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RADIO BROADCASTS

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

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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

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
Deputy Leader of the Australian Greens—Senator Christine Anne Milne
Leader of the Family First Party—Senator Steve Fielding

Government Whips—Senators Kerry Williams Kelso O’Brien, Donald Edward Farrell and Anne McIwen

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
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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

Prime Minister
Deputy Prime Minister, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion
Treasurer
Minister for Immigration and Citizenship and Leader of the Government in the Senate
Special Minister of State, Cabinet Secretary and Vice President of the Executive Council
Minister for Finance and Deregulation
Minister for Trade
Minister for Foreign Affairs
Minister for Defence
Minister for Health and Ageing
Minister for Families, Housing, Community Services and Indigenous Affairs
Minister for Infrastructure, Transport, Regional Development and Local Government and Leader of the House
Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate
Minister for Innovation, Industry, Science and Research
Minister for Climate Change and Water
Minister for the Environment, Heritage and the Arts
Attorney-General
Minister for Human Services and Manager of Government Business in the Senate
Minister for Agriculture, Fisheries and Forestry
Minister for Resources and Energy and Minister for Tourism

Hon. Kevin Rudd, MP
Hon. Julia Gillard, MP
Hon. Wayne Swan MP
Senator Hon. Chris Evans
Senator Hon. John Faulkner
Hon. Lindsay Tanner MP
Hon. Simon Crean MP
Hon. Stephen Smith MP
Hon. Joel Fitzgibbon MP
Hon. Nicola Roxon MP
Hon. Jenny Macklin MP
Hon. Anthony Albanese MP
Senator Hon. Stephen Conroy
Senator Hon. Kim Carr
Senator Hon. Penny Wong
Hon. Peter Garrett AM, MP
Senator Hon. Joe Ludwig
Hon. Tony Burke MP
Hon. Martin Ferguson AM, MP

[The above ministers constitute the cabinet]
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<td>Hon. Chris Bowen MP</td>
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<td>Hon. Alan Griffin MP</td>
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<td>Minister for Housing and Minister for the Status of Women</td>
<td>Hon. Tanya Plibersek MP</td>
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<td>Minister for Employment Participation</td>
<td>Hon. Brendan O’Connor MP</td>
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<td>Hon. Warren Snowdon MP</td>
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<td>Minister for Small Business, Independent Contractors and the Service Economy and Minister Assisting the Finance Minister on Deregulation</td>
<td>Hon. Dr Craig Emerson MP</td>
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<td>Minister for Superannuation and Corporate Law</td>
<td>Senator Hon. Nick Sherry</td>
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<td>Minister for Ageing</td>
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<td>Minister for Youth and Minister for Sport</td>
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<td>Parliamentary Secretary for Early Childhood Education and Childcare</td>
<td>Hon. Maxine McKew MP</td>
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<td>Parliamentary Secretary for Defence Procurement</td>
<td>Hon. Greg Combet AM, MP</td>
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<td>Parliamentary Secretary for Defence Support</td>
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<td>Parliamentary Secretary for Regional Development and Northern Australia</td>
<td>Hon. Gary Gray AO, MP</td>
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<td>Parliamentary Secretary for Disabilities and Children’s Services</td>
<td>Hon. Bill Shorten MP</td>
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<td>Hon. Anthony Byrne MP</td>
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<td>Parliamentary Secretary for Multicultural Affairs and Settlement Services</td>
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</table>
Leader of the Opposition: The Hon Malcolm Turnbull MP
Shadow Treasurer and Deputy Leader of the Opposition: The Hon Julie Bishop MP
Shadow Minister for Trade, Transport, Regional Development and Local Government and Leader of The Nationals: The Hon Warren Truss MP
Shadow Minister for Broadband, Communications and the Digital Economy and Leader of the Opposition in the Senate: Senator the Hon Nick Minchin
Shadow Minister for Innovation, Industry, Science and Research and Deputy Leader of the Opposition in the Senate: Senator the Hon Eric Abetz
Shadow Minister for Infrastructure and COAG and Shadow Minister Assisting the Leader on Emissions Trading Design: The Hon Andrew Robb AO, MP
Shadow Minister for Foreign Affairs and Manager of Opposition Business in the Senate: Senator the Hon Helen Coonan
Shadow Minister for Finance, Competition Policy and Deregulation and Manager of Opposition Business in the House: The Hon Joe Hockey MP
Shadow Minister for Energy and Resources: The Hon Ian Macfarlane MP
Shadow Minister for Families, Housing, Community Services and Indigenous Affairs: The Hon Tony Abbott MP
Shadow Special Minister of State and Shadow Cabinet Secretary: Senator the Hon Michael Ronaldson
Shadow Minister for Human Services and Deputy Leader of The Nationals: Senator the Hon Nigel Scullion
Shadow Minister for Climate Change, Environment and Water: The Hon Greg Hunt MP
Shadow Minister for Health and Ageing: The Hon Peter Dutton MP
Shadow Minister for Defence: Senator the Hon David Johnston
Shadow Minister for Education, Apprenticeships and Training: The Hon Christopher Pyne MP
Shadow Attorney-General: Senator the Hon George Brandis SC
Shadow Minister for Agriculture, Fisheries and Forestry: The Hon John Cobb MP
Shadow Minister for Employment and Workplace Relations: Mr Michael Keenan MP
Shadow Minister for Immigration and Citizenship: The Hon Dr Sharan Stone
Shadow Minister for Small Business, Independent Contractors, Tourism and the Arts: Mr Steven Ciobo

[The above constitute the shadow cabinet]
SHADOW MINISTRY—continued

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

Shadow Assistant Treasurer
The Hon Tony Smith MP

Shadow Minister for Sustainable Development and Cities
The 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

Shadow Minister for Ageing
Mrs Margaret May MP

Shadow Minister for Defence Science and Personnel and Assisting Shadow Minister for Defence
The Hon Bob Baldwin MP

Shadow Minister for Veterans’ Affairs
Mrs Louise Markus MP

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

Shadow Minister for Justice and Customs
The Hon Sussan Ley MP

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

Shadow Parliamentary Secretary for Northern Australia
Senator the Hon Ian Macdonald

Shadow Parliamentary Secretary for Roads and Transport
Mr Don Randall MP

Shadow Parliamentary Secretary for Regional Development
Mr John Forrest MP

Shadow Parliamentary Secretary for International Development Assistance and Shadow Parliamentary Secretary for Indigenous Affairs
Senator Marise Payne

Shadow Parliamentary Secretary for Energy and Resources
Mr Barry Haase MP

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
The Hon Peter Lindsay MP

Shadow Parliamentary Secretary for Education
Senator the Hon Brett Mason

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

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

Shadow Parliamentary Secretary for Immigration and Citizenship and Shadow Parliamentary Secretary Assisting the Leader in the Senate
Senator Concetta Fierravanti-Wells
THURSDAY, 27 NOVEMBER

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Thursday, 27 November 2008

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

PARLIAMENTARY LANGUAGE

The PRESIDENT (9.30 am)—Yesterday at question time I undertook to consider points of order which were raised in relation to remarks by Senator Evans about the Treasurer of Western Australia. It was put to me that Senator Evans’s remarks were contrary to standing order 193. Paragraph 3 of that standing order provides:

A senator shall not use offensive words against either House of Parliament or of a House of a state or territory parliament, or any member of such House, or against a judicial officer, and all imputations of improper motives and all personal reflections on those Houses, members or officers shall be considered highly disorderly.

I must say that if that provision were applied in the strictness of its terms, a great many remarks made about members of other houses could be ruled out of order. The practice followed by the chair and by the Senate in recent years is that criticism of a member of another house is not contrary to the standing order unless accusations of dishonesty or illegality, or something else of that degree of seriousness, are made against such a member.

Having considered the transcript of the remarks made by Senator Evans, I think that, even given the general practice to which I have referred, those remarks came very close to contravening the standing order as it applies to a member of another house. I would ask all senators to keep the provisions of the standing order in mind and to moderate their language when referring to members of other houses.

NOTICES

Presentation

Senator Cormann to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) on 15 November 2008, state and territory Labor Treasurers held a pre-Council of Australian Governments (COAG) strategy meeting in preparation of the COAG meeting on 29 November 2008,

(ii) the Western Australian Treasurer (Mr Buswell) was explicitly told not to attend that meeting by the Treasurer for Victoria (Mr Lenders),

(iii) the Leader of the Government in the Senate (Senator Evans) has sought to justify the exclusion of the Western Australian Treasurer from the pre-COAG strategy meeting held by all Labor state and territory Treasurers,

(iv) when asked whether the Government had received any representations or had any discussions on issues relating to the upcoming COAG meeting as a result of that pre-COAG strategy meeting, the Leader of the Government in the Senate responded that ‘certainly there would have been preparations done’,

(v) the exclusion of the Western Australian Treasurer from COAG preparations and the attitude of the Leader of the Government in the Senate in relation to that are not in the spirit of ‘cooperative federalism’ promoted by the Government before the 2007 federal election, and

(vi) even the Western Australian Labor Shadow Treasurer (Mr Wyatt) was ‘surprised and disappointed’ that his Labor colleagues from the other states had excluded Western Australia; and

(b) calls on the Prime Minister (Mr Rudd) to reprimand state and territory Labor Gov-
ernments and the Leader of the Government in the Senate, or at least remind them, in the spirit of cooperative federalism, of the need to work cooperatively, including with the State of Western Australia.

Senator Ludwig to move on the next day of sitting:

That—

(1) On Monday, 1 December 2008:
   (a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm;
   (b) the routine of business from 7.30 pm shall be government business only; and
   (c) the question for the adjournment of the Senate shall be proposed at 11 pm.

(2) On Tuesday, 2 December 2008:
   (a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm;
   (b) the routine of business from 7.30 pm shall be government business only; and
   (c) the question for the adjournment of the Senate shall be proposed at 11 pm.

(3) On Wednesday, 3 December 2008, the routine of business from 5.30 pm to not later than 7.20 pm shall be valedictory statements relating to Senator Ellison.

(4) On Thursday, 4 December 2008:
   (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
   (b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall not be proceeded with;
   (c) the routine of business from 12.45 pm till not later than 2 pm, and from not later than 3.45 pm shall be government business only;
   (d) divisions may take place after 4.30 pm; and
   (e) if the Senate is sitting at 11 pm, the sitting of the Senate shall be suspended till 9 am on Friday, 5 December 2008.

(5) In making valedictory statements in accordance with paragraph (3) above, a senator shall not speak for more than 20 minutes.

Senator Siewert to move on the next day of sitting:

That the Senate—

(a) notes that:
   (i) Monday, 1 December 2008 marks the 20th anniversary of World AIDS Day,
   (ii) World AIDS Day was instituted by the World Health Organization to raise public awareness about AIDS and to promote support and understanding for people living with HIV/AIDS,
   (iii) globally, there are an estimated 33.2 million people living with HIV,
   (iv) in Australia, between 1981 and 2007, there were 27 331 diagnoses of HIV infection, 10 230 diagnoses of AIDS and 6 767 deaths from AIDS,
   (v) in 2007, 1 051 people in Australia were diagnosed with HIV,
   (vi) currently, approximately 16 692 people in Australia are living with HIV, and
   (vii) from 2003 to 2007 the overall rate of new HIV diagnoses in Australia has increased from 4 to 4.4 per 100 000; and
   (b) calls on the Government to review current levels of Commonwealth funding towards research, education and prevention programs in order to reverse the current upward trend in the rate of HIV infections.

Senator Bob Brown to move on 2 December 2008:

That the Senate—

(a) notes local government and community opposition to a road, proposed by Forestry Tasmania, through a section of the Tarkine forest; and
(b) calls on the Government to ensure no federal funding is used, directly or indirectly, for this road unless or until local government concerns are addressed.

Senator Bob Brown to move on the next day of sitting:
That the Senate—
(a) notes that the Foreign Press Association has grave concerns about the actions of the Israeli Government that have made access to the Gaza Strip inaccessible to foreign media; and
(b) calls on the Australian Government to make representations to the Israeli Government to allow proper access for the media into Gaza.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.34 am)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Corporations Amendment (Short Selling) Bill 2008 and the Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008, allowing them to be considered during this period of sittings.

I also table statements of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.

Leave granted.

The statements read as follows—

Corporations Amendment (Short Selling) Bill 2008

Purpose of the bill
The bill ensures that covered short sales (those short sales which are supported by securities lending agreements) are disclosed and to enhance the powers of the Australian Securities and Investments Commission (ASIC) to deal with short selling regulation and disclosure arrangements.

Reasons for Urgency
To ensure the reporting of covered short sales and enhance ASIC’s powers in relation to short selling, as soon as possible. The under reporting of covered short selling has caused significant concern and uncertainty in the marketplace and may have provided opportunities for market misconduct. Continued uncertainty would be detrimental to confidence in the market and could cause harm to investors. These problems have been amplified by the current volatility being experienced in global financial markets. This resulted in ASIC taking temporary action to limit short selling in Australia. These circumstances have increased the urgency to establish an effective legislative regime for the disclosure of covered short sales and to enhance ASIC’s powers in this area as a means of restoring transparency and market confidence.

The Prime Minister, in his speech to the Confederation of British Industry, noted the recent volatility in stock markets has been exacerbated by the lack of transparency surrounding the increasingly prevalent practice of short selling, and that it is in the interests of all investors to have greater transparency around these issues.

The potential benefits of transparency include disclosure providing a signal to the market that securities may be overvalued, noting that not all short sales are information trades and this information needs to be regarded in that context. Other possible benefits include that there is some awareness that those sales need to be reversed at some future time. Also greater transparency may tend to deter attempts at market abuse. This transparency, and the greater confidence it will engender, is particularly important in the context of the current market volatility.

(Circulated by authority of the Treasurer)

Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008

Purpose of the bill
This bill will make minor and technical amendments to the tax law relating to the luxury car tax relating to the operation of the refund provisions and contracts entered into before 13 May 2008.

Reasons for Urgency
The measures in this bill are intended to ensure that the refund and pre-13 May 2008 provisions put in place by the Tax Laws Amendment (Luxury Car Tax) Act 2008 operate as intended. It is
important that the measures be passed as soon as practicable to ensure that vehicle retailers, finance companies and consumers are certain as to their eligibility for refunds and the rate of luxury car tax that applies. A delayed introduction may impact vehicle purchasing decisions and create further uncertainty for these groups.

In the main, the measures start on 1 July 2008 which is the date that the provisions being amended commenced.

(Circulated by authority of the Treasurer)

LEAVE OF ABSENCE

Senator PARRY (Tasmania) (9.34 am)—by leave—I move:

That leave of absence be granted to Senators Minchin, Joyce, Cash, Cormann, Eggleston, Ellison and Johnston for today, on account of parliamentary business.

Question agreed to.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.35 am)—I move:

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

No. 8 Migration Legislation Amendment (Worker Protection) Bill 2008.
No. 9 Evidence Amendment Bill 2008.
No. 12 Australian Curriculum, Assessment and Reporting Authority Bill 2008.

Question agreed to.

Rearrangement

Senator McEWEN (South Australia) (9.35 am)—by leave—At the request of the Chair of the Senate Standing Committee on Economics, Senator Hurley, I move:

That business of the Senate order of the day no. 3, relating to the presentation of the report of the Economics Committee on the provisions of the Corporations Amendment (Short Selling) Bill 2008, be postponed to a later hour of the day.

Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport Committee

Reference

Senator PARRY (Tasmania) (9.36 am)—At the request of Senator Heffernan, I move:

That the following matter be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 19 March 2009:

Issues relating to the import risk analysis (IRA) for the importation of Cavendish bananas from the Philippines, including:

(a) Biosecurity Australia’s administration of the IRA process;
(b) the scientific and technical information relied upon by the IRA team;
(c) the feasibility of the risk management measures and operational arrangements proposed in the final IRA report; and
(d) the capability of the Australian Government and, in particular, the Australian Quarantine Inspection Service to monitor and enforce compliance with the risk management measures and operational arrangements proposed in the final IRA report.

Senator MILNE (Tasmania) (9.37 am)—by leave—As the deputy chair of this committee, I wish to note that Senator Heffernan did not discuss this proposed reference to the committee. There have been several discussions on the committee since 2002 on this issue, not least of which was a one-hour pri-
vate briefing on this matter yesterday, as it is a sensitive issue and it is before the WTO. I just want to say that the Senate is already overworked, with a number of committees, and I find it difficult to see how this particular inquiry is going to advance the cause of the current circumstances. I do not object to it coming to the committee but I think the Senate needs to consider just how many of these references we make and the time that is involved for the potential outcome of these inquiries.

Question agreed to.

Rural and Regional Affairs and Transport Committee

Extension of Time

Senator LUDWIG (Queensland—Minister for Human Services) (9.38 am)—At the request of the Chair of the Rural and Regional Affairs and Transport Committee, Senator Sterle, I move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Committee on matters specified in part (2) of the inquiry into the management of the Murray-Darling Basin system be extended to 19 March 2009.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.38 am)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, for the construction of a new cooling plant enclosure.

Question agreed to.
The speech read as follows—

RENEWABLE ENERGY AMENDMENT (INCREASED MANDATORY RENEWABLE ENERGY TARGET) BILL 2008

In October 2007, the then Labor Opposition announced a key element of their election policy platform on climate change—lifting the Howard Government’s Mandatory Renewable Energy Target from its pitifully and unpopularly low 2 per cent up to 20 per cent. The Greens, many environment groups and many people in the community welcomed this move as a significant improvement, although not as much as is both achievable and necessary.

Since that time, however, there has been very little progress toward legislating the promised renewable energy target. All we have seen is a discussion paper which disappeared into the black hole of COAG.

Today, in the week of the anniversary of the election, I am pleased to introduce the Renewable Energy Amendment (Increased Mandatory Renewable Energy Target) Bill 2008, a Bill to give effect to one of the Rudd Government’s most important unmet election promises. This bill amends the existing Renewable Energy (Electricity) Act 2000 to increase the Mandatory Renewable Energy Target from 9,500GWh to Labor’s proposed 45,000 GWh. It also includes a new clause requiring that the targets be reviewed each year, and revised by legislative instrument if necessary, to ensure that by 2020 at least 20 per cent of electricity in Australian each year is derived from renewable sources. It is essential to include this clause to make certain that the number of renewable energy GWh remains on track towards the 20 per cent by 2020 target. This is to overcome the problem that occurred previously when the 9,500GWh target did not represent the additional promised 2 per cent increase because of a much larger overall increase in electricity demand than was predicted at the time that the MRET was first set.

In the interests of achieving a swift resolution on this vital matter, the bill from the Greens would enact the Labor commitment on targets, not the higher Greens target. On such an important issue as developing the zero emissions energy sources that will enable us to prevent catastrophic climate change, there can be no reason for the Government not to support the bill.

The potential for renewable energy in Australia is far greater than any projections for energy demand. As Labor’s election documentation itself noted, “enough sunshine falls on Australia and New Zealand on an average day to power the two countries for 25 years”. When our geothermal, wave and tidal, wind and bioenergy potential is added to this, ensuring that, if one source is in short supply for a time, others can fill the gap, there is absolutely no doubt that we can power Australia forever with zero emissions, renewable energy. We can have energy that will never pollute, and we will never have to pay for fuel again, since the sun and wind are free.

Making this vital transition from polluting coal to clean, renewable energy will require a big investment and huge numbers of people employed in high quality jobs. Even if the climate change urgency were not as great, now is the perfect time to embark on this project as part of a ‘Green New Deal’ to lift us out of the global financial crisis. It is one of the most exciting political opportunities in recent history that we can use the solution to the climate meltdown as the solution to the financial meltdown.

The Rudd Government, however, appears to have coal dust in its eyes. While throwing hundreds of millions of dollars at the coal sector’s pipedream of geosequestration, renewable energy is getting the scraps from the table. And yet, the Government is still attempting to dine out on its election promise. In the celebrations of its anniversary, support for renewable energy was listed as a great achievement.

Here are a few selections from what Rudd Labor said about its 20 per cent MRET promise before the 2007 election—some of the choice phrases from an election policy document called “Labor’s 2020 target for a renewable energy future” which encouraged so many voters to give them their support.

“Climate change is a critical economic challenge for Australia’s future and for the global economy. Taking decisive action on climate change is criti-
cal for future jobs and economic growth in Australia.”

“Australia has abundant solar, wind and geothermal energy. We can harness this clean, renewable energy to power our homes and businesses to help tackle climate change. Yet renewable energy has gone backwards under the Howard Government, and many leading edge Australian renewable energy businesses have been forced offshore by the Government’s inaction on climate change and renewable energy.

“A Rudd Labor Government will ensure that the equivalent of at least 20 per cent of Australia’s electricity supply—approximately 60,000 gigawatt hours (GWh)—is generated from renewable sources by 2020 as part of Labor’s comprehensive approach to tackling climate change.

“This is equivalent to the electricity used in Australia’s seven and a half million homes.1 According to industry economic modelling, a 20 per cent renewable energy target will deliver emission reductions of 342 million tonnes of greenhouse gases between 2010 and 2030 compared to just 219 million tonnes under a 15 per cent clean energy target.”

“Scientists—including the CSIRO—are telling us that Australia must achieve emissions reductions of 60 per cent by 2050 if we are to avert the significant economic consequences of dangerous climate change. These reductions can be achieved while maintaining strong economic growth.

“Renewable energy technologies will play a critical role in achieving these cuts as well as providing substantial employment opportunities, particularly in regional Australia. Economic modelling shows that significant cuts to emissions can be achieved at the lowest cost by combining emissions trading with a strong renewable energy target and investment in energy efficiency.3

“Federal Labor has a long standing commitment to introduce emissions trading that will provide the incentive to cut Australia’s emissions through innovative approaches.

“But while the introduction of emissions trading will help bring cleaner technologies into the market over time, an interim renewable energy target will accelerate their use, driving cost reductions by encouraging economies of scale—and achieving overall emission reductions at lower cost.

“As emissions trading matures, however, a renewable energy target will no longer be required. Under a Rudd Labor Government the renewable energy target will phase out in the period 2020 to 2030.

“As part of Labor’s 2020 vision for a clean renewable energy future, Federal Labor will:

- Ensure the equivalent of at least 20 per cent of our electricity supply—or approximately 60,000 GWh—is generated from renewable sources by 2020.
- Increase the Mandatory Renewable Energy Target (MRET) to 45,000 GWh to ensure that together with the approximately 15,000 GWh of existing renewable capacity, Australia reaches Labor’s 20 per cent target by 2020.

“The global market for renewable energy is set to be worth US$750 billion a year by 2016. Countries around the world are setting renewable energy targets to help reduce emissions and position themselves to benefit from this growing market. China has a target of 20 per cent by 2020 and 33 per cent of California’s energy will come from renewable sources by 2020.”

These are fine words, many of which could have been taken from Greens announcements and campaign materials from years ago. The difference, however, is that, when Rudd Labor was given the power to turn words into action, they have, so far, failed to deliver.

This issue is increasingly urgent. Not only because of the climate imperative, but also because the renewable energy innovators and investors who were looking at such a bright future thanks to the election of a Government promising them so much, are now losing momentum and starting to look offshore for growth opportunities. I am hearing that the renewable energy industry is becoming increasingly dismayed about the delay—indeed the complete lack of progress—towards finalising the renewable energy target. This delay and uncertainty is holding back investment.

Only last week, BP Solar joined the long list of companies and innovators that the Labor docu-
ment referred to as having left Australia thanks to Government policy.

For a Government that is so concerned about carbon leakage thanks to its emissions trading scheme, promising handouts to keep polluters in Australia, you might think that they would also see the clean energy leakage that is becoming apparent.

Millions of dollars of renewable energy investment is waiting to go—if only the Government would get of its hands.

This delay is indicative of the Rudd Government’s attitude to renewable energy generally. First they pull the rug out of the PV industry by means testing the Solar Homes and Communities Rebates and then they relegate serious consideration of national gross feed-in law to COAG oblivion.

Australia can and must see far more than 20 per cent renewable energy by 2020, which is why the Greens advocate both a 25 per cent target and a gross feed-in tariff. That policy structure would enable growth in the industry well beyond 25 per cent, and for technologies which will be relatively unsupported by the MRET such as solar thermal, geothermal and wave power.

However, in the interests of making progress, and of assisting the Government in meeting its election promises, this 20 per cent target is the necessary starting point. I commend the bill to the Senate.

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

Leave granted; debate adjourned.

MORETON BAY FISHING

Senator IAN MACDONALD (Queensland) (9.40 am)—I seek leave to amend motion number No. 303 on the grounds that part of what we were calling for has actually been delivered by the minister this morning.

Leave granted.

Senator IAN MACDONALD—I move the motion as amended:

That the Senate—

(a) notes that:

(i) a federally-funded independent review into the sustainability of shark and other protected species in the East Coast Inshore Fin Fish Fishery, which includes Queensland’s Moreton Bay, was released on 27 November 2008,

(ii) the future of fishers in the Moreton Bay area could very much depend on the outcome of this federally-funded review, and

(iii) the Queensland Government is closing tenders for the Structural Adjustment Package for Moreton Bay fishers on 28 November 2008, the timing of which will prevent fishers from making fully informed decisions, taking into account the outcome of the federally-funded review; and

(b) calls on the Queensland Government to extend the closing date for tenders for the Structural Adjustment Package to 1 February 2009 to give fishers the opportunity of considering the independent federally-funded review to determine whether or not they should be exiting the fishery and making application for the Structural Adjustment Package.

Senator LUDWIG (Queensland—Minister for Human Services) (9.41 am)—by leave—As Senator Macdonald has indicated, the independent review of the proposed management regime for Queensland’s east coast inshore finfishery has been released and is available on the website of the Commonwealth Department of the Environment, Water, Heritage and the Arts. The independent review, which Minister Garrett commissioned in September, will help to inform the minister’s assessment of the fishery against sustainability guidelines under the Environment Protection and Biodiversity Conservation Act. The primary objectives of the review were to assess the fishery’s level of interaction with protected species such as
dugongs, whales and swordfish, and the management of shark and commercial fishing efforts. While the review looked at the entire fishery, its focus was on the operation of the fishery in the Great Barrier Reef World Heritage area.

The review found that the proposed changes to the fishery represent a significant step forward but also identified further improvements that should be made in the future to ensure best practice management. The Queensland government is conducting the Moreton Bay structural adjustment package to address the displacing of fishing efforts as a result of the Moreton Bay Marine Park Zoning Plan review. Whilst the area of the inshore fishery includes Moreton Bay, the structural adjustment package is a separate process from the proposed management changes to the fishery and the timing of the structural adjustment package is a matter for the Queensland government. On that basis, we will not be supporting the motion.

Senator IAN MACDONALD (Queensland) (9.43 am)—by leave—In view of what Senator Ludwig has said, I want to reiterate that this report will assess the Great Barrier Reef Marine Park issues happening in the Moreton Bay area. Whilst it is not directly related to the structural adjustment package, it will mean that fishers in Moreton Bay could be affected and therefore could find that they want to take an exit package and be part of the structural adjustment package. It is for that reason that this motion calls for the Queensland government to extend the time to allow the fishers to fully observe the report that has been released this morning.

Question agreed to.

NOTICES
Withdrawal
Senator LUDLAM (Western Australia) (9.44 am)—I withdraw general business notice of motion No. 272 standing in my name.

COMMITTEES
Rural and Regional Affairs and Transport Committee
Report
Senator McEWEN (South Australia) (9.45 am)—On behalf of the chair of the Rural and Regional Affairs and Transport Committee, Senator Sterle, I present corrigenda to the report of the Rural and Regional Affairs and Transport Committee on the provisions of the Water Amendment Bill 2008.

Ordered that the document be printed.

CORPORATIONS AMENDMENT (SHORT SELLING) BILL 2008
First Reading
Bill received from the House of Representatives.

Senator LUDWIG (Queensland—Minister for Human Services) (9.45 am)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading
Senator LUDWIG (Queensland—Minister for Human Services) (9.45 am)—I move:

That this bill be now read a second time.

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

Leave granted.

CHAMBER
The speech read as follows—

CORPORATIONS AMENDMENT (SHORT SELLING) BILL 2008

Today I introduce a bill which will amend the Corporations Act 2001 to address certain aspects about the regulation of short selling.

The bill contains three key short selling measures to enhance the integrity, fairness and transparency of our markets.

First, the bill clarifies the powers of the Australian Securities and Investments Commission (ASIC) to regulate short selling. Currently, ASIC has the power to modify certain parts of the Corporations Act through declarations. These declarations are commonly known as ASIC Class Orders.

To avoid doubt, the amendments make it clear that ASIC has the power to regulate all aspects of short selling including prohibiting these transactions and imposing or varying requirements on these transactions. The changes also mean that ASIC can regulate transactions that have a substantially similar market effect as short sales.

The recent international financial turmoil has highlighted the need for the regulator to be able to quickly respond to issues that could potentially threaten the fair and orderly operation of our markets.

In September 2008, ASIC used its power to make various declarations in relation to short selling. In substance, the Class Orders imposed a ban on covered short selling subject to limited exemptions and required disclosure in relation to the exempted transactions. The declarations were made in light of the unprecedented volatility being experienced on Australian and global financial markets, and international regulatory developments occurring at the time.

As part of clarifying ASIC’s short selling powers and to avoid any doubt over ASIC’s actions, the bill expressly states that the declarations made by ASIC in relation to short selling were within the scope of its power.

