CORRECTIONS

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Tuesday, 21 October 2008

Facsimile: Senate (02) 6277 2977
            House of Representatives (02) 6277 2944
            Main Committee (02) 6277 2944
INTERNET

The Journals for the Senate are available at

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

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

SITTING DAYS—2008

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RADIO BROADCASTS

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

- **CANBERRA**: 103.9 FM
- **SYDNEY**: 630 AM
- **NEWCASTLE**: 1458 AM
- **GOSFORD**: 98.1 FM
- **BRISBANE**: 936 AM
- **GOLD COAST**: 95.7 FM
- **MELBOURNE**: 1026 AM
- **ADELAIDE**: 972 AM
- **PERTH**: 585 AM
- **HOBART**: 747 AM
- **NORTHERN TASMANIA**: 92.5 FM
- **DARWIN**: 102.5 FM
FORTY-SECOND PARLIAMENT
FIRST SESSION—THIRD PERIOD

Governor-General
Her Excellency Ms Quentin Bryce, Companion of the Order of Australia

Senate Officeholders

President—Senator Hon. John Joseph Hogg
Deputy President and Chair of Committees—Senator Hon. Alan Baird Ferguson
Temporary Chairs of Committees—Senators Guy Barnett, Thomas Mark Bishop,
Carol Louise Brown, Patricia Margaret Crossin, Hon. Christopher Martin Ellison,
Michael George Forshaw, Gary John Joseph Humphries, Annette Kay Hurley,
Stephen Patrick Hutchins, Gavin Mark Marshall, Claire Mary Moore, Stephen Shane Parry,
Hon. Judith Mary Troeth and Russell Brunell Trood
Leader of the Government in the Senate—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Government in the Senate—Senator Hon. Stephen Michael Conroy
Leader of the Opposition in the Senate—Senator Hon. Nicholas Hugh Minchin
Deputy Leader of the Opposition in the Senate—Senator Hon. Eric Abetz
Manager of Government Business in the Senate—Senator Hon. Joseph William Ludwig
Manager of Opposition Business in the Senate—Senator Hon. Helen Lloyd Coonan

Senate Party Leaders and Whips

Leader of the Australian Labor Party—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Hon. Stephen Michael Conroy
Leader of the Liberal Party of Australia—Senator Hon. Nicholas Hugh Minchin
Deputy Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz
Leader of the Nationals—Senator Barnaby Thomas Gerard Joyce
Deputy Leader of the Nationals—Senator Hon. Nigel Gregory Scullion
Leader of the Australian Greens—Senator Robert James Brown
Leader of the Family First Party—Senator Steve Fielding
Government Whips—Senators Kerry Williams Kelso O’Brien, Donald Edward Farrell and
Anne McEwen
Liberal Party of Australia Whips—Senators Stephen Shane Parry and Judith Anne Adams
The Nationals Whip—Senator John Reginald Williams
Australian Greens Whip—Senator Rachel Mary Siewert
Family First Party Whip—Senator Steve Fielding

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

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(1) Chosen by the Parliament of South Australia to fill a casual vacancy vice Amanda Eloise Vanstone, resigned.

(2) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Ian Campbell, resigned.

(3) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

**PARTY ABBREVIATIONS**

AG—Australian Greens; ALP—Australian Labor Party; CLP—Country Liberal 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—A Thompson
**RUDD MINISTRY**

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<tr>
<td>Prime Minister</td>
<td>Hon. Kevin Rudd, MP</td>
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<tr>
<td>Deputy Prime Minister, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion</td>
<td>Hon. Julia Gillard, MP</td>
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<tr>
<td>Treasurer</td>
<td>Hon. Wayne Swan MP</td>
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<tr>
<td>Minister for Immigration and Citizenship and Leader of the Government in the Senate</td>
<td>Senator Hon. Chris Evans</td>
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<tr>
<td>Special Minister of State, Cabinet Secretary and Vice President of the Executive Council</td>
<td>Senator Hon. John Faulkner</td>
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<tr>
<td>Minister for Finance and Deregulation</td>
<td>Hon. Lindsay Tanner MP</td>
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<tr>
<td>Minister for Trade</td>
<td>Hon. Simon Crean MP</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>Hon. Stephen Smith MP</td>
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<tr>
<td>Minister for Defence</td>
<td>Hon. Joel Fitzgibbon MP</td>
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<tr>
<td>Minister for Health and Ageing</td>
<td>Hon. Nicola Roxon MP</td>
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<tr>
<td>Minister for Families, Housing, Community Services and Indigenous Affairs</td>
<td>Hon. Jenny Macklin MP</td>
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<tr>
<td>Minister for Infrastructure, Transport, Regional Development and Local Government and Leader of the House</td>
<td>Hon. Anthony Albanese MP</td>
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<td>Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate</td>
<td>Senator Hon. Stephen Conroy</td>
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<td>Minister for Innovation, Industry, Science and Research</td>
<td>Senator Hon. Kim Carr</td>
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<tr>
<td>Minister for Climate Change and Water</td>
<td>Senator Hon. Penny Wong</td>
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<tr>
<td>Minister for the Environment, Heritage and the Arts</td>
<td>Hon. Peter Garrett AM, MP</td>
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<tr>
<td>Attorney-General</td>
<td>Hon. Robert McClelland MP</td>
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<td>Minister for Human Services and Manager of Government Business in the Senate</td>
<td>Senator Hon. Joe Ludwig</td>
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<td>Minister for Agriculture, Fisheries and Forestry</td>
<td>Hon. Tony Burke MP</td>
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<tr>
<td>Minister for Resources and Energy and Minister for Tourism</td>
<td>Hon. Martin Ferguson AM, MP</td>
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[The above ministers constitute the cabinet]
RUDD MINISTRY—continued

Minister for Home Affairs                      Hon. Bob Debus MP
Assistant Treasurer and Minister for Competition Policy and
Consumer Affairs                               Hon. Chris Bowen MP
Minister for Veterans’ Affairs                  Hon. Alan Griffin MP
Minister for Housing and Minister for the Status of Women
                                              Hon. Tanya Plibersek MP
Minister for Employment Participation          Hon. Brendan O’Connor MP
Minister for Defence Science and Personnel     Hon. Warren Snowdon MP
Minister for Small Business, Independent Contractors and
the Service Economy and Minister Assisting the Finance
Minister on Deregulation                       Hon. Dr Craig Emerson MP
Minister for Superannuation and Corporate Law   Senator Hon. Nick Sherry
Minister for Ageing                            Hon. Justine Elliot MP
Minister for Youth and Minister for Sport      Hon. Kate Ellis MP
Parliamentary Secretary for Early Childhood Education and
Childcare                                       Hon. Maxine McKew MP
Parliamentary Secretary for Defence Procurement Hon. Greg Combet AM, MP
Parliamentary Secretary for Defence Support    Hon. Dr Mike Kelly AM, MP
Parliamentary Secretary for Regional Development and
Northern Australia                              Hon. Gary Gray AO, MP
Parliamentary Secretary for Disabilities and Children’s Services Hon. Bill Shorten MP
Parliamentary Secretary for International Development Assistance Hon. Bob McMullan MP
Parliamentary Secretary for Pacific Island Affairs Hon. Duncan Kerr MP
Parliamentary Secretary to the Prime Minister   Hon. Anthony Byrne MP
Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion Senator Hon. Ursula Stephens
Parliamentary Secretary to the Minister for Trade Hon. John Murphy MP
Parliamentary Secretary to the Minister for Health and Ageing Senator Hon. Jan McLucas
Parliamentary Secretary for Multicultural Affairs and Settlement Services Hon. Laurie Ferguson MP
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<th>Position</th>
<th>Shadow Minister</th>
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<tr>
<td>Leader of the Opposition</td>
<td>Hon. Malcolm Turnbull MP</td>
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<tr>
<td>Deputy Leader of the Opposition and Shadow Treasurer</td>
<td>Hon. Julie Bishop MP</td>
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<tr>
<td>Leader of the Nationals and Shadow Minister for Trade, Transport,</td>
<td>Hon. Warren Truss MP</td>
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<td>Regional Development and Local Government</td>
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<tr>
<td>Shadow Minister for Broadband, Communications and the Digital Economy</td>
<td>Senator Hon. Nick Minchin</td>
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<td>and Leader of the Opposition in the Senate</td>
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<td>Shadow Minister for Innovation, Industry, Science and Research and</td>
<td>Senator Hon. Eric Abetz</td>
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<td>Shadow Minister for Foreign Affairs and Manager of Opposition Business</td>
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<td>in the Senate</td>
<td>Hon. Joe Hockey MP</td>
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<td>Shadow Minister for Finance, Competition Policy and Deregulation and</td>
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<td>Manager of Opposition Business in the House</td>
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<td>Shadow Minister for Energy and Resources</td>
<td>Hon. Ian Macfarlane MP</td>
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<td>Shadow Minister for Families, Housing, Community Services and</td>
<td>Hon. Tony Abbott MP</td>
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<td>Shadow Special Minister of State and Shadow Cabinet Secretary</td>
<td>Senator Hon. Michael Ronaldson</td>
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<tr>
<td>Shadow Minister for Human Services and Deputy Leader of The Nationals</td>
<td>Senator Hon. Nigel Gregory Scullion</td>
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<td>Shadow Minister for Climate Change, Environment and Water</td>
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<tr>
<td>Shadow Minister for Education, Apprenticeships and Training</td>
<td>Hon. Christopher Pyne</td>
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<td>Shadow Attorney-General</td>
<td>Senator Hon. George Brandis SC</td>
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<td>Shadow Minister for Agriculture, Fisheries and Forestry</td>
<td>Hon. John Cobb MP</td>
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<td>Shadow Minister for Employment and Workplace Relations</td>
<td>Mr Michael Keenan MP</td>
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<td>Shadow Minister for Immigration and Citizenship</td>
<td>Hon. Dr Sharman Stone MP</td>
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<td>Shadow Minister for Small Business, Independent Contractors, Tourism</td>
<td>Mr Steven Ciobo MP</td>
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[The above constitute the shadow cabinet]
SHADOW MINISTRY—continued

Shadow Minister for Financial Services, Superannuation and Corporate Law
Hon. Chris Pearce MP

Shadow Assistant Treasurer
Hon. Tony Smith MP

Shadow Minister for Sustainable Development and Cities
Hon. Bruce Billson MP

Shadow Minister for Competition Policy and Consumer Affairs and Deputy Manager of Opposition Business in the House
Mr Luke Hartsuyker MP

Shadow Minister for Housing and Local Government
Mr Scott Morrison MP

Shadow Minister for Ageing
Mrs Margaret May MP

Shadow Minister for Defence Science and Personnel
Hon. Bob Baldwin MP

Shadow Minister for Veterans’ Affairs
Mrs Louise Markus MP

Shadow Minister for Early Childhood Education, Childcare, Women and Youth
Mrs Sophie Mirabella MP

Shadow Minister for Justice and Customs
Hon. Sussan Ley MP

Shadow Minister for Employment Participation, Training and Sport
Dr Andrew Southcott MP

Shadow Parliamentary Secretary for Northern Australia
Senator Hon. Ian Macdonald

Shadow Parliamentary Secretary for Roads and Transport
Mr Barry Haase MP

Shadow Parliamentary Secretary for Regional Development
Mr John Forrest MP

Shadow Parliamentary Secretary for International Development Assistance
Senator Marise Payne

Shadow Parliamentary Secretary for Energy and Resources
Mr Don Randall MP

Shadow Parliamentary Secretary for Indigenous Affairs
Senator Marise Payne

Shadow Parliamentary Secretary for Disabilities, Carers and the Voluntary Sector
Senator Cory Bernardi

Shadow Parliamentary Secretary for Water Resources and Conservation
Senator Fiona Nash

Shadow Parliamentary Secretary for Health Administration
Senator Mathias Cormann

Shadow Parliamentary Secretary for Defence
Hon. Peter Lindsay MP

Shadow Parliamentary Secretary for Education
Senator Hon. Brett Mason

Shadow Parliamentary Secretary for Justice and Public Security
Mr Jason Wood MP

Shadow Parliamentary Secretary for Agriculture, Fisheries and Forestry
Senator Hon. Richard Colbeck

Shadow Parliamentary Secretary for Immigration and
Shadow Parliamentary Secretary Assisting the Leader in the Senate
Senator Concetta Fierravanti-Wells
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Tuesday, 14 October 2008

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 12.30 pm and read prayers.

BUSINESS

Rearrangement

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

That, on Tuesday, 14 October 2008:
(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7 pm to 11.10 pm;
(b) that from 7 pm, any question in respect of which a senator requires a division, and any questions consequent on the outcome of that division, shall stand postponed until the next day of sitting at a time fixed by the Senate;
(c) the routine of business from 7 pm shall be government business only; and
(d) the question for the adjournment of the Senate shall be proposed at 10.30 pm.

I understand that this matter has support within the chamber and it will include no divisions and no quorums. Not having quorums is really a chamber management issue, so I thank the Senate for that. It will include those people who want to make contributions during the second reading debate on the two bills which have had wide interest, so it will facilitate the sitting for this week to ensure that we can get through the legislative agenda that we have. In addition, as we do not sit next week, I wanted to express my thanks to the chamber to allow us to use this evening for second reading debates, because estimates will take up next week and we do have only a short number of sitting periods before the end of the year and significant legislation that we do need to get through.

Senator Ian Macdonald—Where is the motion?

Senator LUDWIG—The motion was circulated yesterday in the chamber, and it is also in the Notice Paper for those who want to look at it.

Question agreed to.

Consideration of Legislation

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (12.32 pm)—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:
Migration Amendment (Notification Review) Bill 2008
Migration Legislation Amendment (Worker Protection) Bill 2008.

Question agreed to.

SAFE WORK AUSTRALIA BILL 2008
SAFE WORK AUSTRALIA (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2008

In Committee

Consideration resumed from 13 October.

Senator LUDWIG (Queensland—Minister for Human Services) (12.35 pm)—If I take the time to explain where we are up to, it might give an opportunity for people to be in the chamber. We are now on opposition amendments (11) and (14). I will also take the opportunity of dealing with some of those matters while the matter is before the chair. I see we now have the ability to move forward.

The CHAIRMAN—I call Senator Abetz to move opposition amendments (9) and (10) on sheet 5611.

Senator ABETZ (Tasmania) (12.36 pm)—I apologise to the chamber whilst I am catching my breath. It was indicated to me that we would be having a division on housekeeping prior to this legislation coming up, so I was waiting for the division bells to ring and, of course, that did not occur. My apologies to the cham-
ber. Could I move opposition amendments (11) to (14) by leave.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—Senator Abetz, you first need to move opposition amendments (9) and (10) on sheet 5611.

Senator ABETZ—That is right. We still had that hanging over from last night. Senator Ludwig misled me very badly there, and I fell for it. I do seek leave to move opposition amendments (9) and (10).

Leave granted.

Senator ABETZ—I move:

(9) Clause 42, page 31 (line 31), omit “or (2)”.

(10) Clause 42, page 32 (line 7), omit “and subparagraph (2)(a)(i)”.

Senator LUDWIG (Queensland—Minister for Human Services) (12.37 pm)—Senator Abetz is correct. I did mislead him and I do apologise. I think it is worthwhile to put that on the record. What we also were at and why I missed that point is that we were seeking to have that dealt with yesterday evening as part of the division that we had in respect of opposition amendment (8). However, it is a consequential amendment and it could not be included within it. We do not intend to divide in respect of that. We have stated our opposition to it; it is a consequential amendment. We have indicated our reasoning for the opposition to that and I have already spoken to it as part of the overall package of matters that went to votes at meetings. So I do not intend to add anything in respect of that matter other than to express our opposition to it.

Question agreed to.

Senator ABETZ (Tasmania) (12.38 pm)—by leave—I move opposition amendments (11), (12), (13) and (14) on sheet 5611 together:

(11) Clause 43, page 33 (line 13), omit “any direction”, substitute “certain directions”.

(12) Clause 45, page 34 (lines 14 to 16), omit paragraph (3)(a).

(13) Clause 46, page 35 (lines 1 and 2), omit paragraph (1)(a), substitute:

(a) about the performance of the CEO’s functions but not in relation to operational matters; or

(14) Clause 46, page 35 (after line 17), at the end of the clause, add:

(5) In this section, operational matters are matters addressed in the strategic and operational plans of Safe Work Australia.

I note that the Australian Greens have an amendment in relation to this matter as well, and what I would be suggesting to the Senate—by leave—is that we have a cognate debate in relation to opposition amendments (11) to (14) and the Australian Greens amendments (3), (4) and (5). If we have that debate together then, in the event the amendment I am moving gets up, I think the Green amendment is obviated and will not need to be put and I understand Senator Siewert would withdraw that amendment.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—The question before the chair is that opposition amendments (11) to (14) be agreed to. We will come to the issue of subsequent amendments and withdrawal in due course.

Senator ABETZ—But they do canvass the same grounds, Mr Temporary Chairman, and so I suppose what I am flagging is that if we do stray off opposition amendments into the Green amendments then points of order will not necessarily be helpful for the smooth flowing of the debate.

The issue in relation to these amendments relates to the ministerial direction that is able to be given, especially to the CEO. What we are suggesting relates to clause 43, line 13, which says that the CEO, according to the legislation, must also comply with any direction given by the minister, as per clause 46, or Safe Work Australia, as per clause 48. We believe that the CEO of Safe Work Australia should only be submitted to certain directions and those certain directions are those that would be outlined in clause 46 of the bill, which says the minister may give directions to the CEO but then limits them into certain categories, whereas the carte blanche that is given in clause 43 is, we believe, somewhat too extensive, especially in circumstances such as clause 57(3), which is the topic of an Australian Greens amendment, which is about the termination of the appointment of the CEO. I think these things need to be seen in context because the CEO can be terminated for misbehaviour or incapacity. That is clause 57(1). That seems to me to be fair and reasonable. Then, in clause 57(2), the CEO can be dismissed for bankruptcy and a number of other stipulated reasons, which seems fair enough.

But then we have subclause (3), which says that the minister may terminate the appointment of the CEO if the minister is of the opinion that the performance of the CEO has been—wait for it!—unsatisfactory. So the minister would be able to have carte blanche in relation to the CEO and basically sway him or her and determine and direct, in a completely inappropriate way, the CEO, because what Labor is saying is that on the one hand the minister can direct the CEO in any possible way the minister wants and on the other hand the minister has the power to dismiss the CEO if they have been unsatisfactory. So with that double whammy I must say the position of the CEO really does become the plaything of the minister.

We amended this legislation during our discussions last night to ensure that the CEO and Safe Work Australia did not become the plaything of the minister where the minister could pick and choose favourites in relation to social partners. What we are also trying to
do here, as an opposition, is to ensure that the CEO of Safe Work Australia does in fact have some degree of security. Indeed, given the sort of campaigns that the Australian Labor Party ran against us at the last election in relation to unfair dismissal laws, to be able to get rid of somebody just because they are ‘unsatisfactory’—not even a verbal warning is required, which I understand is now part and parcel of Forward with Fairness under Labor—is interesting, isn’t it? When the Labor Party gets the opportunity to employ somebody, the person has to abide by every direction of the minister and then, if there is anything they do that might fall into the category of being unsatisfactory, the minister can just dismiss them.

Undoubtedly those listening in would be horrified to think that one of the first pieces of legislation that the Labor Party is introducing is to employ somebody on such a tenuous contractual basis. But that, of course, is the Labor Party—they say one thing and they cross their fingers behind their back and in fact do something completely different.

Safe Work Australia is a very serious body. It really has to be given the degree of independence and confidence that allows it to act within the national interest and not be manipulated by the sort of political machinations that we know especially take place between federal and state Labor ministers. We as an opposition are very concerned to ensure that the CEO does have the capacity to act independently and therefore we are moving this amendment, which says that the CEO will be subject to certain directions by the minister under clause 46 but that the CEO should not have to comply with any direction given by the minister. We believe that is an important principle, especially given the other clauses within the legislation which undermine that position even further. We hope that the other amendments that are being foreshadowed will be carried and that that will provide a solid and secure foundation for the CEO of Safe Work Australia to operate on, ensuring harmonisation of occupational health and safety laws around the country.

Senator SIEWERT (Western Australia) (12.46 pm)—The Greens do support these amendments, but we have put amendments that seek to go further because we are deeply concerned about the ability of the CEO to give direction to Safe Work Australia. The opposition amendments limit the ability of the minister to direct the CEO by excluding directions on operational matters—that is, the minister cannot direct the CEO on operational matters. ‘Operational matters’ are defined as matters in the strategic operational plan. However, we would prefer the approach of opposing all ministerial direction to the CEO, which is why we have put amendments to that end. We believe that the opposition amendments go some way to dealing with the issues that we have concerns about but we would have liked to have gone further.

We believe this is specifically an issue around independence and the fact that this body should be tripartite. We believe that these provisions—like many other provisions that we raised during the debate last night—take away responsibility from Safe Work Australia, undermine its independence and undermine its tripartite approach. We believe the exercise of ministerial intervention in these sorts of bodies is not appropriate because it does not provide for transparency or effective outcomes and, as I said, it undermines the genuine tripartite approach that we expect from this body.

I am so scared when I find myself agreeing with Senator Abetz, as I have on so much of this debate!

Senator Abetz—It is spooky!

Senator SIEWERT—It is very freaky! I said to my staff this morning, ‘I feel like I’m in the twilight zone!’ But I will say it: I do agree with Senator Abetz on this issue. We will come to a Greens amendment later on about the termination of the appointment of a CEO. This bill provides:

The Minister may terminate the appointment of the CEO if the Minister is of the opinion that the performance of the CEO has been unsatisfactory.

If you do not obey the direction from the minister, all of a sudden your performance is unsatisfactory. You do not need this in the act; there are other provisions for dealing with unsatisfactory performance. I find this such a blatant attempt to influence Safe Work Australia—I am surprised it has not been done in a cleverer way, to be quite frank. Again, the states and territories and the Commonwealth had a nice little cosy arrangement to come up with a piece of legislation that they did not think we could amend and that puts in place so many obvious triggers for overriding the independence and the tripartite approach of Safe Work Australia. I am actually quite astonished that it has been done in such an outright way. As I said, I would have thought they would have been a bit cleverer about the way that was done.

The Greens wanted to take a much stronger approach to controlling the minister’s ability to intervene in Safe Work Australia. Having said that, we do support the coalition amendments because we suspect that they will not support amendments which go as strongly to this point as ours do. These amendments, at least, provide some control over the exercise of the powers of the minister over the CEO and therefore over Safe Work Australia.

Senator ABETZ (Tasmania) (12.50 pm)—I will comment very briefly, just so the listening audience is not too spooked by the cooperation between Senator Siewert and me. Of course, this does indicate to Liberal supporters that the Greens are not bad 100 per cent of the time and to Greens supporters that the Liberals are
not bad 100 per cent of the time. One thing I can assure
listeners of is that in relation to this the Greens and the
coalition are not engaging in the sort of nonsensical
group hug that we witnessed in relation to the luxury
car tax, where the Greens and Family First voted for
each other’s amendments in circumstances where, I
honestly believe, they were contradictory—but that is
for another time. We are not engaging in the sort of
group hug scenario that this Senate was submitted to in
the last sitting period.

In relation to clause 46—just to clarify this in my
own mind—I referred to where it set out the minister’s
powers in directing the CEO. I understand from the
legislation that that would have to be by legislative
instrument. Would that legislative instrument be a dis-
allowable instrument?

Senator LUDWIG (Queensland—Minister for
Human Services) (12.52 pm)—It would have to be
tabled, so it is tabled in parliament, but it is not a disal-
lowable instrument.

Senator ABETZ (Tasmania) (12.52 pm)—So,
would there be oversight in relation to those matters
that are contained in that legislative instrument? It
seems to me, on the reading of it, that the following
applies:
The Minister may, by legislative instrument, give written
directions to the CEO:

(a) about the performance of the CEO’s functions ... ; or

(b) requiring the provision of a report or advice on a
matter relating to Safe Work Australia’s functions.

So they would be the only two areas. If the minister
sought to provide directions other than those contained
in clause 46, what sort of oversight could there be by
this parliament, given that 46(2) says:

A direction under paragraph (1)(a) must be of a general
nature only.

How can we be assured that the minister will not be too
specific but will stick by what the legislation says? At the
end of the day, the Senate would not be able to dis-
allow the instrument if it were traversed too far, so how
could that actually be checked?

Senator LUDWIG (Queensland—Minister for
Human Services) (12.53 pm)—In terms of 46(1), the
first point that needs to be made clear is the minister
‘may’. So they may choose a legislative instrument and
give written directions to the CEO, as outlined in para-
graphs (a) and (b). Note 1 then indicates:

Section 42 (disallowance) of the Legislative Instruments Act
2003 does not apply to the direction—see section 44 of that
Act.

So it sets out the schema. Should the minister decide to
provide a written direction, it is tabled here. Therefore,
it is open to parliamentary scrutiny. The parliament can
see what that direction is. I will take advice about this
if I am wrong, but it is not unlike the directions that I
can provide to FMA agencies in my portfolio. They are
written directions and they have to be tabled. With re-
gard to directions in the legislation, in this instance the bill says:

Directions about the CEO’s functions are to be general—
and it sets out the requirements in subclauses (2), (3)
and (4).

Senator ABETZ (Tasmania) (12.55 pm)—Under
the Legislative Instruments Act—and my memory is a
bit rusty on this—within what time frame of providing
that written direction would the direction need to be
tabled?

Senator LUDWIG (Queensland—Minister for
Human Services) (12.55 pm)—My recollection is that
it is 14 days, but if it changes from that I will provide
advice.

Senator ABETZ (Tasmania) (12.55 pm)—It will
not change from that. Either you are right or you are
wrong. I will not try to pretend to be an expert in rela-
tion to that because I do not know what the answer is. I
thank the minister for that answer. If the direction is
tabled within 14 days—and I will take that as being
correct for the purposes of this question—or whatever
the time frame might be, and it is deemed by even a
majority of the Senate that the direction transgresses
beyond that which is allowed in clause 46, there would
be basically nothing that the Senate could do, other
than move a motion of censure against the govern-
ment or a censure motion against the government,
but we could not in fact disallow that direction. Is that
the legal position?

Senator LUDWIG (Queensland—Minister for
Human Services) (12.56 pm)—Under the Legislative
Instruments Act, it is not a disallowable instrument. So
the Senate, the parliament, could not exercise that
power. All the other powers of the Senate that apply to
any tabled document are available. I am sure you know
as well as I do that there are a range of ways you can
progress a matter, should you disagree with it. In addi-
tion, given that we on this side of the table do not have
the numbers in this place, we always run the risk—the
debate having been started—of having to defend these
matters and deal with the other powers that the Senate
might want to bring to bear in respect of these types of
issues. That is why it is tabled in parliament—to pro-
vide the opportunity for not only the opposition and the
minor parties to see what that written advice is but also
the public to understand the general schema of how
these things work.

In my experience, it is a matter that is not generally
brought to bear very often. It is one of those where,
when it is brought to bear, there is usually broad
agreement about why it is being brought forward and
usually the minister responsible will provide that gen-
eral advice. I cannot foresee the circumstances, but my
understanding is that certainly in my portfolio you could see circumstances where you might want to do that. Of course, in doing so you do provide the parliament with the opportunity to look at why you are doing it and to criticise the action or agree with the action.

Senator ABETZ (Tasmania) (12.58 pm)—I have just one final question. In relation to the directions that the CEO can be provided with, it says in clause 46(1)(b):

... requiring the provision of a report or advice on a matter relating to Safe Work Australia’s functions.

Would it be the intention of the government to make that report public or, if not public, at least available to the ministerial council or to the members of Safe Work Australia, or will it be simply a report that is between the CEO and the minister and which no other person will be entitled to see?

Senator LUDWIG (Queensland—Minister for Human Services) (12.59 pm)—I am advised that it is a matter for the report to be advised to the minister. It is about ‘the performance of the CEO’s functions under paragraph 45(1)(b) (assisting Safe Work Australia); or ... requiring the provision of a report or advice on a matter relating to Safe Work Australia’s functions.’ It is a way of keeping the minister and who the minister may want to advise—that is, the ministerial council—about the work and nature of Safe Work Australia. It would be a matter for the minister to determine whether that report should or should not be more broadly disseminated—or, as these things go, if it is a mundane or routine report, one would not ordinarily make it available. If it was a significant report the minister would make a decision as to whether the report would be provided. Of course, it could touch upon serious issues—I cannot second-guess what they may be—relating to preventing an injury or death, which the minister may find they cannot make public for all the reasons that you would understand. Or it could be a more perfunctory report that the minister wants to make public because it provides good information about Safe Work Australia. I imagine that that is how it would operate, but the short answer is that it would be a matter for the minister to decide.

Senator ABETZ (Tasmania) (1.01 pm)—Can I just say that, in my experience in this place, Senator Ludwig, it is usually the mundane reports that are freely made available while those that are somewhat more contentious are less frequently made available! But I thank the minister for the answer. I agree with this provision remaining in the legislation—and I will use that to go to the next step of supporting the Australian Greens’ next amendment in relation to the termination of the appointment of the CEO. As the legislation is now structured the minister might order a report, the report may well be to the satisfaction of the ministerial council and to the satisfaction of Safe Work Australia but it may then be used by the minister to say it is unsatisfactory to him—or her, in the current circumstances, with Minister Gillard—and they may therefore terminate the CEO’s employment. Whilst I agree with the current section, I think having clauses like this in the legislation does highlight why the next Greens amendment should in fact be supported. But I will contain my comments to that.

Senator LUDWIG (Queensland—Minister for Human Services) (1.02 pm)—I will respond to a couple of issues. I will address my remarks to the provisions that are being sought to be joined. They go to the ministerial powers to give directions and the power to terminate the CEO for unsatisfactory performance. The point needs to be made at the outset that Safe Work Australia will be established as an independent statutory authority; however, it will be subject to the accountability regime contained in the Financial Management and Accountability Act 1997. Along with that accountability regime, of course, comes the responsibility to meet that legislation.

The CEO has the responsibility to manage the administration of Safe Work Australia and to assist Safe Work Australia in the performance of its functions. The CEO is subject to statutory obligations contained in the FMA Act. Notwithstanding the independence of Safe Work Australia, the minister will be accountable to the Commonwealth parliament for the performance of the CEO and Safe Work Australia staff, as is the case with other ministers who have FMA agencies within their responsibilities. Because of this, and consistent with other bodies subject to the FMA Act, the bill does empower the minister to give general directions to the CEO about the performance of the CEO’s functions and to direct the provision of reports or advice on matters relating to Safe Work Australia. The minister cannot direct the CEO in relation to matters that are solely the responsibility of the CEO under either the Financial Management and Accountability Act or the Public Service Act 1999. I think those are important safeguards to bear in mind when dealing with this. There is a provision that provides a point at which the CEO has to meet the FMA Act and the Public Service Act in discharging their responsibilities, and the minister cannot intervene in relation to matters that are solely the CEO’s responsibility under those two pieces of legislation.

Turning to the issue of the minister’s power to terminate the CEO for unsatisfactory performance, I noted Senator Abetz’s earlier comments in relation to this provision. It is not a provision that allows for capricious action by the minister, nor does it say that. It refers to where there is unsatisfactory performance by a CEO. It is certainly not unreasonable for the minister to have the power to terminate the appointment of a CEO who is not performing. That would of course be
subject to all the usual laws that apply to such action that may be taken by either party in response to this. It is quite a big step to take, and the usual safeguards continue to apply. It is not about taking capricious action in this area. It is therefore not one of those areas that you would expect to be exercised often.

I will stop there, and we will go back a fraction to what this is all about. It is about moving forward with the states and territories in relation to providing an outcome—that is, Safe Work Australia providing the facilitative mechanism to bring forward codes of practice and OH&S legislation. If the minister is not delivering in respect of that and the CEO is not in tune and delivering those outcomes, it is not unreasonable for the minister to start to question why. Certainly the states and territories would be seeking an answer to that question. And, of course, when you talk about the issues that surround procedural fairness, they are embodied in law. They will apply as usual so that people can answer the questions if they are put forward.

The short answer is that it is not unreasonable to have such a provision, given the position the CEO will have and the requirements to have that outcome—that is, delivering OH&S harmonised legislation, including codes of conduct for and on behalf of the Commonwealth, the states and the territories.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—The question is that opposition amendments (11) to (14) on sheet 5611 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—As Senator Siewert is aware, Australian Greens amendment (3) is identical to opposition amendment (12), which was just passed.

Senator SIEWERT (Western Australia) (1.08 pm)—As indicated previously, the Greens will withdraw that amendment as we have just dealt with it. The Australian Greens oppose clause 57 in the following terms:

(6) Clause 57, page 39 (lines 27 to 29), subclause (3) TO BE OPPOSED.

I realise that we have been talking about the termination of the appointment of the CEO. We believe that this amendment is an important amendment. It opposes the provision allowing for the minister to terminate the appointment of the CEO because the minister is of the opinion that the performance of the CEO has been unsatisfactory. Again, we believe it is inappropriate for the minister to have such a significant level of discretion over such an important position. If the minister is able to fire the CEO at will, we believe that this undermines the independence and tripartite nature of Safe Work Australia. We do not believe that this is an appropriate provision to have in this bill which sets up this particular agency.

Senator ABETZ (Tasmania) (1.10 pm)—In my earlier comments I strayed into the subject of this amendment—which was, if I might say, nevertheless relevant as I sought to marry the two considerations. The minister, in responding to those comments, indicated to me that the normal protections would apply to the CEO against any capricious—I think that may have been the word used, or words similar to that—action by the minister. I was just wondering what those protections might be. For example, would the unfair dismissal law apply?

Senator LUDWIG (Queensland—Minister for Human Services) (1.11 pm)—The question of course is in respect of the Work Choices legislation that the previous government introduced.

Senator Abetz—Which you’re keeping!

Senator LUDWIG—I will not respond to interjections that are designed to miss the point. We are in fact getting rid of Work Choices. Where the CEO’s salary is over $100,000—though I am not sure of the exact figure—unfair dismissal provisions would not apply. I was referring to those usual protections that are available in terms of procedural fairness. Senator Abetz and the Greens characterised the minister’s power as being able to sack someone at will. I think that was the phrase that the Greens used. Of course, it is for unsatisfactory performance, not at will. There is no capriciousness embodied in the legislation. It is about ensuring that, if there is unsatisfactory work performance, that power is available. It does not mean that you can conclude it by just pointing at unsatisfactory work or stating the phrase. As you would appreciate, if these matters are contested, the circumstances would need to be examined. The phrase is not unusual in the sense that, if the CEO is not performing—if they are performing unsatisfactorily—that power is available.

Senator ABETZ (Tasmania) (1.12 pm)—The question is: can it be contested in circumstances where it is prescribed in legislation that the minister has the power to dismiss if the minister is of the mind that the CEO’s performance has been unsatisfactory? Unsatisfactory is not defined and therefore, potentially, it could be a capricious minister’s view as to what unsatisfactory could mean—and I think there used to be an example during the Work Choices debate about people chewing gum at work or the colour of the tie the person might be wearing et cetera. I just want to know what the protections are for the CEO from a minister just determining one day that they think that the CEO’s performance is unsatisfactory. What protections are there? Given that, clearly, the unfair dismissal laws, as they will be amended under Forward with Fairness, will not be providing any protection and given that the legislation specifically empowers the minister to dismiss on this quite rubbery ground of unsatisfactory performance, I
would like to know what guarantees there would be for the CEO if this clause were to remain in the legislation.

Senator LUDWIG (Queensland—Minister for Human Services) (1.14 pm)—The short answer is those legal redresses that would be available depending on the circumstances of the particular case.

Senator Abetz—Such as?

Senator LUDWIG—It would be hard to describe those because it is really up to the individuals concerned as to what legal avenues they may seek to address. There are a range of them. I am not going to get into a legal debate now about what a legal adviser might provide to either party in respect of a contested issue. The point is that it ensures that for unsatisfactory performance the power is available. It is not unreasonable for the minister to have the power to terminate the appointment of a CEO who, quite frankly, is not performing. That is the nub of the issue.

Senator SIEWERT (Western Australia) (1.15 pm)—With all due respect I do not know if the minister answered the question in terms of what the definition of unsatisfactory performance is. The issue of concern to the Greens—I think Senator Abetz used ‘capriciousness’ and I said ‘at will’—is the concept that the minister may choose to define something as unsatisfactory performance when the rest of us think it is actually quite legitimate. In fact, that is particularly so when it comes to questioning the then minister’s or the then government’s approach to, in this case, OH&S issues. What the CEO might clearly define as satisfactory performance may be considered by the government of the day—and I am talking about any government of the day—to be unsatisfactory performance, so it comes back to the definition.

Senator LUDWIG (Queensland—Minister for Human Services) (1.16 pm)—I think the problem we then get into is the circularity of the argument. It is one where it is not unreasonable for the minister to indicate, for the reasons specified in the legislation, that someone is not performing their task. If so then the minister can have that power to dismiss. It is a power to dismiss, and what happens from that point on really becomes a matter of the particular circumstances. I did not want to entertain a hypothetical debate as to what might apply depending on the circumstances, because it will turn on the factual matrix of the circumstances at any particular time in respect of the parties, what the nature of the issue is and what the nature of the unsatisfactory work performance is alleged to be. Therefore, we could be here for quite some time trying to second-guess what those are. The provision is straightforward. If you do not agree to it then clearly you do not and we should move on. It is a matter that we think is a reasonable provision to put in the legislation.

Senator ABETZ (Tasmania) (1.17 pm)—I think the minister has given the game away with the use of the term ‘reasonable’ just before he sat down. This clause, which I am minded to support the Greens on having deleted from the legislation, simply says if the minister is ‘of the opinion’; it is not even ‘reasonable opinion’. So good luck to any court trying to determine whether the minister was or was not of the opinion that the performance of the CEO had been unsatisfactory. I would have thought that all the Minister for Employment and Workplace Relations would have to do would be to bowl up to court and say that in her opinion the CEO’s performance was unsatisfactory. How can you cross-examine on what the minister’s opinion was, whether it was right, reasonable, indifferent or indeed an opinion that was reached as a result of a degree of capriciousness on behalf of the minister? The minister is given complete carte blanche. There is no requirement that it be even a reasonable opinion in the way the legislation has been drafted.

Given that the term ‘reasonable’ is absent, I would think that natural justice and things of that nature may well fall by the wayside, given that the only test that the Labor Party believes is necessary, it would seem, is all about giving the minister the complete power if in her opinion the performance has been unsatisfactory. There is no test of objectivity in relation to the minister’s opinion—it is just whether the minister’s opinion was of a particular mind—so if the minister gives evidence to the effect that the CEO’s performance has been unsatisfactory I would think that would be the beginning and end of the court case. It might be one of the shortest cases that would be before the courts. In fact, I would think it would not even reach the courts because of the provisions of this legislation. So, given the minister’s inability to provide any guarantee in relation to this very wide clause, the opposition will most definitely be supporting the Greens amendment.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—The question is that subclause 57(3) stand as printed.

Question negatived.

Senator ABETZ (Tasmania) (1.20 pm)—I move opposition amendment (15) on sheet 5611:

(15) Page 45 (after line 9), after clause 67, insert:

67A Audit committee

(1) Safe Work Australia may establish an audit committee.

(2) The functions of the audit committee shall be:

(a) to receive reports and request information from the CEO on the Safe Work Australia Special Account and the financial management of Safe Work Australia.

(b) to make recommendations on the financial management of Safe Work Australia.

I live in hope that this might be the last amendment and also the one amendment on which the Australian Labor Party might even join us, because before the last elec-
tion the Australian Labor Party were very strong on openness, transparency et cetera. In speaking to that amendment, having moved it, I indicate that we as an opposition believe that Safe Work Australia should have an audit committee. Safe Work Australia will be administering a special account which will receive moneys from, as I understand it, not only Commonwealth taxpayers but taxpayers of all the states and territories. It seems to the coalition that it is appropriate that there be a provision that would establish an audit committee to examine the finances and expenditure of Safe Work Australia. I note that a similar committee did exist under the National Occupational Health and Safety Commission. We believe an audit committee would be a transparency and accountability measure that should be absolutely non-controversial. Wouldn’t it be great if at the very end of this debate we could get unanimity at least on one amendment! I encourage the minister to join with the coalition on this and actually live up to one of the promises that Mr Rudd made at the last election.

Senator SIEWERT (Western Australia) (1.22 pm)—It is probably advantageous to the minister to hear that the Greens will support this amendment. It gives the ability for Safe Work Australia to create such a committee. The CEO has a requirement to report on finances for Safe Work Australia and to make recommendations on financial management. We believe this mechanism will enable them to do that. We believe it is a significant and appropriate amendment to this legislation; hence, we will be supporting it.

Senator LUDWIG (Queensland—Minister for Human Services) (1.23 pm)—I have, in part, good news for Senator Abetz. The clause is unnecessary—that is the bad news. The good news is that, for all the reasons that you articulated—and it might be worth noting this down—Safe Work Australia will be prescribed as an agency under the Financial Management and Accountability Act 1997. It is in line with the Department of Finance and Deregulation’s advice and with appropriate governance arrangements for Australian government bodies. It is consistent with the principles set out in the Uhrig review, which I am sure you are familiar with. Part 7 of the FMA Act goes further than the amendment proposed by the opposition and deals in some detail with the chief executive’s responsibilities in relation to financial management. They include, in part: the promotion of efficient, effective and ethical use of Commonwealth resources, in section 44; the implementation of a forward control plan, in section 45; the requirement to establish an audit committee, in section 46; recovery of debts, in section 47; the keeping of accounts and records and access to those by the finance minister, in section 48; the requirement to give the annual financial statements to the Auditor-General, in section 49; and the provision of additional financial statements and any information the finance minister requires about the financial affairs of the agency, in section 50.

In effect, what I am putting to you is that we agree with the principle that you put forward. It is in the FMA Act and in fact encompasses not only an audit committee but all of those matters more broadly which came out of the Uhrig review, which deal with financial management and the chief executive’s responsibilities in relation to ensuring that. Sections 44 to 50 set out those specific responsibilities that they have to meet. Therefore, we agree with the principle that you put forward. Should this legislation pass, the CEO will have to meet that as part of their requirements, because it is in the FMA Act. We think it is therefore unnecessary to put a separate provision in the Safe Work Australia Bill. That is why it is structured in that way. If you are an FMA agency then those are your responsibilities. We then do not have to reproduce it in each and every piece of legislation. All of those provisions provide for the chief executive’s responsibilities.

Senator ABETZ (Tasmania) (1.26 pm)—It looks as though the absolute worst scenario that can be painted is that the opposition amendment is belt and braces and that no actual argument has been made out against it, because we seem to be in heated agreement. In relation to Safe Work Australia being under the FMA Act, I wonder where I find that in the legislation?

Senator LUDWIG (Queensland—Minister for Human Services) (1.26 pm)—As I have said, Safe Work Australia will be prescribed and it is prescribed by regulations, so it is not in the primary legislation. The regulations prescribe that this agency will be under Safe Work Australia. Unless I am better advised, that will be the finance minister’s responsibility. The Department of Finance and Deregulation would regulate to prescribe Safe Work Australia as an FMA agency. My advisers are nodding, so it seems as though that is how it works.

Senator ABETZ (Tasmania) (1.27 pm)—As the Safe Work Australia legislation is currently before the Senate, it is not part of the financial management act regime, as we speak. It will need to be regulated some time after this legislation is passed. That would require us to rely on—and this is a very spooky thought—the goodwill of the government to actually do so after the event. In those circumstances, I would prefer the Senate to put a belt on the trousers and then if the government wants to regulate and also put a pair of braces on afterwards that will be fine by the coalition. But until such time as we are guaranteed that the braces have been put on, I think we will insist on our amendment, which will provide the belt.

Senator LUDWIG (Queensland—Minister for Human Services) (1.28 pm)—Of course, Safe Work Australia does not exist until the legislation is prescribed. The legislation then details how it stands up.
after that point. The usual process—and this also happened under the previous government—is that when an agency is prescribed, the FMA agency will then, through the Department of Finance and Deregulation, provide that necessary prescription by legislation. It is a usual course of action to undertake. I have stated it numerous times, both in my speech on the second reading and here today, that you do not need a belt and braces approach. This legislation was designed so that you would not need to take the belt and braces approach that you are suggesting. It was designed to facilitate the process that part 7 of the FMA Act would then apply. That is the usual course, having agencies under the FMA Act. I make it plain: it happened under the previous government and it will also happen under this government. It is not unusual. It should not come as any surprise.

Senator ABETZ (Tasmania) (1.29 pm)—I would like to make one helpful suggestion. Irrespective of who might be in government, it may well be of benefit if, in the future, legislation of this nature has a clause in it specifying—as I am sure there can be no doubt about that—that it will be under the FMA regime. Whilst it is all very nice to hear a minister say that it will be under the FMA Act, I make it plain: it happened under the previous government and it will also happen under this government. It is not unusual. It should not come as any surprise.

Senator LUDWIG (Queensland—Minister for Human Services) (1.31 pm)—We will take that on board. The difficulty is, of course—and I will not give you any undertaking in respect of that—that the problem will always arise where you are effectively using one piece of legislation to indicate that another will have to be delegated legislation under that act. It would then have to be operated to provide that prescription. It is getting to the point of being almost a Henry VIII clause—although perhaps there are other ways we could describe it. I said in my opening remarks that Safe Work Australia will be prescribed as an agency under the Financial Management and Accountability Act 1997, and those words are plain. If there are shortcomings in the description in an earlier explanatory memorandum or during a second reading speech then the advisers on my left might want to take that into account.

The legislation does, of course, refer to the CEO’s functions under that particular legislation. Part 7 of the bill, referring to the Safe Work Australia special account, says that the account is ‘a special account for the purpose of the Financial Management and Accountability Act’. So in this particular bill it is mentioned, but we will certainly take on board the issue of a more explicit statement.

Question agreed to.

Safe Work Australia (Consequential and Transitional Provisions) Bill 2008

Bill—by leave—taken as a whole.

Safe Work Australia Bill 2008 reported with amendments; Safe Work Australia (Consequential and Transitional Provisions) Bill 2008 reported without amendments; report adopted.

Third Reading

Senator LUDWIG (Queensland—Minister for Human Services) (1.35 pm)—I move:

That these bills be now read a second time.

Question agreed to.

Bills read a third time.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Minister for Human Services) (1.35 pm)—I move:

That intervening business be postponed till after consideration of government business order of the day relating to the Migration Amendment (Notification Review) Bill 2008.

