SCAG. The minister might be able to confirm that. We anticipate the outcome will ensure that the process works effectively.

The minister may be distracted at this point—though I am sure his advisors are listening—but I wonder if he could respond to a matter I raised during my second reading contribution that there be an undertaking to fix this in some way, shape or form to ensure that it is dealt with. It is not appropriate to deal with it in the way the Democrats have proposed. I do understand why they are proposing it. The mechanism that the government have outlined, we think, can work when it is available. We hope that it is available at the earliest possible time to allow proper research and scholarly and educational work in this area to help fight terrorism.

Question negatived.
Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.40 pm)—I move:

That this bill be now read a third time.

Question agreed to.
Bill read a third time.

BUSINESS

Rearrangement

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.42 pm)—I move:

That the government business order of the day no. 2, Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Amendment Bill (No. 2) 2007, be considered after consideration of government business order of the day no. 11 (Financial Framework Legislation Amendment Bill (No. 1) 2007) but not later than 2 pm.

Question agreed to.
NATIONAL HEALTH SECURITY BILL 2007

SOCIAL SECURITY LEGISLATION AMENDMENT (2007 BUDGET MEASURES FOR STUDENTS) BILL 2007

First Reading

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.42 pm)—I move:

That the following bills be introduced: a Bill for an Act to amend the law relating to the provision of benefits to students, and for related purposes and a Bill for an Act to amend the Social Security Act 1991 and the Veterans’ Entitlements Act 1986, and for related purposes.

Question agreed to.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (12.43 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 JOHNSTON (Western Australia—Minister for Justice and Customs) (12.44 pm)—I table a revised explanatory memorandum and a correction to the revised explanatory memorandum relating to the Social Security Legislation Amendment (2007 Budget Measures for Students) Bill 2007 and move:

That these bills be now read a second time.

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

Leave granted.

The speech’s read as follows—

NATIONAL HEALTH SECURITY BILL 2007

I am pleased to introduce the National Health Security Bill 2007. This is an important Bill that delivers on the Government’s ongoing commitment to enhance Australia’s capability to protect the health of the nation and to respond to naturally occurring epidemics or to terrorist attacks involving chemical, biological and radiological agents.

Since the 2004-05 Federal Budget, when $1.6 million was committed over three years to develop national health security legislation, the government has worked cooperatively with all relevant organisations, States and Territories to develop legislative foundations for the exchange of health information between jurisdictions.

The Government’s efforts were provided added impetus in May 2005, when Australia agreed to adopt the International Health Regulations. The Regulations aim to prevent, protect against, control and provide a public health response to the international spread of disease in ways which avoid unnecessary interference with international traffic and trade.

The Bill before us addresses both the Government’s Budget objective and Australia’s treaty commitments by formalising and enhancing existing voluntary arrangements for sharing information about communicable disease, releases of chemical, biological or radiological agents, and the occurrence of other public health events of national significance.

Where it may be necessary to share personal information, for example to trace interstate contacts of people affected by notifiable diseases, the Bill has been drafted to ‘authorise’ rather than ‘compel’ the exchange of information. This approach reflects existing cooperative arrangements. The circumstances in which such information can be exchanged are clearly defined and a range of protections have been included in the Bill to ensure appropriate care in the holding and use of personal information.

The Bill also authorises Government to meet international obligations by, for example, enabling the provision of personal information to the World Health Organisation to respond to public health emergencies of international concern.

Personal information will also be able to be exchanged with other countries, for example, to assist the repatriation of Australian victims of overseas mass casualty incidents. While Australia
has an outstanding record of response to horrific events such as the Bali Bombings, we can always do more to improve systems, communication and ultimately our capacity to repatriate and treat victims of such incidents.

In addition to formalising and enhancing the mechanisms for the exchange of health information, the Bill also implements recommendations of the COAG Hazardous Biological Materials Review to establish a national regulatory scheme to minimise the security risks posed by security-sensitive biological agents. These include infectious agents, such as bacteria and viruses that can spread rapidly within a population, and toxins derived from animals, plants or microbial material.

Currently there is no nationally consistent legislation that covers all facilities and entities that handle security-sensitive biological agents. Indeed, it is not possible to accurately identify those facilities and entities that handle security-sensitive biological agents, or their location. This legislation addresses this risk by providing for the registration of entities handling security-sensitive biological agents and the ongoing regulation and monitoring of those registered facilities. The Bill also requires entities to comply with biosecurity standards relating to, for example, storage and security requirements for personnel and transport.

The proposed approach to the regulation of entities handling security-sensitive biological agents has been developed in consultation with affected agencies and all States and Territories through the COAG Review process.

The Government recognises that, if we are to achieve an appropriate balance between ensuring protection of the public and also minimising the impost on business, then all affected parties must continue to be closely involved in the implementation of the regulatory regime. The Bill therefore provides for an 18 month implementation period prior to the regulatory scheme coming into effect. This provides an opportunity for the Government to work with the sector to ensure that there is minimal regulatory burden and to implement a supporting education and awareness campaign for the new scheme.

I should briefly note that this Bill is the first of a number addressing national health security issues.

As agreed by COAG at its April 2007 meeting, further consideration is currently being given to legislation to enable co-ordinated national responses to health emergencies and mass casualty situations. I understand that this work is progressing well.

I look forward to debate on the National Health Security Bill.

I move that the Bill now be read a second time.


Amendments to the Student Assistance Act 1973, under Schedule 1, provide legislative support for the provision of services to ABSTUDY and the Assistance for Isolated Children (AIC) schemes.

The first amendment aims to simplify the processes currently used by the Australian Government (as represented by Centrelink) to recover payment(s) made under the ABSTUDY and AIC schemes that have been deposited into an incorrect financial institution account. This is consistent with the provisions of the Social Security Act 1991.

The second amendment will allow notices issued under section(s) 343, 344 or 345 to be issued electronically. This amendment is required to incorporate current technologies and data transfer processes used by Centrelink for other student income support payments into the administration of the ABSTUDY and AIC schemes.

Amendments to the Social Security Act 1991, under Schedule 2, insert a new category of Level of Course to the levels of eligible study. This adds Masters degrees as eligible courses and removes the current restriction on Austudy recipients which prevents them from receiving payment if they have already gained a Masters level degree.

The amendments also attach Rent Assistance payments to Austudy to increase the support for
mature age people participating in education. Items 1, 3 and 6 to 8 clarify existing policy by inserting that a course supplied by a VET provider qualifies along with a TAFE course. This updates terminology to reflect current usage.

From 1 January 2008, students enrolled in an approved Masters by course-work programme, which is required for entry to a profession, or is the fastest pathway to professional entry, will be eligible for Youth Allowance and Austudy payments. This provision will also extend to students enrolled in a Masters course-work programme where a university has diversified by restructuring its course delivery. As Minister for Education, Science and Training I will determine approved courses on application by higher education providers. The legislative amendment makes provision for the approval process.

The extension of Youth Allowance and Austudy to include approved professional Masters degrees responds to a growing trend to increase the level of qualification required for professional entry. The measure enhances Australia’s international competitiveness, will assist in addressing Australia’s skill needs and contributes to the nation’s skill development. The measure ensures that low income students have the financial assistance they require to complete a Masters degree to obtain entry to a profession.

To maintain consistency with student income support policy, as defined by the Act, and the new amendment which extends income support to Masters courses, an additional amendment is required to remove the current restriction on the provision of income support to students who have already attained a Masters degree. This amendment has no effect on the existing allowable time and progress rules, which are maintained. It also does not apply to students who have attained a doctorate.

From 1 January 2008, Indigenous students in receipt of the ABSTUDY Living Allowance will be able to access Crisis payment under the ABSTUDY Scheme. Amendments to the Social Security Act 1991 will clarify that a social security Crisis payment is not payable if the person is qualified for an ABSTUDY Crisis Payment in respect of the same circumstance.

Items 11 to 16 provide access to Rent Assistance for eligible Austudy students. From 1 January 2008, students aged 25 years and over who receive Austudy will be able, if eligible, to receive assistance with their rental accommodation expenses. This amendment provides additional support for mature-age students from low income backgrounds providing them with the opportunity to participate in education and training. Extending eligibility for Rent Assistance to include recipients of Austudy brings this payment into line with other income support recipients, such as those receiving Youth Allowance and Newstart.

I commend the Bill to the Senate.

Debate (on motion by Senator Johnston) adjourned.

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

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

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS
LEGISLATION AMENDMENT (CHILD DISABILITY ASSISTANCE) BILL 2007
Second Reading

Debate resumed from 13 September, on motion by Senator Abetz:

That this bill be now read a second time.

Senator McLUCAS (Queensland) (12.45 pm)—I rise to speak on the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Bill 2007 that we are debating today. This bill introduces a new payment, child disability assistance, into social security law. It is an annual tax-free payment of generally, in most cases, $1,000 to recipients of carer allowance for those who care for children under the age of 16 years. It is proposed to start from 1 July this year and is funded over four years. The measure was announced by the Prime Minister and Minister Brough on 28 June this year as part of the disability assistance package. The first payment is pro-
posed to be made in October this year and the total cost of the measure is $566½ million over four years.

In June 2006, carer allowance was paid to 106½ thousand carers, who cared for 125½ thousand children with disabilities. Carers of children with disabilities are under great financial pressure in their efforts to care for their children and pay for essential supports. Medical expenses can greatly exceed those usually faced for most children. Early intervention therapies, respite care, appropriate educational placements, physical aids—all of these costs place families in situations where the provisions for their child are beyond their resources. Madam Acting Deputy President Moore, I know you have done a lot of research about the costs that families bear when they have children with autism. I am aware that there are families paying over $10,000 a year for the early intervention programs that are now being provided for children with autism. That cost of over $10,000 is a cost that only some families can bear. That means that there are families we know receiving very good quality early intervention services for children with autism in the three- to five-year-old age bracket but, because of those costs, there are a lot of families who are missing out.

Children with disabilities have diverse needs that often change over time. Young children with disabilities can benefit from early intervention and therapy to maximise their early childhood development and learning and, therefore, their inclusion in society in their more mature years. Families and children benefit from respite care to allow the family to regroup and to allow the family time to invest in the long-term care of their child. As they develop, it is clear that older children will outgrow aids and equipment and some of this will need to be replaced. Home and vehicle modifications—hoists in the home and help to modify the family car—are often necessary. This child disability assistance payment will assist carers with the purchase of this sort of assistance and other assistance that best suits the needs of the family. These $1,000 payments are of course welcome and Labor will support this package through the parliament.

But, in doing so, let me make some very brief comments—acknowledging the time—about the current negotiations between the federal government and the states and territories around the Commonwealth State Territory Disability Agreement. That agreement is currently being renegotiated—and I use the term ‘renegotiated’ extremely loosely. It has been a very, very frustrating picture for people with disabilities to watch. We have seen Minister Brough treat the states and territories with absolute contempt. We have seen the states and territories try as best they can to negotiate in good faith. We have seen the minister put offers on the table and then remove them. We now have a situation where we could end up with an even more complex set of services for people with a disability if the proposals Minister Brough has identified are proceeded with.

You would be aware, Madam Acting Deputy President, of the report of the Senate community affairs inquiry into the Commonwealth State Territory Disability Agreement. One of the very clear messages from that inquiry was that people with disabilities and their families find negotiating the service systems for people with disabilities extremely complex. It would seem that we are about to embark on yet another layer of complexity for people with disabilities and their families. Since March this year I have urged Minister Brough to undertake negotiations with the states and territories in good faith. That has not been achieved and it is absolutely clear, from the correspondence from people with disabilities and their carers, that
they are totally frustrated with what they are witnessing.

Disability services are, I think, the best example of the blame game, the best example of where a government or members of parliament take the easy option of blaming someone else for people's inability to obtain disability services. The blame game must cease. We must end up with a situation where people with disabilities can navigate the system easily and be provided with the services that they are entitled to. As part of that, of course, there is a requirement to look to appropriate levels of funding for disability services in this country.

People with disabilities want to contribute to their society. They want to be part of society. They want to be included. But when they cannot access the services that allow that to happen, the opportunity for them to be part of society is hugely diminished.

I will leave my comments there, except to say that we do support the child disability assistance package that we are debating today. But I urge Minister Brough to look very closely at what the outcome for people with disabilities is going to be if he continues in what I think is quite an adversarial approach to negotiating with the states and territories on the long-term funding for people with disabilities, and that is through the CSTDA.

Senator BARTLETT (Queensland) (12.53 pm)—The Democrats support the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Bill 2007 inasmuch as it introduces the child disability assistance payment. It will lock in an automatic payment of $1,000 each year to families receiving an allowance for caring for a child with a disability. That is an annual payment for eligible families in receipt of that carer allowance on 1 July. It is certainly preferable to have that locked in in legislation, as something people know is coming, an entitlement that they will receive, than to have to rely on the vagaries of individual budgets to provide one-off payments.

I would be interested to see, at some stage, a dispassionate cost-benefit analysis of whether these various one-off lump sum payments that are becoming more fashionable these days are the most effective way of getting value for money in delivering income assistance to people in need. I do not actually have a fixed view on whether it is a good initiative and a good change that has become more frequent in recent years, or whether it is a less effective way overall of assisting people. Either way, as I have said many times before, there is no doubt that if there is one group in the community who could always do with more financial assistance of whatever sort, it is carers. So I am certainly not criticising the fact that it is being provided. I just think that, when we are spending public money and entrenching a particular approach, it would be useful to analyse whether that is the best way to assist people—whether we get the best value for our money and maximise assistance for the people who need it. We could probably benefit from having a review of all those sorts of things—perhaps after the election is out of the way.

As I said, people who are carers are, I think, amongst those in the community who can always—almost unequivocally always—do with more assistance, more recognition and more support. That is about more than just money, of course. One of the arguments in favour of lump sum payments like these $1,000 annual payments is that they do assist people in being able to decide for themselves how to get the support they most need—support that is tailored to their individual needs, rather than a predetermined type of assistance or entitlement to which people have to shape their needs or actions in order
to gain access. It does mean that people can use this money in whatever way they choose to get the most benefit out of it. That is certainly an argument in favour of having these sorts of lump sum payments.

There is a need for continual monitoring and assessment of the nature of support for children, particularly children in their younger years. I think Senator McLucas was alluding, amongst other things, to parents of children with autism. That is a group of people for whom I think we need to do a lot better in assessing the extent of extra support that is provided and the nature of that support.

Children with conditions on the autism spectrum present in a wide variety of different ways. Autism manifests itself in a wide variety of different ways that, I would think, do not necessarily fit the fairly narrow medical assessment and diagnosis criteria that tend to apply with various conditions. We still need to learn a lot more about the nature of children with ASD, but part of that, I think, should be to learn more about the sorts of assistance that are needed and should be provided, to learn more about the type of support that needs to be provided. As I said before, that is more than just financial support, but when you are undergoing financial stress—even just as part of trying to provide that support—that makes it harder to get the other support that you may need, particularly emotional or social support. That is just one example, but it is one that I think needs more focus.

I was part of the Senate committee inquiry that examined the Commonwealth State Territory Disability Agreement. I was not as involved in that inquiry as I would have liked to be but I was involved with it to some extent—certainly sufficiently to know that there is still massive room for improvement in that area. I would reaffirm the comments of Senator McLucas in a general sense: we really need to move beyond that state-versus-federal blame game. I am not just blaming the feds; I do not want to move into that role either. I think that all of us across the board, at all levels, need to move beyond that.

If there is one area, post election, that needs serious examination, an area that has not featured as much as it could have in public debate, it is the area of totally re-examining that whole Commonwealth-state arrangement—the federalism compact, if you like. Whether people think the best environment for re-examining that federalism compact is one with Labor state governments and a Howard-Costello Liberal federal government, or one with Labor governments at a state and federal level across the board, I do not know. People can make their own judgements on that; I have my views as well, but that question is for the electorate to determine.

I think there is a role for the Senate in that debate, post election. It is sometimes still called the ‘states house’. That is not terribly accurate but nonetheless it is a widespread view of the Senate’s role—certainly it was the nature of the Senate and the way it was structured coming out of Federation in 1901. We as an institution also have a need to examine ourselves, how we are structured and how we operate, as part of looking at modernisation, making the system work properly and fixing things that definitely are broken. The Senate needs to do a bit of re-examining along the way. As part of that we can play a role that is, hopefully, somewhat independent of or outside the government-to-government stouthes that go on between governments at the state and federal level to try to work through things in a more dispassionate and evidence based way to get the best possible outcomes—which, I might say, the Senate Standing Committee on Community Affairs did when it looked at the disability area and
produced a non-partisan unanimous report. It is a great shame that the federal government has not chosen to act on it in a terribly constructive way. That is a bit of an aside, but only a little bit; it is linked to this wider issue.

One-off payments to help people who are caring for children with disabilities are important and the Democrats welcome them. But we cannot kid ourselves—and I am not suggesting that the government is arguing this—that these sorts of tacked-on payments and initiatives are enough to tackle the core problem, which is that we are failing in this area far too often with regard to people with disabilities and carers for children with disabilities, and with some disabilities more than others. This is welcome but it is still far short of what is needed.

What is needed is not necessarily piles and piles more money, although that certainly would be of assistance in some circumstances; what is needed is better value out of the money that is spent. I know that is part of the argument that Minister Brough is putting forward and I can see some validity in that. Sometimes it is more a matter of the way you go about things rather than what it is you say you are trying to achieve, which I would be somewhat more critical of with regard to the minister. But the payment is welcome.

The Democrats have another concern. An amendment on this has been circulated; I will speak to that now to save time in the committee stage. This $1,000 payment is going to come under the so-called income management regime or the quarantining regime, where people’s income support payments or welfare entitlements are able to be controlled by government and people get told what they can and cannot spend it on and where they can and cannot spend it. The Democrats outlined our views on that issue comprehensibly during the debate on the Northern Territory intervention measures, so I will not traverse that ground again. We have a preparedness to explore the workability of income management arrangements under set circumstances—to trial it in certain circumstances to see how well it works. We do not support—and we are quite concerned about—income management being applied across the board.

The income management regime is being applied across the board in the Northern Territory in a number of communities; it has come into operation this week. I imagine all of us in this place have received representations of concern about how that is being practically applied in parts of the Territory and whether it will be workable for those who most need income assistance. We are not convinced that this particular one-off payment should come under the income management regime, at least until there has been time to see how well the regime is operating. The one-off payment will not come into play on 1 July, so there is time to see, down the track with the next instalment of payments, whether the income management system is working in a way that would suit the one-off payments being included in the system. We think it needs a bit more of a go, basically, before we start lumping in the one-off payments as well. I am sure that most Australians still do not realise that it is now in law that anybody potentially down the track could have their payments quarantined and income managed on the basis of decisions made by a federal government about school attendance, child protection issues and the like.

I am not saying that that should never happen but I am saying that it has been put into law without a lot of people even being aware that it is there, and without very much examination of how it is likely to operate down the track. Governments will have the
power to implement income quarantining without proper scrutiny because we rushed it through here a few weeks ago. It was done in such a way that most people do not even realise it has happened. In those circumstances I do not think it is desirable to be throwing new payments into that mix until we see how the income management arrangements operate.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.05 pm)—The Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Bill 2007 introduces a new form of assistance for people with a disability and their carers, confirming the Australian government’s ongoing commitment to this area. Through this measure, families receiving an instalment of carer allowance on 1 July 2007 for caring for a child with a disability will be paid a lump sum of $1,000. This will help families buy whatever assistance they need—for example, additional respite equipment or early intervention therapy for their child. This new annual payment will go to eligible families receiving carer allowance on 1 July each year. For each child under 16 who attracts a payment of carer allowance a separate $1,000 payment will be made. Families will have flexibility in the use of their payment as best suits them. The government recognises that children with a disability and their families have needs that are diverse and changing. Early intervention therapy and therapy to maximise early childhood development learning may be the best investment for a young child with a disability. Some families and children will particularly appreciate a break through respite care. Children may outgrow aids and equipment as they grow older and may need to have them replaced. Home or vehicle modifications, such as a hoist in the home or some form of assistance in the family car, may be necessary for other families.

The new $1,000 payment will not be subject to income tax nor will it count as income for social security or family assistance purposes. The $1,000 payment for 2007 will be paid automatically to eligible families in October 2007. From 2008 onwards the payment will be paid automatically to eligible families in July. No claim will be required. The government anticipates that this payment will improve the quality of life for around 130,000 children with disabilities and for their families and carers.

I will just make a couple of quick comments in relation to the contribution of Senator McLucas, particularly in response to her desire for an end to the blame game. It was interesting that she expressed a sincere desire for the blame game to end but spent most of her contribution actually engaging in it. I acknowledge Senator Bartlett’s comments in relation to that. It is very difficult to negotiate with the states when they will not engage with you in some circumstances. Some states have been better than others with respect to the disability agreement. The minister in my home state did not even respond to correspondence from the minister. That does make it very difficult. If you do not want to engage in the blame game, do not engage in the blame game yourself. In that context, I commend the bill to the Senate.

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland) (1.09 pm)—The Democrats oppose schedule 1 in the following terms:

(1) Schedule 1, items 9 to 13, pages 6 (line 22) to page 7 (line 12), TO BE OPPOSED.
I spoke to the Democrat amendment to some extent in the second reading debate. I will not go on at length, given the legislative load that the Senate is dealing with. The Democrats are proposing that items 9 to 13 of the legislation be removed. This is the section of the legislation which makes the child disability assistance payment subject to income management, or quarantining, as it is called. According to the explanatory memorandum, the child disability assistance will be treated in the same way as carers allowance for the purpose of income management, relating to child protection, school enrolment, attendance and the Queensland commission—which is about the Cape York welfare reform trials, as I understand it, and which I think does not yet exist under law, but that is another matter. I do not want to get into the blame game about that.

As the new child disability assistance is an annual lump sum payment, 100 per cent of it—that is, $1,000—will be subject to income management under the rules relating to the Northern Territory. I accept that that does make it consistent with how other lump sums to do with family tax benefit et cetera are treated. There is an argument for consistency under social security law—I appreciate that—but, as I said in my second reading contribution, I think we need to see a bit more about how well the income management regime works before we start lumping every payment in there, particularly as it is 100 per cent of it. I think it is no small irony that the government is saying that it provides maximum flexibility for families to decide for themselves how to use this payment in a way that will meet the needs of the child that they are caring for, and yet it is subjected to income management, which is specifically designed to reduce the choice available to a person.

I appreciate that you do not want any carer to grab a thousand bucks and spend it on the pokies or buy a thousand bucks worth of grog or whatever, but that is obviously a potential that is open to anybody in the country. Given that, particularly for people in the Northern Territory who are currently subject to the income management regime, there are no criteria in place—not even a pretence of a criterion—these people are deemed to have been shown to not be as good as they could be at caring for their child. It is a blanket provision—everybody has their income being managed—so I do not think you can make the case that this is a group of people that has been found to not be as good as they should be at being parents, so we will help them with their income. That does not apply in the Territory; this is for everybody—all Aboriginal people in those communities. To me, it is inconsistent with the stated intent of the lump sum payment, which is to give people maximum flexibility to decide for themselves.

As I think was mentioned in the second reading speech from the government, the payment will help carers to purchase the form of assistance that best suits the needs of their family. Well, yes, it will, except for those under income management. Presumably a Centrelink officer, or somebody, will be telling them, ‘Yes, you can’ or ‘No, you can’t’—that is the potential, anyway. It depends a bit on how that pans out, in terms of flexibility, and we do not know about that in a lot of detail yet. The Democrats believe that, particularly for a payment that is meant to provide maximum flexibility for a carer to decide for themselves what they should spend the money on to help the needs of the child, to on the one hand introduce that for maximum flexibility and choice and, at the same time, saying, ‘For this chunk of people’—Aboriginal people in the Territory—‘no, we’re going to constrain your choice
through this other mechanism,’ is I think contradictory.

It will be interesting to see over time, and it is probably too early to tell, how some of these areas will be of assistance to children. I do not want to revisit the whole wider debate, but one of the problems—and it is certainly an issue that comes up often with regard to carers—is: ‘We can only get this type of assistance’ or ‘We only get the subsidy for this sort of assistance; the government has decided what’s needed for our child. Maybe that is what’s needed for most children, but we are convinced that our child is different and we want this type of assistance, but we’re not eligible for assistance for that.’ To use the autism spectrum example again, that is a real issue for some. They can only get some types of supports and not others and it does not suit their child, and they are either forced to take the type of assistance that does not actually suit or they have to pay full bucks, with no assistance at all, for another type of support that is not recognised as being valid. That is always something in the whole health field that you have to balance when you are looking at taxpayer funded assistance for subsidies or support—I appreciate that. That is never easy, but that is the whole point of these sorts of thousand-dollar payments: the parent knows best and we are letting them decide. Then, with income quarantining or income management, we are saying, ‘Well, no, actually you don’t know best’—particularly when that is something that applies across the board, to everybody, purely on the basis of where they live, and certainly some believe it is on the basis of their skin colour. I do not think that is a terribly good precedent or practice, certainly at least until we see how it operates. That is the rationale behind the Democrats’ amendment. Because of the time of day, I will not divide on it, but I thought it would be appropriate to raise those points and some of those concerns.

Senator McLUCAS (Queensland) (1.15 pm)—As Senator Bartlett has indicated, the change proposed by government is to treat the disability assistance payment in the same way that other payments are being treated under the Northern Territory intervention legislation. We treat this measure in the same way that we treated those measures. We strongly support the principle that family payments, whatever they might be, should be paid for the benefit of children. We also support an income management system that provides the essential elements that a child needs to grow up in a healthy, happy and safe environment. We therefore also support the quarantining of welfare payments with the provisos that they should not be open-ended and they should not be arbitrary. It must target only parents who are putting their children at risk. After examining the proposal and assessing Senator Bartlett’s amendment, Labor will not be supporting Senator Bartlett’s amendment because the proposal from the government is consistent with those principles. Therefore, we support the child disability assistance measure being treated as other social security payments were treated in the legislation we debated in the last sitting.

While I am on my feet—and I am very mindful of the time—I have to respond to Senator Colbeck’s allegations. Senator Colbeck told only part of the story. Let us be very clear. The original offer from the Commonwealth to the states was that there would be no increase on the base CSTDA multilateral agreement. The only increase that was offered was a very small indexation which, as we identified during the inquiry, does not meet the increase in costs of delivering the current services. Many witnesses to the inquiry said that it is in fact a cut. That is the first fact.
The second fact is that, earlier this year, Minister Brough offered the states dollar-for-dollar funding for supported accommodation. That was on a bilateral basis outside of the multilateral negotiations. States were told to go back to their treasuries, find new money and come back to the Commonwealth with an indication of what money they could provide to match the government on a dollar-for-dollar basis. In the original correspondence and in messages to the states through the negotiations there was no indication of a cut-off or closing date for those applications to be received.

So, Senator Colbeck, it is disingenuous in the extreme and part of the classic blame game to say that your state did not even respond to the letter. The rules changed halfway through the game. On 4 July this year, the minister withdrew the offer, but the original offer did not say that it would close on any certain date. I put on the record that it is disingenuous of you to say, ‘My state didn’t even answer.’ You do not know what your state was doing from the time the letter was originally received till there was a bolt from the blue on 4 July saying, ‘Sorry, the deal’s now off.’ That is what happened. And for you to accuse me of engaging in the blame game, while telling only part of the story, is disingenuous. I do hope that that is the end of the debate.

The TEMPORARY CHAIRMAN (Senator Moore)—Senator, I know that those comments were made through the chair.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.19 pm)—The government will not be supporting the Democrats’ amendment. The income management regime has been put into place for a reason. The government’s view is that it should not matter whether or not the child has a disability; the intent is still that the funds are meant for the child’s welfare and that they are used for that purpose.

Senator BARTLETT (Queensland) (1.19 pm)—I appreciate that this is a lunchtime debate and I know, Senator Colbeck, that this is not your specific portfolio and you may not be able to answer this, but I would like to ask just one question with regard to that matter. Clearly, people will be entitled to that $1,000 lump sum payment and—

Senator Carr—This should not be in non-controversial.

The TEMPORARY CHAIRMAN—Senator Carr, I cannot hear Senator Bartlett.

Senator BARTLETT—‘Non-controversial’ can mean different things in different contexts, Senator, although feel free to move to take it out of non-controversial if you want to.

Let me start again. Senator Colbeck, you are saying that the intention is to make sure that people entitled to that $1,000 as a lump sum spend it on the child’s welfare. I guess there is one thing I would like to establish. As I understand it, the income management regime has a list of things that people are able to spend money on—necessities, for want of a more precise term. Will people actually need to check what they spend this $1,000 on? If they want to buy some counselling or some therapy for their child, will they need to go to Centrelink and say, ‘I want this therapy; is that okay?’ Or is it a given that they can spend it on therapy and will not need to go and check with Centrelink about the type of therapy it is and whether or not it is appropriate for that child—those sorts of things? You can take that on notice if need be. I appreciate that it is not your portfolio.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.21 pm)—I
can indicate to you, Senator Bartlett, through the chair, that, in all of the measures, individuals discuss their financial commitments and required expenditure with Centrelink and consideration will be given by them to medical or care requirements as part of the process. If you want any further information, I am happy to take that on notice for you, but there is a requirement for the commitment of required expenditure with Centrelink as part of the management process.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that schedule 1, items 9 to 13 stand as printed.

Question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.23 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

SOCIAL SECURITY LEGISLATION AMENDMENT (2007 BUDGET MEASURES FOR STUDENTS) BILL 2007

Second Reading

Debate resumed.

Senator CARR (Victoria) (1.25 pm)—I seek leave to incorporate my speech on the second reading.

Leave granted.

The speech read as follows—


This bill amends the Social Security Act 1997 and the Student Assistance Act 7973 to give effect to a series of changes to student financial support announced in this year’s federal Budget.

The Opposition supports this bill. Among other things, the bill makes a change to income support arrangements for tertiary students that is long overdue. This is to allow Austudy recipients access to rent assistance.
The bill also extends eligibility for Youth Allowance and Austudy to full-time students in approved Masters’ courses.

Austudy recipients are eligible full-time students who have commenced their course of study after they turn 25 years of age. It has been an anomaly, ever since the Howard Government changed student assistance arrangements in 1998, that younger students on Youth Allowance could receive rent assistance, but those on Austudy were ineligible.

Time and time again, this issue was raised with the Government by student organisations and for years they were ignored.

Now of course we have voluntary student unionism—again thanks to this Government—and many student representative organisations have been hard hit. They can’t speak up for students quite so loudly or quite so persistently.

In 2005 the Employment, Workplace Relations and Education References Committee conducted an inquiry into student income support. It recommended that rent assistance be extended to Austudy recipients, but this recommendation too fell on deaf ears.

Now, just before the tightest election the Government has seen itself face for quite a long time, it suddenly moves to a sensible position on this matter. It is about time!

Not far enough

But this legislation does not go far enough. The Senate Employment, Workplace Relations and Education Committee conducted a brief inquiry into this legislation. All submissions received welcomed the legislation, but all also said it didn’t go far enough.

Universities Australia welcomed the Budget measures, noting that they will provide better financial support for many students. The submission argued, however, that the measures were insufficient.

In particular, Universities Australia was critical of the fact that narrowly defined criteria for Youth Allowance eligibility were preventing many students from gaining income support assistance.

The submission argued that the financial difficulties young Australians face in completing their university studies was exacerbated by the fact that an increasing number of students have their applications for Youth Allowance rejected—or they don’t receive Youth Allowance at the full rate.

“The reason is that many of these students are being assessed on the basis of their parents’ income and assets.” This was in turn placing an unreasonable financial burden on many students more generally.

To support its case, Universities Australia provided its 9 March draft report, ‘Australian University Student Finances 2006’, to the Committee. This report contends that university students at all levels are face increasing financial hardship.

The 9 March report found that:

- 40 percent of full-time students and 33 percent of part-time students believed the jobs they were doing were having an adverse impact on their studies;
- 22 percent of full-time students and 33 percent of part-time students regularly missed classes because they had to work; and
- the number of students incurring a debt has more than doubled from 11 percent in 2000 to 24 percent today.

Universities Australia argued that the “age of independence for Youth Allowance recipients should be reduced in order for university students not to be assessed on the basis of their parents’ income and assets.”

It also pointed out that the Social Security Act 7991 governs the age of independence, and that the Act contains a provision indicating that the age of independence ‘will be progressively reduced over time’. Universities Australia observed that this provision has been in place for nine years, since the passage of the Social Security Legislation Amendment (Youth Allowance) Act 7998, and the age of independence has not yet been reduced. It argued that an amendment to the Bill to reduce the age of independence to 18, as per the policy principle of reducing the age of independence, would greatly improve the support available to Australian university students.

Both the National Union of Students (NUS) and the Council of Australian Postgraduate Associa-
tions (CAPA) also welcomed the Budget measures.

NUS and CAPA noted that, of themselves, the measures are only part of the answer to redressing the financial hardship of university students.

The NUS submission noted that as a general proposition, the Budget measures would not

“...sufficiently address the ability for students to live and study without experiencing or being at risk of falling into poverty."

NUS argued that

“...the expectation that students will continue to be financially supported by their parents (if they are deemed well-off) is unrealistic and does not allow for the individual’s respective needs and situations.”

The Council of Australian Postgraduate Associations submission, while particularly welcoming the measure to extend rent assistance to Austudy recipients, was critical that insufficient effort had been made to provide genuine income support assistance, and that “...the current rates for Youth Allowance and Austudy place many students in extreme poverty.”

It further noted that “...even with access to rent assistance, most students are unable to live on income support alone, let alone those challenged with additional financial commitments and responsibilities.”

The Council of Australian Postgraduate Associations submission made a number of recommendations, including that:

“Access to income support [should] be extended to all students studying at postgraduate level to include both coursework and research higher degrees, regardless of the nature of the course in which they are enrolled.”

“The base rates of Youth Allowance and Austudy [should] be raised to, and remain above, the relevant Henderson Poverty Line.”

“The age of independence [should] be reduced to 18 years of age to bring it into line with most other measures of social and financial responsibility.”

Financial situation of students

According to figures from the Department of Families, Community Services & Indigenous Affairs, between 1998 and 2006 there was a 6.4 per cent drop in the number of students receiving either Austudy or Youth Allowance.

These factors particularly affect students from lower socio-economic backgrounds.

Most graphically, we saw only a few weeks ago the release of the final report into student finances, Australian University Student Finances 2006 by Universities Australia. It showed just how difficult is the financial burden of going to university for many students.

It revealed that:

- Nearly 42 per cent of all full-time undergraduates and nearly 33 per cent of full-time postgraduate coursework students had a total annual income of less than $10,000.
- Full-time postgraduate coursework students had the highest rate of rejection for Youth Allowance, the highest rate of dependence on a partner, and the highest level of debt.
- Female students are more likely to rely on free or subsidised services provided by Universities and student associations and believed they would be less able to afford these services if they were not subsidised.

The Report is an indictment of the Howard Government’s neglect and complacency about the financial pressure University students are under.

Minister’s response

The response from the Minister for Education to this report has been that students should be more ‘frugal’ and the Government should not fund a ‘lifestyle’.

Julie Bishop claimed that the report’s findings were flawed, because the study was based on ‘anecdotal’ evidence. She questioned the honesty of the students participating in the survey, saying that “I know what would have said if I were a student”.

That the Minister for Education does not trust Australian university students or believe that students are facing financial hardship demonstrates just how out of touch the Howard Government is.
These financial pressures are increasingly turning full-time students into multiple part-time workers. This has many negative effects on their study experience and educational outcomes.

**Bill’s provisions**

This Bill contains a number of measures to bring the processes for ABSTUDY and AIC payments into line with other allowances when money is deposited into an incorrect financial institution and to allow data to be transferred electronically for administrative purposes.

The key provisions of this Bill, however, relate to the Austudy income support allowance.

Austudy provides financial help to students aged 25 years or more who are studying or undertaking a Australian Apprenticeship full-time.

**Eligibility provisions**

Currently, eligibility for university students is restricted to students undertaking undergraduate courses, to the exclusion of Masters level qualifications.

I want to make some comments on the bill’s eligibility provisions for Austudy and Youth Allowance. The Bill provides that only Masters courses required for entry to a profession, or that exist as a result of a course restructure, will be eligible for income support assistance, and that course eligibility will be at the discretion of the Minister.

CAPA in its submission argued that:

“these measures in their current form will allow access to income support to only a very small number of students in this group, and therefore fail to address the genuine need that has been identified in this area.”

Submissions to the Senate Inquiry also argued for an increase in the parental income test threshold under Youth Allowance. This is currently set at $30,750 a year. Having just one parent in a low-paid job could disqualify you from Youth Allowance! It is totally unrealistic in today’s world.

**Student debt**

These measures are a welcome start to addressing the financial pressures facing Australian university students, but they are only the beginning.

The Government’s own 2005 Higher Education Report released earlier this year reveals that the debt burden for young Australian students has more than tripled under the Howard Government from $4.5 billion in 1996-97 to nearly $13 billion in 2005-06.

This constitutes a massive debt burden around the necks of young Australians and our nation.

It is little wonder that the HECS debt burden continues to grow given the Howard Government’s green light for a 25 per cent increase in university fees in 2005.

If increasing HECS debts were not enough of a burden on students, the Howard Government has presided over the establishment of $100,000 degrees in Australian public universities.

The 2008 Good Universities Guide shows that there are now:

- over 100 domestic full-fee degrees at public universities that cost in excess of $100,000, and
- 2 domestic full-fee university degrees that cost in excess of $200,000.

In 1999, the Prime Minister said that:

“The Government will not be introducing an American-style higher education system. There will be no $100,000 university fees under this Government.”

Unfortunately, however, under the Howard Government, this is now a reality.

The Guide also shows that one degree at a public University costs in the vicinity of $240,000—roughly the same amount as the average Australian housing loan of around $245,000.

Like the Minister for Education who believes that students should be more frugal, the Treasurer has also described the present system as “generous” and pointed out that in the United States, students forked out more than $100,000 and rely on banks to lend them the money.

This just demonstrates how out of touch the Howard Government has become.

Federal Labor remains committed to phasing out domestic full-fee degrees at public universities commencing 1 January 2009 in order to ensure access for all young Australian students based on merit, rather than financial means.
But this is only the beginning of Labor’s commitment to reduce the financial pressures facing university students. Clearly, more needs to be done. Labor recognises that mounting student HECS debts can act as a disincentive to attending university, particularly for those from lower socio-economic or battling backgrounds. That is why Labor has already announced targeted HECS relief in the national priority areas of maths and science.

Labor has already announced it will give struggling Australian university students a helping hand by reintroducing the Voluntary Student Supplement Scheme—abolished by the Howard Government in 2004.

The Voluntary Student Supplement Scheme will allow repayable loans of up to $7,000 per annum to be made available to students currently receiving Commonwealth Income support. Labor is also examining a range of other possible measures, including:

- Scholarships for the best and brightest, scholarships for low SES students, and scholarships for particular disciplines; and
- Further HECS relief and further targeted HECS remissions for particular occupations identified as critical to our economy.

Students must be willing to put in the hard yards to support themselves—but there is a point when the financial and time pressures faced by students becomes simply too great, and compromises not only the quality of their education, but the potential future contribution they can make to the Australian economy.

**Higher degree students and research training**

Turning now to the area of my own portfolio, Labor will look at a thorough revamp of Australia’s research training scheme.

We believe that there is an urgent need to strengthen and extend our research training effort—to improve the number of PhD students graduating from our universities. We as a nation are languishing behind in this area.

While Australia has 7.8 PhD-holders for every thousand in the workforce, our global competitors are doing a lot better. Canada boasts 8.2 PhDs per thousand, but Germany and Switzerland both have well over 20 per thousand. To compete in the world marketplace, Australia needs to lift its game.

Labor will be announcing a series of measures that we will introduce to build a stronger performance in research training and the output of higher degree graduates.

**Conclusion**

Labor supports the overall objectives of the Budget measures contained in this Bill. However, these welcome improvements come at the tail end of eleven years of callous neglect of our university system, and of the students within it, by this Government. This bill is welcome and will be supported, but it cannot mask the historical attitude of this Government to the university sector.

Senator CARR—I move the second reading amendment standing in my name, which has been circulated:

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

(a) welcomes the extension of eligibility for Austudy payments to students undertaking Masters degrees and the expansion of eligibility for Rent Assistance to all Austudy recipients;

(b) notes that these measures come after more than 11 years in office, during which time the Government has made it more difficult for Australian students to go to university, demonstrated by the fact that:

(i) the cost of a university degree has increased by between $7,500 and $30,000;

(ii) there are now more than 100 university degrees costing more than $100,000, and

(iii) since 1996, the Higher Education Contribution Scheme (HECS) debts have nearly tripled from $4.5 billion to nearly $13 billion;

(c) notes the findings of the Australian University Finances 2006 report which revealed:

(i) nearly 42 per cent of all full-time undergraduates and nearly 33 per cent of full-time postgraduate coursework students
had a total annual income of less than $10,000; 
(ii) full-time postgraduate coursework students had the highest rate of rejection for Youth Allowance, the highest rate of dependence on a partner, and the highest level of debt, and 
(iii) female students are more likely to rely on free or subsidised services provided by universities and student associations and believed they would be less able to afford these services if they were not subsidised;
(d) notes the Government’s dismissive and out of touch attitude towards these findings, in particular, the labelling of the survey of nearly 19,000 questionnaire responses as ‘anecdotal’, for suggesting that students should be more ‘frugal’ with their finances, and for saying that the HECS system is ‘generous’; and 
(e) condemns the Government for failing to adequately meet the genuine income support needs of Australia’s university students over its period in office”.

 Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.25 pm)—The purpose of the Social Security Legislation Amendment (2007 Budget Measures for Students) Bill 2007 is to amend three acts: the Student Assistance Act 1973, the Social Security Act 1991 and the Income Tax Assessment Act 1997. The measures contained in the bill enhance the delivery of income support for students and provide a significant benefit to students and their families at a cost to the budget of $135 million over four years. These measures demonstrate the importance that the Australian government places on ensuring that all Australians, regardless of age, location or background, have the opportunity to participate in education and training and contribute to the nation’s continued prosperity. The Australian economy depends on its most precious and important resource: its people. A well-educated and skilled population increases workforce participation and allows every Australian to make a contribution to the broader Australian community. In closing, I would like to thank my colleagues on the Senate Standing Committee on Employment, Workplace Relations and Education for their inquiry into this bill. I note that all parties represented on the committee supported the passage of the bill. I commend the bill to the Senate.

 Senator STOTT DESPOJA (South Australia) (1.27 pm)—I am keen to speak to the Social Security Legislation Amendment (2007 Budget Measures for Students) Bill 2007 because it has been a long time coming. It is a bill that the Democrats support and commend the government for, albeit belatedly. This bill implements some of the student income support measures contained in the last budget, including—and most importantly, as far as the Democrats are concerned—extending rent assistance to Austudy recipients and allowing certain postgraduate students to access Austudy and youth allowance. We welcome the changes, particularly the extension of rent assistance to Austudy recipients. It is something that I, along with some others in this place, have campaigned for for many, many years. Combined with other student income measures in the budget, these measures constitute a $222 million increase for student income support over the next four years. This is well overdue.

 As has been highlighted on page 5 of today’s edition of the Australian, a number of backbench members of the coalition pointed out that debt levels for Australian students are high. We also have to recognise that the affordability of education has plummeted in some ways. HECS fees have increased substantially and the introduction of full-fee degrees has further entrenched a user-pays system in this country. Across the country, stu-
students and graduates owe a grand total of $12.9 billion to the government. More than 2,000 Australians have individual debts of $40,000 or more. In 1997, the Howard government raised the age of independence for income support to 25, after the Keating government had implemented a gradual reduction in that age, lowering it to 22. In 1999, the Prime Minister promised that there would be no $100,000 degrees under his watch. Now we have more than 100 degrees that cost more than that amount and some that cost around $240,000. That is massive. In 2006, 30,200 domestic students paid full fees for their undergraduate degrees, more than double the amount in 2005. The practice is expanding. This year the government brought in legislation that theoretically allows universities to establish full-fee only courses.

All of these skyrocketing costs for students occur against a background of the rising price of essentials in the broader community, such as petrol, food, rent et cetera, leading to a rise in financial stress among the student population. If anyone doubts that, you only have to look at the recent report of the survey by Universities Australia: Australian university student finances survey 2006. According to this report, one in eight students regularly goes without food or other essentials because they cannot afford them. The average number of hours worked by full-time undergraduate students is now 14.8 hours per week. There has been a suspicious decline in the proportion of full-time undergraduates receiving youth allowance or Austudy, from 42.4 per cent in 2000 to 35.2 per cent last year. I cannot believe it is due to a lack of demand. Other studies have shown that the cost of tertiary education is a significant barrier to rural students, with 47 per cent indicating that it would be difficult for them to support themselves at university.

This state of affairs is clearly not in the interests of individual students. If students are worrying about their finances and not being able to afford food or other essentials, or they are working significant hours each week, their studies are highly likely to suffer. That is not in the national interest. Our country is going to depend on highly skilled workers to remain internationally competitive into the future. How can you be focused on the economy on the one hand but allow a system to develop where the employees of tomorrow reject tertiary study due to cost or have education distracted by their financial considerations? What does it say about the future workforce if entry into university is going to be increasingly determined by your wealth rather than your merit?

I am sad that this is an area where the government has not been more active. While the two key measures in this bill today are an improvement, they represent government outlays of $86.9 million and $43.3 million respectively spread over four years, so it is a relatively small amount in the context of the higher education budget, and these two issues alone will not significantly address this pressing issue of affordability.

In 2004, as senators here would know, I initiated an inquiry into student income support through the Senate Standing Committee on Employment, Workplace Relations and Education. Its report was tabled in June 2005, albeit with the interruption of a federal election in the middle. It had 15 recommendations tailored to relieve student financial stress. The government still has not responded to this inquiry, so maybe this is a question to the acting minister today: when is the government going to respond? If the convention is three months, then we have well and truly passed that stage. It was due in 2005 and it is now September 2007—years later. It was the first inquiry to look solely at the issue of student income support. I think it
is a clear breach of Senate protocol but, more importantly, it suggests to the sector and to the community—not just to students, aspiring students and graduates, but to Universities Australia and to other peak organisations—that the government does not care about this pressing issue.

I said repeatedly in this Senate this week, when we were discussing the Higher Education Endowment Fund, we know that this is a key indicator in ensuring that people can participate or enter into education at all levels, and higher education in particular. Student income support has to be adequate and it has to be accessible. We are familiar with what I perceive as a disregard shown by the government in this particular area of policy. But this is really a blatant example of disrespect for the particular issues. By the way, there were 140 submissions to that Senate inquiry.

There is much more the government could do to address some of these issues and obviously we do not have time today to address those. All scholarships could be tax-free. I know that Universities Australia and other groups would acknowledge that. There could be a reduction in the age of independence, ideally to 18, or 21 or even 22, which is where the Keating government was at. It is still quite arbitrary in how we define eligibility for adult versus other benefits. There is plenty of legislation, social security legislation, where you are defined as an adult at the age of 16 if it saves money for government, but it does not seem to work the other way when it comes to being eligible for payments, particularly payments that would actually assist you. We should be considering education as an investment in the future, not a cost. The rate of Austudy and youth allowance could be pegged to a level equivalent to the Henderson poverty line. There are a range of measures and of course I do refer to and recommend that Senate inquiry report.

The Democrats have long argued for and believed in an equitable and well-funded higher education system, and we certainly oppose—and have for a long time—this increasing shift towards deregulation of the sector and an additional reliance upon private funding. I hope that the government does not think that these measures are enough in themselves. This is not an attempt to fob off students and others before an election. I do not just mean students; I mean the broader community. I think that there are serious issues out there that have to be addressed by the government in relation to university study.

Judging by the remarks that I saw in the paper today, I think from Dr Mal Washer and others, these are concerns that are held across the political spectrum. To paraphrase one of the comments I read this morning, that was something along the lines of, ‘Why do we have this booming economy and yet we have so much debt?’ It is not right that our future students, graduates, the skill set of tomorrow, are being burdened with such massive individual debt—the size of a mortgage is needed in order to access education—especially when theoretically through a progressive taxation system people should be repaying their money into government coffers and contributing to the community.

This bill is important and these measures are essential, but there are a broad range of other measures, a suite of reforms, that have to be introduced to address this issue and, once again, I appeal to both sides of parliament to consider these issues. It is not just the government; there is also an aspiring government here and I would not mind hearing a bit more detail from them about what they propose when it comes to student income support as well.

Question negatived.

Original question agreed to.
Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

SUPERANNUATION LEGISLATION AMENDMENT BILL 2007

Second Reading

Debate resumed from 17 September, on motion by Senator Brandis:

That this bill be now read a second time.

Senator MURRAY (Western Australia) (1.37 pm)—The Superannuation Legislation Amendment Bill 2007 proposes amendments to Australian government civilian and military superannuation schemes contained in six related schedules. The overall purpose of the bill is to harmonise choice in super schemes for Australian government employees and to ensure that government superannuation schemes are in accord with recent amendments to the Australian superannuation system enacted via the simplified superannuation legislation.

The requirement for contributing members of the Commonwealth Superannuation Scheme to make the contributions to the CSS is removed from 1 July 2008, thereby making all member contributions voluntary and providing members with the same flexibility and incentives to contribute to superannuation available to the broader community. Eligible members of the Public Sector Superannuation Scheme will be allowed to elect to leave the PSS and join other superannuation arrangements for payment of future contributions, which will provide eligible members with the flexibility for future contributions that is already available to most of the Australian workforce.

Members of the CSS will be able to obtain early release of their funded account balances on severe financial hardship and compassionate grounds from 1 January 2008. Previously cancelled spouse pensions will be prospectively restored from 1 January 2008. An amendment ensuring entitlements to benefits in the Defence Force Retirement and Death Benefits Act 1973 scheme relating to post-retirement marriages is consistent with the treatment in civilian schemes that is proposed, and an anomaly in the treatment of the benefits payable in the act scheme upon marriage breakdown is also rectified.

The committee report into this bill proposed five key recommendations which adequately summarised key concerns arising from this bill. I note the government agrees with three of the recommendations. Committee recommendations are minor in the context of the overall benefits proposed by the bill. Australian Democrat policy has consistently sought flexibility and choice in superannuation legislation. These amendments will provide choice and greater flexibility for civilian government and military employees, finally harmonising super choice for both government and non-government employees.

The Democrat amendment, which I will move in the committee stage of this bill, aims to implement the HREOC Same-sex: same entitlements report recommendations. It is drafted in the absence of a government initiative to address those recommendations. The Democrats have followed HREOC’s suggested amendment form as closely as we can. I would be delighted were the government to substitute their own amendments for mine, but there is no sign of that moral courage yet. I will move this amendment 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 the Democrat amendment will implement the HREOC de facto relationship definition.
The amendment is in line with HREOC’s preferred approach for a dual system: one set that recognises heterosexual marital relationships and a separate second set that acknowledges same-sex relationships which are non-marital. The Australian Democrats propose this amendment which will remove unnecessary sexual preference discrimination. If the government decides not to support the Democrat amendment, it will be because it does not support the removal of clauses in superannuation legislation that discriminate on the basis of sexual preference. In other words, the coalition would be continuing to uphold homophobic laws. Given the strong cross-party support for ending unjust discrimination including from many, many members of the cabinet and the coalition parties, this would be a very sad and wrongful outcome.

HREOC has identified these particular acts as needing amendment to end this unjust discrimination. From page 380 of the HREOC Same-sex: same entitlements report, I quote the following points as discrimination under superannuation laws:

- A *federal government employee’s* surviving same-sex partner cannot access *direct death benefits* (lump sum or reversionary pension) available to a surviving opposite-sex partner (unless the employee joined the public service after 1 July 2005).

- The surviving child of a lesbian co-mother or gay co-father who was a *federal government employee* will not usually qualify for *direct death benefits* (lump sum or reversionary pension) available to the child of a birth mother or birth father.

- It is harder for a surviving same-sex partner to qualify for *death benefits in private superannuation schemes* (as a person in an ‘interdependency relationship’) than for a surviving opposite-sex partner (as a ‘spouse’).

- A surviving same-sex partner cannot usually qualify for a *reversionary pension in a private superannuation scheme*, which is available to an opposite-sex partner.

- It is harder for a surviving same-sex partner to access *death benefits from a retirement savings account* (as a person in an ‘interdependency relationship’) than for a surviving opposite-sex partner.

- It is harder for a surviving same-sex partner to access *death benefits tax concessions* than for a surviving opposite-sex partner.

- A same-sex partner cannot access the *death benefits anti-detritment payment* available to an opposite-sex partner.

- A same-sex partner cannot engage in *superannuation contributions splitting* and the associated tax advantages available to an opposite-sex partner.

- A same-sex partner cannot access the *superannuation spouse tax offset* available to an opposite-sex partner.

- A surviving same-sex partner of a *federal judge* cannot access the *reversionary pension* available to a surviving opposite-sex partner.

- A surviving same-sex partner of a *Governor-General* cannot access the *allowance* available to a surviving opposite-sex partner.

Chapter 13 on superannuation provides more detail about these and other superannuation entitlements.

**Senator COLBECK** (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.43 pm)—The Superannuation Legislation Amendment Bill 2007 makes a number of enhancements to the Australian government civilian and military superannuation schemes. The bill removes, from 1 July 2008, the requirement for contributory members of the Commonwealth Superannuation Scheme, the CSS, to make member contributions to the scheme. As a result, member contributions will become voluntary. This will provide members with the same flexibility and incentives to contribute to superannuation that are available to the broader community. The bill also allows, from 1 July 2008, eligible members of the PSS to elect to leave the PSS and join another superannuation arrangement for pay-
ment of future contributions. A member’s eligibility to join another superannuation arrangement will be determined by the choice of arrangements that their employer has in place.

From 1 July 2008, the bill will enable members of the CSS to obtain early release of their funded account balances on severe financial hardship and compassionate grounds to the extent allowed under the superannuation regulatory framework. The bill will also facilitate from 1 January 2008 the prospective restoration of pensions for persons whose spouse pensions, provided under certain closed Australian government civilian and military superannuation schemes, were cancelled upon remarriage. Upon valid application, spouse pensions cancelled on remarriage—prior to 1976 in the civilian scheme and 1977 in the military scheme—will be prospectively reinstated. Changes to the CSS as a consequence of the government’s Better Super reforms are also included in the bill.

The main amendment will ensure the continued payment of employer productivity contributions where a member has not provided their tax file number. This is consistent with the arrangements in the broader community where employer contributions would still be payable even though the member has not provided their tax file number. The other amendments are technical and take account of the payment of amounts from the CSS fund in relation to release authorities issued by the Commissioner of Taxation to reflect the changed superannuation terminology. The bill also ensures that entitlement to benefits in the military superannuation schemes relating to post-retirement marriages is consistent with treatment in the civilian schemes. The bill also addresses an anomaly in the family law provisions of the Defence Force Retirement and Death Benefits Act 1973 to allow the family law orders to be applied as intended.

The bill was referred to the Senate Standing Committee on Finance and Public Administration for inquiry. The committee made five recommendations. Recommendations 1 and 2 required the government to instruct the trustee of the scheme, the Australian Reward Investment Alliance, in relation to providing information to members of the Public Sector Superannuation Scheme about the implications of reducing member contributions to zero and promoting the changes that enable spouse pensions that were cancelled upon remarriage to be restored. The government agreed in principle with both recommendations; however, the government could not agree with the exact wording of the recommendations as the legislative framework established under the Superannuation Industry (Supervision) Act 1993 does not permit the government to instruct the trustee of a regulated superannuation scheme.

The government acknowledged the intention of recommendations 3 and 4 that individuals not be financially disadvantaged by the commencement of policies in the bill. However, the government is concerned that providing for the retrospective effect of these policies may have unintended detrimental effects on individuals. The government considers that the broad desired outcome can be achieved effectively through alternative mechanisms. The government agrees with recommendation 5 that the bill pass the Senate. I also indicate to Senator Murray that the government will not be supporting his amendment. I acknowledge his comments on the overall perspective in relation to that amendment. I can assure him that there is work being done on progressing that, but at this point in time we are not in a position to support the amendment.

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia)
(1.47 pm)—I move Democrats amendment (1) on sheet 5402 revised:
(1) Page 25 (after line 28), at the end of the bill, add:

Schedule 7—Same-sex: same entitlements

*Defence Force Retirement and Death Benefits Act 1973*

1 Subsection 3(1)

Insert:

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

(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) a de facto relationship is a beneficiary relationship.

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

*Parliamentary Contributory Superannuation Act 1948*

2 Subsection 4(1)

Insert:

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

(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) a de facto relationship is a beneficiary relationship.

3 The whole of the Act
Amend so that every occurrence of “marital” is omitted and substituted by “beneficiary”.

Superannuation Act 1976

4 The whole of the Act
Amend so that every occurrence of “marital” is omitted and substituted by “beneficiary”.

5 Subsection 3(1)
Insert:

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

(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) a de facto relationship is a beneficiary relationship.

6 Section 8A
Repeal the section, substitute:

8A Beneficiary relationship
(1) 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.
(2) For the purpose of subsection (1), a person is to be regarded as ordinarily living with another person on a permanent and bona fide domestic basis at a particular time only if:

(a) the person had been living with that other person for a continuous period of at least 3 years up to that time; or

(b) the person had been living with that other person for a continuous period of less than 3 years up to that time and the Board, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person on a permanent and bona fide domestic basis at that time.

(3) For the purposes of this Act, a beneficiary relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (2)(a) or (b).

(4) For the purpose of subsection (2), relevant evidence includes, but is not limited to, evidence establishing any of the following:

(a) the person was wholly or substantially dependent on that other person at the time;

(b) the persons were legally married to each other at the time;

(c) the persons had a child who was:
   (i) born of the relationship between the persons; or
   (ii) adopted by the persons during the period of the relationship;

(d) the persons jointly owned a home which was their usual residence.

(5) For the purposes of this section, a person is taken to be living with another person if the Board is satisfied that the person would have been living with that other person except for a period of:

(a) temporary absence; or

(b) absence because of the person’s illness or infirmity.

Superannuation Industry (Supervision) Act 1993

7 Subsection 10(1) (definition of dependent)

After “interdependency”, insert “or de facto”.

8 After section 10A

Insert:

10B De facto relationship

(1) For the purposes of this Act, 2 persons have a de facto relationship if they are living together as a couple on a genuine domestic basis, where the two people are not legally married.

(2) In determining whether 2 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:

(a) the length of their relationship;

(b) how long and under what circumstances they have lived together;

(c) whether there is a sexual relationship between them;

(d) their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them;

(e) the ownership, use and acquisition of their property, including any property that they own individually;

(f) their degree of mutual commitment to a shared life;

(g) whether they mutually care for and support children;

(h) the performance of household duties;

(i) the reputation, and public aspects, of the relationship between them;

(j) 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.
A de facto relationship may be between two people of the same gender.

A de facto relationship is a beneficiary relationship.

The rights, entitlements and obligations of a person in an independency relationship extend in all respects to a person in a de facto relationship.

De facto partner means a person in a de facto relationship.

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) a de facto relationship is a beneficiary relationship.

Veterans’ Entitlement Act 1986

9 Section 5E

Insert:

De facto partner means a person in a de facto relationship.

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) a de facto relationship is a beneficiary relationship.

Workplace Relations Act 1996

10 Section 263 (definition of spouse)

Omit “de facto spouse” (twice occurring), substitute “de facto partner”.

11 Subsection 282(1)

Omit “a male”, (wherever occurring), substitute “an”.

12 Subsection 282(1)

After “his”, (wherever occurring), insert “or her”.

We do not need to revisit the arguments for this amendment; we have already heard them both the other day and today. In the interest of progressing debate on the bills remaining at this time, I will not speak further to this amendment. I do note that there are five pages to this one amendment.

Question negatived.

Original question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.49 pm)—I move:

That this bill be now read a third time.

Question agreed to.
Bill read a third time.

FINANCIAL FRAMEWORK LEGISLATION AMENDMENT BILL (No. 1) 2007

Second Reading

Debate resumed from 21 June, on motion by Senator Scullion:

That this bill be now read a second time.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.49 pm)—I table a replacement explanatory memorandum relating to the Financial Framework Legislation Amendment Bill (No. 1) 2007.

Senator MURRAY (Western Australia) (1.49 pm)—I seek leave to have my speech in the second reading debate on the Financial Framework Legislation Amendment Bill (No. 1) 2007 incorporated in Hansard.

Leave granted.

The speech read as follows—

The Financial Framework Legislation Amendment Bill (No. 1) 2007 is the third in a series of Bills designed to simplify and re-structure the financial framework as set out in the Financial Management and Accountability Act 1997 (the "FMA Act") and related Acts. It proposes amendments to the:

- Financial Management and Accountability Act 1997;
- Legislative Instruments Act 2003; and
- Auditor-General Act 1997

Set out in a single schedule, the primary amendments pertain to proposed changes to Division 3 of Part 4 of the FMA Act, which outlines the management of appropriations. Proposed amendments to the two other Acts are consequential in nature.

The proposed legislative amendments contained in this Bill include amendments to section 32 of the FMA Act. This section governs so-called ‘machinery of government changes’, which is of particular importance when government functions are moved between agencies.

A new section, section 32A is proposed which clarifies the timing of adjustments to such appropriations.

Amendments to section 31 of the FMA Act propose changes to how the Finance Minister may establish agreements for the use of net appropriations. Current legislation requires the use of agreements whilst proposed changes will delegate this power to regulations.

In the Democrats view, this is a contentious amendment that is not consistent with recent Committee recommendations. As a consequence I shall be moving an amendment to this Bill to implement the unanimous Finance and Public Administration Committee recommendation regarding section 31 agreements.

Other proposals contained in this Bill include:

- Clarifications to section 28 and section 30 regarding repayments by or to the Commonwealth, including transactions between FMA Act agencies;
- Simplifying the applications of GST to Commonwealth transactions;
- Amendments to section 53 to clarify a Chief Executive’s power to issue directions to officials; and
- A number of amendments that are consequential to those highlighted above.

From the Democrat’s perspective, there are a number of crucial matters that require further attention in schedule one.

Firstly, I am concerned about changes to the application of so-called section 31 agreements. The legislative proposal by Government is to replace current section 31 agreements with a new governance mechanism, controlled through regulations. Whilst I acknowledge that such a measure improves parliamentary control to the extent that regulations are disallowable instruments, I am concerned that the new regulatory mechanism delegates authority away from the Minister of Finance ultimately to senior bureaucrats and that section 31 agreements will persist as an alternative funding channel for Government agencies other than annual appropriations.

Delegating authority away from the Minister to senior bureaucrats can be seen as reducing par-
liamter control and oversight, but on the other hand it can also be seen as vesting responsibility where it should rest—with the CEO and CFO. The danger is that Ministers who delegate such power refuse to be held accountable for the decisions made under their delegated authority.

There is much uncertainty about the impact of changing the structure of section 31 from agreements between the Finance Minister and other agencies and delegating this power to regulations. Section 31 agreements have received attention in a recent F&PA Senate Committee Report, titled ‘Transparency and accountability of Commonwealth public funding and expenditure’.

This report highlighted serious concerns about the fiducial use of section 31 agreements as an alternative funding source for government agencies, to the extent that it recommended:

… that the central role in the management of net appropriations should be returned to the Appropriation Acts so as to ensure that these significant transfers of funds are fully transparent to the Parliament. In making this recommendation the Committee is aware that the management of net appropriations is complicated and that the Department of Finance and Administration is investigating other options. If a procedure other than returning the central role to the Appropriations Acts is proposed, the Committee would expect that the Parliament and its committees would be consulted. In particular, the Committee would expect Finance to report to it on any proposed alternative approach this calendar year.

Currently, net appropriations are managed principally by individual agreements made between the Finance minister and another responsible minister under Section 31 of the FMA Act. This Bill proposes to do away with these Section 31 agreements and to provide for the making of regulations for the same purpose.

The issues underlying the use of section 31 agreements and net appropriations include a significant lack of transparency in the accounting of the receipt of non-appropriated funds and the use of such funds. Indeed, the use of section 31 agreements can be seen as a method for extending a department or an agency’s budget beyond that agreed to through appropriations.

This has the effect of reducing Parliament’s purview and powers of review of the use of funds by government agencies since net appropriations, like special appropriations, are an alternative conduit that effectively bypasses the parliamentary approval process, or enables funds to be converted from one form of appropriation like non-appropriations or special appropriations, to another such as an annual appropriation.

At one level this may seem to be an acceptable mechanism that provides Government with the freedom to implement its mandate from the public. Yet, section 31 agreements are designed to enable Government Agencies, through net appropriations, to increase their annual budget, beyond a level already agreed to by Parliament.

So we have a situation whereby public money is appropriated with minimal parliamentary scrutiny. These funds, which are in surplus, are not returned and the reporting of the use of such funds subject to substandard reporting guidelines.

By converting section 31 agreements into regulations, the concern is that the underlying problems associated with net appropriations as highlighted in the Committee report will persist, despite the fact that it will be a disallowable instrument.

Converting section 31 agreements into regulations will not fix this problem, it will simply perpetuate it. Otherwise stated, this bill finalises the establishment of a government agency funding source that is perfectly designed to be rorted.

The committee also noted significant problems associated with retrospective application of section 31 agreements. It is uncertain whether this problem would be corrected by way of regulations.

The Democrats have a long standing commitment to opposing alternative methods of funding for Government agencies that fall outside of Annual Appropriations. To this end, I am proposing a number of amendments to this Bill that specifically addresses alternative funding mechanisms which reduce parliamentary scrutiny and approval.

The intention of my amendment is to remove altogether section 31 agreements from the FMA Act, in line with the Committee’s unanimous recommendation. In addition, I am also proposing
two other amendments that pertain to the use of standing appropriations and Special Accounts.

Special or Standing Appropriations as governed by section 20 (4) of the Financial Management and Accountability Act 1997, states:

The CRF is hereby appropriated for expenditure for the purposes of a Special Account established under subsection (1), up to the balance for the time being of the Special Account.

The Finance Minister alone can establish a Special Account as well as the quantum of money to be appropriated. Since standing appropriations effectively circumvent a large degree of the scrutiny faced by other means of appropriating public funds, including budget estimates hearings with their corresponding parliamentary approval process, I have always sought to curtail their use and application.

I am proposing that a register of Special Accounts be tabled annually in Parliament, and that a time limit for the use of Standing Appropriations be established.

There is no merit in seeking to exempt the use of public funds from parliamentary scrutiny and approval. Yet sadly, standing appropriations continue to grow unchecked. The numbers of section 31 agreements, standing appropriations, Special Accounts and the amounts of expenditure involved have steadily grown over the life of the Commonwealth. They now amount to over 80% of all Commonwealth government expenditure.

Comparable jurisdictions have not allowed standing appropriations to expand to this degree. In the United Kingdom for example, they amount to about 25% of total government expenditure.

Section 31 agreements have received recent Australian Audit Office scrutiny. The following summarises the ANAO’s findings:

The objective of this performance audit was to assess agencies’ management of net appropriation agreements to increase available appropriations. Net appropriation arrangements are a feature of the Australian Government’s financial framework under Section 31 of the Financial Management and Accountability Act 1997 (FMA Act). They provide a means by which an agency’s appropriation item in the annual Appropriation Acts can be increased by amounts received from non-appropriation sources, thereby enabling the agency to retain and spend those amounts.

The ANAO conducted a detailed examination of six FMA Act agencies, including Finance. Finance was also included in the audit in its capacity as the central agency with broad responsibility for the management of the financial framework, and the co-signatory to all agreements. The ANAO also examined 231 agreements made in respect of FMA Act agencies between 1 January 1998 and 30 June 2005, and agencies’ financial reporting of the use of Section 31 of the FMA Act to increase their appropriations.

The audit concluded there were widespread shortcomings in the administration of net appropriation arrangements. The ANAO was of the view a number of agencies had failed in their responsibility to have in place demonstrably effective Section 31 arrangements that support additions made to annual appropriations and the subsequent expenditure of those amounts. The audit also concluded the current presentation of budget estimates does not assist in providing users of Portfolio Budget Statements with a clear understanding of the extent to which the relevant agency expects to increase its annual appropriation for amounts collected under the authority of Section 31 agreements. Further, the ANAO found that agency financial statements have not accurately reflected the use of Section 31 arrangements.

The ANAO’s findings are an excellent illustration of why funding mechanisms other than annual appropriations should be re-considered. They lack parliamentary control and a corresponding level of accountability that the public demands of Government in the use of public funds.

More concerning still, in yet another ANAO report on the financial management of special (standing) appropriations in November 2004, the Government’s auditors found widespread illegalities and lack of accountability and control in the management of these alternative appropriations.

More than half of standing appropriations were not properly reported by departments and agencies in their annual financial statements.

In addition to the application of section 31 agreements, the second key area of concern that I wish to raise about this Bill is the delegating of
authority away from Ministers to senior Public Servants.

This is a worrying situation, particularly in light of the Government repeatedly avoiding Ministerial responsibility using the excuse of “I didn’t know”, or “it was the actions of a bureaucrat that caused the problem”.

You may be able to delegate authority, but the Government seems to think that authority and responsibility are interchangeable terms. They are not. As a Minister, you are responsible for your portfolio; you cannot delegate away your responsibility or your culpability for the authority that you delegate. If Ministers repeatedly avoid assuming responsibility, how can they rationally expect the support of the Senate to allow even more authority to be delegated?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.50 pm)—The Financial Framework Legislation Amendment Bill (No. 1) 2007—

Senator Carr—Why do you need to read this out?

Senator COLBECK—Well, I am happy to incorporate it if you are happy to accept that.

Senator Carr—Yes, please.

Senator COLBECK—Well, if you are happy to accept it then I will seek leave to incorporate.

Senator Carr—That is the normal practice for non-controversial legislation.

Senator COLBECK—I seek leave to have my summing-up speech incorporated in Hansard.

Leave granted.

The speech read as follows—

This Financial Framework Legislation Amendment Bill (No. 1) 2007 primarily amends Division 3 of Part 4 of the Financial Management and Accountability Act 1997 (FMA Act). That Division consists of five sections, each relating to an appropriation authority. The Bill also contains a small number of consequential amendments to the Auditor-General Act 1997 and the Legislative Instruments Act 2003, and clarifies another matter in the FMA Act in relation to delegations.

Significantly, the amendments will considerably strengthen parliamentary oversight of the capacity for the FMA Act to increase agencies’ appropriations. Current arrangements under section 31, for example, require reference to three separate sources of information in order to identify both the amount of an increase, as well as the original source of the appropriation authority: those three sources are the agency’s “section 31 agreement”, of which there are 80-plus, as well as the text of section 31 of the FMA Act and the annual Appropriation Act in question. In addition to also being exempt from parliamentary scrutiny, these arrangements can vary widely from agency to agency. The revised arrangements, in the form of a regulation which could, for example, ultimately apply uniformly to all agencies, with any change subject to parliamentary disallowance. The revised arrangements will also be restricted to departmental items.

In addition to this increased oversight by Parliament, officials themselves will have better clarity and control over the appropriations administered within their respective agencies. The new section 32A will eliminate the current scope for appropriations to be increased automatically by operation of law, without officials necessarily even being aware that the increase has occurred. The revised arrangements will ensure that no increase to an agency’s appropriation will take place until a record has been made in the agency’s accounts and records. This considerably tightens agencies’ oversight of appropriations.

This is the third Financial Framework Legislation Amendment Bill, with two previous Financial Framework Legislation Amendment Acts having been passed in 2005 and 2006. Each has evidenced ongoing monitoring and review, showing that incremental improvements to the financial framework continue on an ongoing basis. While this area is relatively technical, it is an important part of financial management accountability that the Government takes seriously.

Finally, the Senate Standing Committee for the Scrutiny of Bills sought advice in regard to the
amendments to section 32 of FMA Act, as detailed in the Scrutiny of Bills Alert Digest No. 6 of 2007. The Committee requested additional explanation about the proposed section 32 amendments. The Committee’s requests have been addressed in replacement explanatory memorandum accompanying this Bill.

I commend the Bill.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (1.51 pm)—by leave—I move Democrat amendments (1) to (3) on sheet 5270:

(1) Schedule 1, page 4 (after line 11), after item 2, insert:

2A  After section 20

Insert:

20A  Consolidated Register of Special Accounts

(1) The Minister must cause to be tabled in each House of Parliament not later than 31 August each year a list:

(a) identifying all Special Accounts established in accordance with section 20 or 21 of this Act; and

(b) specifying the date of establishment of each Special Account and the expected duration of the Account; and

(c) specifying the purpose for which each Special Account is established; and

(d) specifying the amount credited to each Special Account at the close of the previous financial year.

(2) Schedule 1 page 4 (after line 15), after item 3, insert:

3A  Before section 28

Insert:

27A  Time limits for special appropriations

(1) If a provision of an Act:

(a) has effect immediately before the commencement of the Financial Framework Legislation Amendment Act (No.1) 2007; and

(b) appropriates money; and

(c) does not specify the amount of money so appropriated;

the appropriation of money by that provision, unless otherwise provided by the Parliament, ceases to have effect at the expiration of the fourth year after the date of assent of the Financial Framework Legislation Amendment Act (No.1) 2007.

(2) Amounts otherwise payable under an appropriation which ceases to have effect in accordance with subsection (1) are to be paid from money appropriated by the Parliament for those purposes.

(3) An appropriation under subsection (2) must not have effect for more than 4 financial years.

(3) Schedule 1, item 8, page 6 (lines 1 to 10), omit section 31, substitute:

31  Transitional arrangements

(1) If a provision of an Act:

(a) has effect immediately before the commencement of the Financial Framework Legislation Amendment Act (No.1) 2007; and

(b) appropriates money under section 31 of the Financial Framework Legislation Amendment Act (No.1) 2007;

the appropriation of money by that provision ceases to have effect at the end of the financial year during which this schedule commences.

Question negatived.

Original question agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.
Third Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.52 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

AUSTRALIAN TECHNICAL COLLEGES (FLEXIBILITY IN ACHIEVING AUSTRALIA’S SKILLS NEEDS) AMENDMENT BILL (No. 2) 2007

Second Reading

Debate resumed from 16 August, on motion by Senator Ellison:

That this bill be now read a second time.

Senator CARR (Victoria) (1.52 pm)—I move:

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

(a) Government’s continued failure over 11 long years in office to ensure Australians get the training they need for a skilled job and to meet the skills needs of the economy;

(b) slashing of funding to the existing Technical and Further Education (TAFE) system, with Commonwealth revenues in vocational education decreasing by 13 per cent from 1997 to 2000 and only increasing by one per cent from 2000 to 2004;

(c) Government’s failure to make the necessary investments in existing vocational education and training infrastructure to create opportunities for young Australians to access high quality vocational education and training in all our secondary schools and in the TAFE system;

(d) Government is creating an expensive, inefficient, and duplicative network of stand alone Australian technical colleges, without cooperation or consultation with the States within the existing vocational education and training framework;

(e) appropriation of more than half a billion dollars for 30 colleges that will produce 10 000 graduates by 2010 when by the Government’s own estimates there will be a shortage of 200 000 skilled workers over the next five years;

(f) failure of the Government to provide opportunities for young people interested in pursuing vocational education and trades training who do not live near the 30 Australian technical colleges”.

I seek leave to incorporate my remarks in Hansard.

Leave granted.

The speech read as follows—

Mr President, I rise to speak to the second reading of the Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Amendment Bill (No.2) 2007.

This bill establishes a further three Australian Technical Colleges, bringing the total number funded by the Commonwealth to 28.

The Opposition will not oppose this bill. Given that we already have 25 ineffectual, mostly failing ATCs, there seems no reason to oppose the establishment of three more.

And, frankly, any move by this Government to get off its tail and do something to train more skilled tradespeople would have to be welcome.

Despite our criticisms of the ATC program—and they are many and cogent criticisms—Labor in government will not close down the ATCs.

What we will do is to make them work—by bringing them closer to state and territory school and TAFE systems, and by ensuring that their operations are coordinated in harmony with those existing systems.

That is the rational way to go.

The Government, by contrast, has established these outrageously expensive new colleges as a political fix to a policy problem—the dire shortages we find in the skilled trades, the shortages that are holding this country back.

Virtually every one is in a Coalition or a marginal seat. The ATCs represent yet another way for the
Government to try to buy its way out of trouble and back into power at the coming election. The ATCs are the Mersey Hospital writ 28 times. They are a blatant political ploy of a desperate government.

Expensive and wasteful
And it’s an expensive ploy. This Parliament will be appropriating more than half a billion dollars—$550 million—to graduate 10,000 tradespeople by 2010.

That’s $55 000 per graduate! That’s over twice the cost of turning out a student in a similar program in a government school.

On top of that, since most of the colleges are actually in the private school sector, the students will pay fees, like at any private school. So whether a student from an ordinary working family would be able to get into one of these lavish colleges, I doubt very much.

At the moment these colleges aren’t working. They can’t find staff: they can’t find students.

- The ATC planned for the Pilbara in WA can’t open because it can’t attract teaching staff.
- The Lismore-Ballina college hasn’t even got off the ground—no tender has been let.
- Two other colleges have also failed to open so far.
- The Eastern Melbourne ATC has only 86 students, against a planned enrolment of 180, Senate Estimates was told. And it’s costing the taxpayer $15.4 million to under-achieve like this, by over 50%.
- The college in Northern Tasmania has only 120 students, when 175 were projected. That one is costing you and me and other Australians even more—$16.7 million.
- Several other ATCs are also significantly under-enrolled. Only two colleges have met their target enrolment for 2007.

Only one-third of the colleges are legally registered in their own right to provide training. The majority of the training actually provided by the ATCs is outsourced to TAFE and private VET providers.

Robb’s remarks in the House on 13 September. And yet on 13 September, we had the Minister, Mr Robb, claiming at Question Time in the House that the ATCs were “an unqualified success”!

In the face of all the qualifications I’ve just listed, and many more—he has the hide to describe the Government’s farcical initiative, its failed initiative, as “an unqualified success”!

He claims that parents and prospective students—some of the kids still only in primary school—have been flocking to ATC information nights in their hundreds. So how come only two of the colleges have met their target enrolments?

The Minister says that students in ATCs are telling him that “for the first time in their lives they feel motivated, they feel understood, they feel valued.”

He says “We are restoring with these Australian Technical Colleges a great sense of pride and confidence in these young people.”

How can that be? What kind of a difference can the ATCs be making to the education of young people when the majority of their teaching is contracted out to existing TAEFs?

The Minister is talking through his hat. What he says has no connection with the pathetic reality of the situation.

This is irony in the extreme—the whole idea, we were told, was that these new colleges were going to be showcases that were ultra-responsive to local industry needs. They would be state-of-the-art establishments that would inspire the stick-in-the-mud states and territories to lift their game.

The Prime Minister himself said, on 26 September 2004:

“The creation of 24 Australian Technical Colleges will promote pride and excellence in teaching and acquiring trade and craft skills at the secondary school level ...

All Australian Technical Colleges will be run autonomously by their principals, who will also engage teaching staff on a performance pay basis, attracting teachers of excellence with up to date industry and skills experience.”

Far from being “run autonomously by their principals” and “attracting teachers of excellence”, the colleges are in fact being run by someone
other than their principals and the students taught by existing TAFE and private VET college teachers!

In my own state of Victoria, the Howard Government admits that 5 out of the 6 ATCs have actually outsourced their teaching to TAFE colleges—the very colleges suffering from funding starvation under the current Federal Government’s policies.

I am sure the TSFE colleges and their staff are doing a fine job, but that’s hardly the point.

Only nine of the existing 21 ATCs have no relationship with the established TAFE system. So much for a ground-breaking new model! So much for a new broom for trade training!

The spin that accompanied the establishment of these colleges assured us that all the students would secure apprenticeship placements. This would happen, it was said, because the ATCs would have much better and closer relationships with local industries and employers than other VET providers have.

Yet students at many of the ATCs have been unable to find apprenticeships. At the Illawarra ATC, for example, against a targeted enrolment of 50 only 35 students have enrolled. Of these, only 20 have been given apprenticeships.

ANAO report

Recently the Australian National Audit Office released a report on the ATC program. This report confirmed the litany of problems I have outlined today. It found that, in the tendering process for the Australian technical Colleges:

- Insufficient attention was paid to state and territory governments;
- Initial tender applications were weak and inadequate; and
- There was little choice among applicants.

The ANAO found that, with respect to nearly half of the initial 24 colleges, tenders were awarded based on only one or two applications. The ANAO said that:

“… an option… may have been to return to the market to develop more industry and community interest…”

A sad but wise comment, especially given that the Government’s ATC website assured us that the colleges would be established in:

“… areas where there are skills needs, a high youth population and a strong industry base.”

It would seem that the clamour from industry and the community for these Howard Government new-style colleges was so deafening that no one could hear it!

This whole program is a miserable embarrassment for the Government. This is expensive and wasteful.

It is not far short of a farce. Labor in government will move swiftly to repair this idiocy. We will sit down with the states and territories and sort out some rational and sensible way out of this mess. As I say, we won’t close the colleges down, but we’ll get them running on a reasonable and efficient footing.

Context—trade skills shortages, and funding

The whole comic tragedy of the Australian technical Colleges needs to be seen in the context of the serious shortage of skilled tradespeople that Australia faces.

We sorely need more qualified tradespeople. It’s a pity that this Government chose to set up a political stunt, rather than to be serious about redressing the funding shortfall in public TAFE and in public schools.

In 1997 the Howard Government cut funding to public TAFE. Commonwealth funding decreased by 13% over the years 1997 to 2000. The increase in the subsequent four years was a miserly 1%.

The Government’s own estimates put the projected shortfall in skilled workers over the next five years as high as 200,000.

A large proportion of existing tradespeople are due to retire in the next decade or so—they are baby-boomers.

Over 400,000 workers in the statistical category “tradespersons and related workers” are aged over 45.

These valuable skilled workers have to be replaced. We are not turning out nearly enough of them. The Government seems to think it can get away with importing skills through use of the 457
visa program but that is not a sustainable long-term option.

Australia needs to train up our own young people for careers in the trades.