The amendment operates for the benefit of parties who organised their affairs in accordance with the Class Orders, and will, importantly, provide certainty to business.

The second measure, in effect, bans naked short selling. Typically, this will mean the seller will need a legally binding securities lending agreement before making the short sale.

The Government has taken action in this area because transactions of this nature have a higher risk of settlement failure (because there are no available securities at the time of sale). In addition, naked short selling may also distort the operation of financial markets by causing increased price volatility and potentially facilitate market manipulation. Furthermore, the perceived activity of naked short sellers may damage market confidence particularly among retail investors.

Community expectations on what is acceptable with regards to short selling, plus the need to protect Australian companies and retail investors from unjustified targeting and abusive short selling are also important policy considerations in this regard.

ASIC has the ability to grant exemptions from the naked short selling prohibition. The Government foresees the ASIC exemptions may allow some non-speculative naked short sales. Given the dynamics of the market and the rapid changes in the conduct and structure of financial markets, the Government considers that these exemptions are more appropriately facilitated by ASIC, rather than by law.

The third measure will ensure the disclosure of covered short sales. The measure is primarily about transparency. Earlier this year, it became apparent that complete data on the level of covered short selling was not publicly available and that legislation was required to address the issue.

The uncertainty surrounding the activity of covered short sellers in Australian securities is having a significant impact on Australian capital markets. We have seen significant price declines in some shares, which have caused considerable rumour and speculation about the role of short selling. This speculation is affecting confidence in the market, particularly among retail investors.

Under the disclosure regime, a seller will be required to disclose covered short sales to their executing broker. The broker will in turn be required to disclose this client information to the market operator. Brokers trading on their own
behalf will be required to disclose their own covered short sales directly to the market operator. It will be an offence not to disclose. Regulations will set the timing and manner of the disclosures. The market operator (for example the ASX) must publicly disclose the short sale information it receives. To complement the disclosure requirement, and ensure clients understand their obligations, brokers must also ask clients if the sale is a covered short sale before making the sale.

Details of the timing and manner of disclosure are to be included in Regulations. This will ensure the regime is able to adapt more readily to the ever evolving market environment, and the mechanisms by which transactions occur.

The disclosure of covered short sales will provide useful information to investors and regulators, contribute to pricing efficiency and also promote market confidence and integrity.

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

**COMMITTEES**

**Membership**

The PRESIDENT—I have received a letter from a party leader seeking the appointment of members to a committee.

Senator LUDWIG (Queensland—Minister for Human Services) (9.46 am)—by leave—I move:

That senators be appointed to a committee as follows:

**Men’s Health—Select Committee**—

Appointed—

Senators Lundy and Sterle

Question agreed to.

**Education, Employment and Workplace Relations Committee**

**Report**

Senator MARSHALL (Victoria) (9.47 am)—I present the report of the committee on the provisions of the Schools Assistance Bill 2008 and the Education Legislation Amendment Bill 2008 together with the Hansard record of proceedings and the documents presented to the committee.

Ordered that the report be printed.

**WATER AMENDMENT BILL 2008**

**In Committee**

Consideration resumed from 26 November.

The TEMPORARY CHAIRMAN (Senator Marshall)—The committee is considering the Water Amendment Bill 2008 as amended and opposition amendment (6) on sheet 5640, moved by Senator Nash.

Senator LUDWIG (Queensland—Minister for Human Services) (9.48 am)—In respect of this amendment we may need either to decide to call a quorum or, if you could let me know where we are up to, I can argue the case whilst I get an adviser. Perhaps if you wanted to add something to the debate, Senator Nash, I can then take a lead?

Senator NASH (New South Wales) (9.48 am)—I will assist by saying that I believe we had concluded debate on this particular amendment yesterday. We are at the point where the amendment was going to be put.

Senator SIEWERT (Western Australia) (9.49 am)—Senator Nash is correct. However, we had just ordered an additional piece of information from the minister on the question of, if I remember correctly, the ACCC inquiry. I think the minister was just about answering a question that I had asked about whether the inquiry was able to look at the issues around third parties and the extent to which they could look at the restructuring, or
potential restructuring, of a particular district. I was interested in what people are now calling a ‘Swiss cheese approach’ of just buying out particular properties and, as a result, additional expense being put on the whole of the district when those properties are bought out. That would have been my subsequent question in response to her answer. We left the debate yesterday with her saying that the ACCC was looking at some of that information and that their report was being provided to the minister. She said that the minister would then make a decision. So I am, in fact, still interested in getting an answer to that question because it will help us to decide how we should be voting on this inquiry. If the work, as the minister is saying, has already been done then I do not see any need to repeat it. But if that work is not being done, this inquiry would help to gain that information.

Senator NASH (New South Wales) (9.50 am)—Senator Siewert is indeed right. I think we had reached that point yesterday but, if the amendment had been put at that point, we would not have been able to take into account that information. As I indicated yesterday, I was also very interested in hearing the response from the minister on that particular issue. My understanding, as I said yesterday, is that particularly within the industry there is not a level of comfort—that what Senator Siewert is trying to ascertain is indeed the case. I certainly understand that there has been some interaction between the industry and the ACCC. That having been the case, and with them still coming to the coalition with concerns about the process, it really leads me to believe that perhaps it is not the case that that third-party effect is going to be undertaken by the ACCC. Hence the need, we thought, for moving our amendment.

Again, just to reiterate from yesterday, there is going to be, as Senator Siewert and others have pointed out, a lot of adjustment throughout the communities. We are looking at bulk water holders and the impact on them of changes in arrangements, of potentially taking water out for a public good. We believe that needs to be very closely looked at to ensure there are not consequences flowing on from the act of taking that water out for that public good. So we feel that this amendment is entirely appropriate in making sure at the very least that there is a safeguard for this process. I am sure the minister will very shortly give us some advice on the workings of the ACCC and I am sure she will very definitively point out how it is all in hand and all being undertaken through the ACCC process. But our view is very clearly that this amendment is appropriate. It will work, at the very least, as a safeguard to ensure that the effect on third parties around the bulk water arrangements is taken very much into consideration.

Senator WONG (South Australia—Minister for Climate Change and Water) (9.53 am)—I thank Senator Nash for enabling me to arrive in the chamber. I apologise to the chamber; I was somewhat delayed. I think I went through yesterday the issue of where the government is currently proceeding in relation to the ACCC and other matters. I think it might be useful if I perhaps go through where those inquiries are at. First, in relation to termination fees, which I think Senator Nash talked about on the last occasion when this amendment was being debated, they are a legitimate mechanism to do with third-party impacts of irrigators terminating access to an operator’s irrigation network. Obviously, one of the discussions that have been raised with me on a number of occasions is the quantum. Unsurprisingly, depending on where people are in that commercial arrangement, they have different views about that. Currently the schedule E protocol to the Murray-Darling Basin agreement on access, exit and termination fees
requires that the termination fees only be allowed when an irrigator terminates access to the operation network and that the termination fee be capped at 15 times the annual fixed access or shadow access fee. My advice is that the 15 times limit was a decision of the previous government.

I do not know whether I should wait until Senator Siewert is able to listen; I do not know whether she wants me to explain this or not. In terms of the termination fee, which obviously is a legitimate mechanism, as I said, to deal with third-party impacts, the current arrangements are that, under schedule E to the agreement, the termination fee is capped at 15 times the annual fixed access or shadow access fee. As I understand it, that was a decision of the previous government predicated on advice which had been provided, including by the ACCC.

The Water Act, which passed through this parliament under the previous government, requires the Commonwealth minister to obtain and have regard to advice from the Australian Competition and Consumer Commission in making the water market and water charge rules to apply in the basin. I am advised the ACCC is undertaking an exhaustive three-stage process of consultation to develop these rules. In July of this year, in response to stakeholder feedback—I emphasise also at the request of the ACCC—I extended the deadline for the ACCC to provide its advice in order to allow more time for stakeholder consultation. Currently the ACCC is due to provide its final advice on rules for termination fees and water market rules to me next month. The draft rules for termination fees provide for operators to levy termination fees but only when they choose to terminate access to the operator’s network and recommend that termination fees be capped at 10 times the annual fixed access fee. I am advised this provides 12 to 15 years of annual access fees. So that is the mechanism by which third-party impact is managed.

The draft rules also provide for the ACCC to approve the imposition of higher termination fees where contained in new or existing contracts. For those operators worried about security against irrigators transforming and trading out without paying termination fees or ongoing access fees, the draft water market rules provide for operators to obtain security. There is obviously no clear formula by which we can calculate the correct termination fee multiple. Setting the multiple is not a deterministic process but takes into account a range of competing objectives. In recommending in the draft rules the termination fee level be at 10 times the access fee, the ACCC has attempted to strike the right balance between providing, on the one hand, investment certainty for operators and irrigators and, on the other hand, incentives for rationalisation to promote the efficient delivery of required services and water trade.

I pause there to emphasise that point. I think Senator Siewert asked, if not yesterday, perhaps last night, about third-party impacts. As I said, a termination fee is one of the ways in which one manages that. It is important to recognise the countervailing policy considerations, and that is that an excessive termination fee—and I appreciate people may have different views as to what that will mean—clearly operates as a barrier to the sort of rationalisation or adjustment we know will be required in the industry. So there are balancing policy objectives here in terms of ensuring that you have a certain investment environment so as to provide an appropriate and sufficient level of investment certainty without, at the same time, creating barriers to the sort of adjustment that we know will need to occur and which irrigators may want.

The government believes it is prudent to monitor any new regulatory arrangements to
ensure that they have the desired effect in terms of setting appropriate rules for the market and for market participants and do not have any unintended consequences. To this end, the draft rules recommend a review of the water charge rules, which would include termination fees, to commence by 2012 and conclude by 2013.

I trust that that assists the chamber in terms of some of the questions which arose yesterday in relation to this amendment. I suggest that a range of the issues that Senator Nash has raised concerns about are already being considered by government and I am certainly happy, if senators are seeking it, to provide further information after the ACCC has provided to me their final advice on termination fees and water market rules.

Question negatived.

**Senator NASH** (New South Wales)

(10.00 am)—I move opposition amendment
(1) on sheet 5664 revised:
(1) Schedule 2, page 318 (after line 32), after item 162, insert:

162G At the end of Part 12

Add:

263 Lower Lakes and Coorong emergency assistance

(1) As soon as practicable after the commencement of this section, the Government must determine an assistance package of a minimum of $50 million for Lower Lakes and Coorong communities to help farmers, small businesses, tourism and community sectors to respond to the crisis caused by the lack of water.

(2) Payments of assistance in accordance with a scheme determined under subsection (1) are to be made from money appropriated by the Parliament for that purpose.

There has been a lot of discussion, particularly over the last few months, about the Lower Lakes and the Coorong. Indeed, I participated in one of the inquiries that went to the Senate Standing Committee on Rural and Regional Affairs and Transport looking particularly into the state of the Lower Lakes and the Coorong and into what arrangements might be necessary to assist. It looked at, initially, the state determining whether there was any water able to go south to the Lower Lakes and the Coorong and what steps governments should take to remedy the situation. One of the recommendations that came forward from coalition senators at that time was that there was a very distinct need for assistance for the Coorong and the Lower Lakes given the very dire situation that they were in.

With this amendment we are intending to require the government to determine an assistance package of a minimum of $50 million for the Lower Lakes and the Coorong. This is to assist communities, farmers, small businesses and the tourism and community sectors to respond to the crisis which has been caused by this lack of water. We think it is an entirely appropriate amendment. We believe that the financial assistance that would then be put forward from the government would go a significant way to alleviating the hardship being experienced by the people in that region at the moment.

**Senator FISHER** (South Australia)

(10.02 am)—I have a question for the minister that may be related. Minister, I want to ask about the definition of ‘conveyance water’ in the bill. I am sure you are very familiar with it. I am referring to schedule 1, item 2, page 12, lines 22 to 24 of the bill which defines conveyance water as:

… water in the River Murray System required to deliver water to meet critical human water needs as far downstream as Wellington in South Australia.

Minister, can you explain the intent of the inclusion of the words in that definition ‘as
far downstream as Wellington in South Australia’?

Senator WONG (South Australia—Minister for Climate Change and Water) (10.03 am)—I assume the senator is aware of what conveyance water is—I was actually asked by a senator in a division the other day what it is. It is additional water to the water that is used required to ensure delivery. So you need to release more water than you actually need at the other end, for obvious reasons, because of the losses on the way. These words were agreed through the IGA process, including with South Australia; this is a critical human need of communities around the Lower Lakes below Wellington. The Senate would be aware that we are already funding a pipeline network for those purposes to the tune of $120 million to enable towns and communities, as well as irrigators who are currently relying on the Lower Lakes, to connect to a higher point on the Murray.

Senators may be aware that earlier this month I visited that area with Premier Rann and Minister Maywald to inspect and announce the work that had already been commenced, and in fact was proceeding quite rapidly, on 130 kilometres of pipeline to supply potable water to households and properties around Langhorne Creek and Raukkan and also to the Narrung and Pottal-loch peninsulas. The definition is agreed with South Australia and, in relation to the Lower Lakes and the Coorong, the critical human needs are being secured by the mechanisms, including a very substantial amount of funding, that I described.

Senator FISHER (South Australia) (10.06 am)—What is the effect of the inclusion of the words in that definition ‘as far downstream as Wellington in South Australia’ in both legal and practical terms, Minister?

Senator WONG (South Australia—Minister for Climate Change and Water) (10.06 am)—I am advised that Wellington is the end of the regulated system, and that portion of the river—as the senator would know—includes the off-takes for Adelaide’s water supply. My advice is that it is the end of the easily regulated system. I am not sure if that is, in fact, a term. The point is, the off-takes to Adelaide are upstream of Wellington, as the senator would know.

Senator FISHER (South Australia) (10.07 am)—Yes, I do know the off-takes for Adelaide are upstream. My question, in both legal and practical terms, relates to what is not upstream of Wellington, to what is downstream of Wellington. If I understand the definition of ‘conveyance water’ correctly, it means that conveyance water would not be provided beyond Wellington—in other words, conveyance water would not be provided under the bill for anything downstream of Wellington. Is that right?

Senator WONG (South Australia—Minister for Climate Change and Water) (10.07 am)—I anticipated that proposition, which is why I made the point about the $120 million the government is already putting in place to ensure potable water. I hope the Liberal Party in South Australia are considering very seriously their position on this bill. There are a range of significant advantages in the bill for South Australia. One of them is, for the first time, the formalisation of arrangements which have worked informally until now through the process that the former Prime Minister and other former ministers established, I think on Melbourne Cup day 2006, to deal with the extraordinarily low levels of inflow and to ensure that critical human needs were met. What we have achieved through this legislation—and South Australian senators from all sides of the chamber should be aware of this—is to obtain agreement from the states, including the
upstream states, to formalise those arrangements, thereby giving a far greater level of water security to South Australians.

I know the political point that Senator Fisher is trying to make. We are addressing the issue of the supply of potable water to the Lower Lakes communities, as I have described, through the pipeline mechanism. But this is not a problem where there is a quick and easy fix. It is certainly not a problem that her government was able to find any solution to in 12 years. We are facing an extremely difficult situation, as senators are aware, in the Lower Lakes and Coorong—as we are, frankly, at many wetlands upstream. Senator Fisher can try and make some points about a definition here, but the fact is that this is a more beneficial set of provisions for your state, Senator, than your government ever achieved in the Turnbull bill and, frankly, it should be supported.

Senator FISHER (South Australia) (10.10 am)—My point is not political. My question is trying to ascertain the basis of the critical human water needs being met for communities below Wellington in South Australia. I am endeavouring to understand the basis upon which—the reasons why—the definition in the bill does not contemplate conveyance water for critical human water needs going any further than Wellington in South Australia. I am trying to establish the reasons why it is seen fit to have those communities rely on external mechanisms rather than conveyance water and critical human needs water, which the bill sees as appropriate for the rest of the basin. I am trying to ascertain and understand the reasons why it is not seen as appropriate for communities downstream of Wellington in South Australia.

Senator WONG (South Australia—Minister for Climate Change and Water) (10.11 am)—The off-takes for Adelaide and the communities which I have outlined around the Lower Lakes—Langhorne Creek, Raukkan and the Narrung and Poltalloch peninsulas—will be upstream of Wellington. Second, in terms of delivery of water to those communities, given the situation in the Lower Lakes, the most reliable way of delivering water to those communities in the current circumstances is through the pipelines network that the federal government is funding.

Senator HANSON-YOUNG (South Australia) (10.12 am)—I would just like to put on record the Greens’ support for the coalition amendment here. I think it is really important that we do something to support the communities who rely on the Lower Lakes and the Coorong. We know that the lack of water has been devastating for people in those communities. We know that, even though we hate to talk about these things, the level of suicide in those communities is increasing. That is how desperate the situation is for people whose businesses are folding, whose schools are closing, whose lifestyles and livelihoods are on the brink of collapse because they just do not know what the future holds for them. We need to be doing whatever we can to support those communities, whether it is transitioning to other types of industries or whether it is giving them a bit of a stopgap measure until we get some increased flows. I am quite concerned—and I spoke about this in my speech in the second reading debate—that this bill as it stands does very little for the Lower Lakes and the Coorong area to respond to the desperate and urgent need for increased flows and support for the community. The opposition should be commended for this amendment.

Senator BIRMINGHAM (South Australia) (10.13 am)—I would just like to echo the words of Senator Nash and Senator Hanson-Young in particular in support of this amendment. The opposition has, particularly
throughout the course of the second reading and committee stage debates of this legislation, sought to recognise that many communities are stressed throughout the system. We have sought to do this by calling for structural adjustment funding throughout the basin system. We have sought to do this by calling for support for exit grants and packages that are necessary throughout the system. In doing so, we have recognised that, right throughout the Murray-Darling Basin system, many, many communities are under stress, particularly irrigation communities in my home state—and the home state of Senator Hanson-Young, Senator Fisher and the minister—of South Australia. We recognise that those Riverland irrigation communities are under particular stress and pressure.

But coming down through the system, with this, one of the last amendments that we propose, we recognise that the Lower Lakes communities are also under pressure. We have recognised, throughout the second reading debate and the committee stage debate, the strains that communities throughout the basin system have been facing. We now recognise that the Lower Lakes communities equally are feeling particular pressure. We have seen thousands upon thousands of South Australians protest in support of those Lower Lakes communities, protest in support of delivering additional water and additional support for the communities there, particularly the people of Goolwa, who are very passionate and are urging the state government and others to consider alternative proposals. This amendment tries to help them through the tough times. Just as we have sought to find ways to help irrigators through the tough times, we see this as a way to try to help those businesses, those tourism operators, those many people suffering throughout the Lower Lakes through the tough times. I commend the amendment to the house.

**Senator FISHER** (South Australia) (10.15 am)—I support the comments of my colleagues Senators Nash and Birmingham and also many of the sentiments put by Senator Hanson-Young. The state of the Lower Lakes and Coorong in South Australia has now been well documented and I think is recognised, as it needs to be. I recognise that there are measures in progress to provide some assistance for the Coorong and the Lower Lakes. The trouble is that it is becoming too little and we fear that it will be too late. These initiatives need to be progressed more quickly and, pending progress of those initiatives, the opposition sees the need for the sorts of measures outlined in this amendment.

It is very good that the South Australian government, particularly Minister Maywald, in the last couple of days has been able to announce the pumping into Lake Bonney in the Riverland in South Australia of 10 gigalitres of water over the next two months, designed to stop Lake Bonney from becoming acidic and in particular to save, for example, the Murray cod, which are attempting to continue to inhabit Lake Bonney. It is very good that the state government and the federal government through national initiatives have found a way to find 10 gigalitres of water to pump into Lake Bonney in the Riverland in South Australia in the next two months. However, I do note that through the recent Senate committee process coalition senators and others, including the Greens and Independents, were cognisant of evidence given to that inquiry that 30 to 60 gigalitres would be very prudent at the very least in respect of Coorong and the Lower Lakes. So it is very pleasing that state and federal governments through a national system have found a way to secure 10 gigalitres to be pumped into Lake Bonney in the next two months. It does raise a question as to when the same mechanism will be able to deliver
30 to 50 gigalitres required to help Coorong and the Lower Lakes.

Senator XENOPHON (South Australia) (10.18 am)—I indicate my support for this amendment and I support the sentiments expressed by Senators Fisher, Hanson-Young and Birmingham in relation to this. The people of the Lower Lakes are bearing the brunt of years and years of policy inaction and mismanagement of the river upstream, and I think it is entirely appropriate that there be this additional package. I think it would be churlish not to acknowledge the assistance that the Commonwealth has given in terms of the pipeline project and a number of other measures. That needs to be acknowledged and it is welcome. But I believe this additional assistance is warranted in the context of the additional pressures the people of the Lower Lakes have been facing, through no fault of their own, as a result of not only the double whammy of drought and climate change but also the fundamental issues of overallocation and of mismanagement of the river system upstream.

Senator WONG (South Australia—Minister for Climate Change and Water) (10.19 am)—I want to respond first to Senator Hanson-Young’s contribution. Senator Hanson-Young says the opposition should be commended. I want to place on record here that I think with respect to the Greens, or certainly from that comment from Senator Hanson-Young, they are becoming dangerously close to becoming apologists for the Liberal Party’s position and the National Party’s position on water. I hope that the Greens when they hold us to account also hold to account those opposite for failing to do anything for 12 years. I hope when they hold us to account they also hold the opposition to account for their criticism of water purchase, which I understood the Greens to support and which this government has had the courage, in the face of very significant opposition upstream, to continue. I hope that, just as the opposition is commended for moving an amendment, the Greens would also commend the government for, in the face of significant political opposition, continuing water purchases because we believe it is the right thing to do.

I hope when people criticise the government for its perceived failures that there is also a recognition of statements being made by opposition frontbenchers such as, ‘Minister Wong’s decision to buy $3.1 billion of water entitlements guarantees that communities currently in the worst drought in living memory will go from a natural drought to a Rudd-made drought.’ I hope those sorts of comments are the subject of criticism from the Greens and from Liberal senators like Senator Birmingham who say we should buy more. I hope when we talk about the Lower Lakes that Liberal senators who stood up in here and said that we should save the Lower Lakes will come out and condemn frontbenchers of their own party who say that we should open the barrages to the Lower
Lakes. But I have not heard Senators Birmingham and Fisher do that.

People criticise this government for seeking to move to free up water trading and to negotiate to remove the caps that limit that trading. I hope that those who think we should do that also criticise Liberal frontbenchers who criticise those efforts, such as Dr Stone, and say those caps should not be removed. So let us inject into this debate a little bit of fairness, a little bit of policy rigour, because I for one am tired of this debate not recognising the extraordinary inconsistencies of those opposite. Senators Birmingham and Fisher can come in here and talk about the Lower Lakes but refuse to roll people in their own party who are critical of water purchases.

We had the extraordinary situation in Senate estimates where we talked about a 1,500-gigalitre target. I think the Greens have been on record wanting double that. My recollection, Senator Brown, is that in one of the elections you indicated 3,000 gigalitres. That is reasonable for an environmental party to push; I accept that. We had Senator Joyce saying, in front of everybody, to Senator Birmingham, ‘We don’t support that.’ This is the alternative government. What is their policy? What is their position? So all I say to those from an environmental perspective who commend the opposition is this: I trust you will be reasonable enough and fair enough and recognise your own constituency enough to also condemn them for the great many things that they either failed to do or still are not supportive of.

In terms of this Lower Lakes issue, the same sorts of inconsistencies by those opposite that I have already outlined are really most patent. Senators, you cannot come in here professing that you do everything for the people of the Lower Lakes and professing that you want to see water returned to that area unless you are prepared to do the hard yards and roll those in your party who are opposed to water purchases and who have described this purchasing as a ‘Rudd-made drought’. You cannot have it both ways, because ultimately people will judge you by what you do, not by what you say. You speak but you do not act. You do not come out and say, ‘They’re wrong.’ You do not come out and say, ‘This is our position.’ You do not come out and say: ‘Yes, we will do this. We will purchase. We will ensure that those upstream know that the Victorian Liberals and the National Party members who are opposed to purchases, those who are critical of purchases, do not represent the views of Mr Turnbull and the party.’ I actually think Mr Turnbull does think we should do something, but clearly he and those around him are unable to control the members of the National Party who are running this debate in the Senate and the members of their own front bench who are more interested in speaking to their local constituency and not dealing with the big problem.

Opposition senators interjecting—

Senator WONG—The reality is the honourable thing to do is not to play local politics and build on people’s fears but to be upfront with them about what reality we confront in the basin. This government is actually prepared to do that. We are prepared to say upfront to these communities: ‘Yes, we think you have to adjust. We think all in the Murray-Darling Basin have to adjust. That is why we are doing what we are doing. That is why we are prepared to purchase.’

In relation to the assistance that is proposed here, my recollection is that, although those opposite never made a formal funding decision to allocate structural adjustment, they are now requiring that of this government. I assume, given their position, that they would want that taken out of the water
purchase entitlement. I do not know, in terms of this agreement or this position between the Greens and the Liberal Party, whether that has been agreed. I want to make the point that this government has done more in one year to assist this community than was ever done by those opposite. I would hope, just as Senator Hanson-Young commends the Liberal Party for an amendment requiring $50 million to be paid—

*Senator Hanson-Young interjecting—*

**Senator WONG**—Senator Hanson-Young, I hope you will also commend this government for having the courage to purchase water for the first time—I hear silence. I hope you will also commend this government—

**Senator Bob Brown**—Mr Temporary Chairman, I rise on a point of order. I do not know what the minister had for breakfast but the point of order here is that she must not encourage the flouting of standing orders by talking across the floor. She should be addressing her remarks through you, Mr Temporary Chairman.

**The TEMPORARY CHAIRMAN**—Yes, a point well made, Senator Brown.

**Senator WONG**—Through you, Mr Temporary Chairman, I note Senator Hanson-Young is prepared to interject to criticise the government but not when I say that perhaps it is reasonable for the Greens, consistent with their policy position, to commend the government for having the courage to be the first government in the nation’s history to purchase water. I hope also that when people talk about the Lower Lakes they might recognise that, while those opposite can move an amendment, we are actually the ones putting money on the ground. We have committed some $320 million in total to the Lower Lakes and Coorong: $120 million for piping to secure the water needs of the communities which were discussed in the previous amendment, plus $200 million for a lasting solution as to the Lower Lakes for the South Australian government. We are working with them to develop that. These are important reforms.

We know that much more needs to be done. Yes, I do have a personal understanding of this area, Senator Hanson-Young, but the problems in the Lower Lakes are problems which are endemic to the system as a whole, particularly the southern basin. And, as many environmentalists have said, this is the most obvious example of the legacy that we—all of us—have inherited, particularly this government in having to address it, and is most obvious at the Lower Lakes. There are a great many wetlands, a great many environmental assets upstream which are also under pressure. I have spoken before in this place about a visit which made a great impression on me: I went to Bottle Bend near Mildura and an irrigator talked to me about the fact that the acidity levels in that billabong were equivalent to sulfuric acid.

There are environmental pressures throughout this system. That is why we are committed to purchasing: because that is the fastest way to return water to the system. Again, it is opposed by many of those opposite. Senator Nash can get up and say, ‘We support water purchases but in the right environment, in the right circumstances.’ There are many on your frontbench who do not, and they are on the record as saying it. That is why we are investing in infrastructure return efficiencies to the river, and I notice again that the shadow minister and others have been critical of the government for not rolling this out. Firstly, we have rolled out more than was ever the case under the previous government. Secondly, we know that investing in irrigation infrastructure is the right thing to do to ensure that the economic base for those communities continues to be viable and productive. But we also know that
savings yielded through that process take far longer to be returned to the river simply by virtue of the nature of getting those projects out.

I simply want to place on record here that this is a government that takes this issue seriously and that is undertaking practical measures to address these issues. We are making progress. A solution will not be achieved overnight and I do not think anybody—if they are honest—in this chamber believes that. We do not support this amendment. We point to what we are already doing and that is providing $200 million for a lasting solution to the Lower Lakes, $120 million for pipelines and a continued program of returning water to this system in order to improve its health, because that is what is demanded in the basin.

Senator HANSON-YOUNG (South Australia) (10.32 am)—The minister said that we need to inject a little bit of fairness into the debate. I would also like to inject a little bit of history into the debate. The Greens for years and years have been calling on calling for action for the Murray, for the entire basin. We have continuously criticised whatever side of this chamber was in government and called for better action, for better foresight in seeing what we needed to do to tackle the overallocation issue and its implications for communities further downstream.

I would like to remind the minister that when this bill first came into play it was the Greens that were moving amendments to strengthen the arrangements, to strengthen the impact on saving the river Murray, saving the basin and giving communities hope and security. There was very little support from either side—either the then opposition, the Labor Party, or the then government, the coalition. So as well as injecting a little bit of fairness, I think we also need to inject a little bit of history.

Even as recently as yesterday, the Greens stood up and acknowledged the good things the government has done on this issue over the last 12 months. But we are talking here about an amendment to give some immediate relief to those communities in the Lower Lakes and the Coorong. We acknowledge that things are happening slowly and further down the track in terms of trying to offer security to these communities, but this package is about trying to relieve the pressure that the communities feel now—and it is important to do that. It is a shame that the minister cannot see that that is an important thing that these communities need right now. They need this support right now. They need action right now.