Question agreed to.

MIGRATION AMENDMENT (NOTIFICATION REVIEW) BILL 2008

Second Reading

Debate resumed from 13 October, on motion by Senator Ludwig:

That this bill be now read a second time.

Senator FIERRAVANTI-WELLS (New South Wales) (1.35 pm)—I rise to speak on the Migration Amendment (Notification Review) Bill 2008, and I am very pleased to be doing so as the new shadow parliamentary secretary for immigration and citizenship. I can indicate that the coalition will be supporting this bill. The bill addresses notification issues that have arisen as a result of decisions of the courts in migration matters. The bill amends the Migration Act by introducing a series of changes that will operate to clarify the way the Department of Immigration and Citizenship, the Migration Review Tribunal and the Refugee Review Tribunal notify clients of decisions.
migration Act 1958 and the Migration Regulations 1994 contain the requirements for notifying clients about decisions on visa applications and visa cancellation. Applicants seeking to find a way to delay the resolution of their cases regularly mount court challenges based on technical errors in the notification process. Indeed, as a former lawyer with the Australian Government Solicitor, I have seen firsthand how, regrettably, unscrupulous immigration lawyers exploit such technicalities in a futile attempt to delay their clients' cases.

There has been a series of cases over the past several years where the courts have identified technical defects in notification. In November 2007, the then Minister for Immigration and Citizenship, Kevin Andrews, described the notification problem as ‘legal process gone mad’ when a 2003 ruling in the case of Vean v Minister for Immigration was found to apply to the case of Shah in September 2007. The Vean decision found that the envelope containing a notification letter had to be addressed to the applicant’s authorised recipient, not to the applicant ‘care of the authorised recipient’. The Shah ruling found it was not sufficient just to address the envelope to the agent exclusively but that the enclosed letter must also be addressed to the agent.

The then Minister for Immigration and Citizenship, Kevin Andrews, requested immediate legal advice on possible amendments to the Migration Act 1958 that would clarify notification procedures to reduce the scope for appeals. In November 2007, then Minister Andrews ordered an investigation into the nature of the difficulties associated with notification in immigration administration. The Weekend Australian of 17 November 2007 quotes him as follows:

It makes the administration of the immigration program extremely difficult because you can find yourself in a situation where the department has acted in good faith according to the law as they understood it at the time and then find that a subsequent court decision could have a retrospective application.

The coalition welcomes the bill as a sensible measure to address problems that can arise with the notification requirements under the Migration Act. Indeed, this was a measure foreshadowed by then Minister Andrews prior to the last federal election. I am pleased to see that this coalition commitment is being addressed by the Rudd government. The coalition understands the precise nature of the problem and what factors need to be considered when defining notification requirements.

As has been the case, the content of communications between the Department of Immigration and Citizenship, the Migration Review Tribunal, the Refugee Review Tribunal and their clients may be to do with visa applications or the clients’ future legal status, so clearly these communications are of critical importance. It is often the case that these notices require a response or particular action within a tightly specified time frame. Moreover, as the Commonwealth Ombudsman pointed out in the 2007 report into referred immigration cases, when an applicant receives notice it can activate certain legal rights and obligations, and the consequences for their action or inaction can lawfully follow.

Unfortunately, there have been cases in the past where a very small deviation from the prescribed process has given a client recourse to challenge the legality of the notice itself, even though the communication was received and perfectly understood. Some clients have been able to delay the resolution of their cases by mounting court challenges based on a minor technical error in the notification. There has been a series of cases over the last few years where the courts have determined that small technical defects in notifications amounted to the client not, in effect, being officially and appropriately notified.

This bill will ensure that clients continue to be treated with fairness and that standard procedures will be followed, but with less opportunity to use a wrong postcode or some other small hitch as an excuse to rule the communication as not having been received or not requiring the specified response—that is, of course, if the communication has delivered to the client in the proper time frame. Put simply, this bill amends the Migration Act 1958 by introducing changes that will clarify the way in which the department and the relevant tribunals can properly notify clients of decisions. This legislation will, at the same time, ensure that the notification system remains a fair and reasonable process for all of the parties involved.

The amendments contained within the bill seek to achieve three key changes. Firstly, in cases where other notification provisions would not apply to a minor and where the minister or the relevant tribunal forms a reasonable belief that an individual has care and responsibility for a minor, the bill provides that the minister, for primary decisions, or the relevant tribunal may communicate with that person, instead of the minor, to notify that individual of a decision of the minister or the tribunal about the minor. Unless certain specific provisions apply—which deal with a client appointing an authorised recipient or the notification of clients that make combined applications—the Migration Act currently requires correspondence or notices be sent to the individual client for notification to be effective where the client would be too young to understand what the notification is about. This is a sensible measure that will ensure a more appropriate handling of applications when an underage person is not part of a combined application, especially when he or she is too young to understand what the notification is about.

Secondly, the bill provides that substantial compliance with the required contents of a notification document is sufficient unless the visa applicant is able to show that the error or omission in the document causes
them substantial prejudice. Strict compliance with arguably insignificant details regarding the content of notification required by the courts has caused the department to concede or lose a number of court cases on minor technicalities. The Veen and Shah cases, as previously mentioned, are examples—and there are other similar cases. The bill seeks to clarify this issue and put beyond doubt the possibility of further related appeals on similar factual scenarios. Minor technical errors in the content of the notice will not render the notification ineffective unless the applicant can show that the error or omission substantially prejudices him or her.

Thirdly, the bill provides that the deemed time of notification provisions will operate despite noncompliance with a procedural requirement for giving a document to an individual. Where the individual has actually received the document, unless the individual is able to show that they received the document at a later date they will be taken to have received the document at that date. In short, where the individual is able to show that they received the document at a later date then that later date will be taken as the date of receipt.

This amendment relates to the communication by the department and the relevant tribunals when notifying clients. Currently, the courts require strict compliance with the statutory notification procedures in order to rely on the deemed notification provisions. Where there is an error in the notification procedures, clients may argue that the deemed receipt provisions do not apply, even when there is evidence that they have actually received the correspondence or notice. In short, this has led to delays and costly legal proceedings despite the fact that the client may have received the notice in a timely manner. The amendment will provide that where there has been an error in notification such that the deeming provision will not apply, but there is evidence that the client actually received the document—for example, they responded to the notice—then notification will be taken to have occurred in accordance with the deeming provisions or at a later date if the client can show the notice was actually received at that later date.

In summary, the legislation should restore more common sense and give a greater degree of certainty to the notification procedures as provided for in the Migration Act 1958 and the Migration Regulations 1994. With ongoing monitoring, there will no doubt be further evolution of these processes and procedures to ensure they are the most efficient, effective and just and cannot be exploited as a stalling opportunity.

I am pleased that this government has realised that the bill as originally presented in the Senate needs an amendment in this House to eliminate what could have caused new complications and the potential for more inefficiency and time wasting. The original bill as introduced contained a rather nebulous provision that ‘substantial compliance’ with the required contents of a notification document was sufficient unless the visa applicant or other applicant was able to show the error or omission in the document had caused them ‘substantial prejudice’. Proving what constituted ‘substantial’ compliance or prejudice would have been complicated and, of course, highly subjective. The government has recognised that, rather than tightening interpretations or closing loopholes, this provision may have caused us more opportunities for unintended consequences. The coalition is therefore pleased to support the further amendment.

While this is a technical bill which does not fundamentally change Australian immigration policy, it does refer to the business of effectively administering appeals and assuring compliance with our immigration policy. It is therefore a significant and important matter. There are some 46,000 visitors who are currently overstayers in our country. There are another 2,000 or so onshore protection visa applicants waiting to be processed. Clearly our systems of application processing must be transparent, efficient, just and humane.

The Howard government left a legacy of immigration law, regulation and practice that has delivered one of the best controlled and managed immigration programs in the world, where the government decides who comes to our country, who is most in need and who is best served by our ongoing protection. However, I would like to take this opportunity to say that the coalition is very concerned that the Rudd government’s softening of its border protection policy has put the people smugglers back in business. The recent arrivals of unlawful noncitizens strongly indicate that the people smugglers are fully testing the water in response to the Rudd government’s recent weakening of border protection rules. The Minister for Immigration and Citizenship, Senator Chris Evans, stated in a budget media release on 13 May:

… from early 2008-09, people found to be refugees will receive a permanent visa, regardless of their mode of arrival.

Prior to this, unauthorised arrivals could expect to be given only temporary visas in the first instance. Now, Minister Evans’s weak words may have been interpreted by international people smugglers to mean that Australia’s borders are again porous. Unfortunately there are hundreds, if not thousands, who have the contacts and funds to pay the $20,000 to $40,000 it may cost to fly to Indonesia and then be pushed off from her shores in a leaky boat headed for Ashmore Reef.

The Howard government’s changes to border protection policy, including the excising of offshore islands from immigration zones, caused the number of unlawful entrants to Australia to dwindle from some 12,000 in the 30 months to January 2002 to just 250 in the years since then. The people smugglers were basically put out of business. Senator Evans must publicly rein-
state border protection and immigration controls and the continuation of the excised immigration zones. The coalition urges Minister Evans to immediately re-engage with Indonesian border security officials, who worked cooperatively and efficiently with the former coalition government. But, more importantly, Minister Evans must insist that Prime Minister Rudd put back the $67.4 million stripped out of the critical area of border security and immigration processing. At least 221 departmental officers have been lost from key roles. The coalition urges the Rudd government to stop this departmental cost cutting and the demoralisation it has caused. The Rudd government should also carefully consider how border protection has been impacted by this substantially reduced funding.

The coalition urges Minister Evans to take urgent and decisive action to communicate that the Labor government intends to retain key elements of coalition policy to help thwart the people smugglers. Unfortunately, Minister Evans may have given a very good impression to the criminals that the Labor government has reopened the borders to whoever has the cash or contacts to make the trip from Indonesia to the nearest parts of Australia. For example, Minister Evans made much of the closing of the detention and processing centres at Nauru and Manus Island but failed to mention that these facilities were being replaced with the just-completed detention and processing facility at Christmas Island.

Minister Evans has also made much of the Labor Party’s abolition of temporary protection visas for unlawful arrivals, stating that from August this year refugees will receive a permanent visa, regardless of how they get here. What sort of message is that sending? The coalition is concerned that the criminal networks who annually smuggle thousands of desperate people through international borders may have been encouraged to again ‘test Australian waters’.

Australia has just committed to one of the biggest refugee intakes ever, including an additional 500 Iraqis who assisted the coalition of the willing in the overthrow of Saddam Hussein. The coalition supports this commitment, but we are very concerned that the Rudd government’s slashing of funding for immigration processing may mean that refugees and those seeking family reunion will wait much longer for selection and settlement in Australia.

In conclusion, these technical amendments are timely, in that the recent change in immigration direction by the Rudd government may well lead to an increase in appeals, and it is important that we effectively administer appeals and assure compliance with our immigration policy.

Senator XENOPHON (South Australia) (1.52 pm)—This is not the first time that I have spoken in this place in relation to my concerns surrounding immigration law in Australia. Those who listened to my previous comments will recall that I emphasised that one of the pillars of Australia’s international reputation is our belief in the right to a fair go for everyone. I also noted that it is the responsibility of all parliamentarians as elected representatives to keep faith with the fair go, irrespective of where a person was born or how long they have been here. It is a belief that the Labor Party in opposition claimed to hold, and I quote from chapter 13 of the ALP’s 2007 election platform document, entitled ‘Respecting Human Rights and a Fair Go for All’. Paragraph 140 states:

Labor’s multicultural and integration services policy agenda aims to ensure social cohesion through maintaining Australia as a tolerant, fair and united nation. Our policy agenda is based upon the following principles—of which I will name but two; firstly:

- Recognition that we all have an interest in and obligation to foster respect for:
  - the rule of law including the right to be treated equally before the law and the rights to due process and a fair trial;
  - and, secondly:
- Strong integration services to assist migrants to settle into the Australian community. Helping people move into the workforce and become self-sufficient.

It is through Labor’s own words that I judge this bill.

The Migration Amendment (Notification Review) Bill 2008 seeks to make what would be seen to be logical and practical administrative changes in relation to notifying applicants of visa decisions. However, these changes allegedly provide flexibility with the time frames and conditions by which the government can inform applicants about decisions, while, at the same time, the time frames and conditions whereby applicants can appeal these decisions are rigidly inflexible. What I refer to is an inconsistency where time extensions can be granted for appeals by any department through the Administrative Appeals Tribunal but cannot be granted by the Refugee Review Tribunal, which handles refugee visas, or the Migration Review Tribunal, which handles migrant visas. As I noted in my previous contribution, this is not about special treatment; this is about fair treatment.

I remind the minister of his commitment to address the issues around time frames for appeals and other matters that I have raised with his office. I have operated in good faith, trusting the minister’s word that he and his department are addressing these things, and I look forward to the government’s next raft of amendments to deal with these issues, which I believe are overdue. However, I must express two reasons for disappointment. The first is in relation to the way that this bill has been rushed before the Senate. Last week one of my staff members flew to Canberra, having re-
quested a day of government briefings including a briefing on this bill. That briefing was provided last Wednesday, but, when my staff member requested information on the notification bill—as distinct from the migrant worker protection bill—he was told that this information was not available. There are in place proper procedures for governments to move bills through quickly, and there are a number of protocols in place, including the parliamentary liaison officer and the very useful role that that officer plays, but there is an established procedure whereby standing orders can be suspended and a bill exempted from the cut-off. The opposition used this procedure with the $30 pension increase bill, by giving due notice in the chamber as well as contacting my office in advance. It is a pity that the government did not follow such procedure.

Yesterday the government wanted to deal with this bill, offering a briefing less than six hours before it wanted to proceed with the bill, and that caused us some considerable concern. While due process and standing orders may seem like an encumbrance to governments, I believe that they are the safeguards of a democracy. On a practical level, they allow my office to duly prepare, in terms of looking at bills. This was not my idea of a government demonstrating open, consultative and due process. There was a real concern that there was not an open communication from the government to my office in relation to this bill. Whilst I acknowledge that the government has said that it was something that should not have happened and it will not happen again, it was something that caused my office some consternation. I look forward to the government’s commitment in dealing with the issue of time frames more generally, and I was reassured again last night that this will be the case. I look forward to regular and extensive briefings on these matters as the government seeks to respond to them by the end of the spring sitting.

My second concern is in relation to the case of a young Afghan man whose family was killed by the Taliban. He is seeking to sponsor his brother, who was captured by the Taliban, out of Afghanistan. I raised this in my previous speech and referred it to the minister’s office. I must admit that I have been underwhelmed by the response, which just referred the family and the Circle of Friends group supporting the family to another appeal process. Given the urgency of the situation and the risk posed to this young man’s life by the Taliban, I would have hoped for more. I am fully aware that this bill will now be dealt with. However, I want to put on the record again the importance of a fair go for all.

In closing, I cannot help but note the irony of a bill that seeks greater time flexibility for governments and departments but condones inflexible timelines for potential Australians. I support the second reading of this bill.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (1.58 pm)—I wish to sum up the debate on the Migration Amendment (Notification Review) Bill 2008 and I might seek to continue my remarks later, given the short period available now. I firstly want to respond to Senator Xenophon. I think there has been some misunderstanding. I do not accept all the criticisms he made at all. My office certainly tells me they have made every endeavour. There might have been a communications problem. But to suggest that we have not bent over backwards to try and brief people, including the opposition, on this and other bills is not right.

I know, Senator Xenophon, that you have been seeking a lot of briefings and we have been seeking to brief you on a lot of things, but you certainly have not raised with me any criticism of the fact that we have actually made the effort to try and facilitate that for you. So we will continue to do that. There may have been a problem in relation to this matter, but we always seeks to brief all senators who are interested on bills, and this is particularly complex.

I note the support, generally, for the bill and appreciate that support. Senator Xenophon, I will come back to you again on the individual case you raise, but I think we advised you that my powers under the act cannot be used until such time as those review processes have occurred. It is a question of the law.

QUESTIONS WITHOUT NOTICE

Age Pension

Senator BERNARDI (2.00 pm)—My question is to Senator Evans, the Minister representing the Prime Minister. I refer to the Prime Minister’s announcement earlier today that the government will finally adopt the coalition’s policy to issue a one-off payment to pensioners. I also refer the minister to his answer yesterday, when he stated that this policy idea was one that the government would not be adopting, describing it as ‘a stunt’. My question to the minister is: why was this a stunt yesterday but has suddenly become good policy today?

Senator CHRIS EVANS—I thank the senator for his question. I think he ought to understand that this is part of a very proactive response to a worsening financial crisis. This is a measure that is designed to assist households and pensioners in this time of financial crisis. What we have developed, in addition to our measures to provide support for financial institutions, is a way to boost the spending in the economy and to provide resources to families and pensioners. In that way, we provide a stimulus to economic activity to try to preserve growth in the Australian economy. We have consistently said in this place, as the senator well
knows, that in the budget we made a down payment to pensioners, to those with disabilities and to carers—not just to the group that the Liberal Party sought to talk about when they moved their bill in this place but to all those in receipt of those benefits. We made that down payment in the budget.

What we announced today is a further down payment to try to assist those people. It is a comprehensive package that seeks not to discriminate against carers or those with disabilities but to include all those who rely on this support. For the first time, those on disability pensions will receive the bonuses that the government announced today.

We have continually argued that we needed a strong budget surplus to act as a buffer against difficult economic times. All Australians would understand that the financial situation has worsened around the globe. We think Australia is well placed. We think we are much better placed than many other economies, but what we have decided to do is, in a mature, rational and responsible way, to introduce a package of measures—directed at housing activity, at families and at pensioners and carers—that seek to provide a stimulus to the economy and to the household incomes of those groups.

I did reject the policy of the Liberal Party in the ACT—absolutely. This is about a responsible national government taking serious policy decisions, and I would hope that we will get the support of the whole Senate on this measure. These are difficult economic times. The international financial crisis will impact on Australia, it will impact on our growth projections, and we have to respond to that. We have decided not to wait until the evidence of that impact is broadly felt but to take action urgently, early and decisively to try to assist the Australian economy in a serious, planned way that fits in with our longer-term nation-building agenda. We think that these measures, with the measures we announced on the weekend, place Australia in a position where we are best able to respond to the difficulties we confront. We were best placed in terms of the stability of our financial institutions already, but the two measures we announced on the weekend and the measures announced today will help protect Australian families and pensioners against those economic conditions. We make no apology for taking those decisions in the national interest.

Senator Conroy interjecting—

Senator Ian Macdonald interjecting—

The PRESIDENT—Senator Evans, resume your seat. Senator Macdonald and Senator Conroy, I cannot hear the minister’s response. I call the minister.

Senator CHRIS EVANS—In conclusion, can I suggest that the opposition support the remaining budget bills, which help to provide the financial capacity to deliver these measures to support families and Australian pensioners. (Time expired)

Senator BERNARDI—Mr President, I ask a supplementary question. The minister should be under no illusions that we welcome this breathtaking backflip to adopt our policy on pensions. It has exposed the empty rhetoric of the other side in the last few months. My question now is: will the government now adopt our policy to cut the fuel excise by 5c a litre, which would give further relief to all Australian households and would further stimulate the Australian economy?

Senator CHRIS EVANS—I can assure the senator that we will not be adopting Liberal Party policies. I remind him that, in 11 budgets, you did nothing for pensioners—

Honourable senators interjecting—

The PRESIDENT—Senator Evans, resume your seat. There is a time to debate this, at the end of question time. That is the proper time—not now. I call the minister.

Senator CHRIS EVANS—Thank you, Mr President. As I said, the Liberal opposition had 11 budgets to do something for pensioners. What this government has done is made an initial down payment in its first budget and a further down payment today and we will undertake the fundamental reform to provide long-term security for those people on pensions and other benefits. We are serious about long-term reform. Today is another measure along a journey to restructuring the pension system and providing security for Australia’s pensioners. I urge the opposition to concentrate on that support at this difficult time rather than engage in the sort of empty rhetoric that was contained in the question. (Time expired)

Economy

Senator CROSSIN (2.07 pm)—My question is to the Minister representing the Prime Minister, Senator Evans. Can the minister provide further details to the Senate on the government’s Economic Security Strategy?

Senator Abetz interjecting—

The PRESIDENT—Senator Abetz, you can cease the interjections. You have had your go today. You have had your quota.

Senator CHRIS EVANS—The Rudd government has today announced $10.4 billion in an Economic Security Strategy aimed to strengthen the Australian economy in the face of the worst global financial crisis since the Great Depression. This $10.4 billion strategy will strengthen the national economy and support Australian households, given the risk of a deep and prolonged global economic slowdown. The Australian economy is strong and we remain better placed than most other nations, but Australia is not immune from the global financial crisis.
In the midst of this crisis our government—the Rudd government—is taking decisive action to strengthen the Australian economy. The government’s Economic Security Strategy contains five key measures: $4.8 billion for an immediate down payment on long-term pension reform; $3.9 billion in support payments for low- and middle-income families; a $1.5 billion investment to help first home buyers purchase a home; $187 million to create an additional 56,000 training places; and of course the acceleration and implementation of the government’s three nation-building funds, looking to bring forward that investment into 2009.

We made tough decisions in the May budget to build up a large budget surplus despite the opposition we received from the Liberal Party. That allowed us to have a buffer for when times got tough. As the Prime Minister has outlined today, those times have arrived. The reason we can deal with it is that we had the surplus, because we made provision for those tough times; we made savings for those difficult times. Our strategy is a significant economic response to deal with those extraordinary economic times.

The measures announced today by the Prime Minister will deliver the down payment to Australia’s four million pensioners, carers and seniors—not just a few of them, all of them. The measures will provide them with immediate financial help in the lead-up to the comprehensive reform strategy we have announced which will be implemented in the context of the next budget.

The $4 billion down payment for pensioners will be made available through a lump sum payment of $1,400 to single pensioners and $2,100 to pensioner couples. People who are receiving the carers allowance will also receive $1,000 for each eligible person in their care. These payments will be made from 8 December 2008 and are intended to provide additional support in the nine months between now and when the long-term reforms are introduced from the beginning of the next financial year.

The package also includes $3.9 billion in immediate financial support to help around two million Australian families. The support will be delivered to families through a one-off payment of $1,000 for each eligible child in their care. Those who will receive the support include families who receive family tax benefit and families with dependent children who receive youth allowance, Abstudy or a benefit from the Veterans’ Children Education Scheme. In all, around 3.9 million Australian children’s parents will receive a $1,000 one-off payment. These payments will provide enormous support for families in the current difficult times. These payments also will be made from 8 December 2008.

Our government is determined to take decisive action to strengthen the growth of our economy and protect Australians from the fallout of the global financial crisis. These measures we have announced today will strengthen our national economy and support Australian households.

Age Pension

 Senator Ryan (2.12 pm)—My question is to the Minister representing the Prime Minister, Senator Evans. Will the minister confirm that the government’s one-off payment to single pensioners of $1,400 to tide them over for the next nine months is equivalent to a pension increase of roughly $38 a week? And will the minister guarantee that pensioners will receive at least this much on an ongoing basis from the government from the next budget?

 Senator Evans—I thank the senator for his question. He has, I think, correctly identified that this announcement today will provide significant financial assistance to pensioners in providing $1,400 to pensioners in a one-off lump sum payment. That does reflect a significant weekly average over the nine months, if you average out the payment, in the order of $35. I think he quoted $38. I have not worked it out exactly—that is not the basis of the payment—but it is of that order. We have also provided $2,100 as a payment to couples.

The reason we have done that is to reflect the fact that a number of authorities and Mr Harmer have indicated to us that it was the single pensioners who were most in need. What we have done in this measure is strike the rate at 66 per cent of the couple rate. So there is relativity there. Those payments, as I have indicated, will be paid on 8 December 2008. We will be seeking to bring legislation through the parliament to implement these measures and I hope to have the support of the parliament and the Senate in doing that.

We do, though, say again that this is about a down payment on what is required in the longer term, and what is required in the longer term is fundamental reform of the pension system. We have accepted that pensioners have been doing it tough—that is the reason we made it a priority in the May budget to provide assistance to pensioners. We made a substantial down payment in that budget for those on pensions and on disability and carer allowances. In addition to that, today we have made a further significant investment in supporting those people.

What we know is that the current system is not serving them well. We have initiated, as part of the broader tax reform review, a review by Dr Harmer, the head of the Department of Families, Community Services and Indigenous Affairs, to look at what we could do in terms of long-term structural reform. We accept that the current system is not working properly, not delivering for those on pensions in the way it should and not guaranteeing security in their income, so we have said it needs fundamental reform. We have been arguing this for months now, and we have put in place the
measures that will allow us to fundamentally reform the system.

On two occasions now, in the May budget and in today’s package, we have responded to the needs of pensioners and those on disability and carer allowances by investing in increased payments to them. That will provide enormous assistance to them during this financial year. But we have been making it crystal clear for months that we intend to structurally reform the pension payment system and that we want to do that in a considered way and a way that produces a good public policy outcome. That process is in train. When it is completed, it will feed into the preparation for the 2009-10 budget, and that decision will be announced by government when taken.

So, in answer to the senator’s question, the perspective of the government on this is that we are serious about long-term reform. We have now made a second down payment on assisting those living on the pension and other benefits, but the fundamental reform process continues, and long-term reform will be achieved. (Time expired)

Senator RYAN—Mr President, I have a supplementary question. Minister, how did the government arrive at the lump sum figure that is roughly equivalent to $38 a week? Having finally copied our plan for a minimum $30 increase in the pension rate, will the minister now apologise to the pensioners of Australia for denying them this necessary increase until today?

Senator CHRIS EVANS—The senator’s question does him no credit. What the government has done is respond to the serious financial crisis which this country is facing, and what we have done now on two occasions is provide extra support for pensioners. I remind the Senate that, in 11½ years, the previous government did nothing to fundamentally improve the lot of pensioners and those on other payments. What we are delivering for pensioners today is what we think serves the national interest. But we are not only delivering for pensioners and those on disability and carer allowances; we are also delivering for Australian families and those seeking to buy their first home. This is a fundamental package that seeks to position Australia to withstand the global financial crisis and to leave us best placed to continue economic growth.

Economy

Senator FURNER (2.18 pm)—My question is to the Minister representing the Treasurer, Senator Conroy. Can the minister please outline to the Senate how the government will use the budget surplus to buffer the Australian economy from the global financial crisis?

Honourable senators interjecting—

Senator CONROY—I thank Senator Furner for that question. Over recent weeks—

The PRESIDENT—Resume your seat, Senator Conroy.

Senator CONROY—Thank you, Mr President. As I was saying, over recent weeks the world has changed dramatically. Australia is currently facing a global economic environment that is fundamentally different to the environment this time last year. That is why the Rudd government has today announced the $10.4 billion Economic Security Strategy—to strengthen the Australian economy in these turbulent economic times. The Rudd government has learnt the lessons of international experience. For the duration of this crisis, the Prime Minister and the Treasurer have undertaken a tireless program of consultations and engagements with key global policymakers. The government has learnt from this experience that the only way to respond to these challenging international economic circumstances is to act early, responsibly and decisively to restore confidence.

In addition to the pension payments outlined earlier by Senator Evans, the Economic Security Strategy also provides targeted assistance to the Australian housing market. The package includes a first home owners boost of almost $1.5 billion aimed squarely at stimulating housing activity and giving first home buyers a better chance in the housing market. Under this policy, first home buyers who purchase established homes will see their first home buyers grant increased from $7,000 to $14,000. First time buyers who purchase newly constructed homes will see their grant increased from $7,000 to $21,000. Through this package, the Rudd government is doubling the first home owners grant for those purchasing existing dwellings and tripling the grant for those purchasing newly constructed homes. All first home buyers entering into contracts between today, 14 October 2008, and 30 June 2009 will benefit from this increase—an estimated 150,000 first home buyers.

In addition to this investment in the Australian housing sector, the Economic Security Strategy also includes a major investment in strengthening Australia’s productivity. The government’s ongoing investments in productivity and skills are central to this government’s economic platform. Today’s package includes a $187 million investment in an additional 56,000 new training places this financial year. This investment will effectively double the Productivity Places Program to 113,000 places in 2008-09. It will take the government’s total investment in training places to more than $400 million since April 2008. The total value of the Economic Security Strategy is close to one per cent of Australia’s GDP, providing a stimulus to the economy proportionate to the danger of a deep and prolonged global economic slowdown. This is decisive fiscal policy action taken in the interests of economic security.
for all Australians and consistent with action taken elsewhere in the world. *(Time expired)*

**Automotive Industry**

Senator FERGUSON (2.23 pm)—My question is to the Minister for Innovation, Industry, Science and Research, Senator Carr. I refer to Ford Australia’s decision to shed a further 500 jobs. Why did the government’s $10 billion announcement today fail to include urgent support to stop the haemorrhaging of jobs in the car industry? Did the minister make any representations to the Prime Minister to include support for the car industry and its associated 60,000 workers in today’s announcement?

Senator CARR—I thank the senator for his question. There have been media reports that have appeared over the last two days suggesting that there may be further job cuts at Ford beyond those that were announced in August. Until the company is able to confirm or reject those reports, I do not believe it is helpful for me to speculate on the numbers of jobs to be lost. As of August this year, over 60,000 people were employed in the automotive sector, representing some six per cent of the manufacturing workforce. The industry is and will continue to be an important provider of high-skilled, high-wage jobs.

There is no escaping the fact, however, that car makers are under immense pressure globally and that the pressure is also being felt in Australia. The credit crisis, combined with the challenges facing the three American car makers, is making it hard for the local industry to have access to investment funds. That is why the measures announced on Sunday to increase liquidity and to stabilise the Australian financial system are so important. That is why the $10.4 billion economic security package announced today is also important. They will help restore the flow of credit to Australian businesses, including the car industry. Combined with the recent cuts in interest rates, they will help stimulate economic activity and reverse the decline in consumer confidence that has contributed to falling car sales.

The Australian industry may be going through some very difficult times but it is doing a damn sight better than its counterparts are in the United States and in many other countries. Australian vehicle sales declined by 3.1 per cent in September compared to a year earlier. That is much healthier than the results that we have seen in the United States, for instance, where the sales have fallen by 26.6 per cent compared to the same period. In Europe, car sales fell by 16.2 per cent to August compared to the same period a year earlier.

The government has consistently said that Australia is much better placed to ride out the global financial turmoil than just about any other advanced country. That is reflected in the relative strength of our car industry, which increased its exports by some 20 per cent to $5.6 billion last financial year. That does not mean that there will not be setbacks. It does not mean that the industry is not in urgent need of reform. The best thing that we can do about these challenging circumstances is to provide support to the Australian automotive industry and continue to provide a solid policy framework for the future. That is why the government commissioned the Bracks review into the automotive industry. It is essential that the sector continue to reinvent itself and become greener and more efficient globally in the way in which it is able to respond to these challenges. The government is responding to these reviews, which of course will provide a firm foundation for new technological development for the industry’s renewal and for its growth as a cornerstone of Australian industry and Australian society.

Senator FERGUSON—Mr President, I ask a supplementary question. I refer the minister to his response to Ford’s first round of job cuts announced on 22 August. He said:

The Government is paying close attention to the recommendations of the Bracks automotive review and will issue our response shortly ...

Is the minister aware that over 3,200 jobs have been lost in the car manufacturing industry since he became minister? How many more jobs will be lost in the car industry before the government finally acts?

Senator CARR—The government acknowledge that the industry is facing challenges. The government have been working very closely with the entire industry to ensure that we have a comprehensive response to these challenges. We are not responding on an ad hoc basis. We are in the business of ensuring that the industry remains strategically significant to this country in terms of its contribution to employment. We will be working with the car makers both in their operations here and internationally to ensure that the component suppliers and the unions are able to develop a much more sustainable response to these challenges by ensuring that we move towards a much greener industry in this country. We are consulting with the industry and we are working closely with the industry as part of that process. *(Time expired)*

**Kunoth Town Camp**

Senator SIEWERT (2.29 pm)—My question is to the Minister representing the Minister for Families, Housing, Community Services and Indigenous Affairs, Senator Evans. My question concerns the recent police raid on Kunoth town camp in Alice Springs, which residents described as an ‘over-the-top terrorist like raid’. Is the minister aware of this raid? Can the minister tell the Senate how many police were involved and whether they were exclusively Northern Territory Police or whether Federal Police or police seconded from other states were involved? Were members of the NT tactical response group involved? Were police wearing...
bulletproof vests or other riot gear? Did they have weapons drawn? How many houses were raided? How long did the raid take?

Senator CHRIS EVANS—I thank Senator Siewert for the question. I suspect that even if I had a brief I would not be able to answer all those questions in one go, but I do not have any advice on that particular incident. While I can try to get the minister’s response as quickly as possible, I have no personal knowledge of the incident nor a brief on the details of it. So I am afraid I cannot help the senator in terms of providing any information now, but I will take it on notice and provide her with what I can as soon as possible.

Senator SIEWERT—Maybe I should give you a few facts. This was a raid on the town camp in response to a toy gun—

The PRESIDENT—Senator Siewert, it is question time. You are entitled to ask a supplementary question, so it is acceptable if you put it in the form of a question.

Senator SIEWERT—Mr President, I ask a supplementary question. Is the minister aware that this was a raid in response to the sighting of a toy gun on a car dashboard? Is this a normal response by the police in the Northern Territory? Is the minister aware that there was a similar incident a week ago at Trucking Yards Camp, where a woman who was playing cards was tasered by police? What steps is the government taking to improve police relationships in the Northern Territory as a result of the NT intervention?

Senator CHRIS EVANS—I do not think I can assist with the supplementary question, given that I do not have a brief on the issue.

Senator Ian Macdonald—You should know all these things!

Senator CHRIS EVANS—I just asked Senator Scullion whether he knew about it, but he didn’t seem very helpful either! So I am not sure it has been as much at the forefront of some of our minds as it perhaps should have been. I do acknowledge the senator’s interest in the area and the serious concerns that she has raised, but I just do not have a brief. I will take her supplementary question on notice as well and try to get her an answer.

Emissions Trading Scheme

Senator MINCHIN (2.32 pm)—My question is to the Minister representing the Prime Minister, Senator Evans. In light of the global financial crisis, which the Prime Minister has said will cause the Australian economy to slow and unemployment to rise, and Treasury modelling that shows the government’s emissions trading scheme will reduce GDP and create unemployment, why won’t the government take the economically responsible course of delaying the introduction of the proposed emissions trading scheme beyond 2010?

Senator CHRIS EVANS—I thank Senator Minchin for the question. I gather that since moving into opposition he has been re-fighting the war inside the Liberal Party to deny that climate change is an issue. But this government actually believes that climate change is a major challenge to Australia, a major challenge to the world, and we do intend to pursue a response to climate change that is responsible. Our ambition remains that we have the CPRS in place in 2010 as the primary tool to achieve our goal of reducing emissions by 60 per cent by 2050.

There is no doubt that we are facing difficult economic times and that some of the projections for growth in the world economy and in Australia will be altered by these events. When the MYEFO is released within a month or so we will have a better understanding of the revised projections. The package of measures announced today was in part an early and decisive response of the government to what we saw as the changing circumstances as a result of the global financial crisis. But we do not believe that the challenge of tackling climate change goes away because we have an economic challenge as well. Climate change, and the threat it poses to Australia and the Australian economy, remains. We understand, as do the Australian people, that the cost of inaction is greater than the cost of taking responsible action now. As I recall, the Shergold report to the Howard government made a very clear point, which I have always accepted, that ‘waiting until a truly global response emerges before imposing an emissions cap will place costs on Australia by increasing business uncertainty and delaying or losing investment.’

The one thing that I think businesses have made clear in their response to the proposals for a climate change response is that they need certainty for planning—to plan their investments, to plan how they are going to handle their business in the coming years. They want certainty. This government has no intention of resiling from its determination to introduce a Carbon Pollution Reduction Scheme. We understand that it is a major economic reform. We will take a careful and considered approach to the design of the Carbon Pollution Reduction Scheme. But taking action to address climate change is vital; it is part of our economic future. If we do not address this issue we will see negative economic impacts in the longer term. We do need to address this issue.

One of the key issues at stake in this debate is the need of business for certainty. All the businesses I talk to say that their investment planning has to be based around a clear understanding of what is going to happen with a climate change plan. They want to know what the rules are, and they want to know what the rules are early. So we do not accept the premise of Senator Minchin’s question, which is that somehow we
ought to stop the fight to reduce carbon emissions because of the other issues that confront our economy and the world. We can actually continue, in our view, to properly prepare Australia to reduce our carbon emissions as well as dealing with the current financial crisis. (Time expired)

Senator MINCHIN—Mr President, I ask a supplementary question. I note that the government appears intent on acting regardless of the economic circumstances of the nation, but I ask the minister: will the 2010 introduction of the government’s emissions trading scheme be at all contingent upon a genuine global agreement on climate change being achieved at next year’s Copenhagen meeting?

Senator CHRIS EVANS—I made it clear that our ambition to have in place a scheme by 2010 as a primary tool to achieve our goal of reducing emissions by 60 per cent by 2050 remains in place. We believe we ought to proceed. We have got the consultation process occurring now. The green paper is out for discussion. The Australian people, business and others are engaged in the design of the CPRS that best suits Australia. We think that this is serious and necessary work. We remain committed to it and we think we can get a good outcome. We will continue to progress our plans to have a carbon pollution reduction scheme in place by 2010 because it is in the national interest, as is our response to the financial crisis. We believe we can and we should do both.

Economy

Senator ARBIB (2.38 pm)—My question is to the Minister for Superannuation and Corporate Law. Can the minister inform the Senate about the Rudd government’s move to safeguard and bolster the Australian economy during this time of global economic turmoil?

Senator SHERRY—Thank you to Senator Arbiv for this very, very important question. The Rudd government today has acted early, decisively and responsibly to provide a significant buffer through a five-part, $10.4 billion stimulus package for the Australian economy in response to the biggest crisis ever confronted by the modern global economy, particularly the financial system. The crisis has entered a major and dangerous phase by threatening to impact on the real economy—that is, jobs and growth. It is a global financial situation that we have seen rapidly change and deteriorate over the last six months.

As is well known, more than 25 banks world wide have failed or been merged, nationalised or taken over. There have been a variety of bailouts. The reverberations of what is known as the subprime loans crisis, originating in the United States, caused by the mass mis-marketing and mis-selling of mortgages to millions of US citizens who could not afford to continue paying for them, and the consequential securitisation and lack of effective regulation of those instruments, have had a dramatic effect on world financial markets and financial institutions. It has led to dramatic losses and volatility on world stock markets, it has hurt consumer and investor confidence, and it is contributing to a serious slowdown in the world economy. The International Monetary Fund forecast growth of less one per cent in six of the world’s largest developed economies for next year. That will be the slowest growth for a quarter of a century. These major economies face the slowest growth in 25 years.

The stark fact is that what has happened in terms of the financial crisis on Wall Street in the US is impacting on ‘main street’ in Australia, and we will see the consequences in terms of the economy, jobs and growth. That is why the government has acted decisively—as it has in a number of other areas. It has acted decisively today. Today’s moves are part of the government’s prudent actions, including, last weekend, the safeguarding of the financial system by guaranteeing bank deposits and overseas borrowings by our companies for three years. Separately, a week earlier, we announced the takeover of the entire regulation and financial services in Australia, the transfer of all those powers and responsibilities from the states and territories to the Commonwealth. That in itself is a relative world first in terms of regulation and supervision, compared to the complex and difficult regulatory financial structures that exist in many other countries around the world. And we have today’s decisive action: a $10.4 billion, five-part Economic Security Strategy to be delivered by 8 December.

The stimulus package includes a $4.8 billion down payment on pension reform—well covered by my colleague and leader Senator Evans; $3.9 billion in support payments for low- and middle-income families; $1.5 billion to help first home buyers; and $187 million to fund a doubling of new training places—importantly, funded by a responsible government taking a responsible approach to a budget surplus. We have lifted the budget surplus to $21.7 billion, or 1.8 per cent of GDP. We have lifted the budget surplus well beyond that which the former Liberal government intended. It was important that we did that. It is an important buffer in these difficult times. I notice that Senator Fielding, to his credit, has indicated that he is supporting our budget. It is unfortunate that the Liberal Party is still intent on opposing central elements of our responsible budget. (Time expired)

Trade

Senator COONAN (2.43 pm)—My question is to the Minister representing the Minister for Foreign Affairs and the Minister for Trade, Senator Faulkner. Is the minister aware of reports that China’s biggest steelmaker, Baosteel, will reduce production by one million tonnes—that is, by 10 per cent—over the next quarter? What impact will this and production cutbacks
by other Chinese steel mills have on Australian iron ore exporters, Australian export earnings and Australian jobs?

Senator Faulkner—With due respect to Senator Coonan, I think this question is misdirected. I think it is more appropriate being directed to the Minister representing the Minister for Trade, who is in fact Senator Carr.

Senator Carr—Thank you very much, Senator Faulkner.

Senator Chris Evans—That’s a difficult handball.

Senator Carr—That is exactly right—a hospital pass.

Senator Faulkner—I don’t represent for Foreign Affairs and Trade; I represent for Foreign Affairs.

Senator Carr—Senator Coonan, I do not have a brief on China and Chinese iron ore. If I may, I would be happy to take the question on notice.

Senator COONAN—I thank Senator Carr for at least acknowledging the question. Mr President, I ask a supplementary question. I ask the minister, when he gets an answer for me, to also check this. When the Prime Minister spoke to the Chinese Premier, Wen Jia-bao, by telephone last week, did he raise Australia’s concerns over the slowdown in demand for Australia’s key raw materials and services exports to China? What was the Chinese Premier’s response?

Senator Carr—I would be happy to seek further advice on this matter. It is my understanding that the Prime Minister did raise these questions with the Chinese government, that the reported suggestion of a slowdown in the Chinese economy was discussed specifically and that the growth rates that have been predicted for China are likely to be revised. However, it is my understanding that the Chinese government will be taking all the steps it can to actually address these issues and will be applying considerable attention to these matters. I am hopeful that I will be able to provide further information. I do not believe that the reported reduction in Chinese demand is quite as significant as some of the press reports have indicated.

Economy

Senator WORTLEY (2.46 pm)—My question is to the Minister representing the Treasurer, Senator Conroy. Can the minister explain to the Senate how the government’s nation-building agenda will help shield Australia from the difficult global economic circumstances?

Senator CONROY—I thank Senator Wortley for that question. We know that every economy in the world today is facing tough economic conditions as developments in global financial markets buffet economies and share markets around the world. Of course, we are not immune from these global developments. The Rudd government is confident that the policy settings that we will come through with in these difficult times will put us in a stronger position than that of other economies. A key part of our plan is a series of nation-building initiatives that will underpin and enhance Australia’s long-term economic prosperity. Nation building means lifting the productive capacity of the economy. It means boosting productivity, lifting international competitiveness and investing in our human capital. The Prime Minister and the Treasurer have announced today that we will fast-track our nation-building agenda to help shield Australians from the global financial crisis. This involves accelerating the implementation of the government’s three nation-building funds. Interim infrastructure reports will be brought forward to December 2008 so that work can commence in 2009 on projects in the key areas of education and research, health and hospitals, and transport and communications.

The Rudd government is taking decisive action to sustain growth and to protect Australians from the fallout from the global financial crisis. To fast-track these projects, the government will be seeking referral of the legislation for the nation-building funds to a Senate committee this week. The government calls on the opposition to make sure that there are no obstacles to the implementation of this commitment. The Rudd government is committed to speeding up the implementation of the government’s nation-building funds so that projects can be funded as early as possible, accelerating the establishment of boards for the Health and Hospitals Fund and the Education Investment Fund.

Today’s announcement builds on the Rudd government’s recent decision to ask Infrastructure Australia to produce an interim report on the national infrastructure priority list by December 2008. Fast-tracking the nation-building agenda can secure economic activity in the short term and expand growth potential in the medium to long term. The Rudd government has already commenced the first funding round of the Education Investment Fund, receiving some 14 submissions for new research facilities and capital expenditure in Australia’s universities. The government has already committed more than $26 billion to its three funds: $12.6 billion towards the Building Australia Fund, for transport and communications infrastructure; $8.7 billion towards the Education Investment Fund, for education infrastructure; and $5 billion towards the Health and Hospitals Fund, for health infrastructure. The Rudd government recognises that investment in infrastructure and skills is the key to unlocking the productivity potential of the economy. (Time expired)

Murray-Darling River System

Senator SCULLION (2.51 pm)—My question is to the Minister for Human Services, Senator Ludwig. Minister, what consultation, if any, took place with...
Centrelink before the Prime Minister announced the extension of the drought exit package to the small block irrigators in the Murray-Darling Basin?

Senator LUDWIG—I thank Senator Scullion for his question in respect of the drought initiatives of the Rudd government. I may have to take this on notice but, in explaining the reasons, Senator Scullion may want to understand that Centrelink delivers on behalf of policy departments. So the respective policy department would undertake the development of the policy, deliver the relevant policy parameters to Centrelink to develop and then provide the service delivery through, in this instance, Centrelink. On that basis it is best that I take that on notice not only to check what consultation has in fact taken place with Centrelink but also to provide a whole answer to ensure that you get a full picture, which would include, in this instance, DAFF as the relevant policy department.

Senator SCULLION—Minister, thank you for that explanation about the interactions between the Department of Human Services and other departments. Mr President, I ask a supplementary question. Given your inability—and I know you have taken some of it on notice—to explain exactly why Centrelink may not have had this information, isn’t this just another example of Labor announcing policy on the run to suit some sort of 24-hour news cycle? Will you guarantee that any interested persons calling Centrelink for information will actually get all the relevant information that they require?

Senator LUDWIG—As you know, recently the Australian government announced a new exit grant package for small block irrigators with fewer than 15 hectares, operating in the southern Murray-Darling Basin. If that is the import of your question I can certainly provide information about that. Grants will be available for eligible irrigators in the Murray-Darling Basin. The objective of the small block irrigators exit grant package is to help small block irrigators—

Senator Scullion—Mr President, I rise on a point of order. Now we have had the brief, I wonder whether the minister could use the remainder of his time to provide information on the consultation process between Centrelink and the policy-developing departments.

Senator Conroy—Mr President, on the point of order: Senator Scullion was not even addressing his own question, thereby trying to introduce a different question. There was no point of order. I ask that you rule it out and ask him to desist from mindless points of order designed to waste the Senate’s time.