Comparison with Commonwealth funding for TAFE

I have said that the ATC program borders on the farcical. Just take a look at these figures and tell me I’m right:

- The Government says it’s going to fund 10,000 students at Australian technical Colleges. Over four years, that will cost the taxpayer more than $550,000.
- At the same time, it has announced that it is funding 128,000 additional training places in the TAFE system. How much will the Commonwealth contribute to funding those 128,000 students? Just $215 million—less than half the amount it’s shelling out for just 10,000 students in ATCs.

This beggars belief. It proves beyond the shadow of a doubt that the Australian Technical Colleges program is no more and no less than a shabby political stunt—and a mighty expensive one at that.

It is irresponsible to waste taxpayers’ money like this. It is hollow vote-grabbing. The Government should hang its head in shame.

Labor’s plans for trades training

In contrast to the Government, Labor is serious about addressing the magnitude of the current skills crisis for all Australians.

Labor believes that Australia must focus on areas of maximum impact, including:

- TAFEs, which remain responsible for the substantial majority of post-secondary VET;
- VET in Schools; and
- On-the-job trades training.

Labor has already announced a 10 year, $2.5 billion Trades Training Centres plan aimed at the 1.2 million students in Years 9, 10, 11 and 12 in all of Australia’s 2,650 secondary schools.

By contrast, I remind you, the Government’s own estimates show that a maximum of 10,000 students are expected to graduate from the ATCs by 2010.

The Labor plan will provide secondary schools with between $500,000 and $1.5 million to build or upgrade VET facilities in order to keep kids in school, to enhance the profile and quality of VET in schools and to provide real career paths to trades and apprenticeships for students.

As well as providing infrastructure to improve vocational education and trades training in secondary schools, Labor has a plan to introduce a Job Ready Certificate for all vocational education and training in school students.

This Certificate will assess the job readiness of secondary school students engaged in trades and vocational education and training.

Students will obtain the Job Ready Certificate through on the job training placements as part of Labor’s Trades Training Centres in Schools Plan.

The Job Ready Certificate will be a stand alone statement of a student’s readiness for work and will be in addition to a Year 12 Certificate and any separate vocational education or trades training qualification.

The certificate will provide students who complete secondary school with an increased awareness of the skills necessary in the modern workplace.

It will also provide employers with a tangible reference, indicating whether students are capable and ready to work.

The Job Ready Certificate will demonstrate that students possess basic workplace skills, including:

- Communication
- Initiative & Enterprise
- Self-management
- Technology
- Team Work
- Problem Solving
- Planning & Organisation.

At present, there is no requirement for education and training providers to issue a formal statement of employability skills.

This has been an ongoing issue for industry, with repeated calls from the Business Council of Australia (BCA), the Australian Industry Group
Federal Labor is committed to making education and training more responsive to the needs of industry.

The *Job Ready Certificate* is a key part of Labor’s 10-year $2.5 billion Trades Training Centres in Schools Plan—which includes $84 million to ensure students involved in trades training received one day a week of on-the-job training for 20 weeks a year.

It will be implemented in cooperation with industry, States, Territories and schools.

By making VET a viable option for all secondary students, Labor’s plan will make a real and significant dent in the current skills shortage.

**Conclusion**

As I noted at the outset of my remarks, despite our serious misgivings about the ATC program, a Labor Government will not close down existing Australian Technical Colleges. We will honour all current contracts with providers.

But we WILL move to transform this misguided stunt of a program into a genuine part of Australia’s education and training system. We will work with the states and territories, and with private providers, to achieve this.

We will put an end to the waste of taxpayers’ money that characterises this program.

At the same time, as I have outlined, we will take definitive and concrete steps to improve the supply of skilled workers—to provide the skills that are essential to Australia’s future prosperity.

We will educate and train Australians so that all can play a part in the great enterprise of creating a future for our nation based on innovation. That’s Labor’s vision for tomorrow’s Australia.

**Senator WEBBER** (Western Australia) (1.53 pm)—I seek leave to incorporate speeches by Senators Crossin, Wortley, Carol Brown, Polley and Bishop.

Leave granted.

**Senator CROSSIN** (Northern Territory) (1.53 pm)—The incorporated speech read as follows—

This Bill amends Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Act 2005 to increase funding in total for 2005 to 2011 by an additional $74.7 million.

This is largely to account for an additional 3 further colleges.

ATC’s are now located across the country with some 90% in coalition held seats.

The flaws of this policy and of ATC’s not withstanding, many of these colleges are now established and open, albeit with far fewer students than expected or desired, and at far greater cost per student than would have been the case if the existing TAFE system had been used.

In view of the continual attacks on all higher education funding by the Howard Government, Labor have accepted these colleges and supported the concept, albeit with reservations. Any additional funds for our higher education sector are welcome so this bill is supported.

The Howard Government has presided over ongoing cuts to VET funding that have seen hundreds of thousands of young Australians denied a place in college.

The Howard Government has, despite many loud and clear warnings allowed the number of trainees and apprentices to fall to the stage where we as a nation are now confronting a massive skills shortage which is severely hampering our productivity and growth.

They of course claim this is not so and that numbers of trainees have risen, but they ignore the fact that the bulk of any increase is in non traditional trade areas, such as retail or fast food outlet trainees.

They ignore too the fact that many of those commencing training are not actually finishing the course for whatever reason.

It is in the traditional trade areas, such as construction, manufacturing and mining that major shortages exist.

It is putting at risk our future productivity and prosperity.

These Australian Technical Colleges were devised as policy on the run, and announced with minimal planning or consultation.
They were devised as a means of competing against existing Labor state and territory TAFE systems with a requirement for staff to be on AWA’s. So they were governed not by any sound educational reasoning but pure Liberal ideology.

They were far too little and too late, and as so often happens with policy on the run they were established in a hurry, with inadequate planning and time.

A report by the ANOA, released in July, into these ATC’s found that too little attention had been paid to state and territory governments; initial tender processes and applications were weak and inadequate and that there had been limited choice among applicants.

In nearly half of the first 24 colleges there were as few as 1 or 2 applications. A fairly underwhelming response from the business world.

The ANAO found that in one region the program had to address significant issues because of the coexistence of a new college with existing State schools.

The ANAO found that the Commonwealth should have carried out greater risk assessments of organisations bidding to set up and run the colleges. None of this should have been surprising as applications were largely from businesses or groups thereof who, with all the best will in the world, were totally inexperienced at submitting for educational facilities.

Additional work had been required with the Department on many applications in order to finalise them with proper costing or business plans.

The ANOA believed that many applications were so weak that a better option may have been to return to the market and try again. However, as usual with this complacent and arrogant government they refused to consider doing this.

While an average school may well be up to 4 years in the planning and establishment, four of these ATC’s were open within just 6 months of being approved. Again government claims this as a positive move—but the ANAO report held otherwise.

As a result these ATC’s, first announced as part of the 2004 election promises, have not produced one graduate—that is 3 years and nearly half a billion dollars down the track. Indeed there is no immediate sign of any graduates even this year.

The ATC’s have been at best a poor policy also badly executed and at worst a cynical political exercise.

There are still well under 2000 students enrolled while the target was for some 7500. Again the Minister tries to put sufficient spin on this fact to claim they are well on target for enrolments. Sad for the government their spin doctors are running out of words.

Most of those colleges that are open have to outsource the bulk of their training to existing schools, TAFE’s or other Registered Training Organisations as only one third of them are actually registered training organisations in their own right.

Furthermore, to add insult to injury not all students enrolled have been able to find employers to give them apprenticeships, which was an essential part of this concept. Despite government claims of great acceptance by business of these colleges, this seems not be wholly true either.

Critics say that these colleges duplicated existing state programs, government estimates of enrolments had been over estimated and costs had blown out. All of these are of course absolutely true.

Many then are in effect “virtual colleges” with a staff only of administrators, but no teachers or actual facilities other than an office or so.

Despite this the government still try to blame the skills shortage on the states for past neglect and insist that these colleges are going great guns. Despite the fact that enrolments in traditional State and Territory TAFE colleges continue to rise while ATC’s struggle to get the numbers.

Just how out of touch with national needs and lack of progress can you get? How much spin can a government try to bamboozle the electorate? Fortunately for Australia it seems that the nation has ceased to believe or accept the vast amounts of spin put on reality by an out of touch and out of favour government.

The Australian Technical Colleges were a political fix for what was a long running policy failing, and so it is not surprising that they are nowhere
near achieving a solution to our skills shortage, neither will they, with under 10,000 graduates expected by 2010 while the government even admits to a skills shortage of 200,000 workers in the next 5 years.

In order to seriously address the skills shortage Australia must invest in the existing TAFE’s which continue to deliver the vast bulk of post secondary VET.

We need to put more resources into VET in schools and on the job training.

Only Labor has such a positive policy proposal for Trades Training Centres aimed at the one million students from year 9 up in our secondary schools.

This will give all secondary students a chance of working and learning in the traditional trades areas.

They will be assisted to access one day a week of on the job training, all of which will go towards their Job Ready Certificate.

Despite all the shortcomings of ATC’s as policy, Labor will not close any of them.

While the establishment of 3 more colleges in an election year could be seen just as a cynical political move, any TAFE funding increase is better than what has happened over the past decade.

Labor will support this bill but condemns the Federal Government for failing to act to address the growing skills needs of the national economy. But this Government has failed to ensure that young Australians could get the skills training they need for skilled jobs.

It has cut funding to VET by 13% from 1997 to 2000 and only increasing by 1% from 2000 to 2004, and created an expensive and duplicative network of stand alone Australian Technical Colleges with little consultation or cooperation with the states and territories.

The best this government can do is appropriate half a billion dollars for 30 colleges that will at best produce only 10,000 graduates by 2010 when the government itself estimates a skill shortage of 200,000 skilled workers and it’s record will show that it has put at risk the future of so many young Australians and our future prosperity.

Senator WORTLEY (South Australia) (1.53 pm)—The incorporated speech read as follows—

I welcome the opportunity to add my voice to those already heard in this place concerning the Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Amendment Bill (No. 2) 2007.

The purpose of this Bill is to implement a 2007-08 budget measure for the establishment and operation of three additional Australian Technical Colleges.

These ATCs, Scheduled to open by 2009, will cater for approximately 900 students and will be located in Northern Perth, Southern Brisbane and the greater Penrith region of New South Wales.

Labor supports the Bill in the interests of movement towards alleviating Australia’s acute skills shortage, but continues to hold reservations about the present and future effectiveness of what has already been exposed as a—characteristically—cynical and politically motivated scheme.

Labor’s Shadow Minister spoke to a second reading amendment on 7 February and again on 9 August this year, expressing his concerns about the program’s value and effectiveness, but also its inefficient and very costly implementation to date at the expense of an already established—though neglected—vocational training infrastructure.

I, too, have previously addressed the issues related to the Government’s hasty policy making and implementation with regard to skills training.

There are 21 ATCs currently operating. Four more are to open in 2008, with the three new ATCs to commence operations in 2009.

Current estimates show that 8,400 students will be enrolled across Australia when all ATCs are fully operational which is expected to be in 2009. 8,400 students enrolled…However, it is estimated that more than 200,000 skilled workers will be needed in Australia over the next five years.

Indeed, according to the Government’s own projections, 240,000 more skilled workers will be needed by 2016.

And the first graduate from the Australian Technical Colleges is not expected until 2010.
And my research reveals that when these students graduate from the ATC, they will have the approximate equivalent of one third of an apprenticeship... what this means is that graduates will likely have approximately one and half years of a three to four year apprenticeship...

So in fact, even those graduating from an Australian Technical College in 2010, will be between two and three years away from being the skilled workers we so desperately need...

So what has the Howard Government been doing for 11 years to address Australia’s skills shortage?

In the year 2005, the unmet demand for education and training places in TAFE institutes was 34,200. That is 34,200 people who wanted a place but could not get one...

In the same year, the unmet demand in the whole of the vocational education training sector was 45,100. These are not just figures; these are 45,100 real people with real families who wanted to embark on training to gain skills...real people who were turned away.

Forty-five thousand Australians who potentially could have graduated as skilled workers this year or next year...

There have also been concerns raised about the overall impact on the institutions already up and running in the TAFE and VET sectors, which could be providing the skills training...

The average expenditure for each student who goes through the Australian technical colleges will exceed by thousands of dollars the average expenditure for each student in TAFE.

In addition to the set-up and operational costs that we are discussing here today, Australian technical colleges are entitled to all of the funding available to schools under the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004.

They are also entitled to general recurrent funding per student, most of them at the non-government school rate.

They will also have available to them targeted funding for special programs and capital funding. The ATCs will also receive the relevant state funding. And they will receive all this, while the Howard government fails to make a genuine commitment to our existing TAFE system.

Instead of working in partnership with already established vocational providers and tapping into the existing expertise to maximise training outcomes, the Howard government embarked upon a course of its own...

So what led to us standing here today, what was the process and why are we back here again amending this Bill...

There is no doubt that the establishment and operation of ATCs has not gone to plan.

On 30 March 2005 DEST invited submissions from consortia—which included government and non-government schools, registered training organisations, local councils, industry bodies and local businesses—to establish colleges. The closing date was 20 May 2005. This allowed a period of some seven weeks for the preparation of submissions! A total of 73 proposals were received, four after the closing date. All were assessed by DEST.

The Australian National Audit Office (ANAO) Report released—two months ago—clearly sets out the problems that have resulted from the Government’s approach.

Among other issues, the Auditor General refers to the inadequate period of time allocated for the planning and implementation of the program.

The ANAO report raises concern about this haste stating:

“The policy provided DEST with little time to plan for the establishment of the colleges. The new schools had to be established in far less time than is usual for new schools, which can take three to four years of preparation before acceptance of their first students. This limited time made more difficult DEST’s tasks of selecting the best educational and financial models to achieve the programme’s objectives.”

Among the consequences of this were:

- Insufficient time to allow the preparation of well-developed, thoroughly costed proposals … resulting, in many instances, in little or no choice in consortia available to DEST;
- Inadequate consultation with state and territory government education authorities and
relevant organisations, with the result that existing systems and infrastructure have been duplicated.

The Auditor General states that a formal, ongoing strategy to deal with the interests of State and Territory governments ‘would have been beneficial’, as these are key stakeholders in implementing the program and have, after all, experience in the provision of secondary schooling:

- Duplication of curriculum areas: each ATC develops its own training curriculum for the same, small number of trades and small numbers of students—which is both time consuming and costly;
- Waste of public funds in pursuit of a quick political fix: of the five colleges visited during the audit, the Auditor General examined two in detail; DEST advised him that each of the two colleges were required to open with minimal planning in order to meet the very tight establishment time…and that each had to rent and refurbish premises for one or two years while permanent buildings were designed or identified;
- Development of policy ‘on the run’: as the Report acknowledges, given the short period allowed for planning and implementation of the ATCs … DEST was obliged to develop policy and procedures ‘as the program progressed’;
- Over estimation of the number of students to be enrolled in 2006: three of the first five operating ATCs signed Funding Agreements in December 2005 and one of these opened in August 2006. As the Audit Report comments, ‘signing Funding Agreements close to the opening date and not commencing at the start of the school year is likely to adversely impact on the number of enrolments’.

There are also issues related to the Government’s direct funding of the consortia via Funding Agreements.

- A significant number of initial business plans and proposed budgets required additional work.

DEST informed the Government that although successful applicants could be announced, this further work would be required before DEST could finalise Funding Agreements.

To announce ‘successful’ consortia for short-term political purposes, in circumstances such as these, shows a very nonchalant disregard of proper financial management;

- The Audit Report notes that the typical Funding Agreement ‘provides funding by way of grants based on the application of the individual college, not by the use of a formula based on student numbers;

Given the number of students currently enrolled—only 1800 in total—this strategy can hardly represent acceptable deployment of taxpayers’ monies;

The Auditor General’s report reveals that ATCs leasing land or buildings, or carrying out capital improvements with public funds, are obliged under the Funding Agreement to enter into a Purposes Agreement with the Commonwealth—if requested by DEST.

In one instance documented in the ANAO Report, an ATC had spent approximately $M6 refurbishing a leased property, but no Purposes Agreement had been signed. The landowner in this instance was known to the Commonwealth to be an established institution.

Cleary, though, neglecting to execute a Purposes Agreement in such circumstances must increase the risk that the Commonwealth would have limited recourse to funded assets, in the event that an ATC ceased to operate on, or before completion of, a Funding Agreement.

This episode provides yet more evidence that the scheme has been poorly thought out and implemented, and is fraught with potential difficulties such as those I have just outlined.

I understand that conflicts of interest have emerged and that mingling of operational and capital funding has occurred. When asked about a particular instance, DEST advised the Auditor General, significantly, that:

‘In this case the imperative to establish the College quickly determined the need to procure items
urgently ... to meet the very tight establishment time frames ... DEST went on to say These colleges have been required to open a school with minimal planning time ... It is inevitable that no existing buildings would satisfy the educational requirements of the colleges, thus refurbishment has been necessary in all such instances ... DEST concluded saying This approach reflects the Government’s objective to open the colleges as quickly as possible ...”:

- In another instance outlined in the Report, potential conflicts of interest around leasing, employment and the provision of services emerged in an ATC.

While a subsequent inquiry revealed no undue gain to companies associated with ATC board members, the Audit Report indicates that competitive quotes and a rental valuation had not been obtained, and no formal contracts had been entered into by the parties.

The dangers inherent in such a hasty approach, coupled with insufficient scrutiny of transactions, need hardly be spelt out.

The Auditor General’s Report reveals also:

- undue haste
- poor planning
- insufficient consultation
- duplication of resources
- inattention to issues of governance and risk
- ever-increasing cost
- inadequate levels of operational scrutiny,
- and potential for the loss of objectivity in decision making with regard to public funds.

The process applied in the establishment of the Australian Technical Colleges is another example of how this government has neglected, downgraded and failed to act in so many areas ... until compelled by electoral imperatives, of course— with the result being, poorly drafted legislation and planning that is rushed ...

For 11 years under this government vocational education and skills training have been systematically neglected — more accurately, systematically downgraded ...

The Government refused to adequately invest in our TAFE system ... the system established to deal with post-secondary vocational education and training ...

The Government has squandered the goodwill and co-operation of education partners in its pursuit of ideological goals, and is reaping a pitiful harvest in the form of an ever more pressing skills crisis in this country.

Once out of touch and complacent, now out of touch and panic-stricken, this government has failed time and time again to deal with the real issues that confront families and workers every day.

High among these, as I have said, are the skills shortage that continues to critically impact Australian industry, and the need for effective skills training — now and in the years to come.

The Howard government has failed to make provision for Australia’s long-term, productive future.

A Labor government would maintain the established ATCs but would transfer their management into the state-based skills and training education system ... this could include the TAFE system, the Catholic or Independent Secondary system, an industry skills and training arrangement or even industry itself. And this would be done through consultation with all interested parties and as contractual agreements allow.

And a Labor government would provide $2.5 billion in capital funding over 10 years to build new trades training centres in Australia’s secondary schools to promote vocational education for students in Years 9 to 12.

This commitment would be supported by programs targeting stronger links between schools and industry and improving student access to on-the-job training.

To give a young Australian the chance to get ahead, to maximise his or her potential, to take a valued place in a forward-looking, contemporary society, is one of the important things a Labor Government would do ... for the sake of all our futures ...
Senator CAROL BROWN (Tasmania)  
(1.53 pm)—The incorporated speech read as follows—

The Bill before us—the Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Amendment Bill (No. 2) 2007 provides funding for three more Australian Technical colleges—announced in this year’s budget.

This bill will amend the ATC Act to allow for an additional $74.7 million in funding for the three additional Australian Technical Colleges announced in the 2007-08 Budget. This appropriation will take the total cost of establishing 28 colleges to $548 million.

Now the skills crises did not just happen over night—the skills crisis we know has arisen as a result of complacency and neglect by this government—despite warnings for many years about skills shortages. This Government has presided over a skills shortage of 200,000 and what do we see from the Australian Technical Colleges initiative. These colleges will see less than 10,000 graduates by 2010.

Having illustrated that this initiative is patently inadequate and is more about a political fix for this government—a government that becomes more out of touch and arrogant as each day passes.

Labor will not oppose the bill, as we are willing to support, in principle measures that are, in theory, aimed at addressing the skills crisis facing our country.

Indeed not withstanding the flaws of the Government’s ATC plan, Labor has committed not to close the colleges down, if elected.

Enough money has been wasted already duplicating infrastructure for the purposes of political gain.

So Labor will not be tearing up contracts. We won’t be closing ATCs.

Labor is committed to sitting down with relevant parties when the contracts do expire to work out the best and most appropriate way of folding the management of the ATC’s into the state based systems.

This just makes sense. Why have separate systems working against each other that are working towards achieving the same goal?

Having said that, one thing needs to be made quite clear—the ATC’s—the Howard Government’s attempt at fixing the skills shortage facing this country is unfortunately nothing more than a blatantly political answer to what is a serious practical problem.

Everything about it smells of politicking and the poor performance figures of the existing colleges sadly prove this.

The Minster for Vocational and Further Education, Mr Andrew Robb recently attempted to claim that there had been an increase in the number of apprentice completions in the last four years.

However what Mr Robb did not say is less than half of completions in 2006 were in the traditional trades- such as plumbers, carpenters and electricians—where we face the most acute skills shortages.

And while the Minster tries to beat up figure to mask 11 years of neglect in the lead up to this years election—the skills crisis in Australia continues.

Indeed according to the Governments own figures, Australia will face a shortage of more than 200,000 skilled workers over the next five years. Why? Because for 11 long years the Government has chosen to sit on its hand and to under invest in traditional trades training.

Because it decided to slash funding to the existing state-based TAFE systems , with commonwealth revenues in vocational education decreasing—when they should have been increasing—by 13% between 1997-2000 and only increasing by a pitiful 1% from 2000-2004.

Indeed it has been estimated that the Governments grave neglect and under funding in this area has resulted in over 325,000 people—seeking trades training and skills—being forcibly turned away from TAFE training facilities since 1996.

There is not doubt that the Howard Governments neglect of the traditional trades is responsible for the situation we find ourselves in today.
And the Government’s solution?

To establish around 28 ATC’s in ‘nominated’ regions around the country—90% of which are unsurprisingly located in marginal electorates—such as Bass and Braddon, in Tasmania, at a cost of around half a billion dollars.

They have chosen snub and shun the existing state-based TAFE system—preferring to spend tax-payers dollars on building duplicate facilities to compete with that of the states.

The result?

After three years and more than half a billion dollars the Governments ATC’s the fact are these:

- have not yet produced a single graduate
- Only 1800 enrolments
- Just two out of 21 colleges are meeting their 2007 enrolment targets
- An average cost of nearly $175,000 per student
- Only one third of colleges legally registered to provide training; and
- Outsource the bulk of their training to TAFEs or registered training organisations.

Indeed according to the Minister for Vocational and Further Education only nine of the current 21 colleges have no involvement with the TAFE system. So what exactly is the ½ billion in taxpayers money actually going to?

With currently only 1,800 enrolments on total, and some colleges struggling to find apprentices for students that have enrolled—it does not look like there is much end in sight to the skills crisis facing Australia.

This is the Government’s answer to the skills crisis problem it has created over the past eleven years. This is the best that it could come up with.

This is so typical of this government—a government that for a long time now has and will continue to under invest in essential ‘infrastructure’ such as trades training.

It just proves that for a long time now—this government has been hiding behind the economic prosperity of the mining boom—but yet has had no real plan for the future.

And here we are—three years on from the 2004 political stunt that is the ATCs and with another federal election looming all we have from this Government is to duplicate the states trades training system, spend millions of dollars doing it and not even produce one single graduate!

And it is not just in the case of trades training that the Governments lack of vision for the future is being exposed.

It has for the past 11 years it has placed its head in the sand and denied the reality and threat of climate change.

It has failed to come up with a ‘broadband’ solution for all Australians.

And it has ignored the struggle faced by many families around Australia when it comes to managing their everyday living costs—whether it be paying the mortgage, rent, or paying for childcare, groceries and petrol.

This Government just does not get it. It has proven that it does not comprehend what is needed in the short term to ease the pressure on working families in this country—many of which are at breaking point—or what is needed in the long-term keep our economy strong after the mining boom diminishes.

Indeed, the way in which it has chosen to respond, after 11 long years on neglect, to the skills crisis facing this country is illustrative of just how this government operates- slapping together a political appeasing, short-term policy targeted at voters in marginal electorates in an attempt to ensure that they retain power at the next election.

There is no long-term plan for the future, no genuine commitment to overcoming the problem faced and no real policy that is likely to bring about real results.

It is the lack of results and the duplication of the state based system that has led to Labor retaining strong reservations about the effectiveness of the Australian Technical Colleges program and its capacity to genuinely combat the severe shortage of skilled labour in the country.

Enrolment figures discovered during Budget Estimates reveal that just two of the 21 existing colleges are meeting their enrolment targets.
Indeed the combined total of enrolments for the two Northern Tasmanian campuses located in Burnie and Launceston is just 120, 55 students short of the 175 student target.

So what is this going to mean?

Economic growth in areas like that of Burnie and Devonport on the North-West Coast of Tasmania that are currently experiencing a period of increased development will be stunted because there is simply just not enough skilled tradesmen to keep up with the amount of work on offer.

Indeed this situation is not confined to the North-West— it is one relative to the whole state, with the Tasmanian Survey of Business Expectations for the March quarter 2007 noting that “the availability of suitable qualified employees continues to be the number one constraint on business” in Tasmania.

Therefore government’s decision to opt for this short-term, ‘band-aid’ solution to the problem is not only failing to overcome the skills shortage, it is preventing and stifling economic growth in regional centres all across the country.

And what’s more, it is not only preventing economic growth but it is denying people that want to take advantage of jobs created through increased development the opportunity to work, because they are unable to access the requisite trades training.

These are the kind of situations that we have to look forward to under the Government’s short-sighted, politically motivated plan.

It is clear that the immediate solution to such a skills shortage is not going to be found in the technical college program- with enrolments not even coming close to reflecting the demand for skilled labour.

Skill shortages are holding back businesses and denying opportunities to young Australians:

- A survey of more than 760 producers by the Australian Industry Group report, Australia’s Skills Gap: Costly, Wasteful and Widespread, one in two firms are experiencing difficulties obtaining skilled labour; and yet,
- according to another Ai Group report, It’s Crunch Time, one in five young adults have not completed year 12 or a Certificate III vocational qualification.

Inadequate workforce skills have contributed to Australia’s declining productivity performance in recent years—putting at risk our long term economic prosperity.

Skill shortages have also been identified by the Reserve Bank as being a factor contributing to higher inflation and interest rates.

What is needed is an approach that utilises existing institutions and structures and allows kids to receive the training they require, right from high school.

In contrast to the Government’s approach, Labor has announced that its $2.5 billion Trades Training Centres plan aimed at helping the 1 million students in Years 9, 10, 11 and 12 in all of Australia’s 2,650 secondary schools access trades-based training.

The plan will provide secondary schools with between $500,000 and $1.5 million to build or upgrade trades training facilities and provide $84 million to ensure all vocational education and trades training students get one day a week of on the job training for 20 weeks a year.

It will also see the development of new Job Ready Certificate as a statement of a student’s readiness for work in addition to a Year 12 Certificate and any separate vocational education and training qualification.

Labor’s plan is aimed at tackling the skills crisis head on, by providing all Australian’s with the opportunity to access trades-based training— not just those that live in marginal electorates.

And of course Kevin Rudd and Labor recently announced the establishment of Skills Australia—if Labor wins the election.

Skills Australia, will be an independent statutory body to advise government on fixing the nation’s skills crisis—which is expected to worsen.

Government’s own research shows we will need 240,000 more skilled workers by 2016 to ensure our economic future.

Skills Australia will play a central role to ensure we lock in a full-employment economy and developing a highly skilled and innovative workforce for the future.
Skills Australia will provide government with recommendations about the future skill needs of the country.

The recommendations made by Skills Australia will help inform government decisions to encourage skill formation and drive ongoing reform to make our education and training system more responsive to business and economic needs of the nation.

Skills Australia will make sure that the skills crisis we are currently suffering from doesn’t happen again—because Labor will have a national approach to it.

For too long kids in this country been lead to believe that a university degree was the only desirable qualification.

For too long, this government has neglected to acknowledge the crucial role that workers with trades based qualifications play in keep this country running and afloat.

This neglect is reflected not only in their under funding of trades training over the past eleven years but also in their Industrial Relations reforms that deny such workers, along with the rest of the country—their basic rights and conditions.

A Government that respected and acknowledged the hard work and long hours that the majority of these trades-based workers put in would not put in place laws that take away their basic rights and conditions.

Workers in trade-based industries—such as plumbers and electricians—because of the nature of the industry—more often than not are forced to work long hours in substandard conditions to get jobs done.

They often incur situations that put then in a relative degree of danger and are forced to be on call during traditional non-working hour times.

These are the people that keep things running in our towns and cities—they are the ones behind the scenes—making sure everything works and are often the one’s called upon to avert disaster.

They should be not only valued but acknowledged for the vital role they play.

But for eleven long years the government has chosen to neglect the valuable role that such workers play—by under investing in trades based training and stripping many existing tradies of their basic rights and conditions in the work place.

This Government after eleven long years in power—roaming the corridors of parliament—have lost touch with the people of Australia and what is needed to see this country prosper into the future.

They have forgotten what it really takes to make things work in this country.

Labor has committed to keeping the existing ATC’s open, if it wins the election.

Labor also has chosen to support this bill, not wanting to deny any initiative aimed at in theory aiding the skills shortage in the country.

But when all is said and done the Governments ATC’s policy proves one thing—that this is a government that is short-sighted, election driven and out of touch.

Senator POLLEY (Tasmania) (1.53 pm)—The incorporated speech read as follows—

I rise in the chamber today to regarding the Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Amendment Bill, 2007.

As a growing body of evidence shows, long-term social and economic outcomes are significantly influenced by the investment that nations make in the education and training of their people.

On measures of pre-school, school, vocational and tertiary education research, Australia has fallen well behind its competitors. We need an education revolution. We must lift the quantity of investment in education and the quality of education outcomes.

We cannot afford to waste the talent and potential of any Australian. We must set for ourselves a new national vision—for Australia to become the most educated country, the most skilled economy and the best trained workforce in the world.

Labor believes that Australia’s economic prosperity can only be guaranteed by training a highly-skilled workforce. Vocational education and training helps Australians develop skills to obtain and perform effectively in secure, sustainable and satisfying employment, and to use those skills to
ensure our national economic prosperity. Labor will invest in those skills.

While Labor supports additional expenditure in the critical area of vocational education and training, we recognise that the Australian technical Colleges are a political, duplicative response, and, in essence, do not address the serious skills shortage in Australia.

By the governments own estimates, Australia faces a skills shortage of more than 200,000 skilled workers over the next 5 years. Again, using the Governments own figures, Australian Technical Colleges can’t produce any graduates until 2010.

In order to seriously address the magnitude of the current skills crisis, Australia must focus on the areas of maximum impact, including in TAFE and on the job training.

I wish to reiterate Stephen Smith’s comment that labor DOES NOT oppose implementation by the government of its 2004 election commitment.

But, I wish to make this point clear- After three years and more than half a billion dollars, the Howard Governments Australian Technical Colleges to date have not produced one single graduate.

The cold reality of the Australian Technical Colleges is this:

- There are only 1800 enrolments in the entire country
- These technical colleges are not addressing the skills shortage
- The average cost of the training for each student comes to a staggering $175,000
- Only one-third of the colleges are currently legally registered to provide training
- And ... they have outsourced the bulk of their training to TAFES and other registered training organisations

Disappointing, but true.

Only a Labor government will take a sensible approach to address the skills shortages in Australia. A Rudd Labor government is committed to utilising the infrastructure and expertise that TAFE can offer.

Furthermore, A Rudd Labor Government will use Vocational education in schools and on the job trades training to address the skills crisis.

While the Howard government is only concerned about getting re-elected by building a network of Australian technical colleges in coalition and marginal seats, Labor is serious about addressing the magnitude of the current skills crisis facing the Australian community.

Labor has announced a 10 year, $2.5 billion trades training centres plan aimed at the 1.2 million students in years 9, 10, 11 and 12 in Australians secondary schools.

As well as providing infrastructure to improve vocational education and trades training in secondary schools, labor has another plan...

Labor will introduce a job ready certificate for all VET and training-in schools students. This is an initiative that would assess the job readiness of secondary school students engaged in trades and vocational education and training.

Students will obtain the Job Ready Certificate through on the job training placements as part of Labor’s Trades Training Centres in Schools Plan.

The Job Ready Certificate will be a stand alone statement of a student’s readiness for work and will be in addition to a Year 12 Certificate and any separate VET qualification.

The certificate will provide students who complete secondary school with an increased focus and awareness of the skills necessary in the modern workplace.

I believe this is a fresh approach to an area that definitely needs reform.

Federal Labor is committed to making education and training more responsive to the needs of industry. Australia’s ability to meet the growing need for skilled employees across the country is crucial to ensuring our future prosperity.

Labor understands the emerging and ongoing skill shortages faced by business must be addressed. Australia’s skills base can only be secured through a sustained commitment to providing training opportunities for more Australians.

This task cannot be left to government alone. Labor will encourage more businesses to increase
their local training programs, rather than turning to temporary skilled migration.

Labor believes that Australia’s skill needs will only be secured through lasting solutions, such as expanded education and training opportunities complemented by a balanced skilled migration program with an emphasis on permanent migration.

Labor supports the development of a genuinely national system of vocational education and training, with increased resources from government and employers for growth and for improved quality. This will include strategies to improve and modernise vocational education and training to provide contemporary programs that meet the changing needs of students, industry and the community.

Labor supports a national training system underpinned by a national qualifications framework, with nationally recognised and portable qualifications, and interstate recognition of the registration of training providers consistent with national registration standards and auditing processes.

Labor is committed to maintaining the integrity of Australian trade qualifications and ensuring that there is an effective and thorough system in place to recognise skills obtained both domestically and overseas, so that qualifications consistent with Australia’s national training system are recognised, including through rigorous and effective trades recognition and skills assessment in the electrical and metal trades.

Labor recognises the important role played by TAFE as the public provider of quality training to assist the government in achieving its policy goals for economic development and social justice, and in meeting the technical and further education needs of the Australian community.

Labor supports a cooperative approach between the Commonwealth, States and Territories to maintain and further develop a high quality, national vocational education and training system built upon nationally agreed objectives, strategies and planning processes.

TAFE has suffered 11 years of funding cuts.

Labor has come up with this plan to rectify the Howard governments neglect.

It’s no secret that the Australian technical colleges are not working...

In my home state of Tasmania, the Examiner Newspaper reported that the Launceston Technical College is operating at less than 70% capacity, with only 120 places being filled out of a target of 170.

The Howard government has spent 11 years with their head in the sand. They have failed the young Australians of this country with their complacency. Its high time the Howard government own up to their grave mistakes and take responsibility. Australia’s ability to meet he growing need for skilled employees across the country is crucial for the future prosperity of the nation. I, like Kevin Rudd, make no apologies for valuing vocational education. I believe a trade certificate is just as good as a university degree. We are facing a serious skills crisis in Australia, and this Bill does little to address that.

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

Mr Acting Deputy President, this Bill seeks to do one simple thing:

Appropriate $74.7 million to establish three new Australian Technical Colleges.

Since the Government has the numbers in this place, it’s a fait accompli.

Nevertheless, the policy and politics on which this program is based are another indication of how the Howard Government has lost its way.

The need for fresh investment in technical training in Australia is chronic.

That’s indicated in convincing detail in Labor’s policy paper:

New Directions for Vocational Education and Training, released last May.

The economic imperatives are obvious to anyone. Especially to employers at this time, when demand for skilled labour is going through the roof.

At the same time, we’ve young people in large numbers not completing Year 12.
It’s estimated that in 2006:
540,000 young Australians aged 16-24 were not engaged full time in work or learning.
That’s a disgraceful waste when skilled labour is so scarce.
So completion rates must be improved.
To do that, education and training must be made more relevant.
The social and economic consequences of not doing so are dramatic.
The detail’s set out in Labor’s policy paper, so I shan’t elaborate.
Except to note that almost nothing is being done about it.
And that includes this Bill.
That’s because the Howard Government, as it has done in so many areas, including:
• Education
• Heath, and
• Aboriginal Affairs
has savagely cut budgets year after year.
Then—of course—as an election nears, the purse strings are cut and “new” policies begin to flow.
They’re from a Born Again government suddenly realising the errors of its doctrinaire ways over the past 11 years.
Is it any wonder the electorate is totally cynical?
This Bill, providing $74 million for technical education, is part of this last-minute panic.
Just like the urgent Murray-Darling water panic.
Just like the Mersey hospital panic in Tasmania last week.
This is all part of the new policy on federalism – which I’ll turn to later.
Between 1997 and 2000, the Howard Government cut funding for technical education by 13 per cent.
Since then it’s only increased by one per cent.
It’s estimated that since 1998, 325,000 potential TAFE students have been turned away from entry.
That’s scandalous.
The conservative, self-satisfied attitude of the Howard Government places no premium on education.
Is it any wonder we’re facing the crisis of a national skills shortage?
Let me turn now to the Australian Technical Colleges program, to which this Bill appropriates further funding.
In 2004 the Howard Government—again recognising the folly of its funding cuts in the face of skill shortages—announced it would create 24 new technical colleges across Australia.
These colleges were to be located in industrial growth areas.
That’s code for areas of political interest to the Government’s electoral ambitions.
So the new colleges have been set down for, Northern Perth, Southern Perth, Queanbeyan (in the marginal electorate of Eden Monaro), ditto Northern Tasmania, Western Sydney, Northern Adelaide and so on and on the list goes.
Twenty one of these colleges are now operating and this Bill will bring the total to 28.
Eventually, 8400 students will be enrolled to complete the final two years of school while working as apprentices.
Currently, 21 are operational with 1800 students attending.
That’s way below the target.
Normally, one would expect any added investment in education to be welcomed with great acclaim.
The chronic need in technical training I’ve already referred to.
But in this case—just as with the Mersey hospital—it makes no sense at all.
The simple failure is that all Australian states have technical education programs of rapidly increasing size and quality.
This Howard Government adventure is nothing but duplication.
Moreover, it’s expensive duplication.
An estimate is that the cost per student of this model is $175,000 per head.
So question becomes:

Why has the Prime Minister embarked on this crazy program, knowing there’s an existing system of technical education, growing in quality and competence?

The answer is simple:

The complete failure of the Howard Government to work with the states, which have the constitutional authority.

One might ask: why haven’t the states cooperated?

Again the answer is simple.

The program mandates the application of Australian Workplace Agreements for all staff.

The program’s just another Trojan horse for the application of the Howard Government’s ideological approach to the creation of a labour market as contained in its “Workchoices” legislation.

That’s the legislation now rejected by the electorate, as the Government now realises, too late.

This ATC program is fatally flawed.

It’s grossly expensive and it’s a complete duplication.

The fact that it’s managed within the community with industry participation may be an attraction.

But when compared with:

Measures of value-for-money, and

The need for greater systemic planning and coordination, that matters little.

One can only wonder at the boost technical training would receive if this budget were dedicated to the state-based systems.

The Prime Minister’s clearly frustrated at his failure to secure state agreement.

It’s where the Commonwealth lacks the constitutional power in our federal system.

That’s despite the repeated photo opportunities—invariably after COAG—showing great displays of harmony and bonhomie.

But state support has always been forthcoming.

So it’s wrong of the Prime Minister to blame the states for his own shortcomings.

Including on educational issues, such as the need for national curricula.

The states, sensibly, detect political purpose, self-promotion and inefficiency.

They’re naturally suspicious of political dogma and crude opportunism.

In this case, the Trojan horse of Workchoices.

Sadly it’s the important issues of education and health which are being used as wedges of power and politics.

This program and this Bill are but further examples.

Let me turn to the recent report by ANAO on this Program and its management by the Department of Education and Training.

I regret to say the ANAO report struggles, as it must, to deal with the real issues with this ATC program.

That’s because the policy is given.

And it’s not the role of the ANAO to be critical of that policy, no matter how stupid and illogical it might be.

It is possible, however, to read between the lines because all the inferences of political imperative are writ large …

Though disguised in top-class bureaucratese.

Nowhere is the political imperative more obvious than in the speed with which this program was established.

The ex-minister (as he is now), was hardly one for niceties, such as the process and detail necessary to establish such a program from scratch.

Knowing the reputation of that minister serves only to add to our suspicion.

As we know he’s no longer a minister.

And that’s quite a feat in the Howard Government.

May I suggest, the ANAO’s comment, that:

“Such ventures might normally be expected to take several years rather than 18 months” is code for concern that lots of corners were cut.

Indeed they were.

Later audits undertaken, when the political imperative has subsided, might see a more critical and forensic examination of such shortcomings.

The ANAO, however, is very polite.
For example, the lack of cooperation with state governments, resulting in this duplication, is expressed in a recommendation that:

“DEST develop and implement an approach for the Australian Technical Colleges to share better practice and approaches to training.”

In other words,

DEST should co-operate with the states.

Well they won’t and they can’t.

That’s because the Howard Government wants to take over the field and have its own way.

Canberra knows better.

DEST interpreted this narrowly as involving only the ATC system, with reference only to sharing of curriculum and program development between themselves.

All of which is already available in the states, in many new and innovative Vocational Education Training programs.

The development by each ATC of its own curriculum referred to at paragraph 2.16, quote

“For the same small number of trades”

is particularly wasteful.

This is indeed a very gentle ANAO report.

But there are plenty of other clues about problems which are worth noting.

For example, concern for the capacity of commercial organisations, unfamiliar with Commonwealth tendering and contracting policy, to comply with financial agreements.

In other words, the risks were not properly taken into consideration, so what improprieties were there?

There’s also some understated concerns at capital investment being inappropriate.

Especially in property of third parties without protection of the Commonwealth interest.

It shows a failure to assess the supply of educational facilities with respect to existing state resources.

That’s what happens with wasteful duplication.

And that’s another sign of impetuosity and political desperation.

Reading between the lines of this ANAO report, I suspect there’s much more to be revealed.

Apart from the obvious matters I’ve referred to already:

Financial management

Governance, and

Risk assessment are all major concerns.

But not dealt with adequately in any detail.

Perhaps we’ll never know.

That’s because it’s Labor policy that these extravagant new colleges be transferred to the states.

We can’t abide waste and we’re not interested in the policies of division and competition for power.

**Senator COLBECK** (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.53 pm)—I seek leave to incorporate my speech summing up the second reading debate.

Leave granted.

_The speech read as follows—_

The Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Amendment Bill (No. 2) 2007 demonstrates the continued commitment from the Australian Government to invest in measures aimed at meeting the future skills needs of the nation and promoting the value of trade based education.

The additional funding provided under this Bill will ensure that a further three Australian Technical Colleges can be established in the regions of greater Penrith, northern Perth and southern Brisbane, adding to the existing 25 Colleges that have already been announced by the Government.

These three new regions all have strong local industry support for the establishment of Colleges and have high unmet demand for skilled labour and many young people.

The benefit of these Colleges to these regions cannot be overstated. Once fully operational, up to 450 students will graduate from the additional Colleges every year. These young people will achieve their senior secondary certificate, as well as being up to one third of their way through an...
apprenticeship in a trade that is in an industry of need in their region. These students will be highly trained, having had exposure to the same state-of-the-art equipment used by industry. They will also be highly motivated, having had a high level of tailored support and mentoring that would not be available to them at other schools. They will have a strong foundation to continue their preferred trade, having already worked in that industry area for up to two years and having received a specialised education that incorporates enterprise education, small business and employability skills.

The Australian Technical Colleges can only achieve these outcomes and become centres of excellence, lighthouses in trade training, if they are appropriately resourced.

The funding committed by the Government to the programme, $530.9 million over 7 years, shows how serious this Government is about raising the profile of vocational and technical education. This level of funding ensures that each College has the capacity to develop or access the latest machinery and equipment, and to employ or engage highly experienced and qualified teaching and vocational training staff. As these Colleges are specialised institutions, they are also able to offer a flexible and fully integrated education and training programme that allows students to complete the requirements of a senior secondary education and undertake trade training in a Certificate III Australian School-based Apprenticeship. As a result, students will be exposed to more realistic work experiences which will assist them in making a smoother transition into a full-time Australian Apprenticeship at the end of Year 12.

The Australian Technical Colleges programme will also go towards addressing the mistakes made 20 to 30 years ago when as a community we started to talk down the trades and we closed all the technical high schools around the country. About 60% of our modern workforce needs a high quality technical education. Currently only 30% have these skills. The Colleges will help to re-balance who does what, and help restore pride and excellence in trade skills training for young people. Encouraging more young people to consider a career in the traditional trades and to participate in the training is a vital and positive development for the training system as a whole.

Currently, 21 Colleges are already operating and more than 1,800 students are benefiting from the high quality education and training that the Colleges offer. This shows that the Australian people have recognised not only the benefits of the Colleges but also the benefits that a trade based and focused education can offer young people. The fact that five State Governments have followed the lead of the Australian Government by establishing their own trade schools is recognition of the importance to Australia’s future of having a pool of qualified trades people available to meet future skills needs.

Four more Colleges are expected to open in 2008, and the three additional Colleges that will be supported through the passage of this Bill will open in 2009. Industry, business and community support for the Colleges are the key reasons why Colleges have been able to be established in such short time frames. It normally takes an average of about three years to establish a new school. Yet the majority of the Australian Technical Colleges have been able to commence operations in a period of less than 18 months.

Industry leadership has proved to be the right model for the Colleges. Each College is driven by local industry, and responds directly to the specific needs of industry. This leadership not only ensures that students are trained and educated according to current industry requirements, it also facilitates the Colleges ability to network with local industry to promote the benefits of Australian School-based Apprenticeship arrangements and work directly with employers to determine the best model for on-the-job training. Already, students and employers are seeing the benefits of such partnerships and over the years the relationship with industry will only grow and improve the outcomes of the Colleges. This close alignment will also enhance young people’s prospects for further training and career development now and into the future within their local region.

Passage of this Bill will provide the necessary $74.701 million funding to develop an Australian Technical College in another three key regions of Australia and provide opportunities for young people that will not only improve their long term
prospects but also the future of the region in which they live. It is clear that in the coming years, there will be a huge demand for Australians with trade and technical skills. The Australian Government recognises this situation and has implemented a number of initiatives to address this matter. The Australian Technical Colleges programme is just one of these initiatives and support for this Bill is crucial to the success of the programme.

I commend the bill to the Senate.

Question negatived.

Original question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Sitting suspended from 1.55 pm to 2.00 pm

QUESTIONS WITHOUT NOTICE

Renewable Energy

Senator CARR (2.00 pm)—My question without notice is to Senator Abetz, the Minister representing the Minister for the Environment and Water Resources. Can the minister confirm that the Howard government has slashed renewable energy research programs, closing down the Energy Research and Development Corporation, the CRC for Renewable Energy and the Renewable Energy Commercialisation Program? Isn’t it a fact that there is now almost no federal funding for research into renewable energy technologies? Isn’t this why many world-leading renewable technologies that originated in Australia, like the evacuated tubes for solar hot water, solar thermal concentrators and silver cells for solar electricity, have been forced overseas? Why has the Howard government abandoned Australia’s world-leading research into renewable energy and forced our leading scientists to go overseas?

Senator ABETZ—The brief answer to the honourable senator’s question is no, but allow me to expand on it. Comprehensive strategies are in place, underpinned by almost $3.5 billion worth of investment, contributing to an 87 million tonne a year cut in emissions by 2010. Recently announced initiatives by the Howard government have included $336 million for green vouchers for schools and $252 million for solar hot water rebates et cetera. We also have invested $15 million in the FutureGen International Partnership. We have invested $70.7 million as follows: $5 million for the Asia-Pacific Network for Energy Technology, $50 million to support further action through the APP and $15.7 million for increased regional expertise in forest management. The list goes on.

The Australian Labor Party can try and make the claim, as it does all the time, that somehow it has been the champion of climate change. The simple facts are these: we were the ones who introduced the Australian Greenhouse Office in 1998. Thereafter, there were literally years when a full 12 months would go by without the Labor Party asking a single question about climate change or global warming. Indeed, if you do a search of Hansard from 1998 up until May 2007, you will find that the vast majority of questions in this area have in fact been asked by coalition senators. The only time that the Labor Party have asked more questions on this issue than the coalition has in fact been in the last 12 months.

That is why I coined the phrase ‘Kevin’s come lately to this issue’. It was only with Mr Rudd that they finally decided that this might be an issue. Before that, we as a government had been developing policies and investing Australian taxpayers’ dollars to ensure that we were well positioned around the world in relation to these issues. We have done that, and we have a very good record. All I would suggest to Senator Carr is that,
rather than accepting questions from the question time committee—

Senator Sherry—He drafted it himself!

Senator ABETZ—Senator Sherry has interjected—embarrassingly for Senator Carr—to say that Senator Carr actually crafted the question himself.

Senator Sherry—He did!

Senator ABETZ—Senator Sherry is confirming that. In that case, the fault does not lie with the question time committee. The chances are that Senator Sherry is a member of it and he wants to defend himself. If it is all Senator Carr’s work, I suggest that his supplementary might—

Senator Carr—Mr President, I rise on a point of order. The minister was asked a specific question about the government closing down the Energy Research and Development Corporation, the CRC for Renewable Energy and the Renewable Energy Commercialisation Program. The question went to: why is the government forcing Australian scientists who are experts in renewable energy to go overseas? The minister has failed to answer. Can you draw him to the question.

The President—Senator Abetz, do you have anything to add to the previous answer?

Senator ABETZ—Yes, I have!

Senator Minchin—There is nothing to add.

Senator CARR—Mr President, I ask a supplementary question. I ask the minister, again, if he could answer the question about the closure of these research programs and the government’s policy to force Australian scientists overseas. I further ask: is the minister aware that Pacific Solar sold the rights to its silicon-on-glass technology to a German firm which is now developing and commercialising this technology? Don’t Australians now have to import evacuated tubes for solar hot water from China, even though this technology was first developed at the University of Sydney? Doesn’t the Howard government’s failure to keep these great innovations in renewable energy in Australia show that, after 11 long years, it still has not taken seriously the question of climate change?

Senator ABETZ—I thought I had outlined quite fully in my answer to the previous question that we do take the issue of climate change very seriously. That is why we have the raft of investments that I just referred the honourable senator to. But, of course, what happens is that you have a pre-written supplementary question which has to be prattled out, irrespective of the answer that is given. That is the difficulty that the Australian Labor Party faces. The situation is that we as a government have been instrumental in the Solar Cities program, for example.

Senator Carr—You’ve got no idea, have you? You’ve got no idea!

Senator ABETZ—The poor honourable senator, interjecting as he does, is a senator who allegedly represents the state of Victoria. The state Labor government of Victoria has entered into a partnership with the federal coalition government to develop a solar city in his state. (Time expired)

MINISTERIAL ARRANGEMENTS

Senator MINCHIN (South Australia—Leader of the Government in the Senate) (2.07 pm)—I inform the Senate that Senator George Brandis, the Minister for the Arts and Sport, is absent from question time today—as, I guess, is obvious. Senator Brandis is fortunate enough to be representing Australia at the World Anti-Dumping Agency meeting in Montreal in Canada. I am sure we all wish we were with him. During Senator Brandis’s absence, Senator Helen Coonan has agreed to take questions in relation to the Arts and
Sport and the Education, Science and Training portfolios.

QUESTIONS WITHOUT NOTICE
Economy

Senator HUMPHRIES (2.08 pm)—My question is to Senator Coonan, the Minister representing the Assistant Treasurer. Would the minister outline to the Senate how the last 11 years of sound economic management have delivered benefits to all Australians? Could she also outline in particular how the government proposes to build on the strong economic performance of the last 11 years to deliver benefits to older Australians? Are there any alternative policies?

Senator COONAN—I thank Senator Humphries for his question. When the coalition was elected in 1996, unemployment in the ACT was 7.7 per cent. After the 11 years of sound economic management to which Senator Humphries refers, unemployment today in the ACT stands at just 2.8 per cent. The sound economic management of the Howard government has of course allowed us to deliver real benefits to all Australians and to invest in the future to ensure that as a nation we continue to prosper. It has allowed us to pay off $96 billion of Labor’s debt and save in the order of $8 billion annually in interest. As we strive to do even better, we should not forget the economic mismanagement of past Labor governments where, out of 13 budgets, they ran deficits in nine of them.

There is no clearer example of how sound economic management enables Australians to directly benefit than the recent Better Superannuation reforms. From today, an estimated 300,000 older Australians will be able to access the pension for the first time or will receive a higher pension. Today, we are cutting the taper rates at which the pensions are reduced by half to $1.50 for each $1,000 of assets above the allowable limits for the full pension. We are also substantially lifting the allowable asset limits, at which points the pension begins to be reduced. As a result, the maximum single rate pension will rise by $12.60 to $537.70 per fortnight and the partnered pension rate for each member of a couple will rise by $10.60 to $449.10 per fortnight. As a result of the reform to indexation, pensions will again rise above the inflation rate, which means that the Howard government is actually delivering in real terms a sustained increase in the standard of living of older Australians.

These significant reforms are only possible because of sound economic management over the last 11 years. If we were to have ducked the tough questions that have set Australia up to build on our prosperity and to lock in our future prosperity, we would not be in a position to reform the pension scheme and to deliver such significant increases to pensioners and particularly older Australians.

As the storm clouds gather once again over the international economy, strong and experienced hands are now more than ever required on the rudder of the Australian economy. Mr Rudd’s startling admission yesterday that he could not even name one single tax threshold correctly, let alone name any of the actual tax rates, proves once and for all that he is an opposition leader on trainer wheels. Australians have every right to ask, ‘If he does not know or care enough about how much tax ordinary Australian wage-earners pay, how can we trust Mr Rudd with our mortgage?’ You cannot run an economy on spin alone, and this latest failure just highlights that Mr Rudd is not fit to run Australia’s $1.1 trillion economy.

Senator Faulkner interjecting—

Senator COONAN—Finally, it is wonderful that Rip Van Winkle, Senator Faulkner, has finally woken up!
Senator Chris Evans—So, yesterday you stirred up Telstra and today you stir up Rudd.

The President—When you are finished, Senator Evans, your colleague will get the call.

Climate Change

Senator CAROL BROWN (2.12 pm)—My question is to Senator Abetz, the Minister representing the Minister for the Environment and Water Resources. Is the minister aware that the 2005 Tracking to the Kyoto target report forecast that Australia’s greenhouse gas emissions would rise by 22 per cent between 1990 and 2020? Doesn’t the 2006 edition of this report show that our emissions will rise by 27 per cent between 1990 and 2020, five percent more than previously predicted? Can the minister explain why the government’s own projections of greenhouse emissions are getting worse? Doesn’t this show that after 11 long years in office the Howard government has failed to tackle our greenhouse emissions? Why has the Howard government so comprehensively failed to reduce emissions to help combat climate change?

Senator ABETZ—I do not know where Senator Brown has been hiding in recent times, but she would be aware, for example, that at APEC we raised the issue of climate change as a very important issue for world leaders. Interestingly enough, it was the Australian government under the leadership of Prime Minister Howard, the foreign minister, Alexander Downer, and the environment minister, Malcolm Turnbull, that actually put it on the agenda. When the alternate Prime Minister had the opportunity to engage with the United States President on this issue for a full 45 minutes, what did Mr Rudd do? He did not mention the issue of climate change. Why? For cheap domestic purposes he seeks to raise climate change, but he squibs it when he can actually do something about it like engaging positively with the President of the United States. He is unable to deal with the issue. For the first time ever, because of Australia’s handling of this issue, we were able to get the countries of Russia, China and the United States to sit down together and talk about this issue in a very constructive way.

Senator Carr—They’re all aspirational!

Senator ABETZ—Senator Carr can interject and say it is all aspirational and all sorts of things, but can I tell him this: talking about climate change at least is better than not talking about it, like Mr Rudd did. That is a classic case of Australia taking the challenge of climate change very, very seriously.

The Climate Institute’s analysis should focus on the energy sector, where its consultants have expertise and where available data might be more reliable. But the government’s emission projections to 2010, released in December last year, draw on detailed economic modelling of all sectors prepared by Australia’s leading experts in the field and show that Australia is performing well against its Kyoto target. The latest national greenhouse accounts provide complete and comprehensive data on Australia’s greenhouse emissions and show that Australia’s greenhouse gas emissions were 102.2 per cent of 1990 levels in 2005, and these results are consistent with the latest projections. Both Australia’s national greenhouse accounts and emission projections are prepared by the Australian Greenhouse Office according to international guidelines and subject to international review. As I understand it, Australia has produced annual inventories for quite some time.

Yes, we are always monitoring; we are always looking at this issue. Indeed, later this day, this Senate will be debating legislation dealing with this very issue. I invite Senator Brown to have a look at the actual record of what is happening.
Senator Ronaldson—Where is he?

Senator ABETZ—No, this is Senator Carol Brown—the more sensible of the two Senator Browns, might I add. But on this occasion she has not covered herself in glory with the question that has been provided to her. But, having said that, we as a government do take climate change very seriously. We have taken the appropriate action and that is why, in the world arena, we are regarded as leaders and that is why the APEC community was so willing to engage with us in Sydney recently. (Time expired)

Senator CAROL BROWN—Mr President, I ask a supplementary question. Doesn’t the fact that Australia’s emissions keep getting worse, even after all the warnings about climate change, show the need for a clear target for emission reductions? Doesn’t the government’s total failure to provide business and consumers with the certainty of a clear target undermine the effort to seriously tackle climate change?

Senator ABETZ—We were just told about Australians being concerned about reducing emissions. Guess what? Just recently we as a government circulated to every household in Australia what they could do about this issue. And who were the ones who condemned us? The Australian Labor Party—the people who today are now feigning concern about this issue! The Labor Party cannot have it both ways. Either it is a matter of national significance for every single citizen in Australia and therefore they should be assisted in engaging on this important issue, or it is not. When we do it, we are condemned. We raise it at APEC—Mr Rudd does not raise it at APEC—but of course they are the alleged champions. Mr President, it is another classic case of Labor saying, ‘Do as we say, not as we do’; whereas we are actually taking the hard actions engaging with people to ensure that we get good results.

Indigenous Communities

Senator JOYCE (2.19 pm)—My question is to the Minister for Community Services, Senator Scullion. Will the minister inform the Senate on the progress of the national emergency intervention in the Northern Territory and any recent developments?

Senator SCULLION—I would like to thank the senator for his question and acknowledge the advice that he has provided to government over some time with regard to Indigenous affairs, particularly his experience with Indigenous people in his home town of St George. On Tuesday I informed the Senate of a suite of measures totalling some $740 million that are going to address the longer term needs of the Northern Territory: some $540 million to repair and build housing in remote communities over the next four years; $100 million for more doctors, nurses and allied health professionals and specialist services; $78.2 million over three years to convert CDEP positions to real jobs; up to $30 million to be matched on a dollar-for-dollar basis to assist the Northern Territory government to meet their obligations in this regard; and $18.5 million over two years for 66 additional Australian Federal Police.

Today I am also pleased to announce the negotiation on another 99-year lease, this time over the township of Ski Beach, which is adjacent to the mining town of Nhulunbuy, in the north-east of the Northern Territory. Negotiations will proceed with the Gumatj people to bring better services and economic development to the region. The negotiations are proceeding at the urging of Galarrwuy Yunupingu, who took the initiative to approach the minister over a 99-year lease over his home community. This 99-year lease to the Australian government over the township will bring a solid foundation to take advan-
tage of the economic opportunities, allowing residents to participate in the Australian economy and provide for normalised land based tenure. This will also be their first chance for homeownership. This is the reality, given what we know from places like Nguiu, in the Tiwi Islands. This has also been agreed to in principle on Groote Eylandt, which is not far from Nhulunbuy.

Negotiations with the aim of having the new arrangements in place by early 2008 will commence immediately. When it proceeds, the secure tenure that the 99-year leases will bring will remove the need for the statutory five-year lease that was provided for under the emergency response act in the Northern Territory. This lease will move land from ownership in a collective sense to individual ownership and control. So, for the very first time, Aboriginal Australians will be able to directly control what happens on their own land and will be able to invest in their future, their family’s future and in economic prosperity. There are many opportunities in and around Nhulunbuy. Ski Beach faces the water and on the other side, as you look across the bay, you can see the mining townships. There are many yachts and there is an emerging maritime industry there. There is currently not a small slipway, so there is an opportunity for a slipway, for a chandlery, for boat hire businesses and for other tourist enterprises. The bottom line is enterprise. The government is more than happy to support Aboriginal communities and their aspirations for economic independence. We have a plan that has been developed in consultation with Indigenous Australians—

Senator Crossin interjecting—

Senator SCULLION— and we have another interjection from Senator Crossin, who disappointingly again asks if we are going to be providing money for that. We are providing an environment where Indigenous Australians enjoy the same level of opportunity as other Australians. This is a fantastic initiative by a government that is happy to provide leadership, not froth and bubble and media stunts. This government is about making absolutely sound decisions, sticking to them and implementing them.

Renewable Energy

Senator WORTLEY (2.23 pm)—My question is to Senator Abetz, the Minister representing the Minister for the Environment and Water Resources. I refer the minister to briefing notes provided to the APEC finance ministers meeting in Coolum, which said about climate change:

To complement market-based mechanisms, there is also a role for regulation and direct government intervention to assist in the development of low-emission technologies.

Don’t leading business groups support this view? Hasn’t the Australian Business Roundtable on Climate Change expressed support for policies that actively encourage the development of renewable energy technologies? Why is the Howard government ignoring business by calling for state-based targets to be abolished and why is the government refusing to increase the mandatory renewable energy target from the current pathetic two per cent level?

Senator ABETZ—The reason for the request for the states to abolish their mandatory targets is because that is what the Prime Minister’s task force actually recommended. Businesses would prefer there to be one target for all of Australia rather than all of the various state targets, which are a bit of a mishmash. Most people who are concerned about industry are concerned that there be one agreed target right around Australia. Otherwise, if you happen to have an aluminium smelter, let’s say in Tasmania, you might have to pay more for energy than if you have an aluminium smelter in Queensland, simply
on the basis of the targets. So it makes good sense. But the government has said time and time again that things such as mandatory renewable energy targets have their purpose. Indeed, we introduced them and I think that they have served a very useful purpose.

In relation to regulations, today the Senate will be debating legislation requiring reporting conditions on particular businesses above a certain threshold. All of those factors which the senator is referring to are factors that we have taken into account, have dealt with or are dealing with in a comprehensive way and which, in fact, have the backing of the Prime Minister’s emissions task force. With great respect to the senator, the emission’s task force brought together the best brains available to us in this area and that is why the government is being very heavily influenced by the task force’s advice, rather than the stunt-a-day from the likes of Mr Garrett, who one day said he would close down our coalmines and kick 36,000 people out of work. When asked, ‘What about the jobs?’ he said, ‘That is hypothetical’, as though coalmining jobs are somehow hypothetical. They are real jobs sustaining thousands of families and hundreds of communities around Australia.

Senator Chris Evans—What happens to coalmining jobs when you use nuclear?

Senator ABETZ—The arrogant Leader of the Opposition in the Senate continues his interjections. As soon as one of his senators gets into trouble we get this arrogant barrage. What I would say to the senator, who is actually listening to my answer, unlike you, Senator Evans—

Senator Chris Evans—I always listen to you, Eric!

Senator ABETZ—Mr President, am I going to get a chance to address Senator Wortley’s question without the ongoing arrogant barrage of the Leader of the Opposition in the Senate.

The PRESIDENT—Continue with your answer.

Senator ABETZ—What I am suggesting to Senator Wortley, and the few like her on the opposition side who might actually be interested in this topic, is that she should read the emissions task force report. I have a copy available in my office and she would find that it sets out a blueprint that will be in this nation’s interest for many years to come.

Senator WORTLEY—Mr President, I ask a supplementary question. Can the minister confirm that renewable energy under the Howard government will decline as a proportion of electricity consumption over the next decade? Does the minister consider the decline in renewable energy to be a successful outcome? Doesn’t this in fact show that, after 11 long years in office, the Howard government is still not serious about climate change?

Senator ABETZ—The one thing that I liked about the senator’s question was the suggestion that in the next 10 years of the Howard government there might be a particular decline in renewable energy. I hope that the first part of the question is right: that we will see another ten years of the Howard government, but I also hope that renewable energy will continue to increase. That is why initiatives such as in the senator’s neighbouring state of Victoria of Solar Cities are so very important. That is something that the Labor senators opposite do not want to hear about, but I can tell them and advise them that their own state Labor government in Victoria wants to know about it because they have partnered with us in this very important initiative. What I would invite the senator to do, if she can still hear my answer above the arrogance of the Leader of the Opposition in the Senate—(Time expired)
Workplace Relations

Senator BUSHBY (2.30 pm)—My question is addressed to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Will the minister update the Senate on the latest information about workplace agreement making in Australia? What does this information say about the Howard government’s modern and flexible industrial relations policies? Is the minister aware of any alternative policies?

Senator ABETZ—I congratulate Senator Bushby on an excellent first speech yesterday and say that he has followed up superbly today with an excellent question, that being his first one. I note from his maiden speech last night that the issue he is asking a question about today is a matter in which he is genuinely interested. Yesterday, the latest official report on agreement making in the Australian workplace was released. Like a number of reports before it, this report totally debunks the false claims being made by the ALP and the ACTU about, in particular, Australian workplace agreements.

Let us compare what the Labor Party says has been happening with what is actually revealed in this document. Let us start with working hours. Those on the other side assert that people are working longer hours. In fact, that is wrong: average weekly hours worked are now at 37.3, a decline, albeit minimal, from 37.4. How about wages? The ALP and the ACTU falsely claim that AWAs are forcing down wages—wrong again. Average hourly total earnings for non-managerial employees on AWAs actually increased by 12.8 per cent; they did not decline. But what about wages under AWAs compared with under collective agreements? The rise under collective agreements was 4.1 per cent. So that is: AWAs at 12.8 per cent; collective agreements at 4.1 per cent. Of course, I could go on.

What does all this say about the Howard government’s flexible modern workplace relations system? It says it is working for the benefit of Australian workers and their families, and it says that the false scare campaign against it is exactly that—false. Yet, despite all this, Labor still maintain the ridiculous position that they will rip up AWAs, the central feature of our modern industrial relations system. They will rip up these modern flexible arrangements which provide 8.7 per cent more for workers than under collective agreements. So why would Labor persist in defying common sense on this?

I think we know the answer: it is the trade union movement. I came across a very interesting quote yesterday and I invite those opposite to guess who said it:

The trade union movement keeps the Parliamentary Labor Party in touch with the values and aspirations of working people. It is our greatest source of cohesion …

And I might be able to say:

Without the union movement the Australian Labor Party would rely on a rainbow alliance of single-issue interest groups: environmentalists, peace activists, gays and civil libertarians—but I do not have to say that; the person whom I am quoting said that as well. With the Labor Party, if it is not the trade union movement, you get a rainbow coalition of ‘environmentalists, peace activists, gays and civil libertarians’. That is the choice in the Labor Party. Do you know who said it? Senior frontbencher Dr Craig Emerson, who would be the small business minister under a Rudd Labor government. I say to those listening: that is the scary prospect of a Rudd Labor government. I say to those listening: that is the scary prospect of a Rudd Labor government; whereas we on this side understand the needs of the 80 per cent of workers who are not in trade unions. (Time expired)

Senator BUSHBY—Mr President, I ask a supplementary question. The minister has
indicated that there have been significant improvements in industrial relations policy. Could he elaborate further on how these changes have contributed to an increase in the number of Australians in work?

Senator ABETZ—That is a very important supplementary question. Since the changes in March 2006 over 417,000 Australians now have a job—417,000 Australians. You can argue about how many were actually as a result of our changes, but as an absolute minimum some of those commentators who are as harsh as one might expect on us say that over half of them are as a result of the abolition of the unfair dismissal laws. Of course, the Labor Party would reintroduce that regime and see all those people who have gained employment as a result of us taking tough initiatives lose their jobs and lose the opportunities that have been provided to them. That is one of the great achievements of the Howard government—real wages growth, the lowest rate of industrial disputation and a 33-year low in unemployment. That is a huge social dividend for this country. (Time expired)

Senator Sherry—Look! Eric has sent two of them to sleep!

The PRESIDENT—Order! Senator Sherry!

Senator FIELDING—Thank you, Mr President. I will start again. My question is to Senator Johnston, the Minister representing the Attorney-General. Minister, as you are aware, in December last year the government changed the law so that recreational fishermen caught dropping a line in the Great Barrier Reef Marine Park green zones would no longer receive criminal convictions. While the government fixed its mess, there are still 324 fishermen who were prosecuted before the law was changed and who now all have criminal records. Minister, given that the government has only partly fixed the problem, and given that it now admits this breach is not criminal activity, will it now rescind the criminal convictions of these 324 fishermen and grant them all a pardon?

Senator JOHNSTON—I thank Senator Fielding for what is a very important question to those 300 fishermen who now feel aggrieved, given that there has been an amendment to repair a situation that was quite anomalous. I also pause to thank Senator Boswell, who has been arguing the case of those 300 fishermen for some long time. I can assure Senator Fielding that I have addressed those issues with open ears. I have to say that, where we have convictions recorded, often on pleas of guilty, in a belief that a certain set of circumstances prevailed, it is now not possible to go back and review those matters, because ignorance of the law is not an excuse. There are a number of High Court cases that substantiate this.

There is clearly, I think—in agreement with you, Senator Fielding—an injustice done to those 300 convictees, if I may use that expression. What I am currently doing is entertaining my department and the Attorney-General’s Department with the request of Senator Boswell. Indeed, may I say that I am hoping for an answer at any moment. This afternoon I have a meeting with respect to precisely that problem and I anticipate...
being in a position to address whether or not it is appropriate that pardons in the face of this anomalous and unjust situation can in fact be granted. I will make sure, if I may, through you, Mr President, that I will inform Senator Fielding, because I do appreciate his question and his interest in this subject. It is clear—

Opposition senators interjecting—

The President—Order! Senators on my left, if you wish to conduct conversations, could you please leave the chamber. It is disorderly. There is far too much audible noise and I cannot hear the minister’s answer.

Senator Johnston—I am very enlivened by a problem where 300 people have received convictions which, with the benefit of hindsight, appear very unjust. As I was saying to Senator Fielding, through you, Mr President, I am seeking to obtain a method of being able to adjust that, arrest that and remediate that injustice in a way that is within the law and acceptable. It is a very difficult problem but we are approaching it. I thank Senator Fielding for what I think is a very good question.

Senator Fielding—Mr President, I ask a supplementary question. Minister, as you have indicated, many of these fishermen have suffered enormously by being deemed a criminal in the eyes of the law. Their employment prospects, ability to get insurance or even open a bank account have all been affected. I would ask that I am kept fully informed with where it has progressed.

Senator Johnston—That is precisely the motivation behind why we are attempting to remediate this situation. These men now have a record of a breach of the criminal law. Their travel plans and what have you are affected. They have to declare that they have convictions against their name in circumstances where they should not have to do that, in the circumstances that have evolved with respect to those offences. I can assure Senator Fielding that I am very motivated to repair this and am doing everything I can to see what avenues are available. I will get back to him shortly, I hope, with a solution.

Veterans Affairs

Senator Fisher (2.41 pm)—My question is to Senator Ellison, the Minister representing the Minister for Veterans’ Affairs. Last week the Prime Minister announced a $330 million veterans affairs disability pension enhancement package, further highlighting the government’s continuing support for our valued veterans. Will the minister outline to the Senate significant new measures to further assist the nation’s war widows and widowers?

Senator Ellison—I thank Senator Fisher for what is a very important question for our war widows and war widowers and acknowledge Senator Fisher’s interest in the area of veterans affairs. The Howard government acknowledges the heavy price paid by our war widows and war widowers in the premature loss of a spouse and also in relation to the physical condition the veterans suffered later from service related issues.

We are committed to ensuring that our war widows and war widowers are supported, and that is why I am very pleased to inform the Senate that the Minister for Veterans’ Affairs has announced a package which will greatly benefit the 114,000 war widows and war widowers in Australia. In short, war widows and war widowers receive currently a non-indexed pension component of $25 a fortnight, formerly called a domestic allowance. This component will increase by $10 to $35 a fortnight from March 2008. This package will bring to a total of $470 million the packages recently announced. Senator Fisher mentioned the $330 million package recently announced by the Prime Minister in relation
to the indexation of payments to veterans generally.

This payment in relation to war widows and war widowers will now be indexed, with reference to both the consumer price index and male total average weekly earnings, from March 2008. The non-indexed $25 pension component has remained constant since it was first introduced in 1946, and this has been a great area of concern for the war widows and war widowers who have been in receipt of that. The government have therefore responded positively and, with these new measures, we will increase the value of this pension component and ensure that its real value is maintained through indexation. This is very good news for that sector of the community—the 114,000 war widows and war widowers who will benefit from this.

The commitment of the Howard government to the veterans sector is underlined by the fact that more than $1.6 billion in new funding has been allocated to Veterans’ Affairs in the last 18 months. That is a significant increase in funding. In fact, despite declining veteran numbers, the Department of Veterans’ Affairs budget has increased from $6.5 billion in 1996 to more than $11 billion today. I thought the opposition would be interested to know that, because this is of great concern and interest to the veterans community in this country. There has been a substantial increase in funding over the last 11 years, from $6½ billion to $11 billion, to ensure that our veterans are supported and that those war widows and war widowers who paid the heavy price of the premature loss of a spouse because of their spouse’s service to this country are now supported. It is important that we continue to support this sector of the community, who paid such a price. This announcement today, as I said, takes the total package of recent announcements to $470 million of new initiatives. This is good news for the veterans community, who well deserve these initiatives. I applaud the minister for his announcement today and for his continued commitment to the veterans sector.

Mr John Utting

Senator CROSSIN (2.45 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. I refer the minister to her claim yesterday that Telstra had Mr John Utting on its payroll. Can the minister confirm that today she received a letter from Telstra expressly stating that neither Mr Utting nor his firm has any financial relationship with Telstra? Hasn’t Mr Utting confirmed this in a letter to Telstra today, which states:

... neither UMR Research nor I have either a current or recent financial relationship with Telstra.

Can the minister now confirm that Telstra has had only one pollster on its books in recent years; namely, the Liberal Party’s pollster, Crosby Textor? Will the minister now correct the record and apologise to Mr Utting, Telstra, the Senate and the Australian people for her false claims in question time yesterday?

Senator COONAN—I do not know who Telstra have as their pollsters. Perhaps the Labor Party can ask Telstra who their pollsters are. They certainly do not tell me.

Opposition senators interjecting—

The PRESIDENT—Order! I am not going to let the minister continue until there is order on the opposition side. It is your question time.

Senator COONAN—I do not have letters from either Mr Utting or Telstra with me. I understand from my office that there are some letters in my office. I would certainly wish to have a look at them before I make any response. Given the aggressive stance taken by Telstra towards me personally and towards the government, I think it only ap-
appropriate that I have an opportunity to consider the contents of any correspondence that might be addressed to me, and that is what I will do. If any correction is required, it will be made. I fully expect that what I will have received from Telstra is an unequivocal commitment that they will stop meddling with the Labor Party and meddling with the election, that they will retract allegations that they have made against me and that they will continue to behave like the major corporation they are and be completely out of the election as far as being a partisan participant.

Senator CROSSIN—Mr President, I ask a supplementary question. Isn’t it true that, in fact, yesterday the minister told the Senate in question time:

We all know that Telstra have John Utting, Labor’s pollster, on their payroll.

Why is it that when the minister cannot win the policy debate she resorts to bizarre personal attacks on Telstra in the parliament? Doesn’t the minister’s increasingly desperate and paranoid behaviour show her complete incompetence and the fact that she has lost control of her portfolio?

Senator COONAN—Isn’t it extraordinary that Senator Conroy does not have the guts to ask either of those questions and gets poor old Senator Crossin to try to be uncivil in asking a question in question time. This just shows the pathetic approach of Senator Conroy and the Labor Party to telecommunications. They cannot win a policy debate, and all they can do is try to get into bed with Telstra and try to win an election by those means.

Child Protection

Senator BARTLETT (2.50 pm)—My question is to the Leader of the Government in the Senate, Senator Minchin. I draw the minister’s attention to the motion agreed to without dissent by the Senate this morning supporting the establishment of a royal commission into the sexual assault and abuse of children throughout Australia. Can the minister advise the Senate if and when the Prime Minister will be responding to or acting on this very important and significant resolution?

Senator MINCHIN—I first acknowledge Senator Bartlett’s long-term, consistent and diligent application of his time and energy to preventing this greatest of evils, the sexual abuse and abuse generally of children. I am sure there is not a senator in this place who does not share his overwhelming concern about this, as I said, great public evil that is regrettably abroad in our community.

We were happy to join with Senator Bartlett and his colleagues in supporting the motion this morning as a mark of our good faith and our concern as a government to do all that we possibly can to deal with child abuse in our community. Indeed, the subject is of considerable notoriety this week, given the appalling case of the person who came from New Zealand with his three-year-old daughter, that child’s mother apparently having been murdered in New Zealand, and abandoned the child at a Melbourne railway station. Child abuse can take many forms, and that is one of the most appalling forms of child abuse that I am aware of.

Of course, while all of us are concerned about it, those of us who are privileged to be parents—and I am one—feel it most particularly and feel enormous anger and despair when we read almost daily of the most dreadful cases of child abuse in this country. Regrettably, one of the phenomena of the breakdown of marriage seems to be that child abuse increases. When a single mother finds herself in a new relationship, she may find that her new partner does not have the same respect for children that parents always have. It is despairing to read of cases almost every week where child abuse occurs within
the family environment, often in those sorts of situations.

Whether or not the commissioning of a royal commission for a major national inquiry into this matter is the best way to go about it is a matter for legitimate debate. Whether such a royal commission is the best way to go about dealing with this at a national government level is something that we are prepared to consider. It is one of the reasons we agreed to the motion; we will consider that question. I cannot give a timeline or a specific determination as to when we might respond but, in the meantime, I think the government have shown good faith. We accept that this is very much a bipartisan issue. We would not seek to suggest that there should be any partisanship or that we are better or worse than anybody else. I accept the good faith of all parties on this issue.

Our good faith and determination to do something about this has been demonstrated most particularly, of course, by our intervention in the Northern Territory. That has been motivated entirely by our concern over the continuing reports and evidence of appalling child abuse in communities, most particularly in the Northern Territory. It was by that motivation that we have engaged in this intervention. Frankly, as someone brought up as a member of the Anglican Church, I am staggered to find the Anglican Archbishop of Sydney questioning our motives and questioning that intervention. I think it is one of the finest things that our government has done and we welcome the support that we have had from across the board for that intervention, which was motivated by our concern for the welfare of the children concerned.

While much is said about the whys and wherefores of what is called cooperative federalism, I do note that we have been working very closely with state and territory ministers through the Community and Disability Services Ministers Conference to deal with this issue at a national level. (Time expired)

Senator BARTLETT—I ask a supplementary question, Mr President. I would remind the minister and the Senate that the coalition members—and I will read the actual part of the resolution—expressed:

… support for the longstanding call for a comprehensive royal commission into the sexual assault and abuse of children throughout Australia, especially in institutions.

Whilst I note that this is a mark of good faith, it suggests it might be problematic if the extent of any action consists of expressing support for resolutions and not actually acting on them. Could the minister indicate whether there will be an indication from the government at least before the election date about how this support for the longstanding call for a royal commission may be translated into action—even if that action does not specifically match that called for in the resolution but is some other form of action which does actually deal with child sexual abuse and assault in a more comprehensive, nationwide way rather than on an ad hoc, case by case basis?

Senator MINCHIN—As I was saying in answer to the first question before my time expired, through the relevant state and territory ministers conference there is an agreed national approach to child protection which I would assert on behalf of those ministers is a comprehensive approach by all relevant levels of government to protecting Australia’s children. It was a mark of good faith that coalition senators were happy to join in supporting the motion today with respect to a royal commission. But, of course, that motion would be a matter for the cabinet to consider and to determine what further action the national government might choose to take on this matter. I just want to reassert our
bona fides on this matter. Our deep and abiding concern is that we, as a national government, do everything we possibly can to ensure a proper nationwide, comprehensive approach to the protection of Australia’s children.

Iraq

Senator KIRK (2.57 pm)—My question is to Senator Coonan, the Minister representing the Minister for Foreign Affairs. I refer the minister to the release of Iraq Body Count’s assessment that over 79,000 civilian deaths have occurred since 2003. I also refer the minister to United Nations assessments that over two million Iraqis have fled their country and that over one million Iraqis have been internally displaced. Does the minister agree that Iraq is a human and security catastrophe? What humanitarian assistance is the government providing to relieve the suffering in the refugee camps that now exist in Jordan and Syria and the displaced persons camps that are increasing in size within Iraq?

Senator COONAN—I thank Senator Kirk for her important question. There is no doubt that any civilian death is one too many. We all agree with that. There are no authoritative estimates of the total number of Iraqi civilian casualties, due in part, of course, to the complex nature of the violence in Iraq. Estimates of civilian casualties and the methodology behind them vary very widely. For example, UK website Iraq Body Count estimates that, as at 6 September, between 71,302 and 77,852 civilians have been killed since March 2003. The United Nations Assistance Mission for Iraq estimates that some 34,452 were killed in 2006. I repeat that any civilian death is certainly one too many. The multinational force in Iraq will continue to work with Iraqi security forces to prevent such attacks and apprehend their perpetrators.

Senator Kirk has also asked what we are doing to assist Iraqi refugees and internally displaced persons. We are very concerned about the humanitarian situation facing many of the Iraqis—over two million residing in neighbouring countries, my briefing note says, and over two million internally displaced. Many of these were displaced under the Saddam Hussein regime due to war, human rights abuses and the deliberate expulsion of citizens from their homes. Australia has provided over $75 million in humanitarian assistance, including for Iraqi refugees and IDPs, since 2003. On 14 February 2007, Mr Downer announced $6 million to assist Iraqi refugees, $3 million to the United Nations HCR and $3 million to the IOM.

The Australian delegation was represented at the Australian UNHCR conference on Iraqi refugees and internally displaced persons and was led by the ambassador and the Permanent Representative to the United Nations in Geneva. It included officials from the Department of Immigration and Citizenship and AusAID, so the personnel making up the representation were very well placed to have Australia’s input and to record Australia’s concern about this most important matter.