Senator BIRMINGHAM (South Australia) (10.34 am)—We have probably been debating this bill for close to 10 hours, through the second reading stage and the committee stage. Throughout those debates, at numerous intersections, Minister Wong has accused us and others in the chamber—but particularly those of us on this side—of playing politics with the debate. She has accused us of being overtly political throughout the debate. Perhaps the pot should look in the mirror at the kettle, because we just had 15 minutes of overt politics, of totally playing politics. However, it is not for the first time in this debate by any means—for the umpteenth time, the minister has felt the need, particularly during this committee stage, to hector and lecture on political point-scoring matters.

I would like to think that we will have robust debates here and yes, Minister, we will actually have robust political debates too—you know that and I know that; we are all grown-ups and we all recognise that politics will be engaged in just as the issues will be engaged in—but do not lecture us on the one hand about playing politics and then give us
15-minute political lectures on the other hand.

The minister knows full well that the process of funding buybacks was started by Mr Turnbull. The minister knows equally well that it was also not long before the election that the Water Act was passed; it was passed only a couple months prior to the election. It was one of the last pieces of legislation dealt with in this chamber. Minister, you know that. You know very well that that is the case. If it had not been for the fact that Minister Turnbull had allocated $10 billion of funding in last year’s budget, you would not have managed to get the funding through the razor gang this year. You would not have managed to get the extra funding that was required to have that $10 billion to be able to do these things. So you owe Mr Turnbull a lot for the fact that he put the process in place. He started things going. He started the ball rolling. Indeed, if your Victorian Labor Party counterparts had not been playing politics with this issue throughout the course of last year, throughout the lead-up to the last election, more may well have been able to be done. The minister obviously feels like she needs a little bit more loving today. She wants some commendation. Minister, I am happy to commend you.

Senator Wong—Not from you!

Senator BIRMINGHAM—No, Minister, please.

Senator Wong—Mr Temporary Chairman, I rise on a point of order. In case anybody is under any illusions, I require no loving from Senator Birmingham.

The TEMPORARY CHAIRMAN (Senator Humphries)—There is no point of order.

Senator BIRMINGHAM—I thank the minister for that interlude. I am sure my finance, who is looking—I hope—to meet me on the aisle in a week or two will not be getting too concerned about any arrangements that we may have. Nonetheless, I will not give the minister the loving but I will give her the commendation. I commend the minister for the fact that building has started on the pipelines to the Lower Lakes and the Narrung Peninsula for the communities there.

It is noteworthy that two years ago, when this proposal was first made, the South Australian government were not calling for those pipelines to be built. Of course they were not calling for them to be built, because at that stage the water levels in the lakes were higher than they have been this year. At that stage, the process was in crisis but not so much in crisis. At that stage, they did not see piping water to the lakes as the solution; this year they did. And I recognise that the government acted and acted quickly to support them.

The question I pose, though, is: if the government can build infrastructure for the Lower Lakes communities so quickly, if it can fund that infrastructure so very quickly and get works happening on the ground so quickly, why can’t it do it elsewhere? That infrastructure is important. It provides water security for the Lower Lakes communities, but it does not actually save any water. It is not the type of infrastructure that is about increasing efficiencies in irrigation elsewhere throughout the system. It is purely infrastructure that provides security to the communities. That is critical, but it is not the water-saving infrastructure that is so desperately needed throughout the rest of the basin. If non-water saving infrastructure can be put on the ground and started within a matter of months then why can’t other projects where hundreds of gigalitres of water could potentially be saved—the Menindee Lakes and elsewhere—be done in months, not years? That is what we should expect from the gov-
ernment when it comes to delivery across the basin, not just in that one community.

What was noteworthy throughout the minister’s 15-minute contribution was that she barely mentioned the communities. Senator Hanson-Young was right to draw the debate back to the Lower Lakes communities and to the point of this very amendment, which is to ensure that some tangible support is provided to those communities. The tangible support that we have called for is to assist irrigators and communities throughout the basin to help them survive the tough times they are in. The minister was right when she said that progress would not be achieved overnight. That is why these communities need support. They need support because progress will not be achieved overnight, and they need support to be able to sustain themselves into the future. They need support so that all the businesses do not close their doors, so that all the farmers do not leave their properties, so that the marinas are not put out of business by all the boats having to be taken to other marinas, so that the tourism industry and other industries in the area are not decimated, so that the schools stay open and so that the facilities of those communities are sustained through the difficult times until progress is made. That is why this amendment is critically important. That is why it should be supported by this house. I commend it to the Senate.

Senator WONG (South Australia—Minister for Climate Change and Water) (10.41 am)—Just very briefly, I will not counter all the issues that Senator Birmingham put on the record. Robust political debate—I am up for that. I do not think you would accuse me otherwise, Senator Birmingham. But I think there is a political game playing that people should be called on when what they say and what they do are so different. I note that Senator Birmingham, despite his professed support for purchases et cetera, has always failed to condemn or clarify that his government’s position is not that articulated by Dr Stone—

Senator Birmingham—I wish I had a government.

Senator WONG—Sorry, opposition. Thank you, Senator Birmingham—that his party’s position is not that of Dr Stone, Mr Cobb or Senator Joyce. The relevant shadow minister, who clearly does not have the internal party political power to deliver this, has never come out and said that Senator Joyce, Dr Stone and Mr Cobb et al are wrong. So my point about playing politics is that people will judge this government and the opposition, as the alternative government, not simply by what they say but by what they do.

I think a number of times in this debate I have been in the rather odd position of being the defender of the Turnbull act. I do acknowledge that Mr Turnbull commenced this process. He did not achieve very much but he did commence this process, and he did get an act through that Senator Nash, on behalf of your party or your opposition, has moved amendments to. We have defended the Turnbull legislation on certain—

Senator Hanson-Young—Are you an apologist for the coalition?

Senator WONG—No. I leave that to you, Senator Hanson-Young. It is not a perfect act. That is why we have brought forward a very substantial bill to amend it. But there are a couple of key areas where the opposition has moved amendments to its own act. When this comes back from the lower house it will be a test of Mr Turnbull’s leadership. It will be a test of whether those in the opposition who have professed concern on these issues are actually able to stand up to those also on that side who do not want water purchases and who want to continue to oppose it. It will be a test of Mr Turnbull’s leadership as to whether or not those extreme ele-
ments inside the coalition will scuttle a piece of legislation that is so important.

I accept that there are differences of views about whether this bill goes as far as people want. There are differences of views from Senator Xenophon and from the Greens, and a different set of differences of views at times from the Nationals and the Liberal Party. But, ultimately, when this comes back from the lower house the test will be whether you are prepared to back genuine reform or whether you are prepared to scuttle it in the interests of playing politics. I would suggest that that latter path will really demonstrate that what you say and what you do are poles apart.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.46 am)—Senator Hanson-Young has really covered the field, but I just want to comment on the minister’s approach to this. As the minister said, the Greens have been campaigning to get action on the Murray-Darling Basin for many years, and that included a 3,000-gigalitre guaranteed flow. We campaigned for that because the scientific evidence was that one quarter of the flow should be guaranteed for environmental purposes. If only the Howard government had acted on that we would not now be looking at a river system in such a parlous state. Indeed, it may have helped if the Labor opposition at the time had been apologists for the Greens and supported the position that we were putting.

We are now debating a very serious piece of legislation; it is a major piece of legislation for the minister. But the whole role of this Senate and its committee system is to, through the community, improve legislation where we can. If the government or the opposition have amendments that the Greens consider meritorious then we will be supporting them. I can make the opposition relaxed by telling them that we are not going to be defrayed from that by Minister Wong’s talk about apologists. The only thing that we do not want to do is have to apologise to the community for denying good amendments on the basis of a political stand. This amendment has merit for the reasons that Senator Hanson-Young and Senator Birmingham have outlined. It is our intention to support it.

Senator HANSON-YOUNG (South Australia) (10.48 am)—I understand that there are other things happening and that there are other things further down the track that you will do to try and support the sustainability of those local communities. But, if you are not prepared to support this rescue package for the immediate relief that these communities need, what is it that you will do?

Senator WONG (South Australia—Minister for Climate Change and Water) (10.48 am)—We can open up this debate again. We are opposing this because we are already doing things for this region—very substantially more than is proposed. This was a Mayo by-election Liberal Party policy stunt, and I think that people know that. We are already putting substantial amounts of assistance into that region. We have taken a consistent position that the best way of ensuring viability for communities throughout the basin—because we as a government have to look at the basin as a whole—and the best way governments can use taxpayers’ funds to assist communities in the basin is to investment in irrigation infrastructure so that we can ensure the economic base of the communities that are reliant in part or substantially on irrigation and so we can assist them to adjust to a future where there is less water. I am not sure that I can add anything further. I understand the position that your party is taking and I have outlined the government’s position.

Question put:
That the amendment (Senator Nash’s) be agreed to.

The committee divided. [10.54 am]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.......... 36
Noes.......... 24
Majority....... 12

AYES
Abetz, E. Barnett, G.
Bernardi, C. Birmingham, S.
Boswell, R.L.D. Boyce, S.
Brandis, G.H. Brown, B.J.
Bushby, D.C. Colbeck, R.
Cooman, H.L. Ferguson, A.B.
Fielding, S. Ferravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Hanson-Young, S.C. Heffernan, W.
Humphries, G. Kroger, H.
Ludlam, S. Macdonald, I.
Mason, B.J. McGauran, J.J.
Milne, C. Nash, F.
Parry, S. Payne, M.A.
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Siewert, R.
Troeth, J.M. Trood, R.B.
Williams, J.R. Xenophon, N.

NOES
Arbib, M.V. Bilyk, C.L.
Brown, C.L. Cameron, D.N.
Collins, J. Crossin, P.M.
Farrell, D.E. Feeney, D.
Forshaw, M.G. Furner, M.L.
Hogg, J.J. Hurley, A.
Hutchins, S.P. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Polley, H. Sherry, N.J.
Stephens, U. Sterle, G.
Wong, P. Wortley, D.

PAIRS
Adams, J. O’Brien, K.W.K.
Cash, M.C. Carr, K.J.
Cormann, M.H.P. Pratt, L.C.
Eggleston, A. Conroy, S.M.
Ellison, C.M. Moore, C.
Johnston, D. Bishop, T.M.

Joyce, B. Evans, C.V.
Minchin, N.H. Faulkner, J.P.

* denotes teller

Question agreed to.

Senator SIEWERT (Western Australia) (10.57 am)—I want to move some clauses of amendment (1) on sheet 5660 separately from the rest of amendment (1).

The CHAIRMAN—As long as you explain to the chamber what you intend to do, you can move it that way.

Senator SIEWERT—Thank you. I intend to move clauses 10 and 11 of amendment (1) separately, but I will speak to the whole of amendments (1) and (2).

The CHAIRMAN—That is quite okay.

Senator SIEWERT—by leave—I move Greens amendments (1) and (2) on sheet 5660 together with the exception of clauses 10 and 11:

(1) Page 326 (after line 32), at the end of the bill, add:

Schedule 4—Amendments related to the recognition of Indigenous water rights

Water Act 2007

1 After paragraph 3(d)

Insert:
(da) to give recognition to Indigenous water rights and delivery of cultural flows; and

2 Subsection 4(1)

Insert:

cultural flows are water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations.

3 Subsection 4(1)

Insert:

cultural water has the meaning given by section 6A.
4. **Subsection 4(1) (definition of relevant international agreement)**

After paragraph (h), insert:

(ha) the United Nations Declaration on the Rights of Indigenous Peoples;

5. **After section 6**

Insert:

6A **Cultural water**

(1) **Cultural water** comprises water entitlements derived from cultural flows.

(2) Cultural water within the Basin can be used for the following purposes:

(a) empowerment and social justice—water is delivered to Country by the peoples;

(b) growing native plants;

(c) protecting and hunting animals;

(d) song, dance, art and ceremony;

(e) spiritual sites;

(f) improved cultural, economic and health outcomes through the provision of food, medicines and materials for art.

6. **At the end of section 21**

Add:

**Basin Plan to recognise the right to cultural water**

(8) The Basin Plan must be prepared so as to recognise cultural flows and provide recognition of entitlements to cultural water.

Note: cultural water has the meaning given by section 6A.

7. **After paragraph 22(3)(e)**

Add:

(ea) the recognition of cultural flows and entitlements to cultural water; and

8. **At the end of subsection 28(1)**

Add:

; and (f) recognise cultural flows and entitlements to cultural water.

9. **At the end of subsection 178(3)**

Add:

; (h) Indigenous water rights and cultural flows.

12. **At the end of subsection 202(7)**

Add:

; or (e) uses water as cultural water.

Note: cultural water has the meaning given by section 6A.

(2) Clause 2, page 2 (table item 4), omit “Schedule 3”, substitute “Schedules 3 and 4”.

These amendments are related to the recognition of Indigenous water rights. This is a very important issue. Members of this chamber will be aware that the Greens have been pursuing the issue of cultural water flows for quite some time. I moved some similar amendments previously, when we were debating the Water Act 2007. This very importantly deals with not only Indigenous water rights but also establishing cultural flows in the Murray-Darling Basin.

Indigenous nations are, and have been since time immemorial, connected to and responsible for their lands and waters. The peoples of every Indigenous nation obtain and maintain their spiritual and cultural identity, life and livelihood from their lands and waters. In addition, Indigenous nations each have responsibilities and obligations under their Indigenous law and custom to protect, conserve and maintain the environment and ecosystems in their natural state to ensure the sustainability of the whole environment.

In November 2007, Indigenous peoples for the nations represented within MLDRIN, which is the Murray Lower Darling Rivers Indigenous Nations, met in Echuca to come to an agreement on the definition of cultural flows and to discuss the impacts and benefits. The Indigenous nations of the Murray-Darling Basin have been working on this for quite some time and are very keen to ensure that their water rights are recognised and that
cultural flows are provided for in the Murray-Darling Basin plan.

I would just like to remind the chamber that it is often cited that within Australia the percentage of land in the Indigenous estate is around 20 per cent. However, in the Murray-Darling Basin, Indigenous peoples currently hold less than 0.2 per cent of the land, despite comprising around four per cent of the basin’s population and despite land reforms such as the New South Wales Aboriginal Land Rights Act 1983 and the Native Title Act 1993. In other words, Aboriginal people’s connection to and involvement in the management of the Murray-Darling Basin has been extensively broken over a considerable period of time. We believe it is about time that we start recognising this and making provisions for Indigenous water rights and cultural flows.

The right to access water is supposed to be provided by the National Water Initiative and other Commonwealth and state mechanisms, but many of these are contingent upon positive native title determinations. Given the current disparity of Aboriginal land tenure within the Murray-Darling Basin, we believe access to water for Indigenous peoples has been severely limited and restricted. Unfortunately, until relatively recently, cultural flows have not been on the political agenda in Australia. They have not been part of the discussions on natural resource management. So, while Australia has moved on and is finally starting to recognise environmental water flows and the importance of natural resource management, we still have not adequately incorporated Indigenous knowledge, expertise and experience into natural resource management. As I said, making provision for cultural flows, in particular, still has not been fully and properly incorporated into our decision making.

MLDRIN defines cultural flows as water entitlements that are legally and beneficially owned by the Indigenous nations and that are of a sufficient and adequate quality and quantity to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous nations. Cultural water flows have many benefits and impacts. These include empowerment and social justice, where water is delivered to country by the peoples. They further include growing native plants, protecting and hunting animals, song and dance, art and ceremony, spiritual sites and improved cultural, economic and health outcomes through the provision of food, medicines and materials for art.

The difference between environmental and cultural water is that cultural water is the Indigenous peoples themselves deciding where and when water should be delivered, based on traditional knowledge and aspirations. This ensures that Indigenous peoples are empowered to fulfil their responsibility to care for country. The question of volumes needed under cultural flows needs to be acknowledged and scoped. More work needs to be done. MLDRIN acknowledges that that work does need to be done. But of course we need to make provision for cultural flows in the first place in order to ensure that there will be water available once the decisions have been made and the calculations have been done on the issue of volumes.

I would like to point out that there are a number of international conventions and processes through which there has been recognition of Indigenous rights to water. They include the International Convention on the Elimination of All Forms of Racial Discrimination 1965. A number of the provisions of this convention relate to the rights of Indigenous peoples to access and use their traditional water resources. For example,
paragraph 5 of recommendation 23 of the convention says:

The Committee especially calls upon State parties to recognise and protect the rights of indigenous peoples to own, develop, control and use their common lands, territories and resources and, where they have been derived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.

The World Heritage Convention also recognises cultural landscapes and their links to conservation and diversity. Included within that is a new category of cultural landscapes. Despite the emphasis on the recognition of Indigenous concepts of culture and appreciation of the sacred nature of these particular sites, a recent analysis of the implementation of the provision for the protection of cultural landscapes revealed that there is a Eurocentric nature to the sites listed and cites the fact that there has been a gap in recognition of the role of Indigenous peoples and Indigenous involvement in those cultural landscapes. The International Covenant on Economic, Social and Cultural Rights also applies here, as does the Convention on Biological Diversity 1992 and of course the draft declaration on the rights of indigenous peoples.

So the issues around cultural flows are recognised internationally. Australia is still to adequately deal with the issues surrounding cultural flows. Cultural flow issues certainly were not given recognition in the Water Act 2007 and are not included in the Water Amendment Bill 2008. We believe it is time that we start recognising these issues and start including a legislative basis for cultural flows. We acknowledge that further work needs to be done on how to implement cultural flows, but we believe we are far past the time when we should have given this issue a legislative base.

The Greens amendments on sheet 5660 relate to a number of issues, including the recognition of Indigenous water rights and the delivery of cultural flows, and we have used the MLDRIN definition of ‘cultural flow’. The amendments provide mechanisms by which we can start to incorporate cultural flows in the act and then start to implement those commitments, if the amendments are accepted, into the legislation—for example, establishing an Indigenous water subcommittee including people with expertise in Indigenous water rights and cultural flows. The amendments include recognition of cultural flows and also how we start to include cultural flows in decision making. I commend the amendments to the chamber.

Senator NASH (New South Wales) (11.08 am)—The coalition has looked very closely at these amendments. We have the greatest respect for the intent with which the Greens have moved the amendments, but we are not convinced that there will not be unintended consequences and, as a result, we will not be supporting them.

Senator WONG (South Australia—Minister for Climate Change and Water) (11.08 am)—I thank Senator Siewert for having a discussion with us about moving clauses 10 and 11 on sheet 5660 separately to enable some discussion to occur. Indigenous water rights are an issue that I am personally aware of and about which I have had some discussions with Indigenous representatives. I understand that the Murray-Darling system has enormous cultural significance for many Indigenous people and communities within the basin. I think this is a timely reminder that the natural wealth of the Murray-Darling system has sustained countless generations of Indigenous people but, by contrast, the people and cultures that have come to Aus-
tralia in recent times have only taken a century or so to preside over the current crisis we see in the Murray-Darling. What I have suggested to Senator Siewert is the consideration of clauses 10 and 11. The remainder of the amendments, at this stage, probably go a little beyond where I think the current discussion and Basin Plan arrangements are at. I am very conscious of the importance of considering Indigenous issues in relation to basin water resources through the Basin Plan process. In my view, the best approach to take would be to allow that to occur through the development of the Basin Plan and the consultation that is expected and required.

Senator SIEWERT (Western Australia) (11.11 am)—I thank the minister for her comments. Obviously, we are extremely disappointed that the government does not think it can go as far as accepting the recognition of Indigenous water rights in the Water Act. We think this is a particularly important issue. Aboriginal people have been disconnected from the management of the Murray-Darling Basin over the last 200 years, and these amendments seek to re-establish and give a legislative base to Indigenous water rights. We think this is a particularly important issue. The opposition cannot support these amendments.

Question negatived.

Senator SIEWERT (Western Australia) (11.13 am)—Before I move clauses 10 and 11 of Greens amendment (1), I would like to explain the amendments we will be making to them. Clause 10 refers to the Basin Community Committee and the subcommittees that exist under the Basin Community Committee. It seeks to establish an Indigenous water subcommittee. Our amended clause will read: ‘an Indigenous water subcommittee to guide the consideration of matters relevant to the basin’s water resources’.

Senator WONG (South Australia—Minister for Climate Change and Water) (11.14 am)—I am sorry, Senator Siewert; I think this might be my fault. Can I suggest that it read: ‘to guide the consideration of Indigenous matters relevant to the basin’s water resources’.

Senator SIEWERT (Western Australia) (11.14 am)—In order to clarify, I will amend my amendment. I apologise for this amendment writing on the run. The wording is: ‘An Indigenous water subcommittee, to guide consideration of Indigenous matters relevant to the basin’s water resources.’ I also seek to amend clause 11, which deals with the basin community committee’s membership, by changing the wording to: ‘An individual with expertise in Indigenous matters relevant to the basin’s water resources.’

The TEMPORARY CHAIRMAN (Senator Humphries)—So you are seeking leave to move those two items together as amended?

Senator SIEWERT—Yes

Leave granted.

Senator SIEWERT—I move:

Clause 2, page 2 (table item 4), omit “Schedule 3”, substitute “Schedules 3 and 4”.

Page 326 (after line 32), at the end of the bill, add:

Schedule 4—Amendments related to the recognition of Indigenous water rights

Water Act 2007

10 After paragraph 202(3)(b)

Insert:

and (c) an Indigenous water subcommittee, to guide the consideration of Indigenous matters relevant to the Basin’s water resources;

11 At the end of subsection 202(5)
Add:
; and (c) an individual with expertise in Indigenous matters relevant to the Basin’s water resources.

Senator NASH (New South Wales) (11.15 am)—I can indicate the opposition’s support for the amended amendment.

Senator WONG (South Australia—Minister for Climate Change and Water) (11.15 am)—I can indicate that the government is supportive of this amended amendment. I thank the Greens for their discussion with us on the wording to enable that to occur. The only caveat I place on it is that, as I indicated to Senator Siewert, given the nature of this bill we obviously will need to have consultation with the states on these issues. With that caveat, the government indicates its support for the amendment.

The TEMPORARY CHAIRMAN (Senator Humphries)—I put the amendment that Senator Siewert has moved as amended.

Question agreed to.

Senator NASH (New South Wales) (11.16 am)—I move opposition amendment (1) on sheet 5657:

(1) Schedule 1, item 1, page 11 (after line 2), after subsection 18H(1), insert:

(1A) Until the States of New South Wales, Victoria and South Australia have each achieved the objective of increasing the flow of water in the River Murray as required by the Living Murray Initiative, these States’ water savings programs are to be independently audited and, as soon as the saved water becomes available, the water must be allocated to the Living Murray Initiative and must not be used for any other purpose.

This amendment goes to the Living Murray Initiative. People will be very aware of these water saving programs under this initiative. The amendment is aimed at preserving saved water for environmental flows. The amendment’s purpose is to ensure that water saved through the Living Murray Initiative is not held back from the Murray but is returned to it. It is a very straightforward amendment. We think it is an entirely appropriate amendment to include in what has been a very long list of amendments. It actually enforces the government’s own EPBC decision that the north-south pipeline should not use Living Murray water.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.17 am)—For the reasons that Senator Nash outlined, and at the great risk of being seen to be an apologist for the opposition, the Greens will be supporting this amendment. We believe that the integrity of the catchment should be maintained and that, at this critical time when there is simply not enough water, water should not be taken out of the basin. There are perfectly good, and much wiser, options that the Brumby government has not undertaken—and I do not mean the building of a desalination plant but the use of the water that falls over metropolitan Melbourne much more wisely—that would obviate the need for this diversion of critically needed water out of the Goulburn River basin and, therefore, out of the Murray-Darling Basin as a whole.

Senator WONG (South Australia—Minister for Climate Change and Water) (11.18 am)—I want to make a number of points about this amendment. I want to make the point, first, that there is already an audit process covering the Living Murray, known as the Independent Audit Group. On the issue of the protection of water from the Living Murray, there are detailed arrangements in place for this purpose, such as the provisions of the Living Murray Business Plan and the Living Murray Intergovernmental Agreement. Section 28(1) of the Water Act for the Basin Plan, the environmental water-
ing plan, has the purpose of safeguarding existing environmental water. I also make the point that, on completion of the water recovery project, an independent review is undertaken by one or more members of an independent review panel to ensure there is evidence of project implementation and outcomes, and this report comes to the ministerial council, which I chair, before the savings are listed on the formal register. So the agreements associated with the Living Murray already provide that this water is not used for other purposes.

In terms of Senator Brown’s apologist comment, I simply would make the point that this was a Howard government initiative—in 2004, from memory—but, obviously, this amendment was not moved by them in the context of their Water Act 2007. But I would make the point that we do not regard this amendment as necessary, given that there are already very clear audit requirements and intergovernmental agreement requirements that those opposite were actually party to as part of the Living Murray arrangements—and which they are seeking to supersede now they are not in government. Regarding Senator Brown’s point about the Sugarloaf, this amendment, as I understand it, is not needed to ensure compliance with the EPBC conditions. We had a lengthy discussion, Senator Brown, and I cannot recall for what aspect of that discussion you were in the chamber, but I am sure you are aware that there are compliance provisions under the EPBC Act which are directed at ensuring compliance with those conditions. So, as I understand it, this amendment is not necessary in terms of compliance with EPBC conditions.

The advice I have, given what I have read out in terms of Living Murray arrangements, is that it is unlikely to alter the audit mechanisms that are already being applied pursuant to the intergovernmental arrangements which apply under the Living Murray and which the previous government was party to. I would make the point that this directly goes to issues that are relevant to the states, so the states would have a direct interest in the amendment that is before the chamber, and it certainly was not something that was discussed or negotiated in the context of the intergovernmental agreement. So I come back, in terms of the opposition, to your consideration of how much risk you are prepared to put this legislation to, and that will be a decision that awaits you when this returns from the lower house.

Question agreed to.

Senator NASH (New South Wales) (11.22 am)—I move opposition amendment 2, on sheet 5657:

(2) Schedule 2, item 50A, after subsection 21(10), insert:

(10A) To avoid doubt:

(a) the delivery of water for the initiatives of the Water for Rivers project was an existing use of water prior to 3 July 2008; and

(b) the taking of water for the initiatives of the Water for Rivers project is not contrary to subsection 21(8); and

(c) the construction and operation of water infrastructure for the initiatives of the Water for Rivers project is not contrary to subsection 257(1); and

(d) all commenced and provisionally agreed Snowy River environmental flows are preserved and excluded from the provisions of subsections 21(8), 21(9) and 257(1).

This amendment put by the opposition is about the Water for Rivers project. There were some concerns raised with us. We believe that none of the amendments moved on the bill would have an impact on the various sources of environmental water for the Snowy River, but we recognise that those
concerns have been raised and that it has been requested that some confirmation be provided that the amendments could not be misinterpreted. This amendment simply confirms the pre-eminence of the Snowy flows.

Senator SIEWERT (Western Australia) (11.23 am)—I would like to register the Greens support of this amendment. We also have sought advice as to whether the amendment that was moved last time would in fact adversely impact on this project. Our advice is that it does not but, to ensure that it is absolutely abundantly clear that it does not, we think this amendment is worthwhile and we will be supporting it.

Senator WONG (South Australia—Minister for Climate Change and Water) (11.23 am)—It is self-evident that the opposition have had to hurriedly put a further amendment in to protect the Snowy River Water for Rivers arrangements in light of the amendments they previously moved in their attempt to criticise the Sugarloaf issue and make that the central issue of water reform in the Murray-Darling Basin. This demonstrates exactly one of the things that we said was a problem with that amendment: that it is all about political gains and trying to make the pipeline the political issue—not the broader and much more significant policy issue of the Murray-Darling. The chamber needs to be aware that this is an amendment which recognises—from the opposition’s own pen—the risk and unintended potential consequences of their amendments in relation to the pipeline, which were clearly politically motivated. I will put that on the record, because I think there is no doubt about that, looking at the history—in particular, looking at the Victorian Liberal Party position and what motivated that. The government does not support this amendment. We did not support the previous amendments that this amendment is trying to fix up.

Senator NASH (New South Wales) (11.25 am)—Again the minister raises the point of political commentary, but certainly it is becoming very obvious that that is coming from the other side of the chamber and not this side. I would just point out to the chamber that it is highly appropriate. We are merely clarifying an amendment so that there can be no doubt.

Question agreed to.

Senator NASH (New South Wales) (11.26 am)—I seek leave to move amendments (1) and (2) on sheet 5677 together.

The TEMPORARY CHAIRMAN (Senator Humphries)—Is leave granted? Senator Brown, are you refusing leave?

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.26 am)—Before I refuse leave, I ask that the mover agree to the two parts being dealt with separately, because they are different matters.

The TEMPORARY CHAIRMAN—We can divide the question. We can move them together and then divide the question so that we can vote on them separately. I propose to do that.

Senator BOB BROWN—I would like to have the two sections dealt with separately.

The TEMPORARY CHAIRMAN—Do you mean debated separately?

Senator BOB BROWN—Debated separately and dealt with separately.

The TEMPORARY CHAIRMAN—Then you should refuse leave.

Senator BOB BROWN—Then, I do so.

The TEMPORARY CHAIRMAN—Leave having not been granted, we will proceed with those two amendments separately.

Senator NASH (New South Wales) (11.27 am)—I move opposition amendment (1) on sheet 5677:
Schedule 2, item 161A, subsection 255A(1), omit “exploration”.