Senator Abetz—Mr President, on the point of order: Senator Ludwig was struggling away, saying, ‘If the question is’ and then suggesting something which the question clearly was not. That is why Senator Scullion rose to his feet. Senator Ludwig was constructing another question on which he in fact did have a brief but was not answering the specific question that was asked by Senator Scullion. I would invite you, Mr President, to invite Senator Ludwig to be relevant to the question that was actually asked, not the one he hoped might have been asked.

The PRESIDENT—There is no point of order. As you know, I cannot instruct a minister how to answer a question. I draw the minister’s attention to the question. Minister, you have 32 seconds in which to answer the question.

Senator LUDWIG—What that 32 seconds allows me to say is that the package comprises an irrigation exit grant of up to $150,000, up to $10,000 for advice and retraining and up to $10,000 for the removal of permanent plant and production related infrastructure. Under the program, irrigators with fewer than 15 hectares of land and more than 10 megalitres of water entitlements may be eligible for the package. Of course, irrigators will need to sell their water entitlements to the Australian government in order to be eligible for the package. More details about the package will be announced by the respective minister shortly. (Time expired)

Indigenous Communities

Senator McEWEN (2.56 pm)—My question is also to the Minister for Human Services, Senator Ludwig. I understand the Rudd Labor government has been rolling out an improved system of income management in the Northern Territory. Can the minister update the Senate on this improved system and its rollout?

Senator LUDWIG—I thank Senator McEwen. I know she has an interest in the Northern Territory. The Rudd Labor government is delivering a better system of income management for families in the Northern Territory. Of course, welfare must be about welfare. Kids need food and clothing. The Rudd government is determined to play its part in helping families put food on the table. That is why we supported income management. But let me go through the litany of problems that the Liberals had in respect of that. High on red tape, low on flexibility, they failed to provide adequate security for customers, and the system was difficult to administer to everyone involved. The Rudd government has been busy rolling out a better system of income management, based on the use of a PIN protected card when purchasing priority goods and services. For most customers the basics card will replace the existing income management system using store cards and direct deduction accounts. Unlike what the Liberals put forward, customers can choose to have their basics card topped up with their income management funds on a regular basis or immediately for emergency services. The basics card is easy to use and provides greater flexibility and more choice for customers on income management.
The green card, as it has quickly become known as, makes it easier for customers on income management to put food on the table for their children. It reduces red tape for small business, unlike the system introduced by the Liberals. Small businesses had asked to be relieved of the burden of dealing with the income management system that the previous government had rolled out. It created significant delays and restricted access for small business to be a part of the system. The basics card cannot be used to purchase alcohol, pornography, tobacco or gambling products. Customers cannot obtain cash with the basics card, via EFTPOS or an ATM. Any business now can be connected to the EFTPOS network in Australia and can apply to become an approved merchant, subject to accepting the merchant’s terms and conditions and obtaining approval from Centrelink.

The good news about this is that the basics card has been available to Centrelink customers in Katherine since 8 September 2008. In addition, the basics card was issued in Alice Springs on 25 September and in the Beswick community on 29 September, as well as in Palmerston and a range of other places within the Northern Territory. It will also be available to customers in Western Australia as part of the child protection initiative, and to customers involved in the Cape York welfare reform trial. As of 9 October, 2,531 basics cards have been issued and activated for customers to use. Some 199 merchants across the Northern Territory, WA and Queensland have been approved to accept the basics card, and about 133 have activated their EFTPOS system ready to process payments through the basics card. When the Liberals had the income management system rolled out they had stored value cards that created red tape and that had a range of problems associated with them. This government has in a very short space of time—within six weeks—rolled out a solution that has already seen small business adopt it. The Liberals did not provide for small business. They did not roll out a system that allowed small business to operate within it.

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

**QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS**

**Trade**

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (3.01 pm)—I wish to add to an answer I gave to a question from Senator Coonan. I wish to confirm that the Prime Minister has had a conversation with Premier Wen and has been told that the Chinese economy is expected to moderate in 2008 and 2009 and that a growth rate of something like between 11 and 12 per cent—which was forecast—is now likely to be down to between nine and 10 per cent. This will remain, still, a very strong growth rate, driven primarily by domestic demand. Australian export of iron ore and other commodities to China are largely for China’s domestic purposes and not for the export sector. There remains strong demand for fixed asset investments on the back of China’s continued urbanisation. China is focused on diversifying its exports to China, including to the services sector and to other markets. In regard to reports of delays in iron ore deliveries, the Australian government is monitoring the situation closely, but it is still too early to assess if there has been a long-term trend in regard to a slowdown in Chinese steel production. There is an ongoing volatility and we want to ensure that it is not just a short-term measure. Given the forecast of strong economic growth in the Chinese economy, there is an expectation that there will be continued sustained demand for Australian commodities.

**Environment**

**Senator Faulkner** (New South Wales—Special Minister of State and Cabinet Secretary) (3.03 pm)—Senator Macdonald yesterday asked me in my role deputising for the Minister for Environment, Heritage and the Arts a question about an alleged breach of the EPBC Act approval conditions for Paradise Dam on the Burnett River in Queensland relating to the lungfish, and about alleged similar environmental problems with the proposed Traveston dam. I seek leave to incorporate the answer in Hansard.

Leave granted.

*The answer read as follows—*

Paradise Dam, Traveston Dam and Lungfish

Yesterday Senator McDonald asked me (representing the Minister for the Environment, Heritage and the Arts) about alleged breach of the EPBC Act approval conditions for Paradise Dam on the Burnett River in Queensland relating to the lungfish, and about alleged similar environmental problems with the proposed Traveston dam.

- The government takes the lessons learnt from Paradise Dam very seriously and will take this into account in assessing future projects, including the proposed Traveston Dam.
- The Paradise Dam matter is the subject of Federal Court proceedings between the Wide Bay Conservation Council and the dam operator (Burnett Water). It is of course not appropriate to comment on those proceedings but I can provide some general information on the issue.
- Paradise Dam was approved by the previous government. The extreme drought and low water levels that are the reality today were not envisaged when the dam was built. As a result, the fishway was not designed to operate at low water levels.
- The Minister remains concerned about the impacts of the non-operation of the downstream fishway on lungfish populations and has requested that his department work with the dam operators to resolve this matter and ensure protection of the lungfish.
• Retrofitting the dam may be one of several possible solutions. While the Minister has not ruled out court action, this may not achieve the best outcome for the lungfish.

• In relation to the proposed Traveston Crossing Dam, the Queensland Government is yet to finalise the Assessment Report and have not yet approved the dam under state legislation.

• Once Minister Garrett receives the assessment report he will make a decision on whether or not to approve the dam based on the best available science, including a number of independent expert reports, and consistent with his responsibilities under the EPBC Act.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Age Pension

Senator CASH (Western Australia) (3.04 pm)—I move:

That the Senate take note of the answers given by the Minister for Immigration and Citizenship (Senator Evans) to questions without notice asked by Senators Bernardi and Ryan today relating to pensions.

I am at a loss. What yesterday was a ‘political stunt’ and what has been a ‘political stunt’ for several months is good policy today. Those on the other side are taking a lesson in ‘Political Backflip 101’. The Rudd government has consistently, over the past few months, refused the opposition’s heed to ease the plight of pensioners and increase the single age pension. Those on the other side of the chamber have repeatedly referred to the opposition’s calls to give pensioners a fair go as a ‘political stunt’. This is despite members of the government themselves, including the Prime Minister, admitting that it would be almost impossible to continue to live on the current single age pension. Let us not forget what Mr Rudd himself said, as reported in an article on page 12 of the Age on Wednesday 10 September 2008: ‘Living on the single age pension is very, very tough.’

This is a government that went to the election last year promising to ease the cost of living for all Australians, including pensioners. What did they do weeks ago, when given an opportunity by those on this side of the chamber to address the issue and to bring some relief to pensioners? They did nothing. But, worse than that, the response that we received from them was that what we proposed was a political stunt. Only last week, Mr Rudd further dampened the hopes of pensioners in relation to any potential increase, saying that the federal government may not be able to afford extra payments now due to the effects of the global credit crisis. What we have today, however, is a political backflip, an adoption by the government of the coalition’s policy to ease the plight of pensioners. We now have Mr Rudd saying that this package is necessary to underpin positive economic growth and to stave off the effects of the global credit crunch. Yet, in an interview with Laurie Oakes on the Channel 9 Sunday morning news on Sunday 5 October, when Laurie Oakes put to the Deputy Prime Minister the following:

Wouldn’t a quicker and more efficient way of stimulating the economy be to give more money to pensioners because they have got no choice, they’ve got to spend it?

And then:

Why not give them money now, stimulate the economy and let them live decently?

The Deputy Prime Minister said in response:

We’ve got the Harmer process and we intend for the Harmer process to come to its conclusion. But now, only nine days later, we are told that the package is necessary to underpin positive economic growth and stave off the effects of the global credit crunch. Let us call it what it really is: a political backflip and an adoption by the government of the coalition’s good economic policy. Those on this side of the chamber have repeatedly called on the government to do something about the plight of pensioners. We have been debating this point at length. Whilst the Rudd government stalled with another review into pensions, we showed leadership and we acted. What did those on the other side do when we acted? They tried to vote down our piece of good economic policy. Every Labor Senator voted against stimulating the economy by providing relief to pensioners. But, worse than that, they belittled what the coalition put forward as ‘a stunt’. It is very clear what has happened. The Rudd government has run out of ideas and now it needs to steal from this side of the chamber.

Here they go again. They borrowed from us during the last election campaign and they are now adopting our policy. But we are not jealous with our economic expertise. The Leader of the Opposition, with his experienced team behind him, has already publicly offered to the Prime Minister and the Treasurer several more practical and effective economic measures to deal with the current economic crisis. Those opposite would do well to work with us during this difficult time. Like all senators on this side, I am watching to see what other coalition measures the Rudd government will adopt to steer Australia through the challenging days ahead.

Senator STERLE (Western Australia) (3.09 pm)—I start my contribution with great disappointment because I thought Senator Cash’s contribution was going to get better. But I am still waiting. It did not get better. Senator Cash, that was absolutely shocking!

The DEPUTY PRESIDENT—Order! Senator Sterle, I think you should address your remarks to the chair.

Senator STERLE—Through you, Mr Deputy President, I reiterate that that was terrible. I would like to take note of the question by Senator Bernardi to the
minister. I find it absolutely offensive when those on the other side of the chamber get up and thank us for adopting their policy.

Senator Cormann—That is exactly what happened.

Senator STERLE—Senator Cormann, if your mob had got what they liked, only single pensioners would have got $30. What about couples? What would they have got?

Senator Cormann—We shamed you into it, and you know it.

Senator STERLE—Senator Cormann, what would—

The DEPUTY PRESIDENT—Order! I think we will have a little bit of decorum.

Senator STERLE—Senator Cormann—through you, Mr Deputy President—if we had adopted your policy, what would we do for couples?

Senator Cormann—We shamed you into it, and you know it.

Senator STERLE—We would not have worried about couples if you had had your way. You mentioned nothing about couples over on that side of the chamber—absolutely nothing!

The DEPUTY PRESIDENT—Order! Senator Cormann, you will cease interjecting. Senator Sterle, I remind you that you do not make your remarks ‘through’ the chair, you make them ‘to’ the chair.

Senator STERLE—Thank you, Mr Deputy President. I will continue my remarks to the chair. As I was saying before I was rudely interrupted by Senator Cormann, if we had adopted the Liberal’s policy of $30 for singles, what would we tell the married couples, those pensioners who are just as much in need of extra money in their hand for their weekly costs? What would we have told carers? They were not on the radar; carers did not matter to the Liberals. It was a stunt. Let us call it what it is. It was a stunt. It was not even a cunning stunt. It was just a poor stunt. And they disregarded not only couples and carers—what would we have done for widows if we had adopted the Liberal’s policy? Oh, of course, they were not on the radar either! When you were running off with your stunt, widows did not get a mention. And what about those on the disability pension? Oh, you forgot about them too, did you? You only thought about this stunt: $30 for a single pensioner—and, all of a sudden, you people are the gurus, the experts, to save the pensioners! They had 11½ years. What did they do for pensioners in 11½ years? They came into this chamber and look for cheap shots like $30 for just the single pensioners—no-one else mattered. Thank goodness we did not even listen to your stunt.

I would like to congratulate the Prime Minister and the Treasurer on the Economic Security Strategy. Let us have a look at exactly what it delivers. It delivers $10.4 billion where it should be going. For all those years, we heard about the surplus. Surpluses are good. Let us make no mistake about that. We have built on the surplus with our budget announcements. I am sure that all Australians will agree with me that it is all very well having a surplus but if you do not spend it where it is needed you should be ashamed of yourself—and the Rudd government will spend it where it is desperately needed.

There is $10.4 billion in our Economic Security Strategy. The strategy includes five key measures, and I would like to go through them. There is $4.8 billion as an immediate down-payment on long-term pension reform. Are you listening over there, senators opposite? It is long term—not just one stunt between now and Christmas. There is $3.9 billion in support payments for low- and middle-income families—another group that did not even come onto the opposition’s radar when they were pulling this stunt. There is a $1.5 billion investment to help first home buyers. There was no mention of that in your stunt! There is $187 million to create 56,000 new training positions. You lot absolutely wrecked training over the years that you were in government. You sat here and watched over the greatest skills shortage in this country since Federation. Do not deny it. I am not hearing a word from senators opposite, because it is true. You know it is true, Senator Cormann, because you come from WA, where the skills shortage is biting. (Time expired)

Senator Ryan (Victoria) (3.15 pm)—I rise in support of Senator Cash’s motion. Before I move on to my comments I would like to respond to a couple of things raised by Senator Sterle. We have heard again from the government benches the only argument the government has ever been capable of mounting against the opposition’s promise to raise pensions by $30 per week—that is, simply: you are not doing everything, so we, being the government, will do nothing. It has no other argument and no other reason for opposing this, which it has done for months now. Senator Sterle raised the 56,000 training positions. It is interesting that that number almost matches the forecast increase in unemployment that this government has outlined in its own budget. So the training positions do not even cover the number of people whom this government is putting out of a job.

The opposition supports the increase in pension support that was announced by the Prime Minister today, but it is important to note that it was done under sufferance, it was done late and it provides pensioners with no security through a long-term commitment that will see their pension rate increase. The government, like many of its state counterparts, also seems to believe that saying something often enough makes it true. It does not. It is important to outline exactly what the
coalition achieved when it was in government. We introduced the utilities allowance. We increased the pension by 24 per cent in real terms and 57 per cent in nominal terms and we linked it to 25 per cent of male total average weekly earnings so that, as the economy grew and earnings grew, the pension went up with them.

I can understand why the government do not raise this nor seem to care about it, because wage growth is not something that seems to coincide with Labor governments. It was around one per cent in Labor’s last decade in office. The government in this place have defined tackling the pension problem as setting up a review. Today they talk of review and reform but they do not actually help pensioners and provide security with an increase in the pension base rate. The government simply say, ‘We have no compassion for pensioners.’ They say, ‘This pension support responds to the needs of the global financial crisis.’ There is no understanding of the need to support pensioners.

The opposition has indicated it supports this, but pensioners of Australia will not forget that this government does not understand them and that today it has said, ‘We are introducing this because of the financial crisis, not because we have listened to the people of Australia, pensioners across Australia, the opposition and the many other groups that have called for this $30 increase.’ It amazes me that the cries of pensioners across Australia have inspired this government to do nothing other than to say, ‘We are responding to a global financial crisis.’ It needs an excuse, and you should not need an excuse to do this.

The minister also outlined the economic position the government finds itself in. The truth is that the Australian people and experts in this field all know that it is a lot easier to have a $10.4 billion stimulus package when you inherit a $20 billion surplus, when you do not inherit a $10 billion budget black hole and $96 billion of debt. This package, which as I have said the opposition supports, is the direct result and dividend of over a decade of strong coalition economic stewardship and the surpluses and elimination of debt that I mentioned.

The fact that the minister referred to the bills pending before the Senate strikes me as typically hypocritical. Six or seven months ago these bills were being promoted as the way to restrain an overheating economy. They have been misleadingly labelled as bills to help tackle inflation, when they force up the price of private health insurance and the price of certain alcoholic drinks. They were outlined as meeting the need to slow the economy, yet the government is now saying we need to pass these bills to slow the economy at the same time as we are stimulating it. It shows a very basic failure of economics 101: that you should not be trying to do both at the same time. That the government is still proposing to increase the private health insurance rates for 200,000 people over the age of 65 who live on less than $20,000 per year shows it has absolutely no concern for the true needs of pensioners. Many of those people are on the pension, and some of the grant announced today will be eaten away by the increase in private health insurance. Let us just hope they do not like a Bundy and Coke, because that is going up as well.

The opposition has picked this crisis from day one. The Leader of the Opposition outlined that the credit crisis was going to have an impact on the economy back when this government was still talking about the economy overheating. The government has been beaten to the punch by the opposition three times now: on the purchase of mortgage securities for liquidity in the mortgage market, on guaranteeing Australians’ bank deposits and on pensions. I am sure the Australian people look forward to more backflips from the government on the proposed tax increases and on cutting the price of fuel.

Senator WORTLEY (South Australia) (3.20 pm)—Those opposite are in an embarrassing position, and for them to stand up today and say the things they have said in this chamber is, to say the least, embarrassing. Those opposite had nearly 12 years in which to fix the pension system—to address its shortcomings and to assist those most in need—but they failed to do so. Last year, the Howard cabinet actually voted against raising the base rate of the pension, and today, when a positive move has been made, we have those opposite, instead of standing up in support, standing up and having just another political go.

The global financial crisis is affecting financial markets right around the world, including in Australia, and those opposite know it. In the past two weeks it has entered a new and even more serious phase. The Rudd Labor government is a forward-looking government, which is anticipating events and putting in place measures to deal with them. We know that working families, pensioners, carers and small-business operators right around Australia—people who have small deposits in banks or other financial institutions, including building societies and credit unions—were becoming increasingly anxious because of what they were seeing on television in their lounge rooms each evening and what they were being confronted with in the newspapers on a daily basis.

We know that the stability of the banks is of fundamental importance to all Australian households, to small businesses and to pensioners. We understand that Australia and the Australian banking system is affected by global events. And, in recent days, global financial conditions have deteriorated markedly. As a result, governments around the world are providing unprecedented support to their financial institutions to enable
them to recapitalise and gain access to wholesale borrowing. So what did our government do? The government took advice from the regulators. Why? Because they are in the best position to tell the government the true state of the wellbeing of our banks. What did the opposition do when they were in government—despite HIH, and following the recommendations of the Australian financial regulator? They did nothing. They took no action. They sat back on their hands. It was left to the incoming government to act. So, acting on the advice of the regulators, the government made the decision to act to provide the same guarantees for our banks and other financial institutions.

Today, the government announced further measures to assist in dealing with the global financial crisis’s impact on Australia, with the announcement of its $10.4 billion Economic Security Strategy. The government is delivering a down payment to pensioners, carers and people with a disability, to provide them with immediate financial help in the nine-month lead-up to the comprehensive reform of the pension system. Yes—that is still going ahead. This will be available through a lump sum payment of $1,400 to singles, $2,100 to couples and $1,000 to recipients of the carers allowance for each eligible person being cared for, to be paid from 8 December.

Let me just refresh your memory. The opposition leader did not believe that carers or people on a disability pension or pensioner couples were in need of assistance. He, along with his Liberal and National Party colleagues, did not consider these pensioners worthy of additional financial help. But I will return to the Economic Security Strategy announced today.

In recognition of the difficult economic circumstances that many Commonwealth seniors card holders face, we are also providing them with a lump sum payment of $1,400 to singles and $2,100 to couples. We are providing security for working families into the future and we are providing relief right now, when families need it. This relief will be delivered to families who receive family tax benefit A, through a one-off payment of $1,000 for each eligible child in their care, which is also to be paid from 8 December.

We are also responding to the challenge of housing affordability, and stimulating residential construction activity, through the first home owners grant boost, which will increase grants up to $14,000 for first home buyers purchasing an established home, and, for those purchasing a newly constructed home, up to $21,000.

(Time expired)

Senator WILLIAMS (New South Wales) (3.25 pm)—I would like to make some comments on the handout to the carers and pensioners announced by the government today. I welcome it very much. It was on 4 September that I issued a media release calling on the government to give a one-off catch-up payment, as I called it, to all pensioners and carers. I knew, from the pensioners and many other carers phoning and coming into my office, how tough they were doing it and how they were battling with the cost of living. I think it is a good thing to see today these people being treated with some sort of respect. As I said just a few weeks ago in my maiden speech, that is especially so for our elderly pensioners. They have earned a rise in the pension and they deserve it. We owe a lot to them for what they have done for us and for the magnificent country we have inherited today.

A lot of people from the government side say, “What did the coalition ever do about pensioners when they were in government for 11½ years?” I should remind them that the coalition were the government that tied the single pension to 25 per cent of average male earnings. And, over the 11½ years when the coalition were in government, male wages increased by 20 per cent in real terms—probably 20 times higher than under the previous government, prior to 1996. The coalition did an extremely good job of increasing pensions during their period, as well as introducing one-off payment systems.

The payments we see today will be very welcome for those battlers out there. Mr Rudd promised before the election that he would put downward pressure on grocery prices. Well, we know that that is a farce and that millions of dollars have been wasted on what you might call a stupid website—GROCERYchoice. He also said that he would put downward pressure on fuel prices. Of course we have seen little of that, despite the price of oil going from US$147 a barrel at its peak to just $79 or $80 in today’s prices. I am pleased with what the coalition did for our pensioners and, as I said, I welcome what the government has done today.

This has all come about because of one thing. It is easy for the government to stand up and say, “We’re going to spend $10.4 billion,” et cetera, but they should just think about where they got it from. They were left a massive surplus by the previous government, which paid off $96 billion in debt. I have a little chuckle each time members of the government talk about the surplus that they have ‘built’. It is a surplus they inherited, not one that they have built. The word ‘surplus’, I am sure, cannot be defined or explained by anyone in the Labor Party—look back at their record of managing money, whether in New South Wales, Victoria or South Australia, in the late eighties or the nineties and at that disastrous 1983 to 1996 period of the Hawke-Keating era. The surplus that they have ‘built’, as they say, was simply inherited from the previous good fiscal management policy of the previous government.

It is because of that surplus that we are now able to care for those battling the most in our community. That is the result of the government’s decision today. Hence, I congratulate them on that decision. It has been a long
time coming. Even in my short time in this chamber, it has been obvious that arrogance does flourish. There are good ideas from all sides of the House. I suppose that is nothing new—it has probably been going on in this place for decades. But I wish politics were such that when good ideas do come forward both sides would listen to them, because I am sure that both sides have a contribution to make, and surely there can be good ideas from both sides of the chamber.

I congratulate the government. This will stimulate the economy. There will be money out there to spend. Those most in need will be able to pay some bills. There will be jubilation amongst hundreds of thousands of Australians today at this announcement. I look forward to seeing some boost in the economy, especially for our small businesses, who are in desperate need, especially in country areas where we have suffered drought since early 2002. I can see that there will be a lot of good to come out of this and a lot of relief for those strugglers and I look forward to seeing some brighter spots, especially around the rural areas, in the near future.

Question agreed to.

**Kunoth Town Camp**

Senator **SIEWERT** (Western Australia) (3.30 pm)—I move:

That the Senate take note of the answer given by the Minister for Immigration and Citizenship (Senator Evans) to a question without notice asked by Senator Siewert today relating to a police raid in Alice Springs, Northern Territory.

I was very disappointed that the minister did not have a briefing on this incident. This is another of a series of incidents, as I understand, that have occurred around the town camps. From what I know to date, there was a toy gun seen on the dashboard of a car in Alice Springs. I am reporting this from the media. The toy gun was reportedly seen by the fire brigade. Sometime later, the Kunoth town camp was raided. I do not know how many police were involved or where those police came from—whether they were Australian Federal Police or whether the tactical response group was involved. But the point here is that this seems to be an over-the-top reaction to a toy gun. That toy gun was not brandished in public. It was not used threateningly. It was simply on the dashboard. Moreover, it was seen by people that supposedly should know better. By the way, I should declare that I have a stack of water pistols in my backyard, as have my nephews. I am just wondering when we can expect a police raid. Of course, we will not get one because we do not live in an Alice Springs town camp.

I have been told further today, by another resident of a town camp, that last week, I think it was, another town camp was visited and a lady playing cards ended up being tasered. My concern here is the over-the-top response by the police going into town camps as part of the law and order reforms, so-called, under the NT intervention, which seems to make it okay for this sort of over-the-top response to occur. As I understand it, the people in the houses that were raided happened to be watching *The 7.30 Report*, which was about—guess what—the impacts of the NT intervention. How much more ironic can you get?

This obviously leads on to the issues around the NT intervention and the report that was released yesterday by the review of the intervention. It came as no surprise to me that it specifically calls for the Racial Discrimination Act to be reinstated and the exemption removed. Maybe this will help to lessen these over-the-top raids on the town camps. As I think I have pointed out, these are not the only two such raids that I have heard about. The report also talks about income quarantining and stopping the compulsory nature of that income quarantining. It also talks about just-terms compensation for the leases that have been compulsorily acquired. Of course, there never was any link proved—by either the previous government or the government now—between taking people’s land away and child abuse.

One of the key issues of the report that comes out for me is the need for consultation, the need to rebuild the partnerships between the Aboriginal community and the government. These partnerships have been severely eroded by the NT intervention. Raiding old ladies’ homes looking for toy guns is a classic example of where the relationship has been broken down. It has not been improved; it has been broken down. The government needs to have a very serious look at the report that came out yesterday.

I have been on record time and time again supporting the government’s involvement in addressing Aboriginal disadvantage. That is not the issue here. The issue is how the government—both the previous government and this government—have gone about the intervention. Over-the-top responses, income quarantining, taking people’s land away and exemption from the rules of the Racial Discrimination Act were never going to solve this problem. They have set the process back significantly. I urge the government to take on board this report and to alter the intervention so that it actually starts delivering real outcomes on the ground.

To help the government, I already have amendments before this place to get rid of the exemption from the Racial Discrimination Act. I urge the government to consider those amendments so that we can actually seriously start addressing Aboriginal disadvantage in this country. This has been 12 months worth of experimentation that has failed.

Question agreed to.
MR STEPHEN EDWARD (SAM) CALDER

The DEPUTY PRESIDENT (3.35 pm)—It is with deep regret that I inform the Senate of the death, on 30 September 2008, of Stephen Edward Calder, a member of the House of Representatives for the division of the Northern Territory from 1966 to 1980.

Senator SCULLION (Northern Territory) (3.35 pm)—I seek leave to incorporate two speeches made at Sam Calder’s funeral. I have made them available to those opposite.

Leave granted.

The speeches read as follows—

Tribute to Sam Calder

State funeral Friday 10th October 2008

In his first speech in the House of Representatives (on 28th February 1967) Sam Calder said a lot about the Northern Territory he then knew, much of which is still relevant to today’s political and community agendas. He led his speech with the statement:

“I am very conscious of my responsibility to all sections of the community to press continually for development and security in the north.” His comments then embraced communications, defence, growth rates and rapid development of the Northern Territory, mining, the Central Australian railways, meatworks, irrigation, sealed roads, air services, tourism, the pastoral industry, statehood and self-government, and aboriginal affairs.

Sam Calder always remained true to this gospel and that honed his priorities throughout his effective political career, and well on into his active and influential retirement. His commitment, sincerity and hard work were never questioned.

As both the Chief Minister and the Leader of the Opposition have already said when he entered Federal Parliament Sam Calder was tagged “Silent Sam” because the Member for the Northern Territory then (in 1966) had voting rights only on proposed laws relating to the Territory and on disallowance motions relating to regulations made under Territory ordinances. Thankfully, in 1968 the Commonwealth gave Sam (as the MHR for the NT) equality of powers, immunities and privileges with members from the states. Sam was never again silenced.

In his final speech in the House of Representatives (on 16th September 1980)—ironically for our famous pilot on a piece of ‘Air Navigation’ legislation!), after thanking so many with whom he had worked, he characteristically said:

“I feel that parliamentary life is not confined to this chamber. It is not even confined to the electorate. There are many pluses and minuses to a parliamentary career. I will not talk about the minuses at this time to any great extent. The pluses do not relate to the great headlines that one might achieve…”

Like so many others, Sandy and I had the great opportunity of working, and socialising, with Sam Calder for over 30 years from the 1960s through to the 1990s. With his good humour he mentored a whole cadre of us—far too many to name or implicate—suffice it to say he was the ‘god-father’ and an icon to a complete generation change of Northern Territory politics. We all frequently caucused with Sam and his legion of friends, mainly in the bars of the Darwin Club, the Green Room, the RSL and Memorial Clubs of Alice Springs & Tennant Creek. Sylvia Wolf’s Katherine hangouts and Mataranka Manor, and the RAAF Officers Mess - because in those days that is where you met the ‘real Territorians’, engaged in debates about ‘real politics’, and got up to some incredible mischief. The solutions to many of the problems of Darwin reconstruction following Cyclone Tracy, the early moves on Constitutional Development and financial negotiations for Self-Government, and his recommendations to so many other important parliamentary committees, were hatched under Sam’s watchful eye. His experience, success and contacts were invaluable.

I succeeded Sam Calder as Member in the House of Representatives when he retired in 1980 and inherited his well trodden relationships with the Country Liberal Party in the Northern Territory and the Parliamentary wing of the National (and Country) Party in Canberra where we both partnered with Bernie Kilgariff and the Liberal Party. One of the greatest photographs of Sam Calder, which will always jolt my memory, is hanging in the National Party rooms in Parliament House—it depicts Sam with Doug Anthony, Ian Sinclair, Peter Nixon, Ralph Hunt and his other colleagues following a great election win which led to so many political deals of benefit to the Northern Territory. Well done, Sam Calder.

Grant Tambling

To Sam Calder DFC from Bern Kilgariff, Alice Springs

Dear Sam

I am thinking of you in a very special way in these recent days, and remembering the young adventurer I first got to know in 1939. Life had many challenges to throw at you and they were met with your well known smile. In those flying days of Connellan Airways and during the World War II in England where you and the other young Australian may pilots aided England and the free world nations to victory. Your skill was recognised appropriately when you were awarded your DFC

You chose to make your future along with that of the Northern Territory and returned to Connellan Airways. As a very experienced bush pilot your life had many other experiences from then on, as a pastoralist with your wife and young family, as a business man and then, eventually, as the lone representative of the, Northern Territory in politics in Canberra

A lone voice until the granting of Senate representation. You understood and promoted action for the defence of the north among other items of debate for the development of the Northern Territory. Your voice and profile became so well known as part of our vast outback of Australia.

Gone now is the playing field in which you participated as leader with your mates.

And now Sam, dear old colleague and friend, we honour you and, as we bid you farewell, thank you for your friendship. May God bless you and in your words “cheers”

Bern Kilgariff.

Senator SCULLION—by leave—Sam Calder was a member for the Northern Territory from 1966 to 1980. He led an incredible life, a life that was very much an exemplary life to all other Australians. He
was a Typhoon pilot and a pastoralist as well as a politician. During his time in politics, Sam was a member of the House of Representatives, a member of the Standing Committee on Aboriginal Affairs and a member of the Joint Standing Committee on Public Works. He was also appointed an Officer of the Order of the British Empire in 1981.

Sam Calder will be much remembered by many of his colleagues for his distinguished flying career prior to his career in politics. He was a flight lieutenant with the RAF. He flew Typhoons and he was awarded the Distinguished Flying Cross. Many would remember 6 June 1944 but I know that a date that stood very much in the mind of Sam Calder was 5 June. That was the day before D-Day, when the Allied forces invaded France. Sam Calder was actually the individual who was asked to fly solo across the channel on 5 June to inspect the weather at the battlefield prior to the invasion of Normandy. Of course, he was selected because of his particular skill as a pilot, his particular courage and his particular leadership. He was a fantastic leader.

I commend very much to this place the book, *Not so Silent Sam*, by Bobbie Buchanan—and I will be returning this book to the Parliamentary Library—which details his wonderful life.

At Sam Calder’s funeral, Ian Tuxworth, a former Chief Minister of the Northern Territory, spoke to me and to all of us about some of Sam’s achievements and the circumstances under which, as a Typhoon pilot, he lived. We all know, and we have all had experiences with, returned servicemen. They have a natural reluctance to provide lots of stories about their lives. It is a quiet time, and a time that often they do not wish to share. But Sam Calder obviously shared some of his with ‘Tucky’. Ian Tuxworth said, ‘Imagine taking off on a flight each day when on average each day five fewer pilots would come back.’ So by the time Sam Calder flew 15 flights, he really believed that he had almost won the lottery. We were told by Tucky that when Sam flew 80 flights, it was, as he said, ‘Just a matter of time.’ Sam Calder had thrown the dice so often that he was simply a dead man walking. It would be hard for us to even imagine continuing to go out in those circumstances. It is hard to imagine getting up every day knowing that your time is definitely up; that it must be this day. We were all very lucky.

Sam Calder flew a total of 125 missions over Europe and came back to fight for the benefits of every Territorian. We were all so glad—and I am sure that Sam would say that he was very glad—when all the dust of the war had settled. After 125 missions, he had managed to make it, and I am sure that, if he were here, he would say that he was the most grateful. All Australians should be very grateful that he came back because he continued to fight. He fought against the elements on his property of Argadarga out at Alice Springs when he returned. The property had very basic amenities and was very remote. It is a wonderful cattle property, and he fought the elements and carved out a wonderful property. He took a leadership role in the pastoral industry way back in the early fifties.

I would like to speak about his role and the responsibility of the Northern Territory. He took his responsibility as the member for the Northern Territory extremely seriously. In his maiden speech he said:

I am very conscious of my responsibility to all sections of the community to press continually for development and security in the north.

It is interesting that his comments embraced communications, defence, growth rates, the rapid development of the Northern Territory, mining, Central Australian railways, meatworks, irrigation, sealed roads, air services, tourism, the pastoral industry, statehood, self-government and Indigenous affairs. Well, I have to say that that might as well have been my own maiden speech, because all of the issues that he touched on are issues that are still of concern to Territorians today.

Sam played a very important role on a number of committees that led to the Northern Territory having its own legislative assembly. He played an important role in the joint committee for constitutional development in the Northern Territory. The terms of reference were to:

Examine measures that might be taken to provide the Northern Territory with responsible self government, having regard to the Government’s wish to establish a fully elected legislative assembly for the Northern Territory by 31 December, 1974.

We would all remember that any plans for 31 December 1974 were in fact thwarted by the visitation upon Darwin of Cyclone Tracy a few days earlier. Most of those plans were put on hold while Territorians dealt, in their normal pragmatic way, with the devastation created by Cyclone Tracy. The second inquiry in 1975 effectively said that the original report should be implemented in its current form and implemented as soon as possible. Of course, Sam was an individual who drove continuously for self-government. We were granted self-government in 1978 and I think that was in no small part as a result of Sam Calder, and I would like to acknowledge that here today.

Sam Calder also fought long and hard for the rights and opportunities of Aboriginal people, with the formation of the Aboriginal land rights act of the Northern Territory. That was debated in 1979. What he said then reflected the way that Sam always thought. He said:

I represent the Aboriginals and other people who live in the Northern Territory. This bill refers to my people in the Northern Territory.

He always saw our first Australians as his people and he had a special relationship with them, not only
through his relationship with so many people in the Centre as a consequence of being a pastoralist, but also as through moving around the Northern Territory. We can look back and see a long history of his fantastic relationship with Indigenous Territorians. He really worked hard to realise their dreams and future, and he continued to engage with them about development opportunities to ensure that they were part of the economic future of the Northern Territory.

He also embarked on a number of huge exercises examining the work and the construction of the Stuart Highway to Darwin and the standardisation of the Alice Springs-Adelaide railway and its extension to Darwin. As a result of his efforts in particular, works on the Stuart Highway and the Adelaide to Alice Springs railway were eventually completed. I remember the budget line item for that; it was some $300,000. You could hardly pay a surveyor for a year to do that, but that was the entire budget item for the surveying of that area.

When Sam first entered federal parliament, he was tagged ‘Silent Sam’, because the member for the Northern Territory in 1966 had absolutely no voting rights whatsoever. The only time that they could speak was on issues associated directly and specifically with the Northern Territory. They were not allowed to stand on any other occasion. So he was very unfairly tagged ‘Silent Sam’—I think it was by the editor at the time of the Northern Territory News. But, due to many of his own efforts, he later looked back and was able to see self-government come about.

Thankfully, in 1968 they gave Sam equality as the member of the House of Representatives for the Northern Territory with the members from all other states in terms of powers, immunities and privileges. As you can see from the comments, the Territory grew and continued to engage with them about development opportunities to ensure that they were part of the economic future of the Northern Territory.

Your petitioners therefore pray that, with the powers vested exclusively in the Federal Parliament under Section 51 (xxi and xxi) of the Australian Constitution, you amend the Marriage Act 1961 to invalidate any present or future States’ or Territories’ Relationship Registers.

*Genesis 1:27; Matthew 19:4-6; Leviticus 18:22; Romans 1:18-27

by Senator Stephens (from 35 citizens)

Petition received.

NOTICES

Withdrawal

Senator FIELDING (Victoria—Leader of the Family First Party) (3.45 pm)—Mr Deputy President, I withdraw general business notice of motion No. 123 standing in my name for today.

Presentation

Senator Siewert to move on the next day of sitting:

That the Community Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 16 October 2008, from 3.30 pm, to take evidence for the committee’s inquiries into the Poker Machine Harm Reduction Tax (Administration) Bill 2008, the Poker Machine Harm Minimisation Bill 2008 and the ATMs and Cash Facilities in Licensed Venues Bill 2008.

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

That the Senate—

(a) notes the following statement of claims from the Fair Go for Pensioners Coalition:

1. That the Federal Government increases the pension rate from 25% of average weekly earnings to 35% of average weekly earnings until a more appropriate pension measure is developed.

2. That proper and improved healthcare measures for pensioners are prioritised, including medical, dental, optical, hearing, pharmaceutical and culturally appropriate services.

3. That the level of funding for aged care services, including culturally appropriate services, is significantly increased and extended to meet the growing demand in this area.

4. That our pensions are not restricted due to overseas travel to visit loved ones.
5. That legislation/regulations be enacted to protect older people considering taking out reverse mortgages.
6. That a thorough review of the means test and GST impact for pensioners and concessions should be undertaken to ensure that pensioners are not losing out.; and
(b) asks the Government to consider it for inclusion in the 2008-09 Budget.

Senator Hanson-Young to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) 19 October 2008 marks the 7th anniversary of a boat known as the Suspected Illegal Entry Vessel X (SIEV X), bound for Australia and carrying 421 passengers and crew,
(ii) this boat sank with the tragic loss of 353 lives, including 146 children, and
(iii) in Opposition, the Government repeatedly expressed its anger and frustration with the former Government’s inaction on establishing a full judicial inquiry into the SIEV X tragedy;
(b) expresses its regret and sympathy at the tragic loss of so many innocent lives; and
(c) calls on the Government immediately to establish an independent judicial inquiry into all aspects of the ‘People Smuggling Strike Team’ operated by the Commonwealth Government from 2000 to date, in particular the boat known as SIEV X.

Postponement
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.47 pm)—by leave—I move:
That general business notice of motion no. 227 standing in his name for today, relating to termination payouts for executives, be postponed till the next day of sitting.

Question agreed to.

The following items of business were postponed:
General business notice of motion no. 233 standing in the name of Senator Xenophon for today, proposing an order for the production of a document relating to the Productivity Commission, postponed till 15 October 2008.
General business notice of motion no. 237 standing in the name of Senator Cormann for today, relating to the Peel Health Campus, postponed till 15 October 2008.
General business notice of motion no. 242 standing in the name of Senator Hutchins for today, relating to the assassination of the former Sri Lankan High Commissioner to Australia, Major General Janaka Perera and Mrs Perera, postponed till 15 October 2008.
Education, Employment and Workplace Relations Committee

Extension of Time

Senator McEWEN (South Australia) (3.49 pm)—At the request of Senator Marshall, I move:

That the time for the presentation of the report of the Education, Employment and Workplace Relations Committee on academic freedom in schools and higher education be extended to 27 November 2008.

Question agreed to.

Economics Committee

Extension of Time

Senator McEWEN (South Australia) (3.49 pm)—At the request of Senator Hurley, I move:

That the time for the presentation of the report of the Economics Committee on Australia’s mandatory Last Resort Home Warranty Insurance scheme be extended to 13 November 2008.

Question agreed to.

Economics Committee

Extension of Time

Senator McEWEN (South Australia) (3.49 pm)—At the request of Senator Hurley, I move:

That the time for the presentation of reports of the Economics Committee be extended as follows:

(a) disclosure regimes for charities and not-for-profit organisations—to 4 December 2008; and

(b) Australia’s space science and industry sector—to 12 November 2008.

Question agreed to.

MS BRITT LAPTHORNE

Senator FIELDING (Victoria—Leader of the Family First Party) (3.49 pm)—I move:

That the Senate—

(a) notes with great sadness the death of young Melbourne backpacker Britt Lapthorne;

(b) offers its sincere condolences to her parents Elke and Dale, brother Darren, family and friends; and

(c) recognises the courage and tenacity of the Lapthorne family in their determination to find their missing daughter and bring her home from Croatia.

Question agreed to.

EXECUTIVE SALARIES

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.49 pm)—I move:

That the Senate calls on the Government to:

(a) ensure that, as a minimum, no financial institution executives’ pay will increase as a consequence of the Government purchasing residential mortgage-backed securities or guaranteeing deposits and wholesale term funding of Australian financial institutions; and

(b) prohibit payment of severance benefits (‘golden parachutes’/‘golden handshakes’) to chief executive officers of such banks or institutions.

Question put.

The Senate divided. [3.54 pm]

(The Deputy President—Senator the Hon. AB Ferguson)

Ayes .......... 6

Noes .......... 43

Majority ....... 37

AYES

Brown, B.J. Hanson-Young, S.C. Ludlam, S.

Siewert, R. * Xenophon, N.

NOES

Adams, J. Arbib, M.V. Barnett, G. Bernardi, C.

Bilyk, C.L. Birmingham, S. Boyce, S. Brown, C.L.

Bushby, D.C. Cameron, D.N. Carr, K.J.

Coo, N.H.L. Codd, R.M. Eggleston, A.

Crossin, P.M. Ellis, C.M. Farrell, D.E.

Feneley, D. Ferguson, A.B. Fishe, M.J. Heffernan, W.

Furner, M.L. Huffman, G. Kroger, H.

Macdonald, I. Ludwig, J.W. Mason, B.J. Marshall, G.

Mason, B.J. Nash, F. Parry, S. * Payne, M.A.

Pratt, L.C. Polley, H. Stephens, U.

Troop, R.B. Sterle, G.

Wortley, D. Williams, J.R.

* denotes teller

Question negatived.

ANTI-POVERTY WEEK

Senator SIEWERT (Western Australia) (3.57 pm)—I move:

That the Senate—

(a) notes that:

(i) the week beginning 12 October 2008 is Anti-Poverty Week,

(ii) Aboriginal and Torres Strait Islanders are over represented amongst those living in poverty in Australia,

(iii) people living on income support payments including single parents, disability support pension and the age pension are over represented amongst those living in poverty in Australia, and

(iv) Australia currently gives foreign aid to the value of 0.32 per cent of gross national income; and

(b) calls on the Government to:

(i) support the development of effective benchmarks to measure poverty,

(ii) institute policies that seek to eradicate poverty and strengthen social inclusion,
(iii) increase the base pension rate by $30 per week which would have the added benefit of directly increasing cash flows during this time of economic crisis, and

(iv) increase the amount of foreign aid to 0.7 per cent in line with the recommendations of the United Nations.

Question put.
The Senate divided. [3.59 pm]
(The Deputy President—Senator the Hon. AB Ferguson)

Ayes............  6
Noes............ 41
Majority........ 35

AYES
Brown, B.J.   Fielding, S.
Hanson-Young, S.C.   Ludlam, S.
Siewert, R. *   Xenophon, N.

NOES
Adams, J.   Arbib, M.V.
Barnett, G.   Bernardi, C.
Bilyk, C.L.   Birmingham, S.
Boynce, S.   Brown, C.L.
Busby, D.C.   Cameron, D.N.
Carr, K.J.   Cash, M.C.
Coonan, H.L.   Cormann, M.H.P.
Crossin, P.M.   Eggleston, A.
Ellison, C.M.   Farrell, D.E.
Feehely, D.   Ferguson, A.B.
Finfield, M.P.   Fisher, M.J.
Forshaw, M.G.   Furner, M.L.
Humphries, G.   Hurley, A.
Ludwig, J.W.   Marshall, G.
Mason, B.J.   McEwen, A.
Nash, F.   Parry, S. *
Payne, M.A.   Polley, H.
Pratt, L.C.   Ryan, S.M.
Stephens, U.   Sterle, G.
Tredou, R.B.   Williams, J.R.
Worley, D.

* denotes teller

Question negatived.

IMPACT OF THE TRAVESTON CROSSING DAM ON THE AUSTRALIAN LUNGFISH
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.01 pm)—I move—

That the Senate—

(a) notes the call by Griffith University Professor Angela Arthington, and by world fish expert Professor Gene Helfman of the Institute of Ecology at the University of Georgia, United States of America, for Australia to avoid the Traveston Crossing Dam in Queensland in order to protect the endangered Australian lungfish;

(b) accepts that the Mary River is the single most vital remaining spawning ground and nursery for the lungfish, and for the Mary River cod and Mary River turtle; and

(c) calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to explain to the Senate how these spawning grounds and nurseries could be protected if the dam were built.

Question agreed to.

FIRST SPACEWALK BY THE PEOPLE’S REPUBLIC OF CHINA
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.02 pm)—I move—

That the Senate congratulates the People’s Republic of China for its first spacewalk and this great contribution to the global community’s future adventure into the cosmos.

Question agreed to.

NOTICES
Postponement
Senator XENOPHON (South Australia) (4.03 pm)—by leave—I move:

That general business notice of motion No. 234 standing in the name of Senator Xenophon for today, relating to the 1999 Montreal Convention, compensation for passengers injured on international flights, be postponed till the next day of sitting.

Question agreed to.

WORLD SIGHT DAY
Senator SIEWERT (Western Australia) (4.04 pm)—I move—

That the Senate—

(a) notes:

(i) that 9 October 2008 was World Sight Day, the theme for 2008 is vision and ageing, and

(ii) the importance of preventive measures and early detection of eye conditions in maintaining vision in later years of life; and

(b) calls on the Government to ensure that Australians have access to good eye care services regardless of their age, geographical location and income.