Senator KIRK—Mr President, I ask a supplementary question. Given that Christian families are being persecuted and brutalised on a daily basis by all factions, oil production has been slashed, Iran has been emboldened and international terrorism has been made worse, can the minister indicate whether she thinks the Australian government’s assistance is having any impact at all?
Senator COONAN—Absolutely. We have often spoken in this chamber about the importance and relevance of the Australian troop commitments. Australia, as I said last week in answer to a question, is committed to staying in Iraq until the Iraqi security forces no longer require our support. The government decided in August to extend our troop commitments until 30 June 2008. It is important that we stay and that we get the job done. Our coalition partners have expressed their strong appreciation for Australia’s very valuable contribution. The ongoing presence of Australia and other members of the coalition in Iraq is at the request of the government in Iraq and we certainly do not intend to leave until that particular job is done.

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

QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS
Petrol Sniffing

Senator ELLISON (Western Australia—Minister for Human Services) (3.02 pm)—I answered a question yesterday from Senator Siewert in relation to petrol sniffing and Opal fuel. I undertook to get back to the Senate in relation to three roadhouses which were mentioned, and I now have that information. I table that information and seek leave to incorporate it.

Leave granted.

The document read as follows—

SENATOR SIEWERT—My question is directed to the Minister representing the Minister for Health and Ageing.

a) Can the Minister tell us how successfully Opal fuel is being taken up by providers within the region identified in the eight point plan and if measures are in place to enforce retailer compliance?

b) Is the Minister aware of the reports that three roadhouses within the identified region are still stocking sniffable fuel, including Ti Tree, Rabbit Flat and Tilmouth Well? What action is being taken to address this?

c) Will the availability of sniffable fuel undermine that rollout in Tennant Creek? Secondly, has the government investigated a reported outbreak of petrol sniffing among young people in Ti Tree earlier this year?

SENATOR ELLISON—I thank the Senator for her question.

a) The regional rollout of Opal fuel has been very successful. Where Opal fuel is being supplied rates of petrol sniffing have dramatically fallen.

• A recent report has found a 50% reduction in the number of petrol sniffers in the APY Lands, in South Australia, since October 2006. This follows the 80% decrease previously reported since the introduction of Opal fuel in the APY Lands.

• Anecdotal evidence in Northern Territory suggests there has been up to a 95% decrease in petrol sniffing in the western desert communities.

• There are 104 sites across Australia that are supplying Opal fuel. This includes 72 communities, 29 service station/roadhouses and three pastoral properties.

• All 11 service stations in Alice Springs have been supplying Opal unleaded fuel since March 2007 with fuel sales indicating a steady rise in the use of the fuel.

• The supply of Opal fuel across Central Australia has been a voluntary process with retailers cooperating with the Australian Government to supply the non-sniffable fuel where petrol sniffing has been an issue.

b) We are very concerned that a small number of fuel retailers in Central Australia are not cooperating with the Australian Government in our efforts to stamp out petrol sniffing.
I am advised that the Department has made contact with the three locations identified by the Senator and each has declined to supply Opal fuel at this stage.

The Australian Government has taken steps to ensure that information is provided to motorists in Central Australia regarding the quality and safety of Opal unleaded fuel.

c) I am advised that Department Health and Ageing representatives recently visited Tennant Creek and negotiated arrangements to introduce Opal unleaded fuel into that area by 1 December 2007. This will be supported by an information campaign to inform residents about the quality and safety of Opal unleaded fuel.

This will not be affected by locations between Alice Springs and Tennant Creek not currently supplying Opal unleaded fuel. However, it is our intention to ensure that all fuel outlets in Central Australia supply Opal unleaded fuel to reduce the amount of sniffable fuel in the region.

In relation to any reported outbreaks of petrol sniffing the Australian Government will continue to contact and work with retailers in the relevant areas to take steps to reduce sniffable fuel and introduce Opal unleaded fuel.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Climate Change
Renewable Energy

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (3.02 pm)—I move:

That the Senate take note of the answers given by the Minister representing the Minister for the Environment and Water Resources (Senator Abetz) to questions without notice asked today.

Today a number of questions were asked of Senator Abetz which sought to draw the government on what it was doing in relation to climate change, and quite frankly the answers again reinforced the message that the government does not understand climate change, has no plan for tackling it and is being dragged reluctantly by the community to confront the issues of climate change. For 11 years the government did nothing in the face of those challenges and it is only in recent times, when the community proved that they were way out in front of the government, when the community concerns were so strong and so loud, that the Prime Minister finally agreed to establish a task force to look at the question of climate change and propositions for a carbon emissions trading system.

We heard from the minister today that the government have no idea about what is going on in terms of the climate change challenge. We know they have not ratified Kyoto. We know they stand outside the international community. We know they have let the MRET run down to the point of making no practical contribution to renewable energy in this country. We know that solar research has been cut by the government to the point that the major leading solar research technologies that were developed in this country have been forced overseas and that Australia’s leading scientists in solar matters are now working overseas due to the lack of funding and lack of interest by this government in solar energy. We have the situation now where Germany leads the field on solar research. Australia has dropped back and our resources in this area have been cut back dramatically, and a country that once led the world in solar research effort is now very much following. There are many good scientists still left in this country, but the funding is not there to provide the leadership in that area that we should be providing.

The government just do not get it on climate change. It is a reflection, I think, of the lack of leadership, the failure to come to terms with modern issues, the failure to come to terms with the future challenges that
Australia faces. Because the government just do not get it, they cannot come to terms with leading the Australian community in tackling climate change. To be fair, there is a fundamental problem inside the government—they do not believe that climate change is caused by human activity. The Leader of the Government in the Senate, Senator Minchin, Senator Abetz himself, the Prime Minister and the Minister for Industry, Tourism and Resources, Mr Macfarlane, actually do not believe that the science about climate change is right—they are climate sceptics. I think Senator Bernardi and others are of the same view. The Liberal Party is full of people who do not accept the science. That is fine, but it makes them totally incapable of leading the response Australia needs to make to climate change.

My view, and I think the view of most Australians, is that the evidence is in, the science is now widely accepted in the world that human activity is making a huge impact on climate, that we cannot go on emitting carbon at the rates we are and that we need to respond. But if you do not believe it, you cannot respond; you cannot provide the leadership necessary. So I accept that the government have a fundamental problem. They do not believe it; therefore they are totally hamstrung in terms of responding. So the Prime Minister had to be dragged into doing something, as Crosby Textor kept reinforcing to him that Australians understand the problem and accept the science and that something needs to be done. But the government have failed to act in a way that would provide the leadership in tackling climate change.

One of the things that struck me when I took on the shadow ministerial responsibilities for resources and energy late last year is that business gets it. Business absolutely gets it. Business wants the certainty of knowing what is going to happen in terms of climate change in this country. It wants the certainty of knowing whether it is going to have a carbon emissions trading system. It wants a price on carbon. It wants to know that we are going to seriously tackle climate change, because it is affecting it very fundamentally. Business cannot make huge investment decisions in Australia until it knows what the price of carbon is, what targets the Australian government has set and what commitment there is to renewable energy in this country. It is crying out for leadership from the Australian government and it is not getting it. Business will get it from Labor because we will set targets, sign up to Kyoto and establish an MRET scheme. (Time expired)

Senator EGGLERSTON (Western Australia) (3.08 pm)—We hear this mantra from Labor time and time again that the Howard government has done nothing about greenhouse issues or climate change. It is absolute nonsense, as we have said time and time again in this chamber. Usually Senator Evans gets his lieutenant, Senator Wong, or one of the other people in his party to put up this nonsensical argument, presumably because he is too embarrassed to persist with it, but today Senator Evans has jumped in with the absolute nonsense claim that the Howard government has not done anything about greenhouse issues or climate change.

Senator Evans is fully aware that one of the first things the Howard government did when it came to office in 1996 was to establish the world’s first greenhouse office. If the previous Labor government had any awareness of climate change, it was open to them during the 1990s to establish a greenhouse office, but it did not do anything. In fact, it is a matter of great pride within the coalition that it can say that it established the first greenhouse office of a government anywhere in the world. That probably should be enough to completely destroy the credibility of the rest of Senator Evans’s remarks.
One of other comments Senator Evans made was that we were doing nothing about renewables, but of course we have a very strong renewable energy program and we have committed almost $3.4 billion to initiatives that directly address climate change and over a quarter of a million dollars to more indirect measures. The Howard government’s energy white paper is the most definitive statement on lowering greenhouse gas emissions. The strategy includes, for Senator Evans’s information, the $500 million Low Emissions Technology Demonstration Fund and the $100 million Renewable Energy Development Initiative—so much for the Howard government, Senator Evans, not doing anything about renewable energy.

Most significantly, in terms of what Senator Evans just had to say, the $75 million Solar Cities initiative very much underlines our commitment to seeking to develop the science and technology to enable solar energy to be used in this country. Of course, Australia is blessed with abundant sunshine and if we can develop the science of solar energy to a degree that it can be used to power cities and plants and provide lighting along highways then Australia will have developed a very useful technology indeed. In Victoria we have set up the largest solar energy plant in the world, at the cost of many millions of dollars. Senator Evans, rather than criticising the Howard government in this chamber, should give credit where credit is due. The Howard government surely deserves credit for its imaginative initiatives in setting up Solar Cities programs around this country.

The government’s climate strategy has also stimulated significant private investment in low-emission technologies. One of Senator Evans’s criticisms was that business was not happy with the government’s policies on climate change, but the mandatory renewable energy target is expected to leverage $3.5 billion in private investment over the coming years. Lastly, the Prime Minister recently announced the next major plank of our climate change strategy, which is a national emissions trading scheme due to begin in 2012. Senator Evans knows that and his remarks about us not having an emissions trading scheme are quite wrong and misleading. Again, the government deserves to be congratulated. (Time expired)

Senator KIRK (South Australia) (3.13 pm)—I rise to take note today of answers given in question time also in relation to climate change. The absolute, bare truth of this matter in the climate change debate is simply that the Howard government has had 11 years to take resolute action on climate change and has done no such thing. What has it done? It has denied, it has run sceptical lines and then it has tried, as a last resort, spin.

The fact is that it has spent millions, not billions, of dollars on climate change. In fact, it has spent less than 0.05 per cent of the annual federal budget on climate change expenditure. Here is an inconvenient truth: during this term of the parliament alone, the Howard government will spend about the same amount on advertising—that is, about $850 million—as it has spent on climate change since 1996; that is, $867 million. So, in the course of the last 11 years, it has spent $867 million on climate change; yet, just in the term of this parliament alone, it has spent almost exactly the same amount of money on government advertising.

As I said before, the government spent less than 0.05 per cent of the annual federal budget on climate change. This amounts to about $5 a year for every man, woman and child in Australia. It is an absolutely miniscule amount. As we have heard today, the government’s problems on climate change are systemic. The government cannot bring
itself to accept that we should ratify the Kyoto protocol and that we as a nation should be sitting at the table and influencing the negotiations surrounding this matter. This government cannot bring itself to accept that a target is a perfectly reasonable public policy position to have. As we heard Senator Evans mention, a number of government members cannot even bring themselves to accept the fact that we, as human beings, have created the greenhouse gas emissions that are contributing to global warming. We know that there are a number of climate change sceptics within the government. In the time I have available I do not have time to mention them all. The government simply will not recognise that global warming will have significant impacts on our economy, our environment and our society. It is time that the government took some responsibility for this—here in Australia, right now, in 2007. That is the bottom line in this debate.

By contrast, Labor have indicated that we are ready, willing and able to tackle this dangerous problem of climate change. There are many things that a Labor government would do. For example, we would restore Australia’s international leadership on climate change, we would immediately ratify Kyoto and we would provide $150 million within our aid budget to assist our Pacific neighbours to adapt to climate change. A Labor government would develop a carbon market and reform our institutions. We, in contrast to this government, would lead by example. We would drive a clean energy renewable revolution. Labor would increase the mandatory renewable energy target that is now languishing under this government. We have seen that the renewable industry has had to go overseas in order to make a go of it. Labor, in contrast to this government, would be—as our shadow minister, Peter Garrett, has said on a number of occasions—fair dinkum about climate change. We would meet the climate change challenge, something that this government—a tired, 11-year-old Howard government—has no possibility whatsoever of doing.

Senator BIRMINGHAM (South Australia) (3.17 pm)—Senator Kirk spoke of taking resolute action, suggesting that this government over 11 years has not taken resolute action. I would contend that this government for 11 years has consistently been taking resolute action on the matters around climate change. As my good friend Senator Eggleston pointed out, this government within just 18 months of being elected, in 1997, launched a package of investments to address climate change initiatives. This government quickly followed that up with the establishment of the Australian Greenhouse Office, and this government has since then committed some $3.4 billion in investments to address the challenges we face as a result of climate change. These are real investments, real measures, taken by a government that recognises that it needs to address this issue. Rather than the rhetorical flourish we hear from the other side of the chamber or the hyperbole we hear from the crossbenches on this subject matter, this government is looking to address it with meaningful, real, practical measures, with sensible policy outcomes that will effect change for the long term to fix this issue but that will not along the way cause enormous pain to the Australian economy.

If there is one thing that Senator Kirk said that I do agree with, it is that the issue of climate change has the potential to have an impact on the economy. Yes, it does, and managing the threats of climate change has the potential to have an impact on the economy. That is why this government, which has demonstrated over 11 years that it can invest in climate change, and that it can effect change along the way whilst also delivering strong economic growth and benefits for all
Australians, is best placed to continue to confront these challenges into the future. This is a government with a track record of strong economic management, as well as a track record of addressing this very important issue. That is the tandem approach we need into the future.

We hear an awful lot about ratification or otherwise of the Kyoto protocol, which is due to expire in 2012 in any event. But this government, by taking sensible steps, has ensured that we can hold the principled ground of not ratifying—because we have concerns that Kyoto will not deliver for the world what is required to ensure that other emitters are tied to targets as well—but of, within Australia, working hard to meet the targets that were set for us under Kyoto in any event. Labor keep trying to claim that we will not meet those targets. They hope that, by saying it often enough, that will be the case. They are obviously being extremely pessimistic in their approach to this. The data shows that, with respect to Australia’s target of achieving 18 per cent of emissions at 1990 levels by 2012, we are on track; we are just one per cent over target. We are well and truly on track when compared to numerous other countries. New Zealand is 13 per cent above its target. That is a country with a Labour government, a country that has ratified Kyoto but a country that is not managing to achieve its targets. There is no point in us having targets if we are not able to meet them. The government has happily said, ‘We will meet the target,’ but also, ‘We expect the rest of the community to play its role as well.’

We heard from both Senator Evans and Senator Kirk. Senator Evans said that this government stands outside of the international community, and Senator Kirk said that we should be sitting at the table with the international community. I am not sure, frankly, where they have been recently. At the APEC summit we saw this government take a leadership role in placing climate change at the forefront of discussions. We are committed to developing the post-2012 arrangements for climate change management in the world. That is why this parliament, hopefully later today, will be passing the first framework for greenhouse gas reporting as part of our emissions trading scheme, which will ensure that this country is playing a leading role into the future in this very important policy area—not just at home, where we will set the standard, but also abroad in ensuring that both developed and developing countries play their role into the future.

Senator POLLEY (Tasmania) (3.22 pm)—I too rise to take note of the answers given to questions on the important issues of global warming and climate change. I would first like to make mention of the contributions by Senator Eggleston and Senator Birmingham to the debate. Senator Eggleston would like people to give the Howard government some credit for what they have done on climate change, but it is drawing a really long bow to expect the Australian community to acknowledge the very little that this government has done over 11 very long years. The senators on the other side are champions at taking credit for anything that is good—for example, the way the state governments have managed their economies—but, when it comes to taking responsibility for the lack of action, we see this government running a mile, and they are the champions of the blame game.

It is Kevin Rudd and the Labor Party that have shown leadership on this very important issue. Mr Rudd recently outlined the details of the very clear need to address the serious issue of climate change and of the policy agenda that the Labor Party will take forward to the pending election. A Rudd Labor government will take decisive action on
climate change because we believe climate change is the greatest environmental challenge facing the global community. Tackling climate change should be a national priority, but, after the Howard government’s 11 years of inaction and denial, Australia is now on track to increase its greenhouse pollutants by 27 per cent by 2020.

In reports released earlier this year, the United Nations Intergovernmental Panel on Climate Change, the IPCC, reaffirmed unequivocally what the Howard government has known since 1996: climate change is real, it will hurt our economy, it will hurt the environment and, most importantly, it will affect our children’s future. In coming decades, hotter and drier summers in the south of our country will threaten our rural communities and industries. The harsh reality of climate change is that the Great Barrier Reef could be destroyed through coral bleaching, the Kakadu wetlands could be flooded and the Snowy Mountains could lose much of their snow. These Australian icons are the backbone of our tourism industry and regional economies.

It should be noted by the Senate what the Stern review in the UK made clear last October: the costs of delay will be far greater than the cost of reducing greenhouse gas emissions now. Labor believes we can address climate change immediately with solutions that ensure the integrity of our water supply, protect our environment and secure Australian jobs and industries now and into the future. A Rudd Labor government would be committed to restoring Australia’s international leadership on climate change and would immediately ratify the Kyoto protocol to help forge a global solution to climate change. Labor will aim to cut Australia’s greenhouse pollutants by 60 per cent on 2000 levels by 2050 and introduce an effective emissions trading scheme by 2010.

Labor is also committed to leading by example. Central to this point, Labor has committed to using its purchasing power to provide a market for new, efficient technologies. Labor has also pledged to help Australian families to green their homes. Labor will offer $10,000 low-interest loans for Australian households to implement energy and water savings and provide rebates for rooftop solar panels. These are real initiatives that go part of the way towards a solution. Labor has agreed to work in partnership with businesses to drive energy efficiency improvements that will deliver smarter and more productive industries and to establish a $500 million national clean coal fund.

Labor is also willing to invest in sustainable agriculture and to protect our biodiversity. We will work with farmers to encourage sustainable farming practices which reduce emissions, develop carbon sinks and protect our unique plants and animals. As I said, it is not about blaming others and wanting to take credit; it is about action and leadership. I think it is necessary and vitally important. It is something that the Howard government has not done and on which it has shown no leadership, and I do not believe it will do so. Labor is the only party.

Question agreed to.

Child Abuse

Senator BARTLETT (Queensland) (3.27 pm)—I move:

That the Senate take note of the answer given by the Minister for Finance and Administration (Senator Minchin) to a question without notice asked by Senator Bartlett today relating to the sexual assault and abuse of children.

The question I asked related to a motion passed by the Senate earlier this morning without dissent—I presume it was with the support of all parties in this chamber. In that motion, the Senate recognised, among other things, the importance of following up ex-
pressions of concern with regard to the sexual assault and abuse of children and young people with genuine action to assist survivors of sexual assault and to bring perpetrators to justice. The Senate also expressed without dissent its support for the longstanding call for a comprehensive royal commission into the sexual assault and abuse of children throughout Australia, especially in institutions.

I appreciate that the minister could not instantaneously give a response that the Prime Minister and the cabinet had considered this resolution in the space of a few hours and resolved to implement a royal commission—although the government is capable of acting extremely quickly on some issues—but I do want to reinforce the key points of the resolution. It does not just support the calls for a royal commission; it also specifically recognises the importance of following up expressions of concern with genuine action. That is certainly the point that the Democrats will continue to push right through to election day and for as long as we have breath in our bodies.

It does need more than just expressions of concern and general statements about how terrible the sexual assault of children is and the need for us all to do more and all those sorts of things. That is all well and good, but it needs to be followed up with genuine action. The minister noted, quite understandably and correctly, that there are efforts through Commonwealth and state governments to work together to improve our performance with regard to child protection. As I have stated in this chamber a number of times before, as have people from other parties, there is certainly a lot of room for improvement in that regard. We have failed pretty dismally, collectively—and societally I might say—across the political spectrum in ensuring as much as is humanly possible a safe environment for children.

I should make the point that, whilst I am urging action from government and political parties in this regard, it is an issue where, as a society, we need to take more responsibility. It is not one of those issues, frankly, where you can expect the government to fix it. You can expect the government to show leadership on it; you can expect some comprehensive, cohesive national strategies, which in my view would include a royal commission or some similar type of independent commission of inquiry to comprehensively examine the issue rather than deal with it in an ad hoc way.

The concern that I and the Democrats have—and that is part of the motivation behind this resolution, as is probably fairly obvious—is that once again we had a particular incident generating a lot of publicity. This was the reraising of concerns about an alleged incident in a youth detention centre in Brisbane some time ago and the fact that the issues of justice with regard to that had not been resolved. It is a serious issue and it needs action. But obviously there is politics involved in that. Obviously that is a part of why it has resurfaced. I think we need to be making sure that we look comprehensively at this issue as a whole—and as much as possible in a non-partisan, independent way—and not have a sudden focus on one area because there is a political scandal, political opportunility or just media heat or whatever it is.

That is why we need to be having some national cooperation and leadership on the issue. That includes the sort of comprehensive examination of the totality of the issue that I do not believe we have ever had. We have had bits and pieces here and there with regard to specific institutions, specific groups in the community, specific regions, specific churches—some done by independent bodies, some by governments, some by departments—but we have not had a comprehensive nationwide examination. That is
why the Democrats keep supporting this call, which others in the community have also made. That is why I would reinforce our request to government—and the opposition leader, who is obviously moving to a period where he is putting himself as the alternative Prime Minister—to act on this as a matter of urgency and get a comprehensive examination and action plan to follow up those expressions of concern with action and do so as a matter of urgency.

Question agreed to.

AUSTRALIAN TECHNICAL COLLEGES (FLEXIBILITY IN ACHIEVING AUSTRALIA'S SKILLS NEEDS) AMENDMENT BILL (No. 2) 2007

Senator IAN MACDONALD (Queensland) (3.32 pm)—I seek leave to incorporate a speech which we had arranged to incorporate in the second reading debate on the Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Amendment Bill (No. 2) 2007, which was inadvertently omitted. The Labor Party have seen it and have approved it.

Leave granted.

The speech read as follows—

A Bill for an Act to amend the Australian Technical Colleges (Flexibility in Achieving Australia’s Skills Needs) Act 2005, and for related purposes

Empowerment, engagement and tangible educational outcomes are what the Australian Technical Colleges are delivering to the young people of Australia. Australian Technical Colleges are delivering to the young people of Australia. Australian Technical Colleges are delivering to the young people of Australia.

Australian Technical Colleges are credit to the Australian Government and are actively remediating the skills shortage by providing an innovative education system tailored to the needs of students, industry and the community.

This Bill is a further commitment to the young people of Australia, giving them the best opportunity to undertake vocational education as well as a secondary Certificate in Education.

The Bill remedies the mistakes of the past (of closing dedicated technical high schools), by funding three more colleges across Australia. It meets the needs of industry in local areas and fulfils the dreams of our young people by allowing them to work toward a future they want.

Gone are the days of vocational education being ‘second best’. I have seen the students at the Australian Technical College North Queensland and they are a first rate group of people. They are intelligent and skilled young men and women, who are able to take control of their education and make their own career and life choices.

Students at Australian Technical Colleges have the opportunity to study a vast range of trades, including, building, engineering, electro-technology, wet trades and automotive which require discipline, dedication and a vast knowledge of maths and design.

If I may be able to be a little parochial, can I say that the Australian Technical College North Queensland is the best Australian Technical College in the country. It is brand new - brand new buildings, brand new workshops with cutting edge equipment that many workplaces do not have. And their trade teachers are fresh from industry. Their students are ahead of the game already, and that is due to the Australian Government, through the Australian Technical College initiative.

The Townsville college has students who come from as far away as Ayr and Bowen. These students have left their families and friends, by their own choice, to take advantage of the opportunities that the Australian Technical College has to offer.

The increase in funding of $74.7 million from 2008-2011 that the Bill provides, will allow 3 further Colleges to be built and resourced appropriately. These Colleges are not just state of the art buildings. They are places that are changing the face of education; providing alternatives and relevant curriculum which engages young people to learn and prosper. 2,000 students are already
attending Australian Technical Colleges and by 2009, over 8,000 will be benefiting from this initiative. This is an amazing achievement considering that the initiative was only announced in 2004.

This Bill will provide Queensland with a fifth Australian Technical College in South Brisbane. The Australian Government is filling a gap in education that the State cannot match, which will be critical in closing skills gaps in Queensland. Queensland is growing everyday, and trade skills are desperately required, not only for the natural resource boom, but in the housing sector as well.

Now, I know that some people are confused as to what Australian Technical Colleges actually deliver. Some people think that they are just another TAFE College. This demonstrates a clear misunderstanding of the education system. Australian Technical Colleges are not competing with TAFE. Australian Technical Colleges provide education to students who wish to complete Secondary Certificate as well as a trade. It is not for post-secondary students. Core subjects, English and Maths, are tailored to integrate with the trade area. Relevancy is the key to ensure our young people are engaged in their learning and the Australian Technical Colleges are proving to be relevant and engaging for students, which can be seen through outstanding enrolment levels and strong retention rates of students.

Australian Technical Colleges, unlike TAFE, are driven by the needs and requirements of industry in the immediate area via direct consultation. By nurturing relationships with industry the colleges reflect the needs of industry and the community. This Bill is providing our young people with a future that allows them to follow their own dreams, rather than trudge along traditional educational paths set by the State government, or worse, totally disengage from the education system altogether. It provides an avenue to meet the skills shortage and it is an investment in the future of Queensland, and of Australia.

We are a fiscally responsible Government in practice, not just in rhetoric, and for that reason we cannot fund immediately all of the ATC’s that I would like to see established. But even in my area of influence in North and Western Queensland I know Australian Technical Colleges would be useful in places like Mount Isa, Cairns, Mackay, Rockhampton/Yeppoon, Gladstone, Emerald and Longreach—and into the future I will be strongly supporting the expansion of this Howard Government initiative to these localities.

I commend the Bill to the Senate

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Broadband

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (3.33 pm)—by leave—During question time I was called upon by Senator Crossin to correct a statement made in answer to a question yesterday from Senator Birmingham. The statement concerned Labor’s pollster, Mr Utting, being on Telstra’s payroll. After question time I read a copy of a letter from Mr Utting, the Managing Director of UMR Research, and a letter from Philip M Burgess of Telstra Corporation Ltd that had apparently been widely copied.

Both letters assert that Mr Utting has no current or any recent financial relationship with Telstra. However, research of the UMR website, last updated today, claims that over the past few years UMR has worked with a wide range of clients, which is illustrated in what is described as a recent client list for Australia and New Zealand. Under the selected clients listed as recent clients is none other than Telstra.

So, whilst I certainly would correct the record if it is wrong, the information on the public record is, I would submit, equivocal and it certainly does suggest that Telstra is a client. It is Telstra and Mr Utting acting on a voluntary basis—I do not know whether that is in fact the position—but, if Telstra and Mr Utting have no financial relationship, it is odd that Telstra is specifically listed as late as today on the UMR website as a client. So, to be fair to both Mr Utting and Telstra, I
have placed the competing versions on the record. I note that the letter from Telstra gave no assurance or guarantee that Telstra would not be meddling in the election to try to secure a Labor victory. I table the website of UMR Research Ltd.

Senator CONROY (Victoria) (3.35 pm)—by leave—I move: That the Senate take note of the statement.

That was perhaps one of the more graceless apologies that one could get when one has been shown to have completely misled the Australian public. Unfortunately, it is not a one-off occurrence. What we have seen in recent months from this minister is that she is a serial misleader of the Australian public. She misled 27 tenderers for the Broadband Connect program when she only told one tenderer that there was more money available than had been advertised as part of the tender process.

Senator Conan—Mr Deputy President, I raise a point of order. I think Senator Conroy is getting very close to reflecting on my integrity, and I do not believe that is appropriate.

The DEPUTY PRESIDENT—There is no point of order. I am listening very closely to what Senator Conroy is saying.

Senator CONROY—That was just in recent months—the first of the serial misleads. Five hundred thousand Australians recently received a letter from the minister, paid for by taxpayers, which misled them about the government’s broadband proposal and, more importantly, misled them about the level of coverage of broadband that they actually received. The Australian public have been misled recently by this minister over the maps purporting to show OPEL coverage. Tragically, the minister was exposed by her own departmental website, which stated, in relation to the maps, that the department took no responsibility whatsoever for any use by any person of these maps.

Senator Coonan—So you rely on our website but not on—

Senator CONROY—The minister’s own website exposed the misleading conduct of this minister. Finally, we saw yesterday this graceless and classless performance by the minister, and she could not even come in here and apologise for misleading the Australian public and slandering Mr Utting. The only pollster that Telstra has employed since the new management came to power in Telstra is the Liberal Party’s own Crosby Textor. That is the only pollster that has been employed by Telstra under the new management. This minister is a serial misleader, and she has fallen well below the ministerial code of conduct for misleading the Australian public on all of these occasions. If it were not for the fact that their ministerial code of conduct has been shredded over the last few years, this is a minister who should have resigned her commission.

Question agreed to.

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (3.39 pm)—by leave—I move:

That:

(a) the hours of meeting for today shall be 9.30 am to 6.30 pm and 7 pm to adjournment; and

(b) the order for the consideration of government business for the remainder of today be as follows:

Health Insurance Amendment (Medicare Dental Services) Bill 2007
Health Legislation Amendment Bill 2007
National Health Security Bill 2007
Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007
The ministerial statement gives a general overview of the role of the Pine Gap defence facility, which has been in operation for 40 years, so this is a bit of a 40th anniversary statement. It sets out the government’s view in fairly straightforward and uncontroversial fashion. I would like to make one or two general comments and a specific comment in regard to it.

There is no doubt that the Pine Gap defence facility plays a significant role in Australia’s defence activities. There is also no doubt that it has been quite controversial and remains controversial to some degree. The level of controversy to some extent depends on the nature of Australia’s defence policy, having regard specifically to what happens at the facility. There is a change in the nature of some of the work that is done there, and a change to the importance of it in the changed international security environment, particularly post 2001. That is something that I recognise, but some of the concerns about the facility remain fairly similar. In previous decades there was a lot of concern about it being a nuclear target. I do not see any reason why that concern would have disappeared. That is acknowledged in the minister’s statement.

There is also the wider issue of what the facility is used for. Speaking individually, I am not a pacifist. I recognise the role of the Defence Force. For me, it is about making sure that the Defence Force is used for genuine defence purposes. That can include intelligence gathering, of course, but it should not be used to facilitate acts of aggression. Certainly, that is behind my concern with regard to the uses of this facility in the current international environment and with regard to the federal government’s current defence policy.

There is a new political correctness abroad in the land: anytime one expresses concern
about Australia’s military policies being intertwined with the current military agenda of the US administration, you are told that you are anti-American or anti the US alliance. I have been on the record a number of times, going back many years, as not being against having a cooperative relationship with the United States, but I do think we need to retain sufficient independence so that we are not so intertwined with the US that, when they embark on unwise acts of military aggression, we are fundamentally linked with those acts and their ongoing operation. That is where we are at at the moment. There is not much doubt that Pine Gap is used in part for that role, and that is a very valid reason why people continue to express concern about it.

The only other point I would make with regard to the ministerial statement is that it does note in passing that the government is quite comfortable with the continuing role of Pine Gap and the way it operates. As far as I am aware, the opposition is similarly perfectly comfortable with it. The ministerial statement acknowledges in passing that that is not a universal view amongst the community; there remain some concerns amongst people in the community. The ministerial statement says that, while the government does not share those views, those views are respected. I am not convinced that those views are respected, and I am particularly concerned about the continuing actions of the Attorney-General in targeting some non-violent protesters who sought to make their views known via entering the Pine Gap facility as a way of conducting a non-violent protest.

Regardless of whether or not you agree with the views of the protesters, or even whether or not you agree with their methods, the sledgehammer approach of the Attorney-General in response to their clearly non-violent action is beyond dispute. The history and record of those protesters over many years has been of the sorts of clearly non-violent protests that lots of people do not particularly like but which are clearly not violent security threats.

The Attorney-General made the decision to use the Defence (Special Undertakings) Act for the first time ever—a Cold War piece of legislation that had never been used even during the Cold War—to charge these protesters. All of the other times people had trespassed at Pine Gap they had been charged under trespassing offences and gone through the courts that way. I do not have a problem with that. People almost always go into these actions with their eyes open, and there is no doubt that the people on this occasion acted with their eyes open, including being aware that there is always the potential for a government to try to use them as a political example. However, I think it is completely unjustifiable for the Attorney-General to have made the specific, political, individual decision to use this extremely heavy-handed piece of legislation that was obviously meant to be used for international spies or people who are genuinely attempting to create major security hazards. I think it is a disgrace to use it on non-violent peace protesters. What is even more disgraceful is that, having done so, the government then employed an army of QCs to ensure that the defence of protesters was as limited as possible and that there was very little opportunity for them to get the totality of their defence and their justifications on the public record or accepted in court.

Those people were thus, almost unavoidably, found guilty by a jury. The judge then produced a sentence. Clearly the judge did not have a precedent to use in determining a sentence because no-one has ever been charged under the act before. The judge in this case weighed up the intent of the actions, the extent of the risk or lack thereof to public
safety and security, the motivation of the protesters and a range of other factors and brought down a fine. The key issue with the use of the Defence (Special Undertakings) Act is that it has the potential for a very extreme jail sentence. I cannot off the top of my head remember exactly what it is. I have 15 years in my head, but it may be seven years; I am not sure. Either way, the decision of the Attorney-General not to charge them with trespassing but to charge them under that act specifically introduced the prospect of many years jail for a very simple act of civil disobedience and non-violent protest.

A particular disgrace is not only the use of that act but that, after the sentence was brought down, the government and the Attorney-General once again came through with a sledgehammer. They are using taxpayers' funds to launch an appeal against the sentence. I think that is not only an excessive abuse of government power but a deliberate act of intimidation not just against those protesters but against anybody who seeks to express concern about this government's defence policy, military policy and foreign policy with regard to the use of our defence forces.

I do not believe the government and the minister can credibly say, as they have in this statement, that they have respect for people who have different views to theirs about the Pine Gap facility. My views about the Pine Gap facility are not the same as those of the protesters who were arrested and convicted, but I certainly do not have any problem with either their right to protest or their method of protest. I do have a real problem with the use of that sort of legislation for a purpose that it clearly was not intended for and with large amounts of taxpayers' funds being used to persecute and pursue peace protesters rather than to protect and improve the safety of Australians.

Question agreed to.

COMMITTEES
Community Affairs Committee

Report: Government Response

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (3.49 pm)—I present the government's response to the report of the Senate Community Affairs References Committee on its inquiry into quality and equity in aged care and seek leave to have the document incorporated in Hansard.

Leave granted.

The document read as follows—

Australian Government Response to the Senate Community Affairs References Committee's Report of the Inquiry into Aged Care – Quality and Equity in Aged Care

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FOREWORD

By the Minister for Ageing,
The Hon Christopher Pyne MP

I am pleased to present the Australian Government’s response to the Senate Community Affairs References Committee’s report Quality and equity in aged care.

The matters raised in the report are wide-ranging. Our overwhelmingly positive response to the report reflects the fact that most of the matters raised were under consideration by Government. Action has been taken consistent with our commitment to maintain Australia’s high quality and world class aged care system.

Overall, since the 2004-05 Budget the Australian Government has committed close to $2.1 billion in new initiatives that address the issues identified in the recommendations made by the Committee. This is in addition to the announcements made in the 2004-05 Budget including the $2.2 billion package of reforms in response to the Review of Pricing Arrangements in Residential Aged Care (the Hogan Review).

This year’s Budget continues the Australian Government’s strong commitment to supporting older Australians. It contains more than $1.7 billion for further improvements to our aged care system. This includes an extensive package of reforms, called Securing the future of aged care for Australians which was announced by the Prime Minister in February 2007.

Our record of unprecedented investment in aged care clearly demonstrates the Government’s commitment to provide for the best of care for Australians as they age. Total Australian Government expenditure on ageing and aged care activities will have grown from some $3.1 billion in 1995-96 to an estimated $10 billion in 2010-11—more than a three-fold increase.

The number of Australian Government subsidised aged care places also continues to increase. At 30 June 2006, there were 204,869 operational aged care places. This number exceeds the election commitment we made in 2001 to provide 200,000 operational aged care places by June 2006. In February 2007 we announced that we will lift the overall provision ratio to 113 places for every 1,000 people aged 70 years or over, including an increase in community care places from 20 to 25. This will yield 250,000 places by June 2011 of which 100,000 will have been added by the Australian Government since 1996.

Christopher Pyne

INTRODUCTION

On 23 June 2004, the Senate referred the following matters to the Senate Community Affairs References Committee (‘the Committee’) for inquiry and report by 30 September 2004:

(a) the adequacy of current proposals, including those in the 2004 Budget, in overcoming aged care workforce shortages and training;

(b) the performance and effectiveness of the Aged Care Standards and Accreditation Agency in:
(i) assessing and monitoring care, health and safety,
(ii) identifying best practice and providing information, education and training to aged care facilities, and
(iii) implementing and monitoring accreditation in a manner which reduces the administrative and paperwork demands on staff;

(c) the appropriateness of young people with disabilities being accommodated in residential aged care facilities and the extent to which residents with special needs, such as dementia, mental illness or specific conditions are met under current funding arrangements;

(d) the adequacy of Home and Community Care programmes in meeting the current and projected needs of the elderly; and

(e) the effectiveness of current arrangements for the transition of the elderly from acute hospital settings to aged care settings or back to the community.

On 1 December 2004 the Senate agreed to the Committee’s recommendation that the reference, not disposed of at the end of the 40th Parliament, be re-adopted with a reporting date of 23 June 2005.
The Committee received 243 public submissions and 10 confidential submissions. The Inquiry also drew extensively on evidence and analysis published in the Review of Pricing Arrangements in Residential Aged Care, Final Report (‘the Hogan Review’).

The Committee’s report, entitled Quality and equity in aged care, was tabled and released on the 23 June 2005. The report included 51 recommendations. In the majority of cases the recommendations focused on matters which the Australian Government was considering or on which action was being taken.

The Australian Government’s response to the Review of Pricing Arrangements in Residential Aged Care in the 2004-05 Budget provided a $2.2 billion package, Investing in Australia’s Aged Care: More Places, Better Care. The large majority of the reforms included in this package, many of which address issues identified by the Inquiry, are now in place. The outstanding matters have required complex and rigorous development and testing over time including the new funding model and related information technology systems. The Government has announced that the new Aged Care Funding Instrument (ACFI), which has been developed with extensive involvement of many residential care providers, will be in place on 20 March 2008. The ACFI will be supported by the implementation of eBusiness and an updated payments system for aged care subsidies which are being developed by Medicare Australia.

Beginning with the enactment of the Aged Care Act 1997, the Australian Government has pursued a reform agenda to ensure that older Australians can access a world class, high quality and affordable aged care system that is responsive to their needs and preferences. Since the $2.2 billion package in the 2004-05 Budget the Australian Government has continued to closely monitor the effectiveness of the aged care system. Where necessary, new reforms have been introduced and reforms in progress built on through strengthened arrangements or additional funding.

This year’s Budget continues the Australian Government’s strong commitment to supporting older Australians. It contains more than $1.7 billion in new funding for further improvements to our aged care system. This includes an extensive package of reforms, called Securing the future of aged care for Australians which was announced by the Prime Minister in February 2007.

The package allocates $1.1 billion to increase Government payments for residents of aged care homes including an additional $92.2 million in the Budget taking the total funding in the package to $1.6 billion. Of this funding, $884 million will support initiatives related to matters identified by the Inquiry.

In addition, funding for new aged care initiatives in the Budget totals a further $255.4 million. Overall, including resident contributions, funding for residential care will increase by $1.3 billion over the next four years, on top of increases for indexation and the increased places already factored into Budget estimates.

Overall, since the 2004-05 Budget the Australian Government has committed close to $2.1 billion in new initiatives that address the issues identified in the recommendations made by the Committee. In relation to a number of the new initiatives funding has been augmented by additional resources from the states and territories through the Council of Australian Governments or other avenues. Details of the initiatives are provided in the responses to the recommendations.

Consequently, the Government considers that the large majority of the recommendations made by the Committee are being addressed.

The Government does not agree with four recommendations. Each of these is inconsistent with current whole-of-government policies on such matters as workplace relations and programme indexation.

The Government’s responses to the recommendations made by the Committee are set out below. They clearly demonstrate the Government’s willingness to invest in reform and the development of care for older Australians.
RESPONSE TO EACH RECOMMENDATION

**Aged care workforce**

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<th>Recommendation 1</th>
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<td>The Committee welcomes the Commonwealth’s allocation of 400 extra nursing places at universities in the 2004-05 Budget. However, the Committee recommends that the Commonwealth further increase the number of undergraduate nursing places at Australian universities to 1000 as recommended by the Hogan Review. In addition to the 440 aged care nursing places funded in the 2004-05 Budget and Additional Estimates, a further 1,036 general nursing places have been allocated to universities across Australia in 2006 for commencement in 2007. Universities are able to bid for new places for aged care nursing. Aged care nursing is regularly identified by the Department of Employment and Workplace Relations and state and territory health ministers as a skill in demand which informs the allocation of new places. Universities are also able to redistribute places from general nursing or other disciplines toward aged care nursing to meet student and employer demand. Funding of $4.1 million for up to 410 more postgraduate nursing scholarships over four years was committed by the Australian Government in its final response to Hogan Review announced on 11 February 2007. The scholarships are part of a $32 million package of support designed to encourage more and better qualified people to work in community care and complement the Aged Care Nursing Scholarship Program which provides up to 250 scholarships each year. Commonwealth Grant Scheme funding to assist nursing clinical training has increased this year from around $690 to $1,045 per nursing unit of study (2007 prices) to enable eligible higher education providers to expand and improve their clinical training arrangements. In addition, as part of the 2007-08 Budget, funding for nursing units of study will increase by an additional 1 per cent from 2008. These initiatives will enable higher education providers to expand and improve their nurse teaching and clinical training arrangements. The 2007-08 Budget also provided $211 million over four years to increase university flexibility. A part of this measure was a relaxation on the caps on university places (both Commonwealth supported and full fee) which may lead to further increases in the number of nursing places offered at universities across the country.</td>
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<td>That the Commonwealth work with aged care providers to ensure that their shared responsibility to assist enrolled nurses to complete medication management training meets the target as recommended by the Hogan Review. The Australian Government has responded to Professor Hogan’s recommendations by supporting the full cost of 5,250 additional certificates of attainment in medication management over four years from 2004-05. Providers are expected to share responsibility in ensuring more enrolled nurses complete medication management training.</td>
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<td>That the Commonwealth implement a strategy which allocates an appropriate number of undergraduate nursing places on the basis that recruitment for those places occurs from the current residential and community care workforce in both rural and urban settings proportionally. For all universities receiving the new aged care nursing places that commenced in 2005, a clause has been included in their Commonwealth Grant Scheme Funding Agreement which requires the aged care places to be allocated with a preference for applicants with experience working in the aged care industry and that the course must respond to the needs of students who continue to work in the aged care industry. Of the 440 extra places allocated to aged care nursing from 2005, 195 were allocated to campuses in the capital cities and 245 to regional campuses.</td>
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Recommendation 4

That the Commonwealth investigate the effectiveness of incentives for staff to work in aged care settings in rural and remote areas.

The Australian Government provides a viability supplement for small residential aged care facilities and those in rural and remote locations in recognition of the difficulties faced by such services in attracting and retaining staff. In the 2004-05 Budget, the Government increased this viability supplement by $14.8 million over 4 years. In the 2006-07 Budget, $19.4 million over 4 years was provided to extend a viability supplement to providers of Community Aged Care Packages, Extended Aged Care at Home (EACH) and EACH Dementia programmes.

A new initiative to support staff to deliver services in remote and very remote aged care services was announced in the Australian Government’s final response to the Hogan Review. As part of this initiative, practical support will be available for providers delivering care to difficult-to-service populations through access to skilled aged care professionals who are able to tailor assistance to the needs of the particular service/provider including longer term training and developmental support.

The 2007-08 Budget includes funding of $8.5 million over four years to provide 120 Indigenous Australians with the opportunity to gain continuing jobs working in community care in place of positions previously subsidised through the Community Development Employment Projects (CDEP) program. This includes 30 positions in remote areas under the National Respite for Carers program and 90 in regional and urban areas in the Home and Community Care (HACC) program. The conversion of CDEP positions into continuing jobs will contribute to the development of a stable and skilled workforce in rural and remote areas.

The wages and other employment conditions offered by aged care employers in rural and remote areas are matters between the employers and their employees subject to relevant legislation including the Workplace Relations Act 1996, as amended by the Workplace Relations (Work Choices) Act 2005. This legislation provides flexibility for parties to negotiate conditions (including incentives) of employment in a workplace agreement.

Recommendation 5

That the Commonwealth, as a matter of priority, expand the National Aged Care Workforce Strategy to encompass the full aged care workforce, including medical and allied health professionals, and all areas of the aged care sector, in particular the community care sector.

The National Aged Care Workforce Strategy developed by the industry through the Aged Care Workforce Committee acknowledges that further work will be needed to cover the full aged care workforce. The Committee is overseeing the implementation of the Strategy.

In keeping with the strategy, the Australian Government will repeat the Census and Survey of the residential aged care workforce in 2007 and is providing additional funding for a concurrent community care workforce census and survey. These initiatives will broaden understanding of the aged care workforce and will assist the Aged Care Workforce Committee with any further development of the National Aged Care Workforce Strategy.

Recommendation 6

That the Department of Health and Ageing and the Department of Education, Science and Training, as part of the National Aged Care Workforce Strategy, ensure the inclusion of quality aged care curricula in undergraduate nursing.

The Australian Government encourages and supports the adoption by universities of an aged care core component in undergraduate nursing curricula through such measures as the allocation of aged care nursing places. Universities are self-accrediting institutions that decide the courses they will offer and the curriculum for those courses. Industry bodies can seek to work with individual universities (or other higher education providers) to develop courses that meet their needs.
Recommendation 7
That the Commonwealth consider implementing mechanisms to ensure that the conditional adjustment payment aimed at restoring wage parity for nurses, personal carers and other staff in the aged care workforce is used to meet this aim.

The Government does not agree with this recommendation. The aim of the conditional adjustment payment (CAP) is not ‘to restore wage parity’. Wages and other employment conditions are matters between employees and employers subject to relevant legislation including the Workplace Relations Act 1996, as amended by the Workplace Relations (Work Choices) Act 2005.

The Australian Government has made clear the purposes of the CAP and stipulated the conditions that providers must meet to receive the CAP. To remain eligible for the CAP, approved providers must encourage staff to undertake training, prepare audited financial reports and participate in a periodic workforce census. The payment is provided on top of the annually-indexed subsidy, to assist aged care homes to continue to provide high quality care to residents, including paying more competitive wages to nurses and other staff.

In 2007-08, the value of the CAP will rise by 1.75 per cent to 7 per cent. Consistent with the Government’s commitment, the CAP will be reviewed in 2007-08.

The Accreditation Agency, accreditation standards and complaints resolution

Recommendation 8
That the Agency ensure that the training of quality assessors delivers consistency in Agency assessments of aged care facilities.

The Aged Care Standards and Accreditation Agency (the Agency) has implemented a multifaceted quality assurance programme as part of its aim to ensure that assessments are accurate. This programme includes:

- inclusion of observers on samples of audits and support contact visits to assess conformance with Agency processes;
- updating training for assessors; and
- providing revised guidelines for assessment in the publication Results and processes in relation to the Expected Outcomes of the Accreditation Standards.

Agency assessors must complete an approved training course and be registered with RABQSA International. Eligibility to continue as an assessor is also reviewed annually.

Recommendation 9
That the Agency publish data on the accuracy of assessors’ decisions in conducting assessments against Agency benchmarks and that this data be provided in the Agency’s annual report and on its website.

Agency assessors do not make the decisions concerning compliance with expected outcomes or whether a service is granted accreditation. These decisions are made by senior Agency delegates based on a wide range of information including assessors’ reports. Assessors monitor the processes and practices that services have in place to meet the Accreditation Standards and complete a report which is provided to the Agency and the service’s approved provider. This report, together with any submission by the approved provider to the Agency, information obtained from the Department of Health and Ageing and other information provided to the Agency is considered in making the accreditation decision. The Agency also has quality assurance processes in place including observers on audits, support contacts, and reviews of assessors’ reports.
Recommendation 10  
That the Agency further develop and improve information provided to residents and their families about the accreditation process, including those from CALD backgrounds and Indigenous people, and more actively involve residents and their families in the accreditation process.

The Agency has developed consumer guides and an audio visual presentation on DVD to better explain accreditation and to assist people in making decisions about residential aged care.

These products are also aimed at providing aged care residents with information about the quality they should expect, the accreditation process and what it means for them.

During an accreditation audit a minimum of 10 per cent of residents and/or their relatives are interviewed and their comments taken into account when the assessment is being conducted.

In order to assist residents and their families understand and be involved in accreditation, the Agency obtains information from aged care homes about any particular cultural services and language issues. This also assists in deciding the formation of an assessment team including, as appropriate, multi-lingual assessors and an interpreter. Similarly, the Agency uses assessors with either Indigenous backgrounds or knowledge of Indigenous culture where there is a predominance of Indigenous residents.

The Community Partners Program also assists people from culturally and linguistically diverse communities to have informed expectations about community and residential aged care services.

New funding of $13.2 million over five years from 2006-07 for the Community Partners Program will double the number of projects funded.

This will expand the development of information and education approaches, such as the use of ethnic media to provide information on aged care, the development of peer support networks, and the provision of assistance to aged care providers so that they can offer culturally appropriate care.

The new funding is in addition to the $10.2 million the Government has already committed to continuing the Community Partners Program over the next four years.

Recommendation 11  
That the Agency develop a rating system that allows residents and their families to make informed comparisons between different aged care facilities. The Committee notes that work is being done on a web-based prototype; however it considers that the rating system should not be limited to a ‘star rating’ but should include easily understood descriptions of a range of attributes, such as type and range of services provided; physical features of homes; staffing arrangements; costs of care; and current accreditation status.

In 2005, the Department of Health and Ageing commissioned an independent study by the Centre for Evidence Based Aged Care at LaTrobe University. This study suggested that there are challenges in developing such information so that it is both reliable and useful to consumers.

The Australian Government Department of Health and Ageing also developed the Aged Care Australia web site (www.agedcareaustralia.gov.au) in response to the Hogan Review recommendations. The web site provides people with a single point of reliable and easy to understand information about aged care, carer support and other relevant health information.

Web site visitors are able to view important information about each Australian Government-funded aged care home, including accreditation and certification details, type of services offered and activities available to residents.

People can also access information about the quality of accommodation by viewing photographs, floor plans of sample rooms and details of recreational areas, including descriptions of garden areas.

The Aged Care Home Finder also allows a comparison of up to five aged-care homes, based on how they meet the particular needs of a potential resident. People can tailor their comparison of different homes by selecting desired features such as, proximity to a specific town or suburb and type of care offered. Users of the Aged Care Home Finder are also able to view maps that show the home’s proximity to local facilities.
Another feature of the website is the Community Care Service Finder which assists people who need support in their own home to locate care services available in their area. This search tool provides information on providers who offer services such as assessment services, including Aged Care Assessment Teams and assessors for Home and Community Care. Details of the services offered by each provider, contact information and operating hours are included.

Recommendation 12
That the Agency ensure that all facilities be subject to a minimum of one annual random or targeted spot check and at least one site visit with notification over its accredited period.

From 1 July 2006 around 5,200 visits will be made by the Agency each year to residential aged care homes. This will include about 3,000 unannounced visits, compared to 563 unannounced visits conducted in 2004-05. Every home will receive at least one unannounced visit every year and the average number of overall visits will increase to 1.75 visits per home per year. These extra unannounced visits will provide aged care residents, their families and the public with greater confidence that the high standards of care required by the government are being met on a consistent basis.

These visits will be in addition to accreditation site audits, support contact visits and review audits. As a result the Agency will be visiting homes at a greater frequency than ever before.

Recommendation 13
That the Agency, in consultation with the aged care sector and consumers, develop a benchmark of care which ensures that the level and skills mix of staffing at each residential aged care facility is sufficient to deliver the care required considering the needs of the residents. The benchmark of care that is developed needs to be flexible so as to accommodate the changing needs of residents.

The Government does not agree with this recommendation. Under the Accreditation Standards, all approved providers are responsible for ensuring that they have appropriately skilled and qualified staff sufficient to ensure that services are delivered in accordance with the standards to meet the care needs of all residents in their home. The Government notes that the Accreditation Standards are consistent with the Workplace Relations Amendment (Work Choices) Act 2005.

Recommendation 14
That the Commonwealth, in consultation with industry stakeholders and consumers, review the Accreditation Standards to define in more precise terms each of the Expected Outcomes and that this review:

- address the health and personal care needs of residents, especially nutrition and oral and dental care; and
- include specific consideration of the cultural aspects of care provision, including the specific needs of CALD and Indigenous residents.

The Australian Government has undertaken an evaluation of the impact of accreditation on quality of life and care of residents in aged care, including identifying options for the measurement of quality improvement into the future. Wide stakeholder consultations were undertaken during the evaluation. All of the project’s iterative stages are currently being integrated into a final comprehensive evaluation. Any consideration of changes to the Accreditation Standards would benefit from waiting until the outcomes of that evaluation are available.

Recommendation 15
That the Agency make greater use of interpreters during accreditation visits to aged care facilities, especially those facilities that cater for specific or predominant numbers of CALD or Indigenous residents; and that assessors be trained in cultural competency as part of their formal training courses.

The Agency obtains information from homes in their accreditation applications about any particular cultural services and language issues to assist in deciding the formation of an assessment team including, as appropriate, multi-lingual assessors and an interpreter. Similarly, the Agency uses assessors with either Indigenous backgrounds or knowledge of Indigenous culture where there is a predominance of Indigenous residents.
Recommendation 16
That the Commonwealth review the operations of the Aged Care Complaints Resolution Scheme to ensure that the Scheme:

- is accessible and responsive to complainants;
- provides for a relaxation of the strict eligibility criteria for accepting complaints;
- registers all complaints as a complaint, with the complaints being categorised by their degree of severity, such as moderate level of complaint, complaints where mediation is required or where more significant levels of intervention are required; and
- provides that the mediation process is responsive and open and that sufficient support for complainants is provided in this process.

Recommendation 17
That the Commonwealth examine the feasibility of introducing whistleblower legislation to provide protection for people, especially staff of aged care facilities, disclosing allegations of inadequate standards of care or other deficiencies in aged care facilities.

Recommendation 18
That the Commissioner for Complaints conduct an investigation into the nature and extent of retribution and intimidation of residents in aged care facilities and their families, including the need for a national strategy to address this issue.

Major reforms of aged care complaints-handling processes were announced by the Australian Government on 27 July 2006. The Government is making available $90.3 million over four years to establish new complaints investigation arrangements, compulsory reporting of assault and protections for approved providers and staff who report, to be managed through the new Office of Aged Care Quality and Compliance.

The Complaints Investigation Scheme, which commenced on 1 May 2007, investigates all complaints and information relating to residential and community aged care services directly subsidised by the Australian Government under the Aged Care Act 1997.

All contacts will be handled through a structured intake arrangement with senior, trained staff and each contact will be investigated by trained investigation officers. The capacity for conciliation will be retained where the matter and the parties are amenable to this method of resolution. There are also powers to issue Notices of Required Action to aged care providers where a breach of their responsibilities is identified. If the requirements of the Notice of Required Action are not met, compliance action may be taken and sanctions imposed.

Decisions and actions of the Office of Aged Care Quality and Compliance in relation to complaints investigation and the conduct of the Aged Care Standards and Accreditation Agency will be subject to examination by an independent Aged Care Commissioner who will report annually to the Minister for Ageing. This report will be presented to Parliament.

Aged care providers of residential aged care services will be required to compulsorily report all cases of sexual assault or unreasonable use of force on a resident in a residential aged care service from 1 July 2007. This report must be made to both police and the Department of Health and Ageing. Failure to report a prescribed incident may result in compliance action being taken against the provider. The subordinate legislation will also include discretion for approved providers not to report where an assault has been carried out by a resident suffering from dementia or another form of mental impairment.

The legislation also provides protection for staff members and approved providers who are compelled to report suspected abuse of care recipients to their employer or to another appropriate authority. The legislation specifically gives protections to those people who are legally required to report under these requirements. Other people who become aware of abuse are encouraged to report and can do so openly, confidentially or anonymously. Further, others also have access to existing protections from defamation action through common law.

The legislation to implement these reforms, the Aged Care Amendment (Security and Protection) Bill 2007, was introduced into the Parliament on 8 February 2007 and was passed through the Senate on 22 March 2007.
To further protect residents of aged care services directly subsidised by the Australian Government under the Aged Care Act 1997, it will be a requirement that certain staff and volunteers, both new and existing, undergo a police record check, with the implementation occurring progressively from 1 March 2007.

Under this arrangement, approved providers will be required to ensure that there is a police record check for all staff and volunteers who have, or are reasonably likely to have, unsupervised access to care recipients and that this police check is undertaken every three years. Where the police record check records that the person has a conviction of murder, sexual assault, or a conviction of, and has been sentenced to imprisonment for, any other form of assault, then the approved provider will be required to ensure that that person is not allowed to provide unsupervised care within their aged care service.

This measure will supplement the existing requirement for approved providers to ensure the suitability of staff working in aged care services and the protection of aged care recipients.

Through an international and national literature review, the then Commissioner for Complaints has reviewed all available evidence to identify the strategies that have been used to deal with potential and actual retribution. The findings of the review have been considered by the Aged Care Advisory Committee, made up of industry, professional and consumer representatives. Aged care industry representatives have committed to develop strategies to deal with the issue in residential care. A copy of the literature review is available on the Commissioner’s website at: http://www.commissionerforcomplaints.net.au/

This industry-based response complements and reinforces the existing consumer protection provisions already in place including the accreditation process, the quality assurance and compliance framework, the Charter of Residents’ Rights and Responsibilities, the Aged Care Complaints Resolution Scheme and the National Aged Care Advocacy Program.

**Recommendation 19**

That the Agency’s role in promoting ‘best practice’ continue and that it:

- develop a standard evidence-based approach to defining ‘best practice’ in aged care; and
- provide regular aggregated information to the industry on methods for achieving ‘best practice’ in the provision of aged care services.

The Committee further recommends that the Agency consider ceasing its direct role in providing direct staff training given the potential conflict of interest that this entails.

While further development of best practice is desirable, this should not necessarily be primarily the responsibility of the Agency, nor should the Agency cease its role in direct staff training.

In the 2006-07 Budget funding of $21.6 million over four years was allocated to encourage best practice in residential aged care. This initiative will improve the evidence base for clinical care for residents, and enable nationally consistent application of clinical best practice in aged care homes and closer links to the Standards under the Aged Care Act 1997. Leading aged care services will work with groups of aged care homes, researchers and educators to define and implement the most up-to-date, evidence based, care practices. Under the Program there will be two funding rounds. The first funding round closed on 7 December 2006.

Successful applicants will be required to contribute to national dissemination of best practice developments, sharing their findings with other services and through clinical seminars and workshops.

The Agency’s legislated role in staff training is appropriate and provides an avenue for disseminating and promoting best practice.

In addition, the Agency regularly runs ‘Better Practice Seminars’ around Australia. These events promote and celebrate better practice and innovation in aged care, with participants having an opportunity to hear of the experiences of award-winning homes, and learn from subject-matter experts about ways to achieve better practices.
Documentation and technology

**Recommendation 20**

That the Agency, in consultation with industry stakeholders and consumers, review the information required to be provided in the document Application for Accreditation and consider the feasibility of other options such as reporting by exception, with a view to reducing superfluous and time consuming reporting.

The Agency has reviewed the Application for Accreditation form taking into account extensive feedback from stakeholders – approved providers, staff from homes, and Agency assessors. The form has been considerably simplified and incorporates improved explanation about the types of information that could be included to demonstrate how the home is performing against the Accreditation Standards. Released in April 2005, the revised form has been designed to allow electronic completion and lodgement.

Other initiatives through which the Government is streamlining business transactions and reporting include the encouragement and facilitation of greater use of IT in both care and administration. See response to Recommendation 21.

**Recommendation 21**

The Committee welcomes the Commonwealth’s initiatives in promoting IT in the aged care sector and recommends that the implementation of these initiatives, as well as increasing the take-up rate, should be a matter of priority.

The Australian Government’s aged care IT initiatives are aimed at both streamlining and automating administrative processes to increase efficiency and reduced paperwork for providers, and improving the quality of care provided to recipients of aged care services.

The Department of Health and Ageing has already moved towards supporting electronic processing of key transactions between aged care providers and the Department. The Department is also working with Medicare Australia on the implementation of eBusiness and a new system to support the payment of aged care subsidies. The software providers are presently working to incorporate the latest releases of the eBusiness capability.

The Government is continuing research into the IT readiness of the sector to better understand the level of IT usage and capacity to increase use of IT. The research will also assist in developing strategies to encourage and support successful take-up of IT across the aged care sector.

A one-off payment to aged care providers was made in June 2005, totalling $152 million, to help them take advantage of new technology, improve their business practices and focus on staff training.

In addition, through the Clinical IT in Aged Care project, the Department is examining how the application of clinical IT into aged care can increase the availability and accuracy of clinical information, improve clinical decision making, and support efficient and safe clinical practice.

The Australian Government’s final response to the Hogan Review announced on 11 February 2007 provides $21.4 million over the four years to 2010-11 to support and encourage the adoption of assistive technology (such as systems to help people remember their medication). This will improve the independence of frail older people and help them to remain safely in their homes for as long as possible.

Young people in residential aged care

**Recommendation 22**

The Committee is strongly of the view that the accommodation of young people in aged care facilities is unacceptable in most instances. The Committee therefore recommends that all jurisdictions work cooperatively to:

• assess the suitability of the location of each young person currently living in aged care facilities;

• provide alternative accommodation for young people who are currently accommodated in aged care facilities; and

• ensure that no further young people are moved into aged care facilities in the future because of the lack of accommodation options.
**Recommendation 23**
The Committee notes that the Council of Australian Governments has agreed that Senior Officials are to consider ways to improve Australia’s health care system, including helping young people with disabilities in nursing homes, and to report back to COAG in December 2005 on a plan of action to progress these reforms. The Committee recommends that the Senior Officials clarify the roles and responsibilities of all jurisdictions in relation to young people in aged care facilities so as to ensure that:

- age-appropriate accommodation options are made available; and
- funding is available for the provision of adequate services to those transferring out of aged care facilities.

The Committee supports every endeavour to reach a positive outcome.

**Recommendation 24**
That Senior Officials’ report to the Council of Australian Governments include:

- support for a range of accommodation options based on individual need;
- ways in which the successful accommodation and care solutions already in place can be extended to other jurisdictions;
- identification of barriers to the successful establishment of accommodation options and provision of adequate support services by all levels of government; and
- identify a timeframe for the establishment of alternative accommodation options and the transfer of young people out of aged care facilities.

The Australian Government agrees that the accommodation of young people in aged care facilities is unacceptable in most instances and, as the Committee noted, is working cooperatively with states and territories through the Council of Australian Governments (COAG) to improve their accommodation and care options. Senior Officials were aware of the recommendations of the Senate Community Affairs References Committee Report when reporting to COAG.

At its February 2006 meeting, COAG agreed that from July 2006, the Australian Government and the states and territories will work together to reduce the number of younger people with disabilities in aged care homes. Governments will jointly establish and fund a five-year programme, worth $244 million over five years, to reduce the numbers of younger people with disabilities in aged care homes, with an initial priority given to people aged less than 50 years. The Australian Government is contributing $122 million, with the states and territories also contributing $122 million on a proportional basis.

The programme is being managed on a day-to-day basis by state and territory governments. Younger people with disabilities in aged care homes are being offered a care needs assessment and an appropriate alternative accommodation and care option where this can be made available. Participation in the programme is voluntary.

State and territory governments are developing new age appropriate services and working towards reducing future admissions of younger people with disabilities into aged care homes. All states and territories have now signed bilateral agreements with the Australian Government to help younger people with disabilities move out of aged care homes.

**Recommendation 25**
That the Commonwealth and state and territory governments work cooperatively to ensure that any barriers to accessing funds available under the Innovative Pool are removed so that the desired objective of this initiative in providing alternative accommodation options for young people in aged care facilities is met.

Appropriate funding is being provided under the initiative being implemented through the Council of Australian Governments (see above).

The Aged Care Innovative Pool generally supports time-limited pilot projects. Providing continuing funding for alternative accommodation options for young people currently in aged care homes from this source is not appropriate.

Aged Care Innovative Pool funding was provided to enable state and territory governments to work...
collaboratively with the Australian Government on time-limited pilot projects to demonstrate ways of assisting younger people with disabilities in aged care homes to access more appropriate care options. Although the Australian Government invited applications for this funding over three years from 2004, the response from state governments was disappointing. Only two pilots were established, one in South Australia looking to offer relocation to 15 people, and one in Victoria through which three people have been supported to move to more appropriate care. The results of these pilots are available to inform action by the states and territories under the COAG initiative described in the response to Recommendations 22, 23 and 24.

Recommendation 26
The Committee recognises that in rare instances, a young person may choose to remain in an aged care facility. In such circumstances, the Committee recommends that the Commonwealth and the states and territories work cooperatively to reach agreement on:

- an assessment tool to address the complex care needs of young people in aged care facilities;
- mechanisms, including a funding formula, to provide rehabilitation and other disability-specific health and support services, including specialised equipment; and
- ways to ensure that the workforce in aged care facilities caring for young people has adequate training to meet their complex care needs.

This recommendation is being addressed by the initiative being implemented through the Council of Australian Governments (see above).

Younger people with disabilities are eligible to enter aged care homes essentially as a last resort. Under the Approval of Care Recipients Principles 1997, younger people with disabilities are eligible for aged care services only where they meet the eligibility criteria for aged care services and where ‘there are no other care facilities or care services more appropriate to meet the person’s needs’.

As noted in the response to Recommendations 22, 23 and 24, a five-year programme is being implemented to provide more appropriate care for younger people with disabilities and reduce the number of younger people with disabilities in aged care homes. For those younger people with disabilities in aged care homes who do not wish to move, the funds available through the COAG initiative can be drawn on by the states and territories to provide additional disability services to younger people with disabilities who remain in aged care homes.

Recommendation 27
That the Department of Health and Ageing collect data on young people in aged care facilities by disability type.

For each person they assess, Aged Care Assessment Teams are required to record data on up to ten health conditions, coded using the International Classification of Diseases Version 10, Australian Modification, further modified for the Aged Care Assessment Program Minimum Data Set, and comparable to the Australian Bureau of Statistics four digit code used for the Survey of Disability, Ageing and Carers. These data are captured in Departmental systems for people who have entered care.

Recommendation 28
That the Commonwealth and state and territory governments give priority to the efforts of the Working Party established in November 2004 to examine succession planning for ageing carers of children with disabilities and appropriate support for respite for carers.

On 13 October 2005, the Prime Minister announced a package to assist families wishing to make private financial provisions for the current or future accommodation and care for their family member with severe disability. Since 20 September 2006, parents and immediate family members have been able to place up to $500,000 indexed annually in a special disability trust for the future care of the person without being affected by social security or veterans’ affairs means test. Other assistance provided in the package will support mediation and counselling services for families, financial information kits and more research. It is estimated that the package will cost around $230 million over four years.
Funding for appropriate respite for ageing carers has been substantially increased. In the 2004-05 Budget, the Government made available $72.5 million over four years subject to matching commitments by state and territory governments, to support:

- up to four weeks respite care a year for parent carers aged 70 years and over caring for a son or daughter with a disability; and
- up to two weeks respite care a year for parent carers aged between 65 and 69 years of age who themselves need to spend time in hospital and who are caring for a son or daughter with a disability.

This initiative is being implemented through bilateral agreements signed with the states and territories and now operational under the Commonwealth State/Territory Disability Agreement.

Carers who are ageing are continuing to benefit from funding provided for the National Respite for Carers Programme which has increased more than twelve-fold since 1996-97 to an estimated $179 million in 2007-08. This includes $26.5 million as part of the Government’s final response to the Hogan Review announced on 11 February 2007. Carers will benefit from the provision of additional respite—an extra 100,000 days of respite over four years.

The Carers of Young People with a Severe or Profound Disability Program assists carers who are experiencing significant stress in caring for a person with a disability under 65 years of age. Some of these carers may be ageing carers. The 2007-08 Budget committed a further $6 million for this measure over four years in addition to the $23.9 million already provided.

### Funding for aged care residents with special needs

**Recommendation 29**

That the supplementary funding for aged care for residents with dementia be provided for by additional funding and not funding from within the current budget.

The intent of this recommendation will be met by recent initiatives and the introduction of the new Aged Care Funding Instrument (ACFI). Legislation to introduce the ACFI, the Aged Care Amendment (Residential Care) Bill 2007, was agreed to by both Houses of Parliament on 21 June 2007.

Extra funding for the care of residents has been made available to approved providers through measures in the $2.2 billion 2004-05 Budget package, Investing in Australia’s Aged Care: More Places, Better Care. This was further boosted in the 2005-06 Budget by a $320.6 million package to increase dementia research, and improve care training and early intervention programmes for people with dementia, their families and carers. As part of this package, more than $25 million over four years is being provided for dementia training for aged care workers and people in the community likely to come into contact with people with dementia. This package was on top of a one-off payment in June 2005 (which equated to $1,000 per resident) to help aged care providers in a number of ways, including increasing staff training, particularly in dementia care.

The new ACFI will measure a person’s need for care including in relation to cognition, challenging behaviours, and complex health and care needs. Hence it will facilitate the allocation of funding based on the relative care needs of residents.

The Australian Government’s final response to the Hogan Review includes an additional $393.5 million over four years, commencing 20 March 2008, to provide additional funding under the ACFI. Of this, an additional $102.7 million has been provided to top up the new supplements. This will benefit residents with complex health care needs and challenging behaviours.

**Recommendation 30**

The Committee recognises that the Australian Health Ministers have jointly agreed to the development of a National Framework for Action on Dementia and that the Commonwealth has recognised dementia’s significance with a $320.6 million package of support over five years. The Committee recommends that all jurisdictions work together with providers and consumers to expedite the finalisation and implementation of the Framework to assist all dementia sufferers.

The National Framework for Action on Dementia was endorsed for implementation by the Austra-
lian Health Ministers Conference in April 2006 and by the Community and Disability Services Ministers’ Conference on 26 July 2006. Implementation of the Framework is being overseen by the Health Policy Priorities Principal Committee of the Australian Health Ministers’ Advisory Committee.

**Recommendation 31**
That the Commonwealth undertake a review of the additional costs of providing care for those with dementia and those needing palliative care to ensure that the new funding supplement will be sufficient to provide adequate care.

The Department has undertaken a national trial of the Aged Care Funding Instrument (ACFI) which is being developed as the new basis for the allocation of basic subsidy in residential aged care. The ACFI measures a person’s basic dependency (need for care) – rather than the care planned by an aged care home as under the RCS. Hence it will facilitate the allocation of funding based on the relative care needs of residents.

The national trial collected comprehensive data on resident dependency and care needs including cognition, challenging behaviours, and complex health and care needs including palliative care. This data has informed the final design of the new funding model including the calibration of funding scales for the two new supplements.

The Australian Government’s final response to the Hogan Review includes an additional $393.5 million over four years, commencing 20 March 2008, to provide additional funding under the ACFI. Of this, an additional $102.7 million has been provided to top up the new supplements. This will benefit residents with complex health care needs and challenging behaviours.

In addition, residents with mental illness and complex care needs are eligible for up to five allied health services per calendar year, including by psychologists and mental health workers, where their GP has contributed to the care plan prepared for them by their residential aged care facility.

The Australian Government is also examining suitable service arrangements for older people with a mental illness by supporting two pilot projects in this area under the High Needs category of the Aged Care Innovative Pool. In keeping with the joint government responsibilities for people with both mental health and aged care needs, these pilots are also supported with funding from the relevant state governments.

**Recommendation 33**
That the Commonwealth investigate the provision of psychogeriatric services and the effectiveness of psychogeriatric care units.

The Government has reviewed the psychogeriatric services and care units it funds and is expanding and refocusing these programmes.

The Dementia Behaviour Management Advisory Services Programme builds on previous arrangements, and will provide increased coverage of advice and support to improve dementia care in Australian Government funded residential and community care services.

**Recommendation 34**
That the Commonwealth provide targeted funding for the education of the aged care workforce caring for people with mental illness.

An increase in the capacity of the mental health workforce is a major component of the Australian Government’s $1.8 billion contribution to the Council of Australian Government’s recent initiative for Better Mental Health Services for Australia. This includes funding for 431 new mental health nursing places which will increase the pool of nurses available to work in aged care.
Recommendation 35
That the Commonwealth establish a funding supplement for residents in residential aged care who have additional needs arising from homelessness.

The new Aged Care Funding Instrument (ACFI) will better target funding towards the care of people with more complex care needs and challenging behaviours. The ACFI assesses problems of cognition, regardless of whether they are caused by Alzheimer’s disease or the effects of long-term alcohol and drug abuse. It takes into account the management of challenging and inappropriate behaviours and measures the need for supervision or physical assistance with personal hygiene and toileting. Because the ACFI focuses on core impairments, it does not prescribe how care should be delivered. Hence it will allow care providers to respond flexibly to residents whose care needs may arise from homelessness.

Further support for addressing needs arising from homelessness is being provided through increased funding of $5.7 million over four years to 2010-11 for the Assistance with Care and Housing for the Aged Programme. This was announced by the Australian Government in its final response to the Hogan Review announced on 11 February 2007.

Recommendation 36
That the Commonwealth respond to the growing needs of people ageing with disabilities by consulting with the states and territories and stakeholders to identify ways to improve access by people ageing with a disability to appropriate aged care services including service provision in supported accommodation.

Through the Aged Care Innovative Pool, the Department established a time-limited pilot programme to explore the provision of aged care services for people with disabilities who are ageing in state and territory government funded disability accommodation. The pilot programme proved to be a useful exploration of the issues to be faced in attempting to identify and meet ongoing related care needs for people already in receipt of disability services. Even so, following the completion of this pilot programme, further work is being undertaken to more fully understand this complex area, and to inform any consideration by governments of the ageing related care needs of people already in receipt of disability services.

Under the current Commonwealth State Territory Disability Agreement (CSTDA), disability Ministers endorsed 14 priority areas for action, including “people with a disability who are ageing”.

This is recognised as a significant ‘interface issue’ between state and territory specialist disability services (accommodation, community support and community access), Australian Government disability employment and aged care services, and jointly managed community services, especially through the Home and Community Care (HACC) Program.

As the entity responsible for the implementation of the CSTDA, the then National Disability Administrators (NDA) commissioned research to better understand the changing needs of people with disability as they age, and the roles of the disability and aged care sectors in supporting people to age properly.

The final report of this research project is currently before Ministers for consideration and possible public release.

Community care programmes

Recommendation 37
That, while welcoming the increases in Commonwealth and state and territory funding for the Home and Community Care Programme over recent years, the Commonwealth and state and territory governments increase funding for HACC services to ensure more comprehensive levels of care can be provided to existing clients and to ensure sufficient growth in funding to match growth in demand.

Current Home and Community Care (HACC) Programme funding growth rates exceed growth in the HACC target population. Over the 11 years since 1995-96, national funding for HACC services has more than doubled from $698 million to $1.652 million in 2007-08. On top of indexation, annual real growth in the Australian Government’s contribution in recent years has been 6 per cent.
This growth exceeds growth in the relevant HACC target population and means that relatively more people are able to access HACC services and that more services have been available for existing clients as their needs increase.

In 2007-08, the Australian Government will provide one off HACC funding of $30 million to assist states and territories build on and extend the work agreed by COAG in February for improved and nationally consistent arrangements for providing access to services, assessment and referral for HACC.

**Recommendation 38**
That the Commonwealth review the indexation arrangements for the Home and Community Care Programme to reflect the real costs of providing care.

The Government does not agree with this recommendation. The indexation arrangements for the HACC Programme provide for changes in cost and are in addition to real growth in the Programme. Cost indexation increases are based on movement in economy-wide indices and are consistent with those used in other Government programmes. The state and territory governments also contribute cost indexation using indices that are pertinent to each jurisdiction. Overall programme funding grew by 8.1 per cent in 2004-05 and 8.3 per cent in 2005-06.

**Recommendation 39**
That the Commonwealth and states and territories substantially increase funding for identified special needs groups within the HACC target population including people from culturally and linguistically diverse backgrounds; Aboriginal and Torres Strait Islander people; people with dementia; financially disadvantaged people; and people living in remote or isolated areas.

Current Home and Community Care (HACC) Programme annual planning arrangements give appropriate priority to special needs groups. Under HACC, special needs groups have been defined to ensure consideration is given to the particular needs of those designated groups within the HACC target population.

State and territory governments have primary responsibility for day-to-day management of the HACC Programme including the allocation of funds to particular services and service-delivery agencies. In each state and territory there are specific initiatives aimed at increasing and improving services targeted to meet the needs of special needs groups. While much has been achieved, special needs groups continue to be given priority in each jurisdiction’s annual planning.

**Recommendation 40**
That the Commonwealth introduce a funding supplement to reflect the additional costs of providing community care services in regional, rural and remote areas.

In the 2006-07 Budget, funding of $19.4 million over four years was provided for a viability supplement for community care services in rural and remote areas.

The supplement, which recognises the higher costs and recruitment difficulties faced by these services, will benefit providers and recipients of Community Aged Care Packages and Extended Aged Care at Home Packages.

Community care services in remote and very remote areas will also benefit from additional support announced by the Australian Government in its final response to the Hogan Review on 11 February 2007. Funding of $42.6 million over five years will enable service providers to access tailored assistance from skilled aged care professionals. This includes emergency funding of $800,000 in 2007-08 rising to $900,000 in 2010-11 to ensure continuity of care in unforeseen circumstances.
Recommendation 42
That, while welcoming the increases in Commonwealth funding for Community Aged Care Packages and Extended Aged Care at Home packages over recent years, the Commonwealth increase funding for these programmes to meet demand for these programmes and to provide viable alternatives to residential aged care.

In response to the Review of Pricing Arrangements in Residential Aged Care, the Australian Government committed to increase the aged care provision ratio to 108 operational places for every 1,000 people aged 70 or over. At the same time, in recognition of the need to accommodate increasing community care provision, the proportion of aged community care places was doubled from 10 places to 20 places for every 1,000 people aged 70 or over. Provision is on track to achieve this target by December 2007.

The 2005-06 Budget provided funding for 2,000 places targeted at people with high care needs and who also have dementia.

In addition, in its final response to the Hogan Review, the Australian Government announced a significant increase in the number of community care places: 7,200 places by the end of 2010-11, over and above those that would be provided by the current ratio at a cost to Government of $298 million over five years. This includes 1,600 high level community care places. This will take the overall ratio for community care places from 20 to 25 places for every 1,000 people aged 70 years or over. Four in every 25 community care places will be high care places, shifting the balance towards greater emphasis on high level care and ensuring that the number of places will grow as the population aged over 70 grows. This increase in community care will lift the overall provision ratio to 113 places for every 1,000 people aged 70 years or over.

Recommendation 43
That the Commonwealth provide a clearly defined timetable for implementing all aspects of A New Strategy for Community Care: The Way Forward.

As part of the 2004-05 Federal Government Budget initiative, Investing in Australia’s Aged Care: More Places, Better Care, $26.1 million over four years was allocated to undertake research, development and commence implementation of key action areas identified in A New Strategy for Community Care: The Way Forward. The Australian Government has committed to a broad timetable involving research and development work, consultation, pilots and staged implementation. Implementation timetables will vary by jurisdiction and will need to take account of sector capacity and readiness for implementation. These issues are being explored as part of the development and consultation processes. The Australian Government in 2006 announced $30 million to assist implementation in the HACC Programme from 2008 onwards.

Recommendation 44
That, in supporting the approach in The Way Forward for implementing a more streamlined and coordinated community care system, the Commonwealth address the need for improved service linkages between aged care and disability services.

State and territory governments have primary responsibility for services for people with disabilities. The Australian Government is exploring better linkages between aged care and disability services through development work related to The Way Forward and discussions leading up to the negotiation of the next Commonwealth State/Territory Disability Agreement.

Recommendation 45
That the Commonwealth and state and territory governments assess the appropriateness of the compulsory competitive tendering process for future programmes as part of the implementation of The Way Forward strategy.

The Government does not agree with this recommendation. Open competitive grant processes are used by Australian Government and state and territory funding bodies in community and human services in order to give an equal opportunity for services to apply for funding and to demonstrate that they will provide the best possible services and value for money.
Recommendation 46
That The Way Forward implementation strategy recognise the central role of carers in the community care system.

The role of carers in the community care system is being taken into account in the development of improved arrangements under The Way Forward. Carer organisations and individual carers are being involved in consultation processes.

Recommendation 47
That, while welcoming the increases in Commonwealth funding for carer-specific programmes over recent years, the Commonwealth increase funding for these programmes through the National Respite for Carers Programme and the Carer Information and Support Programme.

Funding provided through the ‘Recognising Senior Australians – Their Needs and Their Carers: Caring for Carers’ is delivering the Australian Government’s 2004 election commitment and demonstrates the continued commitment to carers. $207.6 million over four years is being provided through the 2005-06 Budget to assist the 474,600 primary carers in Australia with better access to respite.

As part of its final response to the Hogan Review, the Australian Government has committed $26.5 million additional funding over five years to the National Respite for Carers Programme. This will increase access to community based respite to assist carers as the number of people receiving high level community care packages increases.

In addition, in the 2007-08 Budget, the Government increased its commitment to encouraging innovative respite care options through the funding of demonstration sites for day respite in residential aged care facilities. $41.2 million over four years is being provided to establish 20 demonstration respite centres, in both metropolitan and rural areas. The demonstration sites will explore new options to provide flexible day care in aged care facilities. They will enable carers to attend to personal business without leaving their frail older relatives or friends unattended.

Overall, funding for the National Respite for Carers Programme has increased from approximately $19 million in 1996-97 to an estimated $185.4 million in 2007-08—a more than nine fold increase.

Transitional care

Recommendation 48
That the Commonwealth and the states and territories improve coordination in the development and implementation of transitional care programmes, and that the development of programmes include input from the community sector and health professionals.