I indicate to the chamber that, subsequent to further discussions with stakeholders, an amendment is appropriate here to more clearly reflect the intent of the amendment.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.27 am)—The Greens will not be supporting this amendment. Yesterday we moved that there be an independent assessment of the impact on the aquifers and the catchment of mining exploration and/or mining before licences be granted. That is a very sensible proposition. I say at the outset: where is the logic in having a mining corporation being allowed to proceed to exploration and then doing a water study, which would show that mining interrupted and degraded the aquifer, and therefore the productivity of the farmlands above, so that the mining is halted? Clearly, the study should be done before any licence for exploration or mining is carried out. That is the clear logic that was accepted by the coalition yesterday. Overnight, the Australian Mining Industry Council and the big miners have moved in, alarmed by this sensible proposition, and have talked the opposition, in particular the National Party, into reneging on the decision to support this amendment.

I understand the lobbying power of the mining industry as against the farming industry, but I do not understand the logic of saying that we will require a study of the impact of mining on the catchment but not before exploration takes place. The mining industry itself ought to look at this because it is being invited to expend large amounts of money on exploration at the risk that an independent study will show significant risk and the mining cannot then go ahead.

The second amendment here is the important one that I will be asking the opposition to look at again, because it effectively says that no matter what happens or what is found in an independent study it will not impact on the go-ahead for mining. I want to quote from the debate yesterday. Firstly, Senator Williams said:

We need to have a proper independent inquiry into underground aquifers in these areas … It is vital that the truth be brought out about these prime agricultural areas. It is vital that this study be undertaken;—

that is, to have a study before licences are granted for exploration—
hence I offer my support for this amendment.

He goes on:

... that we will support them on this matter, create the numbers so that this amendment will succeed.

Well, overnight, suddenly the support is gone, the numbers are going and the people of Caroona have lost that support. Senator Joyce said:

As Senator Williams rightly said, there is no point in compromising the prosperity of the future and our capacity to feed ourselves for the sake of a 30-year window in mining.

Yet these amendments being put forward by the National Party today would do just that. Senator Joyce went on to say:
I hope the wonderful people of Caroona and Breeza Plains and the Haystack Plains realise that, for something to succeed, you need at least 39 senators to vote for it and you need more than half of the lower house to vote for it. I hope that is recognised and taken back to the people of the Liverpool Plains, and I hope we get a chance to read about it in the Northern Daily Leader.

I hope if it is in the Northern Daily Leader that Senator Joyce will read it, because overnight he has reneged. Suddenly the numbers that are necessary to get this vital amendment up—and, yes, it did come from the Independent member for New England, Mr Windsor—are very different. Senator Boswell said:

I find it very unusual that we seem to be getting closer and closer to the Greens. We have not seen eye to eye with the Greens on this for the last seven or eight years.

I suspect, actually, that we have seen eye to eye but there is some political mystique here which is getting into the commonsense that is required to ensure that, in the interests of farmlands right throughout the Murray-Darling Basin, a proper study of the impact on aquifers is done before exploration or mining takes place. Nevertheless, Senator Boswell went on to say:

As Senator Barnaby Joyce has pointed out, you can have all the best ideas in the world, and you can have right on your side, but if you do not have the numbers it does not mean one iota.

Well, right was on the side of the people of Caroona yesterday, and right is on the side of the people of Caroona today. The only thing that has changed is the National Party, which is withdrawing the numbers. It is going from right to wrong. It is going from right to wrong because they do not have the lobby firepower in this place. The Australian Mining Industry Council and BHP Billiton have got at the National Party overnight and have changed their minds. And the people of Caroona still have right on their side. It is the National Party and the coalition that are wrong here today. It is the Australian Mining Industry Council, which has might on its side, which is overriding the people of the Breeza Plain, who have right on their side.

Senator Boswell went on to say:

Today we have delivered the numbers in the Senate to carry this amendment, and that will give them—

the farmers—
some sort of satisfaction. I again point out to those people that Independents can do nothing.

That was aimed at Mr Windsor. I think it will be left to the people of the Liverpool Plains as to who is doing something for the farmers as against the big mining companies who have suddenly got hold of the coalition and changed its mind. Senator Boswell said:

Anyone can huff and puff, but it is only the numbers that will deliver on these issues.

He is not here today. There is no huffing and puffing going on. There is nothing. And suddenly the numbers are not going to deliver. Senator Nash said:

It is about a study to be undertaken about due diligence.

I totally agree, because due diligence means you do the study before the exploration which leads to the mining takes place. You do not wait till after the exploration and you certainly do not insert an amendment like her second amendment, which says: 'If you find that the aquifers are going to be interrupted and significant damage will occur to the potential of the farmlands and their productivity, you don’t have to do anything anyway. Remove that clause.’ Senator Nash went on to say:

What we are seeing here is a very sensible measured approach to ensuring that the operations of mining in rural areas do not impact in an unward fashion on the water system.

She was right yesterday and she is wrong today. The only thing that has happened is
that, overnight, BHP Billiton has got to the National Party. Yesterday Senator Nash said:
Perhaps in the Senate the minister might be rather more agreeable to what is a very sensible, very pragmatic and very good amendment.
But what was ‘very sensible, very pragmatic and very good’ yesterday is today neither sensible, pragmatic nor good. Suddenly this amendment is being eviscerated by the National Party because that is what BHP Billiton and the Australian Mining Industry Council want.

Let me go back to the basis of the amendment here, which came from Mr Windsor, who has done a lot of work on this and who has simply said it is good sense to do a study on the impact on the aquifers and the catchment—because the above-ground water and the below-ground water are interconnected—before you go to explore or mine. That compelling good sense has not changed overnight. I will tell you what has changed, Chair, the Mining Industry Council and BHP Billiton have said: ‘Suddenly this is for real. Suddenly this is important. This amendment may be adopted by the government in the House of Representatives in order to get this important piece of legislation through, because it is an amendment of compelling good sense. We’d better get down to the National Party and the Liberal Party and change it from good sense to bad sense.’ That is what has happened, and I am disgusted by it. I appeal to the National Party to get back to what was described just yesterday by Senator Nash as ‘very sensible, very pragmatic and very good’.

We will, of course, oppose this amendment because it means that the impact of mining on the groundwater systems would not have to be studied before exploration proceeded, the implication being that, once exploration had found that the mining should go ahead—and big mining corporations rarely put millions into exploration if they are not intending to mine—you then do a study. The second amendment here says, ‘And when you’ve done the study, if you find a significant impact is going to occur to the water system, you don’t have to take any notice of that. We abolish that clause as well.’ I will be moving for some consistency when we get to the second amendment. I think this is a very sad outcome. The principle has not changed but the people have. The representation in here has changed because the mining lobby got at the National Party overnight. That is not good enough.

Senator NASH (New South Wales) (11.42 am)—Perhaps I could just very briefly respond. There has been no deviation as Senator Brown is indicating, in spite of his rather lengthy dissertation. One of the things that I have always admired about the Senate is its ability to accommodate improvements in legislation where they are identified. This is one of those cases where, again, I am very impressed with the Senate’s ability to do that. The revised amendment very clearly still echoes the intent of the first, requiring the studies to take place before mining commences.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.43 am)—That is the problem, isn’t it? Senator Nash says the revised amendment ‘echoes’ the original amendment. We do not want an echo; we want substance. It is the National Party that is the echo—of yesterday. The substance has gone overnight. All we are left with is an echo. What are the farmers going to think about that? Let me just explain this to the committee. Farmers at Caroona—and these are not deep green activists; these are quality, long-term, committed farmers on the Breeza Plain—have gone out of their normal routine productive lives to blockade BHP Billiton coming onto their land to drill for what is obviously going to be a massive sub-
terranean mining operation. Their last resort was to put themselves in the way.

Let me tell you that they did not do that lightly. They effectively may end up on the wrong side of the law because the natural law of protecting their farmlands comes first and because they are outmanoeuvred in Sydney when it comes to the legislature, which empowers the mining corporations to cut their fences and move in and do exploration. This process, by the way, is being echoed, to use the senator’s term, up on the plains near Dalby, where there is another mining exploration underway which farmers object to. And we are going to see more of it.

What the farmers sensibly want is a study of the impact on their farms of that mining if and when it comes. That is what the amendment that I brought forward, through the grace of an earlier amendment of Mr Windsor in the House of Representatives, will do. But it is being emasculated by the National Party and the Liberal Party here today. You have got to feel for those people sitting with their tent and their stalls and their display and what it means to them out in the bush south of Gunnedah today. They were not able to come here overnight and fight what they know is a manifest wrong. They are disempowered by this process. Who is going to argue that these are not quintessential Australians standing up for their patch of land, being overrun by—a minister objected to this term yesterday but I will use it again—the big end of town. It is unfair, and they deserve the numbers of representatives who stand up for the bush to be in here today. A big issue was made of that yesterday, that the coalition was giving them the numbers. I am not shy to say that I will make a big issue of the fact that those numbers evaporated overnight and we are left, in Senator Nash’s terms, with an echo of the defence of those people’s rights which we heard here yesterday.

Senator WONG (South Australia—Minister for Climate Change and Water) (11.47 am)—In terms of some technical issues, we put on the record yesterday our view about the best way to deal with these issues, and I set out the provisions in the act which enable the basin plan to deal with the assessment of interception activities such as mining. I pointed to the sections of the existing act which enabled that to occur. We do think the amendment represents some improvement in terms of one of the technical issues that I raised. We retain concerns particularly in relation to amendment (2), which I understand has not been moved. We do retain concerns generally about the constitutional validity of the second part of the original amendment.

I want to make a broader point about what is happening here, in two parts. First, when this amendment was first supported by the National Party—and I notice, Senator Brown, that yesterday you had a lot of friends on your right, on the opposition benches, who are noticeably absent from the chamber now—I wondered whether Senator Nash and others had actually consulted with their Liberal Party colleagues, particularly from mining states, and the shadow resources minister. I wonder whether overnight they have worked out they have got a problem and now they are moving an amendment and clearly reneging on an arrangement they had, from what Senator Brown said, with the Greens.

More broadly, what we have seen is that the historic coalition between the Greens and the Liberal and National parties that the shadow minister spoke about yesterday was historic in part for its briefness. Less than 24 hours later, we see that there is already a breach of what was agreed yesterday, certainly a change in position. People can make their own judgement, but I suggest that this brief and historic coalition was good for the
Liberal Party to try and get them on television looking a little bit green for a period of time but actually does not deliver very much at all, other than good pictures. It remains our view that those on the other side are not interested, from what they have said in here, in behaving in relation to this bill in a way that recognises their own leader’s position in the past, and I assume now, and the responsibility to act on these future challenges.

I assume that we will separately debate the second amendment. We have been consistent, and Senator Brown has also been consistent. We think this is an important issue, but we do believe the best way to approach it is the way I outlined yesterday. I will not re-traverse those arguments.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.51 am)—The minister has pointed to a section of the bill which she says would enable a study of the impact on the water catchment to be undertaken if the authority were to so ordain. I ask the minister: will she or will the government seek to have an independent study of the potential impact on the aquifer of BHP Billiton’s plan undertaken? And is she prepared to have the Commonwealth fund such a study, to at least clear the air on the potential impact on the Liverpool plains of the proposed massive mining operation that BHP Billiton have in mind?

Senator WONG (South Australia—Minister for Climate Change and Water) (11.52 am)—Senator Brown, in fairness, I think I answered those questions yesterday. You may not have got the answer you wished, but I responded directly to the same questions yesterday. We have been debating this for a very long time. I only propose to refer you to my previous answers on this, because we did traverse this in detail.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.53 am)—I cannot allow that to pass. It is a complete duck. I expected a bit more directness from the minister than that. This is a changing landscape. It is a moveable feast, because there is inconsistency on the opposition benches. But there have been a number of proposals for a study of the impact on the integrity of the groundwater in the Gunnedah Basin. I refer to the proposal from the Liverpool plains Land Management Committee which involved three universities and other independent assessors. Part of the proposal states:

… a clear, scientifically-robust statement of the areas where coal development might proceed with least impact on the water resources and land productivity of the region will be available for the approvals/assessment process.

It should be there before the assessment process. My understanding is that it means exploration. The proposal goes on to state:

This project approach provides a comprehensive water resources assessment process—spatial risk assessment underpinned with sound natural resources science directed and implemented by a community group—whose principles would be applicable in many situations of competitive development. It will be the first time that an extensive model of the geological and hydrogeological context of the Liverpool Plains has been achieved. This alone will significantly improve the basis upon which natural resource management and development decisions are made.

I simply ask the minister if she will look favourably at this submission from the Liverpool plains Land Management Committee, because it is a reasonable submission. And if her asseveration that the prospect is there in the legislation for such a study to take place is correct, here is the upfront test case. Ministerial authority, government authority, carries a lot of weight here. This is an utterly disappointing day for the bush and for the people of the Liverpool plains. I ask the minister: will she not have the resources of government brought to bear—she says the way
is open for it—and will she not commit the government to ensuring that this study is undertaken?

Senator WONG (South Australia—Minister for Climate Change and Water) (11.56 am)—Senator, with respect it was not a duck; it was a recognition that we have been in the chamber for hours. I think even the opposition would agree that I gave a quite detailed response to those questions on the last occasion. I was pointing out that we do not believe the amendments that were originally moved by you and supported then by the opposition were necessary, because the effect of interception activities could be dealt with through the Basin Plan in the circumstances I outlined, and the basin authority obviously has the independent authority to enable that to occur if it sees fit.

I also gave you information that the National Water Commission was funding a project to develop tools and guidelines for the assessment of groundwater mining. My recollection is that involves in the order of $2 million. I also recollect that the Liverpool plains is one of the case studies that is being looked at. Senator Brown, I am not going to—and, in terms of appropriate decision making in government, I hope you would not expect me to—make a decision on funding a project on the basis of a senator asking me a question about it across the chamber. What I will say is that these are issues that do require attention. The act enables them to be given attention for the reasons I outlined. We also need to do more work to enable better assessments within states about the impacts on groundwater of mining. So that is the purpose of the project that I funded.

I appreciate Senator Brown’s views on this. We have been consistent about the approach we think ought to be taken in relation to this issue. We were consistent when this previously came up. We retain the same position.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (11.58 am)—I will not delay the committee, but I will just say that if we cannot debate a matter like this and get an answer out of government on the floor of the chamber, the public is left to think that what is more important is those lobbyists who come in the stilly, stilly night, as happened last night with I think Mr Mitch Hooke and the Minerals Council of Australia, to change the whole position and outcome of legislation against the wider interests—

Senator Wong—We haven’t changed our position.

Senator BOB BROWN—Senator Wong objects and says she hasn’t changed her position. The problem is she does not have a position. When I asked specifically about ensuring that a study be done, the position was the same as the National Party’s and the Liberal Party’s. That is the problem, isn’t it?

Let me end this by saying we heard in here yesterday from the Nationals—most of whom are missing now—that Independents are not worth their salt and you have to have the numbers. Well, if ever in this parliament there was a demonstration of the value of an Independent committed to his electorate, it is the value of Mr Tony Windsor to his electorate of New England. I am a Green. I would describe Mr Windsor as a conservative, and one thing he wants to do here is conserve the farmland. We are perhaps on opposite ends of the spectrum. But he is dinkum in this, and he is standing up for his electorate. It is just a pity that that electorate has been sold out in this way in the last 24 hours.

Question put:

That the amendment (Senator Nash’s) be agreed to.
Thursday, 27 November 2008  

[12.05 pm] The committee divided. (The Temporary Chairman—Senator S.P. Hutchins)

Ayes............ 37
Noes............ 6
Majority........ 31

AYES

Bernardi, C.  Bilyk, C.L.
Birmingham, S.  Boswell, R.L.D.
Boyce, S.  Brown, C.L.
Bushby, D.C.  Cameron, D.N.
Colbeck, R.  Collins, J.
Crossin, P.M. *  Farrell, D.E.
Fielding, S.  Ferguson, A.B.
Fifield, M.P.  Fierravanti-Wells, C.
Furner, M.L.  Fisher, M.J.
Hutches, S.P.  Hurley, A.
Landy, K.A.  McNevin, A.
McLucas, J.E.  Nash, F.
Parry, S.  Payne, M.A.
Polley, H.  Ronaldson, M.
Scullion, N.G.  Stephens, U.
Sterle, G.  Troeth, J.M.
Trood, R.B.  Williams, J.R.
Wortley, D.  

NOES

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

* denotes teller

Question agreed to.

Senator NASH (New South Wales) (12.08 pm)—I move opposition amendment (2) on sheet 5677:

(2) Schedule 2, item 161A, omit subsection 255A(2).

In doing so, I want to raise a couple of points. It has been quite interesting that over the last few days accusations about playing politics have been made from one side of the chamber across to the other. But I do not think I have seen a more extreme example of that than what Senator Bob Brown has done this morning. The issue of water is very serious. There is no doubt about that. In spite of Senator Brown’s new-found professed love for farmers coming to the fore, it is the very fact that he could turn this into such a political statement—indicating that his Independent friend from New England might be able to solve the problems of the world by himself—that makes it quite simply untrue. There were also comments made about the Nationals and some changes of position. This amendment seeks to ensure that the outcome that Senator Brown so clearly referred to before, about farmers being able to have a study undertaken on the effects of mining on groundwater and surface water systems before mining commences, still stands.

Senator Brown can use as many words and take up as much time as he wants to. It is entirely his prerogative to grandstand on this issue and to play politics, but that does not help the people of Caroona. It does not help the people right around the Murray-Darling Basin who are extremely concerned about water, which, to the end, is what this debate is all about. This is about the Water Amendment Bill 2008 and all the issues related to it. I would suggest to Senator Brown that he might like to stop playing politics with this issue. He knows full well that the substance of the amendment remains. That an independent expert study will take place before any mining commences is what we are putting forward in this amendment today. Senator Brown may well take up a whole lot more time. As the minister and I have been here for some 10 or 11 hours, a bit more time will not make any difference. Take up as much time as you like, Senator Brown. We will stay as long as you want. But it does not matter what you say or what you indicate. The substance of our position remains. Yesterday my Nationals colleagues indicated very clearly that their position to have a study undertaken substantively remains.
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.11 pm)—The Australian Greens oppose this amendment absolutely. I move Australian Greens amendment (1) on sheet 5678 to oppose amendment (2) as circulated:

(1) At the end of the amendment, add ‘, substitute:

(2) Where a substantial risk is identified licences must not be granted.’

This amendment is to ensure that we are very clear about this issue. Senator Nash said, ‘There will be a study done before mining is undertaken,’ under the previous cave-in amendment of the coalition. That does not change the fact that there is no longer any need for a study to be sensibly done. The bush common sense that she agreed with yesterday is that the study should be undertaken before exploration takes place. The amendment that we now have from Senator Nash means that yesterday’s position—jointly held by the Greens, the Nationals and the Liberals that, where a substantial risk is identified, exploration licences must not be granted—is abolished. When you look at that, together with the amendment that the Nationals have just moved, you get to the point where the amendment from Senator Nash would mean that, where a substantial risk is identified, licences for mining are not altered. You can identify a substantial risk but the mining can go ahead.

My amendment is simply to accept, as the numbers beat us, that a study does not have to be undertaken before mineral exploration; it now has to be undertaken before mining. My amendment would mean that, where a substantial risk is identified, the mining licence must not be granted. I ask the coalition to look at that carefully. If what Senator Nash says is true then my amendment should be supported. It is consistent with the last amendment that was made. We have lost the fight to ensure that a study is done before exploration is undertaken. It now has to be undertaken, as Senator Nash says, before mining is carried out. My amendment is to ensure that, where a substantial risk is identified in that study, the licence for mining is not granted.

I see that there are hurried discussions between Senator Nash and Senator Wong. That is fine. But I think this is very important. What I am doing here is ensuring that, where a substantial risk is identified, the licence to go ahead with the mining is not granted. I beseech the coalition to support this amendment. It is entirely consistent with what Senator Nash has been putting to the committee this morning. It is a very important and logical amendment and I would expect that the government would also support this amendment. What is the point of having a study if a substantial risk is identified and it does not make any difference?

The CHAIRMAN—The question is that Greens amendment (1) on sheet 5678 to amend opposition amendment (2) on sheet 5677 be agreed to.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.16 pm)—I would like to hear from Senator Nash as to whether or not the opposition is going to support this amendment to ensure that where a substantial risk is identified the mining licence is not guaranteed.

Senator NASH (New South Wales) (12.16 pm)—I indicate to Senator Brown that we will not be supporting the amendment.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12.16 pm)—That is shocking. And the government should hang its head in shame as well. I note that Senator Wong is laughing about that, but let me—

Senator Wong interjecting—
Senator BOB BROWN—Whatever you were laughing about it is inappropriate at this time.

The CHAIRMAN—Order! Do you want to take a point of order, Senator Wong?

Senator Wong—Mr Chairman, I rise on a point of order. That is incorrect, Senator Brown. That was not what I was laughing at and I do not appreciate being verballed in that way.

The CHAIRMAN—Senator Wong, that is not a point of order.

Senator BOB BROWN—You are quite right, Chair; it is not a point of order.

This is shocking. Here we have a situation where yesterday we had the opposition supporting the requirement that there be an investigation—a scientific study—of the impact on water catchment of mining operations before those operations took place, including exploration. Then, where a substantial risk was identified, the mine would not go ahead. Now we have got the government and the opposition turning down this absolutely pivotal requirement. Where damage to the farmlands in the short term or long term can be identified, and there is a substantial risk of that damage, both the big parties say, ‘Well, we will leave that to the lobbying power of the mining organisations.’ This is a dreadful sell-out of common sense, let alone the farming communities that are getting the wrong end of this outcome.

Senator Nash may say that I am making a political statement here. Well, I am. I am a politician elected not just to get better outcomes for the people of Australia but to surely levy common sense in situations like this. I ask Senator Nash, or Senator Wong: how can you justify turning down a parliamentary requirement that where substantial risk is identified to farmlands, like those of the Breeza Plain or the Liverpool plains or indeed anywhere in the Murray-Darling Basin, there should not be action following that to protect those farmlands from that identifiable substantial risk? What is the point of doing a study if you then do not act upon it? It is incredible. This is an astonishing turn-around. I understand the excruciating position Senator Nash is in, and I ask her if she would say who it was from the Minerals Council of Australia—was it Mr Mitch Hooke or someone else—who so effectively got to the coalition overnight with this extraordinarily negative outcome.

The CHAIRMAN—The question is that Senator Brown’s amendment on sheet 5678 to opposition amendment (2) on sheet 5677 be agreed to.

The committee divided. [12.24 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes…………… 6
Noes…………… 40
Majority……… 34

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

NOES
Barnett, G. Bilyk, C.L.
Birmingham, S. Bishop, T.M.
Boswell, R., L.D. Boyce, S.
Brown, C.L. Bushby, D.C.
Cameron, D.N. Colbeck, R.
Collins, J. Crossin, P.M.
Farrell, D.E. Feeney, D.
Ferguson, A.B. Fierravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Furner, M.L. Hogg, J.J.
Hurley, A. Hutchins, S.P.
Kroger, H. Landy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. Nash, F.
Parry, S. * Payne, M.A.
Polley, H. Ronaldson, M.
Ryan, S.M. Scullion, N.G.
Sterle, G. Troeth, J.M.
Having spoken for only a short time previously, and a number of weeks ago, I wonder if I could query the time allocated. I thought that I had spoken for five minutes and that I had 15 minutes left. Is that the case?

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop)—We will double-check your time allocation. When we have done that we will reset the clock if necessary. Otherwise you have four minutes at this stage.

Senator CROSSIN—I may well be seeking leave to incorporate the rest of my speech if that is the case. The passage of this bill is now required more urgently to restore the permit system in the Northern Territory as soon as possible. This is, for most Indigenous communities in the Territory, an essential piece of legislation. At present, the public can access communities by air or sea without a permit. Aboriginal people have made it clear that restoration of the permit system is a major priority. On passage of this bill, the permit system will be restored with a few minor changes. For example, the minister will make the necessary determination to allow access to communities for journalists and government contractors acting in their professional capacity.

The removal of the permit system was overwhelmingly opposed by Indigenous people and the land councils in the Northern Territory. I outlined that in my previous contribution to this debate. Of course, this was totally ignored by the previous government in their arrogant approach to most matters by that stage. The Senate Standing Committee on Community Affairs received a submission to the inquiry on this legislation from the Law Council of Australia, which related information that they had been able to obtain only under freedom of information regarding the previous Minister for Families, Community Services and Indigenous Affairs and...
responses to his discussion paper about the permit system. The previous minister produced a totally irrelevant and simplistic so-called discussion paper with a range of absolutely spurious reasons for needing to remove the permit system. As pointed out by the Law Council of Australia in their submission:

… no correlation or relationship had been established by the former Government or its agencies linking the permit system to child sexual abuse in Aboriginal communities.

Paedophiles had not been protected by the permit system. Journalists with a sound reputation were not denied access to communities. Business was not deterred; in fact, far from it—businesses abound on Aboriginal land. Businesses range from small art centres, to which buyers freely come; tourist ventures; and many large mining operations, bringing in huge revenue. So the permit system, as it was, put up few barriers to access, but enabled, for example, police at Maningrida to stop vehicles and, if they had no permit, to search them. In several cases, they actually prevented grog and drug runners from harming the community.

It is not in the least clear how the previous government seriously believed that removal of the permit system would do anything to protect the children. One can only suspect that it was ideologically driven, especially considering that not one single response to the discussion paper produced by the former government said to remove it. A few recommended some amendments but, despite this, the Howard government abolished the permit system. Obviously it was an ideological move, not one based on evidence. The Law Council of Australia also stated in their submission that, of the 80 responses to the discussion paper and community consultations, all of them revealed unanimous support for no change to the permit system. Even two mining companies that were consulted did not want the permit system abolished, but one wanted some amendments.

In his second reading speech to the original bill in 2007, the former minister for Indigenous affairs claimed that it was disturbing to find that people had approached department officials after community consultations to say they supported the removal of the permit system but had been too scared to say it in public. Never once did the minister reveal the true findings of these permit consultations, which were provided to him well before this speech. Not surprisingly, he hid them well. Furthermore, the Law Council stated in their submission that they found no record in any of the documents provided by FaCSIA to support the previous minister’s claim that community members had made any unofficial or private submissions outside of the public consultations.

The power to determine who may and may not enter their land is viewed by Aboriginal people as an important part of their land rights, but never, in my experience, has that right been abused. Let me give a bit of a history of the permit system under the Aboriginal Land Rights Act. The permit system has operated in relation to Aboriginal land under the Aboriginal Land Act since 1978, and it has legal and policy purposes. Legally, the scheduling of Aboriginal reserves, which were crown land, as freehold under the Aboriginal Land Rights (Northern Territory) Act 1976 bestowed a right on the owner—for example, a land trust—to exclude any person for any reason, other than Aboriginal people with traditional rights of access. This right was recognised by Justice Woodward in his 1974 report as being integral to the concept of Aboriginal ownership of land. Justice Woodward recorded that it was strongly supported at the time by both the Northern and Central land councils on behalf of their Aboriginal constituents, and the right as regulated by the permit system continues to be
strongly supported by them. Justice Woodward recognised that, in contrast to ordinary grants of freehold, a regulatory scheme was required because it was necessary for persons with a legitimate or justifiable purpose to be able to access Aboriginal land—especially communities but also for road maintenance, public works, mining and other developments—and that such persons should not be subject to arbitrary or capricious exclusion.

The statutory scheme in the Aboriginal Land Act of the Northern Territory thus regulates the right to exclude, ordinarily encompassed by an estate in freehold, by ensuring that certain persons have a right of access—for example, members of parliament—and other persons have a right to apply for access and have it properly considered by the minister or the land council in accordance with law. To ensure flexibility, traditional Aboriginal owners may also grant a permit regarding their country—section 5(2)—and the land councils may delegate their power under section 5(4). In practice, although they have no statutory role, Aboriginal communities or community councils facilitate permits in conjunction with traditional owners.

From a policy perspective, the scheme is intended to ensure that Aboriginal communities and people are not subject to breaches of privacy or inappropriate or culturally insensitive actions by unauthorised persons on Aboriginal land. It is also intended to ensure that persons with a legitimate or justifiable interest may enter Aboriginal land. Such inappropriate actions are not uncommon and, in a non-court context, have included inappropriate presence or reporting regarding culturally sensitive matters such as funerals or ceremonies, unauthorised photography, and indefensible misrepresentation regarding important issues. Professor Jon Altman, from the ANU, in his statement to the Senate committee made this point:

I have not seen evidence that journalists have been excluded. I have seen one very well publicised case where a journalist was prosecuted for being at an Aboriginal community without a permit.

And he went on to suggest that any landowner would be upset if journalists had free access to their land. And it should not be a surprise that the one journalist mentioned by Professor Altman was one of the only people to speak against reintroducing the permit system. Other than that, there has been support from a wide range of journalists for the introduction of this permit system.

The Senate Standing Committee on Community Affairs heard from Mr William Tilmouth, the CEO of Tangentyere Council. At the hearings in Alice Springs, Mr Tilmouth said:

... there is no evidence that the permit system has resulted in harm to children. On the contrary, it appears to have assisted police in controlling undesirable people entering communities—

That statement was later supported by the Northern Territory Police Federation in the hearings in Darwin. In summary, Mr Tilmouth said that the permit system gives a community the ability to weed out undesirables and move them on, whether Indigenous or non Indigenous—for example, where there was too much alcohol involved or where there were family disputes.