Question agreed to.

COMMITTEES
Procedure Committee
Report
Senator PARRY (Tasmania) (4.05 pm)—On behalf of the Deputy President, I present the Second Report of 2008 of the Procedure Committee.

Ordered that the report be printed and that consideration of the report be an order of the day under business of the Senate for the next day of sitting.

Community Affairs Committee
Additional Information
Senator McEwen (South Australia) (4.05 pm)—On behalf of the chair of the Community Affairs Committee, Senator Moore, I present additional information received by the committee on its inquiry into
the draft National Health (Pharmaceutical Benefits—Charges) Regulations 2008.

NATIONAL FUELWATCH (EMPOWERING CONSUMERS) BILL 2008
NATIONAL FUELWATCH (EMPOWERING CONSUMERS) (CONSEQUENTIAL AMENDMENTS) BILL 2008
Report of Economics Committee

Senator McEWEN (South Australia) (4.06 pm)—On behalf of the Chair of the Standing Committee on Economics, Senator Hurley, I present the report of the committee on the National Fuelwatch (Empowering Consumers) Bill 2008, the National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008 and related matters, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

COMMITTEES
Intelligence and Security Committee

Report

Senator MARSHALL (Victoria) (4.06 pm)—On behalf of the Parliamentary Joint Committee on Intelligence and Security, I present the following reports of the committee:

Annual report of committee activities 2007-08, dated October 2008.


Ordered that the reports be printed.

Senator MARSHALL—by leave—I move:

That the Senate take note of the reports.

I seek leave to incorporate the tabling statements in Hansard.

Leave granted.

The statements read as follows—

ANNUAL REPORT OF COMMITTEE ACTIVITIES 2007-2008

On behalf of the Parliamentary Joint Committee on Intelligence and Security I have pleasure in presenting the Committee’s report entitled Annual Report of Committee Activities 2007-2008. Due to the election this report covers work by the Committee of the 41st and the 42nd Parliaments.

The Committee completed another full and productive year scrutinising terrorism legislation and aspects of the administration and expenditure of the intelligence agencies. Since the last annual report on the Committee’s activities, tabled in June 2007, the Committee has tabled six reports. In addition to the tabled reports, the Committee is currently conducting the sixth review of administration and expenditure

The fifth review of administration and expenditure was the first full review which looked broadly at the administration and expenditure of the six intelligence and security agencies since the Intelligence Services Act was amended in December 2005 to add the Defence Imagery Geospatial Organisation, the Office National Assessment and the Defence Intelligence Organisation to the Committee’s oversight responsibilities.

Overall, the Committee was satisfied the administration of the six intelligence and security agencies was sound. As an issue of significance in previous years, the Committee found that, whilst the security clearance process had been streamlined and some backlog had been cleared, completing clearances within a reasonable timeframe was still an issue for most agencies. The recruitment of the required numbers of staff with necessary language skills also continues to remain an issue for most agencies. Overall, the Committee indicated that agencies were doing all they could to overcome this problem.

The other major review of 2007 was the statutory review of the proscription of ‘terrorist organisations’ under Subsection 102.1A(2) of the Criminal Code.

The Committee noted the need for an adequate community communication or education programme to accompany a listing or a re-listing. This is an area of continuing interest to the Committee.

On 5 May 2008 the Committee accepted the resignation of Senator Robert Ray. The Committee recorded its appreciation by highlighting Senator Ray’s substantial contribution to the work of the Committee. His contribution has left the Committee with an excellent reputation within the Australian Intelligence Community.

Finally, the Committee of the 42nd Parliament is concerned that there is an insufficient pool of staff with the necessary top secret security clearances within the Department of the House of Representatives to provide flexibility and to compensate for staff movements. Accordingly, the Committee recommends to the Presiding Officers the need for additional staff to have security clearances.

On behalf of the Committee, I take this opportunity to thank and commend the Secretariat for their excellent support to the Committee.

In conclusion, and on behalf of the Committee, I would like to thank all those who have contributed to the work of the Committee during the past year.

I commend the report to the Senate.

REVIEW OF THE RELISTING OF AQ, JI and AQIM

On behalf of the Parliamentary Joint Committee on Intelligence and Security I have pleasure in presenting the Committee’s report entitled Review of the Relisting Al – Qa’ida, Jemaah Islamiyah and Al-Qa‘ida in the Lands of the Maghreb.

Al-Qa‘ida and Jemaah Islamiyah were originally listed on 21 and 27 October 2002 and re-listed on 31 August 2004, with effect on 1 September 2004. The Committee first considered the listing of Al-Qa‘ida and Jemaah Islamiyah in 2004 after the Committee’s role in the Criminal Code procedure had been established. Both organisations were again re-listed on 4 September 2006 and the Committee subsequently reviewed the re-listing, reporting to Parliament in October 2006.

Al-Qa‘ida in the lands of the Islamic Maghreb was originally listed under the name Salafist Group for Call and Combat
I commend the report to the Senate.

Ms Philippa Davies and Mrs Donna Quintus-Bosz

Parliament that the regulations made to proscribe these 3

In view of this the Committee will not recommend to the

2003.

the UN since the bombing of the UN Headquarters in Iraq in

2007 suicide bombing attack on the UN Office in Algiers,

significant attack on Western interests was the 11 December

Al-Qa’ida in the Lands of the Islamic Maghreb’s most sig-

Although there have been no anti-Western attacks committed

by Jemaah Islamiyah in South-East Asia since the last re-

listing the Committee heard that within Indonesia it is re-

ported that JI has engaged in sectarian terrorist activities,

such as assassinations and bombings.

Al-Qa’ida in the Lands of the Islamic Maghreb’s most sig-

stantial attack on Western interests was the 11 December

2007 suicide bombing attack on the UN Office in Algiers,

which killed 17 people. This constituted the worst attack on

the UN since the bombing of the UN Headquarters in Iraq in

2003.

In view of this the Committee will not recommend to the

Parliament that the regulations made to proscribe these 3

organisations be disallowed.

Lastly I would like to thank the Secretariat, Mr Robert Little,
Ms Philippa Davies and Mrs Donna Quintus-Bosz

I commend the report to the Senate.

TAX LAWS AMENDMENT (POLITICAL CONTRIBUTIONS AND GIFTS) BILL 2008

FINANCIAL TRANSACTION REPORTS AMENDMENT (TRANSITIONAL ARRANGEMENTS) BILL 2008

First Reading

Bills received from the House of Representatives.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (4.08 pm)—I indicate
to the Senate that these bills are being introduced to-
gether. After debate on the motion for the second read-
ing 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 CARR (Victoria—Minister for Innovation, Industry, Science and Research) (4.09 pm)—I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incor-
porated in Hansard.

Leave granted.

The speeches read as follows—

TAX LAWS AMENDMENT (POLITICAL CONTRIBUTIONS AND GIFTS) BILL 2008

This Bill abolishes income tax deductions for political con-
tributions and gifts.

It was an election commitment to remove tax deductibility
for donations made to political parties, independent candi-
dates and independent members. This commitment was
made as part of ‘Labor’s $3 Billion Savings Plan’, which
was announced on 2 March 2007.

This measure saves just over $10 million per annum.

In addition, this Bill ensures that political parties, independ-
ent members and independent candidates will not lose access
to certain GST concessions to which they may be currently
entitled as a consequence of the removal of income tax de-
ductibility for gifts or contributions.

This measure was introduced as part of Tax Laws Amend-
ment Bill Measures Number 1 2008 earlier this year but was
rejected by the Senate.

I strongly urge the opposition to reconsider their approach to
this measure which forms part of the Government’s response
to inflationary pressures in the economy. This measure and
other savings measures must be passed by this parliament to
implement this government’s fiscally responsible Budget.

Full details of this Bill are contained in the explanatory
memorandum.

FINANCIAL TRANSACTION REPORTS AMENDMENT (TRANSITIONAL ARRANGEMENTS) BILL 2008

The Financial Transaction Reports Act was Australia’s origi-
nal anti-money laundering legislation. Importantly, the Act
provided for the reporting of certain transactions and trans-
fers to AUSTRAC. Many of the obligations in the FTR Act
will soon be replaced with updated measures under the Anti-
Money Laundering and Counter-Terrorism Financing Act
2006.

The Financial Transaction Reports (Transitional Arrange-
ments) Bill 2008 will enable regulated businesses to continue
reporting important information to AUSTRAC as they make
the transition to the new reporting regime.

The AML/CTF Act is being implemented over two years
from 12 December 2006. The Government has also provided
a 15 month ‘policy principles period’ after the commence-
ment of each set of obligations under the AML/CTF Act.

During that period, the AUSTRAC Chief Executive Officer
may only apply for a civil penalty order against a reporting
entity for a contravention of the Act if the reporting entity
has failed to take reasonable steps to comply with its obliga-
tions. This staggered implementation along with the policy
principles period is allowing businesses time to develop the
necessary compliance systems in the most cost effective way.
Items 1 and 2, and 7 to 11 establish transitional provisions under the FTR Act. These provisions authorise cash dealers to continue reporting suspicious transactions, international funds transfer instructions, and significant cash transactions to AUSTRAC until 11 March 2010 or until they become compliant with the new obligations under the AML/CTF Act, whichever occurs first. The date 11 March 2010 accords with the day that the AML/CTF Act policy principles period expires.

Item 3 will allow regulated financial institutions to continue to place relevant transactions in their exemption register. They will be able to do this until they either become compliant with the reporting obligations under the AML/CTF Act, or if they do not become compliant, up until the end of 11 March 2010. This will ensure that appropriate records can continue to be maintained by the financial institution until this date.

Items 4, 5 and 6 amend the reporting obligations imposed on solicitors.

The amendments will enable solicitors who are reporting entities under the AML/CTF Act to continue to provide reports about significant cash transactions to AUSTRAC under the FTR Act. They will be able to provide these reports up until the end of 11 March 2010, or until they become compliant with the reporting obligations under the AML/CTF Act, if that occurs first.

It is important to note that the amendments will not create any duplication in reporting obligations.

In summary, the Bill contains several amendments to the FTR Act which will assist businesses to make the transition from regulation under the FTR Act to regulation under the AML/CTF Act. In particular, the amendments will ensure that those businesses can continue to report important information to AUSTRAC during the transitional period.

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.

[These bills were introduced into the House of Representatives on 27 August and 18 September 2008, respectively, and are therefore subject to the cut off.]

TAX LAWS AMENDMENT (MEDICARE LEVY SURCHARGE THRESHOLDS) BILL (No. 2) 2008

First Reading

Bill received from the House of Representatives.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (4.10 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—

TAX LAWS AMENDMENT (MEDICARE LEVY SURCHARGE THRESHOLDS) BILL (No. 2) 2008

This bill will adjust the Medicare levy surcharge thresholds for individuals and families.

The Medicare levy surcharge is a one per cent increase on top of the Medicare levy for individuals and families who do not have private hospital cover. The thresholds are currently set at $50,000 for individuals and $100,000 for couples and families. This bill will increase the thresholds to $75,000 for individuals and $150,000 for couples and families, and index these thresholds against wages growth into the future. In doing so, this bill will deliver tax relief to working families struggling with household budgets.

When the Medicare levy surcharge tax was introduced it was meant to apply to high-income earners to encourage them to take out private health insurance, the rationale being that those who could afford to take out private health insurance ought to be encouraged to do so. The then health minister, Dr Michael Wooldridge, said at the time:

‘High income earners will be asked to pay a Medicare Levy surcharge if they do not have private health insurance. These are the people who can afford to purchase health insurance’. The then Treasurer, the member for Higgins, said at the time that he hoped it was a tax no-one would ever have to pay. But since 1997, courtesy of the Liberal government’s failure to adjust the thresholds, the Medicare levy surcharge has become a tax trap that has caught more and more working families, to the point where people earning below the average full-time wage are now confronted with the choice of taking out private health insurance that they cannot afford or paying a tax that is meant to apply only to high-income earners. Indeed, in August 2006 the member for Dickson and the now shadow minister for health, in his former role as Assistant Treasurer, demonstrated the tax trap the Medicare levy surcharge has become. I quote from the Age:

‘The assistant treasurer, Peter Dutton, has revealed that the number of taxpayers hit by the Medicare levy surcharge has more than doubled since it was introduced in 1997’.

And of course we have seen those rates increase. In his answer to a question on notice the former Assistant Treasurer revealed that in 1997, 167,000 people paid the surcharge. By 2001 it was 198,000; by 2002, 235,000; by 2003, 282,000; by 2004, 362,000—and we know that by 2005-06 it had risen to 465,000 people. To remove the tax trap created by the Liberals, the government announced in the budget that we would seek to raise the Medicare levy surcharge thresholds from $50,000 for individuals, and $100,000 for couples and families, to $100,000 and $150,000 respectively. Since we announced those changes in the budget, there has been some criticism of what we proposed. We listened carefully to that criticism. We have talked with the private health sector, with other stakeholders and with those on the cross-benches. Having consulted, and having listened, we decided to put forward an alternative proposal.
Instead of lifting the individuals threshold to $100,000 we are now proposing to increase it to $75,000, while retaining the couples threshold of $150,000 which we proposed in the budget. We have also listened carefully to what those in the private health sector and other political parties have had to say about the threshold levels into the future. That is why we are now proposing to index the thresholds against wages growth each year, to ensure that the threshold levels keep pace with wages growth rather than ever threatening to be-
to the tax trap that the previous government’s thresholds had created. We want to provide relief from that tax trap.

Unfortunately we won’t be providing tax relief to as many people as we would have liked. But this measure will de-

lier immediate tax relief to 330,000 Australians—a signifi-
cant number of people. For two average income earners, each earning about $60,000 a year, this will deliver a saving of $1,200 in its first year. And it will give working families a real choice about whether they wish to take out private health insurance—rather than forcing them into it because the alternative is to pay a tax they cannot afford to pay. The proposals we are putting forward in the bill today are sensi-
ble and they are a reasonable position.

Let me take you through what others have had to say about what we are proposing today. Tasmanian Liberal Senator Richard Colbeck, unceremoniously dumped from his posi-
tion as the shadow parliamentary secretary for health this week, has said:

‘If they are talking about indexation, and that is the intent of the government, then indexation of this measure would have put the threshold at about $75,000 or $76,00’. West Australian Liberal Senator Matthias Cormann, the cur-
rent shadow parliamentary secretary for health, has said:

‘would it be more appropriate, instead of doubling it and probably overshooting the mark, to look at what the figure would be if it had been indexed? I am talking about approx-
imately $75,000 per annum.’

The Australian Private Hospitals Association has recom-

mended thresholds of $76,000 and $152,000, indexed there-
after. Access Economics, in a report for the AMA, said that thresholds of $70,000 and $140,000 would have ‘restored the system to previous real levels, if this was the goal’. Terry Barnes, former senior adviser to former Health Minister Tony Abbott, suggested that thresholds of around $80,000 and $160,000 would be appropriate. Our revised proposal is a reasonable, sensible midway point, and it is a measure that those opposite should get behind. In his first press confer-
ence as the Leader of the Opposition, the new Leader of the Opposition said: ‘I know what it is like to be very short of money ... I know Australians are doing it tough, and some Australians, even in the years of greatest prosperity, will always do it tough. Well now he has his very first test on whether he wants to help, and whether he really understands that some people are doing it tough in our community. Fifty thousand dollars is not a high income. South Australian Lib-
eral Senator Simon Birmingham conceded this in the media this morning. He said: ‘It’s certainly not a high salary. In-
deed, it is a working salary.’ So this being the case you have to ask yourself why the Liberal Party would be opposed to putting $500 in the pocket of someone earning a working salary of $50,000 a year who is currently forced to pay the Medicare levy surcharge right now. Why on earth would the Liberal Party continue to support slugging people on work-
ing salaries with a tax that was meant to apply only to high-

income earners?

The Liberal government’s failure to adjust the thresholds when they were in government, and their stubborn refusal to support our proposal to do so now, brings into question whether they ever really intended it to be a tax that just ap-
plicated to high-income earners in the first place. Is the Liberal Party for or against tax relief? That is the question. If the new Leader of the Opposition really understands that some Australians are doing it tough, the opposition will support the government’s Medicare levy surcharge bill and will join with us in providing tax relief for hundreds of thousands of Australians.

Full details of this measure are contained in the explanatory memorandum.

Debate (on motion by Senator Carr) adjourned.

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

INDEPENDENT REVIEWER OF TERRORISM LAWS BILL 2008 [NO. 2]

Report of Legal and Constitutional Affairs Committee

Senator STERLE (Western Australia) (4.11 pm)—On behalf of Senator Crossin, I present the report of the Legal and Constitutional Affairs Committee on the Independent Reviewer of Terrorism Laws Bill 2008 [No. 2], together with the Hansard record of proceed-
ings and documents presented to the committee.

Ordered that the report be printed.

Senator STERLE—by leave—I move:

That the Senate take note of the report.

Senator LUDLAM (Western Australia) (4.14 pm)—On behalf of the whole committee, I would like
to thank the secretariat, who worked very hard to get this report in on time. We were on a very short deadline for this report. I also want to recognise and thank the very dedicated people who gave up a lot of their time to provide their expertise to the committee in giving evidence. In particular, I would like to acknowledge Petro Georgiou MP for getting this whole process started and Senator Troeth for moving it along through the Senate process and carrying it forward.

We heard very wide support for the introduction of an independent reviewer into the terror laws into the up to 40 pieces of legislation that were passed and amended in response to the terror attacks in 2001 and events subsequent to that. Almost unanimously the people who appeared before the committee indicated very strong support for an independent reviewer. I sup-
pose this should not be too surprising. It follows the recommendations that were made by the Sheller review into the operation of the laws in 2006 and the Parlia-
mentary Joint Committee on Intelligence and Security in 2006, who recommended that the terror laws that had been passed and were continuing to be passed, the legislative response to terror, had omitted a vital pre-
caution: some kind of review to assess whether the laws were operating as they should and whether our response as a nation had been proportional and appropriate.

The committee has heard the urgent need to review these terror laws, and that comes through very strongly in this report. On page 9 the Law Council of Australia has perhaps put it best, noting that:

... [t]he exceptional nature of these anti-terrorism measures and the often disproportionate impact they have on the enjoyment of individual rights should not become normalised within the Australian criminal justice system and must be subject to regular and comprehensive review.

Within the context of this near unanimous agreement on the need for a reviewer of terror laws came a note of caution about reviewing put quite succinctly by the Federation of Community Legal Centres of Victoria:

In our view, the appointment of an Independent Reviewer is not a substitute for repeal of undemocratic and excessively harsh laws. When these laws were introduced, they were recognized as an extraordinary response to particular global circumstances, as departing from fundamental principles and as impinging on civil liberties.

So that body in particular saw the risk in instituting a reviewer who would in fact normalise the operation of these quite extraordinary laws in Australia. The committee also heard quite a degree of evidence about the importance of benchmarking the terror laws and the operation of the terror laws against the international human rights obligations that Australia is already a party to and subject to. That came through very strongly. In fact, the committee found that it may well be very useful to ensure, in the process of reviewing the terror laws, that the reviewer gives very strong regard to whether we are in breach of our international human rights obligations.

In closing, I thank the Senate for the time in which to make this brief statement. The Greens certainly support the tabling of this report and we look forward to the introduction of laws enabling an independent reviewer of terror laws subject to some of the concerns that have been raised about our needing a better understanding of exactly how the reviewer will operate. We very much look forward to a timely government response to this report so that the laws can be reviewed and in many cases, it is hoped, repealed entirely. I seek leave to continue my remarks.

Leave granted.

SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS—SUPERANNUATION) BILL 2008
Report of Legal and Constitutional Affairs Committee

Senator STERLE (Western Australia) (4.17 pm)—At the request of Senator Crossin, I present the report of the Legal and Constitutional Affairs Committee on the provisions of the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS—GENERAL LAW REFORM) BILL 2008
Report of Legal and Constitutional Affairs Committee

Senator STERLE (Western Australia) (4.17 pm)—At the request of Senator Crossin, I present the report of the Legal and Constitutional Affairs Committee on the provisions of the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

MIGRATION AMENDMENT (NOTIFICATION REVIEW) BILL 2008
Second Reading

Debate resumed.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (4.18 pm)—In concluding my remarks, having spoken earlier today, on the Migration Amendment (Notification Review) Bill 2008, I note I appreciate the contributions that senators made although I think Senator Fierravanti-Wells wandered off the subject a bit to try to make a few political points on other matters at the end of her contribution. I will not seek to address those points other than to say that I think most of them were wrong and highly misleading. But I do appreciate her contribution on the actual bill and the support of the opposition for these amendments to the Migration Act which relate to notification. I thank all senators for their contributions on and support for the bill.

Question agreed to.

Bill read a second time.

Third Reading

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (4.20 pm)—I move:

That this bill be now read a third time.

Bill read a third time.

FAMILY LAW AMENDMENT (DE FACTO FINANCIAL MATTERS AND OTHER MEASURES) BILL 2008
Second Reading

Debate resumed from 1 September, on motion by Senator Conroy.

That this bill be now read a second time.
Senator BRANDIS (Queensland) (4.20 pm)—The Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 seeks to amend the Family Law Act to provide de facto couples, both opposite-sex and same-sex, with access to federal family courts on property and maintenance matters. The genesis of the bill, the conception of the idea that the Family Court should have jurisdiction over de facto couples as well as married couples, relates to the time of the previous government, although the bill has been expanded in important ways by the new government. The bill has the opposition’s support in principle.

The bill relies on referrals of power by most of the states, currently with the exception of Western Australia and South Australia, to the Commonwealth agreed through the Standing Committee of Attorneys-General in 2002. Presently, the financial arrangements between separated de facto couples are subject to state and territory laws, which vary among jurisdictions, while child custody and access is governed by federal courts. Consequently, in many cases separated de facto couples with children may need to institute proceedings in different courts in relation to the various matters in dispute between them. The intention of the legislation therefore is to provide for national uniformity for all relationship breakdown matters and to confer jurisdiction on the courts with the best resources for resolving the breakdown of relationships, namely, the Family Court of Australia and the Federal Magistrates Court exercising jurisdiction under the Family Law Act. These are serious issues for de facto couples, and legislation to address them has, as I have said, the support of the opposition.

As I indicated earlier, the genesis of this legislation lay in the opposition’s days in government during the attorney-generalship of Mr Ruddock. Funds were allocated by the previous government in the 2007-08 budget for one additional Family Court judge and four additional federal magistrates in anticipation of this measure.

The Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 is the subject of a report by the Senate Standing Committee on Legal and Constitutional Affairs. While a number of amendments are recommended in that report, I can foreshadow that the opposition will be seeking to make two amendments to it. I will return to that.

The amendments confer jurisdiction on federal family courts in relation to de facto financial causes by the insertion of proposed part VIIIAB. It mirrors but is distinct from the provisions of the act relating to the property aspects of a marriage breakdown. A person is in a de facto relationship with another person if they are not married or related to each other by family where, having regard to all the circumstances of the relationship, they have a relationship as a couple living together on a genuine domestic basis. That test will apply equally to same-sex and opposite-sex couples. The coalition agrees in principle with that approach.

For the purpose of orders relating to maintenance, alteration of property interests or declarations of property interests, a de facto relationship must have been in existence for two years, or a period totalling two years, or have produced a child. The amendments do not apply to de facto relationships that broke down before the commencement of the act. However, financial agreements written in contemplation of a de facto relationship before the commencement of the amendments will be governed by the act.

The definition of ‘spouse party’ in the act is to be amended to include a party to a de facto relationship. However, the act will be arranged into distinct parts so that marriage and de facto relationships are dealt with separately. The coalition, which has in its contributions to this debate always emphasised the unique status of marriage in Australian society, believes that it is appropriate to structure the legislation by creating a distinction between marriages and de facto relationships which, although in the consequences of the breakdown of either of them may result in similar circumstances being treated in a similar manner, nevertheless recognises that there is a pre-eminence among relationships accorded to marriage in our society.

The coalition recognises that people enter into de facto relationships for a range of reasons. Often they do so as the next stage from commencing a sexual relationship. Sometimes they enter into de facto relationships following divorce because they do not want the obligations and incidents of marriage. When there are no children of the relationship, treating those people as independent, autonomous adults who can look after themselves and make their own way financially in the world fits with their expectations and intentions, however long the relationship lasts.

It is important that legislation recognises the diversity of circumstances that apply to de facto relationships, some of which resemble marriage in all respects other than being formalised and some of which do not contemplate any properly related consequences and are in terms of both the characteristics of the relationship and the parties’ expectations of it very distant from marriage.

On 17 September a series of amendments was circulated by the government. These amendments arise from the report of the Senate Standing Committee on Legal and Constitutional Affairs in its inquiry into this bill. The opposition supports all but one of the government’s amendments, which we regard as being an appropriate adjustment of the legislation to reflect the evidence that was given before the Senate committee and which are essentially uncontroversial. But let me deal with one important matter, and that is the pro-
posed amendment to section 60H(1) of the Family Law Act. Section 60H(1) of the Family Law Act deals with children which are born as a result of artificial conception procedures. Arising from the recommendations of the Senate Standing Committee on Legal and Constitutional Affairs, the government proposes to amend section 60H(1) so as to contemplate a child born to a woman in a same-sex relationship as a result of an artificial conception procedure.

The approach of the government has been to homogenise those sorts of relationships with married relationships and to treat them identically. In both cases the non-biological partner is described as the other intended parent. Consistent with the principle that partners to same-sex relationships ought to be treated equivalently to partners to de facto heterosexual relationships and the further principle that children born into such relationships ought not be discriminated against, the opposition will in the committee stage be offering its own amendment to section 60H(1), which preserves the separate categories of marital relationships and de facto relationships, preserving the important distinction about which I have spoken. Beyond the proposed amendment to section 60H(1), the opposition will be supporting the government’s amendments.

There is one other matter with which the opposition has a concern with this bill, and it arises from the proposed subsection 4AA(5), which is item 21 of the bill. That proposed subsection stipulates that a de facto relationship may exist notwithstanding that a partner to it may be married to someone else or in another de facto relationship. This adds nothing to what is already understood by the law but it has, by the manner of its statutory expression, raised community concerns that it endorses or tolerates a form of polygamy. The provision can be deleted without affecting the operation or policy of the legislation and therefore I foreshadow that the opposition will also be moving an amendment in that regard in relation to schedule 1, item 21.

The coalition supports the principles underlying this bill and believes it is important in terms of both efficiency and justice that de facto couples, of whatever sexual orientation, have access to the expertise and experience of the Federal Court and the Federal Magistrates Court in relation to all issues arising out of relationship breakdowns. That said, I wish to echo the points made by the opposition in relation to the Same-Sex Relationship (Equal Treatment in Commonwealth Laws—Superannuation) bill. In giving our support to this bill, we do not and will not support any change to or devaluation of the traditional status of marriage as the bedrock of our society. Accepting that people live in a permanent domestic relationship with a same-sex or opposite-sex partner does not and should not be allowed to devalue the traditional unique status of marriage. Subject to that very important observation, and subject to the amendments which I have foreshadowed, the opposition supports the bill.

Senator HANSON-YOUNG (South Australia) (4.31 pm)—I rise in support of the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. As the first stage of the Rudd government’s election promise to remove discrimination against same-sex couples in more than 100 pieces of legislation, the de facto financial bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs, along with the Same-Sex Relationship (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 and the Evidence Amendment Bill 2008.

The Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 amends the Family Law Act 1975 to provide for opposite-sex and same-sex de facto couples to access the federal family law courts on property and maintenance matters. The main benefit of the legal changes essentially allows de facto couples to access the Family Court rather than the more expensive and time-consuming state supreme courts. The bill also amends financial agreements between married couples and superannuation splitting, as well as providing for certificates in relation to family dispute resolution. This legislation requires states to refer their powers to the Commonwealth for the purpose of accessing the Family Law Court. While the majority of states have passed legislation referring their powers, we note that the federal Attorney-General is still in discussion with his counterparts in South Australia, Queensland, and Victoria, where these are yet to occur.

During the course of the inquiry, a number of individuals and organisations expressed concern over the definition of a “parent”, in particular section 9ORB(3) of the de facto bill and its relationship to section 60H(1) of the Family Law Act. Section 60H provides for the presumption of parentage where a child is born through assisted reproductive technology. Only the male partner of the birth mother is considered a parent under this section. The provision—60H—hinges off who the partner of the birth mother is. The key issue is that the de facto partner of the birth mother needs to be gender neutral, not that the birth mother needs to be gender neutral. Essentially, the concern with this section is that you would need to make section 60H gender neutral in order to appropriately cover the children of lesbian couples. Yet, while the use of gender neutral language is needed in order to capture all parents, we would need to see a complete overhaul of the current surrogacy legislation to ensure uniform surrogacy laws across the board.

The Attorney General’s department, in response to questioning from the committee during the Canberra hearing, stated:
… the Commonwealth’s position is that it is currently considering a request by state and territory ministers to consider amending subsection 60H of the Family Law Act to allow children of same-sex relationships to be recognised as a child of the relationship for the purpose of the section.

The Greens fully support the five recommendations proposed by the committee to strengthen this bill. In particular, we strongly support recommendation 1, which seeks to change the definition of a ‘child of a de facto relationship’ in proposed section 90RB of the bill and the parenting presumptions in section 60H of the Family Law Act 1975 to be amended to allow children of same-sex relationships to be recognised as the child of the relationship for the purposes of the entire Family Law Act 1975. We are pleased to see the government amendments circulated last week reflect the concerns raised throughout this inquiry.

As I mentioned earlier, while we would need to see national uniform surrogacy laws implemented to ensure that all same-sex partners are recognised equally, we are particularly pleased with the addition of 60HB, which deals with children born under the current state surrogacy arrangements. We heard numerous stories throughout the inquiry which outlined concerns with children born under surrogacy arrangements and how they would be protected under this piece of legislation. In particular, HREOC outlined within their submission their concern that while: ... the new section 90RB or an amended section 60H will include all children born to lesbian couples … it will not include children born to gay couples through surrogacy arrangements.

I acknowledge that surrogacy arrangements are extremely rare in Australia as all states other than NSW and the ACT either prohibit surrogacy arrangements or limit access to Assisted Reproductive Technology that is necessary to fulfil a surrogacy arrangement, but it is an important step towards a recognition of surrogacy in federal law—a debate I hope to see on this government’s radar sooner, rather than later.

The Greens were pleased to see recommendation 4 of the chair’s report incorporated into the government’s amendments, which: … recommends that the transitional provisions in the Bill be amended to enable de facto couples to ‘opt in’ to the new regime by mutual agreement, subject to appropriate safeguards, where their relationship breaks down before commencement and their property or maintenance matters have not been finalised before commencement.

It is pleasing to see this ‘opt-in’ clause inserted into this legislation to alleviate any problems that may have arisen with the original drafting of this legislation.

I was also concerned about claims, made throughout the inquiry, that this bill would both undermine and devalue the institution of marriage by extending similar rights to heterosexual and same-sex de facto couples. This claim was refuted by many witnesses—in particu-
strained by the Constitution and, in particular, by the extent to which the states have referred to the Commonwealth their powers over de facto financial matters. But, to the extent that the Commonwealth has the power to offer equal treatment, this bill, I am pleased to say, provides for it.

What this means in practice is that, when people break up and seek advice as to their financial rights and responsibilities, the answer will not depend on whether they are married or whether they are gay or straight. Instead, it will depend upon matters such as their age; the state of their health; their income, property and financial resources; whether they have children; and who is caring for those children. It will depend on the contributions they have made to building up the income and earnings capacity of their partner and to the property and financial resources of the couple. It will also depend on the contributions they have made to the welfare of the couple as a family, including contributions as a homemaker or parent, and any other facts or circumstances that the Family Court believes should be taken into account in order to see justice done.

These are the considerations that should matter when it comes to settling financial matters between separating couples, not whether the couples are gay or straight, or married or unmarried. When it comes to settling these matters fairly, the financial contributions made by the parties should matter, and so should their other contributions to their family’s wellbeing. Their current financial circumstances should matter, as should the length of their relationship. And whether the couple has children should certainly matter, as should the arrangements for the care and support of those children.

We should not be reliant on a whole series of different state laws, which are often inequitable, to determine how the children’s interests are taken into account when it comes to these issues. The children of married couples have the protection of the Commonwealth Family Law Act in relation to this matter. The act works to ensure that children’s interests are taken into account when separating married couples settle their financial affairs. When de facto couples separate, the children deserve the same protection, whatever their parents’ sexuality. This bill will ensure that like cases are treated alike. In doing so, it will give all those going through the difficult process of separation greater certainty about their rights and responsibilities. The more certainty, transparency and consistency there is in relation to these matters, the less likely it is that there will be conflict over them. That has to be a good thing for the couples involved and, most especially, for their children.

During the recent Senate Standing Committee on Legal and Constitutional Affairs inquiry into this bill, Heidi Yates, of Women’s Legal Services of Australia, said:

… the Family Court, as a specialist court, with particular ability to look at the future needs of the primary caregiver and their ability to care for the children, provides the most just and equitable outcome and therefore it would be most appropriate if both de facto and married couples could use that federal system. It also promotes consistency, simplicity of advice and I think amongst the community members a more consistent understanding of what their rights and obligations are.

Expert witnesses to the committee also testified to the fact that property and maintenance proceedings relating to the separation of de facto couples in state courts were generally more costly and protracted than similar proceedings under the Family Law Act.

As a Western Australian senator, I can vouch for the fact that this proposed scheme will work, because it is already working in Western Australia. We are not entering uncharted waters here. Western Australia has the only state family court established under the Commonwealth Family Law Act. This unique position has enabled the Western Australian Family Court to exercise both state and federal jurisdiction in relation to the settlement of most financial matters between separating couples. I am proud to say that the Western Australian parliament has taken full advantage of this situation in order to ensure that de facto couples, gay and straight, are treated in the same manner as married couples in relation to these matters. For many years now, under the Western Australian Family Court Act 1997, separating de facto couples in Western Australia have been able to go to the Family Court of Western Australia to obtain orders to relation to the settlement of their financial matters. This act replicates most of the provisions in relation to financial matters found in the Commonwealth Family Law Act, and so, by applying the same provisions to married and de facto couples, the court is able to provide equal treatment to the couples concerned and to their children.

In 2001 and 2002, the Gallop Labor government in WA took the courageous decision to implement wide-ranging reforms aimed at ensuring equal treatment for gay and lesbian people and for same-sex couples and their children. These reforms ensured that the regime in relation to the settlement of financial matters, which already applied to separating married couples in Western Australia, was extended to separating de facto couples, whether straight or gay.

Senators may be reassured to learn that, despite these innovations in Western Australia, the institution of marriage is alive and well in my home state. And why wouldn’t it be? These reforms did not change one iota the rights or responsibilities of married couples. Marriage is not so fragile that it will collapse simply because rights and responsibilities of separating de facto couples are improved and the children of de facto
couples are afforded greater protection. Furthermore, there was no avalanche of complaints from de facto couples, either gay or straight, in relation to the impact of these law reforms in Western Australia.

In contrast, I know that gay and lesbian people in Western Australia are grateful they can live life secure in the knowledge that the state’s laws support the equality of their relationships. As someone personally affected by the previous inequities in the law, I know what it means to people to go from being excluded to being able to access and take for granted the sense of security that other couples take from the legal recognition of their rights and responsibilities in everyday things like family law, property, health insurance and superannuation.

The reforms in WA, which are similar to those before us in the Senate today, have been overwhelmingly received as positive. The legislative scheme before us should be seen in a similar light. It gives courts the guidance and the discretion to make orders that do justice to couples and their children in a very wide range of circumstances—a range wide enough to encompass the situations of almost all couples, gay and straight, married and unmarried.

The Senate Standing Committee on Legal and Constitutional Affairs recently published the report of its inquiry into this bill. In my view, the committee’s report gives a very fair summary of the evidence presented to the committee and the issues raised by the inquiry. On this basis, and on the basis that the committee’s findings accord closely with my own experience of implementing successful gay and lesbian law reforms in WA, I would urge senators to give consideration to these recommendations. In particular, I would urge that consideration be given to the committee’s first recommendation. It must be implemented. The committee recommends that:

… the definition of ‘child of a de facto relationship’ in proposed section 90RB of the Bill and the parenting presumptions in section 60H of the Family Law Act 1975 be amended to allow children of same-sex relationships to be recognised as a child of the relationship for the purposes of the entire Family Law Act 1975. In making this recommendation, the committee recognises that the interests of the child must be of paramount consideration.

To explain, section 90RB of the bill provides that, for the purposes of settling financial disputes between separating couples, a ‘child of a de facto relationship’ includes a child under subsection 60H(1) of the Family Law Act and that, for the purposes of the bill, subsection 60H(1) applies to same-sex couples as it applies to opposite-sex couples.

Section 60H, as it currently stands, ensures that, when a child is born to a woman as a result of an artificial conception procedure and she had a male partner at the time of the procedure, that man is the child’s father under the Family Law Act, provided he consented to the procedure. Applying this section to same-sex couples means that, when a child is born to a woman as a result of an artificial conception procedure and she had a female partner, that partner will be recognised as the child’s parent, provided she consented to the procedure. However, currently the section is applied to lesbian couples in this way only for the purposes of settling financial disputes between separating couples, and not for any other purposes under the Family Law Act. The committee has recommended that the section be applied to lesbian couples for all purposes under the Family Law Act.

This recommendation was based upon evidence received from the Commonwealth Human Rights Commissioner, gay and lesbian organisations, a number of expert legal witnesses and, indeed, many lesbian parents themselves. Professor Jenni Millbank put the case to the inquiry most succinctly when she commented:

It makes no sense to acknowledge the existence of a parent-child relationship for the purpose of property division but not for the purpose of child support or child maintenance, parental responsibility, or for decisions about time with children.

The representative of the Gay and Lesbian Rights Lobby was even more blunt when he pointed out to the committee:

… the mother is a mother for the purposes of who gets the house, who gets the car and the future needs of the children. She is not a mother to her children for the purposes of where the children will live and who the children will spend time with.

My own experience in Western Australia leads me to believe that legal absurdities of this sort can easily be avoided by the consistent use and application of gender neutral language in relation to provisions such as section 60H. Then all couples will be covered in the same way and to the same degree, and their children will be protected in the same way and to the same degree.

I am pleased to note that the government has circulated proposed amendments that will address this issue and ensure that children’s interests are protected regardless of the structure of their family. There are a great many children in Australia who are denied but deserve the protection of a proper legal relationship with both their parents. Many children in Australia are currently denied this right—and it is not in the best interests of these children. I therefore urge all senators to support these amendments, which will give effect to the Senate committee’s bipartisan recommendation on this issue. Common sense, expert opinion and the experience of similar reforms in practice in Western Australia all indicate that the impact of this bill will be overwhelmingly beneficial. This reform will have a very real impact on the lives of large numbers of de facto couples, gay and straight, and their children. I commend the bill to the Senate.
Senator BARNETT (Tasmania) (4.53 pm)—I stand today to speak to the bill before the Senate, the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008, and also as the deputy chairman of the Senate Standing Committee on Legal and Constitutional Affairs that inquired into the bill. At first instance I would like to express my thanks to the secretariat for the assistance provided in a short amount of time under considerable pressure to pull this report together. As senators know, the report of the committee was tabled in August—just a couple of months ago—but it is part of a package of four bills that are currently before the parliament that deal with the government’s legislative package which seeks to implement equal treatment of same-sex relationships in Commonwealth law.

Before I specifically address the bill before the Senate, the de facto amendment bill, I want to highlight to the Senate and indeed to others that the government appears to have displayed and demonstrated an extraordinary degree of incompetence and behaviour bordering on recklessness in its handling of these four bills. First of all, the definitions used in these bills of ‘couple relationship’, ‘de facto relationship’, ‘child’ and ‘parent’ vary across the four bills. And there are many instances where they are mutually incompatible and contradictory. Specifically in the four bills, you have three definitions of ‘de facto’ that are different. So here we have a government which, for whatever reason—whether negligence, incompetence or some other reason—has introduced into the parliament four bills with three different definitions of the word ‘de facto’.

This was of course highlighted at the various Senate committee inquiry hearings that we had—particularly when we had before us as witnesses the Attorney-General’s Department, but it was certainly highlighted by other witnesses as well. Of course, we hope that these matters will now be addressed. I would also refer to the definition of child as ‘a product of a couple relationship’, which has attracted significant adverse comment from community groups and experts on all sides of the issue. Just as a reminder, the four bills that I am referring to are the Evidence Amendment Bill 2008, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 and the bill before us, the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. So there are four bills relating to the same objective—to provide equal treatment of same-sex relationships in Commonwealth law—with different definitions which are contradictory. It highlights negligence at best and perhaps recklessness at worst with respect to the behaviour and the administrative arrangements of the government.

While the House of Representatives was debating and ultimately passing without amendment the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008, which included this problematic term, the government circulated in the Senate proposed amendments to the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008, which used an entirely different approach to the definition of child in Commonwealth law. So we have had the government backing contradictory approaches to the definition of the child-parent relationship simultaneously in two chambers of the Australian parliament.

The government committed to the Senate Standing Committee on Legal and Constitution Affairs, in a public hearing and subsequently as well, that proposed amendments to both the same-sex bills currently before the parliament would be forthcoming and that they would be provided to our committee by 8 October—last Wednesday in fact. Well, of course, we are standing here today and there are still no amendments before the Senate. In fact, they have not been distributed. The committee has not received those amendments. It is an inappropriate administrative arrangement and it is an inappropriate way to deal with legislation. I am specifically referring to the amendments to the two same-sex bills, but of course there is a package of four bills and the de facto bill before us is just one of those four.

I wish the government had got it right in the first place, but of course there is always room for improvement. I hope that the government sees the error of its ways and perhaps acknowledges the concern, dismay and annoyance not only of senators on this side but, I think, across the board and also, in particular, the witnesses, who expressed their concern about the lack of time to prepare adequately to respond to the very lengthy bills, in particular the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 and the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008.

Senator George Brandis has outlined the coalition position but, more generally and from a bigger picture point of view, I want to put on the record the coalition’s view as expounded by Dr Brendan Nelson in his speech on the second reading of the Same-Sex Relationships (Equal Treatment In Commonwealth Laws—Superannuation) Bill on 4 June 2008. He said that while supporting the bill in principle:

… the opposition will not support—in fact we will resolutely oppose—any measure which might open the door or otherwise give legitimacy to gay adoption, gay IVF or gay surrogacy.

A coalition amendment to the bill then stated in part:

… that the Opposition will refer the bill to the Senate Legal and Constitutional Affairs Committee with a view to ensur-
The probability of a marriage ending in divorce appears to have been increasing over the last few years as we have entered the 21st century. Well, there is some good news to report about the duration and the stability of marriage. In contrast, the Institute of Family Studies informed the committee:

Now, we have been feeling a little gloomy and perhaps a little down in the mouth about family matters over the last few years as we have entered the 21st century. Indeed, as a result, families can then prosper and grow—indeed, as a result, families can then prosper and grow and be nurtured and likewise our community. So I wanted to place on the record my strong support for that.

Indeed, those points were made by a number of witnesses to our committee, including Family Voice Australia and the Australian Christian Lobby. I want to particularly thank Professor Patrick Parkinson for his evidence to our committee—it was very extensive, very thoughtful. He did express concerns about the lack of time he had to prepare adequately. He indicated that if he had had more time he could have been more diligent in the preparation of his submission. He is a professor of law at the University of Sydney. I want to put on the record my sincere thanks to the professor for his wonderful work.

In terms of the bill’s consistency with other federal legislation, I have referred to the inappropriate behaviour and administration by the government concerning definitions that differ, particularly with respect to de
facto relationships, but I want to now turn to the issue that has been addressed by Senator Brandis and other senators, which relates to the presumption of who are the parents of a child born as a result of assisted reproductive technology. Section 60H of the Family Law Act provides for and makes presumptions about who are the parents in those circumstances. It effectively recognises a birth mother and the male partner of a birth mother as parents. However, a female partner of the birth mother, a lesbian co-mother, and a male partner of the birth father, a gay co-father, are not considered to be parents. I am putting on the record my position on this, which is that I am disappointed. I do not support access to IVF for single women and lesbians. I realise that that occurs in Australia today, but I think the states should have the opportunity to express their views and allow support for funding for IVF services for married couples and de facto couples of the opposite sex.

In Australia today, couples of the same sex are allowed this service. It is one of the consequences of the government’s position and policy that it is allowed and, as a consequence of that, children are in those situations. We need to act in the best interests of the child. That is why recommendation (1) of the report refers to the merit of amending section 60H. This will ensure that the best interests of the child are protected. At all times—and I want to stress this very strongly—coalition senators have wanted to make it clear, as set out in recommendation (1), that the committee should recognise that the interests of the child must be of paramount consideration. Unfortunately, we did not have enough time to consider in greater detail the appropriate form of the amendment. I am pleased that Senator Brandis has flagged that particular amendment for senators to consider. A government amendment has been circulated, and it will no doubt be considered in committee. There will be important issues that other senators will need to consider about the amendment and the parenting presumptions that will flow from it to people in same-sex relationships, particularly with respect to ART or IVF arrangements.

The second amendment relates to concerns expressed in the report by Liberal senators about the position of multiple relationships and where a de facto relationship can exist. Currently, the bill provides that a de facto relationship can exist even if one of the persons is legally married to someone else or is in another de facto relationship. Some people expressed extreme concern about this. I would like to refer to the Hon. Bronwyn Bishop and others who have expressed publicly their concerns about the condoning of polygamy if this legislation were to go through as is. To avoid those concerns, we propose an amendment, which Senator Brandis has referred to, that would allow the courts to determine whether or not there are multiple relationships involved. That is a matter that they can sort through and resolve themselves. There are also concerns that, if we go down the track proposed by the bill as it currently stands, it will undermine the significance and distinctiveness of marriage, which has consistently been shown to be the most stable and enduring form of heterosexual union.

The proposed amendment to section 60H, which is item 5 of the proposed new schedule 3A of the bill put forward by the government, would effectively give parental status to a lesbian partner of a woman who undergoes an artificial conception procedure—this includes artificial insemination and IVF. Item 7 of the proposed new schedule 3A of the bill, as put forward in the government amendment, would introduce a new section 60HB to the Family Law Act. Under the act, this would give parental status to any person for whom an order has been made under a prescribed surrogacy law of a state or territory. I make the point that there has been no inquiry into surrogacy by a Senate committee and that it would be inappropriate for the Senate to adopt this amendment in the absence of any such inquiry. In fact, the Standing Committee of Attorneys-General is currently considering uniform national laws on surrogacy, but the initial consultation paper for this process has not yet been issued. So I cannot see why we should be going down that track at this stage. It is indeed a concern.