The Australian Government announced the establishment of the Transition Care Programme in the 2004-05 Budget. Transition care was jointly developed by the Australian Government and the states and territories with advice from the Care of Older Australians Working Group’s Clinical Reference Group, which includes community representatives and health professionals. As described in the Inquiry’s Report, transition care provides a short-term package of services to help older people, after a hospital stay, to complete their recovery process. It seeks to minimise inappropriate extended hospital stays and premature admission to residential care.

2,000 transition care places have been allocated and when fully established it is expected that transition care will assist 13,000 older Australians each year. The first transition care places were allocated in June 2005 with services now operational in all states and territories.

Recommendation 49
That the results of innovative pilot programmes funded by the Commonwealth and the states and territories be widely disseminated and that mechanisms be developed to coordinate information about these pilots across jurisdictions so that innovative models of transitional care can be more readily developed based on these models.

Independent evaluations have been conducted for the following Innovative Pool pilots:

- Innovative Care Rehabilitation Service projects—The report of the evaluation has been completed and is expected to be published soon.
- Dementia projects—The projects have been evaluated and the report of the evaluation is now publicly available.
Disability/Aged Care Interface (ageing in place) projects—The report of the evaluation is now publicly available.

The Transition Care Programme is being evaluated in 2007. Findings from this evaluation and the evaluation of the Innovative Care Rehabilitation Service projects will inform the development of any future models of transition care.

**Recommendation 50**
That, the Commonwealth, in conjunction with the states and territories, develop a national framework for geriatric assessment and discharge planning and the provision of post-acute and convalescent services and facilities, including community services; and that discharge planning be coordinated across a range of medical, allied health and community care professions and involve the patient, their family and carers in the development of these plans.

**Recommendation 51**
That common assessment procedures for patients be implemented across the various health sectors so that medical records and diagnostic results can be easily transferred across these sectors.

The intent of these recommendations is supported, noting that the complex issues involved are being progressed through a range of initiatives in conjunction with the states and territories.

A guide for assessing older people in hospitals has been developed by the Centre for Applied Gerontology following research which demonstrated problems associated with hospital assessment processes for older people. This work was commissioned by the Care of Older Australians Working Group (now the Health Care of Older Australians Working Group) of the Australian Health Ministers’ Advisory Council. The guide is now assisting with the comprehensive assessment of older people in hospital, which in turn helps with the development of care plans and discharge planning. The guide can also be used in other settings, including hospital emergency departments, outpatient clinics, hospital-based community outreach programmes, and ambulatory, community and residential care settings.

Critical to the coordination of care across care settings is the capacity to safely share care records. The National E-Health Transition Author-
of them but, hopefully, I will get to the most important ones. Almost three years ago, when I became the shadow minister for ageing, the big issue people would talk to me about when I went to aged-care facilities was funding, particularly capital raising. The most significant issue now facing aged care, both residential and community—and this government knows it—is attracting and retaining a quality workforce to care for some of the most vulnerable people in our society.

The response from the government to the seven recommendations that the committee made in our report is, to be frank, ridiculous. The first recommendation that our committee made was to do with the number of nurses that we have in aged care—in particular, residential aged care. In the life of this government, the number of registered and enrolled nurses who now work in our aged-care facilities in Australia has reduced. At the same time, the number of people who live in residential aged care in Australia has increased by almost 25,000. So we have fewer qualified nurses caring for some of the most vulnerable people in our society.

The recommendation of our committee was to follow the recommendation of Professor Warren Hogan, which was to increase the number of undergraduate nursing places at Australian universities to 1,000. The response is offensive. It talks about the 440 aged-care nurses funded in the 2004-05 budget. That is acknowledged in the recommendation. The response then goes on to talk about the normal number of undergraduate places that are there every year—year in, year out. The recommendation was clear. We need an extra thousand at least to deal with the problem that we have in finding nurses to work right across the health sector but particularly in aged care.

In 2004 this government received a report that said that we are 19,000 nurses short in this country. I note, though, that the government in its response was too embarrassed to talk about the 500 enrolled nurses who, the Prime Minister announced last week, are now going to be trained in hospitals rather than in the well-organised and well-run TAFE system. We know, and Catholic Health Australia knows, that those 500 enrolled nurses that the government has promised to be trained in TAFE will never end up in aged care, because the pathway is not there. I commend Francis Sullivan from Catholic Health Australia for raising the issue, as did I, because we know that that announcement will not result in any new nurses, either enrolled or full nurses, who work in aged care.

Recommendation 5 of the committee report said that as, a matter of priority, we need to expand the National Aged Care Workforce Strategy to encompass the full aged-care workforce, including medical and allied health professionals across all of the aged-care sector, including the community care sector. There is a little bit of honesty in the response to this recommendation. The government acknowledge that further work needs to occur to cover the full aged-care workforce. What have they been doing?

We have known of the problem of workforce in aged care, but the government are still acknowledging that we need to do further work. The next paragraph of the response does tell you what has been happening: they have taken a census. They have counted the number of people who are working in aged care. I am sorry, but we actually need more than counting people who work in aged care. We would like to know how we are going to train, pay and therefore keep people in aged-care services so that we can actually run the facilities that we have.

The second section that the report goes to is a section on accreditation. The first recommendation talks about the need for deliv-
ering consistency in assessment of aged-care facilities. The second recommendation goes to the question of the accuracy of assessors' decisions and, further, is about the access to the process of accreditation by both residents and their families. Once again, the government has intentionally misunderstood the first two recommendations. The issues have not been addressed by this government. Every time there is a problem in aged care and an issue is raised, particularly in the media, the question of consistency of assessment is raised.

We need to have confidence as a community in a system that delivers a fair analysis of the quality of care that is being provided. It is my clear and strong view that we have in fact eroded that confidence in the accreditation process in aged care, particularly over the last 18 months. Aged-care providers have no confidence in the assessment system. The more they find out about it, the more families have limited confidence in the process of accreditation and quality assurance. Unfortunately, we are now getting to the point where I do not think parliamentarians have confidence in the process either. When we lose confidence in the process, I am afraid it is time for a review.

Also in that section, the committee recommended that the agency develop a ratings system that would allow residents and families to make informed comparisons between different aged-care facilities. This followed on from a recommendation of Professor Hogan, who recommended that there be a star rating so that people could make some decision about the facility before either entering it themselves or placing a loved one there. Personally, I do not agree with Professor Hogan's star rating. It is not a motel that we are talking about. We are talking about a place where a person is going to live and receive care.

Once again, the government intentionally misunderstood the recommendation. The recommendation says that we want to give people information so they can make an informed judgement on where they might want to go. The government then went to great lengths to talk about how they have developed a website. And the website is quite good. Whoever developed it did a quite good job. But it does not allow you to make any comparison about the quality of care that is being provided at the facility—the level of staffing. It does not tell you what charges will be levied on any resident. It does tell you where it is, and that is useful. We acknowledge that; that is okay. But, once again intentionally, the government has not addressed the guts of the question. (Time expired)

Question agreed to.

AUSTRALIAN TECHNICAL COLLEGES (FLEXIBILITY IN ACHIEVING AUSTRALIA'S SKILLS NEEDS) AMENDMENT BILL (No. 2) 2007

Second Reading

Senator BARTLETT (Queensland) (4.00 pm)—I seek leave to incorporate a speech by Senator Allison in the second reading debate on the Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Amendment Bill (No. 2) 2007. I failed to do this in the debate earlier today.

Leave granted.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.00 pm)—The incorporated speech read as follows—

On Tuesday this week Tim Colebatch wrote an article in The Age which clearly identified the way in which the Howard Government has ignored the looming skills shortage for the past decade and is now scrambling to make up for its lack of attention to the future needs of Australia.
Tim Colebatch drew on the latest report from the Dusseldorp Skills Forum in collaboration with the Australian Industry Group.

The Report called *It’s Crunch Time: raising youth engagement and attainment* reveals that in May this year 526,000 young Australians aged 15 to 24 years were neither in full-time work nor full-time study. By August this was down to 492,000.

But that’s still half a million young Australians with no full-time job or full-time course of study.

That’s 1 in 6 young people.

These young people were not all unemployed, although many of them were.

221,000 were working part-time but half of those wanted full-time work.

And 173,000 were outside the labour force but many were wanting to work.

Each year 45,000 to 50,000 early school leavers are not going into full-time work or learning or a combination of these.

Rates of school completion in Australia have barely shifted over the past 15 years.

The Ministerial Council on Education, Employment, Training and Youth Affairs estimates that Year 12 completion in Australia in 2005 was 67 percent.

As Tim Colebatch points out the lack of a skilled workforce is in large part a problem of the Howard Government’s own making. Back in 1996 they cut more than $1 billion a year from labour market programmes.

And the initiatives they brought in to replace the network of training schemes they got rid of, had little or no training content.

They relabelled trainees as ‘new apprentices’ and for years covered over the fact that trade apprenticeships were stuck at low numbers.

They used work for the dole extensively—a programme that has no training.

And while commencement rates for apprenticeships and traineeships have at long last improved, the pay is still lousy and completion rates poor. Half of those who start don’t finish.

The Government has spent money recently in an attempt to belatedly tackle skills shortages but—as in so many cases—it is not spending money well.

They have not targeted areas of skill shortages.

Choosing instead to give equal priority to training regardless of if it is an area of demand or not.

Nor is the Government using its funding for schools to direct resources where they are most needed—to those schools that are doing the heaviest lifting.

Crunch Time is concerned with those young people who drop out of education early, who lack motivation, can’t get a place in further education or training or can’t get a job.

It argues that our strong economy means we have a golden opportunity to make the lasting education and training reforms needed to skill and engage all young Australians.

And it proposes a raft of recommendations to provide young people with skills that they and the country need.

As the report points out achieving higher levels of youth engagement and skill attainment are worthy goals in their own terms.

But they are vital if Australia is to successfully cope with a demographic squeeze resulting from ‘baby boomers’ embracing retirement; the need to increase the rate of participation in the workforce; and to raise productivity levels to points where they match or exceed our competitors.

Skilling young Australians through university and vocational education offers the greatest potential source of additional skilled workers, and is the most efficient and productive policy approach.

In 2005, Access Economics analysed the economic impact of increasing the retention of young people in education and training. They estimated that boosting the proportion of young people completing school or an apprenticeship to 90 percent by 2010 would increase workforce numbers by 65,000, boost economic productivity, and expand the economy by more than $9 billion (in today’s money) by 2040.

They also estimated that increasing school and training retention rates among 15-24 year-olds to 90% would:
• have the same positive impact on the economy as increasing Australia’s total migrant intake by 180,000 over the period to 2040;
• have a similar economic impact as increasing the workforce participation rates of older workers by 6.6 percentage points—from nearly 53 percent to 59.5 percent; and
• boost annual GDP by 1.1 per cent by 2040—representing an extra $500 a year per Australian in today’s money.

Crunch Time puts forward numerous recommendations across all levels of schooling to engage young people in learning.

They want to see all students make a successful transition from primary to secondary schooling and provide schools with incentives to assist transitions.

They argue for skilled personnel to improve student’s literacy and numeracy and individualised learning plans.

They want to see more teachers for schools in disadvantaged communities and new teaching methods to fit the needs of struggling students.

The report proposes that this is accompanied by an expanded range and depth of pre-vocational education in schools, linked to local employers and TAFEs—with incentives for retired tradespeople to become teachers and mentors of apprentices.

They want guaranteed places for early school leavers to return to study to complete Year 12 or a Certificate III qualification.

The report argues for mentoring and support for apprentices and incentives for those who complete their training and they want a review of the traineeship scheme with a aim to restructure it so that there are two streams—one that meets future technical, para-professional demands and another that provides transitional labour market opportunities for disengaged young teenagers, young adults and other only marginally connected to the labour force.

And they want more and better trained and supported indigenous education workers in schools and TAFE to work with indigenous children and young people.

There are many more recommendations in Crunch Time.

It presents a vision and a plan for improving the skills levels of our young people and meeting the future needs of the Australian economy. It’s a pity the Government doesn’t have such a plan and can do little more than propose yet another ATC.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint Report

Senator PAYNE (New South Wales) (4.00 pm)—I present a report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on Australia’s aid program in the Pacific and seek leave to move a motion in relation to the report.

Leave granted.

Senator PAYNE—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

A considerable proportion of Australia’s aid goes towards assisting our Pacific Island neighbours. In the 2007-2008 financial year $872.5 million will be disbursed in the Pacific, with the majority directed to assist citizens of the Solomon Islands and Papua New Guinea. Each of the Pacific Island states has different development needs—some more complex than others—and the Australian aid program seeks to help address a wide range of these. The Australian Government does so in partnership with, principally, national governments; but also other donors, non-government organisations and local communities.

Australia has long had a special relationship with several Pacific countries and historical links, especially with PNG. It is not just a case of it being in Australia’s national interest to intervene or to provide aid: Australians genuinely want to help their neighbours. That said, government to government assistance is not always the perfect way to deliver aid. It is therefore important that there
be a mixture of interventions, including those from civil society, NGOs and the private sector.

In the course of the inquiry, the Committee heard from a wide range of stakeholders with an interest in development in the Pacific—Australians and Pacific Islanders alike. Witnesses included academics, consultants, government officials, and representatives from non-government organisations, think-tanks, and business. The Committee invited Pacific High Commissioners in Canberra to a roundtable discussion, and enjoyed talking to a number of Pacific Islander recipients of AusAID Development scholarships studying at the Australian National University as well as returned Australian Youth Ambassadors for Development.

Both the Australian Government’s White Paper on aid and AusAID’s Pacific 2020 report highlight major development challenges facing the Pacific region. In addition to low economic growth, these include rapid population growth, social and political instability, and health and environmental issues such as HIV/AIDS and climate change. The Committee wished to gauge the Australian community’s response to the ways forward presented in the White Paper and Pacific 2020 report, and to engage in the debates shaping the aid and development agenda in the region today—in order to gain insights into the challenges and successes of our aid contributions.

Our inquiry focused on strengthening law and justice; improving economic management and public accountability institutions; maintaining access to basic services, especially health; anti-corruption and good governance measures; and supporting peace-building, and community and civil society development.

One of the main themes to emerge during the inquiry was the need to improve growth in Pacific Island economies. Stimulating the private sector has not typically been the domain of aid agencies for a range of reasons; and public funds are naturally directed to the public sector. However, the Committee heard there is much that the Australian Government, the Australia-Pacific Business Councils, the private sector and NGOs like Australian Business Volunteers are doing, and can do more of, to help promote economic reform; from working to improve the policy environment as advisors in line agencies, to investing in infrastructure and human capital, and supporting entrepreneurial activities.

To these ends, the Committee notes the importance of financial services in the development of Pacific Island economies, and recommends that the Australian Government develop a focused strategy to encourage financial services development, including microfinance.

The Committee was impressed with an innovative idea presented to it by Mr Roland Rich who proposes that the Australian tax rules be amended to encourage companies to become directly involved in building private sector capacities in developing countries, by allowing them to deduct from their taxable income the full costs incurred in providing such assistance. The Committee recommends that the Australian Tax Office, in conjunction with AusAID, consider and report on the merits and practicalities of Mr Rich’s proposal.

The Committee noted the evidence presented to it of the importance to Pacific Island economies of access to developed economies for seasonal workers, and recommends an active and serious evaluation by the Australian Government of the possibility of such a scheme.

Another key theme to emerge throughout the inquiry was the need for strong people-to-people links between Australians and Pacific Islanders—not only for development reasons but also to promote a deeper understanding and better appreciation of our respective cultures.

Concerns were raised by some that the people-to-people links between our nations (be they government-to-government, business, civil society or educational) have reduced in recent years. However, the Committee learnt that many opportunities for engagement exist and that these are increasing. For example, Australia is expanding its scholarship assistance through the Australian Scholarships Program and will double the total number of education awards offered to the region, to over 19,000.

Established schemes such as the AusAID Development Scholarships Program and the Australian Youth Ambassadors for Development Program are very highly regarded throughout the region.
It is with their benefits in mind that the Committee recommends that the Australian Government consider establishing a Pacific Island Youth Ambassador Scheme (similar to and possibly linked with the Australian Youth Ambassador Scheme or AusAID Development Scholarships), whereby young skilled Pacific Islanders can apply for placements in an Australian host organisation workplace for the purpose of work experience and cultural exchange. It is the Committee’s view that an exchange such as this will build further personal contacts and boost cooperative networks in Australia and the Pacific.

The Committee also recommends that the stipend rate for scholarship recipients be regularly reviewed to ensure that the scholarship remains commensurate with the cost of living and is adequate for students with accompanying dependents.

Aid and development is a complex area in which to work. The Committee acknowledges the efforts of Australians seeking to make a difference in this field, be they AusAID officials or public servants seconded to the Pacific from other government departments and agencies such as the Attorney-General’s Department, Customs, Defence and the Australian Federal Police; church groups; non-government organisations; academics; volunteers or private citizens.

All are collaborating on a daily basis with counterparts in the Pacific, working towards common goals. In some parts of the region it is more a work in progress than in others—but their efforts to promote and enhance human rights and security in the region are something that Australians can be proud of and should continue to support.

The Committee heard that interventions like the Australian-led Regional Assistance Mission to the Solomon Islands and the Enhanced Cooperation Program with PNG are welcome, not just by the region’s representatives bodies like the Pacific Islands Forum and RAMSI is very much a regional cooperation effort—but also, by the majority of Solomon Island and Papua New Guinean citizens. This is testament to the good work that Australian personnel, particularly from the AFP, do at a local level, to build trust and goodwill.

In closing, I am grateful to all those who provided evidence to the Committee. I thank my colleagues on the Human Rights Sub-Committee who undertook the inquiry on behalf of the Committee, and the secretariat for their assistance.

Mr President, I commend the report to the Senate.

Question agreed to.

Environment, Communications, Information Technology and the Arts Committee

Report

Senator PARRY (Tasmania) (4.01 pm)—I present the report of the Senate Standing Committee on Environment, Communications, Information Technology and the Arts on two privilege matters raised with the committee in relation to its inquiry into national parks, conservation reserves and marine protected areas.

Ordered that the report be printed.

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

Leave granted.

Senator PARRY—I move:

That the Senate take note of the report.

I seek leave to have a tabling statement incorporated in Hansard

Leave granted.

The statement read as follows—

On the 30th of June 2006, the ECITA Committee held a public hearing in Cairns as part of its national parks inquiry. At that hearing the committee took evidence from two Queensland Parks and Wildlife Service staff—Mr Dave Green and Dr Paul Williams—each appearing in a private capacity.

The committee later received complaints from both witnesses that raised concerns regarding parliamentary privilege.

On the 12th of January 2007, Dr Williams complained to the committee concerning his treatment by two managers, District Manager Mr Geoff Meadows, and Mr Clive Cook.

Some days later, on the 29th of January 2007, Mr Green wrote to the committee expressing concern
regarding a statement made to him by Mr Clive Cook at the time of the hearing.

Under Privilege Resolution 1(18), the committee is required in a situation such as this to take all reasonable steps to ascertain the facts of the matter, and to report the facts and its conclusions to the Senate.

The committee regarded the claims as serious. It wrote to one of the witnesses seeking more detail, and in both cases wrote to the two senior managers against whom allegations had been made, seeking their responses.

Shortly before the committee delivered its report Conserving Australia: National Parks, conservation reserves and marine protected areas, both managers wrote to the committee responding to the claims made against them. When it tabled the inquiry report the ECIT A committee indicated it was still considering the material before it, and would report to the chamber at a later date. It is now making that report.

Dr Williams complaint was complex and in nine parts. All aspects of his complaint are detailed in chapter two of today’s report and its attachments.

Of the nine matters raised, two were of particular concern to the ECIT A committee.

The first matter concerned an interchange Dr Williams had with his manager Mr Cook.

On 28 September 2006, three months after the committee’s public hearing in Cairns, Dr Williams was one of several staff who met with the Queensland Minister for the Environment and Multiculturalism, the Honourable Lindy Nelson-Carr. During that meeting, Dr Williams conversed with her about park management, including explaining to her that staff ‘are frustrated they have not time to implement land management activities’. According to Dr Williams the conversation was initiated by the minister. Mr Cook, who was present at the meeting, was subsequently critical of Dr Williams about his conduct during that conversation.

Dr Williams stated that Mr Cook subsequently rang him, ‘angrily claiming he was sick of me “always doing this”’ and claiming that Dr Williams ‘had a history of complaining out of house about QPWS’. This was followed by a letter reminding Dr Williams of his obligations under the Agency Code of Conduct to ‘avoid publicly criticizing Agency procedures or colleagues’. That letter also required Dr Williams to undertake a refresher course on the Agency’s Code of Conduct.

Dr Williams interpreted the letter as being a reprimand over his conduct. Believing that the only ‘public’ occasion on which he had commented about his Agency was the Senate hearing, Dr Williams complained to the ECIT A committee about Mr Cook’s conduct.

Mr Cook, in responding, focused on the letter he wrote to Dr Williams after a meeting of agency staff with the Queensland Environment Minister on 28 September 2006. Mr Cook’s response to the ECIT A committee did not address the matter of the phone call, nor why he was reminding Dr Williams about refraining from ‘public’ criticism of the Agency.

The second matter concerned a meeting Dr Williams had with district manager Mr Meadows. Dr Williams raised the concern that he was subjected to ‘continued accusation that I have a history of criticizing the department’.

After his initial letter to the ECIT A committee of 12 January 2007, Dr Williams was called to Mr Meadows’ office about a matter unrelated to the ECIT A committee evidence. During that meeting Dr Williams states that Mr Meadows ‘repeatedly accused me of having a history of criticizing the department’. When Dr Williams denied this and sought examples:

All he could provide was the issue of my talking to the Minister in September 2006. I denied this was criticizing the department and in any case one example does not constitute a ‘history’. I asked Mr Meadows repeatedly to provide examples of this history and he could not. In the end he said that I knew what he was talking about. I said to him that I believed he was criticizing me for participating in the Senate Inquiry into national park resourcing. Mr Meadows smirked and said something along the lines of yes of course.

Mr Meadows’ response to the ECIT A committee gave an alternative account of the meeting with Dr Williams about which Dr Williams had complained. Mr Meadows indicated that he had raised three matters relating to Dr Williams’ conduct.
One of those matters was what Mr Meadows regarded as ‘inappropriate behaviour’ at the meeting with the Minister on 28 September 2006. Mr Meadows stated to the ECITA committee that he has not made ‘continued accusations’ that Dr Williams has a history of criticising QPWS. Nevertheless, Mr Meadows did not respond to Dr Williams’ claim that when he asked Mr Meadows if his criticism concerned Dr Williams’ participation in the Senate inquiry, that Mr Meadows had ‘said something along the lines of yes of course’.

The committee noted the view of the Committee of Privileges, expressed in its 125th report, that:

The committee continues to regard the protection of persons providing information to the Senate, and in particular of witnesses before parliamentary committees, as constituting the single most important duty of the Senate, and therefore of the committee as its delegate, in determining possible contempts.

The ECITA committee recognises that it is vital that employees are able to give evidence to parliamentary committees free of any fear of reprisal by their employer.

The ECITA committee was concerned by the circumstances which led both witnesses to approach it regarding their treatment by senior managers. However the material provided by Dr Williams did not show a conclusive and unambiguous connection between the evidence given to the committee and the events that he has outlined, to the exclusion of alternative explanations.

The committee also noted that Dr Williams availed himself of other remedies to address his concerns about the conduct of his managers, engaging the Queensland Public Sector Union to assist in responding to correspondence from QPWS management. It notes that this elicited confirmation from Mr Cook that his letter to Dr Williams did not constitute disciplinary action, and that no penalty was being imposed. The committee was pleased to note this clarification.

The incidents reported to the committee involving Dr Williams presented some unfortunate circumstances. After careful deliberation, the committee concluded that, on balance, the evidence does not warrant referral of the matter to the Committee of Privileges.

Mr Green wrote to the committee on a related matter, and set out his concern as follows:

On the morning of [the] hearing of [the] Senate in Cairns Dr. Paul Williams and myself were met by our Regional Director and he advised us that the department would be reading the minutes of [the] hearing and for us to be careful in our presentation. Obviously it was a veiled threat to influence us to temper our presentation and evidence.

The committee was mindful of the observation of the Committee of Privileges, in its 116th report, that:

- the committee regards it as highly undesirable for any person to confront a witness about his or her evidence outside the parliamentary forum. There is a grave risk of contempts being committed, wittingly or unwittingly, in these circumstances

The committee wrote to the Regional Director, Mr Cook, about the interchange described by Mr Green. Mr Cook gave an interpretation of his encounter with Mr Green at variance to Mr Green’s reading of events. He stated that his motives were to assist Mr Green, not to hinder him.

Having taken the steps outlined above to ascertain the facts surrounding the complaint by Mr Green, the ECITA committee concluded that, while the parties clearly differed in their view of events on the day of the hearing, there is insufficient evidence to warrant referral of the matter to the Committee of Privileges.

The committee wishes to reiterate the seriousness with which the Senate, its committees, and the Committee of Privileges take the protection of witnesses who provide information to the Senate. The committee will remain vigilant in this case. It is writing to all the parties involved to advise them of its inquiries to date. If it receives new evidence that anyone appearing before the committee was in any way threatened or penalised directly as a result of the giving information to the committee, it will consider that material very carefully.

I wish to thank members of the committee for their assistance in examining this matter.

Question agreed to.

Report

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.01 pm)—I seek leave to table the report of the inquiry into the provisions of the Same-Sex: Same Entitlements Bill 2007 and the transcript of the hearing conducted in Parliament House on 13 September.

Leave granted.

Senator ALLISON—I seek leave to move a motion in relation to the report and to make a very short statement.

Leave not granted.

AUSTRALIAN CITIZENSHIP AMENDMENT (CITIZENSHIP TESTING) BILL 2007

Assent

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

HEALTH INSURANCE AMENDMENT (MEDICARE DENTAL SERVICES) BILL 2007

Second Reading

Debate resumed from 19 September, on motion by Senator Johnston:

That this bill be now read a second time.

Senator McLUCAS (Queensland) (4.04 pm)—The purpose of the Health Insurance Amendment (Medicare Dental Services) Bill 2007 is to amend the Health Insurance Act 1973 in order to provide for the expansion of the government’s failing Medicare dental program for people with chronic conditions and complex care needs. As indicated in the debate on this legislation in the other place, Labor will be opposing this bill. Labor will be opposing this bill because it is an election year patch-up job by a government that has presided over 11 years of neglect in dental health. Labor has consistently and loudly highlighted not only the weaknesses of this particular policy but also the Howard government’s negligent approach to the dental health needs of Australians over the last 11 years. A decade of Howard government neglect cannot be fixed by throwing millions of dollars at a failing policy. Failing policy cannot be made effective simply by pouring more money into it. The basis of this policy is wrong, and that is why Labor will not support it.

There is little doubt that Australia is in the midst of a potentially catastrophic dental care crisis. Let us look at some of the facts. Currently there are 650,000 Australians on public dental waiting lists around the country. Many wait years for treatment. Thirty per cent of Australians have reported avoiding dental care due to cost. Dental workforce shortages mean that Australians simply cannot get in to see a dentist when their teeth need attention. In the public sector that means long waiting lists. In the private sector it means not being able to get in to see a local dentist on short notice. These dental workforce shortages are particularly felt in outer metropolitan, regional and rural areas where there are simply not enough dental professionals. These problems with accessing affordable dental care are contributing to Australia’s deteriorating dental health. Tooth decay ranks as Australia’s most prevalent health problem, while gum disease ranks fifth highest. Untreated dental decay in the Australian adult population stands at 25.5 per cent—that is, a quarter of Australians are not getting the dental care they need.

A recent study found that one in six Australians had avoided certain foods during the last 12 months because of problems with their teeth. Some 50,000 Australians a year are being hospitalised for preventable dental conditions which have escalated into more
serious problems because they have not been able to access treatment when needed. And perhaps the biggest indictment is that while Australian kids had the world’s best teeth during the mid-1990s there are now pockets of real concern. For example, between 1996 and 1999, five-year-olds experienced a 21.7 per cent increase in deciduous decay. This was matched by soaring hospitalisation figures for the removal or restoration of teeth. According to the NSW Chief Health Officer’s statistics, hospitalisation rates for children under five have increased by 91 per cent between 1994-95 and 2004-05—a finding confirmed by disturbing claims-information recently released by health insurer MBF that showed a 42 per cent increase in children being treated in private hospitals for dental cavities.

It is clear that Australia needs action on dental health. Rather than addressing this range of issues to improve accessibility to affordable dental care, the Howard government have instead spent much of the past decade cynically playing the blame game on dental health. Time and time again Prime Minister Howard and the Minister for Health and Ageing, Mr Abbott, have deflected criticism onto the states and territories, saying, curiously, that Australia’s public dental care crisis and deteriorating oral health standards were entirely a state and territory problem. We have seen more of it this week, with all of the carry-on that occurred in the other place on Tuesday afternoon.

Of course, in seeking to blame the states and the territories, the Prime Minister and the health minister conveniently ignored two key facts. Firstly, it was the Howard government which scrapped Labor’s Commonwealth dental health program in 1996, ripping $100 million a year from Australia’s public dental system. Make no mistake about this: the government axed it, abolishing the scheme as one of their first acts in government. Do not believe the revisionism exercised by the minister for health this week when he said that the Howard government did not review the Commonwealth dental health program. The program had a year to run, and the government cut off the last year of funding.

While the state and territory governments have more than doubled their investment in public dental care over the past decade, the Howard government has withdrawn $1.1 billion in public dental services over the last 11 years. The impact of the Howard government decision in 1996 still reverberates today, not least within the hundreds of thousands of Australians languishing on public dental waiting lists.

But that is not all that the government has done. Dental care in Australia is in a crisis because of underfunding and because of workforce shortages. The Howard government seems to have forgotten that the training of dental professionals is entirely a Commonwealth government responsibility, but its neglect in this area is of long standing. The Senate Community Affairs References Committee recommended a national oral health training strategy for oral health care providers and other health professionals as long ago as 1998. But the Howard government has failed to act. In 2003, researchers highlighted that there would be a shortage of 1,500 dental professionals by 2010 unless action were taken. In 2004, dental graduation levels were found to be at their lowest for 50 years.

Belatedly the government has recently increased dental-training places at Australia’s universities, and Labor welcomed the recent budget announcement of a new dental school at Charles Sturt University, but a comprehensive and strategic national policy is required to ensure a long-term solution to the crisis. Not enough has been done, in particular to
address public sector shortage and regional and rural demand for dental professionals. While we are talking about dental schools, I place on the record my support for James Cook University’s desire to establish a dental school in my home town of Cairns. I commend them for the work that they have done. It is unfortunate that they were overlooked and Charles Sturt was successful; they can be assured I will continue to advocate on their behalf.

We have needed training for dental professionals for some time. Affordability is also part of the issue. Over the last four months I have been conducting forums for older Australians around Australia. In every single one of those forums the issues of dental health, affordability of dental services and access to dental services have been raised with me. When you talk with these older Australians about the systems in place—the measures that the government introduced some three years ago—firstly, they are not aware of them. Then you explain how they work, and they say, ‘That wouldn’t help me anyway because I can’t afford the copayment.’ These are people who are on pensions. They simply cannot afford the copayment. If you need evidence, you just need to talk to older people who are on pensions and fixed incomes. They will tell you very clearly that the current policy approach of the Howard government simply is not working.

The other thing that I do is ask people from the community what the waiting lists are like at public dental clinics. By way of example, I can report to the Senate that the small community of Edmonton, south of Cairns, a community of around 6½ thousand people, has a waiting list—the worst I have heard of—of 4,000 people. That is 4,000 people out of a community of not more than 6½ thousand. Admittedly, the collection area is probably larger than that, but there are 4,000 people on the waiting list. I did not ask how long it took for them to gain treatment.

Unfortunately, though, this government is far more interested in playing the blame game than in providing solutions for Australia’s dental crisis. The Howard government’s initiatives on dental health have been limited to the subsidies of 30 per cent or more, depending on the person’s age, for people with private health insurance—rebates that, I have to say, Labor supports. But the other initiative that the government has undertaken is the ineffective Medicare dental program for people with chronic conditions and complex care needs, which is the focus of this legislation. This program was initially announced in March 2004 and commenced in July of that year. Under this policy, Australians were eligible for assistance with their dental care if they had a chronic medical condition, like heart disease or diabetes or malignancies of the head and neck, and they had poor oral health or a dental condition which was exacerbating their chronic and complex disease and they were being treated under a multidisciplinary care plan. You had to jump through three hoops to get into the system.

These complex and restricted eligibility criteria, limiting the program to people with chronic conditions and complex care needs, have severely limited the uptake of the program. High out-of-pocket expenses have also proven to be a significant barrier to uptake. Under the original policy, patients could claim up to three items in one calendar year, at a cost of $220 per year, for a program of treatment. But according to the 2005-06 data released earlier this year, the average out-of-pocket expense for assessment or treatment by a dental specialist under Medicare item 10977 was $692. It is hardly surprising that this has adversely affected the program’s take-up.
Complex referral processes between GPs and dentists have also been cited as a significant problem. The Australian Dental Association, in evidence to the Senate Standing Committee on Community Affairs, which examined this bill, stated that the paperwork in the initial system was ‘a bit cumbersome’ and that administration of the scheme, most particularly practitioners’ unfamiliarity with Medicare, continues to cause concern. The AMA noted in their submission to the committee that there was:

... some ongoing concern that GPs have difficulty locating a dentist who will accept the rebates as full payment when referring patients.

To get an idea of just how poorly this program has been executed, I refer again to the media release of 10 March 2004 from the Minister for Health and Ageing, where he stated that the new dental services would provide for ‘up to 23,000 people under multidisciplinary care plans’. In fact, in the three years between its introduction in July 2004 and June 2007, the program provided for a mere 7,000 patients, at a cost of $1.8 million. The minister predicted that 23,000 people would be supported under that program; only 7,000 people were.

Labor has consistently highlighted the weaknesses of this policy. The minister for health has himself, as recently as Tuesday, in the other place, openly acknowledged the failure of this policy. This makes it all the more remarkable, then, that the government has failed to address the range of other problems besetting the program. Most importantly, the eligibility criteria remain totally unchanged by this legislation. Further, the government has failed to address the complex and restrictive referral processes identified as cumbersome by dentists and doctors alike. In fact, the department revealed to the Senate committee which recently examined this legislation that the current three Medicare items will be expanded to more than 450 Medicare items under the extended programs.

The budget announcement included a change in the benefits available under the program, although, again, it was subsequently adjusted. From 1 November, eligible patients will be able to access up to $4,250 worth of Medicare funded dental treatment over two consecutive calendar years. This might sound good to a casual passer-by, and the change might go some way to addressing the out-of-pocket expenses incurred by eligible patients, but the key problem of how few people are eligible remains.

Given the extremely poor take-up to date, Labor has no confidence that the extended program will be any better, particularly because the government has failed to address the range of other problems besetting the program. Most importantly, the eligibility criteria remain totally unchanged by this legislation. Further, the government has failed to address the complex and restrictive referral processes identified as cumbersome by dentists and doctors alike. In fact, the department revealed to the Senate committee which recently examined this legislation that the current three Medicare items will be expanded to more than 450 Medicare items under the extended programs.

Labor is not convinced that moving from three Medicare items to 450 Medicare items can possibly simplify the program or encourage greater take-up—by patients or practitioners. Throwing hundreds of millions of dollars at a failing program is an appalling piece of public policy. Labor objects to the continuation of a policy that not only is failing on its own narrow objectives but also will do very little to address Australia’s public dental waiting lists, will do nothing to make dental care more affordable and accessible to Australian families and fails to even contemplate Australia’s dental workforce crisis.

It is for those reasons that Labor will be opposing this bill. This is a very brief bill. The provisions simply provide the legislative framework for the policy detail still to be
fully revealed by the government. The bill makes amendments to the Health Insurance Act to enable a monetary limit on Medicare benefits for dental services to be introduced for eligible patients. The amendments provide for Medicare benefits to be paid for the supply of dental prostheses, such as dentures, under the new dental items. According to the explanatory memorandum, details such as the Medicare dental items, including the schedule fees, the eligibility requirements for dental providers and patients, and other administrative requirements, will all be set out in a ministerial determination. Perhaps we will be surprised by the policy developments outlined in this detail, but for now Labor are not convinced that this is a policy worthy of our support. Pouring hundreds of millions of dollars into a failing program is simply not good policy and will not help the hundreds of thousands of Australians in need of dental care.

As announced by my colleagues Labor leader Kevin Rudd and Nicola Roxon earlier this week, rather than propping up the Howard government’s failing and narrowly targeted dental scheme shambles, Labor will draw on these funds and redirect them to Labor’s own dental policy. In the first instalment of Labor’s plan, we have committed $290 million to supply up to one million additional dental consultations and treatments for Australians needing dental care. As part of federal Labor’s determination to take national leadership and end the blame game in dental health, this funding will be available for the states and the territories to help clear the waiting list backlog. States and territories will utilise their existing infrastructure to either supplement their existing public services or purchase private sector appointments for the hundreds of thousands stuck on their waiting lists.

Labor’s Commonwealth dental program will ensure that Commonwealth investment is directed towards a broad based scheme that better addresses the priority oral health needs of those groups in the community most in need of assistance. Labor’s approach stands in sharp contrast to the Howard government’s failing chronic disease scheme—a stark choice between helping one million Australians with their dental care or the dismal 7,000 who are offered assistance under the government’s failing policy. Rather than focus on a policy with such restricted eligibility, a Rudd Labor government will re-establish a Commonwealth dental program and ease the pressures on public dental waiting lists. (Time expired)

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.24 pm)—It was encouraging to see that money was finally being allocated to dental care in the 2007-08 budget—or, more correctly, to assist those people who do not have private health insurance. The Minister for Health and Ageing has consistently argued that dental care was not his responsibility and that it was all up to the states. He conveniently ignored the Constitution, which clearly recognises the role of the Commonwealth in the delivery of dental services. Of course, once it looked like dental health was going to play a part in the federal election, the coalition was forced to do something to take the heat off. That is their standard response when it comes to health: wait until there is a public hue and cry, and make some quick announcement that will quieten things down and then move on. Unfortunately, these announcements do not usually tackle the real issues or provide any long-term solutions, and this announcement is no exception.

Ten years ago the Howard government shirked its responsibility for dental care by
walking away from the former Labor government’s $100 million-a-year Commonwealth dental scheme and ordinary Australians had to face the consequences. Hundreds of thousands of people are on waiting lists for public dental care around Australia. Estimates put that figure at 650,000 people, with an average waiting time of 27 months. So that it is one in every 30 Australians, and it is probably an underestimate because anecdotal evidence suggests that lots of people are simply not joining the list because they do not think there is any point. Those 650,000 do not include the many who are not eligible for the public system—people who do not have a health card but cannot afford the private system, where dentists can charge whatever they like.

Dental fees have increased much more quickly than other health services and faster than the CPI. Too many people put off attending to preventive treatment and fillings and cavities, as more urgent bills pile up at home—and their oral health continues to deteriorate. A recent survey by the National Oral Health Alliance estimates that as many as 40 per cent of Australians could not access treatment when they needed it because of costs and a severe shortage of dentists. By 2010, Australia will be short 1,500 dental workers, mostly dentists—that is 3.8 million dental visits that will not happen. The shortage of dentists is already acute in rural and remote areas.

The Australian Dental Association recently released figures showing that on average Australia had 47.4 practising dentists for every 100,000 people. A breakdown of that figure shows that while major cities might have 56.2 dentists per 100,000 people, remote areas had just 22.9 dentists for the same number. Regional areas do not fare much better either. Inner regional locations have 33.6 dentists and outer regional areas 26.6 dentists per 100,000 people. So there is a growing inequity in dental health and care in Australia, whether we are talking about geographic inequalities between rural and urban Australians or between socio-economically disadvantaged communities and their wealthier counterparts. Low-income adults without private dental insurance are 25 times more likely to have all their teeth extracted than high-income adults with insurance. Children in lower income families now have twice as many rotten teeth as those in wealthier groups. Dental health is an area which very clearly illustrates one of the major problems with Australia’s health system: the lack of priority given to prevention and early intervention.

Rather than spending money on education, checkups and early treatment, the federal government is spending millions of dollars a year on GP visits and hospital care for dental problems. It is very difficult to get good data, but reports suggest that up to one in 10 GP visits are for dental problems, costing Medicare hundreds of millions of dollars a year. People come in for repeated prescriptions for antibiotics and painkillers because they cannot find and cannot afford dentists. If you are in pain with a dental infection, it makes sense that of course you would go to your local GP for drugs. But that sort of treatment does not work, which is why people turn up over and over again. GPs cannot fix teeth, they can prescribe antibiotics and pain relief, but the underlying problem remains and it keeps coming back. Eventually things get so bad that people end up in hospitals. More than 30,000 people are hospitalised every year because of a dental condition.

And they are not all older people. The No. 1 reason why children under the age of five are admitted to hospitals is for their teeth. Of course, there is increasing research and awareness of the connection between oral and general health. We know that the failure to treat dental problems can lead to or exc-
erbate other illnesses elsewhere in the body. Poor oral health has been linked to arthritis, diabetes and cardiovascular disease to various degrees. And this is not a failure of policy. In 2004 the national oral health plan, called Healthy mouths healthy lives, was a comprehensive approach to improving oral health and was endorsed by all health ministers. But three years down the track there has been very little improvement. Unfortunately, the changes to the Medicare enhanced primary care scheme for people with chronic and complex conditions proposed in the Health Insurance Amendment (Medicare Dental Services) Bill 2007 will do little to fix the underlying and ongoing problems. On the surface it seems as if, at long last, the Howard government is acknowledging its responsibility for dental care, but it has allocated the money in such a way that most people will not be able to get the help they need. The government has selected one group of people to help, and they will have to go to a doctor and show that they have a condition with complex care needs and receive care under a written management plan.

And then they will have to show that they have a dental problem which significantly adds to the seriousness of their medical condition so they can get permission to see a dentist and get some care. The existing dental items in the enhanced primary care scheme have not been a roaring success, and even that has been acknowledged by the government. There has been a very poor uptake, attributed in part to the administrative complexity of the scheme and the restrictions on age eligibility. So it is hard to see how increasing from three Medicare items to 450 Medicare items will make the system any easier for people to use.

Finding dentists who would accept the rebate as the total payment has also been a problem, meaning that lots of people still face out-of-pocket expenses they cannot afford. It is true that there will be higher rebates under this system but co-payments are still allowed and some eligible patients will not be able to afford to pay the co-payment. The new system will also have a cap on it of $4,250 over two years and people will then have to cover all of the costs for any ongoing dental treatment after that. It is difficult to assess what impact this bill will have; after all, most of the detail, including the eligibility criteria for dental providers and patients, will be up to ministerial determination. But we do know that it will not help those who need to receive their dental care in a hospital environment. These patients will be ineligible for the Medicare rebates.

There are many special needs patients who, for a variety of reasons, cannot be treated in a dental surgery, whether it is because of a mental health problem, an intellectual disability or a physical illness such as cancer, leukaemia or haemophilia. Those patients with special needs that would require them to be under general anaesthetic in hospital or require other hospital-level assistance while undergoing dental treatment will miss out. Dental care is largely primary care and deserves federal funding. This is not a case of the Commonwealth taking over dental care; it is a case of it simply paying its fair share. This means more than simply extending a program that will do nothing for most of the people in direst need.

There should be specific Commonwealth funding for low-income people to get access to free basic dental care, not just people with complex and chronic conditions. The report into health funding by the Commonwealth dominated House of Representatives Standing Committee on Health and Ageing recommended way back in December last year that the federal government supplement dental care for those in disadvantaged positions. And we should extend Medicare to cover medically necessary dental care for the
medically compromised—those patients who, because of their medical, physical or mental state, cannot be treated by general dental practitioners in the private or the public setting and require treatment to be undertaken within the safety and resources available in hospitals.

This group, which includes the severely immunosuppressed—such as organ and bone marrow transplant recipients, patients who require replacement heart valves and those needing radiotherapy treatment to the neck and the head—need medically necessary dental care and this should be funded by the Commonwealth. Equally, those people with intellectual or psychological disabilities that necessitate hospital based dental treatment should be covered by the Commonwealth. And there should be a much greater focus on preventive oral health programs, including dental health promotion and public education campaigns. This would include screening and dental hygiene programs in all primary schools. We should not be simply flinging money at repairing and replacing teeth. This does not fundamentally improve dental health in the country. Once a tooth is replaced or repaired it needs ongoing regular maintenance. To be effective, we need to address the major cause of oral health dysfunction—tooth loss.

We need to be supporting preventive practices, including dental-office-based fluoridation, diet assessment and education, and cleaning and scaling. And we need to fix the lack of a workforce to provide oral health care. We need long-range dental health workforce planning and more university places for dentists and dental hygienists. The federal government has increased dental training places to address the shortage of dentists, but more graduates are still needed to make the dental labour force adequate. And we need more Commonwealth supported dental places.

We also need incentives to encourage graduates to work in rural and remote areas and the public sector, and this means better salaries and conditions for all dental workers working in the public sector. We should be looking at more scholarships for dental students from rural and remote areas and exploring debt forgiveness for dental graduates who agree to provide their services in regional, rural and remote areas or in the public sector. We need to think about providing financial support for dental intern programs, as has been successfully undertaken in Britain. This would allow the immediate creation of an extensive oral health workforce in public hospitals and dental clinics, available to the most needy, as well as ensuring the availability of dentists in rural and regional areas.

We could look at providing salaried, specialty training positions for orthodontics, oral surgery and periodontics, with the requirement of one to two years return of service in a public facility—again providing better access to specialist services in public settings. There should be outreach programs for Indigenous Australians, people with mental illness, homeless people, prisoners and the chronically ill. And we need more dental health assessment and follow-up by dental hygienists in residential aged care. We do need more money to tackle the disastrously long waiting lists for basic dental services, for the relief of pain and the repair and replacement of teeth. But we also need to look to the future and prioritise training, prevention and research if we want to see real long-term gains—that is, gains that go beyond an electoral cycle.

Senator WEBBER (Western Australia) (4.37 pm)—I seek leave to incorporate speeches by Senators Sterle and Polley.

Leave granted.
Senator STERLE (Western Australia) (4.37 pm)—The incorporated speech read as follows—

Health Insurance Amendment (Medicare Dental Services) Bill 2007

Mr President I rise to speak on the Health Insurance Amendment (Medicare Dental Services) Bill 2007.

I wish to speak on this Bill for a number of reasons, mostly because it’s important that the appalling record of the Howard Government in regard to health and dental care is not forgotten.

Mr President, the measures in this Bill are a weak and pathetic attempt to paper over the catastrophic damage that the Howard Government has done to the tradition of Government supported dental care since coming to office 11 long years ago.

One of this Government’s first actions was to abolish the Commonwealth Dental Health Program. This was nothing less than an act of political bastardry. It had nothing to do with health care. It was intended as a kick in the head of the Labor Party. It was about belting up the States and to hell with the consequences for people on low incomes. To hell with people with disabilities. To hell with the elderly of this country.

This action in 1996 was the first step in Mr Howard’s long held dream to dismantle Australia’s public health system.

If things had gone as planned, the abolition of the Medicare would have been the next step.

In 1996 the Howard Government had the dismantling of Medicare in its sights and let’s not beat about the bush, it is still on their agenda.

I have no doubt that the Prime Minister would enjoy striking at the heart of Medicare if given half the chance.

Remember that prior to the last election the Prime Minister and all that lot in the Cabinet gave no inkling that they were going to wreak havoc on Australia’s industrial relations system. On past form it is hardly likely that he would telegraph his intentions to dismantle the Medicare scheme at the first real opportunity.

Mr President, the measure contained in this Bill is nothing more than a con.

The Howard Government’s way is to cause problems and then make a huge noise about how it fixes the very problems it created.

But it now looks like the trusted old strategy is going off like a bucket of prawns in the sun.

Let’s look at their current leadership chaos. As the story goes the member for Mayo was given the task to sound out the Cabinet for support of the Prime Minister’s leadership.

The alleged plan was to murky the waters around the leadership issue and then clear the waters by throwing in a chlorine bomb to fix a fungus that never actually existed.

But I’ve got news for you—the truth is its more like a toxic algal bloom.

What a farce. What a hopeless mob.

Mr President, as it has been said before, you can get away with fooling a few people all the time, you can even get away with fooling all of the people some of the time. But Mr President, you sure as hell can’t get away with fooling all of the people, all of the time.

The majority of Australians have had a gutful of this tricky and unfair Government.

One of the great contributions to dental care in this country has been the State Government School dental schemes that have been an important feature of dental care for decades.

Don’t just take my word for it, take the word of a recent President of the Australian Medical Association. This is what Dr Bill Glasson, the then AMA President, said when interviewed on radio in March 2004:

“preventative dentistry is what its all about, and we certainly practise that in our children and it’s a great success in this country.”

How’s that for a ringing endorsement of State Government school age dental care schemes?

Dr Glasson went on to say:

“I think a dollar spent on dental care saves us three dollars or more in the health system down the line.”
Dr Glasson further stated:
“What I would like to say is there is a certain percentage of our population out there who probably should have zero gap, in other words, there is probably five percent or ten percent of the population that need to be picked up, supported, full stop.”

Given that school age children make up approximately 20% of the population, in effect, what the President of the AMA was saying was that almost a third of Australia’s population require access to Government funded general and preventative dental care.

In 1996 we had such a system—with school children covered by State Government school dental services and adult Commonwealth concession card holders covered by the Commonwealth Dental Health Program (CDHP).

A Senate Inquiry into public dental services in May 1998 found that the CDHP was, and I quote: “successful in meeting its aims, especially in terms of providing greater access to dental services for low income and disadvantaged groups in the community.”

The Senate Committee’s Report went on to say: “since the cessation of the program access to dental care has been reduced with increasing public dental waiting lists. There are now over half a million on waiting lists for general dental care throughout Australia.”

Mr President, a recent count now puts the number of people on public dental waiting lists at approximately 650,000. Here we are, 9 years after the Senate’s Report and we have an even greater number of Australians unable to obtain affordable and timely dental care.

This year, the Federal Government funded Australian Research Centre for Population Oral Health at the University of Adelaide and part of the Australian Institute of Australian health and Welfare, published the Report of the National Survey of Adult Oral Health 2004–2006.

This survey interviewed over 14,000 people aged 15-97 of which five and a half thousand were dentally examined.

The survey found 1 quarter of Australian Adults had untreated tooth decay. The survey also found that this figure varied by no more than 5% among the generations. In other words the rate of tooth decay did not vary according to age.

This means that the Howard Government can’t simply blame past governments for this problem—it’s a problem owned and caused by the Howard Government front and centre.

It’s a problem that has been caused by those opposite and their accomplices in the other place.

The survey also found that the levels of untreated decay were more than twice as high among indigenous Australians.

In addition the survey found that approximately 20% of people had moderate or severe gum disease.

These findings point to a massive failure in Australia’s preventative dental services.

As a past President of the AMA, Dr Bill Glasson said in 2004: “Preventative dentistry is what it’s all about… money spent on dental care will save money.”

If the high level of untreated and oral health disease in the adult population is not addressed urgently, the result will be much greater health costs in the future.

Government health experts, health and medical academics, the AMA and the Australian Dental Association have been making this point for years, backed up by reputable research.

The Howard Government’s response, apart from tinkering around the edges of the problem, like the measure in this bill, has been to blame the States and Territories for the lack of needed publicly funded dental services.

The 2004-2006 National Survey of Adult Oral Health found that 30% of Australians reported avoiding dental care due to cost.

Approximately 20% of people said that cost had prevented them from having the recommended dental treatment.

In other words, the Howard Government has presided over the establishment of significant access barriers to needed dental care, including preventative dental care.
The Survey found that the financial barriers to dental care were greatest amongst uninsured people and indigenous Australians. If you are an adult indigenous Australian or a person on a low income, who can’t afford private dental insurance, you might as well forget it. The chances that you will ever be able to afford preventive dental care are now almost zero. The survey found that people without private health insurance were twice as likely to have difficulty in paying a $100 dental bill than people who had private health insurance. In 1996 the Howard Government dumped uninsured people. It’s been a hallmark of the Howard Government that if you are a low income person you are a loser and a whinger. Also anyone who stands up for a fair deal for low income people is accused of promoting the culture of envy. Mr President, we on the Labor side of politics are proud of our tradition of promoting the cause of the less well off in the community and we are not going to be intimidated by the self-centred silver tails opposite. We on the Labor side will always call it as it is. The performance of the State and Territory Governments in the provision of public dental services has been exemplary despite bad mouthing by Howard Government Ministers. In the period 1995/96 to 2004/05 Australian Institute of Health and Welfare figures show, State and Territory government expenditure on public dental services increased by approximately two and a half times. Don’t tell me that the States haven’t been pulling their weight. Australians know who the abonder from public dental care is—the mean and tricky Howard Government. The Howard Government, by abolishing the CDHP effectively took federal dental care services money from the least well off in the community and handed it over to the better off members of the community. In 1995-96 the Commonwealth was contributing through the CDHP approximately $100 million per annum to public dental services. By 2005-06, having slashed and burnt commonwealth funded public dental services, the commonwealth were spending close to 4 times the cost of the CDHP on private health insurance dental premium rebates. I would find it quite incredible to believe that even the most stone-hearted Tory would think this was justice, that this was a fair thing. Why was it necessary to trade off Commonwealth support for public dental services for low income people for private health insurance premium rebates? It make absolutely no sense. The fact is, this sort of caper has become par for the course for the Howard Government. This mean and tricky Government has made these types of tricky deals an art form. Mr President, sadly this sordid story doesn’t end here. There are two other culprits in this merry tale of incompetence—first the private health funds. In 1995-96 private health fund benefits for dental services were approximately 58% of total member cost of dental services. By 2005-06 the value of private health fund benefits for dental services had fallen to approximately 49% of total member cost of dental services. However, when you look more closely you find that the real story is that fund own sourced benefits for dental services are now only approximately 33% of member dental costs compared to 58% in 1995/96 with the difference being picked up by the taxpayer. On a fund member basis, per capita fund benefits for dental services, after taking account of the federal government private health insurance rebate, fell by 6% in the period 1995-96 to 2005-06. On the other hand over the same period, fund member out of pocket costs for dental services increased by approximately 200%. The stark reality is that neither the private health funds nor the Howard Government have eased the direct cost burden of dental services to fund members over the last decade. This is a major policy failure by the Howard Government. What the Federal Government’s private health insurance rebate policy has done has been to
make life simpler and easier for the private health funds.

No wonder the private, for profit sector is lining up to get a piece of the action. Who could blame them for clambersing to get into a high profit, no risk business subsidised by the Federal Government with a guarantee that you can increase private health insurance premium prices by at least the CPI every year.

You don’t have to worry about such a thing as a productivity dividend.

The other beneficiary of the Government’s largesse has been the private dentists.

Again you can’t seriously blame them. If there’s enough room to shovel your snout in the trough then why wouldn’t they muscle in?

In the ten years to 2004-05 total private dental expenditure increased by 130% compared to an approximate 100% increase in private medical expenditure in the same period.

Obviously, private dentists have done very well out of the Commonwealth’s assault on public dental services even when compared with the almost perpetual winners in the income stakes, the medical profession.

The situation with dentistry in Australia is simply another example of inequality of access to health care being sponsored by the Howard Government.

Mr President, I was very encouraged to read that the current Federal President of the AMA who is from WA, Dr Rosanna Capolingua, in announcing the AMA’s health policy priorities for the 2007 federal election had this to say:

“Australia has a good health system by world standards, but it is not providing equal access to all Australians to high quality health care and services.”

I strongly agree with these comments.

Dr Capolingua is a person who does not hesitate to speak out robustly on problems with Australia’s health care system.

I must say, however, that I was more than a little surprised to read this statement from a President of an organisation that traditionally has been a natural supporter of conservative governments—particularly so close to a federal election.

This gives a measure of how seriously the Federal AMA views the failure of the Howard Government’s policy management of Australia’s health system.

Also I was a little disappointed that, unlike her predecessors, no mention was made of dental health in the AMA’s 2007 federal election health policy priorities.

I know dental services are not a front line responsibility of medical practitioners but, as we know, the lack of adequate preventative dental care and treatment almost inevitably flows on to more serious medical conditions.

As far back as seven years ago the AMA had this to say:

“The Australian Medical Association has recommended the ALP for its commitment to re-establishing the Commonwealth Dental Health Program for the benefit of low-income Australians and pensioners who are suffering immeasurably since the scheme was scrapped 4 years ago and called on the Howard Government to match the commitment.”

Dr Kerryn Phelps, the then Federal President of the AMA stated:

“Dental care should not be treated as a privilege—it’s fundamental to health care overall ...

It is essential for the Commonwealth Government to share its responsibility for those Australians who cannot afford dental care.”

What has changed since these words were spoken by the Federal President of the AMA way back in August 2000?

Mr President, in fact things have got worse.
A few days ago the professional body of Australia’s Dentists, the Australian Dental Association (ADA) called upon the Howard Government to address the mal-distribution of the current dental workforce. Dr John Matthews, the Federal President of the ADA had this to say:

“A mal-distribution in the current supply of dentists make timely and affordable access to dental treatment a difficult proposition for a number of Australians.”
Dr Matthews went on to say:
“Australians living in rural and remote areas have comparatively poor oral health compared to their urban counterparts due to the lack of access to dental care. This is totally unacceptable. There are 650,000 people on waiting lists for public dental care with an average waiting time of 27 months.”

And then he said:
“Just allowing the market to solve the problem is not going to work. We need positive government action to solve this crisis. This is another case where the Federal Government must show leadership and work co-operatively with the States.”

Dr Matthews is absolutely correct. This is exactly what Labor has been saying for years.

Mr President, Labor is opposing this Bill because it simply continues the political fraud that the Howard Government has foisted on low income people who have been shut out from access to dental care.

In stark contrast to the current regime a Rudd Labor Government:
• Will re-establish a Commonwealth Dental Program;
• Will ease cost pressures on working families by contributing to the cost of dental care;
• Will keep people out of hospital for preventable dental conditions;
• Will end the Blame Game and work with the States and Territories to fix Australia’s dental care system.

Under Labor, State and Territory Governments in exchange for additional funding will be required to meet new standards of dental care. These will include:
• Providing priority services to individuals with chronic diseases affected by poor dental health;
• Providing timely service for preventative and emergency services; and
• Maintaining the current effort.

The facts are as clear as day—the Howard Government has made a complete shambles of its dental care policy and there is nothing in this Bill that changes that.

**Senator POLLEY (Tasmania) (4.37 pm)**—The incorporated speech read as follows—

I rise to speak today on the Health Insurance Amendment (Medicare Dental Services) Bill 2007.

In 1996, the Howard Government scrapped Labor’s Commonwealth Dental Health Program.

Effectively, this took $100 million per annum away from public dental services. Public dental waiting lists have now blown out to 650,000 people around the country.

Of particular concern to me is the sharp deterioration in dental health standards among people with low incomes. The rising cost of dental care is a major cost of living issue for families.

The statistics demonstrate this very clearly: One in three Australians avoid going to the dentist because of the cost.

The states and territories have doubled their funding for public dental care since the CDHP was abolished, yet the Howard Government have consistently asserted that the states are to blame.

It’s high time the Howard Government stopped the blame game with the states and took some real responsibility for the health needs of Australians.

Australians are in dire need of a solution to this problem... There are 50,000 hospital admissions for preventable dental conditions every year. 1 in 6 Australians have avoided certain foods because of problems with their teeth in the last year.

The Government’s announcement in the 2007 budget to put 377 million dollars into the expansion of its dental program will do very little to address the public dental waiting lists and will be nothing to make dental care more affordable for everyday Australians battling with the rising costs of petrol, interest rates, and childcare.

The Howard Government has neglected dental workforce issues.

Kevin Rudd on the other hand has a vision for Australia. He understands we need to stop the blame game and deliver positive health outcomes for Australians.
Fixing our dental crisis goes beyond throwing money at the industry. We need to look at the long term—how many dentists do we need, and how will we train them.

In the year 2000 there were 49.9 dentists per 100,000 population. This is a disgrace. In my home state of Tasmania, the figures are worse... just 29.8 dentists per 100,000 people. Australia was ranked 19th in terms of practising dentists per 100,000 population out of 29 OECD countries for which data was available. A disgraceful ranking.

Furthermore, the distribution of dentists is very uneven, with particular shortages in the NT and as I mentioned before, my home state of Tasmania. Between 1989-90 and 1998-99 dental fees increased at rates substantially higher than the CPI and other health services: between 1989-90 and 1998-99 dental service prices increased by 50.8 per cent, while the increase in health prices over the same period was only 22 per cent.

There are only six dental schools in Australia— one each in NSW, Victoria, WA and South Australia, and two in Queensland. The University of Griffith only commenced taking dental students in 2004.

I oppose this bill.

Senator MASON (Queensland— Parliamentary Secretary to the Minister for Health and Ageing) (4.37 pm)—I agree with Senator McLucas and Senator Alison that dental health is a big issue in this country. There has certainly been much debate both in parliament and throughout the public in recent times. It is an important issue but clearly it is an issue primarily for the states. I sometimes wonder, with all the money that we give the states through GST payments—

Senator McLucas interjecting—

Senator MASON—Senator McLucas asked the question. Let us take, as an example, my home state of Queensland. Queensland receives billions of dollars more than it would have received under the old taxation arrangements yet it cannot provide sufficient primary dental care for Queenslanders. Why is that? They receive more taxation revenue from the Commonwealth than they have ever received in the history of the federation and more than they would have received if the Labor Party had stopped the GST going through, which is what they tried to do. But, because the GST went through, the great state of Queensland receives more money in revenue than they would have ever received under the old arrangements.

All of us know that, yet they cannot provide adequate services for Queenslanders, and the Labor Party stands up here and says that it is all the Commonwealth’s fault. Well, it is not. I would like to talk about some of the problems that we have with dental health care, but I would like to say, by way of parenthesis—and I suspect I may even get bipartisan support on this—one of the big issues in Queensland over the last 10 years is fluoride. Fluoride has been a local government issue but also it has been raised in state parliament. I suspect that it is not an issue that is just about partisan politics. We have not even got fluoride in Brisbane city.

Senator McLucas outlined the Labor Party’s proposal, which was recently enunci-
ated by Mr Rudd, and spoke about waiting lists and how the Labor Party will assist in cutting down those waiting lists. Conceptually, that policy is quite incoherent. Let me say, by way of warning, that it is fiscal quicksand. The difference with the coalition policy is that our policy is conceptually coherent. We think that if someone’s dental health impacts upon their general health, which is ultimately the responsibility of Medicare, then the Commonwealth should provide for it. Nibbling away at the edges of waiting lists will not solve the problem. It will not make the states take responsibility and certainly will not solve the more general issue of chronic disease coming from bad oral care. That is the major problem.

I do not know what the Labor Party is on about here. Indeed, their proposal on dental care is not even as generous as the coalition proposal. It is quite an unusual proposal: not only is it less generous but also it nibbles away at the edges of a huge problem rather than engaging in a conceptually coherent policy, such as the coalition’s. The coalition’s policy is that, where oral health impacts upon general health, the Commonwealth will take responsibility.

Through the Health Insurance Amendment (Medicare Dental Services) Bill 2007, the Commonwealth government will provide substantial support to people with chronic conditions such as cancer, diabetes, cardiovascular disease and complex care needs so that they can access dental treatment under Medicare. This will help to improve the oral health of those Australians with long-term serious illness. Passing this legislation will enable eligible Australians to access up to $4,250 in Medicare dental benefits over two consecutive calendar years. If this bill is passed, the new arrangements will commence from 1 November this year. Patients will be able to receive Medicare benefits for a comprehensive range of dental treatment, from diagnosis, preventative services and fillings to more complex treatments such as major restorative work. Older people requiring dentures will particularly benefit from these new arrangements.

The Senate Standing Committee on Community Affairs has recently considered this bill and concluded that it is a ‘fundamentally important step in improving access to dental services and care for many Australians’. The committee recommended that this bill be passed. This Medicare initiative is a substantial investment in private dental treatment by the Commonwealth government of about $385 million over four years. It complements, but does not replace, state and territory governments’ responsibilities to provide public dental services.

I was listening carefully to what Senator Allison said before and I want to remind her that the new Medicare items complement other initiatives announced in the 2007-08 budget that are designed to increase access to dental treatment and support the dental workforce. These include investments in a new school of dentistry and oral health at Charles Sturt University, more rural clinical placements and dental scholarships for Indigenous students. The government has looked very closely at that. The new Medicare items complement other Commonwealth initiatives announced in this year’s budget. Together, these initiatives will strengthen dental care in Australia, and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.45 pm)—I move Democrat amendment (1) on sheet 5378:
Schedule 1, page 4 (after line 4), at the end of the Schedule, add:

5 Subsection 10AA(7)

Insert:

**de facto partner** means one of two people in a de facto relationship.

**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.

6 Subsection 10AA(7) (paragraph (b) of definition of spouse)

Omit “spouse”, substitute “partner”.

7 Subsection 23DZZID(1)

Insert:

**de facto partner** means one of two people in a de facto relationship.

**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.

8 Subsection 23DZZID(1) (definition of spouse)

Omit “de facto spouse”, substitute “de facto partner”.

This is our standard amendment, which would remove the discrimination against same-sex couples, which is inherent in this bill—and, I might say, as we found in the inquiry that was conducted, the report of which was tabled today, is inherent in 58 acts. That was discovered by the Human Rights and Equal Opportunity Commission. It is our view that it is time to end the discrimination against same-sex couples, and this amendment would have the effect of doing that.

Senator McLUCAS (Queensland) (4.45 pm)—I indicate that the Labor Party, consistent with practice, will be supporting this amendment. Whilst we have had the view over the question of discrimination against same-sex couples that we wanted to have a comprehensive response to that issue—and we would do that if we were fortunate enough to gain government in this country—in this case we will support this amendment from Senator Allison. While I have the opportunity, I ask the minister: where is the logic that says that the teeth of an individual are the responsibility of the state and yet the health of the rest of the body of the individual is the responsibility of the Commonwealth?

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.46 pm)—I will address both issues. Firstly, the same-sex couples issue: Senator Allison, I understand the amendment you are trying to move. I do not think this is the time or the place to address that issue again. There are no plans to change current government policy at this time. I will just leave it at that. I suspect that at some other time there will be a debate on the issue. In relation to Senator McLucas’s question about the responsibility for health, since Federation the primary health care of Australians has been, primarily, the responsibility of state governments.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.47 pm)—In his response to my amendment the minister says that at some other time there will be a debate. Could the minister indicate when that time will be?

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.47 pm)—Senator Allison, I am sure that at some time in the future of this parliament there will be a full debate on this particular issue. It will be at another time, at another place, but not this afternoon.

Senator McLUCAS (Queensland) (4.48 pm)—I have one other question. Minister, why is it then that the Commonwealth funds GP visits which, one would assume, is primary health care, but refuses to play its part in the dental health of this nation through cooperatively working with the states to be able to deliver a comprehensive national dental health plan for this country?
Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.48 pm)—In fact, the Commonwealth did not do that until 30 years ago. That is a fact. At that time the dentists in this country decided that they did not want to become part of Medicare. That is the historical fact.

Question negatived.
Bill agreed to.
Bill reported without amendment; report adopted.

Third Reading
Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.49 pm)—I move:

That this bill be now read a third time.

Question agreed to.
Bill read a third time.

HEALTH LEGISLATION AMENDMENT BILL 2007

Debate resumed.

Senator McLUCAS (Queensland) (4.50 pm)—I seek leave to incorporate my speech on the second reading in *Hansard*.

Leave granted.

_The speech read as follows_—

I rise to speak on the Health Legislation Amendment Bill 2007.

This Bill proposes to rectify some unintended consequences of two sets of major health sector reforms implemented by the government earlier this year—the private health insurance reforms, which commenced on 1 April 2007, and the pharmaceutical benefits scheme reforms, the first tranche of which came into effect on 1 August 2007.

Labor supported the original legislation in these two areas, with some amendments, and we will support this Bill.

It is disappointing, however, that we are having to revisit and correct aspects of these reforms so quickly. These two legislative packages were important, complex changes to two key areas of health policy, and the Parliament dealt with both of them in a fairly rushed environment, as I recall. The fact that we are revisiting them again so soon after their respective commencements points to poor management of detail by the Minister for Health when implementing major changes to the health sector.

That we are here having to fix up legislation so recently passed really does smack of a Minister and a Government who have stopped paying attention to the detail of governing; a clear sign that the Minister did not take the care and attention that was needed in first introducing these bills and did not allow for the processes to run for sufficient time—for example, in the Senate Committee.

Perhaps the Minister and his colleagues should be spending a little less time worrying about the Government’s re-election and a tad more time actually governing. Though, of course, the Minister for Health is on the record saying that he is not interested in anything that does not involve the election, so it is no great surprise to us that we are here again fixing up his mess.

Turning to the detail of the Bill before us.

Schedule 1 proposes amendments to the private health insurance reforms which commenced on 1 April 2007. These amendments relate most particularly to the arrangements affecting overseas visitors such as tourists, 457 visa holders or overseas students.

To recap on the original legislation, the reforms enacted earlier this year—the Private Health Insurance Bill 2006 and six related bills—introduced a range of reforms to the private health insurance arrangements that included allowing for private health insurers to offer a wider range of products, standardised information about health insurance products, changes to Lifetime Health Cover, changes to prudential arrangements and changes to the role of the regulator—the Private Health Insurance Administration Council (PHIAC). Under the new arrangements, emphasis shifted from the regulation of health funds to the regulation of health insurance products. In addition, various transitional arrangements were introduced.
The reforms included changes that meant that from 1 July 2008 overseas visitors’ health cover would become a general insurance product that could be offered by general insurers and private health funds. Under the new arrangements, overseas visitors’ health cover would not be subjected to the complying health insurance product arrangements established by PHIAC and would not be subject to the community rating arrangements which require insurers to offer products without discrimination on the basis of age, profile, medical history or other risk factors.

These arrangements created an inequity between general insurers and private health insurers. While general insurers are not subject to the requirement of the community rating arrangements and can therefore operate in a risk-rating environment—where they can charge higher premiums or refuse cover altogether based on a person’s risk profile—private health insurers who are offering complying health insurance products were bound under PHIAC to community rating requirements. This potentially placed an unfair burden on the private health funds because private health funds were required to accept risks that their competitors in this particular market—the general insurers—could refuse.

Correcting this potential inequity appears to be the reasoning behind most of the Schedule 1 amendments.

According to the Health Minister’s second reading speech: “The Act currently provides that all the operational rules of a private health insurer are subject to improper discrimination requirements. However, it was only intended that these requirements apply to the core business of private health insurers—that is, complying health insurance products. The Bill will provide that the improper discrimination requirements only apply to complying health insurance products.”

A second set of amendments concerns the regulatory environment for overseas visitors’ health cover. The government’s intention under the original reform package was to make the Australian Prudential Regulation Authority, or APRA, the regulator for all overseas visitors’ health cover from 1 July 2008 as a general insurance product.

According to the Health Minister’s second reading speech, however, the government has now decided that from July 2008 overseas visitors’ cover offered by private health insurers will be regulated as a health related business by PHIAC, while cover provided by the general insurers will be regulated as a general insurance business by APRA.

The explanatory memorandum provides no information indicating the rationale for this regulatory change. The only explanation offered by the Minister in his second reading speech is that the decision was made after consultation with APRA and PHIAC and that: “This parallel approach will remove the potential for regulatory overlap and minimise the compliance burdens on health insurers who now offer the service, while not preventing potential new providers from entering the market.”

The amendments will remove the requirement that health funds who offer overseas visitors’ health cover during the transition period from 1 April 2007 to 30 June 2008 must offer it as a complying health insurance product. In essence, this means that insurers can offer products to travellers that do not provide the full or same cover as that offered to residents. It also means that health insurers and general insurers will be treated consistently in providing these products to travellers.

Penalties for not offering this as a complying health insurance product will also be removed, retrospective to 1 April 2007. We understand from the Australian Health Insurance Association that the private health insurance industry is generally in favour of these amendments and in fact has been trying to have a number of the minor issues fixed in this fashion.

As I indicated at the outset, we will support these amendments.

Turning to Schedule 2, these amendments concern the Pharmaceutical Benefits Scheme reforms which came into effect on 1 August 2007. To recap, in May 2007 a Bill amending the pharmaceutical provisions of the National Health Act was introduced into the House of Representatives. Subsequently, the Bill was passed by the Senate and came into effect on 1 August 2007. The legislation introduced significant structural changes to the pricing of medicines subsidized under the
The amendments in this Bill propose to clarify and correct provisions in the recent reform package that affect the pharmaceutical benefits around pharmacists: firstly, supplying substituted brands of prescribed medicines; secondly, supplying repeats of medicines; and, thirdly, supplying medicines early.

Prior to the implementation of the new legislation in August 2007, pharmacists could substitute an equivalent brand under the early supply arrangements. However, the reforms introduced in August inadvertently narrowed the definition under the early supply provision so that pharmacists could no longer substitute different brands. This Bill proposes allowing the substitution of different brands under the early supply arrangements, provided the brands are described as equivalent in the schedule.

In essence, the changes here ensure that pharmacists can continue to substitute in the way they did prior to the changes as well as in the new ways that will be encouraged by the major reforms of earlier this year.

Let me deal briefly with those three different areas. In relation to substitution arrangements, under brand substitution arrangements pharmacists are allowed to substitute to the lowest priced approved bioequivalent generic product with the permission of the patient and provided the prescriber has not directed otherwise on the prescription. The government subsidises only to the lowest priced drug in the defined subgroup and consumers pay any difference in price in addition to the usual co-payment.

This Bill clarifies that a prescriber does not need to specify the exact brand of medicine when writing the prescription. A prescription will be valid even if the brand is not specified, although a listed drug and its dosage or form must be specified. The Bill further proposes restricting substitution arrangements to only those medicines specified in the schedule so that pharmacy prepared medicines do not qualify as substitutes.

In respect of repeats, the Bill proposes applying permissible repeat prescription arrangements to schedule equivalent medicines. Under PBS arrangements, a prescription can specify a number of repeats so that the patient does not need to return to their doctor to obtain a new prescription every time they complete a course of medicine. The maximum number of repeats for a subsidised medicine is specified in the schedule.

The proposed amendments prevent the number of permissible repeats being exceeded by prescribing more than one schedule equivalent medicine in a prescription.

Finally, on the early supply provisions: under the PBS arrangements, when a patient has a repeat prescription for a PBS medicine they normally cannot obtain repeat scripts until 20 days after the supply of the original prescription. This is designed to prevent stockpiling of medicines. However, in special circumstances, the patient can obtain a script early or immediately under the immediate supply provisions of the PBS—for example, if the original medication is lost or damaged. These early supply prescriptions do not count towards the PBS safety net.

We understand that industry groups have been consulted on these amendments concerning the PBS reform. While the Generic Medicines Industry Association have expressed their support for the amendments, we understand that Medicines Australia has questioned the need for these reforms. As my colleague the Shadow Minister for Health flagged in the other place, we understand that Medicines Australia has flagged some additional recommendations regarding the need for the Minister to seek Therapeutic Goods Administration advice before something is declared bioequivalent, and Labor have requested clarification from the Minister or departmental officials about where this stands.

Government amendments to this Bill were belatedly provided to Labor on Tuesday evening, just prior to debate on the Bill in the House. The amendments will allow members of the Private Health Insurance Administration Council (PHIAC) to more flexibly manage the practical workings of the Council.

The current provisions, which came into effect with the new raft of private health insurance in April, require members of the Council who are insured by a particular health insurer to excuse themselves from discussions when matters arise
regarding their health insurers. PHIAC is a 6 member Council and each of the members own private health insurance. We understand from the Council that just owning an insurance policy under the current legislation would require the individual Council members to regularly excuse themselves from Council deliberations.

The amendments we are considering here rectify the inadvertent consequences of the April amendments by allowing for the Council itself to determine whether any of its members should excuse themselves from Council discussions. Controls are maintained, with the Board and the Minister able to intervene where it is deemed necessary.

Given the extraordinarily short time frame we were given to consider these amendments, consultation with PHIAC and stakeholders was not possible before this Bill was debated in the other place. My colleague the Shadow Minister for Health flagged in the House that our support of these amendments was conditional on further consultation.

We have subsequently been able to discuss the amendments with the Council, who have confirmed that these changes were initiated on their request. We have also consulted with the Australian Health Insurance Association about the amendments, and although they had no time to canvas their members, the executive was of the view that the changes seemed eminently sensible.

So I will conclude now by saying that Labor supports all three sets of amendments in this Bill and that we hope there will be no need for the Parliament to again revisit either the reform packages for the Private Health Insurance or Pharmaceutical Benefit Schedule.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.50 pm)—I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

(Quorum formed)

Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland) (4.53 pm)—I apologise to the Senate for the need to call for a quorum. I move the amendments that have been circulated in the name of Senator Allison, as I understand it:

Page 7 (after line 4), at the end of the bill, add:

Schedule 3—Same-sex: same entitlements

National Health Act 1953

1 Subsection 4(1)

Insert:

de facto partner means one of two people in a de facto relationship.

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.

2 Subsection 4(1) (definition of spouse)

Omit “spouse” (second occurring), substitute “partner”.

3 Subsection 84B(4) (paragraph (b) of the definition of spouse)

Omit “spouse”, substitute “partner”.

These amendments should not be a surprise to anybody, or they certainly should not deal with a topic that anybody is now unaware of. The Democrats have repeatedly moved amendments of a similar nature countless times over many years, since the Human Rights and Equal Opportunity Commission tabled their report at the end of June, entitled Same sex: same entitlements, which specified what in their view was the best way to address the widespread discrimination towards people in same-sex relationships across about 58 different pieces of Commonwealth legislation. The Democrats have used that as a template.

We have tried every approach. I would make it clear that this is not just some one-off incident to try and make a point or to be inconvenient. We have tried every approach genuinely. We tried the omnibus bill. We put forward an omnibus bill, as recommended by HREOC, to amend all of the acts in a consistent way—applying a consistent definition with regard to same-sex relationships across all of the pieces of legislation identified by the Human Rights and Equal Opportunity Commission report. That bill received such a stonewall that the government would not even support it being sent to a Senate committee for examination. I must say, I remain more than disappointed by that, but, be that as it may, that is what happened. So there was no opportunity for that to be progressed even that far. We have thus, instead, taken the approach of moving amendments, using the definition of a de facto relationship and a same-sex relationship as recommended by HREOC for each of the acts identified by HREOC in their report—hence, the amendments to the National Health Act. We are simply following through on the recommendation of the Human Rights and Equal Opportunity Commission report.

I should make the point that there is a significant degree of disadvantage experienced by people in same-sex relationships under the Health Act. It financially disadvantages them, purely because their relationship is not recognised, because it involves two people of the same gender. The amendments before us simply equate same-sex relationships as coming under the definition of de facto relationships, regardless of whether the people are of the opposite sex or the same sex. That is the impact of the amendment. As I said, it is an issue that we have raised many times before. It is now in lock step with the Human Rights and Equal Opportunity Commission’s recommended approach—an approach that I would have to say has been supported verbally by many people across all parties, including many members of the coalition, but it has yet to get the support where it matters, which is in this chamber, to amend the law, which is where the discrimination remains.

Senator McLUCAS (Queensland) (4.57 pm)—For the same reasons that we supported this amendment in the last piece of
legislation that we dealt with, I can indicate that we will support these amendments as well.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (4.58 pm)—Could I say to Senator Bartlett and Senator Allison that, for what it is worth on this issue, I do not believe that you are grandstanding inappropriately. I will just say that the government has no plans to change its policy at this time.

Question negatived.

Senator BARTLETT (Queensland) (4.58 pm)—I just want to ask the parliamentary secretary one question on this piece of legislation whilst he is here. I did not make a speech in the second reading debate on this, but I just seek to ask about an issue that was raised in a recent migration committee inquiry into temporary visas and the 457 visas. I note that the Bills Digest on this piece of legislation mentioned that a possible effect of these proposed amendments is that holders of a 457 visa may face higher health insurance costs as a result of the removal of the complying health product provisions. The issue of health insurance costs was raised in the inquiry that the Joint Standing Committee on Migration held.

I ask the minister—sorry, the parliamentary secretary; he does such a good job that he is ministerial in all aspects of his demeanour—whether the government has examined this potential consequence and whether it will be undertaking any activities to monitor any impact, not just on 457 visa holders but on a whole range of visa holders who have to take out health insurance as part of their visa criteria. That can be an expensive undertaking. Has consideration been given to the possible impacts? If so, should there be concerns, will it be okay or is it just one of those things where we will have to see how the market evolves, and you will give me a commitment that you will monitor it closely, which I will welcome?

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (5.00 pm)—I am advised that, in the context you have just raised, this bill will make no difference, but we will monitor the situation.

Bill agreed to.

Bill reported without amendment; report adopted.

**Third Reading**

Debate resumed.

Senator McLUCAS (Queensland) (5.01 pm)—I seek leave to incorporate my contribution to this debate.

Leave granted.

The incorporated speech read as follows—

I rise to speak on the National Health Security Bill 2007. The purpose of the Bill is two-fold. Firstly, the Bill seeks to create a legislative framework and underpinning for existing cooperative arrangements between the Commonwealth, States and Territories for public health surveillance and information sharing in relation to public health events of national significance. These provisions also give effect to Australia’s treaty commitments under the International Health Regulations in relation to these matters and provide for the sharing of information with the World Health Organization (WHO) and other...
countries affected by an event relating to public health, or an overseas mass casualty.

Secondly, the Bill also introduces, in line with COAG recommendations, a mandatory regulatory system for security-sensitive biological agents.

The Bill is a new stand alone Bill and reflects a Government commitment in the 2004-05 federal budget to develop national health security legislation.

While Labor believes these purposes are important and worthy of support, and while this legislation has been in the pipeline for some time, yet again Labor has been given a very short time frame for consideration of this Bill. We first sighted the Bill when it was introduced just last Thursday and here is it being rushed through the House and Senate in one day.

This is a substantial Bill with several constituent parts. I’ll turn first to Part 2 of the Bill, which deals with public health surveillance and information sharing, and gives effect to the International Health Regulations 2005.