Mr Ron Levy, representing the Northern Land Council, as a witness to the Senate committee in Darwin, said that there were reasons other than permits that meant journalists did not go to court cases in Aboriginal communities, including the fact that the important cases ended up in Darwin or Alice Springs anyway and it usually cost a lot to travel to communities. He stated that, of 50 applications from journalists, he is aware of only two having been refused by the NLC. He cited the example of the NLC Chairman being at an event at Yirrkala on the day of
the hearings—a community with open access—but very few journalists were interested in going to the event, as it would take up the whole day with travel and cost a lot, all for one news item. So, as the NLC has pointed out, it is very rare that we see journalists seeking to go into these communities, as cost alone prohibits them. Mr Levy provided some figures which showed that about 30,000 people live on Indigenous communities in the Territory and the NLC alone issues about 22,000 permits a year. So permits are hardly very restrictive. The CLC and other land councils gave evidence that they in fact have issued many more than that.

It is quite hard for non-Indigenous people to fully comprehend what their land means to Indigenous people, who have a totally different viewpoint and different values about land. We tend to value land primarily for its economic value or worth. We buy our block of land, which is then part of our ‘wealth’, and we rate that worth in dollar terms. For Indigenous people, their land is not valued in dollar terms, but rather as cultural and spiritual assets to be guarded and looked after for future generations. They believe they came from the land and they will return there. They have an intimate knowledge of their land. The rivers, the creeks, the valleys and all major features are associated with some part of their history, ancestry, beliefs and culture. This may be a beach where special ancestors came ashore or a valley created by the Rainbow Serpent. Whatever it is, it has a special meaning for Indigenous people. One has only to visit communities such as Ngukurr, Groote Island, the Dhimirru land management group in Nhulunbuy or the people in Maningrida and their land management groups to see the pride they have in managing their land. They see the importance of control over who can enter and for what reasons is equally important—and this should be understood by all fair-minded Australians. The request to reinstate the permit system should be supported by this federal parliament. This part of the bill is very strongly supported by Indigenous people and organisations—and, as I said, this aspect of the bill should be supported and passed.

In finishing, I want to remind the Senate that this bill also contains measures to prohibit the broadcasting of certain R18+ pay TV channels in the prescribed areas under the intervention, but only if the community so requests. Finally, some further minor sections amend omissions from the initial bills—in particular, with respect to licensing some road houses as stores and allowing for the transport of some prohibited items through the prescribed areas.

If we truly want to ensure that we develop a new relationship with Indigenous people in this country, we need to listen to what they are saying—and I direct my comments specifically to Senators Xenophon and Fielding. The reinstatement of the permit system is something that Indigenous people in the Northern Territory want, and they have strongly made representations to this Senate, to those senators and to me to ensure that this is what is granted through the passage of this bill.

Senator PAYNE (New South Wales) (12.44 pm)—I rise, I suspect at this point very briefly, to address the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008, and if, as I assume, we are to move to non-controversial bills at 12.45 pm, I seek leave to continue my remarks later.

Leave granted.
The ACTING DEPUTY PRESIDENT (Senator Mark Bishop)—Order! It being 12.45 pm, the debate is interrupted and we move to non-controversial legislation.

MIGRATION LEGISLATION AMENDMENT (WORKER PROTECTION) BILL 2008

Second Reading

Debate resumed from 26 November, on motion by Senator Ludwig:

That this bill be now read a second time.

Senator TROOD (Queensland) (12.45 pm)—I want to make some remarks in relation to the Migration Legislation Amendment (Worker Protection) Bill 2008. This bill seeks to strengthen the legislative framework relating to sponsorship of noncitizens coming to work in Australia under what are commonly called 457 visas. It is important legislation, given its focus. It is important because 457 visas have proliferated since they were first introduced in 1997-98. In the first year that they were introduced, 30,880 visas were issued, and in 2007-08 the figure rose to 110,570 visas. So there has been a fourfold increase in the use of these visas over the period of time in which they have been available.

In Queensland, my own state, they have consistently constituted about 17 per cent to 18 per cent of the visas issued nationally—8,000 in 2006-07 and 9,800 in 2007-08. There are currently 19,000 employers making use of 457 visas and they are spread very widely throughout the economy, largely in the professions and also in the trades. The largest categories in my own state, I note, are in the health and medical professions—nurses and particularly medical practitioners. So the health professions in particular, in Queensland at least, have taken full advantage of the opportunities presented by the 457 visas. With numbers so large, it is clear that there is a need to strengthen the legislative framework under which they operate.

The opposition supports this objective and, indeed, it supports the general thrust of the bill. We do have some concerns, however, and, in voicing these concerns, I suppose it is important that I draw attention to the fact that there has been some argument that the 457 visa process has been abused. It has been argued that there has been some bad behaviour in relation to these bills. Before the Senate committee, an argument was put by the representatives from the CFMEU that there were several instances of abuse that could be noted, although the evidence seemed to be a bit vague as to the nature of these abuses. The statistic that arrests my attention is that, over the period of 1997-98 to now, something in the vicinity of 340,000 visas have actually been issued, and there seems to be a relatively small number of abuses that have been recorded. This is not in any way an avalanche of abuses. There has not been rampant contempt for the rules under which the visas have been issued. So I think we should be cautious about accepting the claims that are being made in the public domain, particularly on behalf of the union movement, that this system is in need of substantial change. But there is a need for greater regulation, and the opposition supports that proposition.

The particular concern that I have about it is the kind of legislative technique—if I can describe it in that way—which is being used in relation to the way in which this bill has been introduced. Several witnesses before the Senate committee drew attention to the fact that, whilst the bill laid out a framework of activity, it provided little detail as to the nature of the obligations which employers, and indeed employees, might be obliged to undertake in the future, and these details were going to be provided in the regulations.
Mr Kessels from Fragomen, who gave evidence before the committee, said:

What we are all doing is sitting around making submissions and discussing a bill which is essentially just a framework, but the real substance that is going to make the real difference is unknown at this stage, and that is the fundamental problem.

I agree with that proposition. I do think it is a fundamental problem. Mr Kessels’ evidence was by no means the only evidence following that particular line. In fact, there were many witnesses who came to the committee who expressed precisely the same kind of concern about the structure of this piece of legislation.

The difficulty here is that we have no clear idea of the nature of the regulations which might be provided. To say the least, in my view, this is an undesirable way of proceeding. I suppose that there is a possibility that when the coalition was in government we may have, on a few occasions, taken this particular course of action. There may have been occasions when we took this course of action, but I do not necessarily approve of that course of action either. So I do not think that the government can take any comfort from the fact that this may have been a way of proceeding in the past. If this were a trivial matter then we might let it pass through, but we are actually talking about the rights of people and we are talking about issues which are fundamentally important to the way in which we manage businesses and the way it affects our economy. These rules and regulations, when they eventually emerge, could in fact have quite a profound impact on both employers and employees. But we do not have, as Mr Kessels said, any real clear idea about how onerous they may well be when they are turned out.

The Senate committee noted that there were a range of concerns. I will not deal with these in detail other than to note that the committee drew attention to the problem of penalties and the enforcement regime that might apply in the regulations. It drew attention to the sanctions that might apply for breaches and, in particular, to concerns about the inspection regime. It also drew attention to what I think are two rather more significant issues. The first of these is the onerous obligations that could well be imposed upon employers as a result of the new regulations. Under these new regulations, it seems that employers will be required to undertake responsibility for costs such as for the education of children, travel and airfares, medical care, and licences and registrations for professions and trades et cetera. All of these have a capacity to impose considerable additional burdens on businesses. For some sponsors, some organisations, some enterprises which already make considerable use of 457 visas, these could be very onerous obligations indeed, particularly for small businesses. We ought to be careful about the consequences of these regulations and the kinds of imposts that we are going to be placing on businesses, particularly small businesses, especially in the economic climate we now find ourselves in.

The second major concern I have is in relation to retrospectivity. We in the coalition have never been enthusiasts for retrospectivity in legislation. It is not entirely clear how retrospectivity might apply in this particular bill, but it seems likely under the framework and the structure that exists that, when the regulations are promulgated, the new obligations will apply to existing 457 arrangements. Employers who have entered into an arrangement with a new employee under a 457 visa might suddenly find themselves hit with very large additional responsibilities which could affect the costs and bottom line of their enterprise. We ought to be very careful about imposing these kinds of imposts on small businesses. I am encouraged by the fact that it seems that the government intends
that there be widespread consultation in relation to the new regulations. That is indeed encouraging. Of course, we will look to see that that actually takes place and wait to see that that undertaking is discharged.

In concluding, I just want to make a broad point. There is a great deal in this legislation that is taking place under the regulations and a great deal of which we, at this stage, are unaware. We can speculate and we can guess, but until such time as we see it written down we have absolutely no confidence that this will not in fact impose new and deeply onerous obligations on employers. Whether it is as a result of incompetence, inadvertence or design, we find ourselves in a situation where this kind of legislative technique has been applied in an area which is of very great importance to the economy. I trust that it is not the intention of this government to proceed in this way in relation to much legislation in the future. It seems to me to be a highly undesirable way to deal with matters of considerable importance to employers, to people with small businesses in particular, and to those who might come to Australia on short-term arrangements. We will look forward to the regulations when they appear. We will be giving them close scrutiny, and we hope that there will not be any great surprises in those regulations.

Senator STERLE (Western Australia) (12.57 pm)—I seek leave to incorporate remarks for and on behalf of Senators Cameron, Xenophon, Hanson-Young, Bilyk, Pratt, McEwen, Marshall, Wortley and Polley.

Leave granted.

Senator CAMERON (New South Wales) (12.57 pm)—The incorporated speech read as follows—

I am pleased to support the Migration Legislation Amendment (worker protection) Bill 2008. This legislation is designed to introduce a new framework for the sponsorship of non-citizens seeking entry to Australia.

The legislation is a timely and necessary response to the problems associated with the operation of the 457 visa program.

The government is determined to strengthen the integrity of the program and to ensure that workers who come to Australia to assist this nation build for the future are treated with fairness, dignity, and equity. This will be achieved through four main measures:

- Providing the structure for better defined sponsorship obligations on employers and other sponsors;
- Improving information sharing across all levels of government;
- Expanded powers to monitor and investigate possible non-compliance by sponsors; and
- The introduction of meaningful penalties for sponsors found in breach of their obligations.

The use of temporary visas, particularly 457 visas, has increased dramatically over the last few years.

This increase is a direct result of the Howard government’s failure to develop a strategic approach to building the skill base of Australia. Widespread skill shortages have been an impediment to the improved productive performance of this nation and are a clear example of the failed economic policies of the previous government.

The government is determined to build a sophisticated national skill development programme and reduce reliance on temporary overseas labour to build the nation.

This is why we are investing $19.3 billion in education and training.

This $19.3 billion commitment is an investment in Australia’s future.

We will invest $1.9 billion over five years to fund up to 650,000 new training places.

These training places will be the engine that drives personal skill development and lifelong career progression.
While the government’s policy will increase the skill base of our country, significant progress on reducing skill shortages will take time. This means Australian industry will continue to seek access to the 457 Visa systems.

Given the global economic crisis and the inevitability of Australia being caught up in the worldwide economic downturn there is a high probability that the future use of 457 visas will decline. Nevertheless, the need to treat all workers in a fair, dignified and acceptable manner is fundamental to the governments approach in this legislation.

Contributions in this debate from the opposition point to a minority of companies being engaged in unacceptable conduct towards 457 Visa holders. It seemed to me that the plight of migrant workers was being reduced to a statistical analysis. This is unacceptable to the government. It is illuminating when you analyse the statistics used by the opposition to defend the 457 visa system.

Senator Fierravanti-Wells argues that only 1.67% of sponsors were found to have breached their sponsorship obligations.

Given that Senator Fierravanti-Wells also points to the fact that nearly 19,000 employers use 457 visas then approximately 317 employers are breaching their obligations.

In my view, this understates the problem as many workers are fearful of reporting breaches due to intimidation from employers. 317 could be the tip of the iceberg.

Even on the opposition’s own figures thousands of workers are being exploited. If one migrant worker is exploited then that is one worker too many.

If one migrant worker is killed or injured as a result of employer exploitation then that is one worker too many.

If one migrant worker is denied equal pay for work of equal value then that is one worker too many.

If one migrant worker is intimidated then that is one worker too many.

If one migrant worker believes Australia is a bad place to work then that is one worker too many.

I note the opposition claim that the union campaign of opposition to 457 visas had been over sensationalised by the media. Far be it from me to defend the media however it is fare and reasonable and in the national interest to report the death, injury, exploitation, and intimidation of any worker including migrant workers.

I have had personal experience attempting to assist 457 visa workers who have been outrageously exploited.

The problems with the system have also been documented by the Victorian Magistrates Court, the Victorian Workplace Rights Advocate, and the Australian Human Rights Commission. The Visa Subclass 457 Integrity Review conducted by the industrial relations expert Barbara Deegan also raised major issues with the programme.

The Australian human rights commission documented numerous examples of the exploitation of workers on subclass 457 visas. Issues raised by people making complaints include:

- Not being paid overtime
- Working longer hours or days than non-Visa employees
- Limited access to sick leave and dismissal if the Visa holder takes sick leave
- Dismissal because the Visa holder was pregnant
- Dismissal for taking leave to care for a sick spouse or child
- Overcharges on rent or other expenses organised by the employer
- Sexual harassment

Despite the predictable opposition by the Australian Chamber of Commerce and Industry to the changes in this legislation, other employer groups such as the Motor Traders Association of Australia noted their “in principle support to strengthen the integrity of the subclass 457 Visa procedures, while ensuring smooth access by employers” they go on to support “the principles of fairness that underpin the subclass 457 Visa regime.”
The Queensland government stated that “the support of the Queensland government for the 457 Visa programme is contingent upon a clear understanding that it does not undermine Australian employment opportunities, wages or working conditions”.

The Minerals Council of Australia “strongly support the need for the system to be operated with integrity so that all parties have confidence that Australia remains internationally competitive in facilitating Labour movement whilst at the same time safeguarding employment and training opportunities for Australian workers and protecting overseas workers from exploitation”.

The New South Wales government “supports the Australian government’s efforts to reform the employer sponsored temporary migration program. These reforms should ensure the program is flexible and responsive to the needs of Australian employers, while respecting the rights and dignity of employer-sponsored migrants and ensuring transparency, accountability and integrity in the administration of the program”.

The Deegan report has formulated a range of recommendations (67 in all) that go to the problems with the 457 visa system and proposed resolution to the problems.

The government has referred the report to the Skilled Migration Consultative Panel which comprises representatives from business and industry groups, state government and unions.

The panel will provide feedback and advise the government on the report, which includes recommendations to:

- Abolish the minimum salary level in favour of market rates of pay for all temporary visa holders on salaries less than $100,000
- Develop and accreditation system risk matrix to ensure rapid processing of low risk visa applications so employers can meet skills needs quickly
- Develop new lists, setting out the skilled occupations for which temporary work visas can be granted
- Limit Visa holders to stay no longer than eight years in Australia (i.e. two four-year visas or four two-year visas) while providing a pathway to permanent residency for those who have the required language skills.

The Minister for immigration and citizenship, Senator Chris Evans has said that the recommendations and the views of the consultant of panel will inform the development of the government’s reforms to the temporary skilled migration program as part of the 2009 budget.

In the meantime this amendment will:

- Lead to effective and efficient identification of non compliance through expanded investigative powers.
- Discourage inappropriate use of the temporary skilled visas program;
- Provide an effective price signal to encourage the hiring and training of Australian citizens and permanent residents and, most importantly:
- Protect overseas workers from exploitation;

The legislation strikes an appropriate balance between:

- facilitating the entry of overseas workers to meet genuine skill shortages;
- Preserving the integrity of the Australian labour market, and:
- Protecting overseas workers from exploitation.

I commend the bill to the chamber

Senator XENOPHON (South Australia) (12.57 pm)—The incorporated speech read as follows—

You will be aware that in my short time in this place, I have shown steady interest in matters relating to migration law.

I would like to take this opportunity to thank the Minister and his office for their efforts to provide regular and detailed briefings over the past three weeks, particularly in relation to the Governments’ plans to review timelines for judicial review of migration decisions.

I wish to acknowledge the Minister’s offer to take a personal interest in the case I have raised previously in relation to a young Afghani refugee who had a number of family members killed by the Taliban, as well as other cases that are brought to
his attention which demonstrate unique and exceptional cases.
I would also like to again commend the Circle of Friends for their advocacy in relation to such cases.
I appreciate his position in relation to Ministerial Intervention and look forward to future discussions which will hopefully produce a fairer appeals and approval system, which will make such intervention less necessary.
I am certain that we will not see eye to eye on every matter in this complex and contentious area of policy, but I respect the Ministers’ efforts and thank him.
That said, I support the broad intention of this bill and indicate that I will be supporting its second reading.
I commend this bill with its intent that it will better protect foreign workers from improper practices by Australian migration sponsors.
I note that the bill aims to make changes to sub class 457 temporary residence visas to provide greater flexibility in Ministerial approval of group sponsorships, improved information about sponsor responsibilities, increased powers to explore non-compliant sponsors and harsher penalties.
I will not take up more time of the Senate going through the specific mechanisms by which this will be achieved. However, I have a number of points on which I would like clarification from the Minister in the committee stage.
Firstly, this bill sets up a framework in which regulations will be developed to enable the bills broader goals. Could the Minister please provide information on the nature and detail of these regulations as they currently stand?
Secondly, I note that red tape, requirements for quantifiable training programs and external training providers can make sponsorship onerous for smaller and niche businesses. In what ways will these changes, if any, will these changes make it easier for these businesses to become approved sponsors?
Finally, I note that medical examinations and English testing can produce significant delays in departmental processing of individual applicants and suggest that these new provisions are to reduce some of these delays. Is this an accurate interpretation? And if so, what measures does the Minister plan to reduce these delays for all 457 visa applicants?
With these things in mind, I support the second reading of this bill and look forward to the Minister’s response in the committee stage.

Senator HANSON-YOUNG (South Australia) (12.57 pm)—The incorporated speech read as follows—
I rise today to speak on the Migration Legislation Amendment (Worker Protection) Bill 2008.
The bill is a welcome move in proving a more robust framework for temporary working visa arrangements, particularly for workers on 457 visas.
457 visas have been a very contentious part of Australia’s broader immigration system. The Australian Greens have always had serious concerns about the scheme while recognising the policy intent behind it.
It is a scheme that needs to balance a genuine need for skilled workers in certain industries and occupations with protection for those workers. There is also a need to ensure the scheme does not provide a disincentive for the provision of training opportunities for workers in Australia.
This is a difficult balancing act. In the past we believe the balance was not met. We along with many others were concerned that 457 visas were becoming the first option for employers, often resulting in workers being exploited.

Bill provisions
The bill before us today is a start in beginning to address some of the problems of 457 visas.
The bill addresses four key areas:

- Expanded powers to monitor and investigate employer non-compliance with the 457 visa scheme;
- A framework for punitive penalties for employers found to be in breach of their obligations;
- Improved information sharing between government agencies to improve compliance; and
A redefined sponsorship obligations framework for employers of 457 visa workers and a range of other temporary work visas.

The improved compliance regime, inspectorate powers and information sharing provisions are welcome. It is always the case that the integrity of a scheme such as this depends as much on compliance than on the standards to be complied with.

We support the provision setting out the investigative powers to monitor workplaces and conduct site visits to determine whether employers are complying with the redefined sponsorship obligations and making those powers similar to the powers of workplace inspectors under the Workplace Relations Act 1996.

We expect sufficient resources will be provided by the Department to ensure that the compliance framework is effective and those sponsors that try and exploit workers will be discovered and investigated.

We further support the instigation of a civil penalty regime with fines of up to $33,000 as well as the ability to cancel an employer’s approval as a sponsor or bar them from making applications for approval as a sponsor for a period of time. We believe a civil penalty regime is entirely appropriate for the breaching of sponsorship obligations.

Some concern has been raised from the business community about the transitional provisions of the bill extending these measures to existing 457 visa sponsors. The Greens support the transitional provisions and the application of the new compliance regime, powers of inspectors and information sharing laws applying to current sponsors. We also support any new sponsorship obligations made by regulation to apply to current visa sponsors and workers.

Lack of regulations

The main concern we have with this bill is that it provides for sponsorship obligations to be made by regulations but we have not yet had a chance to consider what the Government believes those obligations should be.

It would have been preferable to debate this bill in the context of draft regulations.

I ask the Minister to guarantee that he will release an exposure draft of the regulations, particularly those establishing the sponsorship obligations, before they are finalised.

While the regulations will be disallowable, a disallowance is a blunt instrument for dealing with details and these regulations will be full of details. An exposure draft on the regulations will allow a debate on the details.

I would also like to take this opportunity to draw the Senate’s attention to the United Nations Convention on the Protection of All Migrant Workers and their Families. It is not a Convention Australia has signed but it does lay down the basic rights of migrant workers. Particularly with respect to workers rights issues, we would expect the Government to take the Convention into consideration.

The convention holds that migrant workers should be afforded basic human rights such as not being held in slavery or servitude or be required to perform forced or compulsory labour; that migrant workers have freedom of expression and freedom of religion; that migrant workers shall to be subject to arbitrary or unlawful interference with their privacy or be arbitrarily deprived of property - all pretty non-controversial I would think.

Equally with respect to employment it should be non-controversial to apply these Convention standards - that migrant workers shall be treated equally in respect of remuneration, and other condition of work such as overtime, hours of work, rest breaks, holidays with pay, health and safety and termination of the employment relationship.

The Convention also states that migrant workers have the right to medical care and that the children of migrant workers have the right to access education.

We urge the Government to take into account the Convention and consider a ‘rights based’ approach to protecting temporary workers.

Pacific Islander Seasonal Worker scheme

A rights based approach is particularly important if the seasonal worker program will be covered by this bill in the future.
We are unclear at this stage whether it is the Government’s intention for the seasonal worker program to be governed by this legislation. The framework certainly suggests that it should be, with regulations being able to establish different obligations for different visas, and with the enforcement and compliance regime.

The Greens are not opposed to the trail of a seasonal worker scheme but we are concerned to ensure that the exploitation of 457 workers that has occurred is not repeated again.

**Issues with 457 visas**

Turning now to some of the issues that have been raised about the 457 visa program:

We agree with the Australian Manufacturing Workers Union when in welcoming more robust regime of obligations, reporting, regulation and enforcement, it also indicated:

“it remains our position that the fundamental issues that must be addressed relate to the re-introduction of labour market testing, mandatory payment of market rates and employment of 457 workers on collective agreements.

We believe that these reforms would remove the motive and capacity of employers to use 457 workers in circumstances other than those where a legitimate skills shortage exists. They would also mediate the inherent vulnerability of 457 workers attributed to the direct link between the employment relationship with a single employer and the right to stay in Australia to work. Failure to address these questions will leave in place the source of the current problems.”

The submissions to the Deegan Review and the Discussion Paper provide a useful summary of the problems encountered by many 457 visa workers and point to issues that the Government needs to address.

**Wages and costs**

The issue of wages for 457 workers is important for a couple of key reasons. Appropriate wages ensure that migrant workers are not exploited but they also mean that the temporary worker scheme is not used to undermine wages for other workers.

We welcome the increase in the Minimum Salary Level made recently but we question whether the MSL formula is the most appropriate way of dealing with wages. We would like to see a requirement for salaries to be at market rates. The 457 scheme must be about bringing in needed skilled workers, not cheap labour.

The Greens are also inclined to support requirements for sponsors to pay travel costs, costs associated with recruitment migration agent services and registration or licensing fees. We also believe there is a strong case for sponsors to pay for income protection and medical expenses or health insurance for visa holders.

**Exploitation**

It is not just through low wages that temporary migrant workers can be exploited. There is no question that there have been and are 457 visa workers who have exploited. The trade unions have played an important role in exposing these situations such as appalling accommodation, unjustified deductions from pay, workers doing work they are trained for.

Most significantly we recognise that many 457 workers, especially those working in the semi-skilled jobs, are vulnerable to threats of deportation.

As John Sutton from the CFMEU said at the Senate Inquiry hearing into the bill:

“Wherever there are manual workers coming from a developing country, a poor country, and they are under a sponsorship arrangement where they have the knowledge that, if the sponsorship is terminated, the department will ask them to leave the country in 28 days, there are some pretty powerful forces at work that not in all instances but in many instances lead to pretty serious exploitation.”

**Skills/training opportunities**

A final important matter I wish to touch on is skills and training. The 457 visa program is specifically designed to allow temporary workers with skills not readily available to employers. The program needs to be carefully directed to areas with genuine skills shortages and to ensure that 457 visas do not become a substitute for local skills development.
While we recognise that no matter how fast we can train people up, some industries will continue to need temporary workers. The engineering profession for example demonstrated the shortage could not readily be made up though local training—we just aren’t graduating enough engineers. But the government needs to make sure that employers are also investing in the local workforce for long term sustainability. We support obligations on employers to demonstrate a commitment to education and training for the long term.

Similarly, the Greens support a requirement not to use 457 workers as strike breakers. This goes against the intention of the program and could undermine the local workforce exercising their democratic rights.

These are some of the matters we expect the regulations setting out the sponsorship obligations to address.

**Conclusion**

On a number of the issues I have raised today I wish to seek some clarification from the Minister.

The Greens believe the 457 visa program cannot be an easy or cheap alternative for employers. We support the measures in this bill to improve the integrity of the scheme and in particular the compliance framework.

We would have preferred to have debated this bill having had an opportunity to consider draft regulations. The obligations on sponsors that the regulations will contain are pivotal to the future integrity of the scheme.

The Greens will be considering the regulations carefully and as I mentioned before expect the Minister to provide an exposure draft and open them up to appropriate debate and scrutiny.

Despite the lack of regulations the Greens are prepared to support this bill now given the other elements of the bill relating to a stronger compliance framework will apply to current sponsors of 457 workers.

**Senator BILYK** (Tasmania) (12.57 pm)—

_The incorporated speech read as follows—_

I rise to speak on the Migration Legislation Amendment (Worker Protection) Bill 2008.

This bill was introduced to the Senate by Senator Evans, the Minister for Immigration and Citizenship to provide for better protection of migrant workers in Australia.

The amendments before the Senate today arose out of a review of the 457 visa program which the Rudd Government announced earlier this year.

The subclass 457 or Temporary Business Entry visa was introduced by the Howard Government in August 1996 to provide temporary relief for businesses suffering from skills shortages.

Under the 457 visa, an employer can sponsor an overseas worker to work in Australia on a temporary basis. The 457 visa was intended as a stop-gap measure—not a substitute—for the shortage of skills in Australian industries.

However, the explosion of 457 visa applicants in recent years is symptomatic of the failure of the Howard Government to address Australia’s skills crisis.

In the first year of the visa program’s operation, 1997-98, there were just over 30,000 visas granted. These figures include eligible secondary applicants—or family members living in Australia with the primary applicant for the period of their stay.

The number of visas granted has steadily increased over time, but appears to have increased dramatically in the past three or four years. By 2005-06 the number of 457 visas granted had reached just over 70,000, up from 48,000 the previous year.

In the year to June 2008 (the year just gone) a massive 110,000, of what are now known as Temporary Skilled Migration Visas, were issued.

The rapid growth in 457 visas is symptomatic of the Howard Government’s failure over its twelve long years in office to plan for the skills needs of Australia.

While they were raking in masses of revenue off the back of the resources boom, they had plenty of opportunity to invest in the skills and qualifications of Australians.
Instead they allowed Australia’s skills crisis to continue unchecked. The Rudd Government, on the other hand, is serious about addressing the skills crisis.

One of the roles of government is to forecast the skills needs of the country and to take steps to skill our workforce so that Australia’s skills needs can be met first and foremost by Australian workers.

The Rudd Government will give priority to training and skilling Australian workers so that our own workforce can meet the skills needs of industry.

We will work to ensure that Australia’s workforce has the capabilities necessary to fill as many Australian jobs as possible.

This is why we announced in the May Budget that we would make a $19.3 billion investment in education and training to provide employment opportunities for Australians.

We have committed to this investment for the future because we recognise that skills are a vital element in a productive economy.

Having said that, we recognise that developing qualifications takes time and so, therefore, will not meet the immediate skills needs of industry.

Consequently - we support the 457 visa program as a temporary measure to meet short term skills shortages.

But a program for temporary overseas workers should not end up becoming a long term response to Australia’s failure to plan for its own skills needs as it was under the previous government.

The other unfortunate side effect of the 457 visa program has been the mistreatment and exploitation of workers.

While the vast majority of employers do the right thing, the Rudd Government share concerns, with others, about the incidence of employer breaches in the subclass 457 visa program.

There were 1353 employers formally warned and 192 sponsors formally sanctioned in 2007-2008. Comparatively in 2006-2007 there were only 95 sanctions and 313 formal warnings - so you can see that this government is acting to protect these workers.

Australia cannot take pride in its 457 visa program until we take serious steps to combat the human misery visited on overseas workers by some unscrupulous employers.

I quote Senator Evans who recently stated:

“The temporary working visa scheme is only sustainable if the community is confident that overseas workers are not being exploited or used to undermine local wages and conditions”.

This is what the bill before the Senate today seeks to address.

On 28 August 2007 the Sydney Morning Herald reported three deaths of workers sponsored on 457 visas.