In summary, the bill before us clearly needs to be addressed. Some amendments have already been foreshadowed. I think the government has some lessons to learn about administrative matters. Those points have been well made during the last few minutes, and they have also been made by other senators in this place. I thank the Senate.

Senator FEENEY (Victoria) (5.13 pm)—I rise to speak in support of the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. This bill amends the Family Law Act to allow opposite-sex and same-sex de facto couples who live in a bona fide domestic relationship to have access to the federal family law courts on property and maintenance matters.

The bill allows the Family Court to make orders about property related issues brought by people in such relationships. The bill is part of a package of bills, of which the first installment was the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008. Collectively, these bills are designed to remove significant areas of discrimination against gay men, lesbians and same-sex couples, although they also affect the situation of opposite-sex unmarried couples in some respects.

For the purposes of these bills, a person is said to be in a de facto relationship with another person if they have a relationship as a couple living together on a genuine domestic basis but are not married or related to
each other. So it thereby includes same-sex domestic and sexual relationships but does not include situations where, for example, siblings or other relations are living together.

Presently, the resolution of disputes over financial and property matters between de facto couples is subject to state and territory laws and these laws vary from jurisdiction to jurisdiction. This bill will offer couples covered by the bill a nationally consistent financial settlement regime and will also offer them access to the Family Court and its services for determination of their financial matters arising upon relationship breakdown.

The bill allows one court, whether it is the Family Court of Australia or the Federal Magistrates Court, to deal in the one proceeding with both financial and child-related matters arising between separated couples. This will save not only the time of the courts but also couples and individuals money, time and stress involved in potential multiple proceedings in multiple jurisdictions.

I have sought to speak on this bill for several reasons. The first is that it is a good example of the determination by the Prime Minister and the government to keep their election commitments. One of the things that all senators need to know about the Prime Minister of this government is that he means what he says and that when he makes a commitment, it is kept. For this government there are no ‘core’ and ‘non-core’ promises.

Labor went to the last three elections with a commitment to end discrimination against gay men, lesbians and same-sex couples. I would like now to acknowledge the persistent efforts of two members in the other place, Anthony Albanese and Michael Danby, whose work when in opposition on behalf of their constituents led to that commitment. I also would like it noted that Senator Sherry, in this place, has also been a consistent advocate of equality in matters pertaining to superannuation.

We adopted our policy in the full knowledge that some of the supporters of those opposite would use it to play cheap wedge politics against us in the broader electorate. I think that is because the other side assumed—perhaps, I dare say, wrongly—that there was a reservoir of intolerance in the community into which they could tap for their own venal political purposes. Despite this and despite any attendant political risks, the Labor Party has adopted a policy to end discrimination because it is, of course, the right thing to do.

The second reason I sought to speak on this bill is that it reflects the values that I spoke about in my first speech to the Senate. One of the founding and most important core values of the Labor Party is its determination to eliminate discrimination wherever it is found, whether it be discrimination based on race, gender, sexuality, religion or belief.

This bill and the package of bills of which it is a part are steps along the road of eliminating discrimination on grounds of gender and sexuality. These bills ensure that both opposite-sex and same-sex couples—in fact, all people who live together in bona fide sexual and domestic relationships—will enjoy the same rights that married couples enjoy in the field of superannuation and in access to the Family Court.

In the light of some of the contributions we have heard from the opposition both here and in the other place, it is important to stress that this bill does not affect the status of marriage. The definition of marriage as enshrined in the Marriage Act has not been altered or changed in any respect by these bills. It has never been Labor policy to change the definition of marriage and that remains the case today.

As a member of the Senate Standing Committee on Legal and Constitutional Affairs, I have had the privilege of attending the hearings on these bills in Sydney, Melbourne and Canberra, and I read many of the submissions made to the committee by various interested parties. While I certainly respect the sincerity of all those who made submissions, I do not accept the views stated by some—and shared, I believe, by many of those opposite—that extending equality of treatment to unmarried opposite-sex and same-sex couples will in some mysterious way undermine the institution of marriage.

The passage of these bills will make no difference at all to the fact that the great majority of Australians will continue to get married nor to this government’s efforts to support married couples and their families through our social and economic policies and programs. It seems utterly perverse to me to argue on the one hand that marriage is the bedrock of our society and on the other hand to argue that marriage is so fragile that it must be protected by denying fairly elementary rights to people who choose for whatever reason to organise their lives and their personal relationships in a different way. However, I certainly do agree that there are many threats to the stability and security of married couples and their families in Australia today. An example of such a threat is the decreased affordability of housing, thanks to 10 increases in interest rates in a row under the Howard government. That trend is now being reversed under the Rudd government. Today we saw the Prime Minister and the Treasurer announce a $10 billion stimulus package, which will include almost $4 billion directed towards low-income families, and a doubling of the first homebuyers grant from $7,000 to $14,000. That is how this government supports families, not by cheap populist stunts, not by demonising minority groups, not by playing to the most difficult or intolerant tendencies in our community but, in fact, by coming up with simple and practical measures that will help Australian families.
Another example is the decreased security of employment thanks to the Howard government’s inquisitous Work Choices laws, which we are also reversing. The Deputy Prime Minister has announced legislation that will restore fairness and balance to Australian workplaces. This is a practical example of helping Australian families.

Another example is the rising costs faced by many families struggling to raise children in the face of rising costs whether they be traditional or non-traditional, same-sex or opposite-sex families. Today the Prime Minister and the Treasurer had good news for these families: as part of the government’s stimulus package, families who are eligible for family tax benefit A will be paid $1,000 for each child, as will those who have dependent children on other benefits such as youth allowance. Almost four million Australian children will now receive this payment.

Another example is the acute shortage of child care in many areas, particularly inner city areas, thanks to a decade of neglect by the Howard government. This issue was also addressed in the Rudd government’s first budget, in which we delivered on our election commitment to provide substantial relief to families struggling with the high costs of child care. The child care tax rebate was boosted from 30 to 50 per cent of out-of-pocket expenses for approved child care costs. This government has also lifted the maximum amount of the rebate, from $4,354 to $7,500 indexed per child per year.

Another example of a real threat to many Australian families and many marriages is binge drinking, which we also addressed in the budget. This problem will not be addressed if those opposite block our efforts to make pre-mixed alcoholic drinks less attractive.

Senator Joyce—What’s this got to do with de facto relationships?

Senator FEENEY—What this has to do with families is that it is real.

Senator Joyce interjecting—

Senator FEENEY—I have endured the speeches from your side; you might pay me the same courtesy. It is a pity that those opposite do not listen to Senator Fielding and drop their irresponsible opposition to this measure.

Compared with these threats to many Australian marriages, the fact that equality in superannuation and other matters is being extended to opposite-sex and same-sex couples seems to me to be a very minor threat indeed. I think it is something of an insult to married Australians to suggest that their commitment to marriage and to one another is so weak that it can be ‘undermined’ by the extension of equality to other people and other relationships.

The third reason I wanted to speak on this bill is that it is a good example of how Commonwealth-state relations should work and how they are in fact working under the Rudd government. This bill has been made possible only by the willingness of the six state governments to refer the necessary powers to the Commonwealth under section 51(xxxvii) of the Constitution. It has been more than 30 years since the issue of the property rights of de facto couples, and the need for uniform national laws on this matter, was first raised by Frank Walker, then Attorney-General in the New South Wales Labor government. But agreement could never be secured among the various federal and state governments. With a Labor federal government and six state Labor governments, the necessary referral was finally achieved.

During the 2007 election campaign, those opposite tried to scare the electorate by raising the spectre of ‘coast to coast’ Labor governments. Mercifully, the Australian people were not diverted by that scare campaign any more than they were by the campaigns against ‘union bosses’ and other bogeymen concocted by those opposite. Now we can see the very real benefits of having governments at state and federal level who are willing to work together for the national good. I hope that will continue now that we have a coalition government in Western Australia. I pay tribute to the Attorney-General, Robert McClelland, and to the six state premiers and their attorneys-general for their willingness to work together to achieve the outcomes that these bills represent. I look forward to equally successful outcomes on other issues, such as water.

As I said in my first speech in this Senate, the states have their legitimate interests to defend, and there will not always be immediate or easy agreement among them or between them and the Commonwealth. But with a federal Labor government and Labor governments in the majority of states and territories, we are far more likely to get a constructive outcome now than we were under the Howard government—a government which saw the states as enemies and sought to centralise all decision making in its own hands.

I would like to say how pleased I am that the opposition has decided to support this bill. Unfortunately, it is not so easy to say that, because it is not clear at the moment what position the opposition will be taking. In the other place, some opposition members supported the bill, at least in principle, while others, such as Mrs Bronwyn Bishop, objected to it on the spurious grounds that it would legitimise polygamous relationships. That is, of course, a complete nonsense. This bill does not represent condoning polygamy. It is a matter of fact that it is possible for two relationships to exist in a legal sense, that is to say it is possible for a person appearing before the Family Court of Australia to be in both a marriage and a de facto relationship simultane-
The opposition had 11 years in government, during which they failed to act on discrimination against same-sex couples in superannuation and family law. In June 2004 Senator Coonan, who was then Minister for Revenue, said in a media release that the Howard government would legislate in the area of superannuation. She said:

The Government will expand the potential beneficiaries of tax-free superannuation death benefits to include ‘interdependent’ relationships …

same-sex couples who reside together and are interdependent but who may not be recognised under the current rules will be eligible to receive superannuation benefits tax free upon the death of their partner.

It is sad, but not surprising, to record that this promise was not kept—apparently because of opposition in the cabinet. Perhaps Senator Coonan can enlighten us about what happened to that promise. It may give us some insight into the schizophrenic approach of those opposite who have sought to placate all sides of this debate while delivering nothing. Now, after only 11 months in government, Labor is delivering these important reforms. It is disappointing to see that the opposition is trying to have it both ways on this bill—not openly opposing it but apparently intending to move amendments so that they can pander to certain elements of their constituency who are totally opposed to the recognition of same-sex relationships—elements who seek to continue discrimination. I call on them to stop this posturing and to actually come to this place with a view.

This is an important and enlightened piece of legislation which will relieve a burden of unjust discrimination from a significant number of our fellow citizens—law-abiding, tax-paying Australian citizens. It is long overdue and I commend the Attorney-General for bringing it forward so early in the government’s term. I commend the bill to the Senate.

Senator TROOD (Queensland) (5.28 pm)—It is a pleasure to rise this afternoon and speak to the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. This is the first of several bills that will result in some important reforms in family and relationship law in Australia. I think it is fair to say that this is a case of a legislature catching up with some significant changes in Australian social behaviour, especially in the way we live together, in the way we constitute families and relationships, and in the way we protect the interests of our children. As Senator Brandis has said, the opposition supports the general thrust of these reforms. It recognises the need for change, it acknowledges that community values are changing, and it accepts that, to avoid injustices and unfairness, the law must change to reflect these situations.

To the extent that they aim to end discrimination, I am especially supportive of the bill. But there is a caveat on the opposition’s support for reform, certainly on my personal willingness to support it, and that relates to the institution of marriage and to the treatment of children within the bill. Like many, perhaps a majority in this chamber, I see marriage as an institution constituted between a man and a woman—people of opposite sex. I do not support gay marriage nor do I support legislation that might not protect the interests of our children, who are such a valuable resource to our community. Looking at the bill, I was very anxious indeed to see that neither of these principles were offended—the principle of the institution, as I believe it, of marriage and the rights of our children. No doubt some will say that this is precisely what this bill does, that it goes too far, it might be argued, in compromising the values that underpin marriage and that it goes too far in undermining the uniqueness of this very important social institution. I think that this perspective underscores the wide spectrum of views that exist on this issue within Australian society. My own view is that the bill avoids this danger, and I think this is generally the view of the Senate Committee on Legal and Constitutional Affairs, which reported on the bill.

The bill itself, as the Attorney-General said in his second reading speech, gives effect to an agreement between the Commonwealth, the states and the territories to refer powers in relation to the consequences of the break-up of de facto relationships. The existing situation is clearly unsatisfactory. There is shared jurisdiction between the Commonwealth and the states and territories. Among the states, the rights enjoyed by the parties to de facto relationships are confusingly different and where de facto relationships break down couples can find themselves dealing with issues related to children in a federal court and issues related to property in a state court or vice versa. This is expensive and it is highly inefficient. The bill will do away with this confusion. It will bring matters within the jurisdiction of the federal court system and it will enable family courts to deal at the same time with all relevant matters of property and the needs of children.
There are other significant reforms in the bill. It aims to treat same-sex couples on a similar basis as opposite-sex couples for certain family matters and to apply similar principles to de facto couples as those in marriages when break-ups actually occur. Most witnesses before the Senate committee accepted the need for these reforms, but, as the report of the Senate committee makes clear, some who appeared before it to give evidence had a different view. But, I think, in general, the weight of evidence was in support of the reforms that the bill seeks to achieve.

There are many issues raised by the bill and I will not try and canvass all of them in my remarks; perhaps I will just mention three important matters. The first of these is the definition of de facto marriage, which has been touched on by Senators Brandis and Barnett. The Senate committee examined this bill at the same time as it examined the Evidence Amendment Bill 2008. In doing so, this exposed an important issue—namely, the definition of de facto marriage. Both bills have definitions but curiously they are different from each other. The essential point of difference is over the criteria a court has to take into account to determine whether a de facto marriage actually exists. The de facto bill proposes to insert into the Family Law Act a section with nine probative circumstances for the court to take into account. By contrast, the Evidence Amendment Bill proposes to amend the Evidence Act with regard to a definition of de facto marriage and require the court to have regard to only seven probative criteria. Issues included in the de facto bill but omitted from the evidence bill are the existence of a sexual relationship and whether a relationship was registered in a state or territory. Two bills drafted by the same department produced two definitions of the same institution—namely, de facto marriage.

I can be tolerant of seeming illogicalities in legislative drafting when there is a compelling issue of public policy behind it, but to be persuasive here the logic really requires some herculean feats of legal argument. In the committee, Senators Brandis and Barnett and I sought to tease out from officials what this logic might be. The futility of this endeavour is recorded in the Hansard and indeed in the committee’s report. Try as they might, officials could not give what I at least regard as a persuasive argument for the two inconsistent definitions. Perhaps one should not blame the public servants because, presumably, this was a matter of government policy. Whatever the reason, officials were not able to provide me with a plausible case for these differences. I cannot see any persuasive reason for the differences in the definitions.

As if to underscore the bureaucratic restlessness of mind on this matter, we now have a third definition. The Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill, also introduced into the parliament a couple of weeks ago, proposes to amend the Acts Interpretation Act to add yet another definition of de facto relationship—where there are not seven nor nine probative criteria but eight criteria. One bill has nine, another has seven and a third splits the difference and has eight as indicative of the relationship. My simple view is that a relationship is or is not a de facto relationship and the legislature should encourage the court to determine that fact by reference to the same criteria. As a legislature, we should not be inviting the courts to apply three different definitions, depending on circumstances. The answer would seem to be to extend a definition in the Acts Interpretation Act to all circumstances where it is relevant to refer to a de facto relationship.

The second matter that I wanted to raise is the equivalence of marriage with de facto marriage. The evidence before the committee was clear. The bill has provoked community debate about whether marriage should be regarded as much the same as de facto marriage for the purposes of dealing with matters related to the break-up of the relationship, and witnesses came to this issue in very different ways.

Some argued that, by extending to de facto marriages the same rights as marriages, it would actually undermine marriage. It was suggested that there were strong reasons to maintain the distinction, not least because marriage is the best environment for raising children—a proposition which I strongly support. From another perspective, equating the two resulted in the removal of free choice from individuals. De facto couples were being forced into accepting a set of rules relating to an institution—that is to say, marriage—which, seemingly, they were anxious to avoid. Yet another perspective put the proposition that de facto relationships had a specific social purpose: they allow some people to test their compatibility without the burden of responsibilities of marriage. This was especially said to be true of young people. They do not want to be forced into marriage until they are ready. In rebuttal of this point, some witnesses were inclined to say that this was precisely what public policy should be aiming to do—in other words, reinforcing the idea of commitment amongst people. Another line of argument was that couples had the choice to opt out of the Family Law Act by making a binding agreement. On the other hand, the question was raised: would they know whether this option was actually available? Finally, there was an argument, on an equivalence principle reflected in the bill which proposed to protect the weaker party to a de facto relationship, that that in itself was a desirable matter of social policy.

Not surprisingly, the merits of these arguments depend largely on the nature of one’s moral universe and the values that inform it. I can see merits in some of the arguments and rather less in others. On balance, I am
inclined to think that the drafters of the bill have the balance about right. But community practice, once the bill has been passed and the new law is in operation, will no doubt determine whether I am correct. In the meantime, I am not persuaded that marriage as an institution is diminished by the bill, and I can see that there is a compelling need to end the considerable confusion of laws that exist around this area of behaviour.

The third proposition I wish to raise is the matter of the child of a de facto relationship, which has been referred to by other speakers and particularly by Senator Brandis and by Senator Barnett. There is a serious problem with this matter in the bill. The main problem revolves around section 60H of the Family Law Act in relation to de facto couples. Senator Brandis in his remarks referred to the fact that it serves, or seems to serve, to homogenise marriage and de facto marriage. The result is undesirable, and, according to some witnesses and the body of evidence before the committee, it may result in the law becoming convoluted, unduly complex and even illogical and iniquitous.

Clearly, there is a need to rethink this provision of the bill. That view is reflected in recommendation 2 of the committee’s report, where a comprehensive general review of terms such as ‘de facto’, ‘couple’, ‘child’ and ‘parent’ is suggested. But it now seems that the recommendation of the committee may have been somewhat overtaken by events. While I think the review is still desirable, the issue has become more urgent as a consequence of the reforms envisaged under some of the other family legislation now before the Senate—namely, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008 and the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008.

There are two issues here. First, together the three bills have the potential to result in a very confused and convoluted body of law with regard to the definitions of a child, of a parent, and of other matters within the area of family law. That could not only result in injustice to some members of the community, not least children, but it could be very expensive justice. The second issue is that, taken together, the three bills and the definitions traverse important moral and ethical ground and make assumptions on issues where we have barely had any public debate, most notably on the issue of surrogacy, and I note that Senator Barnett spoke to that issue specifically. It is my belief that, as a legislature, we have a responsibility to address these issues before we give these reforms the authority of law, and I trust that the government will give serious thought to the ways in which this can be done before the legislation passes through the parliament. In this context, I commend to the Senate Senator Brandis’ amendments because I think they contribute to the task of clarifying the intent of the bills.

Finally, these bills contribute to the task of ending discrimination based on sex. They catch up with social change. They rectify some confusing jurisdictional issues between Commonwealth and state courts, and they offer a more rational way of dealing with the affairs of de facto couples on break-up. Given the aims of this legislation, I commend these bills, and the reforms that the opposition has placed on the record, to the Senate.

Senator CROSSIN (Northern Territory) (5.44 pm)—I rise this evening to provide a contribution to the debate on the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. I do so in a number of capacities, first of all as the chair of the Senate Standing Committee on Legal and Constitutional Affairs. This provides me with an opportunity, since tabling this report a number of weeks ago, to thank the people who put in submissions to this inquiry and appeared before us. We had public hearings in Sydney, Melbourne and Canberra over three days. I think that, overwhelmingly, the people who appeared before us supported the intention and the content of the legislation. They certainly had gone to a lot of trouble to put their thoughts on paper and submit to us. We had 112 submissions in the course of the inquiry. They were crucial in our getting a view as a committee and charting our way through this piece of legislation, which has become difficult in some areas—and some of those aspects have been raised this afternoon in people’s contributions to the debate.

This also gives me a chance to publicly thank the staff of the committee, who were instrumental in helping us draft this report—particularly Ms Sophie Power, who has now left the committee and gone to be the secretary of another committee; Ms Hanako Jones; and, of course, our secretary, Mr Peter Hallahan. But the whole secretariat of course pitches in and helps deliver good, sound arguments and brings together all of the evidence that we receive, orally and in writing.

This is the first of a tranche of four bills that we will be dealing with through the federal parliament. As Senator Trood said, this finally catches up with what is happening in our social environment in this country and actually recognises that there are same-sex relationships occurring in this country and that laws need to step up to the mark and recognise this.

In June 2007 the Human Rights and Equal Opportunity Commission, now renamed the Australian Human Rights Commission, produced its Same-sex: some entitlements report. This was the report of a national inquiry into discrimination against people in same-sex relationships on financial and work related entitlements and benefits. The report was tabled in the federal parliament, so we are going back some period of time. As
Senator Feeney said, in the lead-up to the last federal election the Labor Party stumped up to the mark and committed to actually ending discrimination for same-sex couples in this country. I want to place on record my admiration for Attorney-General Robert McClelland for embarking on what I think is massive reform in this country in this area and doing it swiftly, within the first year of our coming to government.

The Same-Sex: Same Entitlements inquiry conducted by the Human Rights Commission found that at least 58 federal laws relating to financial and work related entitlements discriminated against same-sex couples and their children, that the laws breached the International Covenant on Civil and Political Rights, and that laws that discriminated against the children of same-sex couples and failed to protect the best interests of children in the area of financial and work related entitlements also breached the Convention on the Rights of the Child.

In summary, the Same-Sex: Same Entitlements inquiry recommended that the federal government should amend the identified discriminatory laws to ensure that same-sex couples and opposite-sex couples enjoy the same financial and work related entitlements and that the discriminatory laws identified by the Human Rights Commission should be amended to ensure that the best interests of children in same-sex and opposite-sex families are equally protected in the area of financial and work related entitlements.

The Same-Sex: Same Entitlements inquiry also considered family law matters. Currently, for constitutional reasons, only married couples are able to access the federal Family Court to decide property related matters. The Same-Sex: Same Entitlements inquiry argued that both opposite-sex and same-sex de facto couples should have access to the federal Family Court for property matters. This bill implements that reform. This bill amends the Family Law Act to allow for opposite-sex and same-sex de facto couples to access the federal Family Law Courts on property and spouse maintenance matters. Amendments which the government will be tabling will extend that to a number of other areas.

The bill also makes consequential amendments to other acts that refer to the property and spouse maintenance areas of the Family Law Act so that they now apply to de facto couples. It makes minor amendments to the Family Law Act affecting financial agreements and superannuation splitting between married couples and it creates a new family dispute resolution certificate.

This bill is long overdue. It gives effect to an agreement between the Commonwealth, states and territories made in 2002. You have to wonder why it took a Labor government to introduce these reforms and make a move. The previous government, now the opposition, had five years in which to make this agreement become a reality. I have not heard, in any of the speeches on the second reading from the other side, why they failed to do that while in government. But what we want to do now is move on and recognise that same-sex couples exist in this country, and rightly so, and to ensure that barriers and discrimination affecting those couples no longer exist.

The primary objective of the bill before us is to allow opposite-sex and same-sex de facto couples to access the Family Court on property and spouse maintenance matters. The reforms will provide greater protection for separating de facto couples and will simplify the laws governing them. I will go through the four schedules quickly. Schedule 1 creates a Commonwealth regime for handling the financial matters of de facto couples on the breakdown of their relationship. This regime is similar to the financial regime that currently exists in the Family Law Act 1976 for married couples. It implements the powers referred by New South Wales, Queensland, Victoria and Tasmania over financial matters arising on the breakdown of de facto couples and it will only apply in referring states. At this stage it does not include Western Australia and South Australia unfortunately, particularly in the case of Western Australia. And of course we do not need referring powers in relation to the territories. That actually happens by virtue of the Commonwealth’s territories powers.

The proposed reforms will apply to de facto relationships that have lasted for two years, or to shorter relationships if there is a child of the relationship or if a party to the relationship has made a substantial contribution to the relationship and it would cause serious injustice not to grant an order. The bill also extends to couples whose relationships both satisfy the definition of ‘de facto relationship’ in the references of power and are registered under state or territory relationship registration legislation. Schedule 2 contains consequential amendments to other related legislation. These pick up references to property settlements and financial matters that apply currently only to married couples and extend those references so that they also apply to de facto couples. Schedule 3 makes several amendments in relation to binding financial agreements between married couples. For example, such agreements can include persons other than the married couples, such as a parent of one of the spouses or a family company. The amendments also simplify the requirements for splitting superannuation interests when one spouse dies. Schedule 4 creates a new type of certificate which can be given to parties by a family dispute resolution practitioner where it becomes apparent that it would be inappropriate to continue the family dispute resolution session. Schedule 4 also makes minor drafting corrections to the Proceeds of Crimes Act.
This bill is in fact the commencement of watershed reform in this country when it comes to dealing with opposite- and same-sex de facto couples and their access to the federal Family Law Courts on property and maintenance matters. The bill is consistent with the government's policy not to discriminate on the basis of sexuality and it offers de facto couples' access to the federal Family Law Courts, which have experience in relationship matters and have procedures and dispute resolution mechanisms more suited to handling family litigation for determination of financial matters when a relationship breaks down.

I want to go to a number of issues that have been raised by a number of speakers this afternoon. The first, of course, is the claim and the hesitation about the protection of marriage. At no time in this bill, or in the other three bills that you will see come before this chamber to end this discrimination, is the Marriage Act amended. At no time is there any intent to actually change the intent, the content, the reverence or the importance of marriage in this country. There is no amendment to the Marriage Act before this parliament. There is no attempt to either water down the relationship in the marriage, or the legal, binding nature of a marriage or to change that in any way at all when it comes to dealing with this situation. This was raised a number of times in our public hearings by a number of witnesses, and it goes to the impact on the status of marriage.

Mr Graeme Innes, who is one of the human rights commissioners, summed it up very well in a public hearing when he said:

"... in no way does this legislation undermine or threaten the institution of marriage. The level of keenness and desperation that I heard from a range of the same-sex couples— and he is referring to their inquiry into these issues— who wish to become married and join that institution would suggest that in fact it is supported by those views rather than undermined by them."

In response to the committee's questions as to whether the institution of marriage continues to hold people's affection despite increases in de facto relationships, the Australian Institute of Family Studies told the committee that its research showed that marriage is still viewed favourably. So, as I said, there is no intention at all to undermine the concept of marriage or the relationship. The committee noted that section 43(a) of the Family Law Act, which is not being amended in any way by the bill, provides that the family courts must have regard to 'the need to preserve and protect the institution of marriage.'

What we are simply seeking to do here with this tranche of legislation is to actually recognize that in this day and age in this country people fall in love with members of the same sex. They have a right to do so, and they do. There may be some elements of our society that do not like or tolerate that but it occurs and it happens and we should be, where we can, ensuring that when people make that choice in their life there is no discrimination. I want people to perhaps think about the impact that this has on families when a son or a daughter chooses to identify as a lesbian or a homosexual and seeks to fall in love with a member of the same sex. As a family and as a parent I am sure that you would want that child—no matter who they choose to love in their life—to have the same rights and access as other members of our society. Abhorrent as it may be for some members in this chamber and in this parliament to accept that, the fact is that it happens. And the fact is that these people are very happy. The fact is that these people choose to live with their lifelong friend and become lifelong partners. The fact is that there are some elements in this society, including myself, who believe that these people ought to have the right to marry. But what is before us now is the matter of actually looking at the rights of these couples when those relationships do not work out the way they would want them to, particularly when there are children involved.

As a committee, we also looked at the issue of de facto relationships. Many submissions were particularly supportive of the inclusion of same-sex couples in the definition of 'de facto relationship' on the basis that it would remove discrimination against same-sex couples in the area of family law and therefore implement aspects of the HREOC same-sex inquiry. Again, Mr Graeme Innes stated that HREOC supported the definition of de facto relationship contained in the bill 'because it brings equality to same-sex and opposite-sex couples'. As I noted earlier, in HREOC's view the definition of 'de facto relationship' in the bill is essentially the same as the model definition recommended in HREOC's own report, the Same-sex: same entitlements report.

Finally, I want to turn to the recommendations of the committee. There is an issue with section 60H of the Family Law Act, although I note that the government will be proposing amendments to change this, as identified in Mr McClelland's press release of a number of weeks ago. We noted that this area of the legislation needed to be dealt with further. I think that is one benefit, perhaps, of Senate inquiries and one of the reasons why Senate inquiries can sometimes do a great job in improving and amending legislation.

As the Gay & Lesbian Rights Lobby from New South Wales pointed out when they wrote to the committee following the tabling of our report, they support the five recommendations made by the Senate Standing Committee on Legal and Constitutional Affairs. One of those was in relation to amending the definition of 'child of a de facto relationship' in the proposed section 90RB of the bill and the parenting presumptions in
section 60H of the Family Law Act. We had suggested as a committee that those be amended:

... to allow children of same-sex relationships to be recognised as a child of the relationship for the purposes of the entire Family Law Act...

That then goes, of course, to access rights and child support rights. As the Gay & Lesbian Rights Lobby pointed out:

An estimated 20 per cent of lesbian women have children, and the Committee recommendations will ensure these children gain important protections and rights via the Family Court and child support scheme.

One area of particular significance is Section 60H of the Family Law Act. Currently, co-mothers are not recognised as a legal parent for the purposes of child support obligations and family law. The Family Law Act only recognises a consenting “husband or male de facto partner” of the birth mother (of a child born through assisted reproductive technology) as a parent.

This means a birth mother cannot pursue child support payments from the co-mother; nor can the co-mother be recognised as a parent in proceedings before the Family Court. The recommendation of the Senate Committee is to simply refer to a “husband or de facto partner.” This reflects similar provisions in NSW, WA, ACT and NT—and those proposed for Victoria. I note that the minister has picked up this recommendation and that there will be amendments in relation to this as we proceed with the debate on the bill.

I think this is a watershed reform when it comes to dealing with this section of our society. As I said, it is the first of four pieces of legislation that we will be dealing with in coming days and that will be passed by this federal parliament. I think it signifies a shift in the maturity of this parliament to recognise same-sex couples and to acknowledge and recognise the work that the Australian Human Rights Commission has done in keeping this drawn to our attention and highlighting the need to end this discrimination. It is with some pleasure that I commend this bill to the Senate.

Senator FISHER (South Australia) (6.04 pm)—I rise to speak as a member of the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. In so doing, I want to endorse and support not only the comments made by my colleagues—in particular, Senators Brandis, Barnett and Trood—but their hard work and that of others that has gone into this process. I will be brief, whilst not wishing to in any way take away from the very important aims of this bill and the three bills to which this bill is essentially related.

I want to express twofold concern, unfortunately, about the government’s approach to the four bills. The concerns relate, firstly, to the government’s again disappointing nonperformance of a core election promise, which is to provide evidence based policy. It has been exhibited in respect of this bill and the three related bills by the presentation of inconsistent definitions of a range of terms used in everyday language—in particular, inconsistency in the proposed definition of ‘de facto relationship’. We have had not one but three different definitions of ‘de facto relationship’ proposed by the government with this series of bills.

How can this be? How can this be in 2008? How can a government seriously propose that a parliament—the same parliament—consider and pass bills which contain differing definitions of mainstream terminology like ‘de facto relationship’? How can a government seriously propose such provisions when, at the same time, maintaining or attempting to maintain that a key tenet of some if not all of the bills is to deliver simplicity and certainty and—in particular, in respect of the amendments to the Evidence Act—to present uniformity across the nation? How can that be if you are proposing three different definitions of the term ‘de facto relationship’? Disappointing is an understatement.

The second failing of the government exhibited in terms of this legislation is the non-fulfilment of the government’s promise to provide to the Senate copies of amendments which the government has said it proposes to move in respect of two of the four bills that attempt to deliver equality for same-sex couples. It is very disappointing that we have not had the opportunity to consider those amendments as we start to progress further our debate about and consideration of this bill and the three to which it is related—because they are, let us confess, inextricably related.

The opposition supports the goals of the four bills, which can be put as seeking to remove discrimination against same-sex couples and, in respect of this particular bill, seeking to provide for separated de facto couples, both heterosexual and homosexual, and particularly where there are children. The coalition keenly supports the intent to protect and provide rights for children. The coalition supports doing so, provided that the institution of marriage is protected and upheld.

The proposed amendments to section 60H of the Family Law Act, as presented in this bill, risk traversing some of those principles. I am referring to the so-called ‘presumptive parenting’ provisions arising out of assisted reproduction and, in particular, assisted reproduction in the case of same-sex couples. The opposition, in our additional comments, have suggested an alternative approach, and Senator Brandis has tabled some suggested amendments in this respect. I ask the Senate to give favourable consideration to those amendments. In so doing I am sure that the Senate will appreciate the sensitivities underlying the debate from both sides, indeed all parameters, of this chamber.

This chamber and the witnesses who provided evidence to the inquiry in relation to this bill reflect the
broad spectrum of views that are essentially touched upon by this bill and the three related to it. The broad spectrum can be said to range from, on the one hand, more conservative views. These are the views of people who are concerned about maintaining what they consider to be an expectation that a child will enter into the world usually as a product of a marriage or, if not a marriage, usually as a product of a heterosexual relationship. However, people with those conservative views, through the process of the Senate inquiry, have demonstrated their preparedness to accept that other circumstances do occur and that providing, through legislation, for the consequences of a situation that some might consider to be less than ideal does not mean that you are condoning or encouraging the creation of that set of circumstances. So the more morally conservative, if I may describe those amongst us in that way, are prepared to accept and accommodate the legislation, if it takes into account that sensitivity.

I therefore urge the Senate to be mindful that, on the other hand, in accommodating that sensitivity, for those who may wish to promote more vociferously the rights of same-sex couples, it is possible to remove discrimination—and, I would suggest, desirable to remove discrimination—in respect of same-sex couples whilst not violating the sensibilities of those with a more conservative approach. So I urge the Senate to consider the opposition’s amendments. Thank you.

Senator CAROL BROWN (Tasmania) (6.12 pm)—I rise to contribute to the debate on the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. The primary measures contained in this bill are long overdue and as such have been largely welcomed by groups such as the Law Council of Australia and Women’s Legal Services Australia. Indeed, when giving evidence during the recently completed inquiry into the bill by the Senate Standing Committee on Legal and Constitutional Affairs, the Law Council of Australia were strongly supportive of the bill, which they described as a ‘much-needed, socially advantageous’ piece of legislation.

The bill amends the Family Law Act 1975 and introduces significant reforms to allow opposite-sex as well as same-sex de facto couples access to the federal Family Law Courts on property and spouse maintenance matters. The positives of the bill are many, as it seems to provide greater simplicity and surety for same-sex and opposite-sex de facto couples in resolving what can often be sensitive post-relationship issues. It also seeks to provide children who have de facto parents with a similar level of protection to those with married parents. Finally, in extending the same rights to same-sex couples, the bill implements one of the important recommendations of the Human Rights and Equal Opportunity Commission’s 2007 Same sex: same entitlements report and is consistent with current government policy of nondiscrimination on the basis of sexuality.

For each of these reasons the bill should be applauded. The bill gives effect to an agreement between the Commonwealth and the states and territories back in 2002 and as such is most welcome and long overdue. The bill follows the enactment of legislation by the majority of states, including my home state of Tasmania, referring necessary powers to the Commonwealth. As the Attorney-General, Mr McClelland, highlighted in his second reading contribution:

The reforms will provide greater protection for separating de facto couples and simplify the laws governing them. The reforms will also bring all family law issues faced by families on relationship breakdown within the federal family law regime.

This is significant because at present same-sex and opposite-sex de facto couples can access the federal courts to resolve child related matters; however, the financial and property arrangements between separated and de facto couples are subject to state and territory law, which varies between jurisdiction. As pointed out by Mr McClelland, this can currently result in the situation where a separating de facto couple with children can potentially find themselves in the Federal Court dealing with children’s issues and in the state courts dealing with property related matters. Obviously, such a situation is far from ideal, as I am sure that all of those who preside in this place can appreciate. It creates unnecessary additional inconvenience and stress in what can often be a very emotive and difficult time—not to mention the fact that, when dealing with the issues involved in separation, financial, property and custodial issues more often than not overlap.

The reforms contained in this bill attempt to address these issues by enabling the federal family courts to deal with both financial and child related matters for separating de facto couples in one hearing. This will mean that the bill will offer de facto couples access to the family law system for the determination of financial matters arising from separation. This is a step in the right direction, as the family law courts have extensive experience in relationship matters and, as such, have procedures and dispute resolution mechanisms at hand that are more suited to resolving issues arising from family litigation. By effectively extending the jurisdiction of the Family Court to include property and maintenance matters, this bill will streamline the formal processes associated with settling the issues arising out of separation for de facto couples. In doing so, it is likely to grant such couples access to, arguably, a better equipped medium of dispute resolution and to, hopefully, reduce some of the inevitable anguish that arises as a result of separation.

This is a significant and necessary improvement of the current situation for de facto couples, particularly
when considered in light of the evidence provided by the Australian Institute of Family Studies as part of the Legal and Constitutional Affairs Committee’s recent inquiry into the bill. In supporting the bill, the institute highlighted some of the research it had undertaken, which showed that cohabiting, or de facto, relationships have become an increasingly common family form, with the 2006 census data showing that 15 per cent of all persons living with a partner were ‘cohabitating’. Consequently, the number of children being born into cohabiting relationships is also increasing.

By granting de facto couples access to the family law courts on property and maintenance matters, this bill promises to give the increasing number of same-sex or opposite-sex couples in Australia electing to live in such relationships the same protections in separation as married couples. This is significant in terms of ensuring that both the rights of Australians who choose to live in de facto relationships and, importantly, the rights of children of de facto parents are better protected. This is not only fair but is also the responsible thing to do.

As I mentioned earlier, the reforms to the Family Law Act contained in this bill also represent a positive step forward from a children’s rights perspective. Women’s Legal Services Australia, who also tendered evidence during the inquiry, were strongly supportive of the bill for this reason. Women’s Legal Services Australia argued that the measures contained in the bill would ensure that children with de facto parents were better protected. Women’s Legal Services argued that, under the current arrangements, the limited coverage and inconsistent features of state and territory schemes meant that children of de facto couples in many cases received less protection in comparison to children of married couples. The measures contained in this bill address this issue to some extent and, by streamlining the process for separating de facto parents, ensure that the rights of children of these relationships are better protected.

As I noted earlier, the reforms contained in this bill will apply to both same-sex and opposite-sex couples living in de facto relationships. By not discriminating between the two, the bill is completely consistent with the government’s policy of nondiscrimination on the basis of sexuality. In this sense, it is extremely pleasing to be a part of a government that is willing to deliver on and implement some of the key findings of the Human Rights and Equal Opportunity Commission’s 2007 report Same-sex: same entitlements. This significant report found that, under the previous government:

… at least 58 laws relating to the financial and work related entitlements discriminated against same sex couples and their children. These laws breach the international Covenant on Civil and Political Rights. Laws that discriminate against the children of same-sex couples and fail to protect the best interests of the child in the area of financial and work related entitlements also breach the Convention on the Rights of the Child.

In response to this, it also recommended in May 2007, amongst other things, that same-sex and opposite-sex de facto couples should both have access to the federal Family Court for property and child related matters. It is pleasing to be a part of a government that is willing act and deliver on this recommendation. It is important to note that these changes are not intended to in any way take away from the status of marriage; they are simply designed to afford same-sex couples and their children the same legal rights and protections when it comes to financial and work related entitlements.

Those opposite, under the leadership of Dr Nelson, withheld their support for this and other related bills that sought to deliver on the recommendations of the Human Rights and Equal Opportunity Commission’s report. While they have previously provided in principle support for the report, when it actually comes to implementing its findings they have always to date sought to defer or delay. Indeed, in June those opposite refused to support a similar bill, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008, which seeks to eliminate discrimination against same-sex couples and their children in Commonwealth legislation in relation to superannuation entitlements. The bill was subsequently sent to the Legal and Constitutional Affairs Committee for inquiry, which I believe handed down its report today.

The now Leader of the Opposition, in his second reading contribution to that bill, not only provided in principle support, but also suggested that the measures, as they relate to superannuation, should be made effective as of the date of announcement. In light of such comments, I would call on the Leader of the Opposition, Mr Turnbull, and those opposite to support in full all of the measures contained in this and subsequent legislation that seek to deliver on the findings of the Human Rights and Equal Opportunity Commission report. As the new leader, Mr Turnbull should reflect on his party’s previous failure to act in this area and wholeheartedly support the government’s push to implement the findings of the Human Rights and Equal Opportunity Commission.

As I stated earlier, the significant reforms contained in this bill have been largely welcomed. Indeed, the Senate Standing Committee on Legal and Constitutional Affairs report into the bill notes that, in general, many of the submissions and witnesses involved in the inquiry were strongly supportive of the bill and, further, that a key reason for this support was that the primary measures contained in the bill would streamline the processes for both same-sex and opposite-sex de facto couples and allow them access to the specialised forum of the family law court to resolve property
and maintenance disputes at the same time as child-related proceedings.

Without quoting the committee’s report in too much depth, many of the witnesses who supported the bill urged the government to proceed with the legislation as a ‘matter of priority.’ The Family Law Section of the Law Council of Australia described itself as a ‘vigorous supporter of the objective that family law should apply in a consistent and uniform manner to married and de facto relationships nationally’. It is important to note that the Law Council, a much respected body in this area, argued that this is a ‘much-needed and socially advantageous legislation’ and that it is ‘long overdue given the high and ever-increasing percentage of Australians who live, regardless of their gender, in marriage like relationships in preference to formal marriage’.

The primary purpose of the bill is to be applauded as it seeks to amend the Family Law Act to ensure that same-sex and opposite-sex de facto couples have access to the federal family law courts on property and maintenance matters—providing for a national and uniform system. This brings to an end the costly and inconvenient system that currently exists whereby separating de facto couples with children can be subject to separate proceedings in the federal family law court and state courts simultaneously. In this way, the bill seeks to provide simplicity and surety for de facto couples in resolving what can often be sensitive post-relation issues. It also seeks to provide to children with de facto parents a similar level of protection as those with married parents.

Finally, in extending the same rights to same-sex couples, the bill implements, as I have said, certain aspects of the Human Rights and Equal Opportunity Commission’s 2007 Same-sex: same entitlements report. From a personal point of view, as one of the many hundreds of thousands of de facto couples, while I hope to never have to use it, I commend the bill to the chamber and urge those opposite to reconsider their position on such reforms and support this bill as well as any other legislation aimed at implementing the findings of the Human Rights and Equal Opportunity Commission report.

Senator BOYCE (Queensland) (6.25 pm)—I also would like to speak on the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. I am very pleased to be able to support the purpose of this bill. However, like some of my colleagues who have spoken earlier tonight, I do have some concerns about not only the quantity of amendments that we have coming from the government for this legislation but also the processes that were used for presenting these amendments in the time frame that they were presented.

I was speaking to a group of young people at the weekend who were talking a little bit about this legislation, and their view of it was that it was rather dry and boring. I am very glad that that was their view of this legislation. It is, on the face of it, a very dry piece of legislation whose time has more than come. The legislation however does bring into effect some very substantial, far-reaching and, as I have said, somewhat overdue reform in the way we go about managing disputes for couples, be they same-sex or heterosexual couples, especially when their relationships break down.

The bill’s explanatory memorandum notes that the aim of the bill is to amend ‘the Family Law Act 1975 to provide for opposite-sex and same-sex de facto couples to access the federal family law courts on property and maintenance matters’. Additionally, the bill also amends the act to provide for amendments relating to financial agreements between married couples and superannuation splitting, and for an amendment to the act for certificates in relation to family dispute resolution.

For its constitutional validity, this bill relies upon the Commonwealth Constitution’s reference power in accordance with section 51(xxxvii) of the Constitution. It is interesting, I think, to look at this use of the reference power in the Constitution as an excellent example of how the Commonwealth and the various states can work together to achieve seamless machinery in governance and maintain a flexible and efficient working relationship between these two level of government in our Federation. I think this use here of the reference power is another example that our constitutional arrangements can function as a living tree and that they are able to grow and develop according to contemporary needs.

The government has made it very clear that the primary policy objective of the bill is to extend the financial settlement regime under the Family Law Act to de facto relationships of all types. This is very much supported by the coalition. The bill sets out to achieve this by conferring jurisdiction on certain courts in ‘de facto financial causes’ involving parties to de facto relationships and providing a new part in and amending existing parts of the Family Law Act to allow the court to make orders in those proceedings covered by the definition of ‘de facto financial cause’. This passing over from the respective state jurisdictions to the Commonwealth jurisdiction expands the role—

Sitting suspended from 6.30 pm to 7.00 pm

Senator BOYCE—As I was saying before the dinner break, the passing from the respective state jurisdictions to the Commonwealth jurisdiction of laws regarding property, dispute resolution matters and in particular child matters expands the role of the federal Family Court and the Federal Magistrates Court to bring in all matters relating to de facto relationships.
As a member of the committee of management of a community organisation some years ago, I know that we were faced with the issue of defining what a family was for the purposes of membership of that organisation. We came to the conclusion that a family was any group of people who said they were and behaved as though they were a family. Unfortunately, we cannot adopt such a general, forgiving and broad definition of a family for legal purposes, so I think it is timely that in this legislation we have recognition of the changing nature of family relationships. It is recognition that Australian families are no longer seen as only those involving a traditional heterosexual marriage relationship of mum, dad and 2.2 kids. It is no longer acceptable in modern society to deny de facto couples and their families the rights and entitlements, such as those to do with property settlements and orders, that de jure couples have received since the abolition of the old matrimonial causes by the Family Law Act when it introduced no-fault divorce in 1975.

This bill provides that two people in a de facto relationship, if they are not married or not related to each other by family, have a relationship as a couple living together on a genuine domestic basis. As the explanatory memorandum states, under current statutory arrangements the financial arrangements between separated de facto couples are subject to state and territory law, and of course these laws vary from jurisdiction to jurisdiction. The bill offers de facto couples a nationally consistent financial settlement regime that would minimise the jurisdictional disputes and uncertainties that certainly impede settlement of matters under state and territory law. It also offers de facto couples access to the family law system for determination of their financial matters arising from a relationship breakdown. The family law courts have a long history of experience in relationship matters. They have procedures and dispute resolution mechanisms that are very suited to dealing with family litigation. We would have one court exercising jurisdiction under the bill dealing with the one proceeding for both financial and perhaps, even more importantly, child related matters arising when de facto couples separate.