Part 2 seeks, firstly, to provide a national system of public health surveillance to enhance the capacity of the Commonwealth, the States and the Territories to identify and respond to public health events of national significance, including:

- the occurrence of certain communicable diseases; or
- certain releases of chemical, biological or radiological agents; or
- the occurrence of public health risks; or
- the occurrence of overseas mass casualties.

As such, this Bill provides a legislative underpinning for a range of cooperative arrangements that have developed over the past decade between the Commonwealth, State and Territory Governments and their agencies.

Secondly, Part 2 provides for the sharing of information with the World Health Organisation and with countries affected by an event relating to public health or an overseas mass casualty.

By way of background, the Government in the 2004-05 Budget allocated $1.6 million over three years to develop national health security legislation. According to the Minister’s Second Reading Speech, the Government has since then “worked cooperatively with all relevant organisations, States and Territories to develop legislative foundations for the exchange of health information between jurisdictions.”

This process coincided with Australia agreeing to adopt the International Health Regulations in May 2005. The International Health Regulations are an international agreement for the control of the worldwide spread of disease. The regulations were originally adopted in 1969 as a means to control six serious infectious (quarantinable) diseases, namely, cholera, plague, yellow fever, smallpox, relapsing fever and typhus. In light of significant increases in international travel and trade, and the emergence of new international disease threats such as severe acute respiratory syndrome (SARS) and avian influenza, as well as the re-emergence of old ones in recent years, the regulations were substantially revised in 2005.

These new revisions significantly broadened the scope of the regulations to include all public health emergencies of international concern. The new regulations require State Parties to develop certain minimum core public health capacities to detect, assess and notify the WHO of health emergencies that are of international concern. At the same time, the regulations aim to ‘avoid unnecessary interference with international traffic and trade’.

As I mentioned earlier, the Explanatory Memorandum to this Bill indicates that it does not introduce any new measures for the sharing of personal health information between the Commonwealth, States and Territories. Rather it ‘provides a legislative basis for existing cooperative arrangements between Australian jurisdictions for the exchange of health information’.

Part 2 Division 2 provides for the development of National Health Security Agreement between the Commonwealth, State and the Australian Capital Territory, Northern Territory and Norfolk Island governments to support the operation of the Bill. The agreement may include—but not be limited to—provision for the sharing of information between these jurisdictions in relation to communicable diseases; formalising consultation between these jurisdictions in relation to public health events of national significance; enhancing the ability within Australia to identify and respond
quickly to public health events of national significance; and facilitating the monitoring of public health events of national significance within Australia.

It is unclear what format a National Health Security Agreement will take: it could be an agreement that the States and Territories will simply mirror the Commonwealth legislation, or it could become the framework for a cooperative legislative scheme that will reduce the current duplication of legislation at the State level. I know my colleague the Shadow Minister for Health has requested clarification from the Minister and Departmental staff on this issue.

Division 3 of Part 2 of the Bill enables the sharing of protected information (including personal information) by relevant government officials in a range of specified circumstances, including preventing, protecting against, controlling or responding to a public health event of national significance. The meaning of “protected information” is dealt with in detail in Division 8 of the Bill.

The Bill also provides for situations where protected information needs to be shared to facilitate identification, or assist in the treatment or repatriation of an Australian who suffers from a disease, or is injured, or dies, as a result of an overseas mass casualty. The Bill further provides for situations when a person who is not an Australian, to help bring that person to Australia for treatment.

The Bill establishes a National Focal Point which will provide a single contact point for liaison between responsible bodies within Australia in relation to public health events of national significance and which will liaise with the WHO and other countries in relation to, for example, events that may constitute public health emergencies of international concern.

According to the Explanatory Memorandum, it is proposed that the National Focal Point will be the Secretary of the Department of Health and Ageing (DoHA), and officers within the Department, and will operate from the National Incident Room, located in the Office of Health Protection of DOHA.

The Bill also establishes a National Notifiable Disease List (NNDL). The Minister must establish the list by legislative instrument, after consultation with the Commonwealth Chief Medical Officer and each of the State and Territory Health Ministers. The list may include any illness or medical condition that the Minister considers a ‘public health risk’, which has been defined in the Bill, and is based upon the International Health Regulation. The Minister may vary the list by legislative instrument after consultation with the Commonwealth Chief Medical Officer and each State and Territory Health Minister.

Part 2 Division 6 deals with notifying, sharing information and liaising with responsible Commonwealth, State or Territory bodies in relation to public health events of national significance etc. This provides a legislative basis for existing cooperative arrangements between Australian jurisdictions for the exchange of health information, and to authorise, rather than mandate, the exchange of certain personal or identified information, for the purposes of national public health surveillance.

Division 7 of Part 2 is intended to give effect to Article 30 of the International Health Regulations and provide for public health observation. According to the Explanatory Memorandum, these provisions are not intended to provide for general health screening of international travellers arriving in or leaving Australia but rather to provide for the sharing of certain information about international travellers in-transit whose health requires monitoring, but where their travel does not pose an imminent health threat.

Division 8 of the Bill includes provisions dealing with protected information, and in what circumstances agencies of the Commonwealth, States and Territories are able to share such information, including to a court or tribunal, or to a coronial inquiry, in accordance with an order of a court or a tribunal, or of a coroner, as relevant.

The Bill also authorises in Division 8 the provision of relevant information to the World Health Organisation or other countries in the event of a public health emergency of international concern. According to the Explanatory Memorandum, it is anticipated that the information provided to WHO will be de-identified health surveillance data.
Clause 27 provides some protections for situations where personal information is provided to an IHR signatory country for IHR purposes, so that the country receiving the information is clear about the nature of the information they are receiving and the purposes for which it is transmitted. Importantly, the Bill includes an offence if a person obtains protected information and makes a record of, discloses, or otherwise uses the information for a purpose that is not authorised. The maximum penalty for such an offence is imprisonment for 2 years. Clauses 22 to 26 describe a range of defences to this offence.

We understand that the States and Territories have been closely consulted on this legislation throughout its development.

Turning to the second purpose of this legislation: the introduction of a mandatory regulatory scheme for the regulation of security-sensitive biological agents. This is covered in Part 3 of the Bill.

Security sensitive biological agents (SSBA) can be defined as Infectious agents, such as bacteria and viruses that can spread rapidly within a population, and toxins derived from animals, plants or microbial material.

Given the potential for either the deliberate or unintentional use or release of these substances to cause serious harm, it seems remarkable that there is currently no nationally consistent legislation that addresses the security risks associated with all facilities and entities that handle SSBA, nor their location.

The Explanatory Memorandum clearly outlines the risks this legislative vacuum brings. Firstly, there are limited physical security requirements for facilities and entities holding or using SSBA. Secondly, there is no means of monitoring the location, nature or destruction of SSBA. Thirdly, there is no requirement for checking of facility and entity employees with access to SSBA to ensure that they do not have criminal or terrorist links; and fourthly, facilities and entities generally do not record individual access to SSBA.

In December 2002, the Council of Australian Governments (COAG) agreed to a national review of the regulation, reporting and security around the storage, sale and handling of hazardous materials. The review has been conducted in four parts covering ammonium nitrate, radiological, biological and chemical materials.

On 13 April 2007, COAG agreed to the recommendations from the Report on the Regulation and Control of Biological Agents. Part 3 of this Bill effectively legislates for the mandatory national regulatory scheme for SSBAs agreed to by COAG.

Part 3 contains a range of detailed provisions providing a framework for this new regulatory scheme. I do not propose to go through these measures in great detail, but they include provisions for:

- the establishment of a National Register of information about the nature and location of Security-sensitive Biological Agents (SSBA) legitimately handled by entities in Australia;
- the establishment of a list of biological agents (to be known as the List of Security-sensitive Biological Agents—List of SSBA) that the Minister considers to be of security concern to Australia. That is, material that—if it could be developed, produced, stockpiled, acquired or retained in types and quantities that could allow the biological agent to be used as a weapon—would be considered a security concern. I understand from the department that this list comprises approximately 20 pathogens and has been developed in consultation with ASIO in terms of threat and vulnerability assessments.
- provisions for the collection, and recording of information for the Register;
- requirements to be complied with for the secure handling of SSBA;
- the establishment of an inspectorial system for the monitoring of compliance with reporting and handling requirements; and
- restrictions in relation to the handling of SSBA, and confiscation powers for the removal of substances in particular circumstances.

The regulatory scheme is founded on risk-management principles to ensure that its effectiveness is maximised and that the regulatory impacts are minimised. The scheme focuses on
managing the risks posed by specific SSBA, so that potential administrative burdens relate only to dealings with nominated agents, rather than to the facility in which they are handled. If a particular facility does not handle or store nominated agents, that facility would not be captured by the regulatory scheme, irrespective of other considerations, including the physical containment level of the facility.

We understand from the Department that the new regulatory scheme will be developed progressively over the next eighteen months, in close consultation with the laboratories that it will affect, for example at universities and research labs.

We also understand from the Department that although the Bill refers to the powers of the Secretary of the Department of Health and Ageing, the department is considering contracting this scheme to a government regulatory agency for its implementation. Labor looks forward to further briefings from the Department on this issue as it develops.

As I said at the outset Labor believes that the purposes of this legislation are important and worthy of our support. I commend the Bill to the Senate.

Senator MASON (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (5.01 pm)—I simply commend the National Health Security Bill 2007 to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT (CAPE YORK MEASURES) BILL 2007

Second Reading

Debate resumed from 19 September, on motion by Senator Johnston:

That this bill be now read a second time.

Senator CARR (Victoria) (5.02 pm)—I seek leave to incorporate my remarks.

Leave granted.

The incorporated speech read as follows—

Mr President, I rise to speak to the Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007.

This bill amends the Indigenous Education (Targeted Assistance) Act 2000 to provide an extra $2 million in 2008 for literacy initiatives in the Cape York region of Queensland.

The $2 million is expected to fund the Making Up Lost Time In Literacy (MULTILIT) accelerated literacy program in Cape York.

The bill is also expected to fund the establishment of Student Education Trusts to encourage families to save for education costs. The Student Education Trusts are voluntary trusts where families can make regular contributions to cover the costs of their child’s education, such as uniforms, books and excursions.

Labor supports this bill.

We do so for two main reasons:

• Because, in a very small but important way, the measures contained in the bill forward Labor’s policy commitments to close the yawning gaps in literacy and numeracy outcomes of Indigenous children across Australia; and

• Because the two initiatives to be funded through this Bill are a rare example of the Government supporting evidence-based programs, rather than pursuing an agenda in Indigenous policy based purely on ideology.

Government’s record

This Government’s record in Indigenous affairs has displayed some serious shortcomings. It has acted to bring down and dismantle a number of constructive initiatives built up over many years by previous governments—I’m thinking here of such steps as the abolition of ATSIC, something that Labor opposed strongly.

In the past (in 2005 to be precise) it has underspent allocated funds on Indigenous education—failing to expend around $142 million allocated
for targeted assistance under IESIP. Bureaucratic and legislative foot-dragging seem to have been the explanation for this, but that's no excuse.

**Labor's commitments**

On the 40th anniversary of the 1967 Referendum, Kevin Rudd announced that Labor would commit to a key target in the area of education—to at least halve the difference in the rate of Indigenous students at years 3, 5 and 7 who fail to meet reading, writing and numeracy benchmarks within ten years.

Kevin Rudd also said that Labor’s policies will be driven by measurable goals and evidence-based programs developed in partnership with Indigenous people.

To support our Indigenous education commitments, we announced nearly $22 million ($21.9 million) over four years to expand intensive literacy and numeracy programs for Indigenous children in our schools. In particular, we said we want to see intensive literacy programs, including programs such as

- Making Up Lost Time In Literacy or MULTILIT, and
- Accelerated Literacy.

which provide a heavily-structured approach to teaching literacy.

**Numeracy programs**

Labor went further than intensive literacy however. We will also target intensive numeracy programs.

It is remarkable that there are no major programs in numeracy for struggling Indigenous children.

The gap in education outcomes of Indigenous and non-Indigenous children is widest in numeracy, and getting wider over time.

To look at 2005 data, 80.4 per cent of Indigenous children in Year 3 met the numeracy benchmarks. By Year 7 this fell to 48.8 per cent, according to the National Report on Schooling in Australia 2005. Fewer than half of Indigenous children in Year 7 were numerate at a basic level.

No government serious about improving the lives of Indigenous children can sit on its hands when confronted with such a shocking figure. As part of our $22 million commitment, Labor will develop a new intensive numeracy program, and implement it at a pilot stage. The Federal Government has yet to sign up to this policy.

I call on the Government to provide funding for concrete programs to improve the numeracy and literacy skills of all Indigenous children.

**Other Labor commitments**

There are four other major policy commitments we have made that to support intensive literacy and numeracy programs for Indigenous children.

The Government has also failed to support any of these policies.

First, we have pledged $450 million towards universal access to preschool for all four-year olds, including Indigenous children.

We are guided in this by two principles:

- It is never too early to invest in a child’s learning but it can sometimes be too late; and
- Children must be allowed to be children and learn through play and fun activities.

The Nobel Prize-winning economist James Heckman has showed that the return on human capital is very high in the early years of life and diminishes rapidly thereafter.

The quantum on that return, according to some experts, is as much as $7 saved later for every $1 spent on early childhood services.

The Productivity Commission estimates that around half of all Indigenous children do not have access to preschool—that's around 4,500 children every year.

Intensive programs in disadvantaged communities in the United States, such as the Perry Preschool Project, have shown that early intervention can produce large social and economic benefits for individual children and for the communities.

Labor’s plan will ensure that every Australian four-year-old, including Indigenous four-year-olds, has the right to 15 hours per week of early childhood education, for at least 40 weeks of the year, delivered by a properly qualified teacher.

It is extraordinary that the Howard Government has ruled out matching Federal Labor’s promise to provide early learning for all four-year-olds.
On 25 July 2007, the Minister was reported in The Australian saying it was up to the states to provide preschool places. While the Minister has been busy playing the blame game, children are missing out.

Most Indigenous children start behind the eight ball when they get to school. It’s shocking that they slip further behind while they are at school.

We have also announced that if we are elected, we would rollout the Australian Early Development Index (AEDI) nationally, at a cost of $16.9 million over four years—a rigorous checklist across five developmental areas to determine a child’s needs when they start school.

Once again, the Minister is funding a small part of AEDI but has failed to commit to a complete rollout nationally.

Labor in Government will fund the development of a specific Index for Indigenous children to take into account the differing cultural and language features of the early child-rearing environments of Indigenous families.

Third, Labor will ensure that, once a development checklist has been completed for an Indigenous child starting school, that child will have their very own Individual Learning Plan, to be updated twice a year for every year of schooling, up to Year 10.

Every Indigenous child in Australia would have a learning plan developed by teachers in consultation with parents and the community.

These plans will be based on the individual child’s needs, as determined by the teacher’s professional judgements, the results of assessments (including national literacy and numeracy testing in years 3, 5, 7, and 9) and through new initiatives such as the Australian Early Development Index.

The plans would identify the individual strengths and weaknesses of every child, and set out in what areas the student and the teacher will target for improvement across the basics of reading, writing, and numeracy.

Labor has pledged $34.5 million over four years providing professional development support to teachers to enable them to complete these learning plans. Parents will be able to access these plans so they can be part of their children’s learning improvements.

Once children’s learning needs have been identified, funding and intervention programs can be targeted and implemented more precisely.

We have seen these initiatives working for Indigenous children in Cape York. The Queensland Government is implementing Individual Learning Plans and working with the Cape York Institute to provide intensive support programs in Cape York and the Torres Strait. They are focusing on heavy mentoring and community involvement.

Parents are involved in developing the individual learning plans, and come together to discuss various challenges on a regular basis. With respect and commitment on both sides, I’m sure that they will succeed in giving children the opportunities they have not had before.

Lastly, on 25 June 2007, Kevin Rudd endorsed and agreed to fund the Cape York Institute for Policy and Leadership’s welfare reform plan for four Cape York communities—Mossman Gorge, Aurukun, Coen and Hope Vale.

The plan is expected to implement initiatives to make family and welfare payments and housing conditional on children’s school attendance. This would be done through four Family Responsibilities Commissions—local statutory bodies that would ensure that welfare benefits go towards the benefit of children.

Federal Labor endorses the key elements of the Pearson plan that in all communities, there must be a reasonable expectation that:

- Children are safe;
- Children attend school and schools are provided for children to attend;
- Adults do not behave in a way that puts their children at risk, either through alcohol and substance abuse, family violence or gambling;
- Training is available and people do their best to seek work; and
- Tenants in public housing comply with their tenancy obligations.

Welfare dependency eats away at your life chances, no matter who you are or what age you are. Low school attendance, lack of safe housing,
as well as horrific child abuse and neglect are all deeply connected to welfare dependency.

That is why Labor has committed both to intensive support for Indigenous education and tough measures to help break the cycle of welfare dependency.

This bill’s initiatives

I’d like to speak about the particular initiatives in this Bill today.

MULTILIT [multi-lit] was established in 1996 by the Macquarie University Special Education Centre based on extensive research and trialling of initiatives to teach low progress readers effectively.

Since then, it has grown significantly with outreach services provided through the Exodus Foundation and at tutorial centres in Gladstone in Central Queensland and in Coen on Cape York.

According to a 2000 evaluation of MULTILIT, low-progress readers in Years 3 to 6 attending a single primary school made mean gains of about 20 months in both reading accuracy and reading comprehension, over two terms when experiencing an attenuated MULTILIT program for under two hours per day.

It is good to see that such progress can be made in Years 3 to 6 because as we know from the latest National Report on Schooling, the number of Indigenous children who meet the reading benchmarks falls from 78% in Year 3 to 63.8% in Year 7.

There are also other successful remedial programs—in particular the Accelerated Literacy project operating in many schools in the Northern Territory, the Kimberleys and Queensland.

Accelerated Literacy (or Scaffolding Literacy) assists low-achieving students to catch up to the average level of the rest of their class by using age-appropriate books to develop reading, writing, comprehension and spelling skills to a high level very quickly.

Analysis by Charles Darwin University shows that students undertaking Accelerated Literacy improve their reading ability at an average rate of 1.73 year levels per year—around 21 months progress in reading a year.

An independent evaluation by the Australian Council of Educational Research concluded that the results were ‘little short of sensational’.

Student Education Trusts

As I noted earlier, this bill would also establish a scheme to encourage Indigenous families to set up Student Education Trusts.

I understand that Student Education Trusts have been tested in Indigenous communities with success. According to the Department of Education, Science and Training, a recent trial in the community of Coen had an 80 per cent take up.

I hope that Student Education Trusts can further build on the initiatives already working in Cape York.

It is critical that we support initiatives based on evidence and demonstrated success. This Government has so far taken a disappointing ad hoc approach.

Successful programs are scrapped in favour of new and untested activities, grants last only three months, six months or a year—when what’s needed is constant, long-term progress.

Indigenous disadvantage will not be tackled with flash-in-the-pan initiatives and half-baked ideas.

Today I call on the Government to establish a baseline survey for the Cape York communities that will be affected by this Bill before these programs are rolled out.

We need to know what we are dealing with before we put in place or extend programs intended to improve Indigenous communities.

There is so much that needs to be done to close the gap in indigenous disadvantage.

Conclusion

Labor has committed to an Education Revolution.

We have also said that a Labor Government will build a future for this nation based on innovation. Both the Education Revolution—on which innovation will depend—and our innovation agenda itself must be inclusive. They must be for all Australians, including Indigenous Australians.

Labor will not let our Indigenous fellow citizens be left behind through disadvantage and prejudice. If Indigenous Australians are left out of our future, our nation will be infinitely the poorer.
In that this bill provides for measures to improve educational outcomes for Indigenous kids in Cape York, Labor supports it.

I commend the bill to the Senate.

I move the second reading amendment standing in my name, which I understand had been distributed in the chamber:

At the end of the motion, add “but the Senate provides bipartisan support for:

(a) eliminating the 17 year gap in life expectancy between Indigenous and non-Indigenous Australians within a generation so that every Indigenous child has the same educational and life opportunities as other Australian children; and

(b) Labor’s positive policy approach towards narrowing the gap between Indigenous and non-Indigenous educational outcomes by:

(i) providing universal preschool access for all Australian four-year-olds, including Indigenous four-year-olds,

(ii) committing additional funding towards intensive literacy and numeracy programs across Australia,

(iii) developing new programs to tackle the gap in numeracy outcomes between Indigenous and other Australian children,

(iv) implementing the Australian early development index for all Australian children starting school, and

(v) introducing individual learning plans for all Indigenous children in Australia”.

Senator BARTLETT (Queensland) (5.02 pm)—I will speak only briefly to this legislation, which is indeed non-controversial. The Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007 provides an extra degree of assistance for Cape York measures with regard to schooling and the like. I note that this is another example of the curious state of play that has occurred with regard to our Senate committee processes, where comprehensive legislation that is controversial and complicated is not referred to Senate committees or is referred to committees with ridiculously short and inadequate time frames, whilst legislation that is extremely straightforward and not controversial at all is sent to committees for a leisurely examination. I think, Acting Deputy President Marshall, you are deputy chair of the committee in question.

This particular bill was referred by the government to the Senate Standing Committee on Employment, Workplace Relations and Education despite nobody from the non-government side having any concern about it or thinking that it needed referral. It is interesting to note the report of the committee on this piece of legislation, which concluded:

The committee is surprised to have received this reference—

that is, the reference of this piece of legislation—

As it has noticed previously, the reference of supplementary appropriation bills directed at specific programs has only a limited usefulness. The amounts of money involved—

in this particular piece of legislation—

represent no more than what would be expected for the continuation of a policy which the Parliament has previously approved.

The committee does not see its role to review a policy which has obvious community support. Nor does it see itself as equipped to assess whether the appropriation is sufficient or otherwise for the purpose of the program which is proposed in the bill. However the committee is not in a position to assess whether the appropriation is sufficient or otherwise for the purpose of the program in the time allowed for consideration of the bill.

That, I think, is a very polite way of saying: ‘Why the hell was this bill referred to this committee in the first place? It is inappropriate and unnecessary. Even inasmuch as there is any issue for us to consider, we do not have the capacity or the time to look at it.’ I really do need to take the opportunity to
point out just how perverted our committee process has become when bills that are not appropriate for referral, dealing with a matter that is not necessary to examine, are sent to committee. Indeed, at one stage consideration was given to the committee visiting areas of Cape York. As a Queenslander, I would like as many senators as possible to visit Cape York and examine some of the issues there. But, at the end of a week in which 500 pages of legislation which will have massive impacts on Aboriginal people across the Northern Territory was railroaded through this place without any opportunity for proper consideration—it had a one-day hearing on one day’s notice in Canberra—to have a bill that deals with, from memory, about $2 million of appropriation given two or three weeks time for examination, with consideration given to senators travelling to Cape York to check things out, just shows how totally perverted the role of Senate committees has become. That, I think, is a real shame.

Having said that, the Democrats support the legislation. There is no reason not to support it. It is part of a much wider range of measures that are being implemented in Cape York. They are in part controversial; I certainly acknowledge that. My response as a Queensland senator and as the Democrats’ Indigenous affairs spokesperson has been to watch them closely to try and get as much information as possible. I have received briefings from the Cape York Institute for Policy and Leadership about the quite comprehensive plan they have for a range of measures in that region. As is regularly stated, this is a trial. It is being done, at least to a reasonable degree, with the involvement of people at the community level and with the intent of trying to empower people locally: to get them to take control over and have ownership of decision making, to restore lines of authority in communities around the cape and to monitor progress and assess it in an evidence based way. It may be that some of those measures are not ones that turn out to be effective. There are some that I am not convinced will be effective, but I certainly support efforts to give them a go. I also support those efforts being properly resourced. That is what is being done here.

I think it is very unfortunate that what is being done in Cape York is being treated as though it is parallel to what is being done in the Northern Territory, because the similarities are nowhere near as great as the differences. We have had the Northern Territory debate a number of times in this place, so I will not deal with that here. The Democrats support this legislation. The measures are, on the whole, welcomed and supported by us, particularly in the context of a trial that is being assessed continually and with the stated goal of empowering people at the local level by involving them in the development and implementation of the program and the decision making along the way. That is clearly different from what is being done in the Northern Territory. How well that will work is still to be seen, but I think the measures need to be commended as a genuine attempt to develop evidence based solutions to entrenched problems and to do so in a way that gives ownership to people at the community level and that has a clear goal of ending it all with greater empowerment at the community level. For that reason, the Democrats congratulate the government for their willingness to provide that support in the scope and nature that they have.

I just wish that the commitment shown by the government in enthusiastically referring this piece of legislation to a Senate committee when it was not controversial or complex—it is basically just some extra funding to continue a pre-existing policy—had been matched by their desire for its much more comprehensive, far-reaching legislation deal-
ing with Aboriginal people elsewhere to be
given the opportunity for some proper ex-
amination. We know that a lot of the issues
that are seeking to be addressed are similar.
There are some differences, but there are
some similarities, particularly on the issues
of child safety, child sexual abuse and child
protection in the cape. They are serious prob-
lems that have been identified a number of
times, not least in reports by Professor Bon-
nie Robertson some years back. That is part
and parcel of the landscape which led to and
informed some of the actions there.

In Cape York, these measures were able to
be scrutinised, debated, examined and devel-
oped with the involvement, at least to some
extent, of people at the community level. I
still cannot see why the same could not have
been done in the Territory, but we will con-
tinue with that debate and continue to try and
get some of those principles married with
and folded into the action in the Territory
over time. I know there are some in the gov-
ernment parties themselves who are keen to
have a greater degree of emphasis on some of
those issues and be more fully involved
with what is happening in the Territory. Re-
gardless of who ends up in government, if
there is one thing that changes after the elec-
tion, I hope it is that the Senate committee
process does its job in a much more rational
and appropriate way than has occurred far
too often in the last year or two.

Senator SCULLION (Northern Terri-
tory—Minister for Community Services)
(5.11 pm)—I seek leave to incorporate my
summing-up speech.

Leave granted.

The speech read as follows—
I will sum up the debate on the Indigenous Edu-
cation (Targeted Assistance) Amendment (Cape

Through the Indigenous Education (Targeted As-
sistance) Amendment (Cape York Measures) Bill
2007 funding of $2.0 million will be appropriated
for the 2008 programme year to provide addi-
tional educational support for Indigenous students
and their families in the Cape York region.

Funding provided through the Amendment will be
used by the Cape York Institute for Policy and
Leadership to work with the Cape York communi-
ties of Coen, Hope Vale, Aurukun, and Mossman
Gorge to embed the Making Up Lost Time in
Literacy (MULTILIT) accelerated literacy pro-
gramme, and to work with parents and guardians
to establish Student Education Trusts (SETs).

Representing a key component of the broader
Welfare Reform agenda to tackle disadvantage in
Cape York communities, these initiatives will
provide further education opportunity for up to
800 Indigenous students in Cape York who may
require intensive literacy support, for their fami-
lies who may require additional assistance to save
for the costs of education.

In recognition that, strong literacy skills are a
critical factor in school completion and in longer-
term success, the MULTILIT component of this
measure will enable the Cape York Institute for
Policy and Leadership to further address what it
describes as the “Cape York literacy crisis”.

Through the provision of MULTILIT, those In-
digenous students with the greatest literacy need
will have access to the accelerated literacy pro-
gramme MULTILIT in their classroom and
through a MULTILIT Tutorial Centre in their
community.

The Cape York Institute has identified that poor
literacy outcomes are exacerbated by the fact that,
upon entering the school system, many Indige-
nous children fail to make literacy gains and in
some cases slip increasingly further behind. The
Institute estimates that by the time Indigenous
students are in Year 2, some 60-80% already re-
quire additional support, compared with 10-25% of
non-Indigenous Cape York children.

The concentrated MULTILIT approach has al-
ready produced positive outcomes in Cape York.
A trial of MULTILIT, conducted in the commu-
nity of Coen in 2005, had a sample of participat-
ing students about four years behind in both read-
ing accuracy and comprehension at the com-
mencement of the programme. This group gained
improvements after only 17 weeks of intensive MULTILIT instruction in their reading with a 43% increase in the number of words that they could read correctly per minute and average comparative gains of: 4.3 months in reading comprehension, 13.6 months in reading accuracy and 15.9 months in spelling. These results have continued in later trials in Coen.

The programme has also been recognised by the 2007 Overcoming Indigenous Disadvantage Key Indicators Report, which in looking at a range of best practice in early literacy engagement strategies, identified the establishment of MULTILIT in the Cape York community of Coen, as an example of an initiative that has improved the educational outcomes experienced by Indigenous students.

The intensive support provided through MULTILIT will be strengthened by the establishment of Student Education Trusts (SETs) in the Cape. Student Education Trusts will provide low income families with the right support to better use their income to ensure that their child is school ready, and has the support to meet education expenses, such as fees, uniforms, textbooks and excursion fees, as well as home-based expenses such as reading books and other learning aids.

The provision of support for the establishment of Student Education Trusts reflects that while some Indigenous parents in Cape York already contribute financially to their child’s education, the high number of school children who start school without the required uniforms or equipment, and with the minimal learning support in their homes, indicates that many do not.

The roll out of Student Education Trusts into the communities of Coen, Hopevale, Aurukun, and Mossman Gorge, will enable parents, guardians and extended family members to make regular financial contributions to meet their child’s ongoing education related expenses from “birth to graduation”.

This initiative is an important part of the Cape York Institute’s strategy to increase the demand for education in Cape York. Through the Trust accounts, the Cape York Institute anticipates that normalised financial expectations in relation to a child’s education will be established and in turn will increase the value of, and commitment, to education in Cape York.

Successfully trialled in the Cape York community of Coen in 2005, Student Education Trusts are now a permanent component of education reform in Coen, being driven by the Cape York Institute. The trial in Coen, achieved an outstanding 80% take up in the first two months. Successes included that:

- 70% of primary school children had their school uniforms purchased and were ready to start school on time;
- 80% of primary school children had on average two books purchased through the school book club; and
- children participated in sporting/education excursions subsidised by savings from their SET.

MULTILIT and Student Education Trusts will have a positive impact on the education outcomes of Indigenous young people and their families in the Cape York region. They will enable the provision of educational assistance to Indigenous students with the greatest need, and will improve the financial capacity of individuals and families to contribute to their child’s education.

The measures are part of the Australian Government’s support for Welfare Reform in Cape York. They reflect the recommendations made by the Cape York Institute, and the Australian Government’s continuing commitment ensuring that Indigenous students, wherever they live, have access to educational opportunities.

Question negatived.

Original question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
SOCIAL SECURITY AMENDMENT
(2007 MEASURES No. 1) BILL 2007

SOCIAL SECURITY AMENDMENT
(2007 MEASURES No. 2) BILL 2007

Second Reading

Debate on Social Security Amendment
(2007 Measures No. 1) Bill 2007 resumed
from 17 August, on motion by Senator Abetz:

That this bill be now read a second time.

Debate on Social Security Amendment

Senator WONG (South Australia) (5.12 pm)—I wish to address my remarks initially in relation to the Social Security Amendment (2007 Measures No. 2) Bill 2007. I think this is the third or fourth Howard government welfare bill that we are again debating this year. It was not long ago that the Howard government claimed it had reformed welfare in Australia, yet here we are with another bill. We saw reports yet again in recent weeks of further attempts at welfare reform being cooked up by Minister Hockey. The simple fact is that, when it comes to social security policy, the Howard government has got it wrong for 11 long years and it still cannot figure out how to get it right. That is because, time after time, this government goes for a short-term political fix rather than a plan for Australia’s long-term future. As a result, Australia still has low participation rates when compared with our competitors. We still have two million Australians who are officially unemployed, working part time but wanting more work than they can get or who want to work but do not show up in the monthly unemployment figures.

Also as a result of the Howard government’s failure to plan ahead and failure to train Australians, particularly the jobless Australians, for the available jobs. I want to emphasise that Labor have a different approach. We believe that people who can work should work, and we believe that those who cannot work should be cared for. We believe that work is a foundation of social inclusion. Everybody benefits when more people can participate in the social and economic mainstream. Labor’s approach to workforce participation is to identify the reasons why some people are not participating as much as they could or would like to and to deliver practical solutions.

I want to briefly address the plan recently announced by Labor leader Kevin Rudd to create Skills Australia. This body will play a central role to ensure we lock in a full-employment economy and develop a high-skilled and innovative workforce for the future. It will assess evidence from commissioned research and industry stakeholders to inform Australia’s workforce development needs. It will provide government with recommendations about the future skill needs of the economy and the country. It will identify future skill shortages so that they can be addressed before they negatively impact on economic activity, persistent skill shortages so that current capacity blockages can be overcome, and barriers that prevent skill formation in areas where persistent skill shortages exist. We will also identify industries where retraining and upskilling of workers may be required to prevent unemployment, underemployment and skills obsolescence. In making its recommendations to government, Skills Australia will have regard to a range of factors. These include the objective of achieving full employment, the international competitiveness of the Australian economy, the promotion of innovation through skills acquisition, providing a sufficient number of appropriately qualified
workers for industries of critical national importance, and the role of state and regional economies in contributing to the success of the broader Australian economy.

In a survey of more than 760 producers by the Australian Industry Group entitled *Australia’s skills gap: costly, wasteful and widespread*, it was found that one in two businesses was experiencing difficulties in obtaining skilled labour. Monash University’s Centre for the Economics of Education and Training has estimated that more than four million additional people will need to acquire qualifications from 2006 to 2016. This includes more than two million new entrants and 1.7 million existing workers. Of these, 61.4 per cent will need a vocational education and training qualification and 38.6 per cent will need a higher education qualification. The simple reality is that businesses are desperate for skilled staff, and people only get a job if they have the skills an employer needs.

Yet again, with this bill another opportunity passes to help jobless Australians obtain skills. Beyond this bill, this government has no plan to match current and future needs for skilled workers with the people who could be working. Instead, what we see in this bill is the usual random assortment of measures.

I want to emphasise at the outset that there is one measure here that Labor strongly supports: exempting relatives from participation requirements if they are the primary carers of children. On the basis of this measure, we will be supporting the bill and we consider this exemption long overdue. Under the amendments, the child must be directed to live with the person under either a parenting order made under the Family Law Act, a state child order or an overseas child order which is registered under that act and the person must be complying with that order. Where those relatives are single principal carers, the bill also ensures that they have access to the higher available rate of payment—the parenting payment single. Relatives who have taken responsibility for the care of children are providing invaluable support to their family and their community, and we must support them.

However, it is worth noting that some community advocates, particularly those who made submissions to the Senate inquiry in this matter, have argued that eligibility for these exemptions should be extended further to include other circumstances where a relative of a child may become a principal carer without court orders being made. Indeed, the approach in this bill contradicts the government’s move towards parenting plans and family relationship centres as alternatives to family courts. It would be worth hearing from the minister how the government justifies the narrowness of the exemption which is contained in the bill.

Nevertheless, this aspect of the bill is quite unlike most of the Howard government’s so-called Welfare to Work agenda which, as you know, actually makes it harder for Australians who are struggling to achieve financial independence. There are other aspects of the bill which continue in this vein.

The Howard government appears intent on making life harder for people with a disability. One of the measures contained in the bill removes medical officers from the assessment of a person’s capacity to work. This dramatic change was one of the reasons Labor sought a Senate inquiry into this bill. I want to quote briefly from a couple of the submissions which were made to that inquiry. The Mental Health Council of Australia submitted to the inquiry that replacing a medical officer with a job capacity assessor in the assessment process ‘could have damaging unintended consequences for the person with mental illness’. The Australian Fed-
eration of Disability Organisations was similarly concerned with the implications of this bill, saying that even under existing arrangements:

... people whose impairments are not visible have been inappropriately assessed by people with poor knowledge or appreciation of the impact of their condition on their capacity to work, the supports they need to work and the range of work that they can realistically undertake.

Given this current predicament, disability advocates are concerned about the impact of removing the limited remaining role of medical officers from this process. Labor believe there is a role for medical opinion in the job capacity assessment process. I indicate that, in the committee stage, we will move amendments to delete the items from the bill which remove medical officers from the assessment of impairment.

The bill also reinforces the role of the job capacity assessment in another way. It replaces the guidelines for making these work capacity assessments from those made by the secretary, with guidelines set out in the legislative instrument by the minister. The secretary will be required to comply with these guidelines, as will the Social Security Appeals Tribunal and the AAT. So, whilst Labor acknowledge and understand the concern that some in the disability community have about the guidelines and, in particular, how detailed and prescriptive they will be, we support the increased ability of parliament to scrutinise the guidelines as a legislative instrument. However, these guidelines have not been released and Labor will watch very closely to ensure they do not make life harder for people with a disability.

This bill, like all the Welfare to Work bills put forward by this government, does not address Australia’s participation challenges. Clearly, the Howard government does not actually understand the scale of the participation challenge. This government simply relies on the mining boom continuing forever. But, as we know, no boom lasts forever and a prudent government would invest in Australia’s people in order to secure our ongoing and future prosperity.

Australia needs a long-term approach to workforce participation and welfare reform. It needs an approach that tackles the reasons that some people are not working and delivers practical solutions. I have indicated that Labor, at the committee stage, will move two amendments to this bill. However, I will flag that, ultimately, Labor will support this bill principally because we support the amendments to participation requirements for relatives who are caring for children.

I want to speak briefly, because we are in a cognate debate, on the Social Security Amendment (2007 Measures No. 1) Bill 2007. This bill makes a number of minor changes to social security law, most of which provide more access to financial assistance. It does provide some additional support to parents who have been adversely affected by the recently implemented welfare changes and, amongst other things, it enables the non-primary carer to access a higher rate of income support than has previously been available.

In addition, there are enhancements to the provision of mobility allowance. It is unfortunate that the government did not include those previously as part of the original Welfare to Work package. There is the enhancement of access to supplementary payments for recipients of parenting payment partnered who have a partial capacity for work and there are a range of changes to participation rules relating to mature age unemployed job seekers. Again, I indicate that Labor will be supporting this legislation primarily because of some of the additional benefits contained in it.
I want to briefly comment on the report into the Social Security Amendment (2007 Measures No. 2) Bill 2007. I want to emphasise that this was a very short inquiry process because obviously, with the government’s restrictive timetabling of this legislation and its desire to get this through in this session of parliament, we were very restricted in the amount of inquiry that could be undertaken. In fact, the committee determined that no public hearings could be undertaken. I indicate our thanks to the 11 community organisations which, at short notice, provided input into this bill. Particularly, given how short the notice was, we were most appreciative of their input and they can be assured, certainly from the opposition’s perspective, that some of the issues that they raised were taken into account in formulating the opposition’s position on this bill. In particular, we note, as I said, the concern that was raised about the removal of the phrase ‘medical officer’ from some aspects of the assessment process. We share the concerns of the organisations which made submissions in relation to that issue.

I want to make a brief comment about one of the concerns raised by submitters to the inquiry in relation to replacing existing administrative guidelines with ministerial guidelines contained in legislative instruments. There was quite a significant amount of concern raised by these community and representative groups about that. I understand the concerns which were raised. They primarily relate to a concern that this would affect appeal rights and review rights and also there was a fear about what would be contained in the guidelines, which obviously may affect people’s rights and be overly prescriptive or unduly harsh. These were some of the concerns raised.

Taking a step back from the opposition’s perspective, we are not opposed in principle to issues being included in ministerial guidelines contained in legislative instruments. We note that, in fact, there is the capacity for greater public scrutiny, because legislative instruments can be disallowed in this chamber or in the other place. In fact, one of our criticisms earlier of the government’s original bill was that there was far too much which had been taken out of the act and placed in the guide. My recollection is that the Senate committee inquiry actually identified some of the concerns with the transparency of that process and the placing within instruments, which were not to be considered by parliament, of issues affecting people’s rights. As a matter of principle, Labor are not opposed to these matters being included in this situation in legislative instruments but we do, as I said at the outset, put the government on notice that we will inspect most closely and consult with community groups in relation to the content of such legislative instruments. I propose to move two second reading amendments, one in relation to the Social Security Amendment (2007 Measures No. 1) Bill 2007 and one in relation to the Social Security Amendment (2007 Measures No. 2) Bill 2007. I understand that they have been circulated in the chamber. I seek leave to move the two amendments together.

Leave granted.

Senator WONG—I move the second reading amendment to the Social Security Amendment (2007 Measures No. 1) Bill 2007 standing in my name:

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

(a) condemns the Government for:

(i) making it harder for Australians to move from welfare to work,

(ii) reducing the financial rewards for people who move from welfare to work, and

(iii) restricting access to training and education for job seekers; and
(b) calls on the Government to allow people with part-time participation requirements to fulfil those requirements through real training or study”.

I also move the second reading amendment to the Social Security Amendment (2007 Measures No. 2) Bill 2007 on sheet 5405 on behalf of the opposition standing in my name:

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

(a) notes the additional parliamentary scrutiny of legislative instruments in place of administrative guidelines; and

(b) calls on the Government to:

(i) listen to the concerns of the disability community regarding the quality and fairness of their Job Capacity Assessment system, and

(ii) consult with stakeholders, to ensure that these new guidelines do not make life harder for people with a disability and that they have fair and reasonable opportunity to appeal decisions relating to job capacity assessments”.

Senator SIEWERT (Western Australia) (5.27 pm)—These two bills, the Social Security Amendment (2007 Measures No. 1) Bill 2007 and the Social Security Amendment (2007 Measures No. 2) Bill 2007, represent a mix of measures, some of which are broadly beneficial to specific groups and others that have attracted considerable criticism, particularly from organisations representing people with disabilities. These bills must be considered within the context of the laws that they seek to amend—that is, the government’s Welfare to Work laws which specifically introduced harsher measures for single parents, people with disabilities and other Australians. These are laws which end up punishing the very people whom we believe our welfare system should be helping the most.

The Australian Greens welcome the beneficial aspects of these two bills. These include the amendments to recognise kinship care and extended participation exemptions to principal carers who are relatives but not parents of children to extend the mobility allowance, to extend benefits to partnered parenting payment recipients and to extend the entitlement to dependent child maximum rate of payment where a person provides at least 14 per cent of care. The fact that the government has belatedly recognised these amendments demonstrates the flaws in the government’s approach which are inherent in the Welfare to Work laws.

Having implemented such a punitive regime, and having rushed the laws through parliament without sufficient time to adequately assess their impact or time for community consultation, the government now find themselves in the position of needing to make these sorts of amendments. This seems to have been done on an ad hoc basis. They have realised the depth of concern and the problems with their legislation and that they needed to act to rectify some of the extreme harshness of the impacts of these laws and their knock-on effects on particular groups of people. The Social Security Amendments (2007 Measures No. 1) Bill 2007 is, broadly speaking, beneficial to the extent that it mostly fixes holes in the Welfare to Work laws. The exception to this is the amendments to the Youth Allowance provisions, where once again we believe the government is taking a very punitive approach to welfare. I will be moving amendments to this bill to amend the definition of a family law order to make it consistent with amendments I will be moving to the Social Security Amendments (2007 Measures No. 2) Bill 2007.

The primary focus of my comments today will be the Social Security Amendments (2007 Measures No. 2) Bill and its amendments regarding principal carers, changes to
the disability support pension provisions and amendments to section 12 of the Social Security Act. I turn now to the issue of principal carers. As the Senate is very well aware, the issue of the definition of principal carers is one that I have had concerns about from the very beginning—since the introduction of the Welfare to Work laws. As I have said in this place on numerous occasions, I will keep raising this issue until it is fixed by the government. This bill does not fix the problem, although it does make a welcome amendment. It does address one issue which I have been raising since the introduction of these laws; it does not fix some of the more in-depth concerns that we have about principal carers. The bill provides for an extension of participation exemptions to principal carers who are relatives, but not parents, of children where the principal carer is providing care for a child as a result of a family law order as defined in the act. These amendments would allow the person in this new category of a relative who is a principal carer but not a parent to access the higher PPS rate of Newstart or youth allowance.

The Australian Greens are pleased that the government is finally recognising the role of kinship care through these amendments. However, while we welcome the intent of these amendments, we are concerned that they do not go far enough to effectively address the reality of kinship carers’ circumstances. For example, there is a need to recognise less formal arrangements than those that fall under the definition of a family law order as defined in the act. These amendments would allow the person in this new category of a relative who is a principal carer but not a parent to access the higher PPS rate of Newstart or youth allowance.

With this in mind I will be moving an amendment to the definition of family law order to widen its scope to recognise less formal care arrangements. This, I might add, will mean that they are then consistent with other requirements under FaCSIA for childcare benefits and for family tax benefits. We are very disappointed that the government has not taken this opportunity to fix the broader problems with principal carers. The Australian Greens also believe that the government should use this opportunity to address the broader principal carer inequities—that is, the contradiction between the presumption of equal shared care within the Family Law Act and the definition of a single principal carer within the Social Security
While I risk boring the chamber yet again with my argument, obviously I have to repeat it because the government has not got it yet. We have outlined this inequity in the past—ad nauseam, I believe—and will continue to draw it to the attention of the Senate until it is fixed. For the purposes of income support, the government says that there can be only one principal carer and that person is responsible for the care of the child. If you are the nominated principal carer then you receive certain benefits under the Welfare to Work laws whereas if you are the other parent in a shared parenting arrangement then you receive exactly the same entitlements as someone with no parenting responsibilities. The problem is that at virtually the same time as introducing the Welfare to Work laws the government made changes to family law which moved to a model of equal shared care as the preferred social model. This is resulting in an increasing number of parents with fifty-fifty shared caring arrangements within an income support system under which only one parent in a fifty-fifty shared care agreement can be determined to be the principal carer. This is manifestly unjust—and the biggest losers are the children, who are caught in the middle. We are now seeing an increasing number of people coming forward who nominally have fifty-fifty shared care arrangements but who in reality are shoulder- ing an unequal part of the parental care burden because their shared care has not been recognised through the principal carer provisions of Welfare to Work. They are suffering and their children are suffering as a result of the government not recognising that the move to a presumption of shared care within the family law system must also be properly recognised within the income support system.

The current situation is leading to disadvantage in the lives of many Australian children. I will once again be moving amendments to the definition of principal carer so that it is aligned with the intent of the family law changes and so that it reflects the concept of shared parenting such that, where parents who are sharing the care of children each receive income support and the difference in percentage of shared caring responsibility is 12 per cent or less, both parents are deemed to be principal carers. I will keep bringing forward this amendment until this inequity is fixed.

I would like to move on to the changes to the disability support pension. There are two key issues with the proposed changes to the disability support pension: firstly, the power given to the minister to make guidelines by legislative instrument relating to the determination of a person’s continuing inability to work, the application of impairment ratings, partial capacity to work and incapacity exemptions; and, secondly, the changes to allow impairment ratings to be made by non-medically qualified assessors. The Senate inquiry received a number of submissions from disability groups expressing concern over both of these changes. First I would like to address the ministerial guidelines.

The main concern expressed by disability groups on the issue of the minister setting guidelines by legislative instrument is the fear that such a change will restrict the discretion of the initial job capacity assessments and the Social Security Appeals Tribunal, or SSAT, and Administrative Appeals Tribunal, or AAT, in reviewing the merits of assessments. The Australian Greens share these concerns. Given that the proposed amendments provide that the secretary must comply with the guidelines determined by the minister, we believe and are concerned that the ability of the secretary or a job capacity assessor to take particular individual circumstances into account may be reduced. Discretion would necessarily be circumscribed by
the fact of a legislative instrument setting out the guidelines.

The issues to be addressed in capacity assessments are highly complex, and accurate assessments require a high degree of discretion. Job capacity assessors are required to make distinctions between a person’s ability to work less than eight, 15 or 30 hours per week. The discretion to take into account individual circumstances outside prescriptive legislative guidelines is vital for accurate and credible assessments. The Australian Greens are opposed to the idea of the minister unilaterally creating guidelines for work capacity assessments. We believe that the creation of guidelines of this nature needs to involve a public consultation process to ensure that any such guidelines are both credible and transparent.

Given the great variation in individual circumstances and the corresponding complexities of the impacts and interactions of various disabilities on an individual’s capacity to work, we believe it is important that capacity assessment guidelines recognise that the experience and expertise of the assessor are crucial factors, that they do not seek to be too prescriptive and that they recognise the importance of expert discretion in capacity assessment. The Greens will be moving amendments to oppose these provisions of the bill.

I now move to the second main issue, with respect to the changes to the disability support program, which relates to the replacement of ‘medical officers’ with ‘assessors’ in the context of the impairment tables. The key concern with this amendment is that it will make it even less likely that the job capacity assessment process will result in accurate assessments. This is likely to have significant consequences for persons accessing DSP. The Greens are very concerned about the consequences of these amendments. We do not believe it is appropriate to remove the presumption that medical officers should conduct certain assessments of a person’s impairment rating.

The Australian Council of Social Services submission to the, as previously noted, short Senate inquiry provides examples of where there should still be a presumption of a medical officer undertaking the assessments, because non-medically qualified professionals would be unlikely to make the expert assessments required. These examples include assessing the likely effects of medical treatment and assessing pain or fatigue in terms of the underlying medical condition which causes the pain or fatigue. These amendments are particularly likely to have a detrimental impact on people with mental illness. Professionally trained medical officers are best placed to make a decision about the impact of mental illness on a person’s capacity to work. This is particularly the case because many people with a mental illness may have a fluctuating capacity to work.

The Mental Health Council of Australia commented to the Senate inquiry:

Determining the ability of a person with mental illness to work can be a very complex process, and is not as simple as referring to a table and applying points. A person may present well on the day of the assessment but then experience a relapse in their condition. This will not be picked up in the assessment if the assessor does not have the necessary medical information or an understanding of the mental illness.

The Australian Greens are not suggesting that there is no role for non-medical job capacity assessors and we recognise that job capacity assessors come from a wide range of allied health professions. However, we believe that there is no good reason for these amendments and we are concerned about their direct consequences on the quality and consistency of impairment assessments. We will be moving amendments to oppose the
provisions replacing the term ‘medical officer’ with ‘assessor’.

I now turn to amendments to section 12. Section 12 allows the secretary to deem a person to have made a claim for a different income support payment when a person becomes qualified for it. The amendments to section 12 provide that there can be no claims resulting from that section more than 13 weeks prior to a determination under that section. The Greens can see no good reason why the 13-week restriction is necessary. We agree with the National Welfare Rights Network that the application of section 12 as a means of relieving debt is reasonable, particularly given the unfairness of many Centrelink debts and the limitations on their waiver. We will be moving an amendment to omit the 13-week restriction on the application of section 12.

The Greens remain steadfastly opposed to the government’s Welfare to Work legislation. We believe it is unnecessarily harsh, is badly targeted and will ultimately prove ineffective in helping people move from welfare into the workforce. The laws focus on reducing income support and rely on coercive measures and unduly harsh penalties to force people into the workforce rather than providing incentives, training and support. The majority of people affected by these measures face substantial barriers to work that are not being addressed. Many lack the skills necessary to meet current job market demands and there are not sufficient training programs to help them. There are not enough employment assistance programs to support them, or they are poorly targeted, and there are definitely not enough accessible childcare places available to look after their kids.

I have repeatedly raised examples—in this place, for instance—of the impact of the changes to the JET system to single mothers accessing training and education and the fact that that has now been limited to a 12-month period. Women are now dropping out of university because they cannot afford to keep their kids in child care. We believe that fixing these things should be the priority. The measures in these two bills are an acknowledgement that the government recognises there are holes in these laws that people are falling through—the very people who should be supported to help them to find work and to cope. We believe that these laws unfairly penalise those who the community and society should be helping the most.

We know there are many more problems with this legislation and gaps in the safety net and we will continue to work to establish an income support system that is based on empowerment rather than coercion as part of the whole-of-government approach that we believe needs to be taken to invest in the future of the people of our community.

Senator BARTLETT (Queensland) (5.44 pm)—The Senate is debating two pieces of social security amendment legislation together. There is an amendment to the legislation, to be moved by the Democrats, regarding the removal of discrimination against same-sex couples, which I have circulated. I will speak to that in the committee stage of the debate.

There are a range of measures in the Social Security Amendment (2007 Measures No. 1) Bill 2007 and the Social Security Amendment (2007 Measures No. 2) Bill 2007. The previous two speakers have gone through them in a fair bit of detail. I do not want to revisit them all extensively. I think that, particularly at this juncture, as we are moving into an election, it is important to emphasise some of the areas where flaws remain in our social security safety net and areas where I believe the safety net has been weakened and things have got worse in recent times.
The Democrats remain of the view that a core component of the so-called Welfare to Work changes was flawed and unfair and remains so. Of course we support shifting people from welfare into work and we support extra resources going into making people more work-ready. Indeed, I do not believe the government does enough of that. There is too much of the punitive approach, and the aspect of the so-called Welfare to Work package that has ended up in a range of people receiving lower income support payments than they otherwise would is not a way of assisting them into work. It has shifted some of them from one form of welfare onto a harsher form of welfare. It highlights one of the continuing and more entrenched problems in our social security system.

It really is disappointing that, to date, there has been no real sign of a commitment on the part of the Labor Party to address this entrenched problem—that is, the growing gap between the pension type payments and the allowances. Basically, the motivation behind a key part of the government’s so-called Welfare to Work package was to shift a whole group of people onto that lower payment. Part of the issue with that is not just the payment level but also the effective marginal tax rate that is attached to it, or the withdrawal rate—the low free-income areas that are contained in those payments that have inbuilt disincentives for people to shift into the workforce. So changes have been made that have increased the disincentives for people to try to start moving into the workforce. For many people, particularly those who have been on welfare for a prolonged period of time, it is not just a matter of one day waking up and having a full-time, well-paid job that you can shoot straight into. In many cases, part of making people work-ready is adjusting to the nature of the labour market and a steady job. That means temporary work, casual work and part-time work. When you have withdrawal rates and high effective marginal tax rates, they are a real disincentive.

There have been improvements in that area in some respects, and I do not dispute that, but the core problem remains. Even the so-called Welfare to Work provisions were meant to be one of the positive components, but the payment rates and income test provisions for sole parents and people with a partial capacity to work were changed and a new income test was introduced for allowance-level payments which retained the old, initial free area but increased the next threshold. So, while the withdrawal rate was reduced from 70c in the dollar to 60c in the dollar, which is an improvement because their basic free area was reduced by being shifted onto the lower payment, many people, depending on total amounts worked and total income earned, ended up with a bigger disincentive.

The whole area really needs an overhaul. It is a real shame that we have moved too far away from some of the core principles that were outlined in the McClure report, when the term ‘welfare reform’ actually did have some meaning. That is many years ago now. Some of those key issues with regard to the built-in inequalities in the welfare system and the gaps between different types of payment have now become so entrenched—and they are getting worse with each indexation—that I am not sure they can ever be reversed without a very comprehensive overhaul. Currently, I do not see any political will in that area.

The Democrats support many of the measures contained in these two pieces of legislation, but it is an opportune time to point to some of the areas where there need to be some significant shifts. That is a message we send to both the major parties. As I
Thursday, 20 September 2007

SENATE

suggested, there is no particular sign of monumental differences here. As I understand it, despite Labor’s appropriate position of opposing some key aspects of the so-called Welfare to Work changes, they are now going to keep them. It is a bit hard to get too enthused about their opposition if they are now going to keep the things they were opposed to.

That is a reminder of one of the core lessons that can be seen when you look at the reality of how the legislative process works. Once something is put into law, it is quite hard to reverse. It gets built into the system; it gets built into the finances; it gets built into the budgetary process; it gets built into the administrative process; it gets built into people’s expectations and operations. It is pretty hard to wind back. That has been part of the problem with some of the things that have been done over a prolonged period of time but particularly in the last few years.

The Social Security Amendment (2007 Measures No. 1) Bill 2007 also includes changes to the youth allowance, ensuring fast connection with employment assistance and greater engagement with the labour market. I would suggest that reducing some of the disincentives for people to undertake work in the first place, whether younger people or others, would be a desirable action. That gives me cause to mention some of the issues of debt and payment problems that exist specifically for young people. Firstly, there is a ‘youth allowance student’ and a ‘youth allowance other’, a Job Search type payment. Because they are just called ‘youth allowance’ there is a lot of confusion amongst younger people who do not realise they have to shift from youth allowance study to youth allowance other when they change study, particularly if they shift between part-time study and full-time study or between different levels of work and those sorts of things. That is something that happens more and more these days. It happened back in my day. Indeed, in the 1980s I shifted between full-time work and part-time work. A payment with a single name of youth allowance could lead to a greater probability of confusion. It is a problem that has been identified by the National Welfare Rights Network, who I would suggest have a better idea than any of us here about the real consequences of all these social security laws that we pass. They deal with all the problems that occur when people fall through the cracks or hit the hurdles.

There remains a continuing problem with the ridiculously high age of independence for youth allowance and the unrealistically low parental income test free area and taper rate. I welcome the separate measure that was passed. I think, earlier today, from memory, which finally introduces rent assistance for people on Austudy. That is a campaign the Democrats have pushed for many years and
we welcome the measure. But there is still very unfair treatment of many young people in regard to youth allowance. The Democrats have pushed for many years for the age of independence to be reduced from the current high age of 25 years. The parental income test is also far too low. There is widespread evidence of very high levels of poverty and financial stress amongst students. If we are trying to encourage people to increase their skills to undertake study or further training then we need to be removing some of the barriers and impediments—and some of them are still in place. Of course, doing things like lowering the age of independence or making the parental income test fairer would appear as a cost in the budget in the short term. I suggest it would pay off in the longer term—and the parliament and the Treasury do not always think longer term—because there would be wider benefits to the community by more people being able to afford to study and expand and develop their skills.

There are also real continuing problems with the indexation of payments like youth allowance, Austudy and Abstudy. They are only indexed once a year and they are only indexed to the consumer price index. The income-free areas for these payments have not been indexed for almost 30 years. Their value has obviously declined dramatically. This compares to pension payments, which increase twice a year in real terms according to movements in average weekly earnings or in the CPI, if it is higher. That, I might say, is an indexation measure that the Democrats are responsible for implementing. So I am certainly not criticising that. I point that out because we were not able to get it tied to all income support payments, so it means the gap gets greater and greater, and the real value of payments such as youth allowance and the like becomes less and less. That compounds some of the other problems I have mentioned with regard to the cuts and the age of independence.

The Social Security Amendment (2007 Measures No. 1) Bill 2007 also addresses issues to do with partner parenting payment recipients and people who share the care of a child. The Social Security Amendment (2007 Measures No. 2) Bill 2007 also relates to issues to do with the care of a child. Senator Siewert outlined a lot of those issues in great detail. I commend her efforts in raising those issues. They will be raised in the committee stage, and the amendments in that regard have been circulated. A clear example I would note is that, under the changes in the second bill, single principal carers receiving Newstart or youth allowance who are eligible for this new exemption will access a higher rate of payment for the duration of the exemption. That higher rate is equivalent to the parenting payment single. That is a clear example of the benefit of having access to that higher rate—the parenting payment single rate as opposed to the Newstart rate. Again, I think that that gap between those two rates is a problem.

The Social Security Amendment (2007 Measures No. 2) Bill 2007 also deals with trying to improve the efficiency of people transferring between one income support payment and another. If that works in such a fashion then it is welcome. The new guidelines regarding assessments of partial capacity to work, as with the development of any of these sorts of guidelines, need to be monitored very closely. There is an inbuilt incentive for guidelines to be developed and finalised, and also administered and implemented, in a way that minimises expenditure, to put it politely. We should not forget that, whilst budgetary expenditure is important and effective, fair and efficient use of public resources is also important; we are dealing with human beings, not dollars and cents, and withdrawals of payments or cuts in pay-
ments can have very dramatic impacts on people, particularly those who are already amongst the poorest in our society.

The Social Security Amendment (2007 Measures No. 2) Bill 2007 also makes a technical amendment to clarify that the waiver of a social security debt recovery due to special circumstances is not available to a person who knowingly fails or omits to comply with social security law. To me, this raises another issue. I am not opposing that part of the legislation per se, but it does highlight another continuing trend: despite all of the talk about mutual obligation—a great catchphrase that is almost impossible to argue against on face value—the reality does not match the talk. It implies an equal partnership, equal levels of responsibility, and the simple fact is that the balance is right out of kilter. The level of obligation and responsibility on income support recipients is enormous. The level of responsibility on Centrelink and the government is minimal. So there is a continual tightening, time after time, on the recipients and very little accountability when Centrelink makes mistakes. This is a key area that the Welfare Rights Network have identified, including in the area of waivers of debts.

In the matter of social security debts, Centrelink can be 99 per cent responsible for the cause of a debt but will not waive it because of a one per cent contributory error of the customer. This encourages a no care, no responsibility attitude. That is not only unfair; it facilitates against good public administration. I think there is the need to make Centrelink at least partially responsible for some of their own errors. The Welfare Rights Network have produced any number of case studies of people in terrible hardship where clearly the predominant fault has been on the part of Centrelink and yet there has been a refusal to waive any debts. Even with this amendment, the Social Security Amendment (2007 Measures No. 2) Bill 2007, we have a further tightening there with regard to any prospect of waiving a debt. With regard to the continuing problem of family tax benefits debts, even when Centrelink’s sole administrative error is proven, that is still not enough to have the debt waived. There must also be severe financial hardship demonstrated. I suggest that is simply unfair.

There is also concern about the so-called good faith debt waiver provision. For a debt to be waived, it is also necessary, among other things, for any overpayment to have been ‘received in good faith’. The way that is being interpreted is such that it is being unnecessarily harsh on people who have not done anything wrong and who are basically the victim of Centrelink stuff-ups. Given the complexity of the legislation, it is inevitable that there will be Centrelink stuff-ups. As I have mentioned a number of times in this place, I was previously employed by Centrelink’s predecessor, the Department of Social Security. I was a social worker in that department, and you tended to get a lot of the cases where people did not fit into the boxes neatly or where there had been stuff-ups—the hard cases that get pushed aside to the social worker. That is still the role that social workers play to some extent. Not just that, but that is part of their role today in that income support arena.

I would suggest that the law since then has become even more complex and the scope for people to ensure that their rights are fulfilled in this area is even more diminished. I certainly support calls for much greater support for independent advice services, such as the Welfare Rights Network, and through community legal centres, because even when people have been wronged it is very hard for them to get access to the support they need to get a fair go to get recompense. And when you are dealing with people who are on income support payments, even small amounts
of money can make a massive difference. Let us not forget that we are talking in the context of the biggest housing affordability crisis in Australia in modern history. We have many people who are really, really on the edge with regard to being able to maintain a roof over their heads with rent payments and the like. Even a small amount of money can make a difference between making that rent payment or not. If they fall behind, get into that spiral, get the eviction notice, it can be the start of a very big fall. Apart from anything else, that can be catastrophic for that person and their family—particularly when there are children involved—and it creates more public cost.

There is also a need for additional funding for authorised review officers within Centrelink to deal with appeals there properly. My understanding is that concerns have regularly been raised not just by the Welfare Rights Network, but by the Ombudsman and the National Audit Office. A model of ensuring decisions or reviews by authorised review officers was agreed to but still has not been properly implemented because of financial problems. Those are things that also need to be addressed. So there are some measures in these bills that go some way forward. Some of them are just fixing up problems or excessive harshness that were introduced in the past, but, as I have outlined in this contribution, there are many more gaps to be plugged. I hope both major parties give serious consideration to doing so in their policy announcements in the election period.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.04 pm)—I thank the senators for their contributions to this debate. The Social Security Amendment (2007 Measures No. 1) Bill 2007 builds on the Howard government’s Welfare to Work reforms by extending eligibility for the mobility allowance and making it easier for people with disability to find work in the open labour market. The amendments also improve the labour market potential of people claiming youth allowance by ensuring the move for young people from full-time study into the labour market is supported by prompt assistance from Centrelink. Welfare to Work measures supporting parents are extended so that people receiving partnered parenting payment can access more support if they have a partial work capacity due to disability. This additional support is consistent with that received by people on Newstart allowance with partial capacity to work.

The Social Security Amendment (2007 Measures No. 2) Bill 2007 gives effect to announcements made in the budget. As with the first bill, this bill also builds on the Howard government’s Welfare to Work reforms. It does so by ensuring better arrangements for principal carers, improved consistency and efficiency in income support decisions and greater clarity in the application of social security law. These amendments recognise the contribution made by grandparents and other relatives when they take on formal caring responsibilities for a child, often preventing the need for foster care arrangements. The amendments extend access to automatic exemptions from participation requirements already in place for some principal carers. In addition, some principal carers will have access to a higher rate of payment while they take on care of a child to whom they are related.

The bill also updates the terminology used in the impairment tables on schedule 1B of the Social Security Act 1991. The updated terminology reflects the broader range of health professionals who are now able to determine impairment ratings against the impairment tables. I would like to make it very clear that these changes do not prohibit the involvement of medical officers and do not reduce the importance of medical infor-
information in relation to assigning impairment ratings. In fact, a job capacity assessor is instructed by the Department of Human Services’ guidelines to take into account all relevant supporting material, including the treating doctor’s report, when making these sorts of assessments.

Assertions by the opposition that this measure weakens the role of medical officers and their supporting reports in this process are simply untrue and misleading. Welfare to Work measures are not an attempt to save money. In fact, they will cost around $3.6 billion over four years. They are part of a genuine attempt to move people from welfare to work for the long-term benefit of Australia. The Welfare to Work measures seek to increase workforce participation through a balance of improved services, increased financial incentives and appropriate obligations. The measures include changes to income support payments, increases in employment services, changes to the participation requirements and a new compliance system. Both bills provide even further support for people assisted under the government’s Welfare to Work reforms. I commend these bills to the Senate, and I seek leave to incorporate other parts of the summing-up speech in Hansard.

Leave granted.

The incorporated speech read as follows—

The 2007 Measures Bill Number 1 builds on the Howard Government’s Welfare to Work reforms by extending eligibility for Mobility Allowance and making it easier for people with disability to find work in the open labour market.

The amendments also improve the labour market potential of people claiming Youth Allowance, by ensuring the move for young people from full-time study into the labour market is supported by prompt assistance from Centrelink.

Welfare to Work measures supporting parents are extended, so that people receiving partnered parenting payment can access more support if they have a partial work capacity due to disability. This additional support is consistent with that received by people with partial capacity to work on Newstart Allowance.

Access to a higher rate of payment is extended to people with shared care of a child. This recognises the costs incurred by parents who share the care of a child, and reflects the important recommendations of the 2006 Ministerial taskforce report on child support.

This Bill also ensures that mature age job seekers can combine self-employment, as well as other types of employment, with voluntary work in order to meet their activity test requirements.

The 2007 Measures Bill Number 2 gives effect to announcements made in the Budget. As with the first Bill, this Bill also builds on the Howard Government’s Welfare to Work reforms. It does so by ensuring better arrangements for principal carers, improved consistency and efficiency in income support decisions and greater clarity in the application of social security law.

These amendments recognise the contribution made by grandparents and other relatives when they take on formal caring responsibilities for a child, often preventing the need for foster care arrangements. The amendments extend access to automatic exemptions from participation requirements already in place for some principal carers. In addition, some principal carers will have access to a higher rate of payment while they take on care of a child to whom they are related.

The amendments also streamline the administration of transfers between one income support payment and another. Restrictions will operate on the time frame in which a payments transfer can be made, and transfers to the closed payments of Mature Age and Partner Allowance, will no longer be possible.

The second Bill also provides for legislative guidelines to be made regarding the review of income support determinations in relation to partial capacity to work, current or continuing inability to work, impairment ratings and incapacity exemptions from the activity test. The guidelines will ensure continued consistency across income
support decisions, and will be contained in Legislative Instruments, increasing the ability of the Parliament to scrutinize the arrangements as they are implemented.

The Bill also updates the terminology used in the Impairment Tables in Schedule 1B of the Social Security Act 1991. The updated terminology reflects the broader range of health professionals who are now also able to determine impairment ratings against the Impairment Tables.

I would like to make it very clear that these changes do not prohibit the involvement of medical officers and do not reduce the importance of medical information in relation to assigning impairment ratings.

In fact, a Job Capacity Assessor is instructed by the Department of Human Services guidelines that they must take into account all relevant supporting material, including the treating doctor’s report when making these sorts of assessments.

Assertions by the Opposition that this measure weakens the role of medical officers and their supporting reports in this process are simply untrue and misleading.

These two Bills provide even further support to people assisted under the Government’s Welfare to Work reforms. These reforms are helping people with the right supports and incentives to make the transition from welfare to work—and we all know that in most instances, a paid job is always better than a life on welfare which feeds further generational welfare.

Australia’s welfare system is designed to provide a safety net for those who genuinely need it. Ours is a generous and well-targeted system by world standards.

With an ageing population, Australia will confront the challenge of a diminishing supply of workers and an increased number of aged dependents. Through a greater emphasis on moving people from welfare to work, we can meet this challenge, sustain our prosperity and ensure those working age people who are able to contribute have the opportunity of doing so.

Our Welfare to Work measures aren’t an attempt to save money. In fact, they will cost around $3.6 billion over four years. They are part of a genuine attempt to move people from welfare to the work, for the long-term benefit of Australia.

The Welfare to Work measures seeks to increase workforce participation through a balance of improved services, increased financial incentives, and appropriate obligations. The measures include changes to income support payments, increases in employment services, changes to participation requirements, and a new compliance system.

The Welfare to Work package includes a number of measures aimed at addressing the specific employment needs of a number of income support recipients. Groups targeted by the measures are mature age people, parents, people with a disability and the very long term unemployed.

Both Bills provide even further support to people assisted under the Government’s Welfare to Work reforms.

I commend these Bills to the Senate.

The ACTING DEPUTY PRESIDENT (Senator Watson)—The question is that Senator Wong’s second reading amendment in relation to the Social Security Amendment (2007 Measures No. 1) Bill 2007 be agreed to.

Question negatified.

The ACTING DEPUTY PRESIDENT (Senator Watson)—The question now is that Senator Wong’s second reading amendment in relation to the Social Security Amendment (2007 Measures No. 2) Bill 2007 be agreed to.

Question negatified.

Original question agreed to.

Bills read a second time.

In Committee

SOCIAL SECURITY AMENDMENT (2007 MEASURES No. 1) BILL 2007

Bill—by leave—taken as a whole.

Senator SIEWERT (Western Australia) (6.09 pm)—by leave—I move Greens’ amendments (1) and (2) on sheet 5397 together:
(1) Schedule 4, item 1, page 13 (line 7), after "family law order", insert "or care arrangement".

(2) Schedule 4, item 1, page 13 (after line 15), at the end of the item, add:
; or (e) a parenting plan within the meaning of 63C of that Act; or
(f) any other formal or informal care arrangement.

These relate, as I referred to in my second reading debate speech, to amending the requirement for these kinship care provisions to apply only under a family law order, to extend the clause to include other care arrangements and to include a parenting payment in the meaning of 63C of the act, or any other formal or informal care arrangements. I will also seek to make similar amendments to the Social Security Amendment (2007 Measures No. 2) Bill.

We are seeking to make these provisions meet the requirements of the community. Many kinship care arrangements are done informally or through parenting plans. As I mentioned in my speech in the second reading debate, the government is seeking to increase the development of more informal arrangements through the family relationship centres, yet they are very heavily limiting the effectiveness of these provisions in their amendments by just restricting them to family law orders. I am particularly concerned about these arrangements and how they are going to apply in Aboriginal communities because there are many children in kinship care in Aboriginal communities. While I cannot quote the percentages off the top of my head, I can virtually guarantee that the majority of those arrangements are informal.

While the government has taken a step to address the kinship arrangements—and I am really pleased that they have recognised that because it is something that we have raised from the beginning when these arrangements were brought into place—it is not addressing the heart of kinship arrangements, which is that many of them are done through informal arrangements. We are seeking to make these effective and to meet the circumstances that are really happening in the community. Can the government explain whether they have done any statistical analysis of the proportion of children that are in kinship care through family law orders, as opposed to those who are in informal arrangements or those who have parenting plans, and why have they restricted them just to family law orders? Also, have the government given thought to the fact that that only addresses a portion of the problem when they have acknowledged that there is an issue there but are only addressing part of the problem?

Senator SCULLION (Northern Territory—Minister for Community Services) (6.13 pm)—I acknowledge the importance of the question, but it is important that we look very carefully at the other alternatives available. There are a number of informal arrangements that are provided for through an exemption and that reflect the flexibility that is needed for kinship requirements and all those things. But if a particular kinship arrangement needs to be made more permanent then a permanent exemption can be provided by going through the court process to make that particular temporary or flexible kinship arrangement available. That does not have a negative impact on the flexibility of that arrangement because, under the existing Centrelink provisions, flexible exemption arrangements can be for a short term. This is not the principal or only tool that is available. The government will look to a suite of other tools, particularly capacity to provide for short-term flexible exemption arrangements, and should that kinship care arrangement become a permanent arrangement then that would be reflected through the court process.
Senator SIEWERT (Western Australia) (6.14 pm)—I am aware that there are some exemptions, and we have been through that ad nauseam in this place—the 16 weeks. But if you are looking after children in a kinship care process it is rather onerous to keep going back for this 16-week exemption. In fact, some people do not want to make it a permanent arrangement. So, again, you are still disadvantaging children who are in kinship care on an ongoing basis that is not the result of a family law order. I remind the Senate that the figures indicate that there are an increasing number of children in out-of-home care—it is going up quite significantly—and the number of children in kinship care is going up quite significantly too. So we are talking about a significant number of children. Many of these children are in informal arrangements, particularly in Aboriginal communities, and it would seem to be much more equitable and more efficient to provide for this cohort of kids and carers in the arrangements that the government has made. As I said, the government seems to have gone halfway to fixing this problem. These amendments actually try to do what the government is trying to do in a much more cooperative manner. The so-called flexible arrangements that are happening at the moment are not meeting those needs and are still quite cumbersome.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.17 pm)—I am advised that, while the department is currently undertaking a continual evaluation and statistical analysis, we are still satisfied at this stage that the flexible arrangements we do have in place are meeting the needs of the community.

Senator SIEWERT (Western Australia) (6.16 pm)—I think you are referring to the amendments I will be moving to the measures No. 2 bill. That relates to shared parenting arrangements rather than the kinship care. I have other amendments. I will ask you some questions, but so as not to confuse the process at the moment I will leave that one be. I will go back to my original question: have you got statistics for the number of children in kinship care under formal family law order arrangements as opposed to those who are in some version of informal care arrangements?

Senator SCULLION (Northern Territory—Minister for Community Services) (6.17 pm)—I will try to not drag this out too much. It seems to me you are having a bet both ways: you are saying that the arrangements are working okay but that you are going to deal with this smaller cohort of people who are under family orders. Why address this issue in a partial manner rather than deal with the full concept of kinship care?

Senator SIEWERT (Western Australia) (6.16 pm)—I am advised that, while the department is currently undertaking a continual evaluation and statistical analysis, we are still satisfied at this stage that the flexible arrangements we do have in place are meeting the needs of the community.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.18 pm)—This is the first step. As I said, we are looking at the remaining cohorts and we hope that an increased scrutiny of that particular demographic will give us good ideas for the future.

Question negatived.

Senator BARTLETT (Queensland) (6.18 pm)—I move Democrat amendment (1) on sheet 5383:
(1) Page 17 (after line 14), after Schedule 5, insert:

Schedule 5A—Same-sex, same entitlements

Social Security Act 1991

1 Subsection 4(1)

Insert:

de facto partner means one of two people in a de facto relationship.

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.

2 Paragraph 4(2)(b) (definition of member of a couple)

Add at the end “and includes a de facto partner and people in a de facto relationship”.

3 Subsections 4(2), (3), (3A) and 24(2) (definition of marriage-like relationships)

Omit “marriage-like relationship”, substitute “de facto relationship”.

4 Paragraph 5(1)(a)

After “parent” (twice occurring), insert “or adoptive de facto partner”.

5 Section 1067C

Omit “marriage-like relationship” (wherever occurring), substitute “de facto relationship”.

6 Subsection 1067C(1)

After “married to” (wherever occurring), insert “or is in a de facto relationship with”.

This amendment circulated in my name deals with the same topic that the Democrats have moved many amendments on—most recently about one hour ago to the health legislation. This amendment seeks to remove the discrimination against people in same-sex relationships and match the recommendations of the HREOC report Same-sex: same entitlements, which was tabled in the parliament towards the end of June.

The Democrats have sought to address the entrenched discrimination against people in
same-sex relationships via a range of mechanisms over many years—without success. But we will continue to persevere with that, particularly given the repeated and widespread statements made by many people, including many people in the coalition and the Prime Minister himself. As long ago as late 2005 he said that he did not support discrimination against people in same-sex relationships with regard to their financial entitlements. He has nonetheless not supported efforts to remove that discrimination—which is rather frustrating—except on a few occasions. Back when I was leader of the Democrats he supported efforts with regard to a component of superannuation entitlement. That was good to see although it took a while—but the rest has taken even longer.

I will not speak at length on this because the issue is well canvassed and the position that each side is taking is also well canvassed. I do note, though, that amendments to remove discrimination in this area of social security could well, and indeed would in some areas of social security, lead to a reduction in entitlements for people in same-sex relationships because they would be treated as a couple. That would mean that if they are treated as a couple then their payment eligibility would go down because the income of one partner would be taken into account in assessing the income of the other. There are people in same-sex relationships where one partner is working full time but the other partner is entitled to welfare because their partner’s income is not counted because they are not recognised as a couple. So this would be a saving for the government, quite probably.

In the nature of these things, some people, particularly in relation to family payments, might end up financially worse off if their relationship is recognised. Certainly, from all the feedback I have had from people in the gay and lesbian community and those more widely who have been campaigning for this most basic issue of equality, this is not a problem for them. They want equality, and where equality means less money that is part and parcel of it. But it is worth making the point that this does cut both ways in terms of financial costs. If there is any time when the government have no excuse not to support this, this is it because it will probably save them money. So I look forward to hearing the minister enthusiastically supporting this money-saving measure. But, more importantly, it is about equality.

We would prefer an approach that matches that of the Human Rights and Equal Opportunity Commission, which is for an omnibus piece of legislation that does the whole lot in one sweep. People might gain on the swings and lose on the roundabouts. It is not about money per se; it is about equality and recognition. That is still lacking and has serious and wider consequences beyond just money. We would prefer that approach, but, as I have said previously, that approach has been stymied to date. We have legislation before the Senate that implements the HREOC recommendations. The referral of the legislation to a Senate committee was refused by coalition members in this place. An ad hoc parliamentary committee of interested MPs was established to examine it in an unofficial capacity and that included members from the House of Representatives and coalition parties. For people who are interested and want to chase it up, I would note that Senator Allison tabled the report of that ad hoc committee in the Senate an hour or two ago. It is probably no great surprise that the majority of that committee recommended that the bill should be passed and that the HREOC recommendations should be supported—nor should it be a
surprise, because it is clearly the right thing to do and it is a change that is long overdue; hence our determination to continue persisting with amendments such as this.

Senator WONG (South Australia) (6.23 pm)—Before the minister responds to Senator Bartlett’s comments, could he also address in his remarks whether or not the government has actually done any analysis of the costs implications of these amendments?

Senator SCULLION (Northern Territory—Minister for Community Services) (6.24 pm)—I will take Senator Wong’s question first. I am not aware of that, but I am happy to take that on notice. In response to Senator Bartlett, this government has already indicated publicly that it is in favour of removing any discriminations against interdependent relationships, including same-sex couples. As Senator Bartlett indicated, the Same-sex: same entitlements report by the Human Rights and Equal Opportunity Commission was tabled on, I think, 21 June this year, and we are looking at those recommendations very carefully. I think it would be fair to say that, in response to a number of Democrat amendments over a whole suite of legislation, we would only make broad changes to government programs after we had considered all of the issues and ramifications. That has been our consistent response to the Democrat amendments in this regard. It is important to remember that we have an obligation to consider a whole range of interrelated areas of law to ensure that there are no unintended consequences. That is the reason that we will not be supporting this amendment.

Senator WONG (South Australia) (6.25 pm)—I think it is appropriate that I indicate Labor’s position in relation to this particular amendment. I am sure that those in the chamber would be aware of Labor’s policy position. Our platform states clearly that a Labor government would remove discrimination—for, say, marriage—that exists in Commonwealth legislation on the basis of sexual orientation. Obviously, this amendment is consistent with that position and we support the principles behind the amendment. I share some of the views that Senator Bartlett has outlined.

We have closely considered the HREOC report, which identified 58, or thereabouts, pieces of legislation in which discrimination exists against same-sex couples, particularly in relation to financial related benefits. Our spokesperson has stated publicly that we support the recommendations of the Human Rights and Equal Opportunity Commission in that report and that in government we would implement them. I think it is safe to say that the position that Labor now has in relation to these issues is the most progressive and advantageous in relation to same-sex couples that Labor has ever stated and publicly put on the record in the federal sphere. I also note that state Labor governments have obviously led the way in clearing away discrimination on the basis of sexuality.

However, this particular amendment has significant cost implications. Senator Bartlett identified that, if this amendment were passed, there would be some cost savings and also some additional costs. We are conscious of that. If we were to win government, this would be an issue that we would approach sensibly, consistent with our platform and our public commitments. It would require us to undertake a proper analysis of the costs associated with it. We are not able to do that in opposition. For the reasons that I have outlined, we are not able to support this particular amendment on this occasion.

Senator SIEWERT (Western Australia) (6.28 pm)—I would like to put on the record that the Greens support the amendment.
believe that it is essential to end this form of discrimination, so we support this amendment.

Question negatived.

Bill agreed to.

Sitting suspended from 6.29 pm to 7.00 pm

In Committee

SOCIAL SECURITY AMENDMENT (2007 MEASURES No. 2) BILL 2007

Bill—by leave—taken as a whole.

Senator SIEWERT (Western Australia) (7.00 pm)—I move:

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

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

1A Subsection 5(18) (and the heading)

Repeal the heading and the subsection, substitute:

Principal carer—a child may have more than one principal carer

(18) If:

(a) a court orders that more than one parent is to have a significant proportion of responsibility for the care of a child; and

(b) the difference in percentage of responsibility for the care of a child between the two parents is 12% or less;

both parents must be treated for all purposes of this Act as a principal carer for the child.

1B After subsection 5(19)

Insert:

(19A) Notwithstanding subsection (19), if a court orders that more than one parent has a significant proportion of responsibility for the care of a child and the difference in percentage of responsibility for the care of a child between the two parents is 12% or less, the Secretary must make a determination that each parent the subject of the court order is the principal carer of the child.