In two of the three cases, the workers were undertaking menial labouring work instead of the skilled work they were brought over for.

They had also complained to their families that their working conditions had been a lot tougher than they were told to expect before they came to Australia.

In the third case, the worker was killed by a tree while operating a chainsaw—a job for which he had no previous experience.

All three left behind families including wives and children.

Clearly employers are breaching their obligations under the temporary skilled migration program if they expect overseas workers to engage in work that do not employ the skills they were apparently brought over for.

However, it is one thing to have reasonable obligations for sponsors of 457 visas, it is another entirely to have the monitoring and oversight to effectively enforce those obligations.

The workers referred to by the Herald’s article may have survived had they felt confident to complain about the conditions they were employed under.

These cases reveal an unfortunate feature of the 457 visa program which is the vulnerability of workers to exploitation.

This vulnerability has been exposed in various court cases.
For example, fifteen 457 visa holders employed by Hanssen Pty Ltd signed unapproved Australian Workplace Agreements for which their employer failed to provide information statements.

The workers did not speak up for fear of deportation and their employer exploited that fear.

A similar vulnerability was identified by the Federal Magistrate in the case of Zefirelli Pizza Restaurant, who underpaid employees on 457 visas.

There have been other examples where visa holders who question the actions of their employer have been dismissed and then deported as an example to other workers to ensure their compliance.

When we hear about cases of workers on 457 visas who got justice because one of them was brave enough to complain to the authorities, it really should make us wonder how many more cases go unreported.

As I said in my speech on Fair Work Australia, there is no greater financial or human cost in workplace relations than the failure to have effective Occupational Health and Safety arrangements.

Such arrangements rely on the ability of workers to raise complaints and issues.

457 visa workers cannot raise OH&S concerns if they are silenced by fear.

OH&S is especially important for 457 visa workers as they tend to be employed in high-risk industries such as construction, manufacturing and mining.

This is why the temporary skilled migration scheme needs proactive monitoring, why workers need to be made aware of their rights, and why employers need to have their obligations enforced with penalties that provide an effective deterrent.

I note that last Monday, in an article in the West Australian, the Shadow Minister for Immigration said that the Opposition would support our reforms.

The Shadow Minister, Sharman Stone, went on to admit that the 457 visa scheme led to exploitation of workers.

While I welcome the Opposition’s support, I would like to know why they decided to wait for the Rudd Government to put forward the legislation before supporting reform.

Have cases of worker exploitation only recently come to their attention?

We identified exploitation of overseas workers years ago and have been calling for changes to 457 visas ever since.

So why did the Opposition fail to lead on temporary skilled migration reform when they were in Government?

I would be very interested to hear Dr Stone explain in The Other Place why she suddenly sees reform of the temporary skilled migration system as necessary after the litany of complaints and concerns that were raised for many years while her party was in Government.

Of course the Rudd Government recognises that reform is overdue and we are leading on it.

On 18 April 2008, the Minister for Immigration and Citizenship, Senator Evans, established an independent integrity review into the 457 subclass visa.

The Migration Amendment (Worker Protection) Bill is the Government’s response to the review’s recommendations.

The terms of reference of the review included:

- measures to strengthen the integrity of the 457 visa program
- the employment conditions that apply to workers employed under the temporary skilled migration program
- the adequacy of measures to protect 457 visa holders from exploitation
- the health and safety protections and training requirements that apply in relation to temporary skilled workers
- the English language requirements for the granting of temporary skilled migration workers’ visas, and
- the opportunities for Labour Agreements to contribute to the integrity of the temporary skilled migration program.

The Migration Amendment (Worker Protection) Bill is the Government’s response to the review’s recommendations.

It contains a number of measures to strengthen the integrity of Australia’s temporary skilled migration program and to minimise the exploitation of workers.
The bill contains improved sanction powers—including new powers—against a sponsor who fails to satisfy a sponsorship obligation.

In the event of a sponsor failing to satisfy their obligations, the Department of Immigration may initiate civil proceedings against them in the Federal Court.

A penalty of up to 60 penalty units (currently $6,600) can be imposed on an individual or 300 penalty units (currently $33,000) on a body corporate.

The Department may cancel the sponsor’s approval as a sponsor and bar them for a time from making further applications for approval as a sponsor.

The bill also contains provisions for improved monitoring and information sharing.

It will allow the Department to collect contact details of 457 visa holders from larger employers for the purpose of providing them with information about their rights and entitlements while in Australia.

The bill will allow for greater information sharing between the Department, the sponsor and the visa holder allowing all three parties to be better informed of each others’ circumstances.

There will also be provisions for information sharing between Commonwealth, State and Territory governments to facilitate a whole-of-government approach to compliance.

Provisions in the bill will amend the Taxation Administration Act 1953 to allow the Commissioner of Taxation to disclose tax information to the Department of Immigration and Citizenship.

This will allow the Department to confirm with the Tax Office what taxable salary is being paid to visa holders for the purpose of ensuring that the minimum required salary is being paid.

The bill will introduce a better regime for monitoring compliance with the obligations of the visa.

New inspector powers will be granted modelled on the workplace inspector powers in the Workplace Relations Act 1996.

Inspectors will have the power to

- enter the premises without force,
- inspect the premises,
- interview any person,
- require the production of documents, and
- copy such documents.

The bill will also improve the framework for sponsorship, setting out obligations for approved sponsors in Regulations that for the first time will be enforceable by law.

The Regulations will be developed in consultation with stakeholders and finalised in the coming months.

The Regulations will establish a process to vary an approval so that an approved sponsor does not have to go through the whole sponsorship process again just to seek a variation to their sponsorship.

The bill introduces a range of provisions to better protect temporary overseas skilled workers. It includes:

- improved monitoring powers,
- the introduction of civil penalties for sponsors who breach obligations,
- clarifying sponsor obligations and ensuring they are enforceable under the Act, and
- greater information sharing between governments and Government agencies.

This reform process is central to maintaining the integrity of Australia’s temporary skilled migration regime and restoring community confidence in the protection of the rights of overseas workers.

While these reforms are important and necessary, the Government is open to advice and feedback on further reform.

The Rudd Government has therefore established a Skilled Migration Consultative Panel comprising representatives from State and Territory governments, the business community and other industrial stakeholders.

This Panel will consider proposals for temporary skills migration reform and advise on their impact on business, the Australian workforce and the broader community.

In conclusion, let me re-iterate:

The Rudd government has worked to strengthen the integrity of the temporary skilled working visa program by:
• As of 1st August this year increasing the minimum salary level for subclass 457 visa holders (for the first time in two years) and that applies to existing visa holders.

• Appointed an Industrial Relations Commissioner, Barbara Deegan to review the integrity of the current subclass 457 visa program with the aim of better protecting overseas workers.

• This report will be referred to the Skilled Migration consultative Panel which is made up of industry, union and state government representatives.

• And introduced the Migration Legislation Amendment (Worker Protection) Bill 2008 which has four main provisions:
  (1) expanded powers to monitor and investigate concerns of non-compliance by sponsors
  (2) the establishment of penalties for employers found in breach of their obligations
  (3) Improved information sharing to allow immigration officials to check the tax records of employers and employees to ensure they are paying the correct wages; and
  (4) Better defined sponsorship obligations for employers and other sponsors.

The details of the obligations will be finalised in consultation with the consultative Panel by early next year.

I would like to congratulate the Minister on his initiative in bringing this reform proposal to the Senate and for the sake of 457 visa holders throughout Australia I urge all Senators to support it. Thank you.

Senator PRATT (Western Australia)

(12.57 pm)—The incorporated speech read as follows—

I welcome the opportunity to speak on this important piece of legislation.

In my first speech, I wished the Leader of the Senate and Immigration Minister well as he attempted to untangle the mess that the previous government made of our immigration system.

In particular, I highlighted that the exploitation of workers under 457 visas still needed to be resolved.

I pointed out that, unless all workers in Australia enjoyed the same rights and entitlements, even those whose licence to stay here is only temporary, our immigration system would be undermined.

The Australian public, and Australian workers in particular, need to be assured that the immigration system is not being used as a backdoor way to undermine Australian working conditions.

I am pleased the work needed to restore faith in our immigration system is now underway through this bill and other work forthcoming.

This bill is a positive reform that will help put a stop to unscrupulous behaviour.

It will help put an end to the exploitation of workers, who arrive in Australia with skills that assist our economy to grow, but who experience abuse and mistreatment.

It will put an end to the unplanned and unregulated explosion of the Subclass 457 visa program.

It will help ensure that Australian workers wages and conditions are not undermined.

This is particularly important in these times of economic uncertainty.

457 visas are, in and of themselves, not the villain in this picture.

457s were originally brought about to address the widespread skills shortages.

My home state of Western Australia has particularly benefited from the skills that temporary workers have brought to our state and our economy.

The resources boom has provided employment for many, particularly in WA.

And still more skilled workers were needed.

But as we know, this was partly because the previous government had failed to invest in skills development, in long term education and training.

Addressing the skills shortage is a priority for the Rudd Labor Government.

We are addressing the skills shortage - not only by fixing up the 457 visa program - but also through the provision of $19.3 billion in educa-
tion and training opportunities in the 2008-09 budget.
The Government has committed an investment of $1.9 billion over five years for up to 630,000 new training places.
We’re building the skills and knowledge for the jobs of the future.
The subclass 457 visa program has benefited employers by providing access to migrants with ready skills that have helped businesses to grow.
It has also given some temporary migrants the opportunity to work in Australia:

- to use and develop their skills;
- to earn good wages; and
- to enjoy good working conditions.

But that hasn’t been the case for all temporary migrant workers.
Increasing demand for skilled workers, particularly over the last five years, has put pressure on the 457 visa program.
The scheme has grown rapidly.
It has expanded to include lower-skilled occupations.
And this expansion has brought with it many temporary workers with lower levels of English language skills.
This context has led to increased exploitation and abuse of workers under the scheme.
Workers have been exploited in a number of ways - including being underpaid and not paid at the correct salary level and even not being paid at all.
The AMWU has brought to my attention many examples of the ways in which workers are being exploited under the scheme.
Cases like that of the company Aprint.
In September last year, this company withheld $93,000 in wages from four Chinese 457 visa workers.
The workers were made to work more than 60 hours a week.
More than ten thousand dollars was taken from their wages for lawyers and travel fees.
The company was fined $9,240 for breaching the Workplace Relations Act.

But amazingly, the company was not subject to any penalty in relation to breaches of their obligations under the 457 visa scheme.
Recently, I met with a group of Filipino workers who are currently in Australia on 457 visas.
I heard their stories of exploitation.
One group of workers told me they were required by their employer to live in one house.
Rent was deducted from their wages for the privilege of living in this house.
They were not free to move to other, more suitable or cheaper accommodation.
Two of the workers wanted to move out.
They wanted to live in different accommodation.
They wanted choice over this critical aspect of their living conditions.
But after repeatedly requesting that the company stop deducting rent from their wages, they were told that the house they were living in was owned by the company, and therefore, that rent deductions would not be stopped.
This is not an isolated case, there are many others just like it.
The union advocated on behalf of these workers, and finally, they were paid back the amount of rent that was deducted from their wages.
Before this union advocacy, they had no choice, no options and no say.

This kind of exploitation has led workers, their unions and many employers to raise serious concerns about the integrity of the program.

What such examples of exploitation make clear - is the need for penalties to be applied to unscrupulous employers.
And this legislation does just this.
Labor is committed to ensuring that employers know their rights and responsibilities under the scheme and act accordingly.
The government is also committed to making sure that local workers do not lose job opportunities to workers on 457 visas.
Employers must abide by conditions that make sure that we keep providing employment and training opportunities for Australian workers.
$19.6 million has been allocated in the 2008-2009 budget by the Rudd government to improve the processing and compliance aspects of the 457 visa program.

The bill will expand powers to monitor and investigate non-compliance by sponsors. This is of critical importance because it will allow for more trained officers who will be able to conduct site visits to make sure sponsors are complying with their obligations.

These inspectors will be able to:
- Inspect the premises;
- Interview people;
- Require that sponsors produce particular documents, and
- Copy documents.

Sponsors who do not cooperate with a written request to produce a document may face up to 6 months imprisonment.

The exploitation of workers through not paying wages or paying incorrect wages will be dealt with by penalties such as fines of up to $33,000 for companies that breach their obligations.

The bill will also improve information sharing across government to make sure that the correct salary is being paid to workers.

Again, this will help put a stop to the exploitation of workers.

It will also provide clarity in relation to the obligations of employers and other sponsors.

This includes providing clarity on the time period within which a sponsor must meet their obligations and the way in which the obligations are to be satisfied.

And these obligations will be, for the first time, enforceable by law.

Sponsors who have already been approved may not need to go through the whole process of seeking sponsorship approval when they want to vary their sponsorship.

This will make the whole sponsorship approval process much more efficient.

So this legislation will be good for employers and it will be good for workers.

It is the first step in the process of rectifying a system that contributed to the exploitation of workers under the previous government.

But there is more to be done.

I was pleased to meet with workers on 457 visas recently here in parliament and with delegates from the AMWU, the ANF and the CFMEU about this issue.

Through this delegation and through individual meetings with visa holders I have heard that there is a real need to improve access to health and community services for workers and their families.

Employers should not be able to direct workers as to whether seek medical attention.

As the AMWU points out – imagine a situation where a worker is sick and needs medical treatment but pressure is put on them not to attend health services by the employer because of the cost.

That is not an acceptable situation for any worker.

Many of these workers, and the families that sometimes accompany them, live in isolation.

For some, their world is limited to the workplace –

Even their accommodation is dictated by their employer

But more than that, workers are even isolated in the workplace, isolated from fellow workers who are Australian residents.

457 visa holders should have the right to collectively bargain their wages and conditions alongside their work colleagues who are Australian residents.

They should not, as some do now, experience fear and intimidation when trying to find out what their rights are.

They should not, as some do now, experience fear and intimidation when they want to talk to other workers about their pay and conditions.

They should be in a position, as all Australian workers should be, to feel confident that contacting their union will not bring with it retribution of some kind.

This workplace isolation is compounded by the isolation that families of 457 workers experience.
Those that are fortunate enough to have their families with them sometimes feel cut off from their communities and from services they should be able to access.

I note there are some very successful programs operating in my home state of WA to break down the isolation experienced by temporary migrant workers and their families.

The AMWU has been successful in working with community organizations and particular groups of workers to develop social networks, so that this isolation can be broken down and workers can get to know their rights.

The government knows there is more work to be done.

That's why earlier this year the Minister for Immigration appointed Barbara Deegan to conduct a broad review of the integrity of the 457 visa program.

Ms Deegan’s report clearly states the complexity that 457 visa holders and their sponsors face.

The report details the ways in which 457 visa holders are exploited and the way in which the system, through rapid growth and long term neglect has perpetuated this.

The report paints a way forward including replacing Minimum Salary Levels which visa holders are currently paid under with a fairer market rate system for all workers earning under $100,000 per annum.

Lack of information about rights and obligations by 457 visa holders is a common theme through the report.

Giving information to workers about their rights can lead to ending exploitation.

Recommendations such as giving information to new applicants regarding realistic pathways to permanent residency such as skill and English language requirements.

And providing clarity around the right to end their employment and seek work with another employer.

This is to stop insidious situations in which workers feel they cannot speak up about poor and unsafe work practices in case it jeopardizes their application for permanent residency.

The report also recommends that employers be barred from taking money from workers as a result of the worker gaining employment with them and from deducting wages for the payment of any agent.

The report made an important recommendation on the issue of fair pay. Arguing that 457 visa holders should be paid the same as the Australian workers they work alongside.

This is in the best interests of these workers, equal pay for the same work. Such provisions will also help ensure that employers don’t seek to bring in 457 workers just because it is cheaper, but will only do so when there is a legitimate shortage of appropriate labour. In the current economic climate in an uncertain labour market this is vitally important.

Stopping the exploitation of workers, making sure they have access to information about their rights and making the system run more smoothly and efficiently is the first priority.

And for that reason I commend this bill to the Senate.

Senator McEWEN (South Australia) (12.57 pm)—The incorporated speech read as follows—

It is a pleasure to speak today on a bill that will lead to some much needed reform of Australia’s migration policies. My office deals with many constituent enquiries surrounding migration and these enquiries are rarely solved quickly, but require much research and time. Often these enquiries are about reuniting family members, finding employment or gaining citizenship, all situations that can cause significant stress.

Under the previous Government, Australia’s immigration policies were cause for international condemnation, particularly our detention policy. Many people - even Australian citizens - were kept in detention for years, despite posing no danger to the community and children were also trapped in those environments.

This destructive detention scheme caused much pain to many and cost taxpayers a lot of money. The Rudd Government is working to change all this and is working to reform the system to take a
risk based rather than punitive approach to detention policy. This government is committed to protecting our nation from the potential dangers posed by some unauthorised arrivals or unlawful non-citizens, but we are also committed to treating people with dignity.

We are not putting our country’s security in jeopardy as we make these changes; we are simply putting the concept of human decency back into Australia’s immigration policies. Labor does not believe that we can only protect our nation at the expense of other’s rights and quality of life.

The Government is still maintaining mandatory detention for those unlawful people who are not Australian citizens and who present an unacceptable risk to the community or who repeatedly refuse to comply with their visa conditions. Unauthorised boat arrivals will still be subject to mandatory detention for health, identity and security checks. But let me be clear that we will only use detention centres as a last resort and for the shortest practicable time.

The Joint Standing Committee on Migration is currently conducting an inquiry into Immigration Detention in Australia. As a member of the committee, I have visited a number of detention centres in Victoria, Christmas Island and Western Australia with the inquiry and these experiences have given me a deeper understanding of the system. The issue of immigration is always an emotive one and detention centres are something that people are extremely passionate about, one way or the other; this was evident in the 133 submissions received by the inquiry.

The committee has held public hearings in Darwin, Christmas Island, Canberra, Melbourne, Perth and Sydney. The information presented by witnesses at these inquiries is often moving and always informative.

The inquiry so far has proven to be very beneficial to the Government and I thank everyone who has taken the time to take us around detention centres, appear as witnesses and make submissions. We are making informed decisions as we move Australia forward.

I am pleased to note that these moves forward haven’t gone unnoticed. Earlier this month the Sydney Morning Herald published a story regarding the Rudd Government’s fast assessments of 26 Afghan and Iranian Asylum seekers on Christmas Island.

Steven Glass, a volunteer for the Refugee Advice and Casework Service is quoted as saying “a number of the asylum-seekers are not behind fences and the kids are all going to the local school. My overall impression is [the department]- and GSL are going to whatever lengths they can to make conditions as good as possible. They are looking at planting trees, tearing down fences.”

The Citizenship Test is another Howard Government policy that caused great distress to my constituents last year. They visited and phoned the office asking many questions with much confusion and fear in their voices. The Rudd Government has also expressed its concerns about the structure and content of the test. For this reason we recently conducted an independent review to determine its fairness and effectiveness.

On Monday, the Minister for Immigration and Citizenship, Chris Evans tabled the report resulting from this review. The review found that while 99 per cent of skilled migrants were passing the test, almost one fifth of those who come to Australia as part of the Humanitarian Program are not. This shows that the test is acting as a barrier between people and Australian citizenship, not equipping them for citizenship as intended.

The Review Committee’s central recommendation is for the legislative requirement to have an “adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship” be linked to concepts and information people need to understand in order to make the Pledge of Commitment. This recommendation is supported by the Government.

Another reform that the Government has made is the abolition of the temporary protection visa regime, a regime which actively prevented refugees from being able to rebuild their lives. The regime denied refugees the entitlements and security of permanent residency, despite our international obligations. Not only was this a further stain on Australia’s reputation but it also entirely failed to serve its claimed purpose.
Evidence shows that the temporary protection visas did nothing to prevent unauthorised boat arrivals, in fact, numbers actually increased not long after the introduction of the regime.

This treatment of refugees was disgraceful. It is important that we treat these people with respect and recognise the varied benefits of accepting others into our country, including filling skills shortages. The resources boom, low levels of unemployment, and the failure of the previous Government to invest in the education and training, have contributed to skills shortages across the country.

Labor has tackled these skills shortage which were ignored by the Howard Government for so long. In May we released a Budget that invests $19.3 billion in education and training to ensure we continue to provide employment and training opportunities to Australians.

The Budget outlined the Government’s commitment to invest $1.9 billion over five years to fund up to 630,000 new training places. These new places will skill Australians for the jobs of tomorrow and close existing skills gaps.

While this investment into the education and training of Australians for the future is crucial, we need to take action that will give us immediate results too.

Over the last five years Australian employers have increasingly turned to the temporary skilled migration program to bring in the skilled workers they need. The Rudd Labor Government has eased the pressure on employers by adding an extra 31,000 skilled migrants to the 2008-09 program.

While making amendments to existing programs, the Rudd Government has looked at new ways to assist Australian employers. The Australian horticulture industry reports that up to $700 million in fresh produce is left to rot because of the unmet demand for low skilled workers. We have developed the Pacific Island seasonal worker scheme to address this crisis.

The scheme will enable Pacific Islanders to work in Australia as seasonal guest workers, by expanding the existing subclass 416 visa to cover workers who have been invited by an approved organisation. The pilot scheme will run over three years and will allow up to 2500 seasonal workers from Kiribati, Papua New Guinea, Tonga and Vanuatu to work in the horticultural industry in regional Australia for up to seven months each year. This type of scheme has received widespread support from organisations, with the World Bank stating that ‘there is no doubt that expanding economic opportunities for Pacific Islanders will translate into a stronger Pacific and that is in the interests of all countries in the region.’

We have also taken action to reform the 457 visa program and this bill will take that reform even further. The previous Government allowed the 457 visa program to run without sufficient safeguards to prevent the exploitation of temporary skilled foreign workers or the undercutting of wages and conditions of Australian workers.

Many stories emerged of 457 visa holders being exploited. One case which then Shadow Minister for Immigration, Integration and Citizenship, Tony Burke, spoke of last year was of a person who was being paid the official immigration rate of $42,000 a year, but had had to spend $20,000 to purchase the job. And that $20,000 was being deducted in equal instalments every day he was paid for the first year.

So he was being paid a further $20,000 less than what the visa said he was going to be paid and of course once the twelve months was up and he’d repaid the debt, he was immediately terminated without cause. The economy desperately needs access to temporary skilled labour, but this is only sustainable if the community is confident that Evans is working to better target the program to the areas most in need, including; IT, engineering and health care.
temporary overseas workers are not being exploited or used to undermine local wages and conditions. The Rudd Government is committed to improving the 457 visa scheme, whilst protecting the rights of overseas workers along with the employment opportunities of our own citizens.

On the seventeenth of February this year we announced a package of migration measures designed to help alleviate Australia’s skills and labour shortages and ease inflationary pressures including:

- adding 6000 places to the general skilled migration program;
- expanding the reciprocal working holiday visa program for young people;
- allowing working holiday makers who work for at least three months in the construction sector to apply for a further working holiday visa; and
- appointing an external reference group to advise how temporary work visas could contribute to the supply of skilled labour.

The Government has made great progress in positive immigration policy reform, and the bill before us today is the next step in that reform process. The Migration Legislation Amendment (Worker Protection) Bill makes amendments to the Migration Act 1958. The aim of these amendments is to enhance the framework for the sponsorship of non-citizens seeking entry to Australia.

The new framework will strengthen the integrity of temporary working visa arrangements, including the existing Subclass 457 visa program. This will be achieved through four main measures:

- providing the structure for better defined sponsorship obligations for employers and other sponsors;
- improved information sharing across all levels of government;
- expanded powers to monitor and investigate possible non-compliance by sponsors; and
- the introduction of meaningful penalties for sponsors found in breach of their obligations.

Let me go through these in more detail. The bill proposes to amend the Migration Act to provide that the Migration Regulations 1994 may specify the obligations to which particular classes of sponsor will be subject, together with when those obligations apply and how they may be satisfied. These obligations are not specified in the bill as a high degree of flexibility is necessary for the program to operate effectively over time and there will be a need to prescribe additional obligations as more visas are brought in with the new framework. If the obligations were written in this bill, it would make putting additional obligations in a very slow and difficult process.

Though the obligations have not been written, I can say that when prescribed in the Migration Regulations, they will:

- lead to effective and efficient identification of non-compliance - this could be done for example by obliging sponsors to cooperate with monitoring by the Department of Immigration and Citizenship;
- discourage inappropriate use of temporary skilled visa programs - this could be done for example by obliging sponsors to reimburse the Commonwealth for location, detention and removal expenses should the visa holder abscond; and
- provide an effective price signal to encourage the hiring and training of Australian citizens and permanent residents; and, most importantly protect overseas workers from exploitation.

The current provisions for the disclosure of information have proved insufficient for effective and efficient operation of the temporary skilled migration program. For example, the Department cannot at present lawfully collect contact details of Subclass 457 visa holders from larger employers for the purpose of providing those visa holders with information about their rights and entitlements in Australia.

The Migration Legislation Amendment (Worker Protection) Bill will rectify this by expanding the
range of circumstances in which the information may be shared between the Department, the sponsor and the visa holder. These amendments will ensure that the three parties involved in the program will be adequately informed of each others circumstances.

The bill will insert new provisions which amend the Taxation Administration Act 1953. These amendments will allow the Commissioner of Taxation to disclose tax information, if the tax information relates to a visa holder, former visa holder, approved sponsor, or former approved sponsor. This will allow the Department of Immigration and Citizenship to confirm with the Australian Taxation Office what taxable salary is being paid to visa holders.

The third main measure is another move designed to increase the protection of our workers from overseas. Amendments proposed in the bill will give specially trained employees of the Commonwealth the power to monitor compliance with program requirements, including the redefined obligations. These officers will be known as Inspectors and will be appointed by the Minister for Immigration and Citizenship.

Inspectors will be able to conduct site visits as well as request relevant documents from sponsors in writing within specified timeframes.

The powers of these Inspectors will include:

- inspect the premises;
- interview any person;
- require the production of documents; and
- copy such documents.

The final measure I wish to discuss is the introduction of penalties. Current administrative sanctions have failed to encourage compliance in all circumstances. The amendments proposed in the bill introduce a civil penalties framework to actively discourage non-compliance.

This will allow civil legal action to be taken against sponsors who are found in breach of the redefined obligations found in the Migration Regulations. The maximum penalty per offence, which will be determined by a Court taking into account all relevant circumstances, is $6 600 for an individual and $33 000 for a body corporate. It is hoped that these penalties will encourage sponsors and visa holders to meet their obligations so that this system can be as fair and effective as possible.

Migrants play an important role in our country and they deserve to be treated as equal to Australian citizens. This bill will work towards that equality by ensuring that the working conditions of sponsored visa holders meet Australian standards. I commend the bill to the Senate.

Senator MARSHALL (Victoria) (12.57 pm)—The incorporated speech read as follows—

The 457 visa program allows overseas workers to enter for a period of up to four years to work in skilled occupations.

I am happy to speak to this bill today as I have had a long running interest in this topic.

2007-08 saw almost 60 000 visas granted to overseas workers. This bill introduces a range of provisions to better protect temporary overseas workers under the Migration Act (1956).

There are four main elements to this bill:

- The bill will improve monitoring powers
- See the introduction of civil penalties for sponsors who breach obligations
- Clarify the obligations that sponsors have and ensure that they are enforceable under the Act
- And importantly, this bill will facilitate greater information sharing among agencies.

The new laws will enable specially trained officers with investigative powers to monitor workplaces and conduct site visits to determine whether employers are complying with the redefined sponsorship obligations.

Fines of up to $33 000 are proposed for employers found in breach of the obligations in the Migration Regulations.

Additionally, the Department of Immigration and Citizenship will retain the ability to cancel an employer’s sponsorship approval or bar sponsors from re-applying for approval for a set period of time.

This bill includes amendments which will allow the Commissioner of Taxation to disclose tax
information of visa holders, former visa holders, approved sponsors, or former approved sponsors to the Department of Immigration and Citizenship in order ensure correct salary levels are being paid to all visa holders.

This amendment is complemented by several additional elements that will ensure the long-term success of the 457 visa programme.

As an important initial measure, this government introduced a wage increase of 3.8 per cent as of October this year. This increase comes after a two year freeze on the wages for 457 visa holders under the previous government.

Moreover, in April this year, industrial relations commissioner Barbara Deegan was appointed to conduct a broad review into the integrity of the temporary skilled migration program.

Ms Deegan’s recommendations will inform the development of longer-term reforms to the 457 visa program that will be brought forward in the 2009 Budget.

In June 2007 the previous Government introduced a Bill that included provisions which:

• tightened the monitoring and sanction provisions that applied to 457 visa holders;
• allowed for information sharing between the Department of Immigration and Citizenship and the ATO on 457 visa holders and their sponsors; and
• clarified the obligations of 457 visa sponsors.

This was the previous Government belatedly attempting to address stories and examples of abuse of the 457 visa system.

Many of these abuses and cases of exploitation of workers were being characterised by commentators as “horror stories”. Yet in the face of these horror stories, the previous government did not prioritise the legislation and the bill was not passed before the 2007 Election.

Even still, a total of 192 sponsors were formally sanctioned and a further 1353 employers were formally warned in 2007-08. This compares with 95 sanctions and 313 formal warnings issued in 2006-07.