I note that the government have said that they will be moving a number of amendments—in fact, numerous groups of amendments—to this bill to incorporate not only some recommendations that have been made by the opposition but also recommendations that have been made by the government and other groups. In particular, we have a number of technical amendments. We also have the government’s amendment proposing that the definition of a ‘child of a de facto relationship’ be amended to recognise the ‘child of a relationship’ for the purposes of the Family Law Act. If this amendment were to go through—and I must admit to having some confusion about which level of amendments we are up to at the moment; it is a shame that these were not provided in a more timely way by the government—it would bring into line contemporary expectations about what the definition of a ‘child of a relationship’ is, irrespective of whether the couple in the family of that child are opposite sex, same sex, married or not married. It would mean that the children of de facto relationships would be considered to be equal in the eyes of the law in matters before the courts. The government amendments would also allow for transitional arrangements to enable de facto couples to opt in to the new regime by mutual agreement. This is welcome, and both of these amendments have the potential to improve this bill considerably.

As you would have noted from the extra report submitted by the coalition senators to the report of the inquiry by the Legal and Constitutional Affairs Committee into this legislation, we continue to have a number of concerns about the lack of uniformity of definitions that are provided by the government within this suite of legislation and within other legislation relevant to it, such as the Family Law Act. However, this bill is a significant step forward in the management of disputes between de facto couples and it will especially assist in the orderly resolution of disputes regarding their children, not just their property.

Interestingly, this bill has been a very long time in gestation. It began more than six years ago as a Howard government initiative, put forward by the then Commonwealth Attorney-General, the Hon. Daryl Williams QC, at a November 2002 meeting of the Standing Committee of Attorneys-General. Naturally, as it was complex legislation, it relied upon intergovernmental agreement and will continue to. We have seen, from the swag of amendments we have been presented with, that very detailed drafting often takes time to get through for consideration. I am personally disappointed that this legislation has taken so long to come before the Commonwealth parliament for consideration.

As I have said, in speaking to young people earlier in the week there is a view, certainly within the youth of Australia, that the time for this legislation has well and truly arrived, that it is no longer remarkable that people live in relationships other than as a married couple or that people live in same-sex relationships. So, on the face of it, this is an extremely commonsense amendment to make to the machinery of family law dispute management in Australia. However, I think we need to look underneath it and think about some of the other issues that we have yet to grapple with. One issue that is mentioned in the report here is the effect that this legislation could have on some same-sex couples who currently receive Centrelink benefits in that they may be worse off financially under the proposed suite of legislation than they previously were. As this report recommends, we need to develop a lot of educational material and provide a lot of support to assist...
those people to ensure that they are no more disadvan-
taged than is absolutely necessary in achieving the re-
sults of uniformity that we are now looking for in the
treatment of all relationships, especially the treatment
children of those relationships.

Interestingly, evidence given to the inquiry revealed
that, according to the 2006 ABS census, 15 per cent of
Australians living with a partner live in de facto rela-
tionships—that is, one in eight couples are not techni-
cally or legally married to each other. However, all
these people raise families and have the same dreams
and aspirations for their children as everybody else has
in the community. If their relationship breaks down
then they should be able to access federal courts to
have property and child maintenance issues dealt with
in the same way that any other couple in a relationship
can.

The Australian Institute of Family Studies said that,
unfortunately, de facto relationships are three to four
times more likely to end in separation than married
couples. One wonders whether that may partly be due
to the ease with which people slip out of de facto rela-
tionships, given that in some jurisdictions there is no
financial imperative in place. But I do not think we
ever want to go back to a system where people stay
together because of the cost of separating. We want
people to stay together so that, as healthy individuals,
they can provide the sort of unit that produces healthy
children.

According to material from the Australian Institute
of Family Studies, married couples in fact have a seven
to nine per cent chance of separating within five years,
whereas de facto couples currently have a 25 to 38 per
cent chance of separating. However, there were no sta-
tistics for the number of opposite-sex couples in de
facto relationships who go on to marry, and I am aware
of many. I suspect that many de facto couples in same-
sex relationships would also go on to marry if they
were legally able to. In some ways, those statistics
suggest that traditional marriage might still be the best
way to go, but it does not take away from the fact that
the most vulnerable people in relationships, irrespec-
tive of whether they be in a marriage or in a de facto
relationship, deserve to be protected by legislation. It is
generally women and definitely children of couples
who suffer the most. This legislation will allow women
and children who are currently in a cohabiting relation-
ship to have access to the federal courts so that they
experience, one hopes, the least amount of financial
and legal hardship as possible. Certainly, children
should not be financially disadvantaged because their
parents are not officially married. I do not think there
will be a dispute from anyone in the Senate on that
issue.

We need to look at the quality of life that is currently
experienced by children who are born into de facto
relationships. The Institute of Family Studies noted that
the number of children in de facto relationships is natu-
really increasing as the number of people in de facto
relationships increases, but that those children are more
likely to be less well off than children of marriages and
that their parents are more prone to separation, as I
have talked about before. We need to be particularly
careful about ensuring that we create the best possible
safeguards for children of all relationships and that
they have the same access to legal and other services as
any other children.

Currently, there are different rules for different
states. Parents and children in Queensland, South Aus-
tralia and Victoria cannot access maintenance from the
separated de facto partner. In New South Wales and the
ACT, child maintenance for children from de facto rela-
tionships stops when the child turns 12. Obviously,
that is a great and discriminatory problem that we need
to address.

I think we have to accept that the role of this Senate
is to reflect our society—not to be too far in front of it
and not to be too far behind it—and to understand and
accept that family structures certainly have changed
and that they encompass a far wider range of structures
than some in this place may be personally comfortable
with but that it is nevertheless what Australia’s society
looks like right now. As society and our communities
evolve, so must the legislation that guards them. I am
not suggesting that we take away from the traditional at
all but we must allow, and enforce, equality for all.
This bill sets out some common sense measures for
couples who are separating and, more importantly, for
their children. I am sure that with goodwill this Senate
can, as a unit, produce good results with the proposed
amendments to this legislation for the benefit of all
Australians.

Senator JOYCE (Queensland—Leader of the Na-
tionals in the Senate) (7.15 pm)—I rise tonight still in a
quandary as to exactly what is best in this issue. It is
fair to say that it is none of my business whether a
couple is heterosexual or gay. However, where children
come into play, then this parliament, and I as part of
this parliament, do have a role.

Tonight I have heard predominantly—though not
exclusively—about the rights of the couple. I have
heard such terms as ‘the partners’, ‘the heterosexual
couple’, ‘the co-habitants’, and ‘co-mothers’. I have
heard a whole range of terms in respect of the rights of
the adults, but there has been very little attention paid
to the rights of the children. I would love to say that the
world is a wonderful place, that it has changed incredi-
bly and that everything now is different, but I think the
world remains remarkably the same in how cruel and
intolerant it can be. We have to bear in mind that we
must not make children a social engineering exercise.
We must not make children a product of our aspira-
tions, making ourselves the primary instrument and children the secondary instrument. Once you have them, children are your foremost responsibility. Your job is to try and make their lives as unaffected and as real as possible, not to foist on them your wishes of how the world should be. When you decide that the way you wish the world to be is what you foist on your children—and it is the way that they have to live their lives—it is incredibly selfish. I do have close knowledge of people with children who are in gay relationships so, without bearing a value judgement, I do think that the life of such kids becomes a little bit tougher than it is for most other kids—in some cases, exceedingly more tough.

If this were just about a property issue then I think it should be a no-brainer and it should go straight through. However, I have been listening to the debate from the word go, and so many of the speeches tonight seem to be about the proffering of a social engineering exercise. It has gone beyond just an issue of what is right for the child to an aspiration of the way the world should be. It is a property rights issue standing in proxy for a social engineering exercise. You can water down everything that surrounds marriage so much that in the end marriage itself does not mean anything. If you take away all that marriage stands on but say, ‘We are not touching marriage,’ you have still ultimately touched marriage. You have changed everything that surrounds it, so ultimately you have affected it. I think it is a bit insincere to say, ‘We are not making a statement about marriage, but we are going to change everything that pertains to it and is closely associated with it and in all other circumstances is to be deemed part of it.’ When you do that you are changing marriage. You might not be changing it in form but you are changing it in substance by the things around it that you have decided, and that you have legislated, will be affected by it.

I have heard Senator Feeney give an exposé of today’s financial rescue package—and that is his endorsement of this bill. I fail to see the relevance between the two issues. I think it is an avoidance of the issue. This debate is supposed to be about what would be a reasonable unfairness in property rights issues affecting same-sex couples, yet we got a discussion piece about the financial rescue package put forward by Mr Rudd today. That in itself, coming across the chamber, rather appears to be a statement of insincerity. Senator Feeney also talked about pitching to a pool of ‘venal political intolerance’. But people are not pitching to a pool of venal political intolerance, they are pitching to what they actually believe in. They are pitching to what they sincerely believe in from the depths of their being. It might be different to what others believe in, but they are not out there trying to canvass votes—in fact, I would say that this would generally be a vote loser for the conservative side of this debate. So you cannot say that it is political opportunism and that you are going to broaden your voting base by daring to err on the side of caution on this issue. I think Senator Feeney’s statement on that issue is unfair—as are the others, on both sides, that have gone down that track.

If this is about property and maintenance then, from what I can see, it all hangs on an amendment to section 60H of the Family Law Act. For this to have substance in any form, section 60H needs to be amended. But we are going to see two opposing amendments come up. I have seen the amendment put forward by the coalition and, to be honest, like many of my colleagues, I have serious concerns even on that one. But we have at least come to an agreement to have good intent for this legislation while keeping all people on board.

I think this legislation is about an inch and a half away from being a conscience vote, because it does drag out some fundamental beliefs that people on both sides of the chamber hold dearly. This skirts around the edges of what is fundamentally the essence of how they see life and the structures and rules by which they would like to see life lived. The structure of society is not malleable to all desires and ideas. It is an unfortunate reality that certain lines in society are ever-present. Whether we legislate for them or not, they exist. When you ignore their existence then you end up hurting yourself and, more importantly, hurting others who have not bought the ticket that you bought. I think that is the big issue: when your decision is going to hurt somebody else who has not decided to buy a ticket for the ride that you are on. That is really what people are looking at in this legislation: are we foisting onto children something about which they are in no position to make a judgement but, if we are honest with ourselves, of which we know what the effect will be?

The expansion of the recognition of co-mothers by a more liberal interpretation of an amendment to section 60H does have ramifications that start to firmly progress the agenda of the destruction of the institution of marriage. I have not been convinced tonight that that is not going to be the case. It is really going to revolve around how the definition of section 60H will be dealt with. I note from the whips’ meeting that there will be no votes and divisions tonight. So I imagine that the greater part of the committee work will have to be done at a different time if there are going to be any divisions on the issue.

But this debate will go on, and the attention that I give to the discussion pieces and what people say on both sides will also go on. Children’s rights, I believe, are best served by a mother and a father—if they are lucky enough to have them. That is a belief that I have. I know that other people have a different belief. I will go on fighting for the family structure to have a mum and a dad—not because of mum and dad but because of the kids. And others will go on fighting for some-
thing different. That is the crucial issue. It will really come down to whether this issue is a stalking horse for a social engineering exercise or whether it is a genuine attempt to try to bring about a fairer outcome in the inevitable breakdown of any relationship, whether it is between a man and a woman or between members of a single-sex couple.

I will give my attention to the proposed amendment that will be put forward by the government and to the alternative amendment proposed by the opposition. How the chamber decides on that amendment will have an effect on my vote. It is vitally important. If you start putting aside everything you believe in then there is really no point in being here; you are really just compromising yourself and everybody else; you are doing it for the money. If that is the case then there are better people to take our place in here. I have serious concerns about what inspires this legislation. I looked for a genuine approach to resolving what we were initially discussing. I was part of a committee last year that talked about getting equal property rights for single-sex couples. I am on the conservative side on this issue—I make no bones about that—but I agreed with that, and I put that in writing in the committee’s report. But the rider was always that, when it starts to involve others, predominantly children, I entirely reserve my right to withhold my agreement to that. If you do not want to stand up for kids and for what you truly believed in when you first came into this place, then it just confirms that you have evolved into a piece of political fluff.

Senator FIELDING (Victoria—Leader of the Family First Party) (7.29 pm)—Family First believes that the important and overriding principle that should guide us when looking at this legislation is that marriage should keep its privileged status and should not be undermined. A second important principle is that relationships other than marriage should be recognised as ‘interdependent relationships’ rather than ‘marriage-like relationships’.

I am a great believer in marriage and the value of working on your relationship to stay married. I share the community’s great concern over the rate of marriage and relationship breakdown. I also understand the argument around wanting to improve the system to allocate property and provide for maintenance if a de facto relationship breaks down. Obviously, if a level of economic interdependence has formed then couples need help when they separate. The importance of a fair allocation of property is heightened when children are involved. But Family First comes at this from a different angle to that of the government, regarding these relationships as essentially ‘interdependent relationships’ rather than ‘marriage-like relationships’. Interdependent relationships could include same- and opposite-sex couples in sexual relationship but they could also include a couple of mates, or two sisters, who live together and share pay, housework, rent and other bills and who are genuinely financially interdependent.

Breakdown in de facto relationships produces financial disputes that need to be resolved, but does that resolution have to be found by treating de facto relationships the same as marriage? Society provides benefits to married couples, and the institution is encouraged and supported because marriage also provides benefits to society. Advantages are given to marriage to encourage and support it because marriage is such a social good. We know, from evidence to the Senate Standing Committee on Legal and Constitutional Affairs from the Australian Institute of Family Studies, that marriages last much longer than de facto relationships do. Different measures of this were pointed to, and one was that de facto relationships are three times more likely to end within five years than are marriages. The institute also agreed that children in de facto relationships do not do as well on developmental outcomes as children in marriages.

I agree with Professor Patrick Parkinson, who told the committee:

If we are to treat all those who have lived in a heterosexual de facto relationship for two years or longer as in a relationship equivalent to marriage then we further undermine any distinctiveness that marriage might have.

Marriage is more than just a relationship option. Family First is also concerned about specific clauses in the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008. Subclause 4AA(2)(g) gives federal government recognition to registered relationships, which is recognition of a form of relationship that undermines the status of marriage. Subclause 4AA(5)(b) says that there can be a de facto relationship even if one of the people in the relationship is still married to someone else. That is a provision that demonstrably undermines marriage. It is absurd that, if one spouse in a marriage cheats on the other with a long-term affair, a breakup of that affair can lead to a claim on the property of the husband and wife in that marriage—so the husband or wife, unaware of the affair, ends up losing money to someone who threatened the marriage. The minister himself says that the bill:

... will give separating de facto couples the same rights as divorcing couples under the comprehensive Commonwealth family law system.

Family First is very concerned that this draft law does undermine the status of marriage.

The bill also raises important questions for de facto couples. The question of who is or is not in a de facto relationship is a big issue and is not clearly defined in the bill. The bill has a definition of de facto that requires the court to consider seven different criteria, but none of the criteria are definitive, so no-one knows if they are legally in a de facto relationship until the court
says so. How is that workable? Under the definition proposed, people deemed to be in a de facto relationship do not need to have made an explicit decision to take on that status, so what one person may consider a casual, ongoing relationship may be deemed by another to be a de facto relationship with all the legal status that that could entail. For de facto couples, it removes choice. It states that they have legal status whether they have sought it or not. It is something that can sneak up on you without you ever deciding you want your relationship to have legal status. The obvious question is: do de facto couples want to be treated the same as married couples? If they do, it would seem likely that they would get married. If they do not, why is parliament, in effect, forcing them into a box they may not want to fit into?

One argument put to the Senate committee that examined the bill was that you can make an explicit decision to organise legal papers to opt out of being in a de facto relationship. But that depends on people being aware both that they might be classified as being in a de facto relationship and that de facto relationships will be treated the same as marriage for the distribution of property after a relationship breaks down. It seems ludicrous that people would have to go to the trouble of legally stating they are not in a de facto relationship to avoid being classified as de facto.

The other point, of course, is that few people contemplate their relationship breaking down. Signing papers that anticipate the breakup of your relationship can tend to take a bit of the magic out of life. It also requires couples who may be classified as de facto to go to some work and expense to, in effect, say they are not in that particular type of relationship. Most people, I would think, believe that if they have not taken the decision to walk down the aisle they will not be treated as if they have. If this bill is passed, a lot of people may get a rude shock. Family First agrees with the argument put by Professor Parkinson that the status of ‘de facto relationship’ takes on extra meaning and importance when children are involved. That is because the financial interdependence of the couple also needs to provide for the welfare of children.

I am a big fan of marriage, but I think people need to choose to be married rather than be deemed to be the equivalent of married. And I think that deeming de facto relationships to be the equivalent of marriage undermines marriage, which involves much more commitment and expectation than a de facto relationship. De facto relationships are interdependent relationships and should be recognised as such for the purposes of division of property. This bill has taken the alternative approach of giving de facto relationships the same status as marriage for the purpose of the division of property, which Family First cannot support.

Debate (on motion by Senator Stephens) adjourned.

SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS—SUPERANNUATION) BILL 2008
Second Reading

Debate resumed from 16 June, on motion by Senator Faulkner:

That this bill be now read a second time.

Senator BRANDIS (Queensland) (7.38 pm)—The opposition supports the principle underlying the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 and the related bill, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008. That principle, stated broadly, is that nobody should be discriminated against on account of their sexual identity. The bills therefore repeal or amend all provisions in Commonwealth law which treat homosexual couples less favourably than heterosexual couples.

Just as, in previous generations, Australian parliaments have legislated to protect our citizens from discrimination arising from their gender, race or religious belief, so now, in the early years of the 21st century, it is high time that the same principle were applied to protect people from being discriminated against on account of their sexual orientation. It is high time that we acknowledged that the domestic arrangements of gay and lesbian Australians ought to be respected and treated on the same footing as heterosexual de facto couples. I should stress that nothing in these bills contemplates so-called ‘gay marriage’. Both sides of politics in this country accept that marriage is a unique relationship which can only exist between a man and a woman. To recognise that—which has been a cultural commonplace in almost every human society since civilization began—is not to discriminate against gay people or to treat their domestic relationships with disrespect; it is merely to acknowledge the unique incidence and characteristics of marriage.

The Liberal Party’s support for this legislation reflects our deep commitment to the intrinsic dignity of every human being and our deep commitment to their fundamental right to lead their own lives in their own way. Like gender, race and religion, sexuality is intrinsic to identity. It is simply no business of society’s to dictate to its members about matters which are so private that they define a person’s very sense of self. But it is the obligation of society to ensure, as a basic principle of fairness, that its members are protected from unlawful discrimination and enjoy the right to equal treatment. As the former Leader of the Liberal Party, Dr Brendan Nelson, said on the second reading of this bill in the House of Representatives on 4 June:

We believe in the equal right of every Australian citizen to be treated with dignity and respect. We believe that all must
have an equal right to lead their lives in their own way, ac-
cording to their own choices and their own decisions, so long
as they respect the equal right of all others to do the same.
We believe that every Australian is equally entitled to a fair
go regardless of who they are, where they live or whether
their parents are right or poor. They are entitled to equal
treatment regardless of the colour of their skin, the God
whom they worship … the political beliefs which they hold,
their gender or professed sexual orientation.

I point out to honourable senators that the opposition
supported the second reading of this bill in the other
place. This is a position which has been strongly sup-
ported by the new leader of the Liberal Party, Malcolm
Turnbull.

Let me say bluntly that this legislation has been too
long in coming. I was one of many who sat on the back
bench in the previous government who urged the re-
dressing of the wrongs which this legislation at last
seeks to address. As I told the Senate on 12 October
2006:

This is an enormous issue for Australia because it affects
so many people. I think that, in years gone by, at a time when
gay people were socially marginalised and, to use a famous
expression, ‘in the closet’, it was thought to be a marginal
issue, a boutique issue, that affected relatively few. But we
know today that that is not so. The estimates vary but social
scientists tell us that between four and six per cent of people
identify as being exclusively or predominantly homosexual.
If those estimates are right—and I have chosen the conserva-
tive end of the estimates—that means there are about one
million Australians so circumstanced.

But each of those people have parents, most of them have
siblings and many of them have children, so the number of
Australians directly affected by discrimination against gay
and lesbian people is many times greater than the five-odd
per cent of the population, the approximately one million
Australians, who so identify. If one takes into account only
the members of their immediate families and disregards their
close friends, workmates and colleagues, one is talking about
a multiple of that number, several million Australians, di-
rectly affected by discrimination which in this day and age
we identify to be ignorant, bigoted and, to use the words of
Sir John Gorton, moved in the House of Representatives to
decriminalise homosexual behaviour.

We have come a very long way in a generation and a
half. And, although these bills are overdue, they have
been overdue for a long time. It is a shame the Howard
government did not act, yet it is equally a shame that
neither did the Keating government nor the Hawke
government. The fact is, from the time Australian soci-
ety repudiated the idea that homosexual conduct was a
crime and accepted that homosexual people should be
allowed to get on with their lives just like everybody
else, it was always appropriate to include them within
the scope of antidiscrimination laws and to repeal laws
which specifically discriminated against them.

The opposition does not regard this legislation as an
attack on the family or upon family values. I have
never been able to understand the argument that the
formation of households is somehow a threat to family
values. By recognising and supporting the formation of
stable households by gay and lesbian couples, the leg-
islation if anything reinforces social stability. In that
regard, I might point out that, in their evidence before
the Senate inquiry, the Australian Christian Lobby ex-
pressed their support for the bills, and they were not
the only witnesses of a conservative disposition who
did so. Nor have I ever been able to understand the
attitude of some people who yield to no-one in their
hostility to ‘big government’, in their conviction that
governments have no business telling their citizens
how they should run their own businesses or spend
their own money, yet seem perfectly comfortable with
governments telling their citizens whom they may love
and how they may love them. Liberals, and respectable
conservatives too, believe that governments should let
people make their own decisions about how they live
their lives, provide a stable framework within which
they may do so, and leave them alone.

Although, as I have said, the principle underlying
this bill, and the cognate bill, has the opposition’s
strong philosophical support, I must express disap-
The first stage of the Rudd government’s election promise to remove discrimination against same-sex couples in more than 100 pieces of Commonwealth legislation follows a 2007 Human Rights and Equal Opportunity Commission report which highlighted that at least 20,000 same-sex couples experience systemic discrimination daily. The Australian Greens believe that freedom of sexual orientation and gender identity are fundamental human rights. The need for acceptance and celebration of diversity, including sexual orientation and gender diversity, is essential for genuine social justice and equality.

The Greens do not think people should be discriminated against on the basis of their sexuality and have some serious concerns which we believe need to be addressed before universal equality is achieved for same-sex couples and their children. In particular, along with other key witnesses we are concerned that, while the government’s proposed legislation will provide superannuation entitlements for same-sex couples who have their money tied up in Commonwealth super schemes, for those who have their money tied up in commercial super schemes the discrimination may very well continue. I should point out here that almost 90 per cent of Australians have their super tied up in private schemes rather than public schemes, so we are only guaranteeing justice for 10 per cent of the population.

Where a superannuation fund provides for recognition of an opposite-sex relationship as a de facto relationship, we believe this should be non-discriminatory. While this bill specifically legislates for judges, veterans and Commonwealth public servants, it allows private superannuation firms to remove discrimination if they choose to yet it does not actually mandate them to do so. While the Greens are indeed pleased to see the government commit to its election promise by removing same-sex discrimination in all areas of law, we are disappointed to see that this legislation does not specifically mandate private superannuation firms to stop discriminating against same-sex couples—considering that around 90 per cent of Australians have their super tied up in private funds.

The Superannuation Industry (Supervision) Act 1993 regulates private superannuation schemes. Where private superannuation trust deeds refer directly to the definitions outlined in the SIS Act, they will have the immediate effect of including same-sex couples. Yet, as I have outlined, this legislation, in its current form, does not require all trust deeds to incorporate these definitions. The Greens believe that in order for full equality to be realised for same-sex couples with respect to this legislation, the Superannuation Industry (Supervision) Act should mandate that where an individual superannuation fund recognises opposite-sex de
This is in fact what we are here to talk about — private or the public sector.

The Greens also welcome the new definition of a ‘couple relationship’ contained within this bill. We particularly support the explicit reference to same-sex couples in the definition of partner and the addition of registration of a relationship as evidence of the existence of a couple relationship. As I outlined in the additional comments to the chair’s report into this bill, the Greens particularly support point number 17 in HREOC’s submission, which states:

The combined effect of replacing the term ‘marital relationship’ with ‘couple relationship’ and replacing the phrase ‘husband and wife’ with ‘partner’ ensures the equal treatment of same-sex and opposite-sex relationships.

This is in fact what we are here to talk about — removing all forms of discrimination.

I would like to outline that the Greens do not support the committee’s recommendation that the definition of ‘couple relationship’ in the bill be amended to read ‘marital or de facto relationship’. We believe that if the government were to proceed with this recommendation, its aim of achieving equality for same-sex couples is an absolute furphy and would not be achieved. Further to this, the Australian Greens support the recommendation put forward by the Australian Coalition for Equality that the recognition of registered relationships needs to be completely separate from the distinct recognition of de facto relationships. It is for this reason that the Greens believe that an umbrella term of a ‘couple relationship’ be adopted to ensure the courts do not treat married, registered or de facto couples differently, in each that will have their own unique criteria but will be provided with equal couple relationship entitlements.

Another issue that was raised during the committee inquiry into this bill was to ensure that children born into same-sex families have the same rights and entitlements to superannuation benefits as children born into opposite-sex families — a basic right for children that is currently denied. The bill expands the changes to the definition of ‘child of a relationship’ by adding the concept of a child who is the ‘product of a relationship’, which caused significant confusion during the inquiry. Many witnesses claimed it was ugly language without any legal precedent. During the inquiry in Sydney, Professor Jenni Millbank suggested to the committee that the ‘product of a relationship’ concept was attempting ‘to do too many things while pretending it is not doing very much and that the ensuing confusion and uncertainty will deprive the people of their rights rather than grant them rights.’

It is for this reason that the Greens, along with other key witnesses, have concerns about the terminology ‘product of a relationship’ being used to define a child. While we support the need for a more concise and legally tested definition of a child, the Greens do not support the committee’s recommendation that a review be conducted to determine the necessity of a definition to be included within this bill. We therefore believe that the terms used to define parents and their children be simplified wherever possible in this and similar legislation to ‘parent’ and ‘child’ — because that is precisely what we are talking about — that it be applied consistently to ensure children across Australia are equitably included and the distinction between parents, co-parents and stepparents are not inappropriately or unnecessarily blurred.

The Greens support the removal of discrimination in all areas of federal law, and we do not want to see the Same-Sex Relationship (Equal Treatment in Commonwealth Laws — Superannuation) Bill delayed any further. The public have expressed their desire to have same-sex discrimination removed from law, and we need to see this discrimination removed immediately. It is not good enough to suggest that a person is half pregnant. You are either pregnant or you are not. If we are to remove discrimination, we should be doing it across the board.

Senator WORTLEY (South Australia) (7.59 pm) — I rise today to support the Same-Sex Relationships (Equal Treatment in Commonwealth Laws — Superannuation) Bill 2008. In doing so, I also want to place on record my full support for the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 debated earlier in this chamber. Both of these bills represent a major component of an historic suite of legislation intended to implement Labor’s commitment to the protection of human rights in Australia and of equity in our community. They are both bills to amend Commonwealth laws that discriminate on the basis of sexuality.

The Same-Sex Relationships (Equal Treatment in Commonwealth Laws — Superannuation) Bill 2008 will amend legislation touching on Commonwealth government defined-benefit superannuation schemes, relevant taxation provisions, and statutes related to the regulation of the superannuation industry. The superannuation schemes covered by the bill include: the Commonwealth Superannuation Scheme, the Defence Force Retirement and Death Benefits Scheme, the scheme under the Superannuation Act 1922, the Defence Force Retirement Benefits Scheme, the Judges’ Pensions Scheme, the Federal Magistrates Disability and Death Benefits Scheme, the Governor-General Pension Scheme, and the Parliamentary Contributory Superannuation Scheme.
The bill introduces a long-overdue reform. It removes discrimination on the basis of sexuality from laws that go directly to the entitlements of citizens, particularly to their wishes as to the disposition of those entitlements after death. The passing of this bill is critical. If the acts I have mentioned are not amended and a scheme member dies, the present situation is that his or her same-sex partner will not be entitled to receive a reversionary death benefit. Once the acts are amended, there will be equal treatment of same-sex couples and their children in this area.

Many of the same-sex couples and their families who encounter systemic discrimination every day of their working lives come under one of the superannuation schemes I have mentioned. The entitlements taken for granted by opposite-sex couples, whether married or de facto, and their families have until now been unavailable to some of their neighbours, family members, friends or work colleagues who might be sitting at the next workstation to them, living down the street from them or shoulder-to-shoulder with them in an Australian Defence Force operation. This is patently unfair and out of step with the thinking of a modern Australian community.

In its 2007 report entitled Same-sex: same entitlements, the Australian Human Rights Commission identified many anomalies with regard to financial and work related entitlements and benefits. I quote, with permission, brief excerpts from the personal stories of two of those who made submissions to the Human Rights Commission:

We are 60 and 58 years of age. We are both members of the Australian Public Service and contributors to the Public Sector Superannuation Scheme …

We hold all our debts and assets in common—house, mortgage, car, bank accounts, furniture, insurance etc. We are the principal beneficiaries of each others’ wills …

We wish to provide security for each other. However, we are unable to do this through superannuation death benefits …

We find this an extraordinary discrimination by the Australian Government against its own employees. Are we any less committed to each other than members of a de facto opposite sex couple, or people who work in the private sector?

Again, another submission states:

I am a serving member of the Australian Defence Force, and whilst there have been significant changes in entitlements following the decision to recognise interdependent relationships in the military in December 2005, I am still concerned regarding the lack of change to superannuation and Department of Veterans Affairs benefits should something happen to me on an overseas deployment …

… should I die in service, then my partner will be financially disadvantaged compared to if we were in a recognised heterosexual relationship …

We’re not asking for new and unusual benefits, just to be treated in equality with those in heterosexual relationships.

The Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 will remedy the inequality that informs these personal statements and allow access to benefits and entitlements previously denied. The bill does this by way of revision of definitions, including the definition of a child, and by the addition of new concepts such as ‘couple relationship’, where required, so as to include same-sex partners.

Further, a relationship registered under prescribed state laws will be sufficient to prove the existence of a same-sex relationship when considering questions of eligibility for a death or pension benefit. As well, the bill will allow changes to the superannuation industry’s regulatory framework so that funds other than the Commonwealth defined-benefit schemes may make allowance for same-sex couples and their children.

Indeed, I join with many others in this place, in the other place and in the community in saying that I regard the reforms set out in this bill as well overdue. The measures contained in the bill are not about special treatment or special rights for same-sex couples and their families. They are about equal treatment for all Australians. They are about equal access to the rights and entitlements which we enjoy and equal adherence to the responsibilities that accompany those rights and entitlements.

The amendments as a whole are expected to be in operation by mid-2009. But every day’s delay in passing this legislation is an extra day of discrimination against same-sex couples—an extra day of discrimination that could have far-reaching, adverse consequences for many men, women and children. It is for this reason, and in the context of the focus on fairness and equity that is the hallmark of a Labor government, that I urge the speedy consideration and passage of these measures, and I wholly commend their terms.

The amendments in this bill will have a positive impact on same-sex families. It will afford them the same superannuation tax treatment as opposite-sex de facto couples. It is with pride that I stand here tonight as a member of a government that has taken the measures contained within this bill, and I commend them to the Senate.

Senator LUNDY (Australian Capital Territory) (8.06 pm)—I am very pleased to have this opportunity to speak on the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 this evening. There is no doubt that it is long overdue. It will remove inequities which have existed
for a considerable time. That Labor took on the difficult task of removing these inequities within six months after coming into government provides me with a great sense of satisfaction and confirms our great party’s ongoing quest for social justice.

First, I need to make clear that this bill only covers Commonwealth defined-benefit superannuation schemes, which are the Commonwealth Superannuation Scheme and the scheme under the Superannuation Act 1922. Simply put, this bill will remove discrimination against same-sex couples and the children of same-sex relationships in acts that provide for reversionary superannuation benefits upon the death of a scheme member and in related taxation treatment of superannuation benefits. As I am sure my colleagues know, these acts were identified in the Human Rights and Equal Opportunity Commission report Same-sex: same entitlements, which found that same-sex couples experience discrimination in a wide range of Commonwealth laws including superannuation, taxation and social security. This bill will allow same-sex couples and their children to receive the benefits and entitlements that they have been prevented from accessing for far too long.

On Labor coming into government, Labor’s Attorney-General commissioned a whole-of-government audit of Commonwealth legislation, which confirmed the Human Rights and Equal Opportunity Commission findings. The audit also identified further discrimination in the legal treatment of same-sex couples, and their children, occurring in a range of non-financial areas, such as administrative and evidence laws, and the government will be examining these matters as well. This bill marks one of a number of stages of the government’s commitment to addressing this inequitable treatment of same-sex relationships in other legislation, some of which have been debated this evening.

There has been a considerable amount of ill-informed comment both inside and outside this place about what the legislation seeks to achieve. Some of the more radical opponents of this legislation have expressed views that this is the beginning of a so-called slippery slope which will lead to hellfire and damnation. Fortunately, the great majority of those who have previously opposed the provisions that are now in this bill have a much more reasoned attitude once they hear the facts of the matter, and I hope they would now support what the government is trying to achieve.

Let us be clear about this: removing sexual discrimination does not undermine marriage; it simply removes discrimination. The question of recognition of same-sex marriage is a separate issue from that of providing equal recognition for same-sex couples. What this bill does do is make sure that same-sex couples are recognised as the same as for all practical purposes and have the same entitlements as opposite-sex de facto couples.

There was a concern that having a differing category of relationships would increase the risk that courts’ interpretations might have varied and could even have included one of a same-sex couple being denied access to benefits. As a result, the bill ensures equality by replacing the term ‘marital relationship’ with the term ‘couple relationship’. This is similar to the approach recommended by the Human Rights and Equal Opportunity Commission. The bill also replaces the phrase ‘husband or wife’ with the term ‘partner’. The definition of ‘partner’ is non-discriminatory and applies to persons, whether the persons are in a same-sex or opposite-sex relationship. This bill will allow all persons who have an opposite-sex or same-sex relationship with a scheme member on an equal footing. Let me state again: removing discrimination in no way diminishes the status of a marriage in the assessment of superannuation benefits. A ‘couple relationship’, which includes both of these types of relationship, recognises equally the children produced. Following on from this, the new definition will prevent the problem of the denial of benefits coming from a surrogacy arrangement, as can presently occur.

It was also found that Australia was in breach of its international obligations. Some 58 of our present federal laws have been found to discriminate against same-sex couples in the area of financial and work related entitlements, in breach of the International Covenant on Civil and Political Rights. Many of those same laws also discriminate against the children of same-sex couples and fail to protect their best interests in financial and work related entitlements, in breach of both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. This bill will mean that Australia is no longer in breach of its international obligations.

This bill reinforces this government’s basic belief that all Australians are equal before the law. There should be no diminution of any of our citizens’ rights or of their expectations to live with dignity and to be treated with due respect. Australians should not bury their heads in the sand and should appreciate that this bill actually causes us to recognise real family situations for a considerable number of Australians. Finally, this bill will ensure that the fundamental benefit of superannuation, which is to provide financial security for working people and their families into the future, is available to all Australians. I think it is an outstanding step on the road to ending discrimination in Australia, and I commend it to the Senate.

Senator BIRMINGHAM (South Australia) (8.12 pm)—It is my pleasure to rise to contribute on this very important bill, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation)
Bill 2008, one of a number of important bills before the Senate at present. That is because this bill and the series of them relate to matters of principle and doing what is right. Many times in this place we spend a lot of time debating politics. Politics is the nature of this place and the other place. This is one of those opportunities where many speakers will cast politics aside for the debate, and that is something to be welcomed. In casting politics aside, they will attempt to speak about what they truly believe in. I reflect on and respect the range of opinions that I am sure have been and will continue to be reflected on this issue. For most of us, it is about doing very much what is right on this issue of discrimination and equal treatment before the eyes of the law.

With that, I am very pleased to add my voice of support to this bill and the other pieces of legislation that have been and are to be debated. Those three bills are the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill, which was just considered in the second reading stage by this place; this bill, of course, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill; and the third major piece of legislation, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill. Each of them takes a very important step towards providing equality of access to the law, to financial arrangements and to the basic services and opportunities that Australians expect to enjoy to a group of Australians who, until now, have not enjoyed access to those equal rights under the law.

Each of them takes a step forward. The bill just considered in debate by the Senate deals with, of course, access to the courts and matters relating to consideration of de facto relationships in the family law courts. This bill relates specifically to Commonwealth defined-benefit superannuation schemes, whilst the final piece of legislation to be considered by this place on another day is a comprehensive piece reforming some 68 Commonwealth acts across a range of areas. It is important that we do this, because society has evolved and come to recognise quite clearly that the discrimination that has existed in our laws is wrong. It is a wrong that needs to be righted and it deserves to be corrected. It is very important and pleasing to see this place act in that way. As a Liberal, it is pleasing to see such an action and step being taken.

As someone who holds liberal beliefs very true and dear to my heart and believes in the innate worth of liberal philosophy at the heart of our Liberal Party, I recognise and respect entirely that there are various philosophical strains that make up our party. There are those who hold far more conservative thoughts and beliefs than I do and some who probably hold far more liberal beliefs than I do, but I recognise that Sir Robert Menzies, our party founder, in 1944 said about the Liberal Party that he was forming:

We would like to have a country …

… … …

in which there is freedom of thought and free speech and free association for all except the enemies of freedom; and

in which citizens are free to choose their own way of living and of life …

It is those freedoms that are inherent in this bill before us tonight and in the other bills related to it. They are inherent because it is not just freedom that is good enough; it needs to be both freedom and equality before the law in how these matters are considered.

Many Liberals over the years have fought for equality for same-sex couples. This is not the first time that Liberals have stood and advanced this argument. Senator Brandis, in his earlier contribution, paid tribute to many, including of course our current leader, Malcolm Turnbull. In turn, I would like to pay tribute to Senator Brandis, who I know regards this very much as an article of faith as a Liberal—an article of faith that we should not be advancing or continuing forms of discrimination in our society.

In South Australia we have a proud history, as the Liberal Party, of working to address and overcome discrimination against same-sex couples. In 1972, Murray Hill, then a Liberal member of the Legislative Council in South Australia and of course the father of former Senator Robert Hill, introduced a bill to decriminalise homosexuality. He enjoyed support in that measure from other prominent Liberals of the time: Martin Cameron, Robin Millhouse, and former Liberal Premier and leader Steele Hall. They saw the wrongs of discrimination and they were willing to champion the cause of righting those wrongs. Through history we have enjoyed Liberals standing up for the rights of others, and this is an occasion where we are very pleased as a party to join in lending our support to this legislation.

Times of course evolve and the relationship status of de facto partners, whether they are in a same-sex relationship or in an opposite-sex relationship, has evolved over the years. That is not to take anything away from the sanctity of marriage and the very integral role that marriage has played, does play and will, I have no doubt, continue to play in our society. Each time some measure that provides legal recognition to something outside of marriage has been advanced or discussed, there have been those who have argued that it will undermine the sanctity of marriage. The proof, of course, has been in what has occurred. Marriage is still very central to Australia despite the recognition that was given to de facto relationships many years ago.
In looking at the evolution of times and talking about de facto relationships during debates, in 1976, in the UK, Lord Justice Bridge spoke of the complete revolution between 1950 and 1975 in society’s attitude to unmarried partnerships. He reflected:

Such unions are far commoner than they used to be. The social stigma that once attached to them has almost, if not entirely, disappeared ... The ordinary man in 1975 would, in my opinion, certainly say that the parties to such a union, provided it had the appropriate degree of apparent permanence and stability, were members of a single family ...

Of course he, at the time, in the seventies, was reflecting on those in an opposite-sex de facto relationship, but in many ways the same words could be applied—the same phraseology could be applied—here in 2008 when talking about same-sex relationships and those in same-sex de facto relationships, because indeed the ‘ordinary man’, as Lord Justice Bridge put it, would now accept that, provided there is an apparent level of permanence and stability, they are members of a family and are worthy of equal treatment under the law.

That is what is being reflected in the Senate committee inquiries that have taken place into these pieces of legislation. The overwhelming body of evidence has been to acknowledge that people are worthy of this equal treatment. The response in the electorate has been one of acceptance that these measures should pass—one of recognising that they should be passed, and passed without great fuss. It is noteworthy in a sense that tonight, as we debate this, the galleries are empty. The emails have not been flooding in. There is not great public angst or opposition to these measures; there is an acceptance that they are a logical next step in the progression of Australian society. They reflect measures and steps that have been taken around the world, and it is now a case of Australia taking that next step to move forward.

So it is that, in lending my support to these measures, I wish to pay tribute to those who have fought so hard against discrimination over the years and finish my remarks in acknowledging that, whether it be against racial discrimination, religious discrimination, sexual discrimination or gender discrimination, many have fought a good fight to overcome discriminatory laws and measures and intolerances in society. It is pleasing to see that those who have fought that fight are winning. The passage of this legislation will see the fight go on, I am sure, and will see further wins for those who believe in a society where all are free to lead their lives as they wish and all are treated equally before the law in doing so. I commend the bill to the Senate.

Senator PRATT (Western Australia) (8.24 pm)—It is with great pleasure that I rise to speak on the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008. Superannuation is a fundamental benefit that, if we are lucky enough to have a working life where we can put some savings away, we can all enjoy a benefit which provides working people with security for their future and the future of those dependent upon them. It is a benefit in line with the principle of mutual obligation—the principle that those who work hard and save for their own retirement, thereby saving the state money, deserve the protection and assistance of the state to do this. That is what super does—it assists people to save for their retirement and it helps protect their retirement savings. This means that, when we talk about super, we are talking about people’s own money. This is not a benefit that the state provides to people without them making any contribution of their own, which makes it particularly important that all Australian taxpayers are treated equally in relation to their superannuation, have the same choices open to them and are entitled to the same benefits in equivalent circumstances.

However, until now, not all Australians have been treated equally by the Commonwealth or the state in this regard. Not all taxpayers have been offered the same protection and assistance. Some have been discriminated against, including me, and not for any rational reason. It was not because they were not as hardworking, because they paid less tax or because their need for protection was less—no. They were discriminated against for an absolutely arbitrary reason. They were discriminated against purely and simply because of prejudice about their sexuality. Unlike straight Australians, these taxpayers could not rest secure in the knowledge that reversionary death benefits would be paid by their superannuation fund to their partner and to any children of their relationship with their partner. Rather, in stark contrast, these benefits cannot be paid to same-sex partners and the children of same-sex couples in the same way that other people enjoy under current law. This discrimination has been allowed to continue despite the fact that every superannuation company and industry group in the country has for a very long time supported ending discrimination against same-sex couples in superannuation contributions, death benefits and reversionary pensions. It has been allowed to continue despite the fact that most Australians have long supported ending discrimination against same-sex couples in relation to superannuation.

Senator Birmingham’s previous remarks reflected on the change in social attitudes over many years in relation to acceptance of same-sex couples enjoying the same entitlements as other Australians. However, this is something that has long been accepted by the Australian public and indeed it has been the Australian parliament that has not, as yet—it will not until we have passed this legislation—caught up on Australian attitudes on this matter. So, despite the best efforts of the gay and lesbian community to bring this matter to the federal government’s attention over the past decade and more—in fact, the superannuation industry, trade
unions and gay and lesbian rights organisations have been joining forces to campaign for law reform in this area for over a decade—and despite the best efforts of some Labor and minor party senators and members of another place to bring it to an end under the last coalition government, discrimination has been allowed to continue.

On 17 June 2004, Mr Anthony Albanese moved an amendment to a Howard government bill in another place in an effort to achieve equal entitlements for same-sex couples in relation to superannuation. On that occasion, Mr Albanese pointed out that this was the 23rd time that he had tried to achieve that objective through this parliament. He also pointed out that the Labor Party had had a bill before parliament to provide for equal super rights since 1998, a bill supported by the superannuation industry, gay and lesbian rights organisations and trade unions. I would like to put on record my appreciation of Mr Albanese’s exceptionally persistent efforts in relation to this matter and my appreciation of the efforts made by a number of Labor and crossbench senators to have this addressed in this chamber and through Senate committees, both by supporting Mr Albanese’s bill and through their own initiatives.

Let me repeat: we cannot blame the superannuation industry for this one and we cannot blame community attitudes. Nor can we argue that the issue was simply overlooked. No, this situation is the direct result of the arbitrary and ignorant prejudices of some past and present members of this chamber and of another place. But I am pleased to see that we now have the opportunity to move on from this time. The previous federal government had a willingness to let itself be held hostage to those prejudices time and time again. As just one example, I wish to remind the Senate of the Howard government’s response to a question asked by former Senator Allison back in 2000 in relation to this matter. The question and answer are worth quoting in full as they illustrate perfectly the Howard government’s ludicrous and fundamentally dishonest approach to these issues over 11 long years in government. I now quote them:


Senator Allison ... asked the Minister representing the Prime Minister, upon notice, on 13 February 2002:

(1) Was the Prime Minister accurately reported in the Sydney Morning Herald of 24 August 2001 as saying, ‘...I don’t think people should be in any way discriminated against or penalised against if they are homosexual.’

(2) Does the Government intend to remove discrimination against homosexual couples with regard to superannuation entitlements for surviving partners of members of the Commonwealth Superannuation Scheme; if so, when.

You will have to excuse me if the following is nonsensical, but it is indeed a quote. Former Senator Hill responded:

... The Prime Minister has provided the following answer to the honourable senator’s question:

(1) The report in the Sydney Morning Herald dated 24 August 2001 is based on an interview on radio station Triple J. The full question and answer are set out below.

“STUDENT: ... if we had a scale with total acceptance of homosexuality on one end and total rejection and abuse of homosexuality on the other, where would you place yourself?

That is the question to the former Prime Minister. And here is his response—and this was provided in an answer to a parliamentary question. He said:

... Oh I’d place myself somewhere in the middle. I certainly don’t think you should give the same status to homosexual liaisons as you give to marriage. I don’t. I mean that will make me unpopular with some people but I accept that. That’s my view. I think the continuity of our society depends on there being a margin for marriage if I can put it like that. But consistent with that view I don’t think people should be in any way penalised or discriminated against if they are homosexual. I mean I certainly don’t practice any kind of discrimination against people on the grounds that they’re homosexual, I think that is unfair. But I don’t think we should go the whole hog in the other direction and take the view that you give relationships between ... I mean I don’t believe in gay marriage for example, I don’t think our society should signal support for that.”