I will not prolong this any longer than necessary because people are well aware of the arguments on principal carers. This amendment is to amend the inequities in the act around principal carers to ensure that parents who are fifty-fifty carers or parents for whom the difference in percentage of responsibility for the care of the child is 12 per cent or less both have access to the principal carer provisions. The minister was in the process of updating us on the review of this issue that the department, as I understand it, is undertaking. I ask the minister what status that review has at the moment.

Senator WONG (South Australia) (7.01 pm)—To facilitate this debate could the minister, in responding to Senator Siewert, also respond to my request as to whether or not the government has undertaken any cost assessments of the implications of this amendment?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.01 pm)—In regard to Senator Siewert’s question, I am unable to give further advice about the status of the department’s investigations into the statistics in regard to that matter. It has been taken on notice and I understand that it is still under active consideration. I am unable to report further than that reported when Senator Abetz took the question on notice in regard to a previous bill—unfortunately, I cannot remember the name of the bill. Senator Wong, there have been no formal costings of those arrangements at this stage.

Senator WONG (South Australia) (7.02 pm)—For the benefit of the chamber, I will indicate the opposition’s position on this amendment. This matter has come up previously, Senator Siewert—through you, Mr Temporary Chair. I hope Senator Siewert is
aware that we are also concerned about this issue. In the absence of being able to cost this particular amendment, we are not able at this time to support the specific amendment. However, I do place on record, as I have previously, Labor’s recognition of the anomaly which exists in the current legislation and our concern as to the effect on children of the government’s rather odd administrative arrangement, under which it appears to be that whoever gets there first gets the principal carer status.

I have previously raised our concerns with this in estimates, so our position is well known. But we are of the view that we do need to be very clear about what effect the detail of this amendment would have and, if elected, we would consider this issue. As my colleague in the House Ms Macklin has stated, we are closely monitoring the impact of the intersection of the Welfare to Work laws, the importance of principal carer status and the promotion of shared care under family law to make sure that parents with largely shared caring responsibility are not disadvantaged.

Senator SIEWERT (Western Australia) (7.04 pm)—Whilst, with all due respect, I can understand that the opposition is at the moment being very careful of committing to financial arrangements, this is about the wellbeing of children, fairness and ensuring that parents are equally able to look after their children. There is a clear anomaly between family law and Welfare to Work. Clearly, a set of parents are suffering as a result of that anomaly between the two acts and, as a society and as legislators, we are sending two separate messages to the community and to parents. They are: on one hand, we think you should have equally shared parenting—and that is now law under the Family Law Act; but, on the other hand, under Welfare to Work only one parent is to be the principal carer and have the right under the Social Security Act to get benefits to enable them, if they are on income support, to be able to properly parent—only one parent can do that.

It is clearly inequitable. This inequity in the act has been identified from the start. I am glad that the government and the department are reviewing this, but I am concerned that the review seems to be taking a long time. I was hoping that I might be third time lucky with this amendment, because I think this is the third time I have put this amendment up—

Senator McGauran—You just won’t learn!

Senator SIEWERT—Well, I put it in a motion for reference to a committee on a separate issue three times and the government finally saw the wisdom of that referral yesterday and supported our referral—third time lucky. So I was hoping the government would see the wisdom of it this time—third time lucky. But obviously it has not.

I would like a time frame on when this review is going to be finished. As I have pointed out on other occasions, the number of children caught up in this is likely to substantially increase as the Family Law Act kicks in. As more orders come through the family law process, now that the assumption is that there will be equal shared parenting, there will be more parents who are getting family law orders and establishing parenting plans that are fifty-fifty or within the 12 per cent. How soon can we expect government to have completed their review and have taken some action on it?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.06 pm)—I am unable to provide that information at this time. I think it is a very reasonable question. It will take some time, as you can imagine, to work out exactly when it is over; it is in the middle. So, if you are
happy, Senator Siewert, I would much prefer to take that question on notice and I will get back to you about a time frame in terms of that scrutiny.

Senator SIEWERT (Western Australia) (7.07 pm)—I could not honestly say that I am happy about the further delay. I appreciate the undertaking but I am not happy that it will take so long. I appreciate the further undertaking and look forward to receiving the answers in the very near future.

The TEMPORARY CHAIRMAN—The question is that the request be agreed to.

Question negatived.

Senator SIEWERT (Western Australia) (7.08 pm)—by leave—

The Greens oppose schedule 1 in the following terms:

(2) Schedule 1, items 2 to 4, page 3 (lines 22 to 28), TO BE OPPOSED.

(5) Schedule 1, item 8, page 4 (lines 20 to 29), TO BE OPPOSED.

(6) Schedule 1, item 10, page 4 (lines 32) to page 5 (line 9), TO BE OPPOSED.

(9) Schedule 1, items 17 and 18, page 5 (line 27) to page 6 (line 20), TO BE OPPOSED.

(14) Schedule 1, item 25, page 7 (lines 11 to 22), TO BE OPPOSED.

(17) Schedule 1, item 33, page 8 (lines 12 to 23), TO BE OPPOSED.

The Greens’ opposition to these items relates to the minister making ministerial guidelines by legislative instrument. I went through the substantive reasons for this in my speech during the second reading debate. We have deep concerns because these highly complex assessments do not lend themselves to such prescriptive and rigid guidelines. We also believe that they need to be subject to public scrutiny. We believe that this is not an appropriate mechanism to achieve what the government is trying to achieve.

I will just add, while I am on my feet, that I heard the argument of the ALP. We do not accept their argument necessarily, either. We believe that this is a rather clumsy way of dealing with these issues. We are deeply concerned about the power being put into the minister’s hands in relation to these matters and about how that affects the discretion of job capacity assessments and appeals following the process. We believe these amendments are inappropriate. That is why we are seeking to have them removed.

Senator WONG (South Australia) (7.09 pm)—As Senator Siewert identified, I outlined, during the second reading debate, our position in relation to the legislative instrument set of amendments contained in this bill. I understand the concerns, particularly given this government’s form, raised by a number of advocacy organisations, including through the Senate inquiry process. Our view is that many of the concerns to which Senator Siewert refers really deal with the content of instruments that we have not yet seen. It is not possible to assert that there are no review capacities unless you have a look at the content of the legislative instruments. We come at this from the perspective that, as a matter of principle, there is benefit in having these prescriptions included in legislative instruments which are disallowable by the parliament. I accept that the Australian Greens have a different position on that.

I again place on the record that, if the government is returned and if the government proceeds down this path, we will be very closely looking at what is contained in those legislative instruments to ensure that some of the issues that have been raised by the groups which have communicated with us are addressed appropriately.

The TEMPORARY CHAIRMAN—The question is that items 2 to 4, 8, 10, 17, 18, 25 and 33 stand as printed.
Question agreed to.

Senator SIEWERT (Western Australia) (7.11 pm)—by leave—I move the Greens amendments (3), (4), (7), (8), (10), (11), (12), (13), (15) and (16) on sheet 5394:

(3) Schedule 1, item 7, page 4 (line 11), after “family law order”; insert “or care arrangement”.

(4) Schedule 1, item 7, page 4 (after line 19), at the end of the definition of family law order, add:

(e) a parenting plan within the meaning of 63C of the Family Law Act 1975; or

(f) any other formal or informal care arrangement.

(7) Schedule 1, item 15, page 5 (line 20), after “family law order”; insert “or care arrangement”.

(8) Schedule 1, item 16, page 5 (line 25), after “family law order”; insert “or care arrangement”.

(10) Schedule 1, item 20, page 6 (line 25), after “family law order”; insert “or care arrangement”.

(11) Schedule 1, item 21, page 6 (line 30), after “family law order”; insert “or care arrangement”.

(12) Schedule 1, item 23, page 7 (line 4), after “family law order”; insert “or care arrangement”.

(13) Schedule 1, item 24, page 7 (line 9), after “family law order”; insert “or care arrangement”.

(15) Schedule 1, item 31, page 8 (line 5), after “family law order”; insert “or care arrangement”.

(16) Schedule 1, item 32, page 8 (line 10), after “family law order”; insert “or care arrangement”.

These amendments also seek to change the definition of family law order in a similar way to what we tried to do in Social Security Amendment (2007 Measures No. 1) Bill 2007, so I will not bother repeating the arguments. But I would just like to ask the minister about his previous answer. I understand that he said that the change in the family law orders was the first step in dealing with the kinship care issue. Does he have a time line for the process of reviewing the statistics and making further possible changes?

Senator SCULLION (Northern Territory—Minister for Community Services) (7.12 pm)—The reason I gave you the answer earlier is that they are very similar amendments; my apologies for that. My answer remains the same. They are under current consideration. As I have said, this is the first tranche. We are continuing to consider these matters. As I have said, I will try to get a time line for the first tranche. I am not sure whether I will be able to get a position for the remainder. I am not sure what sort of consideration that is under. I am a little reluctant to make an undertaking to provide that, but if there is sufficient information available I will ensure that it is provided along with the answers to your first request.

The TEMPORARY CHAIRMAN—The question is that the amendments be agreed to.

Question negatived.

Senator SIEWERT (Western Australia) (7.13 pm)—The Greens oppose items 37 to 46 in schedule 1 in the following terms:

(18) Schedule 1, items 37 to 46, page 8 (line 30) to page 9 (line 21), TO BE OPPOSED.

This relates to the impairment tables. As I articulated in my address during the second reading debate, we have very strong concerns about replacing the words ‘medical assessor’ with the word ‘assessor’. While we have broader concerns across many areas of disability we are particularly concerned about issues of mental health.

We believe this is already an issue of concern in the community in terms of how men-
tal health issues are dealt with under the disability provisions and we are deeply concerned that in fact this is going to exacerbate these issues. Concerns around these amendments were raised by a number of community organisations and submitters to the Senate inquiry and we share those concerns and believe, again, that this is a clumsy way of dealing with impairment ratings and urge the government to go back and have another look at this issue. Therefore we are opposing the changes that the government is trying to bring in with this amendment.

Senator WONG (South Australia) (7.15 pm)—I indicate that the opposition have already circulated an identical amendment in relation to this issue that is opposing the removal of the term ‘medical officers’ in various provisions relating to the assessment process for entitlement to the disability support pension. I have outlined in my speech on the second reading reasons for that. We have an amendment that is in identical terms to that of the Australian Greens. Obviously we will be supporting this amendment.

It was interesting watching the debate in the House of Representatives on this matter when, frankly, the minister’s argument was almost entirely self-contradictory, on the one hand saying that this in fact made no change and on the other hand trying to explain why the change was a good idea. We do take very seriously the concerns raised by organisations such as the Mental Health Council and the Australian Confederation of Disability Organisations on this. The minister in the other place and the minister representing tonight have made similar remarks that try to brush away those concerns. It is very clear that the position of the government or its interpretation of its amendments is not accepted by significant community groups in this sector and we continue to press for these amendments as previously outlined.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.17 pm)—I am unaware of the debate in the other place, but I can see not only by the notes in front of me but I think from some common sense and I am advised that, for a couple of reasons, when we are talking about the issues staying the same, we are not diminishing the role of what we would consider in general terms a ‘medical officer’. The changes are not going to prevent a medical officer from involvement and they are not going to reduce the importance of medical information in relation to the assignment of impairment ratings. It is important to note that a job capacity assessor is in fact instructed by Department of Human Services guidelines that they must take into account all relevant supporting material, including the treating doctor’s report. They are specifically required to do that.

When we are making an assessment in terms of a particular disability and how it has an impact on people’s capacity to provide a certain amount of work, clearly there are aspects outside a medical officer’s capacity—for example, speech therapists and a whole range of other allied health professionals. There is no mischief in the intent of this. We are simply attempting to ensure that a whole suite of assessment that can be made is available for consideration, and this government amendment provides for just that.

Senator WONG (South Australia) (7.18 pm)—I do not want to prolong this debate but really let us be clear what this amendment is. It deletes the reference to medical assessors so it is really beyond logic for the government to say that they are not diminishing their role. What is clear is that there is a removal by virtue of this amendment of a presumption in the act that a qualified medical practitioner should conduct certain assessments, particularly the assessment of impairment ratings using impairment tables.
set out in schedule 1B of the act. That is the purpose of this. So the government can engage in a whole range of sophistry about this but fundamentally they are deleting the reference to ‘medical officer’ in the act. They cannot say that they remain as important.

They then say that the job capacity assessor can have a look at what medical officers say. Let us be clear: we in the Labor Party do not believe that entitlement to disability support pensions should entirely be determined by medical assessors, but we do think that for the purposes of assessing the impairment against the impairment tables that is a function that ought to be undertaken by medical assessors. That is the concern being raised by the disability organisations. The government’s response to that, frankly, does not go to the argument. We do not believe that these amendments should proceed. Again, I remind the chamber of the dissenting report from Labor Party senators in this inquiry that this aspect of the bill should not proceed.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.20 pm)—Again, I support the senator in her interest in moving on from this argument. I know that there has been much debate on it and I have to confess that I do not have the hindsight from having listened to the contribution in the other place. I reiterate that the term ‘assessor’ clearly also includes a medical officer. There is no question that the term ‘assessor’ would include a medical officer. I point you to the position that a job capacity assessor is instructed by the Department of Human Services guidelines that they must—it is no choice; it is not a matter of ‘may’; it is a must—take into account all relevant supporting material, including the treating doctor’s report. As I am informed, and as I read the notes around this, Senator, the current situation concerning a medical officer is just simply to be able to give the assessor the capacity to refer to other assessors, and I think we will have a more comprehensive assessment of that to give recognition to the complex needs of the assessment at the end of the spectrum.

The TEMPORARY CHAIRMAN—The question is that items 37 to 46 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (7.21 pm)—I move the Greens amendment (19) on sheet 5394:

(19) Schedule 1, item 47, page 10 (lines 11 to 17), omit all the words from and including “That day” to and including “new payment”.

We are opposing the application of section 12. Again, I will not take too much time, because I articulated our opposition to this amendment in my speech on the second reading. Section 12 allows the secretary to deem a person to have made a claim for a different income support payment where a person becomes qualified for it. Amendments to section 12 provide there can be no claims resulting from that section more than 13 weeks prior to a termination under that section. We have very strong concerns about this. We see no requirement for this amendment. Because some of this legislation and some of the entitlements are quite complex, very often people do not know that they are due different entitlements, that they are on another provision under the act or that they are eligible for other payments. When the government changed the back pay provisions for disability carers, we expressed similar concern that they were restricting people’s capacity to receive back pay in extremely difficult circumstances. Essentially the same arguments apply. We think this is quite mean spirited and do not support it. We think it is unfair to put that restriction on people. We believe this amendment should be opposed and urge the government, again, to rethink it. I also point out that community organisations
making submissions to the inquiry pointed out the unfairness of this amendment, did not think it should go ahead and urged the committee to rethink it.

Question negatived.

Bill agreed to.


Third Reading

Senator SCULLION (Northern Territory—Minister for Community Services) (7.24 pm)—I move:
That these bills be now read a third time.

Question agreed to.

Bills read a third time.

TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) AMENDMENT BILL 2007

Second Reading

Debate resumed from 16 August, on motion by Senator Ellison:
That this bill be now read a second time.

(Quorum formed)

Senator LUDWIG (Queensland) (7.26 pm)—I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

I rise to support the Telecommunications (Interception and Access) Amendment Bill 2007. The Bill will amend the Telecommunications (Interception and Access) Act 1979 (the TIA Act) to transfer relevant provisions of the Telecommunications Act 1997 (the Telecommunications Act) to the TIA Act and will provide comprehensive and overriding legislation that regulates access to telecommunications data for national security and law enforcement purposes.

The report on the review of the regulation, the Blunn report, was tabled in parliament on 14 September 2005 and recommended that legislation dealing with access to telecommunications data for security and law enforcement purposes be established. The Blunn report included public submissions and consultations with security and law enforcement agencies, the telecommunications industry, privacy organisations and individuals. The Telecommunications (Interception) Amendment Act 2006 implemented the first stage of the legislative amendments.

The bill also contains a number of additional amendments to the operations of the existing TIA Act which Labor supports, including ensuring that interception warrants are available in relation to the investigation of any offence relating to child pornography regardless of the maximum term of imprisonment that may be imposed by state and territory criminal law; widening the definition of ‘exempt proceedings’ to allow disclosures for the purposes of proceedings in relation to the Spam Act 2003 and enabling the use of this evidence in court proceedings; implementing, in part, recommendation 24 of the Blunn report which recommended allowing access to the content of communications for the protection of data systems and the development of testing of new technologies; and a number of other minor amendments that generally improve operational efficiency.

The key purpose of schedule 1 in the bill is to transfer security and law enforcement provisions from parts 13, 14 and 15 of the Telecommunications Act to the TIA Act. Schedule 1, item 12 also inserts a new chapter 4, which deals with access to telecommunications data. The amendments establish a regime for particular officers of ASIO or an enforcement agency to lawfully authorise the disclosure of telecommunications data without breaching the general prohibitions on the disclosure of that data that exist within existing sections 276, 277 and 278 of the Telecommunicati-
The new chapter 4 transfers sections 282 and 283 of the Telecommunications Act to the TIA Act.

The basis for lawful access will depend on whether the authorising body is ASIO, a criminal law enforcement agency or an enforcement agency.

The new provisions distinguish between access to historical telecommunications data—that is, data which is already in existence at the time of the request—and prospective data—that is, data that is collected as it is created and forwarded to the agency in near real time. Access to prospective telecommunications data is only available to ASIO or criminal law enforcement agencies because of the high privacy applications of this type of access. The key amendments are contained in Part I.

Those amendments create a new two-tier access regime. The first tier encompasses the traditional access to existing telecommunications data. These agencies are defined as enforcement agencies.

The second tier, which would be limited to a narrower range of agencies—that is, the criminal law enforcement agencies—would require a higher threshold of authorisation, allowing for future access to telecommunications data, and that is covered in proposed sections 176 and 180. The need to distinguish between historical and prospective data is a reflection of the advances in technology which enable the use of telecommunications data to provide, amongst other things, location information.

To reflect the increased privacy implications of access to prospective data, three more restrictive conditions are attached to these authorisations: firstly, restricting the disclosure of prospective telecommunications data to an authorised officer of a criminal law enforcement agency for the investigation of offences which attract a maximum term of imprisonment of at least three years; secondly, limiting the time frame for which an authorisation may be enforced to 45 days for criminal law enforcement agencies, under proposed section 180, and 90 days for ASIO, under proposed section 176; and, thirdly, requiring the authorising officer to have regard to the impact of the authorisation on the privacy of the individual concerned.

The Bill also deals with voluntary disclosures of telecommunications data by employees of carriers or carriage service providers to ASIO and to enforcement agencies. These provisions make it clear that they only apply in the case of voluntary disclosures and that requests from agencies must be dealt with under proposed sections 175, 176 and 178 through to 180.

There are certain safeguards set out in the bill in relation to access to telecommunications data: authorisations must be retained for a period of three years; the head of an enforcement agency must report on the number of authorisations to the minister on an annual basis; and this report must be tabled in the parliament. Transparency provisions of that kind are particularly important in matters like this.

The bill amends the Telecommunications Act by also inserting proposed section 306A. This provision is based on the existing record-keeping arrangements for the disclosure of historical telecommunications data. The proposed section provides for the records of prospective authorisations made under the TIA Act that are to be kept by carriers, carriage service providers and number database operators. The bill also provides for an offence for unlawful disclosure or use, including secondary use and disclosure, of telecommunications data.

Schedule 1, item 12, inserts a new chapter 5, which deals with cooperation with interception agencies. It requires carriers and carriage service providers to ensure that communications carried over the telecommunications systems are capable of being intercepted.

The bill deals with the obligation on carriers that the intercepted information is capable of being delivered to interception agencies from a delivery point. The Attorney-General’s office advised that, although the above arrangements already exist under the Telecommunications Act, they are being transferred to the TIA Act. The legislation will remain valid within the Telecommunications Act for a transitional period and will then be repealed, although the Attorney-General’s office have not yet specifically identified the length of that transitional period.

The Attorney-General may make written determinations on the interception capability of certain
The new post of Communications Access Coordinator is defined by this bill. That person may grant exemptions to any interception capability obligation under proposed section 192. ACMA can also grant exemptions for trial services under proposed section 193. Carriers also have to prepare and submit an annual interception capability plan in accordance with the bill. The plans will now be lodged with the CAC rather than with ACMA.

The bill also inserts new item 12 in schedule 1, which states that various instruments are not legislative instruments. The Scrutiny of Bills Committee noted that, in each case, the explanatory memorandum states that the reason these exemptions are not legislative instruments is that the relevant documents contain sensitive and confidential information. For example, in respect of the instrument referred to in proposed section 192(4), the explanatory memorandum explains that, if the documents were not kept confidential, the limitations of interception capability and by implication how to avoid interception could become publicly apparent.

The Attorney-General has advised that the power to grant these exemptions is reviewable under the Administrative Decision (Judicial Review) Act 1977.

Schedule 2 amends the TIA Act to ensure that the list of serious offences for which interception warrants may be sought includes all child pornography offences, whether or not the penalty for such an offence is imprisonment for at least seven years. Child pornography offences are already defined as serious offences by the act but only where the maximum penalty is imprisonment for at least seven years.

In relation to the Spam Act, the TIA Act provides that interception material can be used as evidence in an exempt proceeding. Schedule 2, item 5 widens the definition of ‘exempt proceedings’ to allow disclosures for the purposes of proceedings in relation to the Spam Act 2003. This amendment is consistent with the intention of recommendation 17 of the Senate Standing Committee on Legal and Constitutional Affairs report on the bill.

The bill contains several amendments to partially implement recommendation 24 of the Blunn review, which recommended allowing access to the content of communications for the protection of data systems and the development or testing of new technologies. The bill will allow the Attorney-General to authorise interception for developing and testing capabilities, subject to conditions and only by security authority. A ‘security authority’ is defined in schedule 2, proposed section 3, subsection 5(1) as:

... an authority of the Commonwealth that has functions primarily relating to:

- security; or
- collection of foreign intelligence; or
- the defence of Australia; or
- the conduct of the Commonwealth’s international affairs.

The bill also contains provisions concerning the definition of ‘passing over the telecommunications system’ for the purpose of a computer network operated by or on behalf of the Australian Federal Police. People who operate, protect or maintain the network or are responsible for the enforcement of professional standards in the AFP are treated as intended recipients so that their monitoring of outbound and inbound communications is not unlawful. These provisions were inserted by the 2006 amendment and were subject to a two-year sunset clause. The Attorney-General’s office has advised that the two-year sunset clause will also apply to the proposed amendments inserted in this amended bill.

Items 11 and 12 would expand the number of agencies eligible for exemption under subsection 5F(2) and 5G(2) to cover Commonwealth agencies—that is, the Australian Commission for Law Enforcement Integrity and the Australian Crime Commission; security authorities—that is, ASIO, the Department of Defence and the Department of Foreign Affairs and Trade and eligible authorities of the states—and that would include integrity, crime commission and police forces, as well as the AFP, which is currently exempt. This amendment would increase the number of agencies which can monitor all outbound and inbound communications for the purposes of enforcing those professional standards.

The bill was reviewed by the Senate Standing Committee on Legal and Constitutional Affairs.
The committee handed down its report on 1 August 2007 and made a number of recommendations. I will refer to some of those now. At paragraph 3.77 the committee recommended:

... that proposed paragraph 5(1)(m) of the Bill be deleted to remove CrimTrac from the definition of ‘enforcement agency’.

However, it is not proposed to move an amendment in relation to that. Whilst acknowledging that CrimTrac does not have the investigative powers of a traditional enforcement or security agency, we note that CrimTrac does play a vital specialist role in assisting law enforcement. It is for this reason that we think it should remain within the bill’s definition of an enforcement agency.

The committee also recommended that the Attorney-General’s Department arrange for an independent review of the operations of the Telecommunications (Interception and Access) Act 1979 within five years. The committee accepted the view of the government that it is unnecessary to amend the bill to require such a review. We support the bill.

Senator STOTT DESPOJA (South Australia) (7.27 pm)—I think I will follow Senator Ludwig’s lead. I also seek leave to incorporate my speech to this legislation in Hansard.

Leave granted.

The speech read as follows—

This Bill represents the second tranche of the Government’s response to the Blunn Review conducted in 2005. A key recommendation of the Blunn Review was to establish a single, consolidated piece of legislation which deals with access to telecommunications data for security and law enforcement purposes.

The Democrats consider that consolidation of security related legislation is a positive development. In a small way it may alleviate some of the problems that we have seen with the piecemeal development of the Government’s security related legislation in general.

That approach has cumulatively removed individual rights to the extent where even law enforcement agencies are ill-equipped to deal with their extraordinary powers, as was all too readily apparent with the Dr Haneef affair.

Several aspects of the Bill are largely uncontroversial and amount to little more than a transfer of existing provisions from the Telecommunications Act. Some aspects of the Bill go further and amount to an improvement to the existing regime. Under the Bill, voluntary disclosure provisions have been clarified to the extent that it is now explicit that the provisions do not cover the substance or contents of a communication.

However, we believe that other aspects of the Bill create intelligence gathering powers for intelligence and law enforcement agencies on an entirely new basis and other aspects pay scant regard to fundamental principals of personal privacy. In respect of these provisions the Democrats are opposed to the Bill and will move several amendments to ameliorate its worst aspects.

Interpretation issues—‘enforcement agency’ and ‘telecommunications data’

The legislation gives enormous powers to law enforcement agencies to monitor the private conversations of Australians.

Privacy is a fundamental human right, and Parliament has a duty to limit the violation of this right to only those situations where exceptional circumstances justify it. In this respect, we must be careful to limit the powers to only those agencies that can positively justify being vested with them.

As the Chair of the Senate Committee noted in his report, CrimTrac is one agency that has been unable to justify its vesting with such powers. CrimTrac is not a law enforcement agency authorised to conduct investigations into suspected offences except in limited circumstances related to spent conviction legislation.

As such we consider that CrimTrac should be removed from the definition of ‘enforcement agency’ and we will be moving amendments to that effect.

Another area of concern to the democrats is the lack of a clear definition for ‘telecommunications data’.

The Government must respond to the trend has seen current and emerging communications tech-
nologies merge areas that have traditionally been separately regulated.

During the course of the Senate inquiry, various examples of converging technologies were discussed including, web browsing, downloading from the internet, entering chat rooms, sharing emails, taking digital photographs and video footage and playing MP3 files all from a mobile telephone. Questions were raised as to what information captured can properly be considered telecommunications data.

The Democrats consider that the best way to deal with these new technologies is to give certainty as to whether or not the information they produce can be categorised as telecommunications data. This is something which the Attorney-General’s Department appears reluctant to do.

The Attorney-General’s Department has stated that they are ‘concerned about defining technology and call associated data now because the definition might be redundant in 12 months time’. The Democrats are dissatisfied with this reason.

As a matter of public policy, it is desirable to clarify what is meant by telecommunications data now. The definition can be amended in due course if the development of technology demands it.

With advances in technology it is important to clarify the scope of telecommunications data to reassure current and future users of new technologies that such communications may or may not be intercepted.

In the very least, a definition which is technology neutral but which highlights that the information being sought is information about the communication rather than the communication itself, would fit in with the Government’s policy rationale and provide some degree of certainty.

**Prospective data and location information**

Proposed section 176 and 180 of the Bill do not transfer existing provisions of the Telecommunications Act, but create a new scheme for access to prospective information or documents for ASIO and other law enforcement agencies.

The effect of these provisions is that ASIO and law enforcement agencies will have access to ‘real time’ mobile phone data which could allow agencies to pinpoint, with reasonable accuracy, the location of a user. In other words, mobile phones could become a de facto tracking device, and the Bill does not oblige agencies to obtain a warrant for this purpose.

The prospect that our mobile phones will soon have the ability to divulge precise location data is far from fanciful. Already some of the major networks are advertising GPS technology as a standard feature.

The Democrats consider that a person’s mobile telephone phone should not be used as surrogate tracking and tracing technology for people in the absence of any countervailing public interest, significant independent oversight and public reporting.

We favour access to location information only through a warrant and will be moving an amendment to that effect.

If this amendment is not accepted by the Government, the Bill will allow mobile telephone location information to be disclosed under a written authorisation for a period of 45 or 90 days without the need to obtain a warrant.

The Democrats also consider this time frame is excessive and should be limited.

**Public Interest Monitor**

Commendably, the Bill also creates new controls over the existing access framework.

However, given the Democrats view that this Bill involves a widening of the Commonwealth phone-tapping powers; it is appropriate that there be an independent umpire to balance necessary, lawful, and proportionate access by law enforcement agencies to telecommunications data with the public’s right to communicate free from surveillance.

The Democrats note that in relation to the area of listening devices, a model can be found in Queensland, where a Public Interest Monitor is authorised under the Police Powers and Responsibilities Act 2000 (Qld) to intervene in applications for listening devices warrants, and to monitor and report on the use and effectiveness of the warrants.

The Democrats have advocated the establishment of a Public Interest Monitor in other forums and
see merit in adopting the Queensland public interest monitor model to improve accountability.

**Conclusion**

In summary, the Bill confirms privacy as a valued norm but does not do enough to protect Australians’ private conversations and communications. While legitimate law enforcement activities may in exceptional circumstances override a right to privacy, the increasingly complex telecommunications environment exposes individuals to arbitrary interference. Agencies should not be able to self-authorise such invasions without reasonable oversight from the judiciary.

**Senator SIEWERT** (Western Australia) (7.27 pm)—The Greens have some substantial issues with the Telecommunications (Interception and Access) Amendment Bill 2007. I know the government sought to have this legislation dealt with as non-controversial legislation, but we believe that it has some significant implications for the community in terms of its interception and access capacity. We think that it is being rushed through the legislative process and believe that it needs some further amendments. The Greens will be seeking to move some amendments on this legislation. I think that our spokesperson on these issues will probably be able to deal with this legislation in a much more comprehensive manner than I am able to.

**Senator WEBBER** (Western Australia) (7.28 pm)—I seek leave to incorporate Senator Bishop’s speech.

Leave granted.

**Senator MARK BISHOP** (Western Australia) (7.28 pm)—*The incorporated speech read as follows—*

This Bill is important for Australia’s police and anti-terrorist efforts. It’s the second in a series flowing from the Tony Blunn review into the regulation of telecommunications access. As such, it contains no surprises. It doesn’t contain any new powers for police on either interception or access to data. Nor does it deal specifically with powers of interception—but rather access to data. By data, the bill doesn’t mean content of calls.

There’re standard procedures for that which require warrants. Rather, it clarifies the existing law. I accept the Government’s assurance that it provides some extra safeguards to that access. Today I don’t intend canvassing some of the more controversial aspects of this Bill. The debate on these has been covered by the report of the Senate Legal and Constitutional Affairs Committee. During the recent inquiry into organised crime by the Joint Committee on the Australian Crime Commission, evidence was taken from state police forces.

One of the most common deficiencies, in the committee’s view, was access to telecommunications data. A little context here might be useful. One of the biggest problems confronting law enforcement agencies in their fight against organised crime is access by those criminals to modern sophisticated technology. These days, criminals use stolen mobile phones and SIM cards for single calls only. That’s because the location and data on those phones is easily traced. Or they purchase mobiles with false names—apparently easy to do.

Hence the problem for police, who need better security and identity checks for those buying mobile phones and SIM cards. It’s not just a matter of knowing what calls are being made. Information such as time and recipient is easily available,—although this Bill cleans-up some of the rules around that access. It’s a matter of identity of the person with the phone. The 100 point identity check recommended by the Committee might help here. Even though it may cause some public inconvenience. In my view that’s a small price to pay.

The next level of access by police is to real time information on call data where that is vitally important. To that extent, mobile phones can be tracking devices for the police. Some may say that’s an invasion of privacy, but I don’t agree.

Criminal access to sophisticated technology is so difficult to combat, any advantage the police can gain from it should be supported. Provided, of course, the power given by this access isn’t abused. And that’s the purpose of this Bill. Inno-
cent people in these circumstances—where criminals need to be rounded up—have nothing to fear.

Above this level of access to call data, there is access to content. That’s interception and it’s available too, but again only according to strict rules.

Those rules are set out clearly in this Bill, just as they are for access to call data, historic or prospective. As I said, the pros and cons of those rules are addressed in the legal and Constitutional Affairs Committee report.

Problems of criminal access to sophisticated communication technology goes far beyond mobile phones.

The Internet itself has become a major vehicle for crime and organised crime in its own right. That is, not just as a facilitator of crime. This legislation addresses that technology in the same way.

That may be something the joint Committee on the ACC didn’t sufficiently appreciate. State police expressed concern about their capacity to obtain data on e-mail transmissions and anything else through data lines.

That’s also accessible with the same rules to which I’ve referred. That means that data can be obtained on the timing, place and duration of any Internet transmission—but not content.

Access to content is possible too, just as with phones, but again, only by warrant. These are serious checks to protect those values on which some express their genuine concern. State police also expressed concern to Voice Over the Internet Protocols, otherwise known as VOIP.

This Bill also regulates access to that information. So the response to the evidence given by state police forces about access to communications data, in whatever form, are unfounded. As this legislation makes clear, access is available but only within strict rules. The next debate, then, is whether those rules are strict enough.

Again I won’t canvass that issue here because the Legal and Constitutional Affairs Committee did it adequate justice. But I thought I’d pay particular attention to these issues today because I doubt the substance is well understood. Part of the reason for that is the need to avoid controversy.

That’s because the balance between public safety and the invasion of important rights is a fine one. In this case, I’m confident that line hasn’t been crossed. I accept, however, some uncomfortable trade-offs may be made in the public interest.

That judgement, as is often the case, is one for elected representatives in this place. It’s not a responsibility we take lightly. When it comes to the interception, tracking and detection of child pornographers using the Internet, there’s no question.

Thus, the threshold penalty of three years for any crime, set as a restriction on the use of these powers, has not been applied to child pornography. I think the three-year limit is reasonable. Also believe the exemption of child pornography offences of any degree is also laudable. These provisions, though, might warrant further scrutiny.

With respect to the rest of the Bill, it’s important to note the responsibilities In this area for telcos and Internet companies. They’re set out in detail. Without the carriers’ obligations to provide access to information on either data or content, no such scheme would be possible. I know from their evidence that state police forces are concerned at the cost of obtaining information on call data. Again, this Act being includes provisions which facilitate rapid access, yet don’t penalise the telcos. We know it’s onerous and we know there’s a cost. But its one which needs to be borne.

Mr Acting Deputy President, we support the Bill.

**Senator NETTLE** (New South Wales) (7.29 pm)—I seek leave to incorporate my speech in Hansard.

Leave granted.

The speech read as follows—

The secret surveillance of citizens by state authorities is a common theme in drama and fiction. From Shakespeare to today’s Hollywood films—such as the Jason Bourne trilogy—the fear of an all powerful state spying and trampling on people’s rights has popular resonance.

And it has popular resonance for a reason. The overbearing power of the state to interfere and
punish is a real problem of contemporary life across the globe.

Arbitrary and administrative imprisonment, the removal of the right to silence, suppression of freedom of expression and encroachments on the right to privacy are growing across the Western world.

The horrible irony is that it was precisely these problems that modern liberalism sought to address by seeking a balance between the rights of individuals and the powers of the state.

But it is this balance, often under the guise of the war on terrorism that has been jettisoned by neo-conservatives such as the Liberal Party and the Howard government. This bill, the Telecommunications (Interception and Access) Amendment Bill 2007 is the latest manifestation of this process and it is a major threat to privacy and civil rights.

This “track and tap” bill will enable police and security agencies such as ASIO to conduct real time tracking of people’s mobile phones and Internet browsing without obtaining a warrant.

Telephone and Internet companies will be required to funnel data on phone calls, email, voice-over-the-internet (VOIP) and web browsing in real time to the police or ASIO. The data includes phone numbers, caller locations, web addresses and other telecommunications information.

Before examining in detail the Greens particular concerns about this bill I will briefly review the sections of the bill that set up these new powers for the police and ASIO.

Unlike much of the Bill, the proposed Sections 176 and 180 are not merely the shifting of provisions of the Telecommunications Act. Rather they allow ASIO, police and other criminal law enforcement agencies access to telecommunications information they have never had before.

Section 176 allows an eligible person within ASIO to authorise the disclosure of prospective telecommunications data to ASIO, on a “near real-time” basis for a period of 90 days.

Section 180 allows an authorised officer within a criminal law-enforcement agency which includes state and federal police to authorise the disclosure of prospective telecommunications data to that agency, on a near real-time basis for a period of 45 days.

In order to issue such an authorisation, the authorised officer must be satisfied that the disclosure is reasonably necessary for the investigation of an offence that is punishable by imprisonment for at least 3 years.

I understand from communication between my office and the government that near-real time means immediate communication from the telecommunications company or Internet service provider and the agency.

How instantaneous such communication would be is dependent on technological capacity but it would be no more than a few minutes.

This then opens up the prospect of such communications being able to be observed in effectively real time.

This will mean every mobile phone could become a tracking device for the police or ASIO.

Every website address a person visits will also be able to be monitored.

And there is no judicial oversight and no accountability.

To much of the Australian public particular those who know that Big Brother was a novel by George Orwell not a just a television show, such a prospect is no doubt of extreme concern.

It is certainly of concern to The Greens.

It is important to remember when considering this issue that the Telecommunications Interception Act 1979 was passed at time when digital communications did not exist.

It was then accepted that the tapping of someone’s phone was such a significant encroachment on a person’s privacy that a warrant was required and judicial oversight was needed.

Overtime and with the development of digital communications more and more information is now available beyond merely the content of the phone conversations.

Security agencies and the government have used this fact to argue that such data whilst disclosing information on person is not of the same significance as the content of a call and that therefore
the principle of judicial oversight first elaborated in the analogue age could be discarded.

While such an argument has gained some currency it does not stand up to scrutiny.

Whether or not the secret surveillance of the content of a phone call is a greater breach of person’s privacy than knowledge of who they are calling and where they have visited all depends on context.

The fact is, allowing police or ASIO to track the movement of a person or what websites they have visited for one or three months is as much an intrusion on their privacy as listening to a person’s phone calls.

Tracking Internet browsing is particular intrusive. The Electronic Frontiers Foundation said in their submission to the Senate Inquiry on this bill that:

Surveillance of web browsing activities is akin to filming individuals’ activities in a manner that records every item they purchase in shops, every film they see at the cinema or hire or buy, every book and magazine they glance through and/or purchase or take out on loan from a library and so on. Furthermore, unlike “telecommunications data” about telephone calls and email messages, the address of a web page often, of itself, provides information about the content or substance of the communication and web page addresses can be used to obtain access to the content that was communicated.

Tracking of mobile phones could become more intrusive overtime as the Electronic Frontiers Foundation has also pointed out. They say:

New technologies such as Assisted GPS, reportedly expected to be introduced in Australia by some carriers in 2007 or 2008, will greatly improve the accuracy of mobile phone location information. Access to ‘prospective’ location information enables not only identifying/tracking location but potentially real world, real time, surveillance of a tracked individual’s activities.

Therefore the Greens believe the police and ASIO should have to get a warrant to track and tap people’s mobile phones or web browsing.

The Law Council of Australia shares our concerns they said in their submission to the Senate Legal and Constitutional Legislation Committee that:

Given the invasion of privacy it represents, the Law Council believes that criminal law-enforcement agencies should require a warrant in order to access prospective telecommunications data and thus use a person’s mobile phone as a tracking device.

The Law Council recognises that under Section 39 of the Surveillance Devices Act 2004, law enforcement officers are already able to use a tracking device without a warrant in the investigation of a federal offence which carries a maximum penalty of at least 3 years.

This is provided that written permission is received from an “appropriate authorising officer” and installation and retrieval of the device does not require entry onto premises without permission or interference with the interior of a vehicle without permission.

Nonetheless, the Law Council believes that the ease with which telecommunications data may be used to track a person, as compared to the difficult of secretly affixing a physical tracking device to a person or thing, renders proposed s 180 far more amenable to misuse or overuse by law enforcement agencies than existing provisions in the Surveillance Devices Act 2004.

It is on that basis that the Law Council believes that access to prospective telecommunications data should require a warrant.

There are other aspects of this bill that deserve some attention. It should be noted that increasingly telecommunication companies and Internet service providers are concerned about the burdens and obligations placed on them by national security laws and agencies.

I know that the Internet Industry Association and the Australian Mobile Telecommunications Association have expressed concerns about aspects of the bill that have not been addressed.

Also worth noting is that although the government claims to be implementing the Blunn review into telecommunications interception this bill goes far beyond the recommendations of the Blunn review and in particular the proposal to turn all mobile phones into tracking devices and monitor web browsing was not recommended.

There are aspects of the bill that deserve support such warrants for phone tapping during investiga-
tions of child pornography, but The Greens cannot support the bill in its present form.
The reality is this bill is more like something from East Germany than a government claiming to support liberal principles.
It is a major attack on Australian’s privacy on the eve of an election in the dying days of this Parliament.
It is further a travesty that the Labor opposition is so unwilling to stand up for Australian’s privacy because it has adopted a “me-too” approach when it comes to national security.
I expect the late great Lionel Murphy would be ashamed.
The Greens will oppose this bill.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (7.29 pm)—I thank senators for their contribution.
In 2005 an independent report prepared by Anthony Blunn AO recommended the development of a single, overarching legislative scheme regulating access to telecommunications interceptions, stored communications and telecommunication data. Simply put, the Telecommunications (Interception and Access) Amendment Bill 2007 gives effect to that recommendation. The bill does this by moving relevant provisions of the Telecommunications Act 1997 and regulating the disclosure of telecommunications data to law enforcement agencies through the Telecommunications (Interceptions and Access) Act 1979.

In addition to these amendments to consolidate the regulation of access to communications, the bill also includes amendments to allow the use of telecommunications interception in the investigation of all offences related to child pornography. This change reflects the seriousness of child pornography offences and also recognises that these offences are committed via communication networks and are most effectively addressed through access to communications.

It is important to stress that this proposal does not represent new powers for the security and law enforcement agencies; rather, it creates new, more systemic and appropriate controls over the existing access framework. The bill has been considered by both the Senate Standing Committee for the Scrutiny of Bills and the Senate Standing Committee on Legal and Constitutional Affairs. I thank senators on both committees for their diligent work and the matters they raised. I know that the Attorney-General tabled a revised explanatory memorandum in the other place to address the matters raised by the Scrutiny of Bills Committee. The government has also considered the recommendations of the Senate Legal and Constitutional Affairs Committee in relation to ensuring appropriate privacy protection. The committee made several recommendations, which I will briefly address.

Firstly, the committee recommended that the CrimTrac agency be removed as an enforcement agency. The government does not agree with this recommendation. CrimTrac plays a valuable and growing coordination role, providing assistance to Commonwealth, state and territory agencies in criminal investigations in its role as a provider of national information services. It is for this reason that CrimTrac has always been an ‘enforcement agency’ under section 282 of the Telecommunications Act 1997. The transferred provision simply updates the agency’s name.

Secondly, the committee supported the use of the Communications Access Coordinator’s determination making power to provide guidance to agencies on how they should take privacy matters into account in authorising access to prospective data. The government remains committed to privacy protection and supports this role for the Communications Access Coordinator. In this context, I note that the bill requires consulta-
tion with the Office of the Privacy Commissioner when developing this guidance.

Thirdly, the government agrees with the committee’s views on the role of the Inspector-General of Intelligence and Security, IGIS. The inspector-general already has extensive oversight powers and will be able to use these powers with respect to ASIO’s use of the proposed regime without the need for additional legislative provision.

Fourthly, the committee recommended that the Attorney-General’s Department arrange for an independent review of the interception act within five years. As the Attorney has previously indicated, the government does not support this recommendation. While regular review is important, experience shows that the pace of technological change alone continues to drive regular re-examination of the act. In fact, there have been 10 such reviews in recent years—five by independent officers and five by committees of the Senate.

The bill is another significant step in making sure that Australia’s laws for accessing telecommunications information for law enforcement or national security purposes keep pace with the rapidly changing telecommunications environment. This bill dramatically clarifies the regime by collocating relevant provisions in a single regime. This will provide a more transparent, understandable regime for agencies, the telecommunications industry and the public. Again, I thank senators for their contribution. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator STOTT DESPOJA (South Australia) (7.33 pm)—To facilitate proceedings, I move Australian Democrats amendment (1) on sheet 5380:

(1) Schedule 1, item 6, page 4 (line 24), omit paragraph 5(1)(m).

As senators would be aware from the notes of my speech in the second reading debate, which I am sure they will duly read in retrospect through the Hansard, the Democrats have voiced concerns about the significant privacy implications of this bill. Given the invasion of privacy that we believe this legislation allows, we believe that access should be limited only to those agencies that can justify the vesting of such powers. We believe that CrimTrac is one agency that has been unable to justify being vested with such powers. It is not a law enforcement agency authorised to conduct investigations into suspected offences except in limited circumstances related to spent conviction legislation. Effectively this amendment deletes subclause 5(1)(m) from the proposed bill to remove CrimTrac from the definition of an enforcement agency.

Senator LUDWIG (Queensland) (7.34 pm)—Labor oppose the Democrats amendment. It may be, and perhaps it is unfortunate, that this matter has progressed a bit further since the Senate committee hearings, and we are in a better position to understand some of the nuances of the debate. Whilst acknowledging that CrimTrac does not have the investigative powers of traditional enforcement or security agencies, we note that CrimTrac does play a vital specialist role in assisting law enforcement. It is for this reason that we think it should remain within the bill’s definition of an enforcement agency.

I will not go through what CrimTrac is—I think most senators in this chamber have heard what CrimTrac does and does well—but, since November 2004, CrimTrac has been brokering Sensis direct access information on behalf of all policing jurisdictions
and other criminal enforcement agencies to provide them with pertinent information about telephone subscriptions when investigating, preventing and prosecuting criminal offences. Access to this information is governed by various processes and procedures according to the law enforcement agency requesting the information.

Enforcement of criminal law covers a wide spectrum of activities and depends on the organisation to which the investigator belongs. CrimTrac currently brokers that on behalf of all policing jurisdictions across Australia, including the AFP. In addition, CrimTrac brokers telecommunications data on behalf of a number of other law enforcement agencies, which include the Australian Customs Service, the New South Wales Independent Commission Against Corruption, the Crime and Misconduct Commission of Queensland, the Australian Crime Commission and the Australian Securities and Investments Commission.

The current application used by CrimTrac gives a simple forward, reverse and address based search on behalf of those law enforcement agencies. By undertaking these actions, CrimTrac ensures that all organisations are legitimately entitled to have access before approving individuals on a case-by-case basis. Access is granted to individuals, not organisations, work units or teams, according to their responsibility and rank. It goes without saying that that clearly supports, in Labor’s view, why CrimTrac remains central to this jurisdiction and why, given its direct role, it requires that access. Given the nature of what I have just said and the time available, I will not go into any further reasons which support that. If the Democrats want to dispute it further, I can provide more evidence to justify the position.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (7.37 pm)—Obviously the government does not accept this amendment. It comes as no surprise to the honourable senator. Given the general prohibition on the disclosure of telecommunications information in the Privacy Act, which requires that information is only used in relation to the purpose for which it was collected, CrimTrac’s ability to undertake this role is directly linked to its inclusion in the definition of an ‘enforcement agency’ within the legislation. The removal of CrimTrac from this definition would mean that agencies would be required to establish their own infrastructure to access this information, increasing the burden on smaller agencies to develop their own contractual arrangements with information providers. Obviously this would divert resources, be inconvenient and undermine the purposes of the act.

Question negatived.

Senator STOTT DESPOJA (South Australia) (7.38 pm)—by leave—I move Democrats amendments (2) and (3) on sheet 5380:

(2) Schedule 1, item 12, page 9 (after line 27), add:

Judicial warrant required for access

(7) Notwithstanding the other provisions of this section, any authorisation for access to prospective information or documents in accordance with this section is void unless it complies with Divisions 1 and 2 of Part 2, and Part 3 of the Surveillance Devices Act 2004.

(3) Schedule 1, item 12, page 11 (after line 30), add:

Judicial warrant required for access

(8) Notwithstanding the other provisions of this section, any authorisation for access to prospective information or documents in accordance with this section is void unless it complies with Di-

Both these amendments relate to judicial warrants being required for access. We believe that access to prospective telecommunications data has the potential to allow real-time monitoring of location information—that is, in effect an authorisation for access to such data amounts to a de facto surveillance device. Accordingly, we believe that access should be subject to the same scrutiny and judicial oversight as applications for surveillance devices under the Surveillance Devices Act. At a minimum, we say to the government and to the parliament: if you insist on having this kind of legislation and this particular access or these powers for law enforcement agencies, then at least ensure that you have a couple of basic safeguards in place that are at least comparable to those that already operate under the Surveillance Devices Act. Therefore, we are amending proposed section 176, which concerns ASIO, and proposed section 180, which concerns enforcement agencies, to require that access to prospective information by these organisations requires a warrant.

Senator NETTLE (New South Wales) (7.39 pm)—The Australian Greens support these amendments. As I said in my speech on the second reading and have indicated before, our concern is that this bill allows the government to have access to telecommunications data that they do not currently have. Currently they require a warrant to tap phone calls. We do not think they should be able to have access to information about who you are calling, where you are calling from and what website you are accessing without obtaining a warrant. The same regime that operates requiring a warrant for telecommunications should operate in relation to this additional information that is now available around telecommunications because of the way mobile phones and the internet operate.

The same system should apply across the board. That is why we support these amendments.

Senator LUDWIG (Queensland) (7.40 pm)—The opposition does not support the two amendments. The new provisions in the legislation distinguish between access to historical telecommunications data—that is, data which is already in existence at the time of the request—and prospective data, being data that is collected as it is created and forwarded to the agency in what is commonly referred to as near real time. Access to prospective telecommunications data is only available to ASIO or criminal law enforcement agencies because of—and quite rightly—the high privacy implications of this type of access. But it does not come without more protections. Access to prospective telecommunications data would require a higher threshold of authorisation allowing for future access to telecommunications data. That is covered in the proposed sections 176 and 180.

The need to distinguish between historical and prospective data is a reflection of the advanced technology that exists, which enables the use of telecommunications data to provide, amongst other things, location information. But it also provides, in order to reflect the increased privacy implications of access to prospective data, three more restrictive conditions, which are attached to these authorisations: (1) restricting the disclosure of prospective telecommunications data to an authorised officer of a criminal law enforcement agency for the investigation of offences which attract a maximum term of imprisonment of at least three years; (2) limiting the time frame for which an authorisation may be enforced to, under proposed section 180, 45 days for criminal law enforcement agencies and, under proposed section 176, 90 days for ASIO; and (3) requiring the authorising officer to have regard to the im-
In respect of the warrant issue raised by the Democrats, we do not support the position that has been put. I will leave that to the government to deal with.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (7.42 pm)—In response to Senator Stott Despoja of the Democrats and Senator Nettle of the Greens, the government obviously does not agree with this amendment, as it is unnecessary, based, if I may be so bold, on an incorrect understanding of the provisions, and is likely to be confusing in the future. I emphasise that these are not new powers, notwithstanding media reports—the Sydney Morning Herald springs to mind—which clearly disclose a total lack of understanding and an inability to digest and comprehend what this bill does. It is a bit sad, really, that such an important issue can be so misconstrued and misunderstood by journalists.

Telecommunications data has been available to law enforcement and ASIO since 1975. Advances in technology have meant that telecommunications data has become more detailed and the data can be provided in less time than in the past. In response to these new capabilities, the bill introduces new provisions which, for the first time, explicitly regulate the technological change that has occurred. The distinction between prospective data and historical data has not been created to allow access to a new class of data. It is a response to the privacy implications that have arisen out of the existing legal regime. It places new limits on access as well as new reporting requirements.

The regime to enable criminal law enforcement agencies to access prospective data is already based on the equivalent surveillance device warrant. Under the Surveillance Devices Act 2004, an appropriate authorising officer as defined and set out in that act may authorise the use of a tracking device without a warrant in instances where it will not involve any interference with the property of a person, as set out in section 39. A warrant is only necessary where covert entry to premises or a vehicle is required. Prospective data authorisations have similar requirements to these surveillance device authorisations with the express purpose of ensuring that the integrity of the surveillance device regime is maintained. I set this out because there is a degree of hysteria and misunderstanding surrounding what we are actually doing here. I can only repeat: these are not new powers.

Senator NETTLE (New South Wales) (7.45 pm)—I ask the minister: does that mean that you are already getting the information about where someone is making a phone call from and who they are making it to, without access to a warrant?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (7.45 pm)—Under different circumstances.

Senator NETTLE (New South Wales) (7.45 pm)—What are those circumstances?

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (7.45 pm)—As set out in the Telecommunications Act.

Senator NETTLE (New South Wales) (7.45 pm)—There are two things that are being said here. In the explanatory memorandum, you say, ‘This is a new thing that we are doing.’ Now you are making an argument to say, ‘This is not something new.’ I appreciate your honesty in saying that you are already doing this; now I want to understand the circumstances. Your answer to me was, ‘As per the Telecommunications Act.’ The Telecommunications Act does not currently have, as you described, this regime for regulating this information about where you are
and who you are talking to on the phone. Can you give me some more detail about the circumstances where you are already doing this?

Senator Johnston (Western Australia—Minister for Justice and Customs) (7.46 pm)—There is no great art, secrecy or oppression of privacy rights here. Location information has always been available as part of the telecommunications data provided by carriers, as evident from any mobile phone bill—the suburb and the tower. That is all we are saying. The bill recognises that the speed of delivery of this information is increasing the potential of this type of information. That is what it is about.

Senator Nettles (New South Wales) (7.46 pm)—Is the new part the transfer of that information to police and ASIO, or is it that it occurs in real time?

Senator Johnston (Western Australia—Minister for Justice and Customs) (7.46 pm)—It is new protections because it can now occur in real time, and the objective is to have it in real time. There is not much point, in terms of counter-terrorism and other things, in being able to access the data after the bomb has gone off, if you follow me.

Senator Stott Despoja (South Australia) (7.47 pm)—I am glad the minister made those last comments in clarifying that this is a new scheme for dealing with that prescriptive, prospective data—a new scheme for access to prospective data, information and documents for ASIO and for law enforcement agencies. It is a new scheme in that regard and I understand, and I think most of us understand, that there is an element here of trying to establish some kind of privacy right or regime.

The Democrats put on record that one of the problems here, in terms of both what exists now in the act and what we are talking about in this new scheme for access to prospective data, is the reluctance, inability or unwillingness—and I have heard the arguments—of the government to define the scope or define telecommunications data. I understand that this is partly because it is considered that the technology is innovative and hard to keep up with and therefore we cannot readily or easily define telecommunications data. I have some sympathy for that and I understand that particular reason, but it makes some of this law-making a little difficult. I think some of these issues might be resolved if the Attorney-General and the government were more willing to come up with a definition of telecommunications data. I do not want to open up that debate, because I know it is an ongoing one and we have all read reviews and have had this debate before.

Senator Ludwig—We have tried that one before.

Senator Stott Despoja—I acknowledge that Senator Ludwig has tried it. We have tried it. I do not think we are going to resolve it tonight, but I wanted to put it on record in relation to the debate happening between Senators Nettles and Johnston.

Question put:

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

The committee divided. [7.53 pm]

(The Chairman—Senator JJ Hogg)

   Ayes........... 7
   Noes........... 51
   Majority........ 44

   AYES

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

Senator JOHNSTON (Western Australia)—Minister for Justice and Customs) (7.56 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

COMMUNICATIONS LEGISLATION AMENDMENT (INFORMATION SHARING AND DATACASTING) BILL 2007

SECOND READING

Debate resumed from 16 August, on motion by Senator Abetz:

That this bill be now read a second time.

Senator WEBBER (Western Australia) (7.57 pm)—I seek leave to incorporate Senator Conroy’s speech.

Leave granted.

Senator CONROY (Victoria) (7.57 pm)—The incorporated speech read as follows—

I rise to speak on the Communications Legislation Amendment (Information and Datacasting) Bill 2007, which brings with it amendments to: the Radiocommunications Act; the Datacasting Charge (Imposition) Act 1998; and the Australian Communications and Media Authority Act 2005.

This Bill seeks to:

1. Amend the Radiocommunications Act 1992 to give the Australian Communications and Media Authority the power to vary the frequencies on which datacasting transmitter licences operate;
2. Amend the Datacasting Charge (Imposition) Act 1998 to give effect to the Government’s decision that a Channel B licensee is not subject to an annual revenue based fee; and
3. Amend the Australian Communications and Media Authority Act 2005 to authorise the disclosure of certain information by ACMA to third parties with whom it has an ongoing and co-operative role.

On the face of it, the aims of this Bill appear straightforward.

However, upon closer scrutiny, the amendments have implications that simply do not appear to have been adequately considered by the Government.

As was evident at the ECITA Inquiry into this Bill, the Bill fails to address 2 key issues:

1. privacy and confidentiality concerns;
2. consultation of stakeholders in relation to spectrum variation.

I will address each of these important issues shortly.

Additionally, a further cause for concern was the manner in which this Bill was rushed through the inquiry process and into Parliament.
These issues serve to highlight a Government with scant regard to democratic process.

The ECIT A Inquiry
The Australian public should be concerned, as is Labor, at the way in which the Howard Government pushes legislation through parliament. This Bill was no different.

The public has to wonder, as Labor does, what is to be gained by the Government’s apparent rush to notch up another Bill on the board.

The Howard Government’s manner of conducting business illustrates a deep-seated contempt for parliamentary process and serves to denigrate democracy in this country.

On 20 June 2007, the Senate referred the Bill to the ECIT A Committee for inquiry and report by 30 July 2007.

While submissions were invited to be received by no later than Friday, 13 July 2007, the first submission was not received until 16 July 2007.

Subsequent submissions were received and, on 3 August 2007, the date for the inquiry was confirmed as 7 August 2007, just 4 days later.

On 6 August 2007, it became clear that one Labor Senator had not been provided with a copy of a recent submission.

On 7 August 2007, the Inquiry was held.

On 8 August, not 24 hours after the inquiry, the Committee issued its report.

One that same day, only some hours after receipt of the Committee’s report, the Committee Secretariat informed Labor that it required its Minority Report forthwith.

This behaviour again serves to show the Government’s lack of regard for the inquiry process.

The inquiry process is intended to ensure that stakeholders are heard and that legislation can be considered and, if need be, improved.

The non-provision of a submission to a Committee member is inexcusable—as is the request for a Minority Report to be provided forthwith.

The acts outlined above can only be described as the acts of an arrogant Government.

The Howard Government appears to have simply forgotten the tenets of good governance.

Apparently, the Government:

- does not consider it necessary to consult on Bills;
- pushes Bills through Parliament; and
- does not take the time to consider the ramifications of its legislation, as outlined by key industry stakeholders.

Labor, however, does not—and will not—act today without regard for tomorrow.

Labor recognises that this Bill has the capacity to impact significantly on the world of broadcasting in the years to come.

Accordingly, it is vital that this Bill—and every bill that comes before parliament—is given due consideration.

The first area of concern for Labor with this Bill is the privacy and confidentiality implications of the information sharing provisions.

Information Sharing Provisions
In its role as broadcasting administrator and regulator, ACMA is often the recipient of information that is, or could be, relevant to other administrative or regulatory entities.

The Bill provides for ACMA to disclose certain information to the Minister, certain public servants and government agencies such as the AFP and ASIO and regulatory bodies such as the ACCC, the TIO and ASIC.

The Bill also provides for disclosure of information by ACMA to an authority of a foreign country responsible for regulating matters relating to communications or media.

Labor appreciates that there are many instances where the disclosure of information gathered by ACMA to third parties would be, or could be, mutually beneficial.

However, there is concern that these same provisions allow ACMA to provide persons and agencies—including overseas media authorities—with personal and/or confidential information.

There is no provision in the Bill to:

- prevent disclosure of personal or confidential information to a nominated third party; or
- prevent use of an individual’s personal or confidential information by a nominated
third party who has received such information.

Nor does the Bill provide that, where information is shared by ACMA with a nominated third party, that the entity about whom the information relates is:

• consulted;
• informed; or
• has an opportunity to apply, for example, for an exemption from the disclosure.

Clearly, these provisions do not adequately address privacy concerns or provide adequate protection of confidential information.

Labor is concerned that the Bill does not adequately strike the balance between the public interest and the protection of privacy and confidentiality.

Datacasting Provisions

As noted above, the datacasting provisions of the Bill allow ACMA to vary the frequencies on which datacasting transmitter licences operate.

The Explanatory Memorandum states that this will enable the Government:

• to address technical issues, such as interference with existing services; and
• to optimise spectrum for the provision of mobile television services.

While on the face of it there is utility in these provisions, one queries whether the need for them would be lessened if comprehensive spectrum planning was undertaken by the Government.

Labor has concerns that:

• frequency variation is a significant undertaking; and
• the Bill does not provide for adequate consultation with stakeholders prior to any such variance.

The Government has made it clear that it intends to auction off Channel A and B to the highest bidder.

ACMA has identified the potential for Channel B to interfere with analogue television reception in Sydney, the Gold Coast and the Sunshine Coast.

Accordingly, Labor and industry stakeholders consider that the datacasting provisions of the Bill may be utilised sooner rather than later and with far reaching effect.

Clearly, the variance of a licence holder’s frequency has the potential for enormous ramifications, such as:

• the loss of television services;
• interference and disruption to viewers; and/or
• interference and disruption to broadcasters.

It is for this reason that consultation with licence holders is imperative to address both the interference and planning challenges associated with Channel B and to ensure that there is minimal interruption in services.

Conclusion

This is why Labor seeks to move a second reading amendment.

<SC to move second reading amendment—Attachment A>

The Second Reading Amendment:

• acknowledges the Bill’s shortcomings in relation to the failure of the Bill to adequately address privacy and confidentiality concerns; and
• and seeks to ensure that the Government undertakes adequate spectrum planning, enters into consultation with stakeholders and comprehensively assesses the impact of any variation in frequency.

Senator WEBBER (Western Australia) (7.57 pm)—At the request of Senator Conroy, I move the opposition amendment on sheet 5356 standing in his name:

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

(a) is concerned that the bill does not:

(i) provide for consultation with licence holders prior to varying the frequencies on which datacasting transmitter licences operate, and

(ii) address privacy concerns or provide adequate protection of confidential information; and
(b) therefore demands that the Government:

(i) make every attempt to carry out spectrum planning for new digital mobile services to ensure that consumers and licence holders are not disadvantaged, and

(ii) undertake consultation with all stakeholders prior to varying the frequencies on which datacasting transmitter licences operate”.

Senator PARRY (Tasmania) (7.58 pm)—I seek leave to incorporate Senator Eggleston’s speech.

Leave granted.

Senator EGGLESTON (Western Australia) (7.58 pm)—The incorporated speech read as follows—

Today I would like to speak on the Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007.

At the core of this Bill are two aims, the first one relates to the sharing of information by the Australian Communications and Media Authority or the ACMA and the second relating to decisions concerning Channel A and Channel B datacasting transmitter licences.

As a whole, the measures contained in this Bill will help the ACMA better carry out its duties and establish clear guidelines for certain engagements with other organisations so that they too can work more effectively.

As a government department, the ACMA carries out very important work for the people of Australia and it is the duty of this government, as elected by those people to develop and produce legislation that will help ACMA carry out its duties which is why we have this Bill before us today.

To elaborate on the first part of this bill regarding information sharing, the ACMA, as a government department, collects vast amounts of information relevant to its duties from a wide variety of individuals, organisations and other government departments.

The value and importance of this information goes beyond the duties of ACMA to others who have a legitimate interest in that information to better serve the Australian public and in some circumstances, the world’s population in areas which I shall discuss later.

Despite the benefits that sharing this information would give, the circumstances under which ACMA can legitimately pass on information, to whom they can pass that information on to, and under what conditions that information can be passed on is unclear.

This bill would amend the Australian Communications and Media Authority Act 2005 (the ACMA Act) to authorise the disclosure of certain information by the ACMA to the Minister for Communications, Information Technology and the Arts, Departments, government agencies and regulatory bodies.

Providing ACMA with an appropriate level of certainty in regard to information sharing will help improve the efficiency of their activities and the activities of those with whom the information is to be shared.

An example which has been discussed previously and which I will also discuss today is how this bill will assist both the ACMA and the Australian Competitions and Consumer Commission, the ACCC, in terms of their respective roles relating to the Government’s media ownership reforms that took effect from 4 April 2007.

In the question of a proposed merger for example, both agencies are likely to receive evidence relating to the question of control of commercial broadcasting licences.

The issue here is the ability of these two agencies to share such information which is legitimately relevant to the carrying out of their duties.

Amendments to the Trade Practices Act 1974, which have already been before this Parliament, allow the ACCC to disclose protected information to other entities such as the ACMA, but currently the ACMA has no authorisation to complement the ACCC’s share information capacity.

This Bill will provide the necessary information sharing authorisations and is not a simple copy of the ACCC’s authorisations but rather a special made set of legislative amendments that are more appropriately suited to the ACMA’s responsibilities and ongoing relationships.
Another benefit of these amendments is that it will help reduce duplication and the reporting burden on industry.

As was shown in the recent review of the National Greenhouse and Energy Reporting Bill 2007, there is a real cost in time and resources for industry when they are obliged to provide similar information to separate government authorities be they local, state, national or a combination.

As ACMA's responsibilities for the regulation of broadcasting, the Internet, radiocommunications and telecommunications involve gathering a variety of information from many different sources across Australia and indeed the world, there will surely be many circumstances in which unnecessary burdens and overlapping will be avoided.

Here is list of some of the Authorities that would be better able to carry out their functions with the development of an information sharing capacity in ACMA:

- Australian Competition and Consumer Commission (ACCC).
- Australian Prudential Regulation Authority (APRA).
- Australian Securities and Investments Commission (ASIC).
- Commissioner of Taxation.
- Telecommunications Industry Ombudsman (TIO).
- Australian Bureau of Statistics (ABS).
- Regional Telecommunications Independent Review Committee (RTIRC).
- Australian Federal Police (AFP).
- Australian Security Intelligence Organisation (ASIO).
- Director of Public Prosecutions (DPP).

While all of the entities I have so far spoken about have been Australian, ACMA, through its regulation of the Internet in Australia, also has a need to co-operate with overseas agencies.

The global nature of the internet means that issues such as offensive on-line content and international crime require co-operation between relevant government agencies.

Through authorising ACMA to share information with the Australian Federal Police and their overseas counterparts and other relevant agencies, Australia can more effectively participate in combating those crimes which use the internet and other mediums of communication.

What I have so far discussed are just a few of the benefits that could come from the sharing of information by ACMA but we should not ignore that this information can also be used for illegitimate means as well.

A lot of the information that ACMA handles has the potential to be commercially sensitive or personal in nature.

Accordingly, this bill includes a number of provisions that will ensure that sensitive and personal information is provided with appropriate protection.

Despite concerns being raised that the bill does not specifically note the application of the Privacy Act 1988, the Privacy Act 1988 will continue to apply to the ACMA and the Minister, and any information collected regardless of whether or not the Bill specifically notes its continued application or makes reference to the definition of 'personal information' as defined in the Privacy Act 1988.

Now the second section of this bill deals with datacasting and specifically aims to amend the Radiocommunications Act 1992 and the Datacasting Charge (Imposition) Act 1998.

The Broadcasting Legislation Amendment (Digital Television) Act 2006 amended the Radiocommunications Act to allow for the allocation of two previously unallocated channels of the television broadcasting spectrum known as 'channel A' and 'channel B'.

Channel A licences will allow new free to air, in-home digital television services, while channel B licences can be used for a wider range of services, including mobile television.

This bill shall allow ACMA greater flexibility in carry out its spectrum management functions for Channels A and B.

The proposed changes will allow ACMA to vary the radiofrequency spectrum for a licence after it has been issued.
At the moment, datacasting transmitter licences are the only category of apparatus licence which ACMA does not have the ability to change a frequency for after it is allocated.

Once ACMA allocates a frequency to that licence, it is unable to make changes which limit its ability to deal with a range of technical issue that they arise.

This bill will bring uniformity for ACMA spectrum management functions by giving it the same flexibility in relation to the full suite of transmitter licences that it administers.

While concerns have been raised regarding interference, the ACMA is confident that the application of its well established, robust planning process will prevent as far as possible interference happening and to put in place procedures for dealing with the problem should such problems arise.

The Technical Planning Guidelines made under section 33 of the Broadcasting Services Act will continue to be applied and are specifically designed to guard against interference with existing television services.

These guidelines minimise the likelihood of interference occurring and providing a means of appropriately managing any interference that does occur.

Another provision included in this Bill is aimed at amending the Datacasting Charge (Imposition) Act 1998 so that a fee is not payable where a licensee provides datacasting services on a channel B datacasting transmitter licence.

This shall put into effect the Government’s announcement that Channel B licences would not be subject to an annual licence fee.

In conclusion, this bill will result in ACMA being able to better carry out its duties.

As a government organisation, it exists for the benefit of the people of this country and it is the duty of this government to ensure that such benefits continue and improve.

By providing it with a capacity to share information ACMA will not only be able to better serve the public in its duties but it will also help other organisations engage important issues such as the online safety of our children.

This bill is about creating a more efficient government that can get the job done with a minimum burden on the public and industry which is something I strongly support.

I commend this bill to the Senate and I look forward to seeing the future efforts of this government as it continues to raise the bar on efficiency and effectiveness.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (7.58 pm)—I seek leave to incorporate my closing remarks in Hansard and commend the bill to the Senate.

Leave granted.

Part 1 of schedule 1 to this Bill amends the Australian Communications and Media Authority Act 2005 (the ALMA Act) to authorise the disclosure of certain information by the Australian Communications and Media Authority (ALMA) to the Minister for Communications, Information Technology and the Arts, Departments, government agencies and regulatory bodies.

ALMA frequently receives information through the performance of its functions and the exercise of its powers as the Australian Government regulatory body responsible for broadcasting, telecommunications and radiocommunications matters.

The Minister for Communications, Information Technology and the Arts, and certain other Australian Government regulatory bodies have a legitimate interest in receiving information that is obtained by ALMA.

At present, the circumstances in which ALMA can legitimately pass on information are uncertain. The amendments in this Bill will provide ALMA with an appropriate level of certainty and in so doing, will enhance the efficiency of the regulator’s enforcement activities.

The amendments will be of particular benefit to ALMA in the context of its role in the Government’s media ownership reforms that took effect from 4 April 2007.

Amendments to the Trade Practices Act 1974 to provide the ACCC with powers to disclose protected information were recently passed by the
Parliament. However, no similar powers exist for ALMA.

Clearly, the information ALMA receives from regulated entities has the potential to be sensitive and it is therefore appropriate that the Bill includes a number of provisions designed to ensure that appropriate protection is provided to sensitive and personal information.

Whilst the majority of information ACMA collects is commercial in nature, the continued application of the Privacy Act 1988, together with other safeguards incorporated into the Bill, will ensure that appropriate measures are in place for the protection of personal information that might fall within the scope of the Bill.

Part 2 of schedule 1 to this Bill amends the Radiocommunications Act 1992 to correct anomalies relating to spectrum replanning for licences on the unassigned channels, and the Datacasting Charge (Imposition) Act 1998 in relation licence fees on Channel B.

The Bill amends the Radiocommunications Act 1992 to give ACMA greater flexibility in carrying out its spectrum management functions in relation to datacasting transmitter licences. The provisions will permit ALMA to vary a condition of a datacasting transmitter licence that relates to radiofrequency spectrum after such a licence has been allocated.

The Government’s intention is that a channel B datacasting transmitter licensee will not be subject to an annual revenue based fee.

The Bill amends the Datacasting Charge (Imposition) Act 1998 to correct anomalies concerning the application of datacasting charges in relation to Channel B, to ensure the Government’s intention is implemented in a case where Channel B is controlled by a commercial television broadcasting service.

The Government’s intention is that Channel B licences will not be subject to an annual, revenue based fee. Accordingly this Bill contains an amendment which clarifies that a Channel B licenceholder will not be subject to that annual fee.

However, Commercial TV licenceholders will continue to be subject to that annual, revenue based fee where they operate commercial datacasting licences within their existing commercial television platform.

The ACTING DEPUTY PRESIDENT (Senator Moore)—The question is that opposition amendment on sheet 5356 be agreed to.

Question negatived.

Original question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

NATIONAL GREENHOUSE AND ENERGY REPORTING BILL 2007

Second Reading

Debate resumed from 18 September, on motion by Senator Brandis:

That this bill be now read a second time.

Senator WONG (South Australia) (7.59 pm)—I rise to speak on the National Greenhouse and Energy Reporting Bill 2007. This bill establishes a single national framework for reporting greenhouse gas emissions, emission reduction actions, and energy consumption and production by corporations from 1 July 2008. A greenhouse reporting bill is necessary to underpin a national emissions trading scheme. Federal Labor has a longstanding commitment to implementing emissions trading as a sensible and flexible approach to reducing greenhouse gas emissions. It recognises that this legislation is fundamental to what it believes should be a growing bipartisan approach to tackling climate change. That is why Labor was surprised and disappointed that, in the first instance, the Minister for the Environment and Water Resources introduced into the House of Representatives such a sloppy bill—evinced in part by the fact that the government was required to amend its own legislation.
Labor recognises the urgent need for progress on emissions trading, but that does not excuse poor process or lack of consultation. Emissions trading is a significant economic reform—particularly as we need to address dangerous climate change—and we need to ensure that we get the underlying structures right. The bill before the chamber has a range of shortcoming. A major concern is the provision for the all-powerful Commonwealth reporting power to potentially usurp or marginalise state laws and programs. In the absence of Howard government leadership on climate change, the fact is that the state governments—rather than the federal government—have led the way. Their efforts should be supported rather than handicapped. This power is clearly unnecessary. Additionally, the thresholds and time lines are loose and slow so as to prevent an ‘as soon as practical’ introduction of emissions trading. Perhaps this was to be expected given the government’s plan for a slow and modest start to emissions trading by 2011 or 2012.

The chamber will be aware that Labor referred this bill, which was introduced with very little notice, to the Senate Standing Committee on Environment, Communications, Information Technology and the Arts for review. That Senate inquiry heard that this bill was put together without due consultation over a few weeks between July and August. Clearly that is simply insufficient time to produce legislation as important as this. That really follows in the footsteps of many previous bills which this government, since it attained control of the Senate chamber, has rammed through without proper consideration—the most famous one in the term of this parliament was of course the Work Choices legislation, which had hundreds of amendments to it, introduced about 20-odd minutes before it was debated in this chamber. The point to make about that, regardless of the politics of it, is that it is frankly sloppy legislative work from a government that does not feel it has to do that work because it has absolute control of the Senate.

Extraordinarily, in the context of that inquiry the department admitted that they had not consulted specifically with any of the stakeholders during the drafting of this bill. Perhaps this should come as no surprise given the hasty way in which legislation has been introduced into the parliament previously by the member for Wentworth. A notable example of the approach of the Minister for the Environment and Water Resources to these matters is the draft water bills—the National Farmers Federation, environment groups nor the state governments had an opportunity to look at those bills before they arrived in the parliament. It was only when Labor insisted upon the need for a Senate inquiry that this matter of substantial national significance was given at least some detailed consideration. Frankly, this government’s practice of dumping proposed legislation into the Senate with little opportunity for due and proper consideration confirms just how out of touch this Howard government is.

All the stakeholders who gave evidence to the inquiry identified significant problems with this bill. The inquiry heard, amongst other things, that the bill could deliver unintended consequences such as: significantly raising compliance costs; producing a fractured system which may not include all major emitters; obliging companies to seek judicial review; undermining both current and future state laws and programs on climate change, many of which are working effectively; and potentially cutting across other state laws and programs not at all connected to greenhouse gas emissions issues. A number of representations to the Senate inquiry, including from environment organisations, made the point that the reporting thresholds had all the appearance of being too loose and
that it was critical that more information be publicly disclosed about the reporting under the proposed legislation. I note that the Investor Group on Climate Change, which represents some $370-odd billion of funds under management, was critical of the fact that the stipulated time frame is so slow.

As the bill is being rushed through parliament, it is worth the chamber considering the particular reasons why this legislation is being rushed through. The answer is very clear: until it believed it was politically necessary, the Howard government had done virtually nothing at all over its 11 long years in office to address climate change. There has been a systemic pattern of denial and inaction on climate change. That systemic pattern goes to, amongst other things, the question of setting up Australian businesses and the community to deal with climate change and the establishment of a market within which to operate so that emission reductions can have value. It is a matter of record that, on a number of occasions in the past, the Howard government has had the opportunity to consider emissions trading—these have included receiving cabinet submissions on that very matter, which were rejected. Now what we see is the Howard government suddenly realising that climate change is a matter of real interest to the Australian community—

Senator Colbeck—And the Labor Party in the last 12 months.

Senator Wong—That is very interesting. I will take that interjection, Senator Colbeck. Senator Colbeck has made an assertion about the Labor Party’s position on this. You are in the government that is filled with climate change sceptics. You are led in this chamber by a senator who has made it clear that he questions whether or not human activity has had any impact on climate change. We know that this government, both in the cabinet and on the back bench, is filled with people who remain sceptical about the reality of climate change. Is it any wonder that you have been asleep on this issue for 11 years?

So, Senator Colbeck, if you and other ministers of the government want to come here and lecture and try to make a political point, perhaps you should look at yourselves—because you know what? The Australian people know who has put climate change on the agenda in the political scene. The Australian people know that the only reason this government is doing anything at all on climate change is the upcoming election and that the government believes, or recognises, that it needs to be seen to be doing something to deal with the perception that it has done nothing over 11 years. It is all about spin; it is all about the election; it is all about politics. It is not about good policy; it is not about genuinely understanding and believing that climate change is a real challenge to this country. It is not about recognising the economic, social and environmental challenge that climate change constitutes; it is all about political spin. Just as we saw the water announcement in January being made without aspects of that package going to Treasury or Finance for costing, here we see yet another hasty, politically motivated response from the Howard government—a government that has been asleep on the issue of climate change for 11 years.

The government is now introducing legislation in an attempt to show that it is reacting in some way to the deficiencies of its past, which has arisen as a consequence of the government not being willing to embrace emissions trading as a way of tackling climate change. A sloppy bill like this suggests clearly that, at the time it was introduced, perhaps the environment minister had not really had a chance to look closely at it himself. The bill in the form introduced into the House of Representatives has the potential to
increase uncertainty due to unintended consequences, including the introduction of legal ambiguities in relation to some of the clauses proposed.

I want to go for a moment to the issue of the government’s approach to climate change and the inconsistencies in its approach in general. Recently, in relation to the government’s position on the ratification of Kyoto, the environment minister said in the other place:

Kyoto may be amended, and we hope it will be. We will be part of that. We want to amend Kyoto.

That was what the Minister for the Environment and Water Resources, Mr Turnbull, said in the other place in a recent debate. It really was an extraordinary statement because, for the last 11 years, the Howard government has been all about bagging Kyoto. It has been critical of Kyoto. It has talked at various times about the Eurocentrism of this multilateral agreement. It has been denying—and decrying those who claim it—that Kyoto has an important role to play in addressing climate change. Now we have Minister Turnbull saying: ‘Kyoto may be amended; we hope it will be and we will be part of it.’

It would be useful to know whether or not the minister could explain how the government propose to be part of Kyoto if the government continue to refuse to ratify it. That really is the key question that the Howard government need to answer: how are they going to be part of amending the Kyoto protocol when the government in the first place refuse to ratify it and therefore cannot take a place at the table and vote on it?

We see the Howard government getting themselves into an extraordinary, illogical and ridiculous situation on this issue. It is no wonder international commentators and political leaders look upon the position that the Howard government have taken on the Kyoto protocol with some bewilderment. They have got themselves into a tortured, convoluted and contorted position when it comes to Kyoto. At the same time, I remind the chamber of various comments made by the Leader of the Government in the Senate. Senator Minchin is on record as saying:

Kyoto is a failed doctrine ... Therefore, by definition, it is doomed to fail.

That was the government’s previous position: Kyoto is a failed doctrine and therefore by definition doomed to fail. The question that we need to ask ourselves—and that, no doubt, Australians who are interested in this issue will ask themselves—is: which is the government’s position? They are clearly confused when it comes to the Kyoto protocol. Either it is a failed doctrine or we should commit ourselves, as Minister Turnbull has, to amending it.

I want to raise an issue in relation to the Sydney declaration, which occurred recently at the APEC meeting and which the government trumpeted as some great reform. In July last year in a speech to the Committee for Economic Development of Australia the Prime Minister said:

A central flaw of Kyoto is its reliance on a distinction between developed and developing countries which makes little sense when translated into global emissions.

But the Sydney declaration actually put this specific view:

The future international climate change arrangement needs to reflect differences in economic and social conditions among economies and be consistent with our common but differentiated responsibilities and respective capabilities.

That in fact is the Kyoto approach. Article 10 of the protocol says that all parties should act:

... taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances ...
So, really, the Howard government’s position on the Kyoto protocol and on climate change has become one of the most farcical public policy positions that any federal government has ever held. It is being exposed day after day, with contradictory statements by ministers such as those I have outlined.

In addition, notwithstanding the fact that the Prime Minister had been hostile not only to the idea of ratification but also to the notion that the United Nations Framework Convention on Climate Change would be the appropriate pathway to build multilateral agreement on climate change treaties into the future, we now see the much-trumpeted Sydney declaration include a specific recognition that the UN framework is the acknowledged and accepted pathway for future global climate change negotiations and formulation.

We know the Howard government’s position on climate change and the Kyoto protocol is all over the place. As I said previously, I suggest to the chamber that the reason they are all over the place is that they do not believe it. They are filled with climate change sceptics; they are filled at senior levels with people who do not believe that human activity has had an effect on or contributed to climate change. This has infected their public policy response. Theirs is a response driven by politics alone, not by belief and not by public policy considerations. That is why their position is, frankly, incoherent and inconsistent.

There is one further thing to note in the debate on this bill—that is, as a consequence of the public policy position taken by the government, we have seen an impact on the Australian economy. It is unfortunate that there has not been sufficient attention paid to the economic consequences of this government’s failure to embrace clean and renewable energy in Australia, its blind-minded and blind-eyed approach to the issue of Kyoto ratification and its denial of the opportunities that Australian companies could and should have to be involved in clean development mechanisms, joint initiatives and other measures that are linked to the protocol.