Examples of the horror stories involving 457 visas include the situation that arose with the company Dartbridge Welding. This matter attracted a great deal of national media attention when it arose in late 2006. Dartbridge Welding recruited approximately 40 welders from the Philippines.

The welders were charged a $3,000 recruitment fee by a Filipino recruitment firm. They were also charged high levels of interest on this debt. Upon arrival in Australia, the welders were immediately taken to a bank and were presented with direct debit authorities to sign to give the employer and recruitment company the right to directly debit funds from the welders bank accounts.

The welders were placed in houses on the western outskirts of Brisbane, and charged $175.00 per week for rent, medical insurance and transport. The employer placed 8 people in each house, with two per each bedroom. The first job the welders undertook at Dartbridge was the fabrication of their beds.

The workers were subjected to a great deal of verbal abuse and threatening behaviour by the owner of Dartbridge. Following contact with the AMWU the welders joined the Union. Three of the most outspoken welders were dismissed from their employment.

Many more were threatened with dismissal and deportation.

In September 2007, Mr Yu Tu Chuoan of Aprint, withheld $93,000 in wages from four Chinese 457 visa workers. Mr Chuoan made the four work more than 60 hours a week and deducted more than ten thousand dollars from their wages for lawyers and travel fees.

Chuoan was fined $9,240 for breaching the Workplace Relations Act. He was not subject to any penalty in relation to breaches of his obligations under the 457 visa scheme. Under this legislation this will no longer be the case.

Recognising the need to address the cases of exploitation and abuse of the system, this Government has revived the bill and extended its scope.

The Migration Amendment (Workers Protection) Bill 2008 now includes important extra provisions:

• The bill now applies to all temporary worker visas. For example, this now includes occupational trainees and medical practitioners.
This is to stop employers from simply moving to other visa classes to avoid the bill’s provisions.

- The bill now applies to visas issued under labour agreements. Again this is to stop employers from simply moving into labour agreements to avoid the bill’s provisions.

- And the bill now includes provisions which make the system more flexible for employers.

The Department of Immigration and Citizenship has been allocated $19.6 million over four years for the implementation of a range of 457 visa integrity measures, including this bill.

Financial impact statement

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The Improved sanction powers:

- This bill maintains the sanctions of barring and cancelling where there is a breach of a sponsorship obligation, while providing for two new sanctions— civil penalty proceedings, and infringement notices in lieu of civil penalty proceedings.

- The bill provides that if an approved sponsor fails to satisfy a sponsorship obligation, the Minister may seek an order in the Federal Court or the Federal Magistrates Court that they pay a civil penalty of a maximum of 60 penalty units for an individual (currently $6 600) and 300 penalty units for a body corporate (currently $33 000).

- The bill makes clear that if the sponsorship obligations are not satisfied, the department may impose one, several or all of the sanctions on the approved sponsor (or former approved sponsor). For example, if an approved sponsor was not paying the minimum salary level (MSL) to an employee (and it is a prescribed obligation to pay MSL), the department can cancel the sponsor’s approval. The department may also bar them from making applications for approval as a sponsor for a set period of time and initiate civil penalty proceedings in the Federal Court or Federal Magistrates Court.

The improved sanctions are important step forward by this government.

In recognising the contribution that the 457 visa programme makes to our economy, this government remains aware that it is also responsible for ensuring safe and fair workplace for the visa holders while working in this country.

Improved monitoring and information sharing

- This bill introduces new powers for inspector which can be exercised for the purpose of monitoring compliance with sponsorship obligations and for other purposes prescribed in the Regulations.

- The new inspector powers are modelled on the workplace inspector powers in the Workplace Relations Act 1996 (‘WRA’). This is to facilitate the carrying out of inspector functions by officers of Department of Education, Employment and Workplace Relations (DEEWR).

- The bill provides that inspectors have the power to enter, without force, any place the inspector has reasonable cause to believe that there is anything relevant to the purposes for which they may exercise their powers.

These powers include:

- The power to inspect the premises;
- The power to interview any person;
- The power to require the production of documents; and
- To copy such documents.

These inspections can be conducted at any time during work hours, or at any other time necessary for the purposes of the power.

- The bill inserts new provisions which will amend the Taxation Administration Act 1953. These amendments allow the Commissioner of Taxation to disclose tax information, if the tax information relates to a visa holder, former visa holder, approved sponsor, or former approved sponsor whose identity has been disclosed to the Commissioner of Taxation by the Minister for Immigration.

This will allow DIAC to confirm with the ATO what taxable salary is being paid to visa holders.

An improved sponsorship framework

- The bill provides that the approved sponsor must satisfy prescribed obligations.
The prescribed obligations clearly set out the period of time in which an obligation must be satisfied, and the manner in which the obligation is to be satisfied. The result being that for the first time, the obligations are enforceable by law.

- The obligations were the result of wide-ranging consultation with relevant stakeholders.
- Already approved sponsors will not need to go through the sponsorship application approval process when seeking a variation to their current sponsorship arrangements. This will obviously create efficiencies for the client and for the Department.
- The bill provides that additional sponsorship obligations set out in a labour agreement will be enforceable through the Migration Act.

Regarding Transitional arrangements – existing 457 visa sponsors
- Existing standard business sponsors will be subject to the sponsorship obligations from the date of commencement of the bill and will no longer be subject to existing undertakings.

All aspects of the new sponsorship framework will apply to existing standard business sponsors. The Rudd Government is committed to ensuring the Subclass 457 visa scheme operates as effectively as possible.

The Rudd government recognises that the 457 visa programme is essential to contributing to the supply of skilled labour for this country. However, the Rudd government recognises that the benefits of the 457 visa programme must not be enjoyed by this country without ensuring the protection of the employment and training opportunities of Australians and the rights of overseas workers.

Senator WORTLEY (South Australia) (12.57 pm)—The incorporated speech read as follows—
I rise to add my support to the Migration Legislation Amendment (Worker Protection) Bill 2008.

This bill seeks to restore the integrity of the Subclass 457 visa program and, in doing so, rebuild community confidence in this important scheme. It will introduce various measures designed to better protect those who come to Australia under this temporary workers’ arrangement from exploitation.

The bill proposes to amend the Migration Act (1958) to make sponsor obligations clearer, introduce civil penalties for those who fail to fulfil their 457 visa responsibilities, improve monitoring of the scheme and facilitate broader information sharing between government agencies.

Unlike a Bill introduced but never debated and never put to a vote by the former Howard government, this proposal importantly encompasses all temporary worker visas - including occupational trainees - and covers visas issued under labour agreements.

The changes we are introducing in the bill before us today are designed to prevent employers simply shifting to other visa classes or labour agreements to avoid their obligations.

As well as being structured to reinstate and safeguard the rights of workers, this document is designed to make this system more flexible for employers.

A properly functioning Subclass 457 visa scheme is an important contributor to the health of the Australian economy.

It is an important cog in the government’s efforts to continue to put downward pressure on interest rates and inflation by increasing the supply of skilled labour in this country.

It is no secret nor should it be a surprise that we are suffering an acute skills shortage in this country. Unfortunately, eleven-and-a-half years of neglect in this area by the previous Howard Government made sure of that.

Addressing this serious and urgent need is one of the Rudd Government’s major commitments. Our first priority is to attack this problem by educating and equipping Australians, so that employers’ skills demands are matched by the skills set of our community into the future.
In this year’s Budget, the government made a $19.3 billion pledge to get Australians ready and prepared for work.

A $1.9 billion investment committed within this sum will deliver up to 630,000 new training places provided over five years.

However, a skills crisis born out of indifference and inattention, and exacerbated by a resources boom and low unemployment, cannot be remedied overnight.

Industry needs skilled workers now and we simply do not have enough Australians appropriately trained and prepared to take up those jobs.

We need 457 visas, the overseas workers who receive them and the employers who sponsor those workers—and it is in everyone’s interests that it is a robust and transparent scheme.

The system originally was designed to be taken up by a small number of highly skilled, professional, English-speaking temporary migrants.

But in the past five years, as the skills crisis has worsened, the scheme has been forced to grow rapidly in response to industry demand.

In 2003-4 there were just fewer than 40,000 457 visas issued.

In the most recent financial year, this total had ballooned to more than 110,000.

Professionals—such as registered nurses and GPs and business, information and computer specialists—still make up the bulk of 457 visa workers.

However, labour market demands have been shifting across the life of the scheme.

The program has begun to attract greater numbers of tradespeople, as well as more workers from non-English speaking nations such as India, China and the Philippines.

With greater communication difficulties and lower levels of education, this growing group of employees has been at much higher risk of exploitation by unscrupulous employers.

Sadly, under the watch of the former Howard Government, exploitation became a scourge on the scheme.

Initially denying any problems with the 457 visas, then defending her department by virtue of the fact it could not properly monitor the scheme, the former minister ultimately ordered a stop on the public release of information about the program in 2006.

However, through the media, the Australian public began to hear about employers who were undermining local wages and conditions by bringing in 457 visa workers.

By June last year, the then Minister for Immigration Kevin Andrews started to move on trying to plug the holes in the scheme.

However, stakeholders were not properly consulted in this process.

This failure meant many of the system’s shortcomings were not identified, let alone acted upon.

Of the changes that were made, some were too heavy-handed, resulting in an increase in red tape across the scheme—even for the majority of employers who had been doing the right thing.

Overall, it was a case of too little, too late.

The program needed a real overhaul, not just some minor tweaking.

The Rudd government recognises the need for Australia’s temporary overseas worker program to be in tune with global migration trends.

This is essential if we are to stay competitive in the world labour market.

And we need the confidence of stakeholders at home if we are to engage employers to take up the economic opportunities the scheme offers.

One important element in the attempt to gain the confidence of the major players is wages.

In August this year, the government indexed the minimum wage for 457 visa workers for the first time in two years.

This has meant an increase in the non-regional base salary level from $41,850 to $43,440 per annum and from $57,300 to $59,480 for ICT professionals.

The Government also appointed Barbara Deegan, an Industrial Relations Commissioner, to review the integrity of the current 457 visa program and recommend measures to better protect overseas workers.

And in the 2008/09 Budget, the Rudd government gave real and meaningful backing to its commitment to improve the temporary skilled migration
program by allocating $19.6 million towards that end.

That funding for a range of 457 Visa integrity measures, includes this bill.

It also covers the establishment of a departmental working group which is charged with the task of creating a longer-term reform package.

Ultimately, the Subclass 457 visa system needs to be streamlined and transparent if we are to prove its integrity to the Australian people.

It must not undermine the pay and conditions of Australian workers if it is to be accepted as legitimate.

And it must not allow the exploitation of the overseas workers it seeks to attract to employment in Australia.

In order to achieve these necessary advances, we have begun analysing and addressing stakeholder apprehensions with the scheme.

And we have begun to act—as I have generally outlined today—in a decisive, timely, considered, collaborative and coordinated fashion.

This bill is a crucial plank in that plan of action … that commitment to improve the Subclass 457 Visa system for all involved, particularly the employees and employers on which the scheme relies.

We have also taken into consideration the effects of the scheme on the Australian people and the Australian economy.

I commend the bill to the Senate.

Senator POLLEY (Tasmania) (12.57 pm)—The incorporated speech read as follows—

I rise today to speak on the Migration Legislation Amendment (Workers Protection) Bill of 2008. I have taken an interest in this legislation and this area since I was heavily involved as the Deputy Chair of the Joint Committee on Migration into the inquiry into 457 temporary visas conducted last year.

That inquiry, “Temporary Visas, Permanent Benefits,” served as a wakeup call to a number of us about the 457 visa scheme. While we maintain that the highest priority must be placed on providing Australians with job opportunities and training, the simple truth is that the labour shortage and the skills crisis meant that for a number of businesses it was necessary to get hold of labour as soon as possible. The 457 program should never overshadow the need to develop the training and skills of working Australians.

That is where the 457 visa program comes in. By providing temporary skilled migration, it allows Australia to continue its economic development without being handicapped by a lack of skilled labour. It was designed to address areas of skills shortages within Australia. However, as the skills crisis has deepened, the needs of the labour market demand has changed. The scheme has begun pulling in a larger proportion of people in trade level occupations, as well as increasing numbers of workers from non English speaking countries. These particularly include the Philippines, China and India.

It is now recognised that workers in occupations below the professional level and from non English speaking backgrounds are at much higher risk of exploitation, particularly in the areas where we have traditionally seen industrial relations problems.

During the inquiry we travelled all across Australia and heard some horror stories about mismanagement of employees, exploitation and quite frankly disgusting treatment of a number of foreign nationals brought here to work under the 457 scheme.

We heard from unions about workers too scared to talk to the Department about their mistreatment, or even more appallingly forbidden to talk. Even worse we heard about how some of the workers, lacking in basic English skills, were completely unable to function in Australia.

We heard that some migrants who came here on the 457 program were being exploited in slave like conditions and weren’t being paid the minimum agreed wages. We heard the sad case of Pedro Balading from the Philippines. Mr Balading came to the Northern Territory expecting to work on a farm. Instead his job became fence posting and one day he was thrown from the vehicle he was riding in and died from his injuries. Not only was he lied to about his job and duties, but he then faced the indignity of his wages being garnished for his living expenses.
There was also the case of Mohammed Nayem who came here from Singapore who was forced to work 50 hour weeks, paid for 38 hours a week and then had $100 forcibly deducted from each pay packet as rent for his room – a converted office that he shared with five other men. Australia didn’t turn out to be the land of opportunity for them.

I was truly shocked at the level of abuse of the scheme that was occurring. These abuses convinced me at the time that the Scheme required serious reform if it was to continue.

I congratulate the Minister for this reform to address these concerns.

While the 457 Visa scheme is a wonderful idea, the sad truth is that the previous Liberal/Coalition Government failed to implement a number of simple oversight measures in the original legislation that even their own members should have been able to see were necessary. In that respect it had all the hallmarks of a Howard Government labour scheme – unfair and poorly thought out. A number of the recommendations we put forward in our report into the scheme were simple common sense ideas that really should have been present in the original scheme.

That they were not is a sad indictment on the motivations of the Howard Government.

I commend this legislation, and Minister Evans, for addressing a number of the concerns that we raised in that report. This bill will introduce a range of provisions designed to better protect temporary overseas workers.

These include:

• Improved monitoring powers;
• The introduction of civil penalties for sponsors who breach obligations;
• Clarifying sponsor obligations and ensuring that they are enforceable under the Act;
• Ensuring that there is greater information sharing amongst Government agencies.

It is vitally important that these reforms are passed in 2008. We have consistently demonstrated our commitment to improving the integrity of the 457 visa program over a number of years and here is tangible proof of that commitment.

The integrity of the 457 visa program has been undermined by its rapid growth and changing role, but it is only now – by the Rudd Labor Government - that its problems are being addressed.

For those in the Chamber who may be unfamiliar with this program, the 457 visa program is designed to allow overseas workers to enter Australia for a period of four years and to work in skilled occupations.

The scheme has increased four-fold in the last four years with around 110,570 people currently on the scheme in Australia.

In June of last year, the previous Government introduced a Bill that was belatedly aimed at addressing some of the problems that we had noticed in the 457 program. However that Bill was never debated and not passed prior to the previous Election. The Minister at the time, Kevin Andrews put forward these changes too late, and in a heavy handed way which meant that everyone involved in the scheme was caught up in extra red tape.

The Rudd Labor Government recognises that the ground here is shifting and that the role of the temporary skilled migration programme is changing. In order for Australia to remain competitive in the global labour market it is essential that we offer a robust, streamlined and transparent temporary migration program.

That is why we have put forward this bill. That is why we have already introduced a number of reforms aimed at improving the 457 scheme.

It includes a number of important extra provisions.

The bill applies to all temporary worker visas. It doesn’t matter if you are an occupational trainee or a medical practitioner you will be covered. This measure was brought down in part to stop employers simply moving employees between visa classes to avoid the bill’s provisions.

The bill also now applies to visas that are issued under labour agreements. This is another common sense solution to stop employers simply moving their employees onto a different agreement.

The new bill also includes a number of provisions to make the system more flexible for employers.
The Government has improved sanction powers under the bill. It provides for two new sanctions to employers who violate their obligations. These are civil penalty proceedings and infringement notices, which can be provided in lieu of civil penalty proceedings.

If a sponsor fails to meet their obligations under the Act, the Minister now has the power to seek an order in the Federal Court or Federal Magistrates Court to ensure they pay a civil penalty. This is currently $6600 for an individual and $33,000 for corporations.

It is also now made explicit that a failure to satisfy a sponsorship obligation may result in the department imposing ALL of the sanctions on the sponsor. This is designed to act as further deterrence for employers.

One of the major issues that we found in the Migration Committee investigation was the lack of proper information sharing between Government agencies. Often it was more than a case of the right hand not knowing what the left hand was doing, and it led to serious breakdowns in communication which disadvantaged workers.

We have introduced new inspector powers which can be used to monitor employer’s compliance with their obligations. They are modelled on the powers given to inspectors in the Workplace Relations Act of 1996. They allow officers of the Department of Education, Employment and Workplace Relations to carry out the following functions.

Inspectors have the power to, at any time they feel necessary, enter without force any place the inspector has reasonable cause to believe holds anything relevant to their case.

These powers allow them to:

• Inspect the premises
• Interview any person
• Require the production of documents
• And copy these documents as required.

It is to be hoped that these changes will prevent such sad cases as the one we read about in recent months in The Age. Industrial Relations Commissioner Barbara Deegan described how foreign middleman can demand excessive fees to gain or renew the visas, and then encourage Australian employers to exploit the workers by demanding ‘unlimited hours’ for minimum wage.

In addition to these changes, the bill will allow the Commissioner of Taxation to disclose tax information if the information relates to a visa holder, former visa holder, approved sponsor or former sponsor. This is at the discretion of the Minister for Immigration and will allow the Department to confirm details with the Tax Office with regard to salary and other allowances payable to visa holders.

Of course we are aware that it is important that measures to provide oversight to 457 visa holders must be implemented quickly. That is why existing business sponsors will be subject to the sponsorship obligations from the date the bill commences. All existing undertakings will be replaced by the new provisions of the bill.

This is necessary, not only to safeguard workers as I stated earlier, but also to maintain the integrity of the program. Without an abrupt cut off date, a situation would be created where some workers in a workplace were subject to the new monitoring and inspection powers and others were not. This is obviously not an ideal situation for anyone.

We have decided that this bill will commence within a period of 9 months from Royal Assent. This is important. The 9 month period will allow the recommendations of various review committees to be taken into account when drafting the necessary regulations and procedures.

This 9 month period will also be beneficial in educating all existing 457 sponsors and visa holders as to the changes that are being proposed.

As I stated at the outset of my speech, my previous involvement with the Migration Committee has given me some background on the issue of the 457 Visa program. I am extremely pleased that Minister Evans has introduced this bill and acted to end the inequities that were present in the scheme.

The 457 Scheme is something that serves a worthwhile purpose, however it is so important that it is used properly. The Rudd Government realises that the first priority must be to equip our own workforce to meet the skills of the labour market.
That is why in the 2008 Budget the Treasurer announced that the Rudd Government is making a $19.3 billion investment in education and training to ensure that we continue to provide employment and training opportunities for Australians. However we realise that investing in the education and training of Australians will not meet employers immediate skills needs.

That is why it is imperative that we restore public confidence in the 457 Visa programme. It is in everyone’s interests to have a robust and transparent scheme in place. A loss of public confidence in the 457 scheme can translate into a loss of popular support for the scheme and will act as a barrier to employers to take up the economic opportunities that the 457 visa scheme offers.

The challenge for this Government is to prove to the Australian people that the 457 visa program has integrity and that it is not undermining Australian wages and conditions.

That means that it is used to cover up legitimate skills shortages and not as simply an avenue for cheap unskilled labour.

That means that those who come here under the scheme receive every opportunity to report poor treatment instead of being condemned to slave like conditions.

That means that we as a Government ensure their conditions are monitored, and that they are being fairly treated.

I commend this bill to the Senate.

Senator BUSHBY (Tasmania) (12.57 pm)—I seek leave to incorporate comments by Senator Ellison.

Leave granted.

Senator ELLISON (Western Australia) (12.57 pm)—The incorporated speech read as follows—

The Migration Legislation Amendment (Worker Protection) Bill 2008 amends the Migration Act 1958 and seeks to enhance the framework of the sponsorship of noncitizens to enter and work in Australia with the objective of ensuring the working conditions of 457 visa holders meet Australian standards and the costs of sponsorship are more fully identified and met by the sponsor.

The Coalition is supportive of the overall objectives of the legislation, believing that a framework for sponsor obligations is necessary but understanding that we have grave reservations about lack of availability of the regulations attached to this Bill. I understand that draft regulations are to be made available in the first part of 2009, and of course these will define the operation of the framework.

The failure by the Government to produce these regulations treats with contempt the needs of sponsors to have a clear understanding of their obligations and will keep in the dark many Australian businesses that have an overwhelming need for temporary sponsored visa holders in their workforce.

Even with the economic downturn in States like Western Australia and Queensland we are still hearing of skills shortages and the need for 457 visa holders.

The sponsorship framework provided for in the Bill is maintained by four main measures which:

• Outline the framework for a system of statutory regulations for sponsorship obligations in relation to 457 visas;

• Widen the sanctions that can be applied if a breach of those regulations is made by the sponsor;

• Detail a system of monitoring, compliance and information sharing powers; and

• Set out the transitional arrangements between the current and new regime.

On the face of it none of these measures, which are general in nature, could be termed controversial. It is the absence of detail going to cost, penalties and obligations of sponsors that causes concern.

Background

It is firstly worthwhile however to review the background of the 457 visa scheme.

In 1996 the Coalition introduced new visa categories to allow employers to sponsor skilled workers on a temporary basis, between three months and four years, to help ease chronic labour shortages.

The Temporary (long stay) Business Visa (subclass 457) is the most commonly used category.
After a specified time, workers and their families can apply for permanent skilled migration.

Size and growth of the program
The annual intake for the 457 visa program has steadily increased from some 15,000 in 1997-08 to 22,370 in 2003-04 to 46,680 in 2006-07. In February 2008 there were 125,390 457 visa holders in Australia including 67,410 skilled workers and 57,980 family members.
There are currently nearly 19,000 employers using 457 visas. Nearly 30% of 457s are employed in NSW.
On average 457 visa holders stay two years and approximately 50% move to permanent residence via the Employer Nomination Scheme or the Regional Sponsored Migration Scheme. Apart from providing a temporary supply of skilled workers, the 457 Scheme has also proved to be a good source of permanent skilled migration.

The Bill
Under the proposed Bill visa holders can be sponsored by employers who must meet a series of “undertakings”. These “undertakings” are now to be specified in the new (as yet unseen) regulations.
According to the Rudd Government the regulations will be drawn up in the following months, followed by six months of consultation and education about the changes. All currently engaged sponsors will ultimately be transferred to the new regime.

The Bill’s Framework:
Sanctions
In addition to the current options of barring or suspending a sponsor for breaching an agreement, there will be new civil penalties of a maximum of $6,600 for an individual and up to $33,000 for an incorporated body. The Minister may also issue an infringement notice with a fine of up to one fifth of the maximum penalty. It is essential that, in relation to any sanctions, any element of retrospectivity is avoided. This is something on which we will place careful scrutiny.

Monitoring and Compliance
The power of Inspectors to monitor and investigate is modelled on the Workplace Relations Act; with for example, the same powers to request a document etc. Again these powers will have to be carefully scrutinised.

Information Sharing
The Minister will be able to reveal information about the sponsor to the visa holder and vice versa.
The Bill also contains an amendment to the Tax Administration Act so the Commissioner of Taxation can provide information to DIAC to find out if the company is “a good corporate citizen”. Understandably for the individual and the sponsor there will be sensitivities which must be safeguarded. How one defines a ‘good corporate citizen’ remain to be seen.

Transition Provisions
When the new regime comes into effect, all 457 visa sponsors will be moved to the new regime. The expected commencement date is mid 2010.

Discussion
While the framework in the Bill is supported by the Coalition as a further evolution of the obligations of sponsorship which the Coalition introduced through the Migration Amendment (Sponsorship Obligations) Bill in June 2007, a serious problem lies in the delay of the production of the regulations by the Rudd Labor Government. As I have said, the Coalition will subject them to close scrutiny when they are finally tabled.
The April discussion paper this year of regulation options released by DIAC does however give us some idea of potential new payment obligations for sponsors of 457 visa workers and their families.
These new options include:
• meeting all of the education costs of minors accompanying the worker;
• covering all medical costs, either through insurance or direct payment, including covering medical costs where the insurance company refuses to pay;
• paying any migration agent’s fees, or other costs of recruitment up to a maximum specified;
• paying all travel costs to Australia (before only travel from Australia was required);
The Rudd Labor Government has also proposed that sponsors not be allowed to use temporary overseas labour during periods of lawful industrial action or to influence enterprise bargaining negotiations. This could have very interesting interpretation challenges.

The framework refers to a new system of compliance and monitoring work. We need to be concerned that employers and sponsored visa applicants are not frustrated by greater red tape burdens.

There are also proposals that 400 series temporary work visas which have not required sponsors in the past, e.g. for those staying for less than three months, may in future require sponsors who will also need processing and monitoring. The Rudd Government will need to ensure that this does not put even greater pressure on the capacity for the Department to deliver efficient processing of applications for this group of visas and undermine the high regard in which the Australian migration system is held. It is important that the accessibility and flexibility of this programme is maintained whilst ensuring its integrity is maintained.

Financial Impact

The 2008/2009 budget allocated $19.6 million over four years including $0.4 million in capital funding for 2008/2009, to develop the legislation, better define employers obligations, improve investigatory powers, a more robust sanctions framework and a detailed information campaign. It is essential that the Department of Immigration and Citizenship be adequately resourced to effectively implement these measures.

Summary

It would be detrimental to Australian employers if the cost of bringing in skilled labour and the time the process takes leaves Australia less competitive in the global market for the highly mobile skilled worker. Indeed, in its submission to the Standing Committee on Legal and Constitutional Affairs the Australian Chamber of Commerce and Industry submitted that the changes seemed disproportionate to the actual scale of sponsorship problems and thought that the cost of measures might be prohibitive for many businesses and would discourage the use of the programme by Australian employers experiencing genuine skills shortages.

Indeed the DIAC’s annual report for 2006/07 stated that only 1.67% of sponsors were found to have breached their sponsorship obligations. A representative from Australian Mines and Metals Association informed the committee ‘we seem to be at odds as to where the justification for such a bill came from.’ Even the Minister Senator Evans was reported in the Australian Financial Review on 11 November 2008 as conceding that the ‘majority of employers did the right thing’.

In conclusion while the Coalition will support the Bill it will reserve the right to assess the regulations on the basis of what is best for Australia.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (12.57 pm)—In summing up, I would like to thank senators for their contributions to the debate on the Migration Legislation Amendment (Worker Protection) Bill 2008. I would also like to thank those who incorporated their responses due to the tight legislative timetable. I apologise for them having to do that, but there will be a record of their contributions.

This is an important piece of legislation. It was drafted in the first instance by the previous government and was not introduced in time before the last election. It has changed, but the basic policy intents—remedying some of the deficiencies in the arrangements surrounding sponsorship and dealing with sponsors who fail to do the right thing via sanctions and inspection regimes—were issues considered by the previous government. They took a decision that they needed a legislative response, because there have been restrictions on the capacity of the Department of Immigration and Citizenship to ensure the integrity of the system. My great concern as a defender of the temporary migration program is that it has been seriously undermined, and public confidence in it has
been seriously undermined, by the exposure of cases of abuse of overseas workers. That represents a small number of incidents in terms of the overall program, but it is not an insignificant number. I would say to the Liberal senators who tried to suggest that the union movement’s concerns were not warranted: you are wrong—dead wrong. We have had serious problems and, as you know, the previous minister—

Senator Fierravanti-Wells—We just asked for it to be put in context, Minister.

Senator CHRISS EVANS—I always put it in context, if you look at my speeches. I appreciate the opposition’s support on the bill, but the legislative impetus for this came from the previous minister because of his concerns. If you look at what he did in areas like the IT and meat industries, you see that he responded—in a fairly ham-fisted way, in my view—to concerns that he had about the exploitation of workers in those industries. This is not something that is unique to me as minister.

There have been serious issues of abuse. They are in the sorts of areas where you see industrial relations problems. The industries where there have been problems are the industries where you have problems with exploitation more generally. We have had examples, like the exploitation of cooks in the restaurant industry in Canberra, which have had to be dealt with. There are concerns. My consistent position has been that you can only defend the scheme if you make sure it has integrity. You can only allow it to work for employers who do need the skills if you ensure its integrity. This is about making sure we have the balance right in that regard, and it will give us the ability to ensure that it does have that integrity and that we can weed out the small numbers of sponsors who fail to do the right thing.

Regarding the question of consultations, unlike under the previous minister, who announced changes without any consultation—major changes in this area and major changes, more broadly, in the migration area—this consultation has been exhaustive. It started with me appointing an employer reference group, which has three representatives of industry, led by Mr Coutes, whom Senator Trood may well know and who is senior executive and chairman of Xstrata. They looked at the 457 system and how we might make it more responsive to employers’ needs. On receiving that report, I implemented all but two of their recommendations. One which I did not implement was changing the name of the program, but I would like to do that at some stage. I think the program has seen a vast improvement in its responsiveness to employers and the processing of applications. If you talk to employers using the scheme, you will find that they are very complimentary about the changes and what those have meant for allowing them to access the scheme.