The answer then goes on to say in very obscure terms:

... The Commonwealth Superannuation Scheme ... provides benefits for scheme members and their eligible spouses and children. The CSS is a regulated superannuation scheme for the purposes of the Superannuation Industry (Supervision) Act 1993 (SIS Act) which regulates the superannuation industry. Under the SIS Act benefits can be paid to a dependant, which includes the spouse or any child of the person. A spouse under both the SIS Act and the rules of the CSS does not include a same sex partner. However, where a member of the CSS has neither a spouse nor an eligible child there may be a minimum lump sum benefit payable to the member’s legal personal representative or, if none exists, any individual or individuals determined by the CSS Board. That could include a same sex partner.

Senator Parry—I’m totally confused.

Senator PRATT—Senators, what gobbledegook was that that former Senator Hill was indeed required to deliver on behalf of the then Prime Minister. What absolutely complete and utter gobbledegook! Senator Parry, you did say you were totally confused—as was I in reading the then Prime Minister’s response.

Senator Parry—Madam Acting Deputy President, I rise on a point of order. I am confused because Senator Pratt started talking about former Senator Hill quoting the then Prime Minister and then she went on to the then Prime Minister himself. I am confused about the answer and about how Senator Pratt is portraying the then Prime Minister.

The ACTING DEPUTY PRESIDENT (Senator Hurley)—Senator Parry, there is no point of order.
Senator PRATT—Madam Acting Deputy President, with your indulgence I am happy to reassure the senator opposite that I was simply quoting from *Hansard* and repeating what former Senator Hill was directed to answer on behalf of the former Prime Minister, which was a quote from Triple J saying that the former Prime Minister does not really condone, but does not want to discriminate against, gay relationships—an answer that effectively said, ‘But we will continue to discriminate against same-sex couples and their superannuation’, all expressed in fairly gobbledegook terms. Senators, I ask you: did former Senator Allison ask former Senator Hill about gay marriage? Or did she ask whether the former Prime Minister’s professed aversion to discrimination extended to a commitment to legislate for equal super rights some time soon? Well, you do not need to be a giant to answer that question and you do not need to be a genius to work out what that rant about gay marriage was really about in this context. It was about, as has happened many times in this place, distracting attention from the fact that, despite his protestations against discrimination, the former Prime Minister had absolutely no intention of ever ending discrimination in the fundamental matter of superannuation entitlements.

The fact that the Howard government never had any intention of ending the discrimination against same-sex couples in superannuation law was even more clearly demonstrated the following year. In 2001, the government voted down its own superannuation choice legislation after it was successfully amended in the Senate to allow gay and lesbian couples the right to leave their superannuation contributions and entitlements to their partner. On that occasion, former Senator Greig had this to say:

... the Federal Coalition is hopelessly out of touch with community attitudes and the majority of States and Territories, most of which have already ended this discrimination at a local level.

“The Superannuation industry is understandably seething over the Howard Government’s inflexibility and are shaking their heads at last night’s decision.

“It is ridiculous to promote a Bill about Superannuation choice, if that Bill denies some people the choice to unambiguously nominate their partners as beneficiaries.

“Without exception, every Superannuation company and Industry Group supports ending discrimination against same-sex couples in superannuation contributions, death benefits and reversionary pensions,” ...

Former Senator Greig also pointed out that this was the first time in federal parliamentary history that anti-gay prejudice had led a government to sabotage one of its own bills. What an extraordinary step for a government to take! It just shows the great lengths the previous government was prepared to go to to avoid ending discrimination against same-sex couples in Commonwealth superannuation laws. It just shows the extent to which the government was held captive by the bigoted attitudes within its own caucus on this issue.

Well, senators opposite now have a crystal clear, cut and dried opportunity to finally do the right thing on this issue, and it is wonderful to see the bipartisan support for these measures. But they have been far too long in coming. Many people have died, without their partners receiving the full benefit of their superannuation.

It is well past the time for this arbitrary and unfair discrimination to be brought to an end—not indirectly and incompletely and not by trying to shove same-sex couples under the carpet by lumping them in with some catch-all interdependent category, but by openly, directly and completely giving same-sex de facto couples exactly the same rights under our superannuation laws as the rights of heterosexual de facto couples. Why shouldn’t we? This bill does just that—nothing more, nothing less. People in same-sex relationships today see themselves as the same as any heterosexual couple, with the same kinds of family, social and community commitments and with the same kinds of loving, mutual obligations to each other. We have spent so much time fruitlessly debating equal super rights for same-sex couples in this place and, because we have been banked up against this issue, we have not had the time or the opportunity to address the many other forms of discrimination affecting same-sex couples and their children. That is why it has been left to Labor to catch up on everything, to bring us up to date and to give same-sex couples the same substantive rights that other couples enjoy. I trust that, on that basis, this bill will be passed so that we can finally move on to deal with all of those issues of discrimination against same-sex couples regarding financial entitlements, many of which were addressed by the recent groundbreaking report of the Australian Human Rights Commission.

As senators are aware, the government has before the Senate a further bill which addresses these more wide-ranging issues through a large number of much needed reforms to legislation affecting taxation, social security and other critical financial entitlements.

This government’s readiness to take the initiative on these matters, to be bold, to be thorough and to be fair stands in sharp contrast to the prevarication, deception and half-heartedness that characterised the record of those opposite on these matters. I commend the government on moving so swiftly to address all of these matters upon coming to office. It means a great deal to me personally, and I wholeheartedly commend this bill to the Senate.

Senator BERNARDI (South Australia) (8.40 pm)—The Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 and omnibus bill to follow are built upon premises that I do not accept—premises that take their lead from the
development of an Orwellian newspeak and give rise to a most pernicious form of social engineering.

Perhaps not even five years ago, the bill that stands before us would have been considered by most in this place as anathema to our society and to the time-honoured principles of support for marriage and the family. Now, I dare say, I am probably seen by many as speaking some form of heresy in this place when I say that this bill does not deserve the time we are about to devote to it. I guess my comments are what George Orwell termed ‘crimethink’. Another, more modern term for my misgivings, and one that I am sure will be levelled at some point, is ‘homophobe.’ Where is the freedom of thought? Where is the freedom of expression? It seems that those of us who oppose the degradation of marriage and the family, which such legislation represents, are reduced to quiet whispers of dissent, lest we be outed, lest we be branded as intolerant, uncaring or heartless. However, I do not accept that we in this place should blindly accept new definitions for ancient institutions, nor should we blithely succumb to the radical reordering of human rights that seeks to hijack principles such as fairness, reasonableness and compassion, making them slaves to errant notions of discrimination and equality.

George Orwell’s 1984 may well have been a tract against totalitarianism and socialism, but it was also a window upon the age that we live in. The clever marketing strategies of the same-sex lobby that have brought us to this juncture have beaten virtually every reasonable objection out of the public debate, not by reason, not by recourse to truth and justice, but through engendering subtle and not so subtle changes to language and perception over a long and sustained period that would have made Syme from the Ministry of Truth burst with pride.

This government has bought the myths and is determined to foist this ungood on every Australian citizen. I say ‘ungood’ deliberately. In Orwell’s own words, the etymology of newspeak was developed: … not only to provide a medium of expression for the worldview and mental habits proper to the devotees of IngSoc—that is, English socialism—

but to make all other modes of thought impossible.

It is almost impossible in this day and age to think of the term ‘discrimination’ as anything other than negative and the adverb ‘discriminating’ as anything other than a pejorative.

The report of the Human Rights and Equal Opportunity Commission, upon which this bill and others are based, claims that there exists a right to non-discrimination. What does ‘a right to non-discrimination’ mean? Perhaps if I said ‘a right to be treated fairly’ we might all nod sage-like. But to be treated fairly implies some external standard by which we judge fair and unfair behaviour. What then is the case for fair treatment of same-sex couples? Is it fair that same-sex couples be treated the same as married couples? I say no. This place said no. We in this place made that clear in 2004, although I get the impression that those opposite supported the Marriage Amendment Bill begrudgingly at that time. I say that, because the debates we are now engaged in are about creating precisely such a regimen. They can tell us that these bills are not about marriage, but that is either a delusion or sheer sophistry. As one submission to the various inquiries put it:

We wonder … whether or not the current debate would have been fought out in the context of amendments to the federal Marriage Act had not that decisive moment occurred in 2004.

I agree. The report of the Human Rights and Equal Opportunity Commission did get something right, though. It pointed out where, in federal law, some same-sex couples are treated differently from married couples. By and large, I believe that most of these differences are entirely justified because same-sex couples are intrinsically different relationships from marital relationships. I say ‘by and large’ because I concede that there may be some instances where a case can be made for change in equitable terms. But this is where the devil lies in the detail. The HREOC simply said, ‘Ah! We’ve found some discrimination, and discrimination is ipso facto wrong; ergo we need to fix that.’

I put it to my colleagues that this is hardly the case for change. What are the arguments arising from these eureka moments of discovering discrimination that would employ the dictates of reason to decide that such change as proposed in this bill and other bills is warranted? There are none. The case has not been made. I say: make the case so we can debate the reasoning, but do not treat the members of this place, elected by the good people of this great nation, as mindless minions. I hope I am not the only one in this place that finds this approach offensive—and offensive is what this bill is. It is offensive in the breathtaking ignorance of social mores and conventions. It is offensive in that it seeks to make the treatment in Commonwealth law of same-sex couples as virtually identical to that of married couples. Again, as one submission put it, if all that is left to differentiate between same-sex couples and married couples is a ‘piece of paper and a ceremony’ then there will remain little defence, at some future point in time, to a claim for full inclusion in terms of the Marriage Act. A equals B, B equals C; therefore, A equals C. The use of algebra by Family Voice Australia in one of their submissions makes the reality all too obvious. We recognised de facto married relationships three decades ago in a limited way. Over time, both in terms of the law and in the perception of the public, de facto married couple relationships have become de facto marriages—or, in fact, marriage, as the Latin term connotes. This and other bills will afford same-sex couples
equal standing with de facto married relationships and, therefore, practical parity with marriage itself.

Groucho Marx once said, 'I don’t care to belong to a club that accepts people like me as members.' The great institution of marriage, which is the foundation of society and the only social institution where children can be properly nurtured, has taken a beating in the past three decades or so. We have expanded the membership of the marriage club to include heterosexual couples who do not, for whatever reason, actually want to get married. Now we want to throw open the doors and welcome into the fold those whose relationships are uncharacteristic of the most basic elements of a marital union. It is not difficult to understand that if a club or association defines its reason for existence away then it will, sooner or later, cease to exist. We do not expect the RSL to broaden their membership to include bohemian peaceniks, we do not ask the Country Women’s Associations to include men and we do not ask the NRL or the AFL to include women in their teams. Why is it then that we defy the same sort of logic when it comes to marriage? I suspect that, as much of the same-sex literature suggests, the ultimate goal of the same-sex lobby is indeed to destroy marriage by defining it out of existence. And we in this place are being asked to contribute to the demise.

If we required any further proof that the recognition of same-sex relationships in the manner outlined is against common sense we need only look at the fact that—to jump through unnatural hoops—the bill defines children as a ‘product of a relationship’. A product of a relationship! How coarse. How degrading: ‘Here, Joe; I’d like you to meet my products: product A and product B. We want to have at least four products in our family.’ Maybe we should extend this newspeak further: maybe a family should no longer be a family but should be referred to as ‘a corporation’. In Spain, parents are no longer Mum and Dad but ‘Progenitor A’ and ‘Progenitor B’, so maybe there is some logic to that. Unfortunately such changes would probably fall foul of HREOC, I expect, because of alphanumeric discrimination! Of course, if a child is a product, then the mother is little more than an incubator—a factory, or production line, if you will. How sad. And one can only imagine how we should be redefining the father. This is where the real test of this type of legislation lies. If we need to redefine the meaning of institutions, relationships and persons so as to make this regime work, then it is a sure sign that this is wrong. It is a sure sign that it is unnatural. As Aristotle said: ‘It ever remains unjust to treat unequal things equally.’ And that is precisely what we are doing here.

I do not know whether this bill, or the omnibus bill, can be rescued. It is a bad bill with bad consequences, a fact reflected by the government’s own tabling of 18 pages of amendments to their own bill. I am also aware that a number of contributors to the inquiry regarding this bill and the omnibus bill have mentioned the idea of interdependency as an alternative vehicle to deal with superannuation, and we should consider that. I think that, in terms of superannuation, interdependency passes the fairness test. I am not so sure about other matters, and I am certainly opposed to referring to children as ‘products of a relationship’. In fact, I find it quite disappointing that children are being used as an excuse, and a vehicle, to highlight the importance of this bill. In closing, I urge this Senate and its members to raise the bar of reason in respect to this bill. I urge all members to ask themselves whether HREOC and the government have applied reason and presented sound argument for these changes and whether or not the manner in which these changes is to be achieved is fair and reasonable. We are considering major changes to marriage and the family here, and we need to treat this matter with extreme care. I want it noted on the record that I stand firmly with marriage and with the natural family.

Senator BARNETT (Tasmania) (8.51 pm)—I rise tonight to speak on the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008. As the Deputy Chair of the Senate Standing Committee on Legal and Constitutional Affairs, which inquired into this bill, I want to express my severe concerns regarding this bill. Together with my colleagues, Liberal Senators Trood and Fisher, I have expressed additional comments with respect to this particular bill in the committee’s report. The fact is that this bill is flawed, and that has been confirmed by the government. The government has only today tabled 18 pages of amendments to this bill, and we are expected to express a view in favour of or against the bill. In fact, government senators have said in this place that this bill should be passed. How on earth can they possibly say that, when they have not even reviewed and considered the government amendments that were tabled just a few hours ago? How is that possible? The bill is flawed. It is now up to the Senate to consider the amendments, and it will take time to properly, diligently and professionally consider those amendments. That is very important.

Before I look at the substance of the bill, I want to address the process. It is a flawed process. The bill was referred to our Senate committee on 18 June 2008 for inquiry and report by no later than 30 September. On 4 September, a similar bill, the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008, was referred to the committee with a concurrent reporting date. We had two public hearings. The fact is that the committee was told by the Attorney-General’s Department, under questioning by me and indeed other coalition senators, that they were in fact considering amendments to this bill—in the middle of a committee of inquiry! You can imagine
how the senators on that committee felt. Goodness, gracious me! We were expected to express a view supporting or not supporting this particular bill when we were advised by the witnesses before us that they were considering further amendments to the bill. I understand that they were reviewing the Hansard transcripts of the evidence given to the committee by the witnesses, which in many ways was critical of the bill. Perhaps they were responding to that. If that was the case, that was good news. But you can understand how we felt when, halfway through an inquiry in which we were looking into this, the government said, ‘We’re looking at a whole range of amendments to this bill.’

The chair of the committee subsequently confirmed that the amendments would be provided by the government on 8 October, which was Wednesday of last week. Here we are in the middle of the next week and the amendments still had not arrived in this chamber until a few hours ago. There are 18 pages—and I have them here before me—together with a supplementary explanatory memorandum, which we will need to review as well. The supplementary explanatory memorandum is some 21 pages long. We will need to review that along with the 18 pages of amendments. If you want confirmation that this government is administering the affairs of this country in a dilatory, negligent and potentially reckless manner then you have it here before you today, my colleague senators and Madam Acting Deputy President. The evidence is here.

I have not even looked at these amendments, so I do not know if they address the concerns that have been expressed not only by us but by other members of the Senate committee. That Senate committee inquiry report was delivered just a few hours ago—in fact, around four o’clock this afternoon. It is extensive. There are 73-odd pages. Additional comments by the Liberal senators are at the back of the report. I want to say thank you to the secretariat for the work they did, under a lot of pressure, to pull this report together in a very tight time frame. I thank Peter Hallahan and his secretariat for pulling that together. I also thank Senator Trood and Senator Fisher for the work they have done in pulling together the additional comments by the Liberal senators.

I want to focus on the process and then on the substance of the bill. The process, firstly, is flawed—the government has tabled 18 pages of amendments today. Senators on the other side are saying, ‘Support the bill; it’s got to be passed as soon as possible.’ Give us a break! Due process says we should consider this in a measured, proper and professional way, as a Senate should. I find it almost offensive that they are asking us to pass the bill without even considering the 18 pages of government amendments that were laid on the table just a few hours ago. So you can understand the frustration, annoyance and perhaps a little bit of aggro from those on this side of the chamber who say due process has been abused and that the process is unsatisfactory in the extreme.

Earlier in the Senate, in the debate on the de facto amendment bill that is before us, I highlighted the fact that this is one of four amending reform bills before the Senate on the removal of discrimination between same-sex couples That is an objective that all of us in this chamber support—let me put that on the record—but the government has come up with three different definitions of ‘de facto relationship’ in four separate bills introduced concurrently, simultaneously, in both houses of this parliament. How is that possible? How could the government muck it up so badly? And now they are amending their own bill! It is embarrassing for the government. They should have simply come in here and apologised. They should have said, ‘We’ve muffed it. We want to improve this legislation. We need more time to amend our bills, which we’ve asked the Senate to consider. We’ve asked the Senate committee to use your time, your resources, your efforts to fix the bill. We’ve now seen the flaws in our argument. We’ve seen the flaws in our bill, and we want to try and fix it.’ If they had come into this chamber and admitted the flaws and admitted that they had muffed it, then it would have been appreciated, and it would have helped in terms of coming up with better legislation. That is our job: to try and improve the legislation in the Senate. As a whole, it works, it is great, and I appreciate it.

I also want to say that not only the Attorney-General’s representative but all the witnesses were bona fide and expressed their views on this as they saw it, and I thank them for it. But there are significant elements of incompetence and potential recklessness by the government in the manner in which they have managed these four bills and the different terms in these bills, such as ‘couple relationship’, ‘de facto relationship’, ‘child’ and ‘parent’. They vary across the four bills, and in many instances, as I indicated earlier in the day, they are incompatible and contradictory. So the process is very, very flawed.

I want to confirm on the record what I said earlier about the coalition’s policy position. We support the principle of the objective behind these four bills but resolutely oppose—and I quote Dr Brendan Nelson:… any measure which might open the door or otherwise give legitimacy to gay adoption, gay IVF or gay surrogacy. He does not support it and the coalition does not support it. I put that on the record because marriage is important, families are important and those principles are important.

There are two major areas of concern with the substance of the superannuation amendment bill before us. Firstly, the term ‘couple relationship’ is used in the bill to cover both marriage and de facto relationships, including same-sex de facto relationships. Why would
they do that? Why would they lump it all in there under ‘couple relationship’ in this legislation? This was an area of serious concern not just to the Australian Christian Lobby, Family Voice and Professor Patrick Parkinson from the University of Sydney but to a whole range of witnesses. They felt uncomfortable about this, and I know that there were members of the community, across the community, who felt very uncomfortable about the use of the term ‘couple relationship’ because it undermines marriage.

I know the Attorney-General says the objective of the bill is not to undermine marriage, but in using the term ‘couple relationship’ it certainly does. Marriage is treated simply as one of the possible indications that two persons are in a couple relationship, and it is not even conclusive for that purpose. This novel approach undermines the unique status of marriage in Commonwealth law and it was abandoned by the government in drafting the general law reform bill, which refers to marriages and de facto relationships as two distinct types of relationships while nonetheless treating them equally. The government have seen the error of their ways. They have fixed it in the same-sex general law reform bill but have made the error in the same-sex superannuation bill. So you have a different approach in two bills introduced to this parliament pretty much concurrently—within the space of a month. It is a quite bizarre approach.

Our recommendation is that the term ‘couple relationship’ be abandoned and the bill redrafted using the terminology used in the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008. So I am hoping that some of the government’s 18 pages of amendments, which they tabled in the Senate today, will have fixed that. I have not looked at them but I am hoping they have fixed it. Let us hope so.

The second area of concern relates to the definition of a child as a ‘product of a relationship’. Professor Parkinson refers to ‘product’ as an ‘ugly’ word. I agree with him. Is a child a ‘product’ of a relationship? Certainly the government has displayed extraordinary inaptitude in presenting the Senate with a series of ad hoc and incompatible approaches to the definitions of ‘child’ and ‘parent’ in Commonwealth law. The bill would introduce a provision that:

... any child, in relation to a person, includes ‘...if, at any time, the person was in a relationship as a couple with another person (whether the persons are the same sex or different sexes)—a child who is the product of the person’s relationship with that other person.’

I put it to the Senate that that is not in the best interests of the child and not in the best interests of our community.

The first explanatory memorandum to the bill—I do not know about the second one because it was only tabled this afternoon—set out two scenarios in which the definition would apply. The scenarios canvassed by the explanatory memorandum to this bill do not refer to surrogacy arrangements; however, the definition may cover some surrogacy arrangements. So what will the Senate do about this? There is a lack of clarity, and it is deeply regrettable in a matter as significant as the legal relationship of parenthood. Why is there confusion about this? For decades or even hundreds of years there has not been confusion about the definitions of parenthood and of a child, but the government is clearly confused. The government deserves considerable criticism for having proceeded in this manner.

There has been no inquiry into surrogacy by a Senate committee. It would be inappropriate for the Senate to adopt the amendment that has been put forward by the government in the absence of any such inquiry. In fact, the Standing Committee of Attorneys-General is currently considering uniform national laws on surrogacy, but the initial consultation paper for this process has not yet been issued. A question about this was asked in the committee, and I thank the Attorney-General’s Department for responding swiftly and in accordance with the facts at hand.

I could refer to the other concerns I have, but they are set out in the additional comments by Liberal senators to the committee report. The second recommendation made by the Liberal senators is:

The Bill should be amended to remove all references to a child as ‘the product of the person’s relationship with that other person’ and to replace such references with the phrase ‘child of the de facto partner of the person.’

The bottom line to that recommendation, and the rationale behind it, is that we want to do what is in the best interests of the child. We want to protect and preserve the uniqueness and special nature of marriage and encourage marriage in this country. We want to support and encourage families. We acknowledge the importance and stability of marriage in modern-day Australia.

Senator Cormann—Hear, hear!

Senator BARNETT—Thank you, Senator Cormann; it is very important. Marriage provides the umbrella under which children grow, are nurtured, are cared for, are loved—it provides the umbrella under which children can prosper and learn and be all that they can be as Australian citizens. We want to support that institution in this place. Sadly, it concerns me immensely that the way this bill is drafted undermines the institution of marriage. I hope with all my heart that the government’s amendments that have been tabled today, the 18 pages of amendments to its own bill, will clarify and address the issues that were raised in the Liberal senators’ additional comments to the committee report that has been tabled this afternoon. I hope with all my heart that this legislation will not attack or undermine
the institution of marriage, that it will not put the best interests of the child second, third or fourth but first and make them paramount. And I hope that, in achieving the objectives of removing discrimination against same-sex couple, those institutions, those things that we hold dear, that we know are important, will be safeguarded and protected.

I note, as I noted earlier in terms of the institution of marriage, that it is proven, that the evidence shows, that children with parents in a marriage relationship end up being healthier, wealthier and better educated, and have better outcomes in terms of job prospects and so on, compared with other relationships. That is good; that should be acknowledged. I thank the Australian Institute of Family Studies for providing that evidence to our committee in the different forums that we had.

In conclusion, I thank my colleagues Liberal Senators Trood and Fisher, and I thank the committee for the work it did in a short amount of time under considerable pressure. I think we have delivered a report which will be considered and reviewed. In the context of this debate we will now have to carefully review the 18 pages of amendments before the Senate, in its wisdom, will decide on this matter.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.09 pm)—The Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 is a difficult one to sort through, given it involves a number of complex issues about fairness and the importance of marriage as the basic building block of our community. Family First believes that people in interdependent relationships, such as same-sex couples or couples who are not in a sexual relationship but who are financially dependent on each other, should have shared access to their superannuation. But Family First comes at this from a different angle to the government, regarding these relationships as essentially ‘interdependent relationships’ rather than ‘marriage-like relationships’. Family First has a concern about the approach of the draft laws, which undermine marriage by placing a number of relationships including marriage into a catch-all category of ‘couple relationship’, as though all these relationships were of equal value. The danger of course is that marriage becomes just another relationship option and loses its special status.

By coming up with the new term ‘couple relationship’ the bill lumps marriage and other relationships all into the same category—the bill treats all these relationships as the same. The bill does not mention marriage, or husband or wife. These words have been deleted. If this is the model on which the government will base other legislation, these important words will start to disappear from all federal laws. The term ‘couple relationship’ should instead be replaced by reference to ‘marriage and interdependent relationships’ so that we do not do away with references to marriage. Family First believes that the important and overriding principle that should guide us when looking at this legislation is that marriage should keep its privileged status and should not be undermined.

Legislation should also be child focused, not adult focused. It is in the best interests of children to have both a mother and father when possible. So it is important to promote marriage, not reduce it status, because that is where children get both a mum and a dad. Without question, marriage is the best environment in which to raise children.

I am a great believer in marriage and the value of working on your relationship to stay married. I share the community’s great concern over the rate of marriage and relationship breakdown. We know from evidence to the committee, from the Australian Institute of Family Studies for instance, that marriages last much longer than de facto relationships. Different measures were pointed to, but one overriding fact was that de facto relationships are three times more likely to end within five years than marriages are. It is the greater stability of marriage that is one of the important things about marriage that provides that reassurance and confidence to children.

These are among the reasons marriage is so important to the community and why marriage should continue to be promoted and placed above other relationships. This bill should be about giving people in interdependent relationships the ability to share their super. But by focusing on same-sex relationships, and not on the broader category of interdependent relationships, the concern is that there is not a broad, equal treatment of all relationships separate to marriage. Interdependent relationships could include same- and opposite-sex couples in sexual relationships, but it could also include a couple of mates or two sisters who live together and share pay, housework, rent and other bills and so on, who are genuinely financially interdependent. I note the argument that not many interdependent people have claimed superannuation under the existing provisions. But, as more and more people reach retirement age after spending their working lives contributing to superannuation, that will change.

There is also a strange definition of ‘child’ in the bill, which says that ‘a child is the product of the person’s relationship’ with their partner. But children can only be created, without technical intervention, by a man and a woman. I agree with the comment by Professor Patrick Parkinson, who recommended to the Senate committee that examined this bill that a better test would be whether the child is dependent upon the person entitled to the pension, not whether they are the product of a relationship.

Family First does not believe this bill is the best way to ensure people in interdependent relationships can
share their super, because it takes the approach of making all couple relationships equal. Family First does not believe they should be equal, as legislation should be child focused and marriage should be advantaged above the other relationships to help provide the best environment in which to bring up children.

**Senator FIERRAVANTI-WELLS** (New South Wales) (9.14 pm)—Mr Acting Deputy President Barnett, can I at the outset associate myself with the comments that you made earlier in your speech, having had the benefit of being on the Senate Standing Committee on Legal and Constitutional Affairs and hearing witnesses. I have in particular noted the comments of the Liberal senators in the report that was tabled earlier.

I would like to focus this evening on two matters and comment on the package of bills which includes the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008. I would like to make the general observation that what we really should be focusing on is the removal of discriminatory treatment in federal laws as it applies to all interdependent relationships. Senator Fielding mentioned earlier some of those relationships. I would like to go back and look at where this has effectively been done in recent years and really focus on what I think has been the change of attitude of this government in terms of its treatment of interdependent relationships.

The previous government took the attitude of looking at interdependent relationships and discrimination across different areas—in other words, see where that discrimination exists and deal with it as it applies to interdependent relationships of the type that Senator Fielding has just described. What this government seems to be doing instead is actually taking a discriminatory approach by choosing a particular relationship and then trying to do blanket changes across a wide range of areas.

I think in the end what is happening here is that quite a number of people who are in interdependent relationships are being discriminated against because the recognition of their rights—and their right not to be discriminated against—is not being addressed here. I ask the question: why has the government adopted this deviation of now discriminating in favour of particular groups of people in interdependent relationships rather than looking at interdependent relationships in the global sense?

It is a complex area when we talk about interdependent relationships. I believe that it is more appropriate to deal with this on a case-by-case basis. Australia has a very good commitment in protecting human rights, and governments of different persuasions have condemned discrimination. Indeed, in our society all should have the opportunity to participate in our community and to experience the benefits that are associated with that participation. On the other hand, I think that all in society should also accept the responsibilities that flow from such participation without fear or discrimination. As I have indicated repeatedly, governments have been committed to the protection of human rights, and our approach to human rights is a reflection of our liberal, democratic ideals. It is also a reflection of the belief that justice and human dignity are basic rights that all in society should enjoy.

Our human rights in Australia have been underpinned by the interaction of important institutions within our legal framework. We are one of the oldest democracies and we have strong democratic institutions. Our common-law system has also been important in protecting human rights. In addition to current legislation at a federal level, there are antidiscrimination laws at state and territory levels which together form the body of law which protects human rights. We have a wide range of programs, services and support mechanisms designed to assist all Australians, irrespective of their interdependent relationships. We all share the commitment to ensure that programs and services are targeted to those most in need, while encouraging Australians to contribute in our community.

The previous government was committed to the elimination of discrimination against same-sex couples, but this was part of a program of the elimination of discrimination in relation to the body of interdependent relationships. This is really the concern that I have here. It is my belief that the issues that we are dealing with ought properly to be treated on a case-by-case basis. Rather than doing things in this across-the-board fashion, I think it is important to look at particular areas where discrimination could exist and then apply changes to legislation across a body of laws where interdependent relationships are affected.

I would like to just to touch on areas of interdependent relationships where the previous government took significant action to address differential treatment and discrimination and did so on a case-by-case basis. For example, in the area of superannuation, superannuation laws were changed to include same-sex partners as potential beneficiaries of death benefits in some circumstances. There were changes to income tax legislation to expand the range of potential beneficiaries of tax-free superannuation death benefits to include interdependent relationships. This would include elderly siblings intending to live out their lives together, adult children living with and caring for their parents, and same-sex couples who might not otherwise be recognised as dependants. Tax-free superannuation death benefits could previously only be paid to spouses, children under 18 and those who could establish financial dependency on the deceased. Various changes were made in those areas. For example, legislation enabled same-sex couples to choose a super fund that best
served their needs—that is, one with governing rules that allowed payments to same-sex partners.

Another case is that of Australian Defence Force employee entitlements. The previous government made progress in eliminating discrimination against people in interdependent relationships in the Australian Defence Force. For example, in October 2005, a decision was made to extend certain conditions-of-service entitlements to other interdependent relationships of ADF members, including same-sex partners of ADF members. A wide range of work-family balance provisions that recognised interdependent partnerships were made available to ADF members.

Provision was made in the area of immigration for a full range of interdependent relationships. For example, in the areas of temporary and permanent skilled visas people who shared an interdependent relationship with an Australian citizen or permanent resident were able to apply for interdependency visas to allow them to reside in Australia and, of course, this included same-sex relationships. Interdependency visas were created as a class of visa under the migration legislation. Another example is in the area of federal employment laws, where discrimination in employment on the grounds of sexual preference became grounds for lodging a complaint under the HREOC legislation. Also, various changes were made in the area of public servants’ superannuation and Australian superannuation schemes through benefits in the CSS and PSS. I raise these examples because that really was a different approach. We are now seeing a change of attitude by this government that in effect singles out one interdependent relationship, in my view to the discrimination of other interdependent relationships.

I now turn to some of the issues that have been raised by other senators, in particular the concerns that were raised in the additional comments by Liberal senators in the committee report in relation to some of the terminology and language used in the various bills, in particular what has been described at 1.8 of those additional comments as the ‘novel approach’ which ‘undermines the unique status of marriage in Commonwealth law’. I agree with the comments that have been made by Liberal senators that the term ‘couple relationship’ should be abandoned. We really do need to look at the terminology and the amendments in the Senate and change some of that terminology. Other senators have also talked about the terminology of a child being a ‘product of a relationship’—

Senator Cormann—‘Bureaucrati’!

Senator Fierravanti-Wells—In its extreme. We talk about sensitivity; well, describing a child as a ‘product’ is just very much devaluing the concept of a child and of being a child. I look at that and I think that something is terribly wrong there.

I would like to conclude my comments by putting on the public record the importance of marriage as an institution in Australia. Marriage is a unique institution in our society and it is one that we as senators and members of the Australian parliament should do everything in our power to protect, and ensure that it is supported, encouraged and backed up in every way, shape and form. The package of bills that are now before us has afforded me the opportunity to express my views on the sanctity and uniqueness of marriage and the very important role that it plays in Australia. Marriage is a very important institution not only for the traditional Anglo-Saxon culture in this country but also for so many others in our culturally diverse community. It is the important umbrella institution which helps to nurture children in an environment where they can grow and prosper. Indeed, the traditional form of marriage in my view provides the best form of security in our society. I know that some of those opposite do not share that view but I know that it is a view that is shared by so many. Often people talk about the silent majority in this country. I think that the silent majority in this country would agree about the sanctity of marriage and the sanctity of what is the traditional family. Like Senator Bernardi, I too stand for the traditional definition of marriage and for the traditional definition of the family.

Senator Humphries (Australian Capital Territory) (9.28 pm)—The Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008, which is before us tonight, seeks to provide equality of treatment in relation to superannuation benefits for the dependents of those who have made the choice to enter into a same-sex relationship. Of course, such as decision is a matter of choice. It is a choice that has been made by many thousands of Australians. Aside from their sexuality, there are no other common characteristics of people in same-sex relationships. They come from all walks of life, all social strata, all varieties of ethnicity and all age groups. They have in common perhaps only that they choose to live in a loving and supportive relationship. It is not possible, I believe, to discern in such relationships any less commitment to a successful relationship than one would find in any other domestic relationship in our community—for example, in a de facto heterosexual relationship. Whether one approves of such relationships personally is irrelevant. It is a matter of choice for those entering such relationships, and I personally respect their right in a society such as 21st century Australia to make that choice.

It is of course not within the capacity of any law to change social views about particular social phenomena—at least not directly. If this legislation should pass through the parliament, we do not in effect change the views of many Australians towards people in same-sex relationships. I think it would be beyond the power

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and, in fact, the desirability of legislation to do that. Equally, the law should not artificially place barriers in the way of or burdens on Australians who choose to enter into such relationships. This and the other legislation which make up this package are designed to ensure that those artificial barriers to people who live in that particular kind of relationship are removed.

I do not understand what social harm is addressed by keeping in place articles of petty discrimination against those who enter into a same-sex relationship. I have a longstanding commitment to supporting that right of choice, which is open to all in our free society, and I welcome the bill as a mechanism to ensure the rights of same-sex partners, and the dependants of those relationships, to access facilities such as superannuation.

I belong to a party that believes in choice. I belong to a party that believes in freedom. I revel in a diverse, pluralistic, multicultural and multifaith society, where people make all sorts of decisions. To the extent that they make those decisions, I wish them well. I ask only that they make decisions which do not harm other people. I do not see in the various disabilities that we have imposed in the law of Australia on people in same-sex relationships over many years any particular issue that touches on people outside those relationships which would warrant the preservation of those forms of discrimination.

Many individuals make a choice about these things in the face of opposition and discriminatory actions or comments from some sectors of the community. But that is no reason for the dependants of such individuals to be treated differently from the dependants of any other contributor when, for example, distributing their entitlements from a superannuation scheme. Such contributors might be judges, politicians, actors, artists, defence personnel, public servants or bus drivers. I am sure that in every one of the states and territories represented in this chamber there are people in all of those categories and many more who are in fact at this time in same-sex relationships.

As we all know, superannuation is the main source of saving towards retirement for most people and to support their family in case of early death. Currently, however, in most schemes, particularly the older Commonwealth ones, same-sex partners do not qualify as a ‘spouse’ or a ‘marital partner’ in order to receive a death benefit or retrospective superannuation pension on the death of their partner. The amendments before us aim to rectify this situation by changing the definitions of ‘spouse’ and ‘marital relationship’ to ‘partner’ and ‘couple relationship’ in some nine acts covering the superannuation of various Commonwealth employees, including, incidentally, the Governor-General Act 1974 and the Parliamentary Contributory Superannuation Act 1948. The amendments also cover further regulatory superannuation and taxation acts.

There has been some debate about the definition of ‘child’ in the various schemes, and I take the point that the definition needs to be carefully worded so as to be effective and not to cause unnecessary offence or to place people in invidious situations with respect to the wider operation of the laws of Australia. But those problems are not insurmountable, and those problems should not be a barrier to the passage of this legislation in this or a very similar form by this parliament.

It is estimated that the measures contained in the bill will cost on average $8 million per year for the next four years and increase the unfunded liability by around $112.6 million. But I emphasise that, in looking at that figure, we are providing for an entitlement which I believe these families—families based on same-sex relationships—should enjoy just as others who, in their relationships, contribute the same dollars and are entitled to enjoy the benefits of their contributions to superannuation schemes.

Mention has been made about the importance of the legislation protecting the sanctity of marriage. Let me put on record very clearly my view that marriage is an extremely important institution in our society. I see it as the bedrock of a successful society, and I hope that nothing done by this parliament at any time will undermine the effectiveness and the value of the institution of marriage in the eyes of Australians. But marriage is not strengthened or supported or made better by applying disabilities to those Australians who, for whatever reason, choose to be part of other kinds of relationships. Marriage is not strengthened by actually discriminating against people in those sorts of relationships. We should ask ourselves whether the pieces of legislation to which this bill and other bills in this package are directed actually contribute to anything as noble as the strengthening of marriage or are simply anachronisms which deserve to be removed.

Members of this chamber will be well aware that for many years Australia has been a signatory to the International Covenant on Civil and Political Rights, and that covenant states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground ...

I do not understand there to be any good reason why that provision should not be the anchor on which we move tonight or in the course of the next few weeks to effect the changes to legislation that will remove those forms of discrimination which are referred to directly in article 26 of the international covenant.

Mr Acting Deputy President Barnett, I am acutely aware of the concerns that have been raised by coali-
tion members, you included, of the Senate Standing Committee on Legal and Constitutional Affairs, which reported a short time ago. I think it is extremely important that the issues which were given rise to in that report, particularly the report of coalition senators, be fully and properly addressed. It does concern me enormously that there are 18 pages of amendments to deal with, and I sincerely hope that the government does not expect to put 18 pages of amendments before the Senate this week and expect them to be dealt with by the Senate in a considered way. I hope that those issues can be worked through and that by moving those amendments, considering them and supporting them as appropriate we can strengthen the purpose of this legislation.

But I ask members of this place not to be distracted from the main task put forward by this bill and the other bills in this package. It is to bring out of the shadows, in a legislative sense, those people who have laboured under special difficulties by virtue of their personal and other arrangements because of their membership of a same-sex relationship. If there is good reason for preserving some form of discrimination in those circumstances, I look forward to hearing it and to understanding why that discrimination should be retained. I have not yet heard such good reasons, and I do not imagine that I will in the course of this debate.

I implore senators to consider carefully the commitments that we have all made, through our various parties, to the Australian community. I am certainly aware of the commitment made by my party now at two successive elections to remove discrimination against people in same-sex relationships. The detail might be a matter to quibble over; the thrust of what is required to do that should not be quibbled over and should be the task of the Senate in the coming days and weeks. I commend this bill—and the others in the package—to the Senate and trust that it will be viewed and considered in good faith by every senator who sits in this place.

Senator ELLISON (Western Australia) (9.40 pm)—The bill we are dealing with tonight is the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 and is part of a package of bills which are related and purportedly deal with discrimination against same-sex couples. Ostensibly, the genesis of this bill is portrayed as being the Human Rights and Equal Opportunity Commission report Same-sex: same entitlements. I think it is fair to say, though, that last year, when the coalition was in government, it gave consideration to eradicating financial discrimination based on the sexuality of a person or persons in a relationship. And I think it is fair to say that the purpose of removing that financial discrimination, as alluded to in the title of this bill, is something which would be broadly supported. But, of course, there are other aspects to this bill.

Firstly, although the Senate committee quite rightly touched in its inquiry on the subject of interdependent relationships, this bill does not. I think it is a tough disingenuous of people to say, ‘Well, we want to eradicate discrimination where same-sex couples are involved, but we are not prepared to go that extra distance and cover those interdependent relationships which exist in society and which can be best characterised as, say, two people who have lived together in a non-sexual relationship but have relied on each other over many years.’ I cite an example of two spinster sisters. They too are in a similar position. I think it is regrettable that this bill does not go that far to include that. If it were serious about doing away with discrimination based on financial matters and the relationships people enter into with each other, it would consider that, but it does not.

Of course, there are other aspects to this bill which go much further than its title would suggest. I am dealing with definitions such as those of ‘child’ and ‘parent’, just to name a couple—very important definitions indeed, ones which are central to our society and the basic functioning of our community and families. I note that these matters were raised in the Senate Standing Committee on Legal and Constitutional Affairs inquiry into this bill—and of course you, Mr Acting Deputy President Barnett, were a member of that committee. I want to pay tribute to the work that you did with Senators Trood and Fisher in relation to your comments on aspects of the bill which you found flawed.

Before I deal with that, however, I wanted to remind the Senate of what the coalition announced back in June as to its policy. The coalition stated:

There is no inconsistency between the recognition of equal treatment and the economic rights of same-sex couples and the coalition’s acknowledgement and respect for traditional marriage. The coalition will not accept amendments that would alter the status of traditional marriage between a man and a woman and does not support gay marriage or access by gay and lesbian couples to adoption, IVF and surrogacy. The coalition’s support for the government’s amendments is subject to the condition that nothing in its terms will affect the status and centrality of traditional marriage between a man and a woman.

Those are basic principles which guide us in approaching this legislation.

The difficulty, of course, is that this bill does bring in those other aspects which I have mentioned. The bill provides in relation to the definition of a child:

Any child, in relation to a person, includes:

… … …

… if, at any time, the person was in a relationship as a couple with another person (whether the persons are the same sex or different sexes)—a child who is the product of the person’s relationship with that other person.
Some very interesting comments were made by Liberal senators who are members of the Senate Standing Committee on Legal and Constitutional Affairs. I refer to them as being of great assistance. I quote:

The government has displayed extraordinary ineptitude in presenting the Senate with a series of ad hoc and incompatible approaches to the definitions of ‘child’ and ‘parent’ in Commonwealth law.

The Bill would introduce a provision that, any child, in relation to a person, includes ‘...if, at any time, the person was in a relationship as a couple with another person (whether the persons are the same sex or different sexes)—a child who is the product of the person’s relationship with that other person.

The Explanatory Memorandum to the Bill gives two scenarios in which this definition would apply. These scenarios each involve artificial conception. Each scenario raises complex questions about the consent required by various parties in connection with a procedure involving assisted reproductive technology undergone by one party, and the implications for a possible parent-child relationship between these parties and any child conceived as a result of that procedure. The Bill does not adequately address these issues.

The scenarios canvassed by the Explanatory Memorandum to this Bill do not refer to surrogacy arrangements. However, the definition may cover some surrogacy arrangements.

I think that is a salient point because it demonstrates the lack of forethought that has gone into this bill, and that is also demonstrated by the late production of some 18 pages of amendments. I will come to the lack of process in a moment.

It can be seen that when you apply the fundamental principles I mentioned earlier, as espoused by the coalition in June this year, you do have some concerns and you can see some issues with this bill. I certainly agree with some of the comments that you, Mr Acting Deputy President Barnett, and some of the other senators made when expressing concerns about the definitions—the reference to ‘relationship’ and the impact the definitions have on marriage. They are of a very serious nature indeed.

As I said at the outset, no-one argues with doing away with discrimination, where you have couples who are interdependent on each other—whether they are same-sex or not is irrelevant; it is the fact that people are being discriminated against because of their different relationship and that they cannot enjoy the same superannuation benefits or other financial benefits. No-one disagrees with eradicating that sort of discrimination. I think it was Brendan Nelson who said that no-one should be financially disadvantaged because of their sex, and I think that was a very good way of putting it.

I note that, in this report by the Senate Standing Committee on Legal and Constitutional Affairs, Liberal senators stated:

A better approach to ensuring equal treatment for children who have a parent who is a party to a same-sex relationship ...

I think that is an issue which has been raised: the welfare of children. Of course, the welfare of children is paramount, but I think there is a better way of expressing it. I certainly take on board the comments of Liberal senators who stated that you could use the phrase ‘child of the de facto partner of the person’ to refer to a child in these circumstances, other than referring to a child as simply being a ‘product’ of a relationship. Senator Bernardi said it very well when he referred to the fact that he wants four ‘products’ in his family. I have got three. I certainly refer to my children in other terms—sometimes not so affectionately; it depends on their behaviour—but I do not think I can quite bring myself to think of children as ‘products’. I think that it is very unfortunate.

During the course of the inquiry there was evidence given. I refer to that part of the report which deals with ‘de facto relationship’ versus ‘couple relationship’. The Attorney-General’s Department said there were difficulties with expressing it by reference to ‘de facto relationship’ and that ‘couple relationship’ was a better way of doing it. I note that the Association of Superannuation Funds of Australia, no less, concurred that you could have a difference in the reference without having discrimination. Certainly the Australian Christian Lobby stated that the generic category of ‘couple relationship’ should be abandoned and replaced with references to ‘married’ or ‘de facto relationship’ and the associated terminology of ‘spouse’ or ‘partner’ throughout the bill. That was something which the Association of Superannuation Funds of Australia did not take any issue with, as I see from the report. I think that that is a salient point as well, because it demonstrates that you do not have to overturn these established notions and definitions which society has come to accept over years, such as ‘child’, ‘parent’ and ‘marital’, in order to achieve your ends.

All it takes is a bit of smart thinking, a bit of work and a bit of time. It does not take 18 pages of amendments being delivered at the last minute, when you think that this government and the Attorney-General have had months to contemplate this. He has breached every undertaking he has given the coalition, as I understand it, in relation to the delivery of these amendments. We had the absolutely outrageous situation of a Senate committee considering a bill having been promised amendments before it completed its determination of the inquiry, and it did not get them. Then, once the report was handed down in the Senate today, 18 pages of amendments arrived. Of course, that demonstrates the very point that was made. Mr Acting Deputy President Barnett, you made that point forcefully and correctly.
There is a procedure in this Senate and it is that you have Senate inquiries which are of great assistance to senators when they are considering bills. In this case, the Senate inquiry has been of great assistance, but of course it could not do its job because it did not have the opportunity to consider 18 pages of amendments. I have not had a chance to look through them. I flicked through them and I am not sure whether they address the concerns that I have mentioned, but I have to say this: we are dealing with very important icons in our community, and definitions. It is very much the basis on which society ticks. The family is at the basis of our community and society. Definitions such as ‘marriage’, ‘child’ and ‘parent’ have been with us for many years and the acceptance of the established definitions of those terms has formed the basis of our community and society. You do not simply come along and say, ‘Well, we want to achieve this end and we will overturn all those definitions in the meanwhile and refer to children as products.’