The fact is that, under the Howard government, renewable energy companies have voted with their feet. In August last year we saw a company close its wind turbine assembly plant in Northern Tasmania. The cost was 100 jobs—that is, 100 Tasmanian jobs went as a result of that decision. In February 2007, Pacific Hydro announced it was investing $500 million in Brazil because Australian renewable energy projects had been stalled by the government’s refusal to ratify the Kyoto protocol. I invite Senator Colbeck, the parliamentary secretary who is handling this bill, who is a Tasmanian senator, to indicate whether he is supportive of the fact that 100 Tasmanian jobs were lost as a result of this government’s intransigence and failure to deal with this issue, that 100 Tasmanian jobs were lost? There has been a direct economic impact and a direct economic burden on our country, on Australian workers and on Australian industry as a consequence of the government’s position.

I make the point that the same company that closed its wind turbine assembly plant in Northern Tasmania has subsequently announced that its Portland factory will close in December 2007 because further investment cannot be viable in current market conditions. The reason for the unviability is that the Howard government has failed to establish a market in which these companies can operate and to provide the necessary services for reducing emissions and providing energy at the same time that many other countries—many of our competitor economies—have begun to do so. There is no market here for
these companies to undertake these activities. As a consequence, companies are stranded and stuck, and the investment goes offshore and the jobs go with it.

A very strong business case lies in Australia accessing the Kyoto protocol. There are lost opportunities associated with emissions reduction projects; there are lost opportunities associated with the clean development mechanisms in other countries. The fact is that, under the Howard government, Australia and Australian companies continue to miss out. There is the opportunity for this nation to become a regional leader by establishing low-carbon projects in Australia that can generate carbon credits to other countries. There is an opportunity for this nation to become a regional hub for a global power carbon market—which is what many Australian businesses would like to see. Unfortunately, all of these opportunities have gone begging as a consequence of the Howard government’s stubbornness in respect of climate change and its refusal to ratify the Kyoto protocol. I move the second reading amendment standing in my name:

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

(a) notes that:

(i) the bill was hastily drafted without any genuine consultation with stakeholders, including state governments, industry groups and environment groups,

(ii) the bill was hastily drafted and introduced so as to prevent due public and parliamentary scrutiny, and

(iii) significant Government amendments were circulated less than 24 hours before the second reading debate so as to prevent due public and parliamentary scrutiny;

(b) is concerned that the bill does not reflect the urgent need to establish an effective emissions trading scheme; and

(c) therefore demands that the Government amend the legislation according to the unanimous recommendations in the report of the inquiry into the bill by the Environment, Communications, Information Technology and the Arts Committee”.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.18 pm)—I too rise to speak on the National Greenhouse and Energy Reporting Bill 2007. The Democrats support the objectives of the bill, which are to centralise and standardise the reporting requirements, to reduce the burden and the bureaucracy associated with reporting and to make public greenhouse and energy data available while maintaining confidentiality.

There is a crucial need for data and reporting on both greenhouse gas emissions and energy consumption in order to effectively inform policy development and energy market reform. This data is essential for the evaluation of government policies and programs and for the government to be able to measure and assess the performance of policies and evaluate if these policies are achieving the objective of a reduction in greenhouse gas emissions.

The initiative is long overdue. The government is very late to the game of collecting data on greenhouse gas emissions and energy consumption. The state governments, on the other hand, already require energy consumption reporting in order to administer their own greenhouse and energy programs. The initiatives of the state and local governments outreach the climate change policy initiatives of the federal government. Some of those state initiatives include: the Victorian renewable energy target, the Victorian energy efficiency target, the New South Wales Greenhouse Gas Abatement Scheme and the South
Australian feed-in tariff. State initiatives would not be required if the Australian government were taking genuine action on climate change.

The government’s climate change policy is not informed by accurate data. It is also not informed by economic modelling and, therefore, is not strategic. A recent survey undertaken by the Australian Industry Group revealed that only one out of 10 Australian companies knew the volume of greenhouse gas emissions they were producing and felt they knew enough about climate change to manage the risks to their businesses. Only a quarter of these companies have tried to save water. The companies surveyed admitted that they were poorly informed about how to cut their greenhouse gas emissions or how climate change might affect their business. Seventy per cent of companies surveyed believed they had a responsibility to reduce their greenhouse pollution and were willing to use their own money and to increase the cost to their business. As the Chief Executive of the Australian Industry Group, Ms Heather Ridout, points out, there is a need for industry and the wider community to understand their obligations to be socially responsible, but the risks to industry competitiveness must also be managed.

Australia is one of the biggest wasters of energy in the world. Our demand for electricity is growing unchecked by almost 2½ per cent a year. By 2010 greenhouse emissions from the stationary energy sector are projected to be 153 per cent above 1990 levels. Australia’s energy consumption is projected to double by 2050. There is an urgent need for an annual investment of $6 billion in infrastructure—money that would be better spent in other areas if we achieved even modest levels of energy efficiency and reductions in energy use. Energy efficiency can make deep and cost-effective cuts in our fossil fuel use and our greenhouse gas emissions, and it could reduce the high levels of energy waste.

If our energy demand continues to grow unchecked then renewable energy and clean energy development chase a receding target. A one per cent energy efficiency target reduces the need for eight coal fired power stations and could permanently defer the need for nuclear power stations.

The European Union have just set a target of 20 per cent energy efficiency by 2020. If Australia adopted this achievable target, we could permanently defer the need for any nuclear power stations, reduce our greenhouse emissions, pay less on our electricity bills and cost-effectively transfer to renewable energy. Not only that but energy efficiency increases jobs, lowers inflation and improves our economy.

The current energy market framework does not serve this outcome. We still have a 1990s market and an energy market that rewards ever-increasing energy demand and does not address waste. We must remove barriers to and allow participation of energy efficiency and distributed generation in the energy market. Energy efficiency is a clear front-line climate change policy and the lowest cost greenhouse gas abatement action available, but not even the simplest actions and policies are being implemented by the government.

There is a clear market failure with regard to greenhouse action, energy efficiency and renewable energy. The state governments and even the environment groups are well ahead of this government in undertaking cost-benefit economic modelling for greenhouse action. This bill represents a step in the right direction, and the Democrats look forward to the data being used to inform government policy so they can at least catch up with the efforts of the states on greenhouse action.
Senator MILNE (Tasmania) (8.24 pm)—I rise this evening to make some remarks with regard to the National Greenhouse and Energy Reporting Bill 2007, legislation intended to establish a national framework for reporting greenhouse gas emissions and certain abatement actions as well as energy consumption and production by corporations from the 2008-09 financial year. In rising to speak to this bill, I note that the Australian Greenhouse Office in 1998-99 went to great lengths to develop a framework for emissions trading, and it was shelved. Here we are all these years later, at the end of possibly the last sitting day of this government, and legislation is brought into the chamber to set up arrangements to actually measure greenhouse gases. I think that gives some indication of where we have been under the Howard government in relation to climate change.

Before I go to the substance of my remarks, I put the government on notice that there is one aspect of this legislation on which I would really appreciate an explanation. Since we are unlikely to go into committee, I give notice now so that, hopefully, when the government representative, Senator Colbeck, responds, he might be able to give some explanation in relation to it. It is with regard to clause 27(1A), which states:

... the Greenhouse and Energy Data Officer may refuse to disclose information under this section if satisfied that there would not be adequate security measures in place in relation to the confidentiality of the information.

Given that there are already secrecy provisions that govern these arrangements, I seek an explanation for that provision.

We should all remember that the Kyoto protocol was signed in 1997. Here we are a decade later and we are just beginning the process in Australia that the rest of the world has been engaged in for a decade. When Minister Robert Hill came home from Kyoto a decade ago, he boasted to the Australian community about what a fantastic job he had done in browbeating the rest of the world in achieving for Australia an increase in greenhouse gases on 1990 levels when the rest of the developed world all accepted cuts. The reason the developed world finally accepted, in the middle of the night, Australia wearing them down was that the rest of the world wanted Australia in the tent. They decided to compromise and allow Australia an increase.

In subsequent years, Australia continued to frustrate at almost all the United Nations Framework Convention on Climate Change and Kyoto protocol meetings. Of course, it was not until 2005 that the protocol was ratified. Australia took so little interest in this process that even in this last week the Minister representing the Prime Minister in this chamber told the Australian people that China had still not ratified the Kyoto protocol. Let me inform the government that China not only signed but ratified some time ago. China has been the recipient of substantial funding under the clean development mechanism.

Let me go back. When Kyoto was signed in 1997, there were three financial mechanisms under the protocol to be worked through: firstly, the clean development mechanism—investment from developed countries to developing countries; secondly, joint implementation—investment from developed to developed countries; and, thirdly, emissions trading. Over this last decade that has been worked through substantially. The Europeans developed their pan-European trading system and they made some serious errors. One of the errors was to trust the corporate sector to appropriately calculate the level of their emissions. What occurred was that the corporate sector inflated their emissions in order to come in underneath the free permits that they had been given and therefore trade in the market in what was essentially a false carbon saving.
We learnt from the emissions trading system in Europe that it is desperately important, if you are going to have an emissions trading system, for that system to have integrity and the integrity has to come from the measurements that you put in place. That is why the legislation here is so important and that is why it disappoints me, because we have to deal with greenhouse gas emissions and we have to deal with it urgently. The science tells us we have to deal with it urgently. Only this week the Antarctic scientists have told us that the ice melts both in the Antarctic and the Arctic are going much faster than any scientist anticipated. They are telling us that the IPCC report, for example, failed to incorporate ice melt and that the likely sea level rise is going to be much higher than the 59 centimetres predicted in the IPCC reports. So we know that we are faced with a catastrophe and I do not think the government believes that. And, even if it has now come around to believing that climate change is real, I do not get a sense from the government that there is any urgency. And urgency is the key thing because the scientists are telling us that global emissions have to peak by 2015 and then reduce. And there is no suggestion that is going to occur, because under this legislation emissions trading does not get up and running until 2012. That is way too late. The Europeans have been into it for a long time. Several states in the north-east of the United States have set up their own emissions trading system. They are all working together to try to make sure that they are consistent so that, when we get to a global emissions trading system, there will be an easy knit of those systems.

Australia is now in a position, having learnt from the experience of the Europeans, to do something comprehensive. But emissions trading by itself is insufficient to address greenhouse gas reductions, and that is the other problem with this legislation—that is, it is in isolation from a comprehensive policy framework. We have had that already. Emissions trading will not drive renewable energy rollout in Australia. You not only have to have a price on carbon; you also need a mandatory renewable energy target high enough to secure investment. You also need feed-in laws that give you a guarantee that the energy utilities will purchase renewable energy at a fixed price for a fixed period of time. You also need to look at this issue of land use, land use change and forestry. Again, we saw an example of that today where the government has rushed ahead with tax laws. Unfortunately they are not coming into this place. Again, this is the contempt that the Howard government has for the Senate. The House of Representatives have gone home because they know that there is a government majority in this place and it does not matter what we might want to do to amend legislation; they have got the numbers to block any amendments and so they have more or less thumbed their noses at the Senate and gone home. I hope that the community realises that having a majority in both houses is a very bad idea for good legislation, because you do not get it if you do not allow scrutiny of legislation through committees and then through amendments.

I now return to the issue that is in front of us with this particular bill. As I indicated in relation to that tax bill, the idea of addressing land use, land use change and forestry by bringing in a tax deduction for so-called carbon sinks without requiring permanence of those carbon sinks, without putting a time frame on it, is just a pork barrel for the plantation sector. Indeed, a plantation sector on this occasion will come from the cement industry, the coal fired power stations and the aluminium sector. As if it is not bad enough that we have the managed investment schemes out there distorting the market, we will now have the cashed-up energy sector
investing in the establishment of trees without any hydrological analysis, without any requirement that those plantations be in any way biodiverse and without any requirement that they stay in the ground for any length of time. If you have a situation where you call a tree-planting a sink and you can log it at any time, it makes absolutely no sense and makes zero contribution to reducing greenhouse gas emissions. What you need is a comprehensive, integrated framework of policy which looks at emissions trading, which looks at land use, land use change and forestry and how that will intersect with food security and how that intersects with ecological integrity and ecosystem maintenance in terms of water. You also have to look at the financial mechanisms that will drive the rollout of renewables and you need regulation that will set in place national energy efficiency targets and energy efficiency standards for appliances and buildings and so on.

With this particular bill, the government made a huge mistake by squandering the goodwill of the states. The states have gone ahead and developed a lot of work on emissions measurement and they were going to go ahead with a national emissions trading system in the absence of the Commonwealth doing so. They agreed at a COAG meeting to establish a mandatory national greenhouse gas emissions and energy reporting system. They were prepared to give up some of their powers on the understanding that the Commonwealth would consult with them adequately and that there would be an agreed system. The minute the Commonwealth got that, the Prime Minister announced his emissions trading task force and, without any further ado or consultation with the states, the Commonwealth just drew up its legislation and made a total mess of it.

I am delighted that there was at least a one-day hearing where Senator Wortley from the Labor Party and I were able to sit all day and question everybody who came, and I am grateful to all of the representatives from state governments who came. Clearly there was an overwhelming case that clause 5 of this particular legislation had to go, because effectively it was overriding the states and undermining their ability to keep going with the good initiatives they had in place and the need for states to continue to collect appropriate data. I am pleased to say that as a result of that Senate inquiry evidence, which was so overwhelming, the government amended its original bill and has at least now recognised that it is not going to be able to override the states in the way that it wanted to. Also, the bill as it was previously drafted said that the federal government officer who was overseeing this only ‘may disclose’ information to the states and not ‘must disclose’.

Again, after considerable evidence, I am pleased that the federal government now understands that they must disclose information to the states. The states wanted reassurance that, if there was a dispute about information being freed up for them, there would be an appeal mechanism. I am glad to see that that has also been incorporated. But the issue that I would really like an explanation on—and it is important for the states that this is on the record—is what is meant by the energy data officer’s capacity to refuse to disclose information if satisfied that there would not be adequate ‘security measures in relation to the confidentiality of the information’? It is really important that we get an explanation from the government in this second reading debate as to what that means. Otherwise, the comfort that the government has given the states by replacing ‘may’ with ‘must’ will be undermined by that particular clause. I would appreciate knowing from the government what is actually meant by that.

Even though I welcome those changes, one of the real issues that remain with this
bill is that the essential elements of a reporting scheme include comprehensive coverage of emitters, data at both corporate and facility level, reporting on a range of relevant activities, transparent and objective processes for calculating emissions and public accountability of the scheme. That is not included here because the government has given in to the Australian Industry Greenhouse Network, which desperately does not want public disclosure at a facility level. We now have a bill in which, although the data will be collected at the facility level, there is no requirement to disclose that data to the public. There are only aggregated totals across company levels and that is not going to give the public what it wants in terms of being able to hold companies to account. That is a mistake. There will now be no transparency for the public to know how emission permits are allocated. Even though there is an overwhelming body of evidence that all pollution permits should be auctioned, there is no doubt that a number of them will be allocated for free.

Unless you can have absolute transparent reporting at both facility and aggregate level, how can the community have any confidence in the integrity of any scheme? I think that is a real mistake. The thresholds are too high. They should have been much more stringent. Also, there is no need for the phase-in over three years, as is the case with this bill. We should be able to move much faster than that, and that is why I say that I do not think the government understands the urgency of dealing with climate change. The government does not understand that we are facing dangerous climate change and, in the face of that, we have to act quickly. We cannot sit around and wait for several more years to get this underway.

Our only insurance is if there is a change of government. Hopefully, we will then be able to come back and amend this so that we can put it in the context of a holistic set of measures on climate change. That will hopefully include land use, land use change and forestry. Hopefully, it will include the big emitters and be much more comprehensive because the thresholds will be different. Hopefully, we will also get much more urgency and transparency into the debate. If you do not have that transparency then you will end up with no public confidence in the system, as is the currently case.

The community’s right to know is not part of this bill. As I indicated, information at facility level is part of the community’s right to know. Only total gross greenhouse gas emissions and energy produced and consumed is made public. Australians will be very angry with a reporting system that allows for the information to be reported but to be then kept secret from them. The other issue is that we wanted to make sure that external auditors were accredited to avoid conflicts of interest, and the same applies to the greenhouse and energy data officer. There must not be a conflict of interest in any shape or form, because those positions are absolutely critical. Also, in order to get transparency and the appropriate compliance and enforcement, it is critical that there be opportunity for random audits and that the auditors be accredited so that we do not effectively have self-regulation. Self-regulation has undermined quality control in so many industries across Australia and, because it has been self-regulated for so long, the community has very little confidence in the land use, land use change and forestry sectors.

I finish by making the point that I do not think that the government fully understands what a mistake it has made in squandering the goodwill of the states. To get an effective emissions trading scheme you have to have cooperation at all levels of government and confidence at all levels of government that there is going to be a collaborative approach.
and a fair system. The states most certainly felt that they had been done over and, to use the words of one of the states, knifed by the Commonwealth. That is not the way to begin to set up the basis of what will be an extremely significant financial mechanism to address climate change.

I welcome the changes that the government has made. I am sorry that the transparency and the facility level is not there, and I would appreciate an explanation from the minister about what is meant by that the amendment that I referred to earlier. I hope that will give some additional comfort to the states that this is not a backdoor means of restricting information to them.

Senator BIRMINGHAM (South Australia) (8.43 pm)—I rise to support the National Greenhouse and Energy Reporting Bill 2007 and seek leave to incorporate my speech.

Leave granted.

The speech read as follows—

I welcome the presentation of the National Greenhouse and Energy Reporting Bill 2007 and am pleased to endorse it to the Senate. This Bill represents the latest in a long history of sensible, well planned and strategic steps taken by the Howard Government to address issues of climate change. It stands in stark contrast to the shallow approach of the Labor Opposition and the hyperbolic approach of the minor parties in this place.

The Liberal Party enjoys a proud history of environmental achievement, dating from our protection of the Antarctic in 1960, through the creation of Australia’s first Office of the Environment and appointment of the first ever Environment Minister. Liberal governments continued to lead on environmental measures with the protection of significant areas such as the Great Barrier Reef and Fraser Island, the banning of whaling and regulation of dumping at sea.

Upon election the Howard Government again led with the establishment of the Natural Heritage Trust, which has grown under this government to provide $5.1 billion for the protection and rehabilitation of Australia’s natural environment. This initiative was followed by enactment of the strongest environmental protection laws this country has ever seen, with passage of the Environment Protection and Biodiversity Conservation Act 1999.

These are just some of our many environmental achievements while in office. The environmental leadership of the Howard Government owes much to the stewardship of former Senator Robert Hill, who served as Minister for the Environment from our election in March 1996 through to November 2001. I had the pleasure of working for Robert at the time of the 1996 election and, with the debate of another piece of significant environmental legislation introduced by a Liberal Government, I pay tribute to the role Robert played in our environmental achievements and particularly in the pursuit of measures to address climate change.

Contrary to the comments made by other parties in this place and elsewhere, the Howard Government has taken climate change issues seriously and acted upon them from the very moment of our election in 1996. In 1997 the Prime Minister announced a $180 million package to reduce greenhouse gas emissions, followed in 1998 by the establishment of the Australian Greenhouse Office and a further $555 million package to establish world leading systems for measuring and monitoring greenhouse gas emissions as well as minimum energy performance standards for a range of appliances and equipment.

In 2000 the Government passed the Renewable Energy (Electricity) Act 2000, which established the Mandatory Renewable Energy Target Scheme and has helped to drive the growth of renewable energy sources across Australia.

All up, this government has invested $3.4 billion to date in measures to tackle climate change and, unlike many of those countries who did ratify the Kyoto Protocol, we have enjoyed success in implementing change that puts us on track to meet our agreed emissions targets.

This is a government that has taken climate change seriously, invested in it, acted upon it and achieved results. It is a proud record that has been achieved while maintaining strong economic
growth and ensuring all actions taken are in the interests of all Australians.

We are now taking new steps to implement the latest in our planned measures to tackle climate change—the introduction of an emissions trading scheme.

In my short time as a member of this parliament I am proud to have been part of a government that has proposed two significant environmental measures. The Water Act 2007, which rightly seized federal control over aspects of the management of the Murray-Darling Basin and is part of the largest investment in our river systems in Australian history, and of course the Bill before us today, which will make an emissions trading scheme possible.

I acknowledge the work of the current Minister for the Environment, Malcolm Turnbull, in pursuing these measures. This Bill, in forming our first step towards emissions trading, is a vital component of the Howard Government’s multi-faceted approach to tackling climate change. It stands as part of our initiatives to reduce emissions across the Australian economy and encourage greater efficiency, while also working with the international community towards truly global approaches to addressing climate change. The approach of this government seeks the involvement of all countries, so as to ensure meaningful global emissions reductions, and took a major step forward thanks to the Prime Minister’s leadership at the recent APEC meeting.

This Bill will establish a world leading emissions reporting scheme that will cover between 70 and 75 per cent of total emissions in Australia, or almost 100 per cent of industrial emissions and mining emissions. The coverage of this scheme is greatly extended by the incorporation of transport and other fuels as well as the inclusion of all six classes of gases identified by the Kyoto Protocol, and will see some 700 Australian companies having to report on their emissions.

Minister Turnbull outlined the importance of this legislation to the establishment of an emissions trading system in his second reading speech, stating that:

“Robust data reported under this bill will form the basis of emissions liabilities under emissions trading, and will inform decision making during the establishment of the emissions trading system, including with regard to permit allocation and incentives for early abatement action. The bill will establish a single, national framework for reporting greenhouse gas emissions and abatement actions by corporations from 1 July 2008.”

Ultimately companies emitting more than 50 kilotones of carbon dioxide equivalent, producing more than 200 terajoules of energy or consuming more than 200 terajoules of energy will be required to report their emissions to a new statutory officer, the Greenhouse and Energy Data Officer.

This system will give Australia a uniform, national reporting framework that should facilitate the removal of duplicative arrangements developed by many state and territory governments.

The Senate inquiry into this Bill heard and accepted concerns from State Governments about their access to data and continued capacity to collect data themselves as a result of the initial draft of this Bill. I understand the Government has accepted these concerns and the legislation is being amended accordingly, but I would urge the States to, so far as is practical, utilise the data that will be obtained under this Bill and not impose additional costs on businesses by duplicating these reporting requirements.

The arrangements put in place under this legislation will begin to give effect to the recommendations of the Prime Ministerial Task Group on Emissions Trading, which has ensured the government offers clear policies to reduce emissions into the future. As part of this, the Government will take scientific and economic advice to establish a realistic reductions target next year, which will guide the operation of our trading scheme. By comparison, Labor claims to have a target, established by media release rather than science or economics, and further offers no plans to achieve its target. The Howard Government has the policies to achieve change and will ensure the targets to which Australia commits are achievable and in the interests of all Australians.

I welcome this Bill and the establishment of a world class emissions trading scheme in Australia. I am sure that such a scheme will see the market respond and adapt as needed, in order that emissions be reduced to the target levels that will
be set. This market driven response highlights the economic significance of addressing climate change. It will require careful economic management, which is why the Howard Government is best placed to continue managing this important issue.

The market may respond with clean coal options, such as a carbon sink like that proposed by great South Australian company Santos in the Cooper Basin. This project, to capture and safely store carbon dioxide deep underground as the Cooper Basin oil and gas reservoirs reach the end of their useful life, has the potential to store up to 20 million tonnes of carbon dioxide per annum and up to one billion tonnes over its lifetime. This is one of the most exciting projects to be proposed in addressing greenhouse emissions and I truly hope to see it come to fruition.

Over time the market for carbon emissions will no doubt see further development of non-greenhouse gas polluting energy sources. Solar, wind or geothermal power will play a role, with the significant investment in these technologies already taking place. It may also be the case that nuclear power, which stands as the most reliable currently known base load generating alternative to coal fired power stations, could also play a role. If this proves to be economically and environmentally feasible I hope that petty, parochial politics does not stand in the way of such a development.

The challenge for addressing climate change is great. But in Australia we are already accepting our share of the global responsibility to reduce emissions and are acting to ensure such emissions are further reduced into the future. We are also acting to ensure the global response is equally as effective, otherwise our efforts will count for naught. This Bill helps to position Australia to maintain its positive, leadership role in addressing climate change. I commend it to the Senate.

Senator GEORGE CAMPBELL (New South Wales) (8.44 pm)—I seek leave to incorporate Senator Wortley’s speech.

Leave granted.

Senator WORTLEY (South Australia) (8.44 pm)—The incorporated speech read as follows—

I rise to speak on the National Greenhouse and Energy Reporting Bill 2007.

This Bill is intended to provide a single conduit for reporting by corporations of their greenhouse gas emissions and abatement action from July 1, 2008.

It has been introduced as the first step towards the establishment of an emissions trading scheme. With that objective in mind, the concept of this legislation is not difficult to support. Over the past few years, the states have pushed for a national greenhouse reporting scheme at COAG and industry groups have lobbied for various limits, conditions and exclusions to these efforts.

This Bill was foreshadowed by the Government earlier this year, after the announcement of the intent to establish a national emissions trading scheme.

As would be expected the major stakeholders expected they would be consulted during the drafting stage of the legislation.

Therefore, it was a major disappointment—and to the detriment of the document before us—that on this occasion this did not occur.

In addition to this lack of consultation, the Bill was hastily drafted and introduced into the Parliament, meaning there wasn’t time for full public and parliamentary scrutiny of its contents.

Introduced into the House of Representatives on August 15 of this year, the legislation includes the following aspects:

• Mandatory registration of controlling corporations with the national system,
• Requirements for registered corporations to keep records and provide reports,
• Requirements concerning the security and disclosure of information under the scheme,
• Compliance and enforcement arrangements, Administration arrangements (including the establishment of the position of Greenhouse and Energy Data Officer), and
• Compliance monitoring arrangements.

By the 2010-2011 financial year the provisions of the legislation would apply to approximately 700
companies which annually put out more than 50 kilotonnes of greenhouse emissions each.

However, the slow-start timeframe and the reporting thresholds that this Bill establishes may be insufficient to meet the reporting needs of an emissions trading scheme slated to start in 2010.

A major and recurring concern raised by the states about this legislation is that it has not accurately translated the spirit of cooperation, collaboration and consultation from the COAG talks on the subject.

Some of its clauses and provisions were an unwelcome surprise to the states, who had expected a different outcome when it came down to specifics.

Across a wider range of parties, other concerns voiced about the original Bill included that the proposed new Federal Government powers over state legislation and policies it provided for, looked to be on the excessive side—even harmful to the very essence of the legislation.

This most troublesome clause has been amended by the government, however this and other significant amendments were circulated less than 24 hours before the second reading debate so as to prevent due public and parliamentary scrutiny.

Indeed, overall there have not been appropriate timeframes for analysis of the Bill by those it will affect and those charged with bringing it into law.

It is a substantial document—it contains more than 50 pages—but was introduced into parliament with at short notice at the end of the last sitting week in August.

It’s no surprise, considering this, that potential “unintended consequences” of the Bill have been identified.

These include increasing the compliance burden on industry.

One example of this would be the legal costs likely to be incurred as stakeholders grapple with the ambiguities arising from the structure of the Bill.

There also may still be a risk this Bill could undermine current and future state-based programs which have been designed to tackle the challenge presented by climate change.

However, despite its flaws—and I will canvass these in some more detail later on—Labor supports this Bill because we believe in the general aim of the legislation.

Our country urgently needs a workable climate change strategy.

Labor is committed to the implementation of an emissions trading scheme.

Those on our side of the chamber see it as the most sensible and practical means of dealing with greenhouse gas emissions.

The more effectively we can monitor and record emissions data, the more effectively we can reduce and offset emissions.

So the heart of this legislation is in the right place.

However, because it has been put together in haste, without cursory—let alone comprehensive—consultation with the relevant parties, it has a number of shortcomings.

The government also obviously has had both eyes on the mirror while drafting it.

In other words, the Government has been more concerned about being seen to be doing something... anything... than worrying about getting the finer details right when it came to putting together this Bill.

So rather than reducing the uncertainty and ambiguity for those in industry who are trying to do the right thing when it comes to emissions, the document’s current form has the potential to increase doubt.

Still, even just having legislation on this issue before the parliament is an important first step towards real progress.

I was a member of the Standing Committee on Environment, Communications, Information Technology and the Arts recently charged with the examination of this Bill.

The resultant report accurately conveys that the state government departments, industry representatives, environmental and conservation organisations, and other groups and individuals who furnished submissions were supportive of the Bill’s intent.
However, each of these groups articulated significant and specific concerns as to its provisions and likely effect.

These concerns were highlighted during the Committee’s public hearing on September 3, 2007.

The inquiry heard that the Commonwealth Greenhouse Reporting Bill was put together without due consultation over July and August this year.

The Department even admitted it had not consulted with any of the stakeholders during the drafting of the Bill.

However, it did cite previous years’ discussions with various parties on the subject and referred to previous COAG outcomes and agreements during the hearing.

Although the Bill itself fails to reflect accurately the outcome of these discussions.

The Australian Industry Greenhouse Network, which represents the major Australian emitters, testified that the government did not consult with the network when drafting this Bill.

The state governments, likewise, were not consulted on the Bill.

Expert witnesses, state governments, industry and environmental groups agreed that while the objective of the legislation was sound and necessary to underpin emissions trading, the Bill before Parliament had various problems.

The inquiry heard that its introduction would deliver unintended consequences such as significantly raising compliance costs and producing a fractured system that may not include all major emitters and therefore might oblige companies to seek judicial review.

Other unintended results likely would include undermining state laws on climate change that are working; and cutting across other state laws that are not even connected to greenhouse emissions issues.

Major emitters testified that the Bill was not consistent with previous positions or agreements made between the states and the Howard Government at COAG.

It also was pointed out that the proposed Act would leave little room for future co-operative efforts or negotiation.

Overall, the major emitters supported the Bill in its current form but recommended numerous amendments to improve it.

Environmental groups testified that the reporting thresholds were too high and that more information should be publicly disclosed than currently proposed under the legislation.

The Investor Group on Climate Change and environmental groups believed the time-frame was too slow—which is consistent with Labor’s position of introducing emissions trading as soon as practicable.

The powers that the original Bill afforded the Commonwealth potentially could have undermined current and future state climate and pollution programs.

Legal testimony from Professor George Williams from the University of New South Wales’s Faculty of Law suggested simply removing the clause—clause 5—that provided these unnecessary powers.

If the clause—which he deemed to be “overbroad”—couldn’t be scrapped, he called for it to be amended to be specific rather than all-encompassing.

“It is hard to see how good policy could require the breadth of section 5,” Professor Williams says in his submission to the Committee.

“I am concerned that by denying an effective operation to state and territory laws providing for reporting and disclosure this will prevent those jurisdictions from enacting carbon trading or other schemes.

“Section 5 may strike at the heart of such schemes and prevent them (from) being put into place,” he goes on to say.

While backing the simplification and rationalisation of greenhouse reporting, the state governments recommended significant amendments both via submissions and at the hearing.

The submission from my home state of South Australia begins by stating that its government is—and I quote—“extremely supportive of the
streamlining of greenhouse gas and energy reporting”.

However, like so many other groups, its view on clause 5 was unequivocal.

The SA submission says: “... the Commonwealth has taken a very heavy-handed approach that could have broad ramifications for an effective response to climate change. It undermines the spirit of the COAG initiative.”

That clause since has been amended by the government.

Of significant concern to both industry and the conservation groups which gave evidence was that the Bill leaves many of the practical measures that would underpin it to be determined at a later date by regulation and ministerial decree.

Indeed, the majority of submissions to the inquiry expressed concern that too much was left to regulation, believing instead that such provisions should be dealt with in the actual legislation to provide greater clarity and the chance of certainty.

There is concern that the Greenhouse Reporting Bill is necessary legislation but that it may yet have the potential to slow Australian action on climate change by undermining—at least in the short term—state initiatives.

All state governments represented at the hearing perceived the original clause 5 as unreasonable, leaving their responsibility to implement their own legislation, policy and locally based climate change programs to the discretion, essentially, of a Commonwealth government minister.

A significant number of submissions sought the deletion of the clause entirely; while Professor Williams, however, added that an alternative formulation of the clause would exclude state and territory laws only if and when they fell within the ambit of the regulations to be made under the Bill—that is, if they duplicate reporting made under the proposed scheme.

Labor members of the committee agreed with the committee’s recommendation that Clause 5 be redrafted to this effect.

Another major issue is that the thresholds for greenhouse and energy reporting are, in the view of Labor members and some other witnesses, loose in the Bill.

One submission noted that under the proposed threshold, only approximately 20% of the facilities which currently report under the National Pollutant Inventory would be required to report under the proposed Act.

Only 20% of those businesses who now report their emissions!

We are concerned, too, that it is proposed the maintenance and dissemination of information will, at the basic level of public disclosure, comprise a single aggregated total of emissions in carbon dioxide minus energy.

Meanwhile, only total energy produced and consumed will be made available for public disclosure.

It is the view of Labor members of the Committee that emissions and energy data should be disclosed at the facility level.

So it would seem the provisions of this Bill support disguise over disclosure.

Labor believes that state access to information must be guaranteed, not subject to the discretion of the Greenhouse and Energy Data Officer - as it would have been under the original Bill.

This issue is particularly relevant in light of the readiness of the states and territories to participate in a streamlined national scheme and the need for cooperation in greenhouse reporting between all jurisdictions.

Therefore, Labor supported the Committee’s second recommendation—that Subclauses 27(1) and 27(2) (c) be amended to provide for reporting information to be given to the state governments—and welcomes the amendment to this end.

Overall, this legislation must consider its impact—on all stakeholders—into the future.

In the absence of Federal Government leadership on climate change, state governments have led the way and their efforts should be supported rather than handicapped.

In concluding, I feel compelled to draw to the attention of Senators the fact that yet again, as has so often been the case in recent months if not years, Labor Senators have been obliged to come to the conclusion that submitting organisations
were not allowed sufficient time to formulate and furnish their views on the proposed provisions.
In this present instance, all but three of the more than 30 submissions were received after the closing date.
Interested parties simply weren’t given enough time to give their views on the legislation.
Yet again, the Committee was not afforded sufficient time to adequately review the submissions nor to adequately inquire into the likely impact of the proposed measures.
Then, when amendments were put forward by the government in the face of overwhelming concerns by the majority of stakeholders, the House had less than 24 hours to review them.
This unseemly haste in dealing with a matter of significant complexity and acute importance only highlights the Government’s fixation on ramming through its Bills before they can be properly and comprehensively examined.
Surely this election-inspired haste, after eleven years of posturing, denial and delay, demonstrates how tenuous and self-serving this Government’s commitment to a workable solution to the climate change imperative really is.
We know members of the Howard-Costello government have either lost touch with Australian families—or never been in touch with them.
While many people across this great but fragile continent are concerned by, and willing to do anything they can to help curb climate change, they rightly have little faith in Canberra’s Coalition to lead the way.
And why would the Government be at the forefront on this issue when some of those that comprise it don’t even believe climate change is an issue, let alone a crisis?
Indeed, as we have heard repeatedly in this chamber and the house, a number on the Government’s benches still refuse to accept the science about the human impact on global warming and climate change.
In contrast to the Howard Government’s sceptics and fencesitters, Labor ranks are brimming with true believers.
We believe the issue of greenhouse gas emissions is a serious one.
We believe something needs to be done now to stem the harm being done to our planet.
We believe we have the policies and people to deliver on this and other issues which matter to the Australian people.
The sooner we act on emissions trading, the longer the economy will have to adjust to new market signals, and the better placed we’ll be to prosper in new and growing international carbon markets.
Therefore, because of its intent, Labor supports this Bill.
But as ever, we emphasise the importance of realising that intent through a well thought-out, consultative legislative framework, rather than a hastily drafted, lone-handed document.

Senator ELLISON (Western Australia—Minister for Human Services) (8.44 pm)—I table the revised explanatory memorandum for the National Greenhouse and Energy Reporting Bill 2007. To answer Senator Milne’s question in relation to the disclosure of information to the states and territories: this is not intended as a device to restrict information to the states and territories. The government take very seriously its responsibility to protect the very detailed data it is now requiring Australian companies to report. This will include data that could convey detailed information about the production activities of a company, the technology it uses, the processes it uses and the position of the company in relation to emissions generally. The government’s intention is to make all of this information, including commercial-in-confidence information, available to the state and territory governments. That is the intention. But what we do intend is that it be protected sufficiently. And that is what this bill is about. The government does have a responsibility to ensure that adequate safeguards are in place prior to handing that information over to the states and territories. So I can assure Senator Milne that this is not a device to restrict information to the state
and territory governments; it is to make sure it is provided but in a secure environment, bearing in mind that this could be quite sensitive information.

My remaining remarks are by way of summation of the debate and I seek leave to have them incorporated in Hansard.

Leave granted.

The document read as follows—

Question negatived.

Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Human Services) (8.47 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

JUDGES’ PENSIONS AMENDMENT BILL 2007

FEDERAL MAGISTRATES AMENDMENT (DISABILITY AND DEATH BENEFITS) BILL 2007

Second Reading

Debate on Judges’ Pensions Amendment Bill 2007 resumed from 14 August, on motion by Senator Abetz:

That this bill be now read a second time.

Debate on Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007 resumed from 10 September, on motion by Senator Brandis:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (8.48 pm)—I rise to speak on the Judges’ Pensions Amendment Bill 2007 and the Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007. Labor supports the contents of these bills. They largely contain technical amendments to the formula by which the superannuation of former federal judges is payable. Currently, upon the death or retirement of a federal judge a formula operates to reduce a judge’s pension by averaging the rate of surcharge that applies to the judge in each full financial year of his or her service. The Judges’ Pensions Amendment Bill makes four technical amendments to the current scheme. Firstly, it amends the reduction for the years 2003-04 and 2004-05 which, according to the explanatory memorandum, brings the formula into line with the maximum surcharge for those years. Secondly, the bill amends the formula regarding invalidity pensions to take into account the abolition of the surcharge from 1 July 2005. Thirdly, the bill allows that the spouse of a judge, who dies in office, to choose between having the judge’s pension reduced under the formula or a commutation scheme. Fourthly, the bill allows the trustee of the Judges Pension Scheme to draw on an existing special appropriation for the payment of the judges’ surcharge debts to the ATO as they retire.

The Federal Magistrates Amendment (Disability and Death Benefits) Bill sets out to enact a pension scheme for magistrates who are no longer capable, for medical reasons, of doing their job. This will allow magistrates who have served on the bench to retire because of ill health and receive a payment. In effect, it will help to make their position more consistent with other federal judges. Given the difficulty in removing judges on the grounds of poor health, this is a sensible option. It removes the incentive for magistrates to continue on in their position after ill health may make it untenable. In
so doing, it will help maintain the exceptionally high standard that currently exists in the Australian federal judiciary.

At the moment, federal magistrates operate under a scheme which is separate from the pension scheme that exists for other judicial officers which comes under the Judges’ Pension Act 1968. The federal magistrates receive a superannuation fund or retirement savings account to which the Commonwealth contributes. This means that if a federal magistrate retires before the age of 65 then they are not eligible to receive a pension. This creates an incentive to continue to work even if illness or disability prevents them from effectively performing their job. The proposed legislation will alter that and allow the magistrate who retires for those reasons to have access to a continued source of income via the judicial pension scheme. Specifically, it will allow a magistrate who retires to, post retirement, request the Attorney-General to certify that the retirement is due to permanent disability or infirmity. This is modelled on the process that occurs for other judges under the Judges’ Pensions Act. A refusal to certify would be appealable to the Administrative Appeals Tribunal. Where the request is granted the magistrate in question would be eligible to receive a pension at 60 per cent of the federal magistrate’s salary until they reach the age of 65. They would continue to be eligible to receive a superannuation contribution from the Commonwealth until that age as well.

Turning to the more troublesome end, if there is a death benefit scheme the bill updates the provisions for magistrates’ death benefits, bringing them closer into line with those of other judges. It will allow lump sums for death benefits to be paid to eligible spouses and eligible children if a magistrate dies before the age of 65. The benefits would be equal to the superannuation contribution that the judge would have received had they lived to that age. Magistrates who retire on the disability pension scheme inserted by this bill would also be eligible for death benefits.

For the remainder of my contribution this evening, I will refer primarily to the Judges’ Pensions Amendment Bill. The comments I have are equally applicable, of course, to both this bill and the federal magistrates bill, but of course the Judges’ Pensions Amendment Bill will serve as a single example. The act, as it currently stands, excludes same-sex de facto couples from its operation. Heterosexual de facto couples are, for the purposes of this act, taken to be bona fide married couples if they (a) have lived together for three years or more as man and wife or (b), in the case of less than three years, the Attorney-General, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person’s husband or wife on a permanent and bona fide domestic basis, regardless of whether or not the person was legally married to that other person.

Same-sex de facto partners of judges are currently completely excluded from this scheme. What does that mean? For a married or de facto heterosexual couple, the current sections 7 and 8 of the Judges’ Pension Act provide that, on the death of the judge or retired judge, the surviving partner is entitled to a payment of 62.5 per cent of the relevant pension in relation to the judge. It is a reasonably standard clause, which exists to ensure that the partner of a judge who has served the judiciary and Australia is not left high and dry upon their death. Unfortunately, as I have already mentioned, it was not drafted to envisage—and it certainly does not encompass—circumstances where judges engage in same-sex de facto relationships. This is not a situation which Labor think is acceptable and, as such, I foreshadow in this speech that we will be moving amendments
in the committee stage to ensure that these injustices do not continue.

The amendment is clearly within the objects of the bill before us. The bill’s long title is ‘A Bill for an Act to amend the law in relation to Judges’ pensions, and for related purposes’; therefore, being clearly within the stated objectives, Labor brooks no criticism for moving the amendment per se. It is imperative that the parliament take these measures and start moving these types of amendments, basically because of the government’s intransigence on the issue of discrimination against same-sex couples.

There is no logical reason or rationale for continuing to refuse access to these pensions for same-sex de facto couples. There is a purpose to this focus: heterosexual couples may marry and become spousal partners falling under the definition of this act. It is enough to be said that it is not the place or role of parliament to place legislative prods in this direction, but, following the exclusive definition of marriage in the common law and in the Marriage Act 1968, same-sex couples are left with no option at all.

The transferability of these pensions to a partner of the deceased judge is a recognition of their contribution to judicial life and the immense workloads that these judges undertake during their tenure. The payment is also to ensure that the partners of these judicial officers are not left high and dry in the event of their death. There is no provision in place barring homosexual judges from accessing the judicial pension scheme, and there is no suggestion that a judge who is in a same-sex relationship is any less worthy of receiving a pension as one who is in a heterosexual relationship. The only thing that is barred is transferring the pension to the other partner in the same-sex relationship on the same grounds that are provided for in a heterosexual relationship.

I point out that the issue of whether or not homosexuality should be legal is well and truly settled, and rightly so. It is over a decade since the Keating government passed the Human Rights (Sexual Conduct) Act 1994, which overrode Tasmanian laws outlawing homosexuality. I am not reopening the debate; it is settled. Logically, then, there is no reason why the payment of a pension to a judicial partner after a judge’s death should not be extended to include same-sex de facto partners; yet the legislation as it stands does not allow for this to occur and, to be perfectly frank about this, it is about time for the government to begin the process and the steady march to move with Australian society to extend benefits to persons in de facto same-sex relationships.

The government is well behind on these matters. For more than a decade there has been inaction and no real outcomes with regard to the removal of discrimination against Australians in same-sex relationships at the federal level. The precise dimensions of this discrimination have recently been laid out in the report of the Human Rights and Equal Opportunities Commission Same-sex: same entitlements. That report found a total of 58 pieces of federal legislation which discriminated against same-sex couples, and that was only in the area of financial and work related entitlements.

At this point I would like to add the caveat that in some cases the discrimination may actually be beneficial. Some benefits are reduced where a person is living in a marriage-like situation with a person of the opposite sex, and same-sex de facto relationships do not count for those purposes. So, in those limited cases, the same-sex de facto couple might actually gain a financial advantage out of the discrimination, but, for the most part, same-sex de facto couples are denied the benefits which are provided to married couples.
To remove the discrimination which operates in relation to this act, I will, as I have said, foreshadow an amendment. My colleague in the House of Representatives Nicola Roxon earlier moved a second reading amendment calling on the government to remove discrimination against same-sex couples in this piece of legislation. The government did not support that in the House of Representatives.

This is unfortunate because the government have made comments in the media that they will support the removal of discrimination against same-sex couples. I will take the opportunity of quoting some of their comments. Firstly, a media release from the Attorney-General on 21 June this year, in response to the HREOC report, stated:

In connection with interdependent relationships, including same-sex relationships, the Government will consider making further changes to the relevant legislation on a case-by-case basis.

I also note a statement by the Prime Minister, John Howard, at a doorstop interview on 8 June last year:

I am in favour of removing areas of discrimination and we have and I’m quite happy on a case, by case basis to look at other areas where people believe there’s genuine discrimination …

The case we have before us today is about as clear-cut as it gets. There is a clear benefit that is being denied same-sex couples in a de facto relationship. In respect of this, it is also narrowly cast. The point is in the principle that this bill is one which goes to pensions. As the government would be well aware, in some instances we have not supported these types of amendments in the Senate. This is because they look like tagging or because the costs may be quite large and difficult to ascertain. The costs are an issue not in themselves or alone but when put together with the principle I enunciated earlier, which is that we do not generally accept tagging—that is, finding an amendment to a bill and then using a subsidiary or unrelated amendment such as this. I think the government accepts that we generally stick to that principle, and, of course, it is a reasonable principle to stick to. In this instance, we are on point, we can move the amendment and it is, as I have said, narrowly cast.

We have an example of where this should be remedied—in this instance, High Court Justice Michael Kirby. I invite the government to consider the legislation further and more deeply because of this example. The government determined to act only on a case-by-case basis. Here is one. As Justice Kirby himself has stated in a letter to the Attorney-General, if he were to die today the legislation as it currently stands would deny his partner a judicial pension. Justice Kirby will retire from his judicial career by early 2009. If he were to die before—I stress that we hope and pray that that does not occur—or after his retirement, the person he is in a caring relationship with and with whom he has forged a life for nearly four decades would not receive anything. This is a clear and unambiguous example of how these laws impact on law-abiding Australian citizens. There is no justification. I note again that the Attorney-General has stated that he will look to remove discrimination on a case-by-case basis, and I offer this as a perfect example of a case in which the Attorney-General, or his representative in the Senate, can act.

Given this government’s self-publicised reputation for truth and honesty with the Australian public, I would certainly expect that the government would honour this commitment given by Mr Ruddock and support our foreshadowed amendment. I note that there are many amongst the conservatives who agree with Labor on this position, even if the right wing dominates within their party. I might add that the lunar right, which appears to be slowly taking over their state branches, does not.
Senator Murray—Did you say ‘lunar’ or ‘lunatic’?

Senator LUDWIG—‘Lunar’. It is a baying at the moon sort of thing.

Senator Murray—Not ‘lunatic’?

Senator LUDWIG—No. I reserve that for a few others. I say to the members of the government in the Senate who support these types of amendments: do not worry; Labor will be giving you the opportunity to vote and to allow your practical record on the matter of the removal of discrimination against same-sex couples to be put on the public record through this simple example.

Finally, I would like to deal with government criticism that was raised in the Main Committee on another bill, the Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007. As I understand the comments made by the Attorney-General at that time, the government wants to address all of this discrimination at once, in one package, and it was not appropriate to tackle these issues of discrimination in the manner we are doing it today. In response to this criticism, I point out that the government has had 11 years to remove discriminatory provisions in federal legislation. During that time, state Labor governments have moved forward on the issue—abolishing discriminatory provisions in areas such as superannuation and recognising same-sex de facto relationships, to give two examples.

And let us not forget the case-by-case pledge. Where did that get to? The Attorney-General and the Prime Minister could be described as flip-flopping around on their previous long and deeply held commitment to reform on a case-by-case basis. One minute, when it is convenient, it is case by case; the next it is ‘wait for the package’. It is really concerning that the Liberals cannot be trusted on this issue. Even if you thought you could rely on a Liberal promise in this area, do not forget that there is always the National Party.

Federally, Labor have pledged that, if elected, we will remove discrimination against same-sex couples across all federal legislation, with the exception of the Marriage Act. By way of contrast, this government have been in power for 11 years, the HREOC inquiry has been going on for the last 18 months and the report has been publicly available since June. There surely cannot be too many sitting weeks left—if you believe the Treasurer, at least his first iteration, this is probably the last—before parliament is dissolved and the general election is called. So far, all we have heard from the government is that they will look at legislation ‘on a case-by-case basis’. We have not seen a formal response to the HREOC report. We have no indication of whether the government is planning to act on it and, on the off-chance that they will, when they are going to do so.

The case that Labor are making here is quite simple. We are in favour of these bills. They have our support. It is a minor technical amendment that fixes some inconsistencies in the scheme and brings it into line with the maximum surcharge. Labor are not objecting to the bills per se in the amendments that have been put forward. There is an issue here that does give an opportunity to this government to make some practical changes to benefit an individual’s life. I commend these bills to the Senate.

Senator MURRAY (Western Australia) (9.07 pm)—I stand to speak on the Judges’ Pensions Amendment Bill 2007 and the Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007. Despite the fact that the Attorney-General’s portfolio is held for our party by Senator Stott Despoja, these bills principally cover the area of superannuation and I have been coordinating the par-
ticular approach that we have been taking to these bills. The bills of themselves are, of course, welcome. The Australian Democrats support both bills, which are before us cognately. We do wish—and it is another reason I am here—to use this opportunity to draw attention to a gross inequity that exists within present law with respect to same-sex couples and death benefits that attach to them.

The Judges’ Pensions Amendment Bill 2007 amends the superannuation surcharge related provisions of the Judges’ Pensions Act 1968 and adds a definition of ‘salary’ to the act. The act makes provisions in relation to the entitlement to pensions of persons who hold office as judges of the High Court of Australia, the Federal Court of Australia and the Family Court of Australia and certain other office holders who are deemed to be judges for the purposes of the aforementioned act. Currently, when a judge retires or dies in office with a superannuation surcharge debt, the pension payable to the former judge or to the dependant or dependants of the former judge, as the case may be, is reduced under a formula in section 6B of the act. The formula reduces such a pension by averaging the rates of surcharge applied to the judge in each full financial year of his or her service. The bill remedies technical deficiencies in the formula in order to apply the correct rates of surcharge in 2003-04 and 2004-05, to amend the treatment of invalidity and death benefits and to recognise payments made to discharge in part a judge’s surcharge debt.

No direct issue applies to the substance of the bill, but rather the bill provides an opportunity to move amendments to what is a gross inequity and injustice to the justices, if I might put it that way. The media has reported that Justice Kirby has been in correspondence with the Attorney-General to request his and the government’s support for amending the discriminatory aspects of the Judges’ Pensions Act 1968. Justice Kirby’s key concern is the fact that his same-sex partner of 38 years will receive no pension entitlements in the event of Justice Kirby predeceasing him. This is in comparison to the partners of other judges, who qualify under the marital relationship provisions for a reversionary pension pegged at 62.5 per cent of the pension that would otherwise have been payable to the judge in question. In response to media questioning, the Attorney-General stated:

In connection with interdependent relationships, including same-sex relationships, the Government will consider making further changes to the relevant legislation on a case-by-case basis. We will do this in consultation with the relevant stakeholders, taking into account the relevant legal, policy and fiscal impacts.

That is all very proper. Of course, it is language to allow for delay and obfuscation. The Human Rights and Equal Opportunity Commission’s report Same-sex, same entitlements: national inquiry into discrimination in same-sex relationships: financial and work related entitlements and benefits came out in May 2007 and has been in the hands of the government since then. This is the 12th act we have sought to amend since that report came out to meet HREOC’s criticisms. I heard a minister say in an earlier debate that they have not had much time since May 2007. Have you seen the range of bills we have had since May 2007, especially budget bills? It is an absolutely ridiculous argument. As the shadow Attorney-General said, there is no clearer cut case than this particular one, which is also one that is not very costly.

The report itself applies to issues of financial and work related discrimination on the grounds of gender preference. I mentioned the public discussion about Justice Kirby’s circumstances. Of course, he is not the only judge or magistrate in this country who has a different gender preference to that which
might be described as heterosexual. He will not be the last person of that preference. These are aspects that should be beyond discussion. They should simply be cleared up and superannuation benefits be available to people in the normal way described. Of the 58 acts that the report lists at the end, there are two which relate to the judiciary. One is the Judges’ Pensions Act 1968—I am referring to page 397 of the report—and the other is the Judicial and Statutory Officers (Remuneration and Allowances) Act 1984. On page 384 of the report, in the summary of findings and recommendations at chapter 18, HREOC has very helpfully listed the factors that need to be borne in mind. I have made sure that my amendment—and I will relate it back to that when I come to it in the committee stage—closely matches the way in which HREOC has suggested these matters be resolved.

I wish to remind the Senate chamber of the discrimination under superannuation laws—we are dealing here with superannuation and death benefits—just so that it can get into your heads how abominably stupid maintaining this farce of homophobic laws is for a government which carries the word ‘liberal’ in its name. It is outrageous and I concur with remarks of the shadow Attorney-General. It is my view that many, and probably most, liberals in the Liberal Party in this parliament and many cabinet ministers are of the view that this discrimination should end. There is cross-party agreement on this, and yet here we are having to try and twist the government’s arm to do what is right, proper and moral instead of continuing with the kind of laws that the Taliban would enjoy and support. At pages 380 and 381 of the HREOC report is this list of discrimination under superannuation laws:

The Inquiry finds that federal superannuation laws discriminate against same-sex couples or families in the following ways:

- A federal government employee’s surviving same-sex partner cannot access direct death benefits (lump sum or reversionary pension) available to a surviving opposite-sex partner (unless the employee joined the public service after 1 July 2005).
- The surviving child of a lesbian co-mother or gay co-father who was a federal government employee will not usually qualify for direct death benefits (lump sum or reversionary pension) available to the child of a birth mother or birth father.
- It is harder for a surviving same-sex partner to qualify for death benefits in private superannuation schemes (as a person in an ‘interdependency relationship’) than for a surviving opposite-sex partner (as a ‘spouse’).
- A surviving same-sex partner cannot usually qualify for a reversionary pension in a private superannuation scheme, which is available to an opposite-sex partner.
- It is harder for a surviving same-sex partner to access death benefits from a retirement savings account (as a person in an ‘interdependency relationship’) than for a surviving opposite-sex partner.
- It is harder for a surviving same-sex partner to access death benefits tax concessions than for a surviving opposite-sex partner.
- A same-sex partner cannot access the death benefits anti-detriment payment available to an opposite-sex partner.
- A same-sex partner cannot engage in superannuation contributions splitting and the associated tax advantages available to an opposite-sex partner.
- A same-sex partner cannot access the superannuation spouse tax offset available to an opposite-sex partner.
- A surviving same-sex partner of a federal judge cannot access the reversionary pension available to a surviving opposite-sex partner.
- A surviving same-sex partner of a Governor-General cannot access the allowance available to a surviving opposite-sex partner.
Chapter 13 on Superannuation provides more detail about these and other superannuation entitlements.

It is not as if this issue is new. I recall many years ago moving an amendment to the act that covers the Governor-General to address this matter, and the reaction was that of astonishment. I have moved numerous amendments on this issue over the decade that I have had responsibility in this area and they have all been rejected. I have been joined, in a very vigorous and helpful way, by the shadow minister on superannuation matters, Senator Sherry, in an estimates committee quizzing of a very sympathetic minister. Let me put on the record my appreciation for the responses that Senator Minchin has given in this area, but he has been defending the indefensible and he has been defending it because he has not, and others of his persuasion have not, prevailed in the cabinet.

This criticism of mine is not a criticism of the Liberal Party; it is a criticism of the Liberal Party’s leadership—an absolute failure. The idea that to address this now would be sensitive in an election environment is just appalling, because you could have addressed it in the month after the last election or the month after the election before that. I think it is a failure of moral will; it is a collapse in liberalism. The days when liberals with a conscience crossed this floor, as they often did, seem to have gone by the board and the conservatives have the party by the throat. Like all these things, the dam will burst and the people of good heart in the Liberal Party will prevail.

It is our job from the crossbenches and the opposition in this case to push the point and to make people feel uncomfortable about an issue which they know is right and proper to pursue. With one hand I want to give you a jolt to encourage you to face up to the issue, but on the other hand I want to give you great encouragement. I know many liberals listening to this debate and who participate in these chambers badly want to see these issues resolved in the interest of a fair go—old-fashioned, Australian, fair-go treatment. Now that we have the HREOC report, we really have a very thorough and comprehensive appraisal of this issue.

With those words—and you will be happy to know that I am not going to repeat them all when I move my amendment; I will simply move the amendment—I want to put the case to you one more time this week. For the 12th time this week, we are asking for these laws to be addressed.

Senator NETTLE (New South Wales) (9.21 pm)—I seek leave to incorporate my remarks.

Leave granted.

The speech read as follows—

Justice Kirby is without doubt a great Australian. In 2002, in front of a crowd of 35,000 at the Sydney Gay Games, Kirby declared:

"The movement for equality is unstoppable. Its message will eventually reach the four corners of the world."

Well, one might now be forgiven for assuming that Justice Kirby’s position is the dissenting opinion. Since that time, the Howard government has been allowed to continue its relentless attacks on full equality for the gay and lesbian community.

Now, Justice Kirby has asked the Government, in representing the Australian citizens who he has served in our highest judicial appointment for over 10 years, to extend to him and his family a most basic right. A right which, were his partner of over 38 years a female, they would be granted automatically.

The Greens will move an amendment that will, as it relates to his pension, grant Justice Kirby’s family the respect and recognition it deserves. This is an opportunity to take a step towards full equality for all Australians. An opportunity for
which there is no excuse to avoid. The Greens are providing this opportunity.

The gay and lesbian community has experienced long years of exclusion, and under the Howard government this has been further entrenched.

The Greens amendment is based on the principle of inclusion.

Other opposition parties have recognised that Justice Kirby's family should not be denied equality because his life-long partner is male.

But The Greens recognise that to provide for full equality, there must be a genuine spirit of inclusion within the legislation that comes from Parliament.

Families must not be denied full equality on the basis of the private sexual nature of the relationship.

Families must not be denied full equality on the basis of who performs household duties.

Families must not be denied full equality on the basis of the lack of a statutory declaration declaring they are a family.

Families must not be denied full equality based on the ownership and acquisition of property.

Families must not be denied full equality based on their reputation and public aspects of their relationship.

Amendments put forward by the opposition and the democrats, include provisions such as these.

I’d like to ask Senators a question. Do you suspect Justice Kirby of attempting to defraud the Australian people? And beyond that do you suspect that those worthy of our highest judicial appointment will ever attempt to defraud the Australian people? If no, then on what basis are these exclusions justified?

I’d like to extend to Justice Kirby and his family—his life long partner—on behalf of the Australian Greens a thank you for all the great work he continues to do on the High Court.

Justice Kirby asked in 2002 that we “Be sure that, in the end, inclusion will replace exclusion”. The Australian Greens continue to answer that call.

Senator STOTT DESPOJA (South Australia) (9.21 pm)—My remarks tonight deal specifically with the Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007. Obviously, Senator Murray has pointed out that the Democrats have dealt with this on both Attorney-General’s and superannuation lines. I think you will find the amendments in my name on behalf of the Democrats dealing with this particular legislation reflect exactly the sentiments that have been expressed by Senator Murray on the party’s behalf. I also indicate that we have amendments dealing with the reduction of the age threshold. I also seek leave to incorporate the rest of my remarks in an attempt to facilitate proceedings. I will move my amendments in due time.

Leave granted.

*The incorporated speech read as follows*—

As the Democrats’ Attorney-General Spokesperson, I rise to speak on the Federal Magistrates Amendment (Disability and Death Benefits) Bill. The Democrats welcome improvements in the remuneration and entitlements of Federal Magistrates, such improvements being long overdue given the enormous contribution Federal Magistrates make to the federal justice system.

As the Australian Law Council note in their submission to the Senate Legal and Constitutional Affairs Committee who considered the provisions of this Bill in April 2006: “In a few short years both the jurisdiction and workload of the Court have grown considerably. The volume of civil case filings is very high and the Law Council understands that around 60% of general federal law filings, and around 50% of family law filings, are made in the Court.

Surveys commissioned by the Court appear to establish that it is continuing to provide a very satisfactory service for most of its customers with savings over the comparable cost of litigating in the superior courts”.

So, the Democrats wish to acknowledge publicly their support of the work of the Federal Magistrates and the important restorative justice approaches they are taking in respect of disputes.
In relation to the Bill, new sections 9A, 9B and 9C provide for a Federal Magistrate to be certified as a retired disabled Federal Magistrate, receive an entitlement to a pension and entitlements to certain superannuation contributions. Section 9D provides for death benefits for Federal Magistrates and retired disabled Federal Magistrates.

While the Democrats support this proposal we are rather disappointed that the Howard Government has failed to ensure that such improvements are fair, equitable and appropriate to Federal Magistrates. Specifically, we are disappointed that this initiative is unfair in respect of its treatment of age limitations on entitlements and same sex relationships.

In relation to age limitations Section 6 of the Judges Pensions Act 1968 sets the age threshold for judges of every other federal court at 60 years. Yet, the age threshold for benefits and death benefits under this Bill has been set at 65.

In its submission to the Senate Legal and Constitutional Affairs Committee the Victorian Bar noted that his Bill continues to place Federal Magistrates on an unequal footing with judges of every other federal court, by not including Federal Magistrates under the Judges Pensions Act 1968.

The Democrats propose that the age threshold for benefits should be reduced to 60 which would place Federal Magistrates on equal footing with judges of every other federal Court whose pensions are determined by the Judges Pensions Act 1968. This is an opportunity to be fair to Federal Magistrate. We believe the reduction of the age threshold for benefits to 60 years would serve to ensure relativity of remuneration within the federal judicial system. Of course, the alternative is simply to include Federal Magistrates in the Judges Pensions Act but I’m sure the Howard Government will find some pithy excuse as to why this shouldn’t happen and we shouldn’t let this opportunity for fairness and equality within the federal justice system to be lost.

It should come as no surprise to my colleagues that the Democrats are also proposing a second amendment to the legislation in respect of the definition of a spouse. Unlike the major parties, we have for decades advocated and listened to the needs of the GLBTIQ community. We don’t intend to let them down in respect of this Bill.

Since our inception in 1977, the Australian Democrats have campaigned loudly for allowing same-sex relationships equal status to those in heterosexual relationships. If, Senator Bartlett and my Private Members’ Bill The Same-Sex marriages Bill 2006 were in effect there would be no need to propose this amendment. But that is not to be the case.

The Bill’s denial of benefits to Federal Magistrate’s same sex partner sends the wrong message to the Australian community that discrimination is acceptable in Australia. And quite frankly discrimination is not OK.

More worryingly, the exclusion of same-sex relationships from this Bill sends the wrong message to Federal Magistrates. It is the Federal Magistrates who must sit and judge cases under Commonwealth Anti-Discrimination legislation. What message is the Howard Government trying to send to them? That it’s OK to discriminate against the GLBTIQ community?

As Justice Kenneth Raphael, said in his submission to the Senate Committee: “To impose such discrimination on a court which has the prime responsibility for dealing with cases under the Commonwealth Anti-Discrimination legislation is ironic.”

I don’t think its too much to ask the Prime Minister to modernise his way of thinking and put a stop once and all to his Government creating new laws that only seek to discriminate against the gay community. The number of old laws on the statute book that discriminate against the gay community is bad enough without the Government adding more.

And it seems many of the Government’s own MPs are growing impatient with the Howard Government’s failure to embrace a modern day definition of relationship that does not centre on spouse. Coalition MPs Malcolm Turnbull, Peter Lindsay and former crocodile farmer Warren Entsch are demanding action. Mr Entsch is reported in The Australian on 1 June 2007 as saying “he is furious and angry about the lack of action. They keep saying ‘oh we’re looking at it.’ But
they’ve been looking at for too long. In my view, not enough has been done.”

This Bill provides the Howard Government with the opportunity to act today to bring about an end to discrimination against same sex relationships. The Howard Government has done it before. In relation to anti terrorism legislation the Government has included same-sex partners within the definition of ‘close family member’ under Anti-Terrorism Act (No.2) 2004. It’s time, in an election year, that they show decisive leadership on this issue once again. Are they for or against ending same sex discrimination? If they are for it they will support my proposed amendment.

For these reasons and a number of others, the Democrats will be moving amendments to rectify these deficiencies.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.22 pm)—I thank senators for their contributions to the debate on the Judges’ Pensions Amendment Bill 2007 and the Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007. The government acknowledges the significant contribution judges and federal magistrates make to an efficient federal civil justice system and it is committed to ensuring that they have adequate and appropriate terms and conditions of service. The Judges’ Pensions Amendment Bill 2007 is intended to rectify technical deficiencies in the Judges’ Pensions Act 1968 relating to the application of the superannuation surcharge to federal judges appointed between 7 December 1997 and 30 June 2005.

Senator Hogg—Incorporate it.

Senator JOHNSTON—This may not be important to some members on the other side but I am sure it is important to the judges and the magistrates. The main object of the bill is to pass on the reductions in the top surcharge rate of 2003-04 and 2004-05 and to give judges an option to commute a portion of their pensions to pay for surcharge debts.

The Federal Magistrates (Disability and Death Benefits) Bill 2007 will provide federal magistrates and their dependants with improved financial protection in the event of serious disability or death. It is the government’s view that the public interest is served by ensuring that federal magistrates with disabilities which prevent them from performing their duties retire with adequate financial provision. Currently a federal magistrate whose performance is significantly impaired for medical reasons might nonetheless be unwilling to resign. This is particularly important where federal magistrates have tenure to age 70 and can be removed only on the grounds of proven misbehaviour or incapacity. If the performance of a federal magistrate is significantly impaired for medical reasons, it is desirable that a lack of adequate disability provision not be a barrier to the magistrate’s willingness to resign.

I want to briefly talk about the principal issue surrounding this bill, and that is the issue, of course, raised by Senator Murray and adverted to and raised in the speech by Senator Ludwig. The issue of same-sex entitlements is very emotive. Can I say that the emotion does to some greater or lesser extent cloud the otherwise strong adherence, particularly of Senator Murray, to matters of good government.

I want to say a few things about this from the perspective of what it will mean and the significance of a movement to the recognition of same-sex entitlements. The government is considering the issue of same-sex entitlements in relation to the Commonwealth defined benefits superannuation schemes generally. As stated by the Attorney-General recently in the context of the Federal Magistrates (Disability and Death Benefits) Bill, it is not appropriate to deal with judicial officers—and I would have thought the opposition would accept this—in isolation from other recipients of Common-
wealth defined benefits such as returned servicemen, public servants and parliamentarians. In short, people, particularly the likely beneficiaries of broad amendments, will say: ‘What about us? It’s all very well to give the judges and magistrates same-sex entitlements; what about us?’ In terms of a case-by-case basis, this is something that we need to consider from the perspective of the Australian Defence Force, 55,000 service personnel plus about 20,000 or 30,000 civilian employees; diplomatic officers and officers generally; agencies; appointees; and, of course, parliamentarians.

Senator Murray—You voted against that today too.

Senator JOHNSTON—I know this is emotional for Senator Murray, but I would like him to hear me out because I want to point out why the government is at the point it is at now. It is frustrating, I know. Rome was not built in a day, and it would be lovely if we could just write cheque after cheque and satisfy every emotional requirement pursuant to people who seek to be a beneficiary under the superannuation schemes of the Commonwealth. But, firstly, in terms of each of the matters before the Commonwealth on a same-sex basis, there are vastly different budgetary considerations from department to department. There is an impact.

I note that Senator Murray rolls his eyes when I say that, but this is a government that now has the capacity to satisfy the needs of same-sex relationships because it has been considerate of budget considerations, because it has minded the budget. The point is: we do not just write cheques on each bill because we get a feel-good out of it. What we do is bring into this place good policy that has equity across the board. That is something I would have thought that Senator Murray would relate to. Why would judges’ partners be any better off than a sergeant’s same-sex partner? Why would that be the case, Senator Murray? It would be because you want to satisfy your emotional commitment on a case-by-case basis. The government is saying that we need to analyse each section of the community—I will go further so that you understand what the problems are here.

Senator Murray—I raise a point of order, Mr Acting Deputy President. The minister is misleading the Senate, and I would appreciate it if he addressed that matter. Perhaps he does not realise that this very day we moved an amendment exactly of this kind to the Defence Force Retirement and Death Benefits Act scheme, so we did not leave out the sergeants, and he is misleading the Senate.

The ACTING DEPUTY PRESIDENT (Senator Watson) —Unfortunately, Senator Murray, there is no point of order.

Senator JOHNSTON—There is no point of order; of course, there is not. Let us look at it from the perspective of the fact that we are talking about superannuation. There is no same-sex marriage in Australia. I hope Senator Murray would agree with that. We have a common-law relationship or we have a partnership formed in the civil law.

Senator Murray interjecting—

Senator JOHNSTON—Senator Murray does not want to understand what I am talking about, because these are deep legal principles that you do not just go writing cheques for on an emotional whim. Now let us talk about this. These relationships actually produce children, and Senator Murray might be surprised to learn that they could be categorised as dependants. They could be the subject of the sort of amendments that he is talking about. This refers not just to Justice Kirby’s partner but also to children. You bring in a whole host of—

Senator George Campbell—So what?
Senator JOHNSTON—I love it that Senator George Campbell says: so what? I am talking about the rights of the child, Senator Campbell. There is a United Nations convention that you obviously do not even know about. You just disclose your absolute gross ignorance—from someone who has served so long in this place. Let us talk about the human rights and equity issues flowing from this. Here we have a group of senators who want to start writing cheques bill by bill and case by case. What I am talking about is having an overall, well-considered policy that deals with this inequity. To do it one at a time, case by case and write the sort of cheques that Senator Murray and obviously Senator Ludwig would have us write is to discriminate against those who are not the beneficiaries of this bill. So the learned senators on the crossbenches are saying that two wrongs will make a right. I want to introduce the ingredient of family law—property settlements—into this debate. Senator Murray has not even thought about that, because superannuation will be the subject of—

Senator Ludwig—The states referenced you the power and you haven’t picked it up, quite frankly.

Senator JOHNSTON—That is right: the states have to reference the power, and you need to be married. Of course these are things that the Labor Party would make up as it goes along in an emotive, unconsidered, not thought through, half-baked, half-understood way. We have a whole host of legal principles that need to be considered if we are going to do the job properly. That is the fundamental issue. Of course these are things that, when you pander to sectional interests without actually considering good government, you end up making errors on. I should not have to stand here—and I am a bit embarrassed that I do—and mention these things to Senator Murray.

Superannuation is a fundamental ingredient of day-to-day life in Australia. The beneficiaries of that are the essence of what we need to explore on an agency-by-agency, employee-by-employee basis so that we get the actuarial mix correct so that we achieve an equitable assessment of how same-sex relationships are going to be resolved in a way that is transparent and fair across all agencies. All agencies are different, and that is the essence of a case-by-case consideration. Having said that, in conclusion, judges are entitled to receive the benefit of the lower maximum rates of surcharge, through this bill, which apply to other high-income earners in 2003-04 and 2004-05. Since other Commonwealth defined benefit schemes already offer their members a commutation opinion, this is simply to bring the judges’ scheme into line.

The Judges’ Pensions Amendment Bill will address judges’ concerns about the application of the surcharge. It will give the benefit of the lower maximum rates and the flexibility to make partial payments of their surcharge debts before they retire. The additional entitlements provided to federal magistrates under the Federal Magistrates Amendment (Disability and Death Benefits) Bill will assist in both ensuring the continued high calibre of appointees and ensuring that federal magistrates can focus on their important duties without being distracted by concerns over the adequacy of protection available to them and their dependants in the sad event of disability or death. I commend these bills to the Senate.

Bills read a second time.

In Committee

JUDGES’ PENSIONS AMENDMENT BILL 2007

Bill—by leave—taken as a whole.
Senator LUDWIG (Queensland) (9.34 pm)—by leave—I move opposition amendments (1) and (2) on sheet 5300 revised:

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

1AA Subsection 4(1)
Repeal the definition of child of marital relationship.

(2) Schedule 1, page 3 (after line 6), item 1, before the definition of salary, insert:

de facto relationship means:

(a) the relationship between two people living together as a couple on a genuine domestic basis;
(b) in determining whether two people are in a de facto relationship, all the circumstances of the relationship must be taken into account, including any of the following:
(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;
(c) no one factor, or any combination of factors, under paragraph (b) or (f) is necessary to establish a de facto relationship;
(d) a de facto relationship may be between two people, irrespective of gender;
(e) two people may still be in a de facto relationship if they are living apart from each other on a temporary basis;
(f) if a relationship is registered under a state or territory law allowing for the registration of relationships, registration is proof of the relationship from that date.

The debate has, I think, already mostly taken place during the second reading debate, so I will not extend it any longer than need be, given the lateness of the hour. Clearly this item inserts a new definition of de facto relationship into the act. The definition is based on the recommendations of the Human Rights and Equal Opportunity Commission model definition published in its report. It goes on to define a de facto couple as a couple living together in a genuine domestic relationship and then provides a list, of (a) to (j), of how that would then be taken into account. It does confine itself and it is narrowly cast. It is in fact more narrowly cast than the amendments to be moved by the minor parties. Be that as it may, it does seek equity—as I indicated in my speech in the second reading debate—for Justice Kirby. This of course is the prime amendment that Labor is moving to the act and the rest are consequential. The effect would be that de facto homosexual couples will gain access to the same rights as de facto heterosexual couples, which is the main import. As we know, it only relates to the particular act which it amends—which is the Judges' Pensions Act. While Minister Johnston was keen to group
me with the minor parties—and whilst sometimes I do not mind standing with them—in this instance I am slightly apart. This amendment is only with respect to the Judges’ Pensions Amendment Bill 2007. It seeks to amend that bill to provide for equity in respect of the arguments which were progressed during my speech in the second reading debate and which I have outlined now. I commend the amendment to the Senate.

Question negatived.

Senator LUDWIG (Queensland) (9.37 pm)—Going from what they have said in the past, I am disappointed that the government do not take the opportunity in this instance to take what I consider to be a case-by-case example with a narrow amendment which does not have the cost implications that Senator Johnston avers. Of course, the government can, if he talks about a range of other Commonwealth officers and sergeants, and other officers for that matter—I did not want to leave out the ordinary and sometimes exceptional foot soldiers—undertake that process. They can demonstrate their bona fides in this and undertake their work. In this instance they can start with this one. I move:

(3) Schedule 1, page 3 (after line 15), after item 1, insert:

1A Section 4AC
Repeal the heading, substitute:

4AC Spouse or de facto partner who survives a deceased judge

1B After subsection 4AC(2)
Insert:

(2A) For the purposes of this Act, a person is a de facto partner who survives a deceased Judge if:

(a) the person had a de facto relationship with the deceased Judge at the time of the death of the deceased Judge (the death); and

(b) in the case of a deceased Judge who was a retired Judge at the time of the death:

(i) the de facto relationship began before the retired Judge became a retired Judge; or

(ii) the de facto relationship began after the retired Judge became a retired Judge but before the retired Judge reached 60; or

(iii) in the case of neither subparagraph (i) nor (ii) applying—the de facto relationship had continued for a period of at least 5 years up to the time of the death.

1C After subsection 4AC(3)
Insert:

(3A) In spite of subsection (2A), a person is taken to be a de facto partner who survives a deceased Judge if:

(a) the person previously had a de facto relationship with the deceased Judge; and

(b) in the case of a de facto relationship that began after the deceased person became a retired Judge and reached 60—the relationship began at least 5 years before the deceased person’s death; and

(c) in the Attorney-General’s opinion, the person was wholly or substantially dependent upon the deceased Judge at the time of the death.

1D Section 7
Repeal the heading, substitute:

7 Pension to spouse or de facto partner on death of Judge

1E Section 7
After “spouse” (wherever occurring), insert “or de facto partner”.

1F Section 8
Repeal the heading, substitute:

8 Pension to spouse or de facto partner on death of retired Judge

1G Section 8
After “spouse” (wherever occurring), insert “or de facto partner”.

1H Subsection 9(1)
After “spouse” (wherever occurring), insert “or de facto partner”.

1I Subsection 10(1)
After “spouse” (wherever occurring), insert “or de facto partner”.

1J Section 11
Repeal the heading, substitute:

11 Pension in respect of children on death of spouse or de facto partner

1K Subsection 11(1)
After “spouse” (wherever occurring), insert “or de facto partner”.

1L Section 12
Repeal the heading, substitute:

12 Pension in respect of children on death of Judge or retired Judge when spouse’s or de facto partner’s pension not payable

1M Subsection 12(1)
After “spouse” (wherever occurring), insert “or de facto partner”.

1N Section 12A
After “spouse” (wherever occurring), insert “or de facto partner”.

1O Section 15
After “spouse” (wherever occurring), insert “or de facto partner”.

1P Section 15A
Repeal the heading, substitute:

15A Allocation of pension if a deceased Judge or retired Judge is survived by more than one spouse or de facto partner

1Q Section 15A
After “spouse” (wherever occurring), insert “or de facto partner”.

1R Section 15A
After “spouses” (wherever occurring), insert “or de facto partners”.

This final item is to remove the term ‘child of a marital relationship’ from the act. The term in fact came to our attention when we were preparing our amendments for this bill. It appears to be a hanger-on, possibly from a previous amendment to the legislation, that has been missed. Often I spend most of my time looking at your legislation, and these things turn up occasionally and I give you the opportunity to correct them. The problem with the definition is that it appears only once in the legislation, in the definition section. So you have a phrase that is defined but in fact not used. It is not unusual, I guess, for Commonwealth legislation, but occasionally it comes up. In my view, this appears to be a redundant section of the legislation. The term ‘child’ and ‘eligible child’ are defined elsewhere, and those are the terms that are used throughout the act.

I would be happy to accept advice from the minister as to whether this is worth keeping in the definition when it does not appear to have any function as it is unrelated to any other section. It appears that, in keeping with always removing causes of confusion, it might be worth accepting this amendment and removing it unless there is good cause to keep it. Perhaps the minister has some clarification as to a good reason for keeping it there.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.40 pm)—I have no clarification of that, but the broad thrust of my response to the same-sex amendment is that, whilst Senator Ludwig wants to tell us that the states have referred matters of superannuation from de facto relationships to the Commonwealth, to underline my position I want to point out that South Australia and Western Australia have not done that. What do you say, Senator Ludwig, about that? What that highlights is what I am saying: we need a proper, detailed, well-thought-out, comprehensive plan to deal with this issue and to not make it up as we go along.
Question negatived.

Senator MURRAY (Western Australia) (9.40 pm)—by leave—I move Democrat amendments (1) to (7) on sheet 5325 revised 2 together:

1) Schedule 1, page 3 (after line 6), item 1, before the definition of salary, insert:

child of a de facto relationship means:

(a) a child born of a de facto relationship;

(b) a child adopted by the persons engaged in that relationship during the period of the relationship.

de facto relationship means a relationship between two people living together as a couple on a genuine domestic basis, where the two people are not legally married:

(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 1, page 3 (after line 15), after item 1, insert:

1A Subsection 4AB(1) After “basis at that time”, insert “and includes a de facto relationship”.

3) Schedule 1, page 3 (after line 15), after item 1, insert:

1B Section 4AB
Omit “marital relationship (wherever occurring), substitute “beneficiary relationship”.

4) Schedule 1, page 3 (after line 15), after item 1, insert:

1C Section 4AC
Omit “marital relationship” (wherever occurring), substitute “beneficiary relationship”.

5) Schedule 1, page 6 (after line 26), after item 10, insert:

10A Subsection 10(2)
Omit “marital relationship” (wherever occurring), substitute “beneficiary relationship”.

6) Schedule 1, page 7 (after line 5), after item 11, insert:

12A Subsection 11(3)
Omit “marital relationship” (wherever occurring), substitute “beneficiary relationship”.
I propose to move the same amendment that Senator Ludwig voted for. As you heard, he said he was a little distant from us on this matter. He actually voted for it, and if you look carefully you will see that that was a matter that was divided on. The division related to the same amendment, which was designed for the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997, which was moved earlier this week. There was a division on it and it had the support of Labor, the Democrats and the Greens versus Family First and the Liberal and National parties. So when you hear Senator Ludwig say he is slightly apart from us, perhaps it is with respect to this bill; it certainly was not with respect to the income tax act, because he voted for it.

This week we have dealt with this on a systematic basis. I do not intend to engage the minister in his rebuttal of my position. I could continue rebutting his and we can go backwards and forwards and, I suspect, he will use his barrister skills and I will use my deep understanding of superannuation financial figures. But it is probably best left alone at this time of night and at this time of the week.

I would indicate, for the assistance of the chamber, that this week this amendment has been rejected by the coalition with respect to the Defence Force Retirement and Death Benefits Act 1973. They will be rejecting it for the Federal Magistrates Amendment (Disabilities and Death Benefits) Bill, I am sure. They rejected it with respect to the Health Insurance Act 1973, the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997. They have indicated they will reject this for the Judges’ Pensions Act and the Judicial and Statutory Officers (Remuneration and Allowances) Act. They rejected it with respect to the Parliamentary Contributory Superannuation Act and the Parliamentary Entitlements Act 1990. They rejected it with respect to the Social Security Act 1991. They rejected it with respect to the Superannuation Act 1976, the Superannuation Act 1990, and the Taxation Laws Amendment (Superannuation) Act 1993. And they rejected it with respect to the Workplace Relations Act 1996.

That totals 12, so this is hardly an attempt to leave out sergeants and include judges, which I thought the minister might have thought because he might not have been paying attention to other legislation. He has a busy life as a minister, and I will give him the benefit of the doubt. But we have made a systematic, holistic and comprehensive approach to this matter. I have said that I will not engage further in debate—and I will not, unless provoked. I simply move my amendments.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (9.45 pm)—I certainly do not want to provoke Senator Murray, because I know he is earnest and sincere and I respect him enormously. The point I want to make is that the government is not saying no. The government has said, ‘We are considering this.’ I want to just pause to say that this is very, very significant legislation. It is generational legislation, Senator Murray, if we go down this path—and, as time rolls by, it seems that we are going to go down this path. The Attorney’s words that the government is considering this ring in my ear.

Senator Murray, your amendments are interesting but they set out by way of example the sorts of problems we are dealing with. As
you well know, we have six states and two territories. They make legislation. By and large, all of them have enacted legislation concerning de facto relationships. The defining point of de facto legislation is the effluxion of time. In other words, de facto spouses acquire rights by virtue of the duration of the relationship. What your amendments seek to do, and indeed what a number of amendments before this chamber have sought to do, is to say that rights are required. Firstly, let us deal with children. Your amendment (1) says:

child of a de facto relationship means:
(a) a child born of a de facto relationship; or
(b) a child adopted by the persons engaged in that relationship during the period of the relationship.

There is a period mentioned there. You then go on to say:

de facto relationship means:
(a) the relationship between two people living together as a couple on a genuine domestic basis ... 

You then clarify that to say ‘not married’. Given that the states define ‘de facto relationship’ by virtue of time and you have not, you have created a complete conundrum between rights that flow by virtue of state legislation and rights that we would seek to bestow by virtue of Commonwealth legislation. This creates a dual rights regime—the haves and the have-nots. All I am saying to you is: please, work this through. It is complex. There are a host of considerations and we are giving them consideration. It is not going to happen tonight; it is not going to happen in the immediate term. But, ultimately, I think the package will go across agencies, across departments. We will look at actuarial tables. We will look at life expectancies of same-sex couples, we will look at the effect on children and we will take the states with us. All I am saying to you is: please go with us on this mission.

Senator LUDWIG (Queensland) (9.48 pm)—It just dawned on me that I think you were wrong about WA, because WA have their own Family Court.

Senator Johnston—Family law, yes, but de facto is separate.

Senator LUDWIG—But they can deal with same-sex de facto couples in their system. Anyway, it is a minor argument.

Senator Hogg—It’s 10 to 10.

Senator LUDWIG—Whoops! It is 10 to 10, they tell me from behind, so we should not have that debate now. I will turn to Senator Murray’s amendments. Senator Murray, I actually prefer my amendments. I am not going to support yours. The Democrat amendments are designed to accomplish largely the same task as ours, although they differ in detail. Specifically, the definition they use of ‘de facto relationship’ is similar to that of the Human Rights and Equal Opportunity Commission but it is worded in a slightly different manner. A recommended subsection (3) has been included with subsection (2). In addition, the Democrat amendment does not include the optional Human Rights and Equal Opportunity Commission clause, which gives recognition to relationships registered under a state scheme, whereas our amendments make this inclusion. We understand that Tasmania already has a state relationship register. As such, Labor’s view is that our amendments, although defeated, will offer greater certainty to couples who have a de facto relationship registered under that scheme.

There are two more areas of distinction between our amendments and the Democrat amendments. The Democrat amendments include a new definition of ‘child of a de facto relationship’, which parallels the definition of ‘child of a marital relationship’ that
already exists. I am not convinced that this is necessary. If you look through the Judges’ Pensions Act, you will see that the only time the term ‘child of a marital relationship’ is used is in the definitions. It does not appear to be anywhere else in the act, and the term ‘child of a de facto relationship’ will not be either. I offered that up to the government but it failed to amend the legislation accordingly. Maybe you could look at it some other time.

The definition of ‘child’ in section 4 of the Judges’ Pensions Act already includes adopted children and biological children under the age of 16. If a child is validly adopted under the law of an Australian state, it is fair to assume they will fall under this act. In addition, the act sets up a scheme for determining whether or not a child can receive pensions, under sections 4AA and 9 to 12. Section 4AA provides that a child is eligible to receive part of a pension if the child is a child of the deceased judge and if:

(b) the Attorney-General is of the opinion that:

(i) at the time of the death of the deceased Judge, the child was wholly or substantially dependent on the deceased Judge; or

(ii) but for the death of the deceased Judge, the child would have been wholly or substantially dependent on the deceased Judge.

Sections 9 through to 12 set up when an eligible child may receive a pension. Labor’s amendments would have removed the definition of ‘child of a marital relationship’ entirely. As such, although I support the general concerns raised by you, Senator Murray, and they are echoed by Labor, we will not be supporting your amendments because they would seem to have the combined effect of removing one of the redundant definitions and replacing it with another, unfortunately—although I do not mean to be harsh in saying that. I seek clarification from the government as to why this definition may be in the act. They can have a another go at trying to tell us. I tried in vain to get an explanation from Minister Johnston. Maybe they can have another go now.

Finally, the Democrats have restructured the legislation to replace every instance of the term ‘marital relationship’ with the term ‘beneficiary relationship’. On balance, I prefer to stay with the draft that Labor have put forward. We spent a bit of time on that, and we think that it matches HREOC and it matches Labor’s position in respect of state relationship registers. It offers greater certainty to those same-sex, de facto couples who have registered their relationship under a state scheme, such as in Tasmania. With those words, Labor will not be supporting the Democrat amendments.

Senator MURRAY (Western Australia) (9.53 pm)—So that people participating in the debate understand, I took very senior and very specialised advice in designing the amendments. This is not one of those things you can knock off on the back of a cigarette box. When the government are considering matters, perhaps they might look at some of the concepts which have been fed to me to try and resolve what the minister has properly identified as thorny issues and which the shadow Attorney-General has indicated need some thought. These amendments come with a fairly good pedigree in their design. That is all I will say on that.

Senator NETTLE (New South Wales) (9.54 pm)—In the same way that the Greens supported the previous opposition amendments, we will be supporting these Democrat amendments.

Question negatived.

Senator NETTLE (New South Wales) (9.54 pm)—by leave—I move Greens amendments (1) to (5) on sheet 5335:
(1) Schedule 1, item 1, page 3 (after line 6), before the definition of salary, insert:

child of a de facto relationship means:
(a) a child born of a de facto relationship; or
(b) a child adopted by the persons engaged in that relationship during the period of the relationship.

de facto relationship means a relationship between two people living together as a couple on a genuine domestic basis.

(2) Schedule 1, page 3 (after line 15), after item 1, insert:

1A  Section 4AC
After “marital relationship” (wherever occurring), insert “or de facto relationship”.

(3) Schedule 1, page 6 (after line 26), after item 10, insert:

10A Subsection 10(2)
After “marital relationship” (wherever occurring), insert “or de facto relationship”.

(4) Schedule 1, page 7 (after line 5), after item 11, insert:

11A Subsection 11(3)
After “marital relationship” (wherever occurring), insert “or de facto relationship”.

(5) Schedule 1, page 7 (after line 19), after item 12, insert:

12A Subsection 12(3)
After “marital relationship” (wherever occurring), insert “or de facto relationship”.

These amendments go to the same issue as the previous two sets of amendments—that is, the removal of the discrimination that exists within this legislation. The Australian Greens amendments do it comprehensively. I feel that there is not much more we can say on this. We do not support discrimination and these amendments seek to remove that discrimination, right across the board. This is an opportunity to move such amendments. Senator Murray has talked about the other opportunities we have had this week to remove discrimination from law and the Greens have been supportive of those attempts to remove the discrimination. We do not believe in discrimination, so we seek to remove it from the law and that is what these amendments do.

Senator LUDWIG (Queensland) (9.55 pm)—I will take Senator Murray’s advice and have another look at the amendments he drafted. I try to make my words not seem too unkind; nevertheless they might come out that way. Senator Nettle might find what I am going to say a little unkind, unfortunately.

Senator Murray—I am not thin-skinned.

Senator LUDWIG—Let us hope Senator Nettle is not either. Labor are not prepared to support Senator Nettle’s amendments. In fact, Labor oppose them. It is surprising to me—it may have been an oversight, I do not know; Senator Nettle may wish to clarify—that these amendments do not extend the benefits to same-sex couples. The reasons they do not do that, in Labor’s view, is that there is no specific inclusion of same-sex partners in the proposed amendments, as in the Labor and the Democrat amendments. These amendments do not offer sufficient coverage for same-sex, de facto partners and sufficient certainty that they are in fact covered.

Federal law has not defined a de facto relationship to include same-sex couples. The Family Law Act, for instance, states, ‘A de facto relationship means a relationship between a man and a woman who live with each other as spouses on a genuine domestic basis, although not legally married to each other.’ The dictionary defines de facto as, ‘in fact, in reality’. Given that the Marriage Act
specifically excludes marriage or same-sex partners, it is hard to see how a same-sex relationship could be construed as de facto unless it was more specifically defined. If you look at the previous case law on this, in 1995 Brown v Commissioner for Superannuation examined a similar issue. In that case, the question was whether the phrase ‘ordinarily lived with that other person as that other person’s husband or wife on a permanent and bona fide domestic basis’ could include same-sex couples. It was ultimately decided that it did not. Although there are obvious marked differences between Brown and the present situation with the Greens amendments, it does show that at least in that instance Australian courts have been hesitant as to whether to accept same-sex relationships as de facto couples. You would have to go through the process to see if in fact it was, whereas in respect of the Democrat and the Labor amendments you do not expose yourself to a court case for the determination of that fact. The amendments proposed by Labor and the Democrats make it clear that same-sex couples are covered under the pension scheme. The amendments proposed by the Greens do not.

This is an example where you can see that the Greens are trying to achieve something, but you cannot actually trust the Greens to do something constructive. I accept that, on many occasions, their principles might push them, but it seems that they harp about these things and they actually fail to get them right. The Greens amendments would not extend benefits to same-sex, de facto couples; instead they would slightly extend the existing scheme and create two parallel schemes for de facto relationships. On that basis, Labor oppose the Greens amendments.

Question negatived.

Bill agreed to.
Senator STOTT DESPOJA (South Australia) (10.02 pm)—by leave—I move Australian Democrats amendments (3) to (6) on sheet 5260:

(3) Schedule 1, item 13, page 10 (line 15), omit “husband or wife”, substitute “partner”.

(4) Schedule 1, item 13, page 10 (line 19), omit “husband or wife”, substitute “partner”.

(5) Schedule 1, item 13, page 10 (line 23), omit “husband or wife”, substitute “partner”.

(6) Schedule 1, item 13, page 11 (after line 16), after subsection 9E(8), insert:

(8A) To remove doubt, the Minister must not form the opinion that the relationship between a person and his or her partner is not a marital relationship on the ground that the Federal Magistrate and his or her partner are of the same gender, gender identity or sexuality.

The Senate would be aware that this is a related issue. It relates to same-sex entitlements. We have probably debated this issue here today to a sufficient degree. Obviously the Democrats put on record our disappointment at the outcome of the last set of amendments without wanting to reflect on a vote of the chamber, of course. This is an attempt to amend the legislation before us in relation to dealing with same-sex issues. We have sought to do that by changing words such as ‘husband’ and ‘wife’ and the relevant definitions of that terminology to ‘partner’. The arguments have been put forward by colleagues on this side and I urge the Senate to support the amendments before it.

Question negatived.

Senator LUDWIG (Queensland) (10.04 pm)—I am happy to indicate Labor’s position. It is similar to the position I have been adopting all night with respect to these types of amendments from the Democrats in this area. We agree with the principle; we have said it repeatedly this evening in this debate. With respect to this particular one, we prefer our position, quite frankly, and we are quite willing to continue with that. Even though the government will not accept it, we think we might be able to wear them down eventually.

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.05 pm)—The government—it may be of no surprise to anybody—is voting against the amendments.

Senator NETTLE (New South Wales) (10.05 pm)—The Greens are supporting the amendments.

Original question agreed to.

Bill agreed to.

Judges’ Pensions Amendment Bill 2007 and Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007 reported without amendment; report adopted.

Third Reading

Senator JOHNSTON (Western Australia—Minister for Justice and Customs) (10.06 pm)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

DEFENCE LEGISLATION AMENDMENT BILL 2007
CRIMES LEGISLATION AMENDMENT (CHILD SEX TOURISM OFFENCES AND RELATED MEASURES) BILL 2007

First Reading

Bills received from the House of Representatives.
Senator ELLISON (Western Australia—Minister for Human Services) (10.06 pm)—These bills are being introduced together. After debate on the motion for the second reading has been adjourned, I shall move a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Human Services) (10.06 pm)—I table a revised explanatory memorandum relating to the Defence Legislation Amendment Bill 2007 and I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

DEFENCE LEGISLATION AMENDMENT BILL 2007

In October 2005, in tabling the Government response to the 2005 Senate report into ‘The effectiveness of Australia’s military justice system’, the previous Minister for Defence, Senator the Honourable Robert Hill, commented that the Australian Defence Force does a truly magnificent job in defending this nation and its interests. He also added that the Government was committed to providing the best equipment and conditions of service to ensure that the ADF is a modern fighting force and that hand in hand with this, is a determination to provide a military justice system that is as effective and fair as possible.

The Government continues to express its admiration of Defence personnel undertaking important and often dangerous activities in Australia and on overseas operations.

The Government is also committed to reforming the military justice system to address the concerns of Defence personnel, the parliament and the community. This Bill is designed to make significant enhancements to the military justice system, which in turn will facilitate confidence in that system among those who it serves.

The changes are intended to provide for and balance the maintenance of effective discipline and the protection of individuals and the rights of Australian Defence Force members. This does not mean simply applying civilian standards and procedures to the Defence Force as this would not allow the ADF to perform its mission safely and effectively.

Because of the unique nature of warfare, the ADF applies a far greater level of regulation than that encountered in other forms of employment and demands behaviour which is consistent with its role as an armed force. Breaches of services discipline must be dealt with speedily and, sometimes, more severely than would be the case if a civilian engaged in such conduct. The military justice system needs to be one that can operate in Australia and overseas in peace and war. As the transition between peace and war can occur quickly, it is not practicable to have different systems with different standards applying in each of these circumstances.

The Government recognises the need for these additional constraints and standards, and that the military justice procedures that accompany them must be demonstrably objective, as independent as possible, timely, impartial and fair to ADF members, and they must be seen to be so by the Australian people.

In 2006, the first stage of significant reforms to the ADF discipline system was implemented through the establishment of a statutorily independent and transparent Australian Military Court. The court will come into effect on 1 October 2007. The second stage of these reforms makes further significant improvements to the military justice system, in particular through the modernisation and redesign of the summary discipline system.

Commanding officers in the ADF carry great responsibility, which may ultimately require them to use lethal force lawfully and with great discipline. The summary discipline system is the cornerstone of command authority in an armed force.
and enables the timely maintenance of discipline and morale.

The balance between discipline and the rights of individuals is the key to achieving the operational effectiveness and success that the nation expects of its armed forces, and of which the nation can be proud. It is this balance that produces a Defence Force that can wield lethal force while reflecting the values of its homeland and complying with its international obligations.

The ADF summary discipline system forms one part of the military discipline system which, taken as a whole, must provide the safeguards necessary to protect the interests of ADF members. Commanders use the summary discipline system on a daily basis. It is integral to their ability to lead the people for whom they are responsible in order to ensure their welfare and safety. It must operate quickly, be as simple as possible and it must be capable of proper, fair and correct application by commanding officers.

It is upon this premise that the Australian military justice system is based and the amendments proposed in this Bill have been drafted.

To ensure this fairness and rigour, the Bill will introduce a number of enhancements to the summary discipline system including—

- A right in all cases to appeal a summary authority conviction, order or punishment to a Military Judge of the Australian Military Court. The Bill provides that a statutorily independent Military Judge of the Australian Military Court will have the discretion to deal with an appeal on its merits by way of a fresh trial or a ‘paper review’ of the evidence. Following the appeal process, should the punishment be altered, a Military Judge will be limited to imposing a punishment not greater than the maximum punishment available to the summary authority at the original trial.

- The right to elect trial by a Military Judge of the Australian Military Court for all but a limited number of certain disciplinary offences, similar to the scheme available in the Canadian Forces summary discipline system. Dealing with these offences at the summary level will reinforce the maintenance of service discipline, while preserving the rights of individual members. Additional safeguards have been included for these offences, including limited punishments and a requirement for summary authorities to offer a right of election if, prior to making a finding of guilt, they determine that the more severe punishments that are available to them might apply. In addition, a convicted person will be further protected by the right to appeal I have just mentioned and a system of reviews of all summary trials.

- A revised evidence framework applicable to summary trials. The current evidence regime is overly complex and not easy to apply by persons without formal legal training. The importance of having a fair but simple and easily understood evidence framework, is recognised in the current British and Canadian Forces summary trial systems which do not use formal and technical rules of evidence. The Bill will make it clear that a summary authority will not be subject to the same formal rules of evidence that apply to the Australian Military Court. Nevertheless, the Bill will provide that evidentiary principles continue to apply at the summary level to ensure a fair trial and the protection of individual rights. This will mean that summary hearings will be more efficient and timely, while maintaining all the necessary safeguards for an accused person. Nothing in this proposal will affect a member’s appeal or election rights to the Australian Military Court from a summary trial.

- Automatic review by a ‘reviewing authority’ in respect of technical errors related to the awarding of punishments and orders. Further, in the case of certain more severe punishments, an additional safeguard will apply through the continuation of the requirement for them to be approved by a reviewing authority before they take effect. In exercising this power, a reviewing authority will be able to quash a punishment or revoke an order and substitute a less severe punishment or order within the trying authority’s jurisdiction—there will be no power to increase a punishment. The right to appeal to the Aus-
Australian Military Court will then apply from the time the punishment is approved. The intention of the automatic review process is to provide additional safeguards for members by providing another avenue by which to correct inappropriately awarded punishments or orders that may not otherwise have been the subject of an appeal to the Australian Military Court.

A number of other significant improvements to the Military Justice system are included in the Bill. Following a review of offences and punishments in the Defence Force Discipline Act, a number of proposed changes will be effected in the Bill, including:

- Reinforcing ADF anti-drug policies by enabling service tribunals to deal with offences in respect of a more contemporary range of illegal drugs and, for offences committed within Australia, allowing prosecutions up to the trafficable amount;
- Making it clear that a member is guilty of an offence if he or she ‘omits’ to perform an act which proves to be prejudicial to ADF discipline;
- Reinforcing the high standard of weapons safety required in an armed force by making the offences of ‘unauthorised discharge of a weapon’ and ‘negligent discharge of a weapon’ alternative offences;
- Improving the accuracy and fairness of sentencing by allowing the suspension in whole or part of a greater range of punishments under the DFDA;
- Ensuring that Defence Force Discipline (Consequences of Punishment) Rules apply to punishments imposed by discipline officers, so that in the interests of consistency and fairness the same consequences can be made to apply to all DFDA punishments whether imposed by a service tribunal or a discipline officer;
- Reducing the adverse and disproportionate impact of minor service offences on the civilian lives of Service personnel by providing that the status of a summary conviction is expressed to be for service purposes only; and
- Providing better administration of members sentenced to dismissal by allowing the AMC to order that the punishment of dismissal is effective on a day no later than 30 days after it has been imposed (rather than immediately as is currently the case).

These changes will make an immediate contribution to the rigour, fairness and transparency of offences and punishments under the DFDA.

A number of other agreed recommendations from the 2001 Report of an Inquiry into Military Justice in the Australian Defence Force by Mr J.C.S Burchett QC will also be effected in the Bill. These include:

- Expanding the Discipline Officer scheme under Part IX of the DFDA to include junior officers up to and including the ranks of Lieutenant in the Navy, Captain in the Army and Flight Lieutenant in the Air Force (with limited punishments); and
- Removing the separate and more severe scale of punishments for Navy.

Additional proposals include—

- Expanding the jurisdiction of superior summary authorities to include ranks up to Rear Admiral in the Navy, Major General in the Army and Air Vice Marshal in the Air Force. This change will allow simple and minor offences committed by more senior officers in operational environments to be dealt with expeditiously at the summary level, rather than awaiting (the currently mandatory) trial by the Australian Military Court.
- Adding the automatic disqualification of a summary authority to try offences where it has been involved in the investigation of the service offence, the issuing of a warrant, or preferring the charge. The change will help reduce any perceptions about the possible bias of commanders and promote further confidence in the impartiality and fairness of summary proceedings.
- Removing the examining officer scheme from the DFDA. This change will remove an unnecessary and rarely used procedure.
• Introducing a new time limit of as soon as practicable within three months from the time the member is charged to the date of trial by summary authority. This will improve the timeliness of summary proceedings and prompt referrals to the Director of Military Prosecutions so that complex or serious matters are tried by the Australian Military Court as quickly as possible.

• Clarifying the powers of the Director of Military Prosecutions in respect of a charge preferred by the Director of Military Prosecutions to proceed directly to trial by the Australian Military Court to make it clear that he or she has the full range of options that are required by the position.

• Requiring a discipline officer to provide a report to his or her commanding officer. The intention of this amendment is to provide a safeguard through legislated oversight of the discipline officer scheme and provide statistical information to commanding officers. This will facilitate the maintenance of discipline and transparency of the discipline officer scheme.

• Providing a right for a member to request no personal appearance, subject to approval, in respect of a summary proceeding. The personal appearance of the accused will remain the norm, however, in exceptional circumstances where a summary authority of the correct rank is not readily available, and only where the accused intends to plead guilty, the member may apply to not personally appear at a summary proceeding and to have the matter heard in his or her absence, subject to the approval of the summary authority. The member will have the right to be represented at such a hearing.

• Statutorily recognising the new Provost Marshal Australian Defence Force. In accordance with the Government response to the Senate report, the Provost Marshal was appointed on 14 May 2006 to head the newly established ADF Investigative Service. It is intended to enable the Provost Marshal to refer a serious service offence to the Director of Military Prosecutions where he or she considers it appropriate to do so. Adoption of this provision will improve efficiency by streamlining military justice procedures and allowing more serious matters to be referred directly to the Director of Military Prosecutions and trial before the Australian Military Court thereby avoiding unnecessary summary proceedings.

• Strengthening the rights and duties of legal officers, in particular the exercise of their legal duties independently of command influence, by an amendment to the Defence Act. The purpose of this new section is to ensure that ADF legal officers are not subject to inappropriate command direction in the exercise of their professional capacity as ADF legal officers while still allowing an ADF legal officer who is superior in rank or appointment issuing technical directions to subordinate ADF legal officers.

• To give effect to a recommendation by the Senate Standing Committee on Foreign Affairs, Defence and Trade, in its report of October 2006, it is intended that the Director of Military Prosecutions be able to require that a trial of a class 3 offence is to be by a Military Judge alone, accompanied by a reduction in the maximum available punishment (six months imprisonment). This amendment reflects civilian criminal practice and overseas military systems which enable a prosecutor to require that a charge be dealt with by judge alone for a range of more minor offences. Similar to the current system of a Defence Force magistrate trial, these offences do not warrant a jury trial (with the associated administrative issues, expense and possible delays). This will avoid unnecessary jury trials, which will be of significant benefit to the ADF, given their potential to impact adversely upon ADF operations.

• Allowing for the Director of Military Prosecutions to be able to seek a determination from the Defence Force Discipline Appeal Tribunal on a point of law that arose in an Australian Military Court trial, at the conclusion of that trial. This will be for precedent purposes and will allow the law to be applied correctly in future cases.
These recommendations and initiatives, when implemented, will streamline and improve the ADF discipline system.

A modern and professional force deserves a modern and effective system of military justice. With the reforms contained in this Bill, the Government will provide a system that improves impartiality and fairness while striking the correct balance between ensuring effective discipline to allow the Australian Defence Force to operate safely and effectively, and protecting individuals and their rights.

I present the explanatory memorandum to this Bill.

CRIMES LEGISLATION AMENDMENT (CHILD SEX TOURISM OFFENCES AND RELATED MEASURES) BILL 2007

The Bill I present today is one that all Members of the Parliament should support. The aim of the Crimes Legislation Amendment (Child Sex Tourism Offences and Related Measures) Bill 2007 is to ensure that sexual crimes against children committed by Australians overseas are the subject of a comprehensive and up to date suite of Commonwealth offences.

Child sex tourism, as a global industry, is recognised by the United Nations as ‘one of the worst contemporary forms of slavery’. Child sex tourism is a serious problem in many less developed countries. Many of these countries lack effective laws or, where laws are in place, the ability or willingness to enforce them.

Unfortunately, Australians play a large part in the child sex industry overseas, particularly in Asian and Pacific Island countries. In 1994, the Crimes Act 1914 was amended to introduce a regime of offences that target those people who engage in this type of conduct or help others to do so. Since their introduction, there have been more than 20 prosecutions against these provisions with approximately 15 convictions.

Child sex tourism offences

The existing child sex tourism offences in the Crimes Act cover a variety of conduct by Australian citizens or residents overseas, including engaging in sexual intercourse with a child, inducing a child to have sexual intercourse with a third person and participating in acts of indecency other than sexual intercourse with a child. Other behaviour captured includes acts done in or outside Australia with the intention of benefiting from, or encouraging, any of the above offences.

The Bill relocates the existing offences, currently located in Part IIIA of the Crimes Act, to chapter 8 of the Criminal Code. The provisions have been redrafted to reflect the approach taken in the Code and current drafting practices.

New measures contained in the Bill fill gaps in the current legislative regime and will enhance Australia’s existing child sex tourism regime by creating new grooming, procuring and preparatory offences. These offences are essentially preventative in nature. Their purpose is to give law enforcement agencies and prosecutors the mandate to take action before any child is harmed.

The new grooming and procuring offences are directed against people who are actively engaging with children in ways that will make them more likely to participate in sexual activity. Grooming can include a wide range of behaviour including conduct that encourages a child to believe they have romantic feelings for the adult or desensitising the child to the thought of engaging in sexual activity with the adult. Procuring a person to engage in sexual activity includes encouraging, enticing, recruiting or inducing (whether by threat, promises or otherwise) in relation to that activity. The procuring offences would apply, for example, where a person offered money to a child to engage in sexual acts or promised them some other form of benefit.

The Bill will also add new preparatory offences to the child sex tourism regime. The offences are intended to capture a wide range of preparatory conduct that occurs with the intention of preparing or planning to commit an offence involving sexual conduct with a child overseas. Such conduct could include activities such as arranging travel and making a hotel reservation in a well known child sex tourism destination, so long as this behaviour can be linked to an intention to commit an offence against the child sex tourism regime.

The Bill will also make changes to a number of penalties with the aim of ensuring consistency in...
penalties for like offences across the Criminal Code. As a result, offences involving:

- sexual intercourse with a child would carry a penalty of 17 years imprisonment
- sexual conduct with a child would carry a penalty of 15 years imprisonment
- procuring a child would carry a penalty of 15 years imprisonment, and
- grooming a child would carry a penalty of 12 years imprisonment.

Offences involving child pornography material or child abuse material overseas

The Bill introduces new offences making it illegal for Australian citizens and residents to deal with child pornography or child abuse material while overseas. Behaviour relating to child pornography or child abuse material in Australia is currently outlawed by a comprehensive regime of Commonwealth, State and Territory offences. The new offences will ensure that the same conduct by Australians overseas is also captured, and will complement the child sex tourism offences.

Under the new provisions, a person will be guilty of an offence if he or she possesses, controls, produces, distributes or obtains child pornography or child abuse material outside Australia. The person will be subject to a maximum penalty of 10 years imprisonment. This penalty is consistent with penalties in State and Territory offences relating to similar conduct in Australia.

In line with the child sex tourism provisions, these new offences are intended to fill the gap where a foreign country either has no specific laws dealing with this behaviour or is unable or unwilling to prosecute persons who engage in such behaviour. They will prevent Australian citizens or residents from travelling overseas to collect, produce or distribute child pornography or child abuse material in countries where such material is not illegal or where laws are not enforced. Individuals will no longer be able to avoid prosecution for such behaviour.

Under the proposed scheme, legitimate dealings in such material—for example for law enforcement purposes—would be protected.

Forfeiture

The Bill inserts new provisions to provide for the forfeiture of child pornography and child abuse material and any article containing such material, such as a computer or CD ROM, used in the commission of specified sexual offences against children. The provisions provide for the making of a forfeiture order by a court, either, automatically upon a finding of guilt for a Commonwealth sex offence or on application by a constable or prosecutor, where the court is satisfied on the balance of probabilities that such an offence had been committed. Once forfeited, the material or article becomes the property of the Commonwealth and can be destroyed.

Conclusion

The Australian Government is committed to protecting children from the threat of sexual abuse. The measures contained in the Bill will result in a strengthened child sex tourism regime and send a strong message to Australians contemplating such behaviour overseas. The measures also complement the Government’s current initiatives with respect to the protection of indigenous children in the Northern Territory and the Protection of Australian Families Online.

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

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

AUSTRALIAN CRIME COMMISSION AMENDMENT BILL 2007
NATIONAL HEALTH AMENDMENT (PHARMACEUTICAL BENEFITS) BILL 2007

Returned from the House of Representatives

Message received from the House of Representatives returning the bills without amendment.
TAX LAWS AMENDMENT (2007 MEASURES No. 5) BILL 2007

Returned from the House of Representatives

Message received from the House of Representatives agreeing to the amendment made by the Senate to the bill.

VETERANS’ ENTITLEMENTS AMENDMENT (DISABILITY, WAR WIDOW AND WAR WIDOWER PENSIONS) BILL 2007

First Reading

Bill received from the House of Representatives.

Senator Ellison (Western Australia—Minister for Human Services) (10.08 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.

BUSINESS

Consideration of Legislation

Senator Ellison (Western Australia—Minister for Human Services) (10.08 pm)—by leave—I move:

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

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

Leave granted.

The statement read as follows—

Purpose of the Bill

The bill provides a one-off increase of $15 per fortnight to the above general rate component of the extreme disablement adjustment rate of disability pension, increases the general rate disability pension by 5 per cent, increases the former domestic allowance component of war widow and war widower pension by $10 per fortnight and indexes general rate disability pension and the former domestic allowance component of war widow and war widower pension with reference to both the Consumer Price Index and Male Total Average Weekly Earnings in the same manner as service pension.

The measures in this bill are beneficial to veterans, war widows and war widowers and their families.

Reasons for Urgency

Certain existing pension rates and indexation arrangements do not take account of the relative value of the general rate disability pension in the existing environment of low inflation and rising wages. The bill ensures greater equity across all veterans’ and war widow and war widower’s pension payments. Early passage of the bill will directly benefit veterans, war widows and war widowers.

Question agreed to.

VETERANS’ ENTITLEMENTS AMENDMENT (DISABILITY, WAR WIDOW AND WAR WIDOWER PENSIONS) BILL 2007

Second Reading

Senator Ellison (Western Australia—Minister for Human Services) (10.08 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—

I am pleased to present legislation that affirms the Government’s ongoing commitment to Australia’s veteran community and assists veterans who have been disabled as a result of their service for our country and our war widows and war widowers.

The legislation increases payments to disability pensioners and war widows and war widower pensioners and changes the methodologies used to index their pensions. This Bill will benefit more than 140,000 disability pensioners and approximately 114,000 war widows and war wid-
owers, and ensure that their pensions retain their relative value and equity across the veteran community.

The amendments will provide a one-off increase of $15 per fortnight to the Extreme Disablement Adjustment rate; a five per cent increase to the General Rate; and a change to the methodology used to index the General Rate pension for veterans—all with effect from the March 2008 adjustment.

The Bill also allows a one-off increase of $10 per fortnight to the former domestic allowance component of war widows and war widowers’ pensions, and amends the way it is indexed, also with effect from March 2008.

The legislation’s one-off increase to the EDA brings it into line with increases to the Special Rate and Intermediate Rate disability pensions introduced in the 2007 Budget. Additionally, the Bill provides a five per cent increase to General Rate disability pensions, which will mean a fortnightly increase of $20 for all pensioners at or above the General Rate. These amendments will ensure equity across all veterans’ disability pensions.

The legislation also changes the way the General Rate pension is indexed, from indexation to the CPI alone, to indexation with reference to both the CPI and MTAWE in the same manner used to calculate service pensions. And unlike the current methodology, the new means of indexation will take into account the present economic environment of wages growth and low inflation to calculate the relative value of all disability pensions.

Currently there are two components in the calculations for Special Rate and Intermediate Rate disability pensions. The General Rate provides compensation for non-economic loss or pain and suffering, while the Above General Rate provides compensation for economic loss. Compensation for non-economic loss is currently indexed to the CPI, while the economic loss component of disability pensions is indexed with reference to both the CPI and MTAWE.

While CPI indexation continues to be used to maintain the value of non-economic loss payments in major injury compensation schemes, some smaller schemes do feature wage related methods of indexation. In keeping with the Government’s commitment to a ‘best practice’ and beneficial system of support for service related injuries, illnesses and impairment the non-economic loss component of disability pensions will also be indexed with reference to both CPI and MTAWE in the same manner as the Service Pension from March 2008.

The veteran community—particularly those veterans on the Special Rate disability pension—has argued strongly that these calculations are inequitable and should be changed. The Government has worked closely with the veteran community on this matter and I am pleased to present a Bill that introduces a uniform—and a more rational and equitable—method of indexation for all disability pensions.

The legislation also ensures that war widows and war widowers’ will continue to receive equitable pension payments that will retain their relative value into the future. This Bill provides a one-off fortnightly increase of $10 to the former domestic allowance component of war widows and war widowers’ pensions, taking it to $35 per fortnight. Furthermore, this component will be indexed for the first time, also with reference to both CPI and MTAWE.

The implementation of these enhancements is supported by a funding commitment of around $470 million from the March 2008 introduction and through the out-years to 2011/2012. This Bill continues the Government’s ongoing commitment to supporting Australia’s veteran community and will ensure ongoing fairness and value in the pensions for our disabled veterans and war widows and war widowers.

Senator LUDWIG (Queensland) (10.09 pm)—I seek leave to incorporate my speech on the Veterans’ Entitlements Amendment (Disability, War Widow and War Widower Pensions) Bill 2007.

Leave granted.

The speech read as follows—

As the Shadow Minister for Veterans’ Affairs made clear in the House this morning, we want more than anything for it to have speedy passage through the Parliament, with no further delays for
veterans and war widows than they have already endured.

Labor has unqualified support for the Bill’s measures which seek to restore some of the value of the disability and war widow and widower pensions and ensure against their future continuing erosion.

The Bill will implement the commitments made first by Labor and then by the Howard Government to introduce new indexation arrangements for the general rate disability pension and for the previously non-indexed component of the war widow and widower pension. These rates will be indexed twice annually with respect to both the Consumer Price Index and Male Total Average Weekly Earnings.

This Bill will also increase the rates of extreme disablement adjustment disability pension, raise the general rate disability component of all disability pensions by 5%, and will increase the previously non-indexed component of war widow and widower pension by $10 a fortnight, measures which Labor supports in full.

The erosion in value of the domestic component of the war widows’ pensions has been a longstanding concern for veterans and Australian War Widows, and no doubt, this action on the part of the Government is long overdue. This Bill’s provisions gives veterans and war widows some financial certainty, which they both need and richly deserve. It will ensure that their standards of living no longer erode relative to community norms, as they have done for the past 11 years of the Howard Government.

I warmly congratulate the members of the ex-service community who have lobbied the Government for these changes over a long period of time. This is primarily the result of their hard work, and this Bill is their victory, and the victory of the veteran community.

Senator BARTLETT (Queensland) (10.09 pm)—I am afraid that I do not have a speech to incorporate, so I will have to use the old-fashioned, verbal communication technique. The Veterans’ Entitlements Amendment (Disability, War Widow and War Widower Pensions) Bill 2007 has appeared extremely rapidly, even by this government’s standards. I think it appeared only today in the House of Representatives and it is already here and will pass tonight. It is a true one-day wonder. Fortunately, it is a positive piece of legislation rather than a negative one like some of the others that have been rushed through this place in recent times. It makes the point that when the government wants to move on something they can do it pretty quickly. That is a very relevant issue which I will raise in my amendment in the committee stage. It also goes to the issue that we have been debating a number of times today, including on the last bill, where the government has said that they need to further examine the issue of removing discrimination in a whole range of acts. As senators would know, it was in 1995 that the Democrats first put forward proposals to address that in a comprehensive way. Twelve years later the government is still considering it.

This piece of legislation reflects a government commitment to increase payments to disability pensioners, war widows and war widower pensioners—the disability veterans pensioners—as well as changing the methodology used to index their pensions. This is in response to quite a recent announcement by the federal government and again shows that when the political will is there movement can be quite quick. It is not an inexpensive measure, with the total cost over four and a bit years being $470 million. It is not going to break the bank, particularly at the moment, but it is not loose change either. Again, it shows that when the political will is there, or when the political need is perceived to be there on the eve of an election, then the government can move very quickly, including introducing legislation in what is a relatively complex area. Dealing with indexation formulas for veterans’ disability pensions and war widows and war widower pensions
is actually quite a messy area. I know that from having tried to move amendments dealing specifically with indexation of various veterans payments in the past. It is good to see that things can move fast but hard not to be a little cynical about the selective application of that promptness.

However, I do not think it really matters what the motivation is. This is a positive result for many in the veterans’ community and therefore it should be welcomed—and it is welcomed by the Democrats. This legislation provides a one-off increase of $15 per fortnight to the extreme disablement adjustment rate, a five per cent increase to the general rate and a change to the methodology used to index the general rate pension for veterans, with effect from the March 2008 adjustment. It also allows a one-off increase of $10 per fortnight to the former domestic allowance component of war widows and war widowers’ pensions, which as I understand it has not been increased for quite some time, so it goes a fair way to restoring the original value of that allowance. The one-off increase to the extreme disablement adjustment rate brings it into line with increases to the special and intermediate rate disability pensions and also provides a five per cent increase to the general rate disability pension, which will mean a fortnightly increase of $20 for all pensioners over and above the general rate.

There has been a bit of competition in this area between the government and the opposition in recent times. That is something that the Democrats welcome and I would say that it is also something that most in the veteran community would welcome as well. There has been a lot of agitation by a lot of groups for a long period of time. The opposition put forward their proposals and pledges and the government matched them and upped the ante. The opposition immediately matched them back again. Either way it produces better results for the veteran community and, at least in this case, it has produced a good policy outcome. It has not been like what occasionally happens in a pre-election environment where the bidding war breaks out and you get a quite poor public policy outcome, when it is just grabbing a vote-buying opportunity. These initiatives that are being put forward are based on specific issues that have been agitated for a long period of time. They are quite valid concerns that have been expressed by many in the veteran community. So it is simply matching the valid claims and concerns that have been put forward over a long period of time.

More than congratulating the government and before that the opposition for their actions in this regard, first and foremost congratulations are due to the ex-service organisations in all of their forms, sizes and styles for their work in pushing these issues so hard for so long in the face of such resistance. The immense contribution of so many organisations, many of them predominantly voluntary and community based organisations advocating on behalf of many different segments of the veteran community, is something that is quite impressive. Their level of commitment and their passion for the issues on behalf of their own groups and their own constituents, if you like, is very admirable. Bills like this should be ones that they chalk up as clear achievements to indicate that they really are making a difference.

Having said all that, it is appropriate to indicate that there are still further areas that do need to be addressed. There are other issues with regard to appropriate indexation of superannuation for veterans. There are also issues to do with the treatment of taxation of military superannuation. There is, of course, the issue of the ongoing discrimination with regard to people with same-sex partners, which I will address in the committee stage of the debate.
The other point that I do want to take the opportunity to make once again is that, while these changes address some entitlements to war widows, war widowers and veterans on the extreme disablement adjustment rate, there is a need to still further improve the support we provide to other ex-service personnel who have disabilities or health problems as a direct consequence of their service in the armed forces—it may not be from warlike service but from other activities within the Defence Force. There is quite a clear distinction between the type of support provided to people depending on whether the disability or health issue has arisen as a consequence of warlike service or other activities. I think that is a real ongoing problem, not just for the individuals concerned and their families but for the Australian community. I have absolutely no doubt it directly affects the ability of the Defence Force to recruit people and even more so to retain people.

Just yesterday I met a 30-year-old woman who, as a 20-year-old in the Navy, suffered a severe neck and back injury. Her initial treatment was nothing short of absolutely appalling and disgraceful. Her injuries were not properly assessed at that early stage. The long delay in properly assessing that injury seriously compromised her long-term health and her ongoing quality of life. Most people are fit, active and vital when they are 20 or so years old and join the Navy or any of the defence forces. To suddenly go from that to being severely incapacitated as the result of injury directly caused by your service and then to find that you are not getting support both initially and longer term and that you are having to scratch, fight and battle to get assistance with medical treatment is not only an absolute travesty of justice for the individual but it sends a very strong message to many people that it is a pretty bad idea to join the ADF because if you get injured you are not always guaranteed to get well looked after.

There have been improvements in recent times, and I fully accept that. But I see it as part of my task and the Democrats’ task to keep that pressure on to improve things up to a consistently high standard for all injured and wounded ex-service personnel, regardless of where their injury occurred or how their health conditions were generated. If it is related at all to their being part of our Defence Force, if it is related at all to their decision to join the Defence Force and serve their country, then they should get that support on an ongoing basis and in a reliable way. The extra stress people endure from having to battle purely to get support can often be just as debilitating. There is that feeling of abandonment and the mental stress of having to fight for their entitlements. There is also the stress that pushes across onto the family as a whole. That is a consistent picture that I see as well, because the burden falls back on the families, as it does on carers in all sorts of areas in the community. You see that stress and trauma and the compromising of the quality of life spreading out from the individual to the wider family.

I know that goes wider than what is in the bill before us now but I want to take the opportunity to repeat that message. It is still something that we are falling short on and we do need to lift our game much higher. I hope, in this pre-election environment, that there is genuine acknowledgement given to that issue by both major parties. There needs to be a specific focus on the needs of the injured service personnel across the board. We need to lift our game.

The specifics within the legislation are welcome as far as they go. There are still wider issues with regard to indexation of superannuation, in particular, and taxation treatment. They need to continue to be
pushed for. There are wider parts, as I under-
stand it, of the policy commitments of both
the government and the opposition that still
need to be implemented in legislation. The
fact that this part of it has been able to be
brought forward and put in place so quickly
is welcome, but it again begs the question of
why it could not have been done sooner and
also begs the question about why it can take
so long to do something sometimes, even
when the government says they fully support
it in principle. It can be years in the making
and yet, when there is a sudden need to gain,
regain or try to regain support on an issue,
then the movement can be rapid in the ex-
treme.

Having said that, it is a positive piece of
legislation. I would only make the single
cautionary remark, as I said at the start: the
formulas and different components of allow-
ances, pensions and entitlements in the vet-
erans area are quite messy and complicated. I
am not, in any way, disputing the drafting
skills of the government, but there is the is-
issue of whether or not you get it right when
you rush through legislation this quickly in
this area. I am sure that, if they do not get it
right—the legislation does not come into
force until, as I understand it, March next
year—there will be an opportunity to fix it
down the track. It does need to be said that,
whilst the legislation is positive and assum-
ing it does what the government say it does,
there is still the issue of the risk of imple-
menting legislative changes like this in such
a rapid form. We need to make sure that we
have actually got it right and that it does do
what we think it does. I think it does what
the government think it does and, assuming
it does what they think it does, that is a good
thing, so we support it.

Senator ELLISON (Western Australia—
Minister for Human Services) (10.24 pm)—
The Veterans’ Entitlements Amendment
(Disability, War Widow and War Widower
Pensions) Bill 2007 delivers great benefits to
war widows and war widowers. I commend
the bill to the Senate and thank senators for
their contributions.

Question agreed to.
Bill read a second time.

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

Senator BARTLETT (Queensland)
(10.24 pm)—by leave—I move amendments
(1) to (5), on sheet 5404 revised, together:

1A Subsection 5E(1)

Insert:

de facto partner means a person in a de facto
relationship.

de facto relationship means a relation-
ship between two people living to-
gether as a couple on a genuine domes-
tic 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 cir-
cumstances they have lived to-
gether;

(iii) whether there is a sexual rela-
tionship between them;

(iv) their degree of financial depend-
ence or interdependence, and any
arrangements for financial sup-
port, between or by them;

(v) the ownership, use and acquisi-
tion of their property, including
any property that they own indi-
vidually;
(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.

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

1B Subsection 5E(1) (at the end of the definition of non-illness separated spouse)

Add:
; or (c) who is a de facto partner.

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

1C After paragraph 5E(2)(a) Insert:

(ab) the person is a de facto partner, or a person in a de facto relationship; or

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

1D Subparagraph 5E(2)(b)(iii)

Omit “marriage-like relationship”, substitute “de facto relationship”.

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

1E Section 11A (and the heading) Insert “marriage-like” (wherever occurring), substitute “de facto relationship”.

These amendments, as people can see, also address the existing discrimination in the Veterans’ Entitlements Act with regard to people with same-sex partners. They redefine the definitions of de facto partner and de facto relationship to include people in same-sex relationships as well as opposite sex relationships. That is, of course, an issue on which the Democrats have put forward amendments many times over the years. We have done it quite a number of times just this week and, indeed, four or five times just today, so I will not go through the arguments in great detail. We have just had one of those arguments with regard to the previous piece of legislation to do with judges. But I do believe I have to, partly because of the contribution of the minister in the previous debate on the amendments that the Democrats moved in relation to judges’ pensions. He quite explicitly said, ‘If you remove this discrimination against judges and give judges with same-sex partners access to the pension, what are you going to do about Defence Force people?’ The veterans community was an explicit example that he gave. This is what we would do about it: we would move an amendment to the Veterans’ Entitlements Act as well.

That just shows, frankly, the complete intellectual bankruptcy, I would have to say, of the argument put forward by the minister in the previous debate, because the government refuses to progress legislation which sits on the Notice Paper in the Senate that would deal with all of these changes en masse and in a way that is completely consistent with the Human Rights and Equal Opportunity Commission report, which has examined the issue thoroughly over many months. Indeed, it examined it so thoroughly that that was the excuse that the government gave for not referring that piece of legislation to a Senate committee. The government said that it has already been examined by HREOC, the Human Rights and Equal Opportunity Commission, and that we do not need to send it to a committee because they have already done the work.
That being the case, there is no reason to not proceed with that straightaway. Obviously, the government would not do that, so the next approach is to move amendments to each of those pieces of legislation, each of those acts, as amending bills come through this chamber. We have had many amending bills coming through this chamber this week which have provided many opportunities to remove this discrimination. So, frankly, the argument that Senator Johnston put forward, as the minister in the previous debate to do with judges’ pensions, is simply specious. He may or may not have known, but this particular amendment that we are dealing with regard to the veterans entitlements, was certainly before him, having been circulated in the chamber.

I will read briefly from the summary in the Human Rights and Equal Opportunity Commission report so that people are clear that this is not just a matter of some high-minded principle about equality or removal of discrimination; this is about explicit and very direct negative impacts on veterans. And they are veterans. The government’s speech with regard to this legislation, quite understandably and appropriately, in glowing terms talks about the government’s ongoing commitment to Australia’s veteran community and to assist veterans who have been disabled as a result of their service for our country and our war widows and war widowers. After that, there should be this in brackets: ‘Unless those veterans’ partners are of the same sex—then our commitment does not exist.’ So, if you are a partner of a veteran, the government are pleased to have this legislation before the chamber to demonstrate their ongoing commitment to you—unless it is a same-sex partner, and then they do not have any ongoing commitment to you and you do not have any entitlements at all. That is simply the case. I cite the findings of the Human Rights and Equal Opportunity Commission:

Australian Defence Force veterans and their families are generally entitled to a range of special benefits and entitlements in recognition of their military service.

However, many of those benefits are not available to veteran same-sex couples and their children.

So we have this range of special benefits and entitlements to veterans and their families in recognition of their special service, but if your partner is a same-sex partner then there is not that recognition of your service. Why is it that your service in the Defence Force, a very special and important type of service to the Australian nation, is not recognised as completely and fully if your partner happens to be of the same sex? How does that show recognition of your special contribution of military service?

To detail the examples, the same-sex partner of a veteran cannot access the war widows and widowers pension, the very specific benefit that we are increasing here, quite appropriately and with the support of the Democrats. We support increasing by $10 per fortnight the former domestic allowance component of the war widows and widowers pension and amending the way it is indexed. But the simple fact is that it is available to opposite sex partners of deceased veterans; it is not available to same-sex partners. Their contribution is less valuable. That is a simple legal fact as the law now stands and it will remain that way until an amendment such as the one I have put forward on behalf of the Democrats is passed.

The same-sex partner of a veteran cannot access war widow or widowers pension and they cannot access bereavement payment. I ask senators to think about how that would feel. It should not need much imagination. When your partner dies—and obviously in the case of veterans they can be partners of
decades-long standing—it is not just that you do not get the payment; it is that you do not get the recognition. Your relationship with your partner who has just died, a lifelong partner in some cases, is not recognised. That, I suggest, is something that can strike very hard at people, and it should not have to happen.

Same-sex partners cannot access war widow or widowers pension, bereavement payment, gold repatriation card, income support supplement, partner service pension or military compensation. I say in passing that military compensation can include the sorts of people I was talking about in my speech in the second reading debate or injured service-persons. To use a quote from one of the people who gave evidence to the HREOC inquiry:

Gay war veterans laid down their lives or were injured for our country—in the same way as heterosexual war veterans.

They protected us. We should protect them and their families. Why are their families less deserving of being afforded this protection?

One day I would like an answer to that question: why are their families less deserving of being afforded this protection? There is no excuse for this continuing discrimination. On behalf of the Democrats I repeat our commitment to continue to push on this issue until the discrimination is removed, whether it is under the Veterans’ Entitlements Act or under the other 57 pieces of legislation that were identified by the Human Rights and Equal Opportunity Commission.

Senator LUDWIG (Queensland) (10.33 pm)—The Labor Party understands the position that the Democrats are putting in this debate. It is a matter they have diligently been progressing this evening in a range of other legislation and during the week. The Labor Party’s position on this has been articulated by me and by others. We have said that, if these are tagging amendments, we understand and support the principle but we are not going to agree to the actual amendment. This is, on balance, one of those in that frame.

It is also the case that we do not want to contribute without some idea of what the cost would be. No costings have been provided. As we have said, Kevin Rudd is a fiscal conservative and he is not going to allow these things to provide an attack on the budget. We do not think that they are matters that go to the budget issue per se. They are, by and large, moral issues. Labor has proposed a way of dealing with this. The Human Rights and Equal Opportunity Commission has provided a way forward and a model that Labor prefers. I understand that it differs from the model that has been put forward by the Democrats. We also think that the process of an audit to look at the Commonwealth legislation and the Commonwealth regulations, guidelines and procedures does need to be progressed in a meaningful way to ensure that there is meaningful removal of discriminatory provisions within the legislation. It is no easy task and it is even more difficult from opposition.

On that basis, we are not prepared to support the amendment. I do not use the word ‘oppose’ in this instance. I do understand that the Democrats have been consistent in this principle. But I think that the Democrats understand the position that I have articulated. We have a similar view but perhaps a different way of getting there. We are not going to manage it from opposition by amending the government’s legislation. It is a matter that will take some time for a government to do.

We have heard this evening from the Minister representing the Attorney-General in this place that the government is considering
it. I think the words, although they seemed to warm his heart, were a little hollow. The government has had 11 years to deal with this matter. The HREOC report has been released and available, and they have not commented on or provided a response to it in a meaningful way. That is a shame. This government, even in the last week of this session—that is, potentially, if you believe the Treasurer—has not really provided support or clear direction in this area by using the phrases ‘we will’ or ‘we will commit to’ or ‘the coalition will’. They have been saying ‘considering’, and unfortunately Labor knows what that in fact means: ‘We will consider it for a very long time and try not to do anything unless absolutely forced into it.’

Senator ELLISON (Western Australia—Minister for Human Services) (10.37 pm)—Just for the record, the government does not support the proposed amendments. The government’s position on this issue is very clear and well known. Senator Johnston outlined the government’s position in more detail in the previous debate. I will not traverse the same ground and detain the Senate any longer, but this is a matter that was the subject of the Human Rights and Equal Opportunity Commission report, which was handed down three months ago. The government is considering that report. In relation to these amendments, the government is opposed to them.

Senator BARTLETT (Queensland) (10.37 pm)—Just very briefly, I understand the position that both the minister and the shadow minister have taken. I think that Senator Johnston’s contribution and reasons are somewhat at odds with the reasons given by a range of other ministers on various other similar amendments around the place. But that is neither here nor there. The bottom line is that the government are not going to do it. I think it is pretty clear what the other reasons are as to why the government are not going to do it. We all know they could have done it years ago. They did, eventually, after a lot of pressure from the Democrats, do at least part of it some years ago in regard to superannuation. They could have done it a long time ago if they wanted to do it; they have not. That is obviously clear.

With regard to Labor’s position, again, I understand it. I appreciate the desirability of costings. I do think it is a bit of a problematic argument to use in the sense that this measure of $400-plus million that we are about to pass was not on the table yesterday. It is suddenly there now. Money can appear pretty quickly when the political desire is there. I am wary of the principle of whether or not you can afford to remove discrimination, particularly in the current fiscal environment where you obviously could afford it. It is saying: ‘We would like to remove discrimination, but we cannot actually afford it.’ I understand it on principle, but I think that, in a practical sense, it has its problems. Either way, we shall persevere and one day we shall succeed.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Human Services) (10.40 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
higher education support amendment (extending fee-help for vet diploma, advanced diploma, graduate diploma and graduate certificate courses) bill 2007

first reading

bill received from the house of representatives.

senator ellison (western australia—minister for human services) (10.41 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 ellison (western australia—minister for human services) (10.41 pm)—i table a revised explanatory memorandum relating to the bill and i move:

that this bill be now read a second time.

i seek leave to have the second reading speech incorporated in hansard.

leave granted.

the speech read as follows—

the higher education support amendment (extending fee-help for vet diploma, advanced diploma, graduate diploma and graduate certificate courses) bill 2007 will open up opportunities for students to pursue high level full-fee vet courses.

this bill sets up the arrangements and appropriation to extend fee-help assistance for students studying full-fee vet diploma and advanced diplomas with registered training organisations such as a tafe.

the government believes it is important to raise the status of vocational and technical education to signal the significance the government and the community attach to high level technical qualifications. in turn this raises the self-esteem of those students undertaking these qualifications.

this initiative will assist students who wish to pursue higher level vocational education and training qualifications. many students are attracted to vet because of the specialist skills they learn while studying, but the high upfront fees acts as a deterrent. presently, these students cannot access student loan arrangements and are forced to pay their fees upfront or pursue an alternative higher education qualification if they need loan assistance.

through fee-help the australian government provides loans to ease the up-front financial burden for eligible students by assisting them to pay their tuition fees to their training provider. this initiative will remove some barriers that exist for students who want to pursue further higher level qualifications through the vet system. it increases access to technical and vocational diploma and advanced diploma courses.

training organisations will be encouraged to seek approval from the australian government to receive fee-help for diploma and advanced diploma students if they have an agreement with a university that their students could move (with appropriate credit transfer) into a related degree qualification.

this arrangement will ensure that vet students get appropriate recognition in any subsequent studies at university, and get credit for what they’ve already done. it will also encourage those already with trade qualifications to build on them.

as this budget measure is an extension of fee-help in the higher education sector, this amendment is based substantially on the existing fee-help mechanisms already in the higher education support act. vet providers will be required to meet certain conditions including financial viability, quality and reasonable fees and student access arrangements. the government insists on these arrangements as it is important to protect the interests of the students who take on responsibility for repaying the debt they incur from a provider. these measures ensure that the provider is acting in the best interests of their students.

in addition, current fee-help legislation requires providers to be corporate bodies and this is also a requirement for vet providers.
This is the first introduction of a student loan scheme in the VET sector at the national level. I am continuing consultation within the sector on the operation of the scheme, including the impact on state and territory training arrangements. I introduce this amendment to demonstrate the government’s commitment to deliver this scheme in 2008 for the benefit of all Australians.

This arrangement covers full-fee courses. Governments will continue to support training through public funding. This measure is part of the suite of reforms and funding by the Australian Government for VET to remain as a world-class training sector. States and territories will be expected to continue with their level of funding for training and to continue to provide public funding for training.

The Australian Government expects to loan around $221m to students over the four years to 2010-2011 depending upon the number of VET providers which seek approval to provide VET FEE-HELP assistance and the number of students they enrol.

In the coming decades, Australians with trade and technical skills will be in demand. It is predicted that over 60 percent of jobs will require high quality technical or vocational qualifications yet currently only 30 percent of the population have these skills.

The Australian Government is a strong supporter of vocational education and training (VET). Total Australian Government funding to VET, taking into account the 2007 Budget measures and the Prime Minister’s Skills for the Future package of last year, amount to $11.8 billion over the next four years.

Loan assistance to students adds to the suite of programmes the Australian Government has developed, providing equity and choice for individuals. Pursuing a trade or vocational qualification is just as important as pursuing a university education as a pathway to a productive career and future prosperity. Through this Bill, the government is offering students real choice in the study they pursue and builds the skills of the workforce. This measure, combined with the suite of other initiatives already put in place by this government, represents a significant investment in the development of skills in the Australian population.

I commend this Bill to the Senate.

Senator CARR (Victoria) (10.41 pm)—I seek leave to incorporate my remarks on the second reading in Hansard.

Leave granted.

The speech read as follows—

Higher Education Support Amendment (Extending FEE-HELP For VET Diploma and VET Advanced Diploma Courses) Bill

Mr President, I rise to speak to the second reading of the Higher Education Support Amendment (extending FEE-HELP for VET Diploma and VET Advanced Diploma Courses) Bill 2007. This bill, as its name makes clear, extends availability of the Government’s FEE-HELP loan scheme to certain courses offered in the vocational education and training sector.

These are full-fee courses at Diploma and Advanced Diploma levels that articulate through credit transfer with university undergraduate courses.

FEE-HELP loans, or any other type of loans, will not be available to government-funded students in TAFE, or to those undertaking apprenticeships.

Labor supports this limited measure, though we have concerns about some of the ways the Government has sought to limit loan availability. I’ll return to those concerns later in my remarks.

We support the measure because it brings parity in access to FEE-HELP for full-fee students who choose to get themselves a university degree by first taking a path through the VET system, and moving to university for the later years of study.

These students will now have the same right of access to FEE-HELP as those who choose a full-fee degree program offered exclusively in the university sector.

That seems on the face of it a rational and fair adjustment to existing policy.

Of course, Labor has said that we will phase out full-fee undergraduate degrees if we are elected to government. We do not support favoured access to university for those who can afford to pay high fees. That is inequitable.
However, while this option remains available, full-fee students who choose a route through VET should not be disadvantaged by being denied access to a loan scheme to help them cover their tuition fees.

**Concerns**

I said that Labor has some concerns about the detail of this bill.

The first is a major one. The bill restricts access to FEE-HELP loans to students studying with a provider that is incorporated. In fact, this restriction means that those in full-fee courses in the public TAFE system in all states and territories except WA and Victoria will have no access to FEE-HELP. This is because TAFE colleges in those states and territories are not incorporated.

The practical effect is that, aside from WA and Victoria, FEE-HELP in the VET sector will be available only to those studying with private providers. This is no more than yet another backdoor means of privatising our tertiary education system by stealth—something this tricky Government has done with such alacrity over the last eleven years.

Why do I say this?

We only need to look at what’s been happening in the higher education sector since the introduction of FEE-HELP in 2005. The previous year, full-fee undergraduate students made up less than 2.5% of the undergraduate population. When FEE-HELP became available, full-fee undergraduates increased in number to over 4% of undergraduates. Many of these study with private providers.

In June 2007, there were 60 private higher education providers approved for FEE-HELP. Back in June 2005, six months after FEE-HELP became available, there were only 31 such providers.

**Comparisons with international education sector**

We have already seen what happened in the international education industry when private providers offering courses to overseas students suddenly mushroomed. We suffered huge problems in maintaining the quality and integrity of the system. Of course the reasons for the growth in this case are different, but the lesson is the same.

Despite a radical overhaul of the ESOS legislative regime that regulates the international education industry, many of the old problems remain.

I have recently had drawn to my attention a private provider in this sector in Melbourne, that claims falsely on its website to have existed for years and to have an excellent and long-standing reputation. In fact, the college was established only in April of this year, and it’s run by the same people who ran another college that went bankrupt last year, leaving a large number of students stranded.

I understand that at least one of the college’s operators is in Australia on a student visa himself. The college’s premises are located upstairs in a small shopfront in the Melbourne CBD, and yet this college is registered to provide courses in automotive trades.

I mention this example simply to draw attention to the problems associated with regulating a fast-growing sector of education or training. It seems that, despite the existence of regulation and the vigilance of state and federal authorities, it is possible for dodgy and even fraudulent entities to slip under the net.

I would be extremely concerned if the measure contained in the bill currently under debate—to extend FEE-HELP loans to a potentially long list of private providers—threatened the quality and reputation of our Australian VET sector as a whole.

I am sure this is not the Government’s intention. But it is a danger.

**Anomalies created by this measure**

This bill extends eligibility for FEE-HELP loans to students in the VET sector undertaking certain fee-for-service Diploma and Advanced Diploma courses. Those courses have to have articulation into higher education—via credit transfer—will not be eligible for FEE-HELP assistance. These students will miss out on assistance, unlike their colleagues in eligible courses—whether or not those individual students intend to go on to higher education. One
student who does a Diploma course in VET can get FEE-HELP, but another doing a similar-level course cannot.

This situation will create pressures to widen eligibility to all fee-for-service Diploma and Advanced Diploma students in the VET sector. And following that there will be pressures to broaden access to the scheme still further in the VET sector.

This trend could lead to pressures to open up the VET sector—specifically public TAFE—to HECS as well, for students in government-subsidised places. Some may oppose, and others may welcome, such a policy development. But it shouldn’t happen incrementally. It should only happen, if it ever does, after full public debate has occurred. This is a contentious matter in some quarters and Labor is well aware of that fact.

There is another anomaly associated with the measure contained in this bill. The bill would extend FEE-HELP availability to certain VET Diploma and Advanced Diploma students, but ignores those studying for VET Vocational Graduate Certificates and Diplomas. Increasingly, these courses are offered on a fee-for-service basis.

These are specialised courses for graduates, as their name suggests. They are offered in the VET sector rather than in universities because, as it happens, VET and TAFE are the best providers to offer them—this sector has the relevant vocational expertise in the relevant niche area.

Examples of these courses include Adult Literacy Teaching; Architectural Digital Illustration; Indigenous Advocacy and Counselling; and Sales Management.

If the courses were to be offered instead in universities, the students would have access to FEE-HELP. On the face of it, it would seem reasonable to make FEE-HELP available to these students. The Government should explain its reasoning for not including Vocational Graduate Certificate and Diploma courses in this bill.

**Underlying policy agenda**

Finally, I return to the issue of incorporation of VET providers. As I noted earlier, this bill will open up FEE-HELP access only to students whose provider is an Incorporated body.

One might ask the reason for this restriction. To the jaundiced eye—after eleven long years of a tricky Howard Government—it might seem that there is an unstated, ulterior motive at work here: a push to turn public TAFE systems into loose groupings of stand-alone entities that essentially compete like businesses. The aim might be to get TAFE institutions to compete both with each other and with the private sector—a sector, as I have pointed out, given quite a fillip by this bill.

This current Government is uneasy with state TAFE systems that are centrally coordinated and managed—a choice which is, after all, one for the states alone. The Commonwealth has tried to force the states to bend to its will in this regard, but most have refused to play along. This bill is quite likely a back-door attempt to have its way on this contentious issue.

It remains to be seen how the states will respond. If the Government’s intentions on this matter are not as I describe, perhaps it can explain to the Parliament what its actual intentions are.

**Chubb’s comments on higher education**

I want to take this opportunity to make a few comments about some views expressed recently by ANU Vice-Chancellor Professor Ian Chubb.

He has slammed the Government over its higher education funding policies, particularly those on research and research infrastructure.

Professor Chubb pointed to the slide in research performance and spending over the last decade. He made the point that Australia needs to perform at “the highest international standards”. This is particularly true in basic research.

He said that international corporations are increasingly seeking out centres with strong basic research capacity. These are the places where they want to invest. But Australia’s expenditure on basic research has fallen sharply in recent years—from two-thirds of university R&D spending in 1990-91 to just half in 2004-05.

This is despite the Howard Government’s much-trumpeted *Backing Australia’s Ability* packages 1 and 2.
Professor Chubb said that Australia was “pretty much alone” in that both our Business and our Higher Education R&D are directed heavily to applied research. The United States, in response to data indicating that its research competitiveness was falling, has doubled its spending in three major programs.

China now spends $170 billion per annum on R&D and last year became the world’s second biggest R&D investor. It spends ten times what Australia does.

Labor is committed to lifting our R&D performance. We have as our goal to double overall R&D expenditure—across public and private sectors within ten years.

We are also committed to addressing another of the worries expressed by Professor Chubb—the urgent need to renew our research workforce. We will increase the number of higher degree research student places and establish new programs to attract and retain early and mid-career researchers in our universities.

Professor Chubb asked whether Labor remained committed to the concentration of research capacity and a “hub and spokes” model for shared access to research critical mass and state-of-the-art infrastructure.

Yes, we are committed to those policies. Labor will scrap the Howard’s Government’s seriously flawed Research Quality Framework, but we will replace it with a streamlined and transparent funding and Quality Assurance model that will direct research funds to high-performing universities and researchers.

Labor in Government will revitalise Australia’s university research environment. This is a vital part of our plan to forge a future for the nation based on innovation.

**Summing up**

Equally important to our nation’s future is the creation of a highly-skilled workforce at all levels and in all fields. Our TAFE institutes and other training providers are central to that task.

That’s why Kevin Rudd and Labor have placed a training agenda at the centre of our Education Revolution.

To sum up on this bill, I have said that Labor does not intend to oppose it.

In so far as the bill clears up what is essentially an anomaly in the availability of access to FEE-HELP loans, then the bill is to be welcomed. If it means that students enjoy additional study options, and can use pathways from the VET sector into higher education, without facing upfront fees—that’s a good thing.

However, I’d like to remind the Senate that Labor has expressed a number of concerns about the intent and potential implications of this bill. And I have asked the Government a number of questions about its reasons for choosing the precise category of students that it has, in terms of eligibility. Answers to those questions would be appreciated.

Finally, I want to stress that Labor has committed to phasing out full-fee undergraduate degrees in Australian publicly-funded universities. If Labor is elected to office, that is precisely what we will do.

Labor is committed to an Education Revolution for our nation. We will lift Australia’s performance in education, training and research, starting with early childhood.

As part of that radical shift, we will end the inequity of the Howard Government’s policies in higher education financing, so that all young Australians have the same opportunities. There can be little that’s more important than that.

**Question agreed to.**

**Bill read a second time.**

**Third Reading**

Bill passed through its remaining stages without amendment or debate.

**Senate adjourned at 10.43 pm**
The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Australian Communications and Media Authority Act—
Radiocommunications (Charges) Amendment Determination 2007 (No. 3) [F2007L03648]*.
Radiocommunications (Interpretation) Amendment Determination 2007 (No. 2) [F2007L03650]*.

Australian Prudential Regulation Authority Act—Australian Prudential Regulation Authority (Confidentiality) Determination No. 13 of 2007—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 (2005) [F2007L03727]*.

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—
AD/BELL 212/68—Tail Rotor Blades [F2007L03732]*.
AD/BELL 205/73—Tail Rotor Blades [F2007L03731]*.
AD/BELL 412/52—Tail Rotor Blades [F2007L03733]*.

Defence Act—Determinations under section 58B—
Defence Determinations—
2007/60—Short absence.

Defence (Employer Support Payments) Amendment Determination 2007 (No. 1).

Export Control Act—Export Control (Orders) Regulations—Export Control (Fees) Amendment Orders 2007 (No. 2) [F2007L03665]*.

Financial Management and Accountability Act—Net Appropriation Agreements for—
Australian Prudential Regulation Authority [F2007L03664]*.
Great Barrier Reef Marine Park Authority [F2007L03666]*.


Health Insurance Act—Determinations—
HIB 13/2007 [F2007L03696]*.
HIB 14/2007 [F2007L03697]*.
HIB 15/2007 [F2007L03698]*.
HIB 16/2007 [F2007L03700]*.
HIB 17/2007 [F2007L03701]*.
HIB 18/2007 [F2007L03703]*.
HIB 19/2007 [F2007L03705]*.

Motor Vehicle Standards Act—
Vehicle Standard (Australian Design Rule 29/00 – Side Door Strength) 2006 Amendment 1 [F2007L03749]*.


Natural Heritage Trust of Australia Act—Extensions to the National Action Plan for Salinity and Water Quality Bilateral Agreements (to 30 June 2008) between the Commonwealth of Australia and—
Queensland.
South Australia.
Tasmania.
Victoria.

Private Health Insurance Act—Private Health Insurance (Benefit Requirements) Rules 2007 (No. 3) [F2007L03707]*.

Radiocommunications (Transmitter Licence Tax) Act—Radiocommunications (Transmitter Licence Tax) Amendment Determination 2007 (No. 3) [F2007L03651]*.

Remuneration Tribunal Act—Select Legislative Instrument 2007 No. 277—Remuneration Tribunal (Miscellaneous Provisions) Amendment Regulations 2007 (No. 2) [F2007L03751]*.

Social Security Act—


Social Security Exempt Lump Sum (Queensland Government Redress Scheme) (FaCSIA) Determination 2007 [F2007L03594]*.


* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Inspector-General of the Australian Defence Force: Memo

(Question No. 3370)

Senator Faulkner asked the Minister representing the Minister for Defence, upon notice, on 18 June 2007:

With reference to tabled document no. 8 provided at the estimates hearing of the Foreign Affairs Defence and Trade Committee on 30 May 2007, namely a copy of an alleged signed memo by P R Smythe and D M Ryan addressed to Mr M Leishman of the office of the Inspector General of the Australian Defence Force, dated 6 February 1998:

(1) Has the department: (a) located that memo in its original form; and (b) analysed the memo; if so, can the Minister confirm: (i) that the memo is genuine, (ii) that it was submitted on Australian Federal Police (AFP) letterhead, (iii) that it is date stamped as having been received on 6 February 1998, (iv) that the identity of the initials at the foot of the memo are those of Mr Leishman; if not, whose initials were they, (v) that the annotated seven digit telephone number 06 2497444 was the number of the AFP Canberra Operations Centre at that time, (vi) that the annotated seven digit phone number 08 4191920 was a facsimile number in the South Australian office of the AFP at that time.

(2) Have P R Smythe and D M Ryan who allegedly signed the memo been interviewed; if so: (a) by whom; (b) when; (c) where; (d) were the interviews taped; if so: (i) was a transcript made, and (ii) is the transcript available; and (e) have those former officers confirmed the authenticity of the memo.

(3) (a) Has Mr Leishman’s whereabouts now been traced; and (b) have attempts been made to contact him to confirm the authenticity of the memo; if so, was the authenticity confirmed.

Senator Ellison—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) The department:
   (a) has not located the memo in its original form; and
   (b) and (b)(i) – (vi) has conducted an initial examination of a copy of tabled document no. 8, the result of which has been referred to the Ombudsman for consideration as part of the Ombudsman’s investigation. It would be inappropriate for the department to comment further before the completion of that investigation.

(2) and (3) All matters concerning this document and its authenticity have been referred to the Ombudsman for consideration as part of the Ombudsman’s investigation. Accordingly, Defence has not contacted any of the individuals named in these questions since the Ombudsman initiated the inquiry.
Families, Community Services and Indigenous Affairs: Red Tape and Funding Reform

(Question No. 3376)

Senator Crossin asked the Minister for Community Services, upon notice, on 20 June 2007:

With reference to the Red Tape Removal and Funding Reform branches of the department:

1. For the 2006-07 financial year, for each branch: (a) how many full-time staff are employed in the branch; (b) how is departmental funding provided to it; (c) how much funding for programs or projects is administered by it; and (d) can a list be provided of activities it undertook and the outcomes it achieved.

2. In regard to the Red Tape Removal branch, is it the case that consultants have been sent into some Indigenous community organisations to assess and address the issue of red tape; if so: (a) can a list be provided of all community organisations that have benefited from this assistance; (b) what work have the consultants undertaken, or what work do they expect to undertake; and (c) what is the total cost of consultancy fees and associated departmental fees incurred by the initiative.

Senator Scullion—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:

The Red Tape Removal Branch and the Funding Reform Branch referred to in the honourable Senator’s question is one and the same Branch, with a name change to better reflect the work performed. During 2006-07 there were 6.63 full time equivalent staff employed in the Branch.

Funding for the Branch was provided through the normal departmental budget process.

The Branch did not have any administered funds for programmes or projects during 2006-07.

The major activities of the Branch in 2006-07 were related to the conduct of the Indigenous common funding round involving six agencies, 1,146 clients applying for funding for 3,230 activities. The Branch also provided support services to Indigenous Coordination Centres and other Australian Government agencies which administer Indigenous grants. In 2006-07, the Branch in consultation with other Commonwealth agencies worked through the recommendations of the Morgan Disney Report. It prepared a report to the Secretaries’ Group on Indigenous Affairs to gain across Commonwealth agreement to the recommendations. A cross-agency working group is progressing implementation of the recommendations.

Morgan Disney and Associates were engaged in 2005 to conduct the study “A Red Tape Evaluation in Selected Indigenous Communities.”

The list of communities is at Attachment A.

In undertaking the Red Tape Evaluation, Morgan Disney and Associates worked with 22 organisations in 18 communities nationally to map contracts and funding agreements.

The cost of the Morgan Disney evaluation was $168,269.

ATTACHMENT A

Organisations consulted by Morgan Disney and Associates

Aboriginal and Torres Strait Islander Corporation for Welfare, Resources and Housing, Krurungal
Arltarlplita Community Government Council
Association of Northern, Kimberley and Arnhem Aboriginal Artists
Borroloola Community Education Centre
Borroloola Community Government Council
Cape Barren Aboriginal Association
Avian Influenza

**Senator Bob Brown** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 23 August 2007

In regard to the prospect of an avian influenza pandemic:

1. Has the Government considered helping Indonesia to increase its preparedness for an avian influenza pandemic, for example, by providing equivalent pro-rata supplies of anti-viral drugs and vaccine supplies to those now available in Australia?

2. What specific assistance has been provided by the Government to prevent avian influenza in West Papua?

3. What aid has been provided in order to help detect, prevent and meet the emergency of a pandemic in: (a) East Timor; and (b) Papua New Guinea?

**Senator Coonan**—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:


   Through the aid program, Australia is providing up to $34 million to support the Government of Indonesia in addressing the threat of an Avian Influenza (AI) pandemic. Additional information in relation to Australia’s assistance to Indonesia has been provided to the Senate Tables Office and to Senator Bob Brown. Support includes programs to control the epidemic in poultry and to strengthen surveillance of, and response to, human cases. For example, assistance is provided to the World Health Organization (WHO) and the Food and Agriculture Organization (FAO) to support the Government of Indonesia’s efforts to control AI in humans and poultry at a national level.

   The Government, through the Department of Health and Ageing, has a Memorandum of Understanding with Indonesia to promote and safeguard public health in general and to strengthen public
health services in particular. The Plan of Action on health cooperation between the two governments for the period 2004-07 includes a commitment to build capacity in health planning and management by sharing information on communicable diseases and developing the rational use of pharmaceuticals in Indonesia.

Australia has a National Medical Stockpile which includes large amounts of antiviral medicines and personal protective equipment. Procurement of some limited stocks of pre-pandemic vaccine based on currently circulating strains of H5N1 is also under way.

The Commonwealth Government has a standing commitment, as set out in the Australian Health Management Plan for Pandemic Influenza, to consider requests from the WHO or other governments for assistance from the National Medical Stockpile and to respond commensurately with the nature of the threat, without weakening Australia’s own capacity for action should the pandemic spread here.

Australia’s assistance to Indonesia has included funding of $1.3 million to the WHO for the purchase of 50,000 courses of Oseltamivir (“Tamiflu”).

At the APEC Health Ministers Meeting in June 2007, the Minister for Health and Ageing the Hon Tony Abbott MP, reiterated Australia’s willingness to consider assisting Indonesia with vaccines.

(2) Australia is providing over $8 million to support Indonesia’s Ministry of Agriculture to extend its animal disease surveillance and response program to South Sulawesi, Papua and West Papua. This program is currently in its preparatory phase. It will commence in South Sulawesi, where the incidence of disease is highest.

Australian assistance to the WHO and FAO to help Indonesia increase its pandemic preparedness will benefit all of Indonesia including West Papua.

(3) (a) The Government has provided development assistance to East Timor to help detect, prevent and respond to a potential pandemic. For example, $4.75 million over three years has been allocated for a Biosecurity Strengthening Project in East Timor. The project is being implemented by the FAO in conjunction with the East Timor Ministry of Agriculture, Fisheries and Forestry. The project will build the capacity of the veterinary and quarantine services in East Timor. Activities include education campaigns, surveillance of potential health emergencies, improving health practices in poultry and pig husbandry, and assisting with legislation and research.

Australia has also placed an epidemiologist in the WHO office in East Timor. This placement is assisting East Timor to increase its pandemic preparedness.

(b) Australia has taken a leading role working with the Government of Papua New Guinea (PNG) to combat AI. $6.1 million has been committed to help monitor and respond quickly to outbreaks of AI in poultry and humans.

Since March 2006 Australia has provided:

- Technical assistance to develop the PNG Contingency Plan for Preparedness and Response to an Influenza Pandemic;
- $400,000 to enhance surveillance and reporting in the Western and Sandaun Provinces, involving public awareness, training in rapid testing and developing protocols for an outbreak;
- $113,000 to extend the National Health Radio Network to high risk locations;
- Funds to support a twinning program between the Australian Quarantine Inspection Service (AQIS) and PNG’s National Agriculture Quarantine and Inspection Authority (NAQIA). This agreement will increase PNG’s operational capacity to investigate disease outbreaks including AI;
$500,000 for the WHO in PNG to support their technical assistance and rapid response capacity; and

Assistance to PNG through the Pacific Regional Influenza Pandemic Preparedness Project.

Australian support enabled early testing and reporting of a recent incident in Sandaun Province. AusAID and AQIS officials are in close contact with their counterparts in PNG and are ready to offer necessary assistance.

**Australian Government AusAid**

**AUSTRALIA’S ASSISTANCE TO INDONESIA FOR AVIAN INFLUENZA**

Australia, through the Government’s overseas aid agency AusAID, was one of the first countries to respond to Indonesia’s Avian Influenza (AI) challenge, committing funding of up to A$34 million since early 2004. Our support includes:

**Control of AI in poultry**

In collaboration with the UN Food and Agriculture Organization (FAO) and the Ministry of Agriculture’s National Animal Health Diseases Control Centre

- provide technical leadership to the Indonesian Government and the international community on AI
- lead the implementation of an aggressive plan for control in poultry
- support the roll-out of the community based Participatory Disease Surveillance and Response Program in South Sulawesi, Papua and Java, Bali and Sumatra
- collaborate with NGOs to strengthen community based surveillance

**Control of AI Surveillance and Response in Humans**

In collaboration with the Ministry of Health and World Health Organization (WHO)

- strengthen provincial and district-level hospitals, health centres and community based infectious disease surveillance
- support rapid response teams (field epidemiology) to investigate suspected human AI cases and strengthen international reporting
- support hospital response teams to oversee preparedness at tertiary care facilities
- assist the National Committee for AI Control and Preparedness to manage AI
- funding to purchase 50,000 courses of the antiviral medication “Tamiflu”
- support the AI Command Post within the Ministry of Health

**Veterinary Laboratory Capacity-Building**

- CSIRO is working with Ministry of Agriculture to strengthen veterinary laboratory networking
- improve provincial laboratories ability for animal disease surveillance and control

**Indonesian Animal Quarantine System to Control AI**

Australia’s Quarantine and Inspection Service is working in collaboration with the Indonesian Agency for Agricultural Quarantine to strengthen Indonesia’s internal quarantine services in order to contain the H5N1 virus.

**Animal Health Support for South Sulawesi and Papua Provinces**

Australia’s CSIRO in partnership with the Ministry of Agriculture and UN FAO

- veterinary epidemiologists working to improve disease control, surveillance and response
- improved identification and notification of AI in animals
Australian Passports
(Question No. 3444)

Senator Nettle asked the Minister representing the Minister for Foreign Affairs, upon notice, on 24 August 2007:

(1) Given that, since May 2007, transgender people travelling overseas for gender reassignment surgery cannot obtain a limited validity passport identifying their intended sex and that, due to this, whilst overseas they will now be more vulnerable to abuse and discrimination, does the Government recognise that, if a person’s passport does not reflect the gender which that person lives in society, it leaves them open to danger during travel.

(2) Given that the alternative to travelling on a limited validity passport has been a Document of Identity (DOI), which does not include a gender field, and the significant limitations of DOIs, does the Government acknowledge the more difficult circumstances faced by transgender people travelling overseas for gender reassignment surgery.

(3) Given that under Article 12 of the United Nations International Covenant on Civil and Political Rights on freedom of movement, a nation should not deny its citizens a passport and the rights of free and safe passage, how can the safety of transgender Australians wishing to travel overseas be ensured.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator’s question:

(1) The purpose of Australian Passport Amendment Determination No.1, which came into effect in July 2007, was to strengthen the integrity and security of the Australian passport and passport issuing process. It clarifies the elements that constitute a person’s identity for passport issuing purposes and the source of the information on which the Department of Foreign Affairs and Trade will rely to confirm the elements of identity, including gender. These are the birth records held by the relevant Registrar of Births, Deaths and Marriages, for Australian-born citizens and citizenship records held by the Department of Immigration and Citizenship, for foreign-born citizens.

It follows that the Department cannot issue passports showing a gender which is different from that appearing in the document supporting a person’s claim to Australian citizenship.

There is no evidence that a pre-operative transgender person travelling overseas on a passport recording their gender as shown on their birth or citizenship record is more vulnerable to abuse or discrimination.

(2) The Australian Document of Identity is widely recognised. It is a highly credible and International Civil Aviation Organisation (ICAO) compliant travel document. DFAT has had no complaints in recent corporate memory from persons encountering problems when travelling on an Australian Document of Identity.

(3) DFAT’s policy does not contravene Article 12 of the United Nations International Covenant on Civil and Political Rights. It does not prevent travel for transgender persons who may be issued, on application, a travel document using one of the following options:

1. They can obtain a passport in their gender at birth as shown on their cardinal document (birth or citizenship certificate)
2. They can obtain a passport in their new gender following amendment of their cardinal document
3. They can obtain a Document of Identity with the gender field left blank.

Any of the above options will allow a transgender person to leave or re-enter Australia.