Someone once said that marriage is a great institution—the trouble is the people in it. I must say there is a lot of truth in that. I think someone said earlier that a marriage is something you have to work at constantly—and don’t those of us who are in the institution know that!—but it is still a worthwhile one. It is still one which is the anchor of this society. I fully accept that men and women have had de facto relationships for time immemorial and it has been recognised by the common law, quite properly. That is a choice people make; I respect that. People in interdependent relationships that rely on each other financially should not be discriminated against. But we must, above all, keep marriage as an essential union between a man and a woman and recognise it as the basis of our society and community.

I note that during the hearings the Australian Family Association, the Australian Christian Lobby, Family Voice and others expressed fears that this could be the beginning of something much more. I reiterate: the coalition has said very clearly that it approaches this on the basis that it believes in traditional marriage and that its support for the government’s amendments is subject to the condition that nothing in its terms will affect the status and centrality of traditional marriage between a man and a woman. I would remind my colleagues of that as the guiding principles which drives the coalition in these matters.

I think for someone to say, ‘If you hold a different view, you’re biased or prejudiced,’ is a reflection of the lack of faith they bring to the argument. We all hold different views; I respect views which are different to mine. But I think that for people to say, ‘Well, you’re just prejudiced,’ is an easy fix and is not thinking through the argument. It is perhaps facile at best to say this after you have heard consideration and comments given by people of a different view, and I have seen that today, where those comments and views have been well thought-out and based on a thorough consideration of the issues at hand.

I hope that, in the amendments that will be considered and in the committee stage of this bill, this flawed bill can be salvaged. Senator Bernardi; you, Mr Acting Deputy President Barnett; and others have voiced their concerns as to whether that can be done. I share those concerns, but I say to senators and the wider community that this is about getting something very important right and, if it takes some time and a bit of hard work, then so be it, because this goes to matters which are central to our very community. We want to eradicate discrimination wherever it should be but we also want to preserve those basic notions which hold us together as a society.

Debate (on motion by Senator Stephens) adjourned.

**ADJOURNMENT**

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (9.55 pm)—I move:

That the Senate do now adjourn.

**Millenium Development Goals: Child Mortality**

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (9.55 pm)—I seek leave to incorporate an adjournment speech on behalf of Senator Collins.

Leave granted.

Senator JACINTA COLLINS (Victoria) (9.56 pm)—The incorporated speech read as follows—

The world is past the half-way point in the time allowed to achieve the Millennium Development Goals (MDGs), which set out an internationally agreed plan to halve global poverty by 2015. These goals have underlined the importance of improving health, and particularly the health of children, as an integral part of poverty reduction.

The Australian Government is committed to the MDGs and believes Australia should be a strong contributor to achieving these, in particular its commitment to Goal 4: Reduce Child Mortality by reducing child mortality by two-thirds by 2015. Most infant and child deaths are caused by a combination of malnutrition and preventable or treatable diseases. Of the 10 countries with the highest child mortality rates, seven are in the top 10 for poverty. There is also a strong correlation between child deaths and how much governments spend on health, immunisation, and access to clean water.

Globally, child mortality rates have fallen to a record low - dropping below 10 million for the under fives for the first time. In 1990, the figure stood at 13 million.
The MDGs has a strong focus on addressing the priority health needs of children, including reproductive health, nutrition, and prevention and care measures for childhood diseases. An effective response to address these priority child health needs requires a comprehensive approach to service delivery that includes strengthening the underlying health systems, supporting country-specific priorities to address high-burden health problems and ensuring health systems can reduce regional vulnerability diseases.

**Progress towards MDG 4**

Millennium Development Goal 4 aims to reduce the under 5 child mortality rates by two thirds from 2000 levels by 2015. Childbirth is a central event in the lives of families and the development of communities, representing the well-being of society and its potential for the future. Far more can and must be done by both developing and developed countries to reduce child mortality. There has been some progress made to reduce child mortality rates. Under 5 child mortality has fallen in developing countries from 200 per 1,000 live births in 1960 to 105 in 1990 to 88 in 2003. The number of children that died in the developing world before their fifth birthday was 10.1 million in 2005. In 2006 the number of children under five that died globally decreased to 9.7 million. Yet this means in the 21st Century we still allow well just under 10 million children to die each year, although most of these deaths are preventable.

18 out of the 29 countries in our larger region are not on track to achieve MDG 4. This means that 400,000 children in Cambodia dies before their fifth birthday. The main causes of child deaths globally are: neonatal disorders (birth asphyxia (10 per cent) sepsis (8 per cent) preterm delivery (8 per cent) tetanus (2 per cent)); diarrhoea (22 per cent); pneumonia (21 per cent); malaria (9 per cent); HIV/AIDS (3 per cent); measles (1 per cent). The interventions required to greatly reduce these deaths are almost all relatively low cost and can be delivered at the community and district health service levels. Fortunately a package of relatively simple interventions delivered as a continuum of care can reduce child deaths by around 60 per cent (or 6 million). As AusAID has pointed out:

> “Interventions that can prevent most deaths of women and children are well understood, but weak health systems mean they do not reach those who need them - a challenge for all countries in the region”

For example, the UNICEF Innocenti Research Centre has estimated that the lives of up to two million babies could be saved each year if all babies were exclusively breastfed for six months. The World Bank has stated that exclusive breastfeeding for six months is the single most effective measure that could be implemented to reduce child mortality rates globally. UNICEF estimates that since 1990, six million lives have been saved by exclusive breastfeeding and global breastfeeding rates have risen by at least 15 per cent. However, despite the reported improvement in breastfeeding in the developing world, approximately 63 per cent of children under six months of age are still not adequately breastfed.

Cambodia is a positive example of how breastfeeding interventions have dramatically improved child mortality rates. A national campaign in Cambodia over recent years has raised breastfeeding from as low as 10 per cent in 2000 up to 60 per cent at six months of age. Simultaneously, child mortality dropped by one-third.

According to UNICEF Nutritionist, Karen Codling, this significant improvement “can only be explained by the switch to breast milk”.

Australia’s aid has made a significant contribution to health outcomes in many countries in the region and this is likely to increase with the improved AusAID health policies and initiatives by the Rudd Government. The objectives of Australia’s policy for development assistance in health are:

- Strengthening health system fundamentals that have an impact on service delivery;
- Addressing priority health needs of women and children;
- Supporting country-specific health priorities to tackle high-burden health problems that result in high levels of premature mortality or disability; and
- Ensuring that system can reduce regional vulnerability to HIV and emerging infectious diseases.

The current plan is to double aid to health to around $600 million in 2011-12.

The Micah Challenge and Make Poverty History movements in Australia, campaigns aiming to have all governments achieve the Millennium Development Goals, argue that Australia should increase expenditure on health in the aid budget to $1,030 million by the 2011-2012 budget as Australia’s fair share globally. They say this should include $350 million towards improving basic health systems in countries in our region, especially those services directed for child and maternal health. If Australia does its fair share we have the potential to save, on average, the lives of 75,000 children each year.

Further these campaigns are arguing for an increase in funding to UNICEF, the UN body that is charged with improving child health and well-being globally. In the 20082009 budget, Australia allocated $14.5 million to UNICEF, a significant increase. However, Australia’s per capita total contribution in 2007 was one quarter that of Ireland, a fifth that of The Netherlands, a twentieth that of Norway and 11 other donors had higher per capita contributions.

We have the ability to make a real difference in our region on saving the lives of children from easily preventable deaths and we should do our fair share in making sure that the target of Millennium Development Goal 4, to reduce under 5 child mortality by two-thirds by 2015, is achieved and preferably exceeded.

**Background**

Under the previous government, while Australia provided aid in various sectors, such aid, while relevant to MDGs was usually treated as sectoral expenditure. Under the Rudd Government, the MDGs are used as benchmarks to allocate and measure the effectiveness of Australian aid.
Australia recognises the critical role that United Nations agencies play in leading global efforts to progress towards the MDGs. The Rudd Government has committed to increasing Australia’s support for such agencies as part of a funding increase announced in the recent budget.

A concrete demonstration of this commitment was the 2008-09 Budget measure to invest an additional $200 million over four years in dedicated funding to key UN agencies. This commitment enables Australia to contribute directly to work on issues as diverse as increasing child literacy, improving maternal and child health and the empowerment of women in countries beyond our own region.

Australia will collaborate with effective UN agencies and like-minded donors to ensure the UN system and agencies work more effectively to reduce poverty. If we are to be serious about realising a fundamental turnaround in our immediate region’s long-term economic development and consequential political stability, Australia will need to increase its funding effort beyond 2010-2011.

That is why the Rudd Labor Government is committed to raising our official development assistance (ODA) to gross national income (GNI) contribution from 0.35 per cent in 2010-2011 to 0.5 per cent by 2015-2016.

The recent federal Budget laid the foundation for implementing this long-term commitment. Australia will provide an estimated $3.7 billion in ODA in 2008-09. We are committed to increasing both the quality and the quantity of the Australian aid program, and retain the target ODA level of 0.7 per cent of GNI as an aspirational goal.

Increased funding is only one aspect of the Government’s commitment that Australia plays a proper role in the fight to reduce child mortality rates and ending global poverty. Ensuring that aid funds are spent effectively on poverty reduction and achieve the maximum possible benefit is also essential.

To this end, reforms are underway to strengthen the effectiveness of our aid. The Annual Review of Development Effectiveness provides greater transparency on the performance of the aid program to the Australian public and will encourage greater debate on the development challenges facing our region.

Conclusion

The Rudd Government is committed to ensuring that Australia once again becomes a development leader by ensuring that an increased aid budget has a genuinely positive impact on those who need it.

The Government will continue to place a strong focus, within the development assistance program, on addressing the health needs of children and reducing child mortality rates in developing countries.

International Day of Older Persons

Senator BILYK (Tasmania) (9.56 pm)—I rise to speak today in recognition of Australia’s International Day of Older Persons, which was celebrated on 1 October as part of the broader United Nations International Day of Older Persons. The day was an opportunity to recognise and celebrate the contributions older Australians make to their families and communities, and to encourage participation by older people in community activities. One of Australia’s greatest assets is its older Australians. They have helped shape modern Australia and continue to make significant contributions to society with a lifetime of skills, knowledge and experience.

Australia’s theme for this year’s International Day of Older Persons was social inclusion. The social inclusion agenda aims to: create opportunities for individuals to participate not just in economic life but also in Australia’s civic and social life; recognise the complex and different barriers which prevent participation and the real impact these have on individuals and communities; and acknowledge the need for early intervention, prevention and treatment strategies which provide a pathway to inclusion and a continuum of care.

I had the privilege recently of hosting, in my electorate office, an awards recognition ceremony celebrating the International Day of Older Persons. This enabled me to acknowledge the contribution that these older citizens make to my community through their work, through their skills and, perhaps most significantly, by sharing their experiences. I could think of no more representative group to highlight the theme of social inclusion than the group of Kingborough senior citizens whom I had the pleasure of honouring on this occasion. The range of community activities with which these wonderful people are associated is amazing. They include creative writing, exercise programs, meals on wheels, fire awareness and the creative arts—to name but a few. And all have some degree of involvement with local seniors community groups, such as the Kingborough Seniors Action Group, Channel Action Through Seniors and the local chapter of the University of the Third Age. It was just unfortunate that I did not have the space to honour more people, as there are many, many more throughout the area that are worthy of recognition. Of course, this group is representative of the many older persons throughout Australia whose tireless dedication to the broader community and sense of self-sacrifice is truly inspirational.

Ageing people represent a global issue or set of issues which transcend boundaries between developed and developing countries and between rich and poor, and which challenge the traditional dichotomy of the social and economic policy spheres. That is not to gloss over the specific nature of the challenges facing developing countries versus those of developed states, such as Australia, but rather to highlight that the challenges or, as I would like to emphasise, the opportunities posed by an ageing population are universal.

Recognising the need to respond to these demands, the United Nations General Assembly adopted, in 1991, the United Nations Principles for Older Persons. These principles were articulated for policymakers to incorporate into national programs. Five quality-of-life characteristics were identified: independence, partici-
vation, care, self-fulfilment and dignity. The Madrid International Plan of Action on Ageing, adopted in 2002 and signed by 159 countries, reflects a global consensus on the social dimensions of ageing. Based on the view that ageing represents more than a political and policy challenge but is a true milestone of human achievement, the Madrid plan articulates three interrelated themes which provide a powerful statement of the opportunities provided by an ageing society. There is ‘empowerment of older persons’, ‘full realisation’ of their rights and potential, and public recognition of the opportunities and challenges of an ageing society. Together, these themes inform the development of a policy approach to ageing that is integral to the national development agenda.

Two immediate questions arise when considering the Australian national development agenda. What do these global opportunities and challenges mean for Australia? Does the Australian demographic context reflect these global trends? On the second question, the most recent data provided by the Australian Institute of Health and Welfare is conclusive. Australia is a rapidly ageing society. By 2036 the proportion of the population aged 65 years and over will constitute 24 per cent of the total population. This represents a doubling of the number of persons in this population group over a 30-year period. Again reflecting global trends, the number of Australians aged 85 years and over has doubled over the past 20 years and is now projected to grow more rapidly than other age groups.

The Australian Bureau of Statistics, in its most recent survey, found that the number of people aged 65 years and over increased by 2.7 per cent in the year to June 2007. By comparison, the rate of increase in the group aged 40 to 64 years was 1.7 per cent. Of greatest significance though is the fact that the gap between these two groups is widening over time. This trend will only continue as the baby boomer generation ages and advances in health care extend life expectancy. A challenge will be to understand how the baby boomer generation will view themselves as they age. It was once observed that in the Australian context older people were to be seen but not heard and in many cases not even seen. This view has never been acceptable. It is based on the many myths surrounding the aged members of our community that went largely unchallenged for many years.

I want to briefly consider and dispense with three of these myths. Myth 1 is: older people are entirely dependent. Yet it is the case that, amongst those aged 85 years and over, some 74 per cent live independently. The average age for entry to permanent residential care is 82 years for both men and women. Furthermore, some 94 per cent live in private dwellings in the community. The vast majority of these folk go about their lives without the need for assistance or support.

Myth 2 is: older people represent a drain on the public purse. What a cruel myth when one considers that almost one quarter of men aged between 65 and 69 years participate in the workforce along with 13 per cent of women in the same age group! The Australian Institute of Health and Welfare reports that 24 per cent of older Australians provide direct or indirect financial support for adult children or other relatives living outside the household. Almost half of Australians aged 65 to 74 years provide unpaid assistance to someone outside their household. They also provide some 11 per cent of carers and 13 per cent of primary carers who provide support to people of all ages with a disability.

Myth 3 is: older people have nothing to offer the community. Again, this is simply a falsehood. I refer again to the small group of members from the Kingborough community as evidence of this. Not only do many older members of the community have much to offer but they are willing and able to do so. What a wonderful yet still largely untapped community resource!

To ensure that older members of Australian society are able to actively participate in their communities, it is important to consider the concept of active ageing as promoted by the World Health Organisation, which has as its central objective the aim of extending the healthy life expectancy. This involves promotion of the social and mental components of health in addition to the physical ones. In Australia this has found expression in policies and programs developed by both the government and non-government sectors.

We have seen how empowerment and protecting the rights and ensuring the dignity of older persons are today recognised internationally as crucial issues in the context of a society for all ages. This implies that policy making must be both forward looking and comprehensive. It can be argued that there is no one area of public policy that is not influenced in some manner by the ageing of the Australian population. Recognition of this fact implies we need to develop policy processes geared at mainstreaming ageing into all relevant policies and programs.

The previous government, to its credit, recognised this with the establishment of the position of the Minister for Ageing, a practice continued by the Rudd Labor government, and commencement of work on the development of a strategic approach to ageing policy. I wish to once again refer senators to the social inclusion agenda which has been articulated by the Rudd government and suggest that it provides a suitable framework against which to respond to the opportunities and challenges posed by an ageing population. The social inclusion agenda accordingly seeks to create opportunities for individuals to participate not only in Australia’s economic life but also in its civic and social life and to recognise the complex and different barriers
which prevent participation and the real impact this has on individuals and communities. It also acknowledges the need for early intervention, prevention and treatment strategies which provide a pathway to inclusion and a continuum of care, as I have already mentioned.

The Rudd government further recognised the need to promote a positive view of ageing with the appointment, in April of this year, of Ms Noeline Brown as Australia’s first national Ambassador for Ageing. The role of the ambassador is to promote a healthy, positive and active ageing message within the community and to lead promotional activities to ensure our communities value and respect older people. In conclusion, I would like to inform the Senate of the following quote from the Ambassador for Ageing, which I believe all of us have a duty to recognise:

“Australian’s aged over 55 contribute an estimated $75 billion every year in unpaid caring and volunteer activities. What a staggering contribution to our nation and this is certainly something I am extremely proud to publicise ... “

To this I can state with confidence that the group of older Australians whom I recently had the privilege to honour would join me in saying, ‘Hear, hear!’

**Stem Cell Research**

Senator BERNARDI (South Australia) (10:07 pm)—I rise tonight to address a matter that should be of concern to every member of this chamber, particularly those who were here during the last parliament, in the closing months of 2006. At that time we dealt with a private member’s bill, sponsored by former Senator Kay Patterson, that gave rise to the recommendations of the 2005 Lockhart review on human cloning and embryonic stem cell research. That debate was a particularly difficult one, and I know that members of this chamber at that time deliberated long and hard over the details and their vote. The crux of the debate centred around the status of the human embryo and whether or not potential treatments for all sorts of ailments and conditions arising from embryonic stem cell research and cloning outweighed the respect due to nascent human life.

Ultimately, the debate was resolved in the affirmative and, as a result, the cloning of human embryos was allowed under limited conditions. Those conditions were expressed in amendments to the Research Involving Human Embryos Act 2002 through the Patterson bill. The form of those conditions expressed the concern that, while we were willing to allow human cloning and the destruction of human embryos, limits needed to be set that recognised the discrete nature of the human embryo. We said, quite rightly, that a licence to use excess ART embryos and human eggs to clone a human embryo could only be granted if the intended outcome could not be achieved by other means and if there was a likelihood of treatment outcomes. Almost a year after that debate, on 7 November 2007, the science of human cloning abruptly became redundant. As many will know, it was then that two leading cloning scientists, almost simultaneously, developed direct reprogramming of human skin cells back to the embryonic state. These induced pluripotent stem cells, or IPS cells, are the exact equivalent of embryonic stem cells, created without the need for embryonic destruction—a win-win, if ever there was one. IPS technology continues to develop at a pace, while no-one has yet cloned a human embryo.

I would have thought that following such developments the licensing body of the National Health and Medical Research Council would have said, ‘That’s it! Hallelujah! There’s no need to consider licences for embryo research and cloning. Let’s break out the champagne and get on with getting some outcomes.’ But that was not the case. On 16 September this year the NHMRC granted three licences for human cloning to Sydney IVF Ltd. All of these licences will use clinically unusable human eggs to attempt human cloning and one will, additionally, use DNA from existing embryonic stem cell lines to the same end. I say ‘end’ deliberately, because none of the licences express any outcome at all that even remotely resembles a treatment or treatment potential. These licences have been granted for the sole purpose of attempting to create a cloned human embryo and developing the techniques to do so.

Ends and means are very important concepts here. When we deliberated long and hard over the Patterson bill, through the Senate Standing Committee on Community Affairs inquiry and, indeed, the Lockhart review, we as a body, as I saw it, were convinced that the ends justified the means. Whatever we might have believed individually about the status of the human embryo, we as a Senate were convinced that the scientific El Dorado of cures and treatments using embryonic stem cells from cloned human embryos was a worthy end.

For the benefit of those who read this and for my colleagues who are listening, I draw their attention to the wording, in part, of section 21 of the Research Involving Human Embryos Act 2002, which the Patterson bill amended to now read:

(4) In deciding whether to issue the licence, the NHMRC Licensing Committee must have regard to the following:

(a) restricting the number of excess ART embryos, other embryos or human eggs, to that likely to be necessary to achieve the goals of the activity or project proposed in the application;

(b) the likelihood of significant advance in knowledge or improvement in technologies for treatment as a result of the use of excess ART embryos or human eggs, or the creation or use of other embryos, proposed in the application, which could not reasonably be achieved by other means—
As I said earlier, such advances in treatment can now be reasonably and easily achieved by other means—that is, by the use of IPS cells direct-reprogramming technologies. As Dr David van Gend, from Australians for Ethical Stem Cell Research, said:

The research goal for SCNT cloning is to obtain “patient-matched” stem cells for researching a patient’s disease. We all know there is now a superior, entirely ethical alternative to reach the same research goal. The science of SCNT cloning, which politicians promised would bear such miraculous fruit is now, with every month that passes, visibly withering on the vine.’

How then is it that the NHMRC Licensing Committee could see fit to approve not one but three licences for SCNT cloning for Sydney IVF Ltd? I have written to the head of the NHMRC, Professor Warwick Anderson, seeking answers because it really irks me that of the three licences that were granted to Sydney IVF Ltd ‘not one expressed an outcome that could be remotely construed as having any potential medical benefits’—to use the terminology of the community affairs committee report.

One licence uses DNA from an embryonic stem cell in SCNT to try to produce embryonic stem cells. To me, that sounds like a sophisticated version of the perpetual motion machine. Another licence uses the DNA from cumulus cells that surround a human egg in SCNT to try to produce embryonic stem cells. No future possible benefit is stated. Essentially, the NHMRC, to my observation, has given Sydney IVF licence to play at cloning and little, perhaps nothing, else. The ends in this exercise are not the ends that we debated and certainly not the ends that the Australian public, by and large, understood to be the benefit of our deliberations. As I said, I have written to Professor Anderson on this matter, seeking answers. I recognise that the NHMRC is the authority that interprets section 21 of the Research Involving Human Embryos Act. I think that part of the problem, in addition to the fact that other, more reasonable means do actually exist, is the interpretation of section 21(4)(b) of the RIHE Act, which also limits licensing by the ‘likelihood of significant advance in knowledge or improvement in technologies for treatment as a result of the use of excess ART embryos or human eggs, or the creation or use of other embryos’. In my letter to Professor Anderson, I said:

From discussions with my colleagues and others I conclude that the NHMRC may well be interpreting the first part of section 21(4)(b) as two separate statements—that is, “likelihood of significant advance in knowledge” or “likelihood of significant improvement in technologies for treatment”. I assure you that the intent was “for treatment” to be read with both subordinate clauses.

These are the ends that we as a Senate supported, namely, the likelihood of a significant advance in knowledge for treatment or a significant improvement in technologies for treatment.

I will await Professor Anderson’s comments on this, but in closing I want to say that if this is indeed an error of interpretation then we may need to amend the existing legislation to honour the work of Senators Patterson, Stott Despoja and Webber, who championed the 2006 legislation. We may also need to more clearly reflect the intentions of all members of this chamber by removing any ambiguity. In light of the breakthroughs in direct programming through IPS cell technologies, we should also consider bringing forward the statutory review of both the relevant acts. I think this is made all the more pressing considering the fact that the hope of uniform national legislation has been thwarted by the negation of a reciprocal bill in the Western Australian parliament—and, I believe, quite rightly so. This whole situation should serve as a reminder that our role as legislators is much more than the often difficult debates that we encounter. We also have an obligation to ourselves and to the Australian public to ensure that the intentions we express as a body are indeed carried out.

Micah Challenge Australia

Senator ARBIB (New South Wales) (10.15 pm)—I arise at this extremely late hour to speak in regard to an organisation and cause that I am proud to support and which I believe should be brought to the parliament’s attention. Micah Challenge Australia is the local arm of a worldwide coalition of Christian agencies, churches, groups, and individuals seeking to deepen our engagement with poor and marginalised communities and to influence the leaders of both rich and poor nations to fulfill their aid commitments. In Australia, Micah Challenge is made up of more than 25 organisations such as Baptist World Aid, Caritas, Compassion and World Vision. The organisation is supported by prominent Australians such as Cardinal George Pell, Reverend Tim Costello and Reverend Dr Gordon Moyes. Micah Challenge believes that our generation is the first to have the resources and the know-how to end absolute poverty for good. All we need is the will to make this happen. This is a view I share and something that I am deeply committed to.

Over the past week in Canberra, the Micah Challenge has held its annual national gathering—Voices for Justice—to coincide with Anti-Poverty Week. Over 250 people, including many young people from around the country, attended the four-day gathering to participate in workshops and to talk about global poverty with federal MPs and senators. Indeed, today I had the pleasure to meet a Micah Challenge delegation of young Australians to discuss with them the work they are doing for their organisation. I would like to thank Hindrick Buining, Rebecca Roberts, Nadia Morom and Adam Urbanic for taking the time to explain their issues with me, and I wish them well in their cause.
What impressed me about this group was that, although they were from vastly different backgrounds, they were all committed to a common goal; I must say how inspired I was with their passion, energy and drive for the global cause. I wish more of us shared their passion.

One of the problems the group raised with me was that of improving maternal health. I was particularly impressed by a young man, Adam, a 15-year-old student at Cabramatta High School, who presented me with the basic birthing kit that I have with me tonight. For the aid of _Hansard_, this is a Chinese takeaway container, but it contains a kit comprised of soap and latex gloves for the birth assistant—to prevent infection to the mother and child; a razor blade—to cut the umbilical cord; and string and a bandage—to tie the cord. Also in the kit was a plastic sheet so that a baby can be delivered on a clean surface. Adam and the delegation quoted figures that showed that basic steps and a basic kit such as this could cut maternal deaths in the developing world by up to two-thirds. This highlights the work that the Micah Challenge is undertaking and that the things we take for granted in this country can make a huge difference.

The United Nations Millennium Declaration states that ending poverty is one of the greatest challenges of our age. Over one billion of our fellow human beings experience daily the abject and dehumanising condition of extreme poverty. Infants die because their parents and communities are too poor to afford basic health care. Women and men suffer from waterborne diseases because they and their communities are too poor to afford clean water and sanitation. World poverty has been a blot on First World countries like Australia for decades and generations. For most of us it is a sense of shame and guilt that will not go away. Governments have failed in providing the leadership necessary to end poverty. It has mostly been left to non-government organisations, and sometimes even to celebrities and entertainers like Bob Geldof or Bono, to raise awareness and take action.

Obviously much more needs to be done in terms of politicians providing the necessary leadership and the resources to confront this issue head on. To this end I was relieved when the United Nations proposed an agreement to deal with poverty in third world countries. In 2000 all 189 member states of the United Nations signed on to the Millennium Development Goals—a set of eight targets that aim to halve world poverty by 2015. The goals are these: first, to eradicate extreme poverty and hunger—a goal aimed at reducing by half the proportion of people living on less than US$1 a day; second, the achievement of universal primary education—something we all take in this country for granted; third, to promote gender equality and empower women—a policy to ensure that girls and women have the same education and opportunities as boys in developing countries; fourth, to reduce child mortality—a measure targeted at reducing infant and child deaths by two-thirds; fifth, the improvement of maternal health—a policy aimed at reducing the proportion of women dying in childbirth; sixth, the combating of HIV-AIDS, malaria and other diseases; seventh, to ensure environmental sustainability takes place at all times; and, eighth, to develop a global partnership for development—this goal addresses issues such as trade, debt, aid and public health, and the promotion of economic growth and poverty reduction. These are lofty goals, but they are achievable. However, these commitments are only as strong as the plan of action behind them, and to this end I am pleased and proud that there has been a change in the way the Australian government now deals with the issues of foreign aid and foreign assistance.

Thankfully, Prime Minister Kevin Rudd and the Australian government are serious about global poverty and have responded positively by increasing much needed resources and aid to help the cause. The Treasurer’s budget in May laid the foundation for the government’s commitment to increasing Australian development assistance. In 2008-09 the aid budget is an estimated $3.7 billion, our largest ever investment in reducing poverty. This is an impressive increase of nine per cent on the 2007-08 aid budget. Indeed, Australia’s estimated ratio of aid to gross national income is now 0.32 per cent, which is above the 2007 donor average of 0.28 per cent. That is a good rise. Most importantly, the Prime Minister and the Australian government are determined to increase overseas aid even further, with a goal of providing 0.5 per cent of gross national income by 2015-16.

Progress towards the millennium goals is being made but some countries are doing better than others, and progress is not rapid enough to see all regions achieve all goals by 2015. In Australia’s immediate region, the Asia-Pacific, no country is on track to achieve all the goals by 2015. That is very unfortunate. The Australian government is aware of this slow progress. With this in mind, we have increased our aid budget in Papua New Guinea and the Pacific, and aid will now be based on new mutually agreed targets for development. That is a welcome step.

In closing, I would like to reiterate my support for Micah Challenge Australia, and its members, for the fine work that they are doing. I believe that by working together as a nation, with the support of the Prime Minister and the Australian government, we will take the positive steps that are necessary to meet our millennium development goals and show the world how serious we are about fighting global poverty.
Millenium Development Goals

Micah Challenge Australia

Senator BARNEIT (Tasmania) (10.24 pm)—Tonight I would like to speak on the millennium development goals and Micah Challenge. This is especially relevant because it is Anti-Poverty Week. I noted the contribution of Senator Mark Arbib earlier this evening. I concur with his comments and I thank him for his contribution. Along with many other senators in this place, last week I was standing with Senator Ursula Stephens at the launch of a report prepared with the support of the Micah Challenge and the millennium development goals’ supporters in this country. Senator Arbib was at that particular event, together with Senator John Williams, and I know that it has the support of many senators in this place.

Together with Senator Polley, in my home state of Tasmania I have supported the millennium development goals through different initiatives and activities supporting Micah Challenge. Since joining the Senate in February 2002, I have made it a priority not only in this place but also in my own state of Tasmania to support the Make Poverty History campaign, and I have had the honour of successfully moving motions in the Senate in support of the millennium development goals.

As part of the Voices For Justice event in Canberra this week, Micah Challenge has released a report entitled We can meet the challenge! Why Australia can and should meet the international aid target. I would like to comment on that report shortly. Before doing so, I would like to thank and commend Ben McKinnon, Jemma Gardam and Amy Bradley, from Launceston, with whom I met today. They are in Canberra this week, on behalf of the Micah Challenge team, for forums, seminars, workshops and meetings with various members of parliament. Ben McKinnon works for the Scripture Union in Tasmania, and I count him as a friend. He stimulated me into action early in my Senate career when he asked me the question: ‘What are you doing about the millennium development goals?’ At the time, I did not know much about it. I said: ‘Not much. I don’t know anything about it. Tell me about it.’ And then I did some research and I was motivated into action. So a very young man motivated me into action. I think that says everybody can make a difference in the world, whether it be those in the Senate chamber or others in the community. Since then, together with others, Ben has initiated ‘Make a difference’ days, or MAD days—Micah Challenge initiatives in and around Launceston, in northern Tasmania, in schools, with kids. I was at the Exeter Primary School, together with Dick Adams and others, supporting their campaign at that time. It is great. You can make a difference. Here in Australia, we can make a difference in terms of eradicating poverty around the world.

There are eight millennium development goals. They are: (1) to eradicate extreme hunger and poverty; (2) to achieve universal primary education; (3) to promote gender equality and empower women; (4) to reduce child mortality; (5) to improve maternal health; (6) to combat HIV-AIDS, malaria and other diseases; (7) to ensure environmental sustainability; and (8) to develop a global partnership for development. These are very important goals, and this parliament and its members fully support them.

The Micah Challenge is a global movement of Christian agencies, churches, groups and individuals. There are some 25 organisations in Australia. They aim to deepen people’s engagement with the world’s poor and to reduce poverty as an integral part of their Christian faith. Micah Challenge takes its name from the prophet Micah, who wrote at Micah 6:8: ‘What does the Lord require of thee but to act justly, to love mercy and to walk humbly with thy God?’ It is a great verse, a good question, and a great challenge for us to consider every day when we wake up to face the day ahead.

I rode on a pushbike to support the launch of the campaign on Monday, together with the Hon. Kevin Andrews, the Hon. Pat Farmer, Julie Owens MP and many others to give it a bit of a boost and to say yes, we can make a difference. We were there, in our bike gear, making a difference.

The Micah Challenge kicked off in 1970, when the international community adopted an aid target for rich countries of 0.7 per cent of national income—that is, developed economies should devote 70c in every $100 they earn to international development assistance. In terms of Australia, the coalition supports government’s goal of 0.5 per cent by 2015. Our leader, Malcolm Turnbull, is very open-minded in reviewing our commitments and policies. He recently referred to his relationship with Tim Costello, whom I commend and thank for his leadership in this area and the work that he does in supporting not only the Micah Challenge but the efforts of World Vision in making a difference in the world. Mr Turnbull referred to the importance of foreign aid and having measured outcomes. He noted that Australia has a big heart, and I agree with him. It was a very good comment.

I want to commend Amanda Jackson from the Micah Challenge team, Melinda Tankard Reist and the organising committee for what they have done this week with the dozens and dozens of people from all around Australia. Thank you for being in this parliament. Thank you for trying to make a difference. Thank you for influencing me and others to try to make a difference in our world.

The domestic resources of many developing countries are so low that they are unable to make the needed investments in infrastructure, health and education. For example, in 2006 government expenditures converted
to purchasing power parities saw the government of Australia spend over US$6,000 per Australian. But the government of Cambodia was able to spend only $109; the government of Malawi, $122; and the government of Bangladesh, just $140. In other words, when the governments of Cambodia, Bangladesh and Malawi sought to provide services to their people they had revenues that in purchasing power terms were less than 2.5 per cent of the purchasing power of the Australian government. So development assistance can help developing countries fill the financing gap. Aid alone of course cannot solve poverty. Developing countries must implement effective plans to lift their populations out of poverty and mobilise their own public and private resources to this end. Even after they have done this, developing countries need our assistance to make up the gap between their own resources and the resources they need.

I refer the Senate to an important article by Tim Costello in the Age last month. He said:

... little more than three decades ago, few Australian companies dared invest in China. It was a poor country bedevilled by corruption and a lack of transparency, and was struggling under crumbling infrastructure. Today countries such as Vietnam and Cambodia loom as the next frontier for Australian business.

This business opportunity is underpinned by the realisation that the vast majority of products and services are developed exclusively for the richest 10% of the world’s customers. Business now understands the 5 billion people at the bottom of the world’s economic pyramid not as ‘a problem’ but as a massive, untapped, potential market.

It is why in Australia companies such as IBM, KPMG, Visy, IAG Insurance and the Grey Group set up the Business for Millenium Development alliance to highlight how Australian companies can do more to reduce poverty while developing business with emerging markets in the Asia-Pacific region.

And this is where the Millennium Development Goals are so critical. The MDGs aim to eradicate extreme poverty and hunger. They commit developing countries to boost education, health and environmental outcomes.

And he goes on. It is a good article and he makes some very good points.

It is a question not just of aid but of free trade and the importance of fair trade. I note that the Doha round of the World Trade Organisation trade talks broke down in Geneva in late July this year. Some have said this is the end of the round while others have said it is only a pause. I would encourage the government to do all in its power to see the talks resurrected. This can really make a difference, helping people help themselves, particularly in Third World countries. It was not so long ago that every day 30,000 children were dying from preventable causes. That is disgraceful and should motivate us all to act. Nearly 11 million children under the age of five die every single year. The case just a few years ago was that each day 58,000 people were dying from hunger and easily preventable diseases. Things are improving; we have made progress; but there is more to do. I thank the Senate and I urge the public and the Senate to support the Millennium Development Goals and the efforts of the Micah Challenge.

Senate adjourned at 10.34 pm

DOCUMENTS

Tabling

The following government documents were tabled:

- Attorney-General’s Department—Report for 2007-08.
- Australian Competition and Consumer Commission (ACCC)—Report for 2007-08, incorporating the report of the Australian Energy Regulator (AER).
- Customs Act 1901—Conduct of Customs officers [Managed deliveries]—Report for 2007-08.
- Defence Housing Australia—Statement of corporate intent 2008-09.
- Department of Families, Housing, Community Services and Indigenous Affairs—Report for 2007-08, including financial statements for Aboriginals Benefit Account and Aboriginal and Torres Strait Islander Land Account.
- Final budget outcome 2007-08—Report by the Treasurer (Mr Swan) and the Minister for Finance and Deregulation (Mr Tanner), September 2008.
- Health Services Australia Limited (HSA Group)—Statement of corporate intent 2008 to 2011.
- Inspector-General of Intelligence and Security (IGIS)—Report for 2007-08.
- International Air Services Commission—Report for 2007-08.
- Private Health Insurance Ombudsman—Report for 2007-08.
- Public Service Commissioner—Report for 2007-08, incorporating report of the Merit Protection Commissioner.
- Research Involving Human Embryos Act 2002—Report pursuant to subsection 16(8).
- Treaties—List of multilateral treaty actions under negotiation, consideration or review by the Australian Government as at September 2008.

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

- Anti-Money Laundering and Counter-Terrorism Financing Act—Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2008 (No. 6) [F2008L03746]*.
- Civil Aviation Act—Civil Aviation Regulations—Instrument No. CASA EX67/08—Exemption — carriage of passengers of EADS CASA 212-400 aircraft within Antarctica [F2008L03465]*.
Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—
AD/B737/343—Cracks in Fuselage Skin [F2008L03709]*.
AD/Bae 146/135—Wing-to-Fuselage & Main Landing Gear Door Fairing Panel Grommets [F2008L03659]*.
AD/Bell 206/29—Cover Assembly P/N 206-001-012-1 or P/N 206-001-012-7 – Inspection and Modification [F2008L03651]*.
AD/Bell 206/30—Main Transmission Magnetic Plug – Inspection [F2008L03652]*.
AD/Bell 206/31—Main Transmission – Modification [F2008L03653]*.
AD/Bell 206/37—Anti Torque Control Idler Assembly P/N 206-001-746-5 – Inspection and Rework [F2008L03655]*.
AD/Bell 206/40—Tail Rotor Control Tube Tunnel – Modification [F2008L03656]*.
AD/Bell 206/43—Heater Fuel Line P/N 206-070-705-1 – Inspection [F2008L03657]*.
AD/Bell 206/118—Bogus Tension Torsion Straps [F2008L03603]*.
AD/Cessna 206/16—Main Gear Wheel Assemblies [F2008L03604]*.
AD/DH 60/1—Compression Leg Tie-Rod – Inspection [F2008L03605]*.
AD/DHC-2/6—Safety Harness Inertia Reel – Installation [F2008L03638]*.
AD/DHC-2/14—Main Undercarriage Lower Forward Attachment – Modification [F2008L03641]*.
AD/DHC-2/16—Aileron Centre Hinge Bracket – Inspection [F2008L03640]*.
AD/DHC-2/17—Fin Rear Attachment – Inspection [F2008L03639]*.
AD/EC 225/4—Main Rotor Hub Dome Fairing Attachment Screws [F2008L03642]*.
Commissioner of Taxation—Public Rulings—
Class Rulings—
CR 2008/61.
Product Rulings—
PR 2008/65.
Currency Act—Currency (Royal Australian Mint) Determination 2008 (No. 7) [F2008L03583]*.
Customs Act—Tariff Concession Orders—
0807302 [F2008L03551]*.
0809061 [F2008L03588]*.
0809121 [F2008L03589]*.
0809127 [F2008L03590]*.
0809129 [F2008L03591]*.
0809407 [F2008L03592]*.
0809733 [F2008L03593]*.
0809963 [F2008L03594]*.
0810096 [F2008L03596]*.
Environment Protection and Biodiversity Conservation Act—Amendment of list of threatened ecological communities, dated 12 September 2008 [F2008L03637]*.
Food Standards Australia New Zealand Act—Australia New Zealand Food Standards Code – Amendment No. 103 – 2008 [F2008L03741]*.
Social Security (Administration) Act—
Social Security (Administration) (Declared relevant Northern Territory areas — Various (No. 31)) Revocation Determination 2008 [F2008L03747]*.
Social Security (Administration) (Declared relevant Northern Territory areas — Various (No. 32)) Determination 2008 [F2008L03748]*.
* Explanatory statement tabled with legislative instrument.

**Departmental and Agency Appointments**

The following documents were tabled pursuant to the order of the Senate of 24 June 2008:

Departmental and agency appointments—Supplementary budget estimates—Statements of compliance—
Attorney-General’s portfolio agencies.
Education, Employment and Workplace Relations portfolio agencies.
Families, Housing, Community Services and Indigenous Affairs portfolio agencies.
Finance and Deregulation portfolio agencies.
Human Services portfolio agencies.
Veterans’ Affairs portfolio agencies.

**Departmental and Agency Grants**

The following documents were tabled pursuant to the order of the Senate of 24 June 2008:

Departmental and agency grants—Supplementary budget estimates—Statements of compliance—
Attorney-General’s portfolio agencies.
Families, Housing, Community Services and Indigenous Affairs portfolio agencies.
Finance and Deregulation portfolio agencies.
Human Services portfolio agencies.
Innovation, Industry, Science and Research portfolio agencies.
Veterans’ Affairs portfolio agencies.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Agriculture, Fisheries and Forestry: Carbon Offsets for Air Travel
(Question No. 599)

Senator Minchin asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 25 August 2008:

(1) What are the department’s guidelines on the purchasing of carbon offsets for air travel.
(2) In 2008, how many flights undertaken by departmental officials were carbon offsets purchased, and of these, how many were purchased for: (a) business class fares; and (b) economy class fares.
(3) In the 2007-08 financial year, what was the additional cost to the department of purchasing carbon offsets for travel.

Senator Sherry—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The department does not have guidelines on the purchasing of carbon offsets for air travel.
(2) In 2008, no flights were undertaken by departmental officials where carbon offsets were purchased.
(3) In the 2007-08 financial year, there were no additional costs to the department in purchasing carbon offsets for travel.

Veterans’ Affairs: Carbon Offsets for Air Travel
(Question No. 605)

Senator Minchin asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 25 August 2008:

(1) What are the department’s guidelines on the purchasing of carbon offsets for air travel.
(2) In 2008, how many flights undertaken by departmental officials were carbon offsets purchased, and of these, how many were purchased for: (a) business class fares; and (b) economy class fares.
(3) In the 2007-08 financial year, what was the additional cost to the department of purchasing carbon offsets for travel.

Senator Faulkner—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

(1) The Department of Veterans’ Affairs has not issued guidelines on purchasing carbon offsets for air travel.
(2) In 2008 no carbon offset contributions have been made when purchasing flights.
(3) In 2007-08 no carbon offset contributions were made when purchasing flights.

Minister for Innovation, Industry, Science and Research: Overseas Travel
(Question No. 729)

Senator Abetz asked the Minister for Innovation, Industry, Science and Research, upon notice, on 2 September 2008:

With reference to the answer given to question on notice B1-19 asked during the 2008-09 Budget estimates hearing of the Economics Committee, which referred to the Minister’s travel to Japan, Germany and Belgium between February and March 2008, and the answer given to question on notice no. 513 (Senate Official Hansard, 26 August 2008, p. 3790), in particular, the answers to parts (8), (10) and (12) which referred to the Minister’s trip to Japan and the United States of America (US) in June 2008, and noting that the documents the Minister referred to do not contain the level of detail requested, can a more comprehensive answer be provided:

(1) For the visit to Japan, Germany and Belgium between February and March 2008: (a) what was the total cost of the Minister’s: (i) travel, (ii) accommodation, and (iii) any other expenses; and (b) what was the total cost for each of the following groups, departmental officials, personal staff, and family, in relation to: (i) travel, (ii) accommodation, and (iii) any other expenses.
(2) For the visit to Japan in June 2008: (a) what was the total cost of the Minister’s: (i) travel, (ii) accommodation, and (iii) any other expenses; and (b) what was the total cost for each of the following groups, departmental officials, personal staff, and family, in relation to: (i) travel, (ii) accommodation, and (iii) any other expenses.
(3) For the visit to the US in June 2008: (a) what was the total cost of the Minister’s: (i) travel, both internal and external, (ii) accommodation, and (iii) any other expenses; and (b) what was the total cost for each of the following groups, departmental officials, personal staff, and family, in relation to: (i) travel, (ii) accommodation, and (iii) any other expenses.

Senator Carr—The answer to the honourable senator’s question is as follows:

(1) (a) For the total costs for Minister Carr’s trip to Japan, Germany and Belgium in February/March 2008 please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.
The Department of Finance and Deregulation tables all costs for overseas Ministerial travel (including family and staff) that the Department of Finance and Deregulation has met on a six monthly basis. The reports relating to Minister Carr’s trip to Japan, Germany and Belgium in February/March 2008 will be tabled in future tabling reports that are expected to be provided to Parliament in the last week of Parliamentary sittings in December and in the Parliamentary sittings for June each year.

(b) For the total costs for Minister Carr’s Chief of Staff please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.

(1) (b) The total costs for one departmental official were:
   (i) Travel: $25,063.44.
   (ii) Accommodation: $3,162.02.
   (iii) Other expenses: $1,128.13.

(2) (a) For the total costs for Minister Carr’s trip to Japan in June 2008 please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.

(2) (b) For the total costs for Minister Carr’s Chief of Staff please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.

(2) (b) For the total costs for one family member please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.

(2) (b) The total costs for one departmental official were:
   (i) Travel: Japan (and the US - unable to split Japan and US components as one single ticket was issued for whole trip) - $23,900.95.
   (ii) Accommodation: $191.66.
   (iii) Other expenses: $0.00.

(3) (a) For the total costs for Minister Carr’s trip to the US in June 2008 please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.

(3) (b) For the total costs for Minister Carr’s Chief of Staff please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.

(3) (b) For the total costs for Minister Carr’s Adviser, Innovation, please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.

(Note that the two personal staff did not travel at the same time but accompanied the Minister on different legs of the trip).

(3) (b) For the total costs for one family member please refer to the Department of Finance and Deregulation’s reports on overseas Ministerial travel.

(3) (b) The total costs for one Departmental official were:
   (i) Travel: see (2)(b)(i).
   (ii) Accommodation: $3,465.58.
   (iii) Other expenses: $3,019.23.

QUESTIONS ON NOTICE