That was one point of consultation. The second was that I appointed the industrial relations expert Mrs Barbara Deegan to conduct an integrity review of the program, and she has spoken to hundreds of people throughout Australia and consulted with all the key groups. I released her report a matter of weeks ago. We also had a discussion paper that went to possible reforms that would be part of the regulations for this legislation. Again it was public, and again it received submissions—more than 80 were received. All of that is to be considered as part of the drafting of these regulations by the Skilled Migration Consultative Panel I established, which includes four members of senior industry bodies like ACCI, AiG and the Minerals Council, four union representatives and four representatives of the largest state governments. All are engaged in the process of
getting the issues and integrity of the 457s right.

Senator Trood made a good point which is the key to all this: the scheme grew very quickly, and the public policy settings around it have been inadequate to cope with the growth not because of the numbers but because of what has happened in terms of the skill classifications and countries of origin. Under the scheme originally, we were bringing in highly trained medical professionals, engineers et cetera—people with obvious qualifications going into high-paid jobs sponsored by large companies. There were no problems with that. From an immigration point of view, I just want to know that they have a passport, a visa and no criminal history. Whether they get $250,000 or $300,000 from BHP every year is their lookout.

But with the expansion of the program we have seen the skill level come down so that we have a lot of people coming in at tradesman level. We have also seen the source country change. Source country change is important because we have people who do not have English as a first language, some of whom have very little English at all. That is where the exploitation occurred. People from China, the Philippines and India, lacking the English-language skills, have been brought in by labour hire firms into industries with sometimes poor IR records, and that is where the problems have been.

Senator Fierravanti-Wells—Some are run by the unions, too.

Senator CHRIS EVANS—I do not know about being run by the unions. All I am saying is that the risk profile has changed and the public policy settings around it are not competent now. That was recognised by the former minister. I think it is broadly recognised in the parliament. This is about getting the right public policy settings around it. It is not about increasing costs to employers—I do not want to make the scheme such that it becomes prohibitive. Equally—

Senator Fierravanti-Wells—They don’t know their obligations, Minister.

Senator CHRIS EVANS—They will know their obligations. They have been—

Senator Fierravanti-Wells—You do a lot of consultation, but—

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop)—Order!

Senator CHRIS EVANS—We have done a lot of consultation because we want to get it right. They say to me that the former government never talked to them like we do about the detail of these things. I am constantly talking to industry about it. We have to get the balance right. We want to be clear, though, that we want 457 workers to be more expensive than Australian workers, because we do not want people to employ overseas workers in preference to Australian workers—a principle that the previous government used to articulate as well. One of the major requirements out of the Deegan report is about market rates of pay. We have the situation now where some overseas workers coming into the country are paid less than their Australian counterpart—that is, there is an incentive to use a foreign worker over a local worker. I do not think anyone in here would endorse that. The market rates argument is very important and will be central to any reforms.

I also want to pick up another point that Senator Trood made, although I do not want to go on for too long. The discussion paper deliberately raised the gamut of issues, including education costs because these are actually starting to impact on state education systems. In Queensland—your own state, Senator Trood—we suddenly had an influx of a large number of workers who then had kids who went into the public schools, which did not have the facilities to cope. Most of
the rural communities are very glad to have them, because a lot of those towns are dying. They are very welcoming and there have been some really great stories about all of that.

At our primary school, which my youngest son has now left, they have now got 40 overseas students who do not speak English. But they have got no ESL teacher. The teachers are finding that the resources to cope with those students are not there. The P&C association has recently paid for the six-month employment of an ESL teacher because the teachers have been finding that they have not been able to give enough attention to the other students—a real problem that comes as a result of having overseas workers. It is not irrelevant; it is a cost to the taxpayer and a cost to the state education system—costs that have got to be considered. Personally, I am not going to look to lumber employers with those costs. We cannot pretend that we are not going to have a public policy debate about those because there is not an issue. There is, and state governments are raising it with me because the larger the number of overseas workers the bigger the drain on their resources.

Senator Fierravanti-Wells interjecting—

Senator CHRIS EVANS—That is right. Some of them are the biggest users, Senator, but this is complex. That is what I am saying: it is complex. So the discussion paper picks up all those issues. As I have said, there is an enormous amount of consultation and discussion going on around these changes. The Skilled Migration Consultative Panel are going to have the draft regulations referred to them. They will not agree on them all—I am sure of that—but we will have this process, the arguments will be held and in the end the government will have to make a decision.

I know there has been interest by Senator Xenophon and the Greens in this issue of regulations. I have made it clear that I am happy to distribute the draft of the regulations earlier in the year before they are introduced. I am happy to do that for the Liberal opposition and Senator Fielding so everyone sees the draft and everyone can give feedback. But I absolutely reject any suggestion that there has not been consultation about all this, and I am happy to compare the consultation on these measures with that on the former minister’s more substantive measures which were just announced.

There is a serious attempt here to tackle an emerging problem about the public policy parameters around the temporary skilled migration program. There are more emerging, quite frankly, as the economy turns down a bit. I appreciate the support from around the chamber. As I said, I will make draft regulations available to people before they are introduced and they will certainly go to the industry’s Skilled Migration Consultative Panel. Hopefully, at the end of this we will have a good outcome. Obviously it will not be agreed upon by all, but I think we will have regulations that provide integrity to the scheme, which has been under pressure, and protect overseas workers but ensure that Australian workers are protected from overseas labour undercutting employment opportunities for Australians. That is the right balance that we have got to get. I think that when we come to the draft regulations we will be able to get that balance right. I thank the Senate for its support for the bill.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
EVIDENCE AMENDMENT BILL 2008
Second Reading

Debate resumed from 19 June, on motion by Senator Ludwig:

That this bill be now read a second time.

Senator BRANDIS (Queensland) (1.10 pm)—I suppose it is a reflection on the way in which the parliament works, where all of the attention is directed only to matters of political controversy, that the Evidence Amendment Bill 2008 will pass through this chamber in a matter of a few minutes without any significant debate, yet the bill, which the opposition supports, is probably one of the most important pieces of legislation that this parliament will consider this year. It has a long history. As honourable senators would be aware, originally the whole of the law of evidence was judge made. But in 1979 the then Fraser government made a reference to the Australian Law Reform Commission to inquire into the possibility of the comprehensive rationalisation and reform of the rules of evidence. The ALRC produced a substantial research paper and draft legislation in 1985 and a final report on the possibility of uniform evidence legislation in Australia in 1987. In 1991 the Commonwealth government and the New South Wales government each introduced legislation substantially based on the ALRC’s draft. The parliaments of those two jurisdictions passed in 1993 evidence bills which came into effect from 1 January 1995. They are a model for the gradual process by which Australia’s rules of evidence will become both statutory and uniform, and that has happened in some but not all jurisdictions. The current bill is the first full-scale review of the operation of the 1995 legislation and it will bring into effect a number of very important changes.

To most people, I suspect, the rules of evidence would be a very dry and prosaic subject, but to me as a lawyer they are end-lessly fascinating. I regard the law of evidence as being—along with the symphonies of Beethoven or the architecture of Christopher Wren or the poetry of John Milton or Einstein’s general theory of relativity—among the great achievements of the human mind. The complexity, the subtlety and the sophistication of the rules are indeed remarkable, and the manner in which legislative draftsmen have captured the complexity of those rules, which consist of a large number of categories, subcategories, subsubcategories, exceptions and subexceptions, is a great tribute to them. The rules of evidence have been expressed by great legal textbook writers like James Bradley Thayer and Wigmore, in America, and by the incomparable Sir Rupert Cross, at Oxford University, who, like a 20th century Teiresias, laboured through blindness to create his monumental work on the law of evidence.

They have now been reduced to statutory form, and the statutory formulation in the 1995 bill has now been improved upon. But these are more than merely technical changes. Again, these are the sorts of things that perhaps could only get a lawyer very excited. There have been significant changes to the exceptions to the hearsay rule. There have been very important changes to the rules regarding the competence and compellability of witnesses. There have been important changes to the testing of the credit of witnesses. The question of privilege, which does trespass a little more beyond the technical legal nature of these changes, is also addressed in this bill.

For those of us who are interested in the rules of evidence—I suspect there are not all that many in the parliament—this is a very, very important day. This is a very, very important bill. The opposition hopes that it will speed the process towards the day when all of the Australian jurisdictions adopt a uniform set of rules. In closing, can I express
the congratulations and appreciation of the opposition to those at the Australian Law Reform Commission, those in the Attorney-General’s Department and the legislative draftsmen who have brought this bill to fruition.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.16 pm)—I thank Senator Brandis for his contribution and acknowledge his knowledge and interest. I think those of us who are here in the chamber will recognise that we have all learnt an important lesson today, and I thank him for that.

Senator Brandis—I was just being self-indulgent, Senator McLucas.

Senator McLUCAS—Oh, not at all. The Evidence Amendment Bill 2008 includes a number of amendments to improve the overall workability of the uniform evidence laws. In particular, the bill contains important reforms to make it easier for children and people with cognitive impairment to give evidence, by promoting the use of narrative evidence and disallowing improper questioning of vulnerable witnesses under cross-examination.

Other significant reforms contained in the bill include improving the procedure for taking oral evidence, including expert evidence, about the traditional laws and customs of Aboriginal or Torres Strait Islander people to accommodate the very form by which these laws and customs are maintained; and extending the compellability provisions in the Evidence Act to recognise that people involved in same-sex relationships should not be forced to give evidence against their partner unless a court is satisfied that there is a compelling reason to do so. This is consistent with the government’s commitment to remove same-sex discrimination in Commonwealth laws.

This bill is a significant step in progressing the harmonisation of evidence laws across Australia. As the Attorney-General has previously said, the Australian government is keen to encourage all jurisdictions to implement the model uniform evidence laws. This will result in a more uniform and coherent approach to evidence law and, in particular, reduce complexity and costs associated with juggling two evidence regimes in non-uniform Evidence Act jurisdictions. I commend the bill to the chamber.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

TRANSPORT SECURITY AMENDMENT (2008 MEASURES No. 1) BILL 2008

Second Reading

Debate resumed from 12 November, on motion by Senator McLucas:

That this bill be now read a second time.

Senator BRANDIS (Queensland) (1.18 pm)—The Transport Security Amendment (2008 Measures No. 1) Bill 2008 does not put me in mind of Beethoven, John Milton, Albert Einstein and Christopher Wren, as did the last piece of legislation. It is a much more prosaic bill. Its purpose is to amend the Maritime Transport and Offshore Facilities Security Act 2003 and the Aviation Transport Security Act 2004 to streamline some legal terms and conditions that will enhance the effectiveness of security outcomes. The bill does not merge the security arrangements of the aviation, maritime and security sectors but rather seeks to ensure that a similar regulatory framework is in place for each industry to enhance the overall efficiency of transport security.
The background of the bill arises from the events of September 11 2001, when the international community recognised a need to implement systems to protect the maritime and aviation transport sectors against the threat of terrorism. As a result, the International Maritime Organisation developed the International Ship and Port Facility Security Code in December 2002. Under this code, all security regulated port facilities, offshore facilities, port and offshore service providers and ships are required to implement security plans to undergo security risk assessments.

In Australia the Maritime Transport Security Act was introduced by the coalition government in 2003 and it implemented the international guidelines developed by the International Maritime Organisation. After subsequent amendments, the act was amended and renamed the Maritime Transport and Offshore Facilities Security Act 2003. The Aviation Transport Security Act 2004 established a regulatory framework which requires that certain aviation industry participants have approved transport security plans. It implemented Australia’s obligations under the Chicago convention—that is, the Convention on International Aviation.

In 2007 a task force was established within the Office of Transport Security, a division of the Department of Infrastructure, Transport, Regional Development and Local Government, which designed a review to examine ways in which the Maritime Transport and Offshore Facilities Security Act 2003 could be improved to increase flexibility and clarity in maritime security planning. The outcome of the review led to the proposals which are the subject of this bill, which the opposition supports.

The bill amends both the Aviation Transport Security Act and the Maritime Transport and Offshore Facilities Security Act to clarify that the department’s secretary may permit both aviation and maritime industry participants to hold multiple security programs and plans at once and that, prior to the commencement date of the amendments, the operation of the Aviation Transport Security Act and the Maritime Transport and Offshore Facilities Security Act does not prevent industry participants from holding multiple security programs or plans.

Additionally, in relation to the Maritime Transport and Offshore Facilities Security Act, the bill is intended to insert a definition of ‘Australia’ into the act so that the act’s operation extends to include external territories; allow the department’s secretary to approve a maritime, ship or offshore security plan for up to five years but no less than 12 months; enable regulations to be made to prescribe mapping standards for maritime security zones and security regulated port boundaries, and standards for the presentation of information detailing offshore security zones, required to be produced by industry participants; and ensure the consistent usage of definitions and terms throughout the act. As I indicated earlier, this is a law reform measure which the opposition supports.

Senator McLUCAS (Queensland—Parliamentary Secretary to the Minister for Health and Ageing) (1.22 pm)—in reply—I thank Senator Brandis for his contribution. The Transport Security Amendment (2008 Measures No. 1) Bill 2008 does not propose to vary any of the policy settings underpinning Australia’s transport security regimes. However, the bill will strengthen the Maritime Transport and Offshore Facilities Security Act 2003 in a number of ways. The bill will allow for maritime, ship and offshore security plans to be approved for less than the current five-year period but not less than 12 months. It will enable regulations to be made to prescribe mapping standards for maritime security zones and security regulated port boundaries. The bill confirms the
operation of the Maritime Transport and Offshore Facilities Security Act in external Australian territories and ensures the consistent usage of definitions and terms throughout the act.

The amendments clarify that industry participants may hold more than one approved security plan or program at the same time, and they recognise the validity of all existing plans held prior to the commencement of the bill. The passage of this bill will assist industry participants to comply with security obligations with greater clarity and certainty, thereby enhancing their capacity to get on with what they do best: keeping our transport industries moving. The passage of this bill in the current sitting of parliament will enable industry participants to focus on implementing and maintaining the measures outlined in their security plans and programs, thereby contributing to the strengthening of Australia’s transport security arrangements.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

NATIONAL MEASUREMENT AMENDMENT BILL 2008

Second Reading

Debate resumed from 24 November, on motion by Senator Stephens:

That this bill be now read a second time.

Senator ABETZ (Tasmania) (1.25 pm)—The objective of the National Measurement Amendment Bill 2008 is to introduce a national system of trade measurement. Annually the trade measurement system in Australia underpins transactions worth more than $400 billion per annum—75 per cent of these transactions are business to business and 25 per cent are retail. While the Commonwealth has constitutional responsibility for weights and measures under section 51 of the Constitution, under the National Measurement Act 1960 the Australian government has responsibility only for defining measurement units and standards, traceability of measurement and patent approval of instruments used for trade or legal purposes. Inspection and enforcement powers, except for utility meters, and the setting of the various regulations surrounding trade measurement reside with the various state and territory governments, meaning that Australia has eight different sets of trade measurement regimes.

This bill will establish a national system of trade measurement which will formally commence on 1 July 2010 but which will commence on 1 July 2009 for transitional purposes. It will override state based legislation, which will eventually be repealed by the various states. The national trade measurement system will be run by the National Measurement Institute in the Department of Innovation, Industry, Science and Research. All current regulation, licensing and enforcement measures surrounding trade measurement will be run by the Australian government from 1 July 2010. This will entail some 240 state based inspectors formally being transferred to the Commonwealth and made APS employees, as well as the transfer of existing trade measurement and associated enforcement equipment. This is a direct cost-shift from the states, which will no longer have any trade measurement costs. Funding of $31.65 billion was provided to the department of innovation for the transition to a national trade measurement system and for its first years of operation from 2007-08 to 2010-11. Ongoing funding of $23.653 million will be provided from 2011-12.

The majority of the bill is given over to setting out appropriate offences and penalties, and enforcement powers for Commonwealth trade measurement officers. According to the explanatory memorandum and the
government, these various clauses reflect those found in the states’ and territories’ legislation. There are only two differences of significance: (1) inspectors will now be able to seize materials other than measurement equipment; and (2) the bill explicitly creates a ‘right to silence’ defence based on the grounds of self-incrimination. This is not present in some state based laws. The bill establishes three levels of offences: ‘fault’, ‘strict liability’ and ‘infringement notice’. The most common penalty amounts under this bill are 200 penalty units, or $22,000, for fault offences; 40 penalty units, or $4,400 for strict liability offences; and five penalty units, or $550, for infringement notice offences. This largely reflect the penalties in the state legislation.

As well as implementing a national system for the first time in Australia, the bill introduces on a voluntary basis the option for manufacturers to use the average quantity system, or AQS, rather than the minimum quantity system currently used. The AQS is the international standard for international trade in prepacked goods and is used in nations including Canada, China, the EU, Japan, the Republic of Korea, the Russian Federation and the United States of America.

The AQS provides a statistical measure that a batch of goods would be, on average, within statistical normal distribution, while the current NQS, and its associated testing regimes, requires many producers to overfill their products—albeit marginally—in order to meet minimum quantity requirements. Adopting AQS would increase efficiencies in production and measurement while ensuring consumers remain protected. It will also make Australian prepacked items more accessible to international trade. Making it voluntary enables those producers who wish to remain with the current system, for cost or other reasons, to do so.

It has been a long and winding road to get to the position of being on the cusp of establishing a national trade measurement system. On 13 April last year, the Council of Australian Governments, under the stewardship of former Prime Minister Howard, agreed to establish a national system of trade measurement, to be administered by the Commonwealth from 1 July 2010. This bill implements that agreement.

The issue of establishing a single national system of trade measurement has been on the agenda for more than 20 years. In 1985, the Department of Science commissioned a review of the trade management system known as the Scott review. This review recommended that federal weights and measures legislation be amended. However, the Commonwealth, state and territory ministers, with the exception of Western Australia, instead decided that each jurisdiction should implement uniform trade measurement legislation.

In 1995, the Department of Industry, Science and Technology commissioned a review known as the Kean inquiry. Kean noted that the objectives of the uniform legislation had not been achieved. For example, fee structures differed between jurisdictions, industry was expected to meet varying requirements and the legislation had been implemented and applied inconsistently. As a result, Kean also recommended that the Commonwealth assume full responsibility for trade measurement.

In February 2006, COAG identified six priority regulatory hot spots where overlapping and inconsistent regulatory regimes were impeding economic activity. Trade measurement was one of these six hot spots. COAG requested the Ministerial Council on Consumer Affairs to develop a recommendation for a national system of trade measurement, which was subsequently agreed to by COAG on 13 April last year.
There is no doubt a national system of trade measurement will eliminate common and difficult-to-quantify business concerns such as legislative differences, the need for multiple licences and different enforcement regimes. However, in its 2006 report, relied upon by COAG, the MCCA undertook a series of cost-benefit analyses of implementing a national trade measurement system. Perhaps surprisingly, this analysis was unable to quantify significant benefits for the economy, with an overall net positive value to the economy of only $5.7 million: $16.2 million cost to government; $22 million benefit to business. It is in this context that it is disappointing that the government has failed to produce a regulatory impact statement for this bill. COAG principles for national standards setting and regulatory action hold that: Proposals for new regulation that have the potential to restrict competition should include evidence that the competitive effects of the regulation have been considered, that the benefits outweigh the likely costs and that the restriction is no more restrictive than necessary in the public interest.

According to advice from the office of the Minister for Small Business, Independent Contractors and the Service Economy, Dr Emerson, the Office of Best Practice Regulation review determined that an RIS was not required as this bill does not change the regulatory burden on business; it merely transfers powers from state and territory governments to the Commonwealth and, in some cases, the burden is reduced. However, as seen from the cost-benefit analysis done by the MCCA in 2006, it is not clear that the national trade measurement system will have a significant net positive value. In this context it is surprising that further analysis was not done in the form of an RIS.

Labor talks a lot about cooperative federalism, yet it tried twice, in the 1980s and 1990s, to deliver national trade measurement and failed. It took the coalition in government, in 2007, to deliver this historic agreement. Labor is now merely implementing the coalition’s hard work. Labor has failed to provide a regulatory impact statement on the basis that this bill is merely a transfer of powers, not an extension. It is disappointing that, with such a major regulatory change, it has failed to provide such a statement. Nonetheless, the coalition is of the view that a national trade measurement system will be of benefit to all Australians and, on the basis of assurances given by the government that this bill does accurately replicate existing state laws and does provide sufficient safeguards to individuals involved in the weights and measures sector, we support the bill.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (1.35 pm)—in reply—In summing up debate on the National Measurement Amendment Bill 2008, I would like to thank Senator Abetz for his comments. Of course, we all recognise that there are many things that we undertake in the parliament that are way beyond politics, and this is one of those. This is about setting a framework for a national system of trade measurement, and its intent is to replace each of the current state and territory based systems.

In a seamless national economy it makes no sense for our trade measurement system, a system which underpins commercial transactions across Australia and into our export markets, to be regulated by nine different jurisdictions. That is rail gauge economics and it belongs in the last century, or even the century before. It is what the government has been working so hard to change through the Council of Australian Governments’ Business Regulation and Competition Working Group, which is co-chaired by the Minister
for Finance and Deregulation and the Minister Assisting the Minister for Finance and Deregulation. This national system that we have debated today builds on the experience of state and territory administrations, and it will remove current inconsistencies and definitely will help to reduce business costs. It will allow Australia to adopt the new technologies and processes that will help our industries to actually compete better internationally. The National Measurement Institute will be responsible for administering the new national trade measurement system and will offer employment to inspectors and others who are currently working in trade measurement in the states and territories.

The bill is the product of a COAG decision in February 2006. As I said, some things are beyond party politics. COAG identified trade measurement as a priority hot spot reform area where overlapping and inconsistent regulatory regimes were impeding economic activity. The bill has been developed through industry consultation and supported by a legislative working group of state and territory officials convened by the National Measurement Institute. It lays the basis for a new national trade measurement system and will offer employment to inspectors and others who are currently working in trade measurement in the states and territories.

We agree with the Labor government on the principle of this bill, but one of the concerns I have is about implementation. I have spoken—indeed many on the coalition side have spoken—much about the implementation of government policy over the last 12 months. In the sphere of education there has been much talk—much of it taken from New York and from Tony Blair’s website—but the implementation of policy has been third-rate. I speak of an issue I have raised many times in this chamber—the computers in schools policy in the Digital Education Revolution, and trade training centres. The policy is not necessarily bad; the implementation of the policy has been a shambles.

The Australian Curriculum, Assessment and Reporting Authority Bill establishes a new Commonwealth body, the Australian Curriculum, Assessment and Reporting Au-
Authority, ACARA, which will replace the interim National Curriculum Board. ACARA will develop and administer the new national curriculum and collect data, providing analysis and research to governments. Its main role, however, will be the development of a national curriculum. The opposition sincerely hopes that ACARA will develop a world-class curriculum free from ideological bias and with a strong foundation in the basics that have been neglected to the detriment of too many children in recent decades—a sad legacy of the infatuation of the education establishment in this country with trendy foreign ideas.

Another great paradox in this country is that so many public intellectuals say Australia suffers from a cultural cringe, yet the same people adopt often pathetic foreign educational fads uncritically, to the detriment of too many Australian students for too long. When I used to teach at university, nearly everyone was a postmodernist. They would talk about deconstructing the text; it was terrific stuff. But you have to be able to read before you can deconstruct. That has been the basic problem that we have seen over the last 20 years in this country.

I have said we are going to support the bill, and we do hope it works. But we will be carefully studying the progress in relation to issues such as the timing of the curriculum’s introduction and its connection with school funding, and the place in the system of existing curricula, such as those at the University of Cambridge International Examinations schools, the Montessori schools, the Steiner schools, the Christian schools, the Islamic schools and the Jewish schools. We will also pursue with great interest the issue of potential future additions to the four core curriculum subjects at the moment, such as languages and music. Lastly, and perhaps most importantly, the opposition will carefully study the final product to make sure that it serves students rather than some ideological agenda or some new intellectual fad.

Senator MILNE (Tasmania) (1.43 pm)—I rise today to make some comments in relation to the Australian Curriculum, Assessment and Reporting Authority Bill 2008. I note that the establishment of the authority was agreed in October at the Council of Australian Governments meeting and that this bill establishes the authority as an independent body corporate with a number of functions. These include: developing and administering a national school curriculum for school subjects specified in the charter, which is determined by the Ministerial Council for Employment, Education, Training and Youth Affairs; developing and administering national assessments; collecting and analysing student assessment data and other data relating to schools and comparative school performance; facilitating information-sharing arrangements between Australian government bodies; publishing information relating to school education, including information relating to comparative school performance; providing curriculum resource services, including education research services; and providing resources, support and guidance to the teaching profession.

So this is a very interesting and, I have to say, a huge responsibility for the authority that is being set up. I note that its initial budget is some $37.2 million over four years, $20 million committed to the National Curriculum Board and $17.2 committed to the independent National Schools Assessment Data Centre. The bill provides for a board to be made up of a chairman; a deputy chair; a representative each from the Commonwealth, states and territories; a representative from the Independent Schools Council of Australia; and another one from the National Catholic Education Commission. A board member is appointed by the minister if
agreed to by the ministerial council and if the person has certain professional expertise.

I particularly want to note here that the membership of the board does not include any representative of public education except for state governments. The non-government sector is independently represented on the authority in two positions. I know that the government would presumably argue that, because the state governments and territories have a position on the board, public education will be taken care of. However, I think that public school education should be independently represented on the board because governments have an interest in the entire education system in their states and not just public schools. I am concerned by the fact that there will not be an independent public education expert on the board but there will be two from the non-government schools and just the state government representatives, which in fact will perpetuate the divisions in Australia between private education and public education as they currently stand.

I do not intend to move an amendment to that effect. I have certainly canvassed that but I would hope that the government would take it on board. In looking at the appointments that it makes to the board, recognising there will be nominations from state governments and so on, I hope that people with serious expertise in public education will be put forward as nominees to the board so that that does not occur. It is something that I feel very strongly about. I cannot see why it could not happen because the determination to say people have to have professional expertise suggests that they will have that background, so it is not a significant shift. I would like to see somebody independent of state governments, who is an expert in public education, appointed to the board.

The assessment and reporting scheme is one of the most contentious elements of the government’s education proposals. That was very clear from the Senate inquiry that we conducted into the bill. The framework for the assessment and reporting requirements will be decided by COAG and, as I have indicated before, the role of the authority will be to collect, analyse and publish the data. Already there is extreme nervousness around the country about what that means in terms of what exactly will be collected, how it will be used and how it will be presented to the community so that we do not end up with a league table analysis. The fact that the government has flagged the sacking of principals or the closing of low-performing schools makes the community even more nervous about what data will be collected, how it will be presented, how it will be used and whether the data collected will all be publicly available so that other people can run that data through various models and actually use it in a way that perhaps had not been contemplated by the authority at the time of the data collection.

There is nothing more divisive than stories out in the community about one school performing poorly on this, that or something else, and people saying that they would not send their kids to that school or the other school and so on. Once you get that kind of league table mentality happening in the community then you get the community responding by asking, ‘What is the measurement that we are being asked to report on?’ and then schools start teaching to the measurement and not educating in the manner which they think is the most appropriate. Essentially you get a ‘teaching to the test’ mentality. That is not a good way to go in education.

If you get the performance of teachers tied to the performance of schools in a league table context, how are you going to get your best teachers to teach in the most difficult and most challenging educational environ-
ments? If you are going to reward teachers with performance bonuses tied to school performance outcomes then what you are inevitably going to get is a move by people to the schools which are performing better against the analysis. So you are going to find it harder and harder to staff some of those difficult schools, which will be to the detriment of those students. As we all know, the most challenging students and the most challenging school environments deserve the best teachers in order to make up those gaps in educational success that we clearly know are there for one reason or another.

I am very concerned about Mr Joel Klein and about what he advocates from his New York model. And I am rather concerned as well about the evidence that has been coming out of England. Just as Australia seems to be heading down the track of adopting this kind of approach, there are considerable doubts as to its effectiveness in raising standards and, in fact, there have been unintended consequences coming out of the way that these models have been implemented overseas. I must say it always seems that, just as some of these new processes are being discredited overseas, Australia gets around to adopting them. I am really concerned about this. Unless performance pay for teachers tied to school performance is managed in a sensitive way—frankly, I cannot see how it is going to be managed in a sensitive way—we are going to have some unintended consequences for those people in communities who are the most adversely affected and who do not have choices about where they might want to send their kids to school. They are going to be the ones suffering the greatest consequences.

I put the government on notice here that what is needed in public education is a regime that is fair to teachers. There are a myriad of reasons why a school may be performing or not performing against a set of data. I want to make sure that the best approach to lifting standards in schools and improving the attractiveness of teaching as a profession is adopted. Frankly, the best way of doing that is to fund public education adequately. If you support teachers in their work, if you put in additional resources to assist teachers and to assist students who are struggling for various reasons, then you get better outcomes. The fact of the matter is that Australia has underfunded public education for more than a decade. The problem we have got in this country is that the state governments’ underfunding of education, with the lift in funding that the federal government has given, particularly to the non-government sector, has increased the gap between performance in public education and what private schools or non-government schools have been able to offer, particularly in terms of resourcing.

It is absolutely critical that this weekend’s COAG meeting takes account of that, because what I fear with the global economic downturn is that state governments are going to cut back on their education funding, just as the Commonwealth brings in its league tables and its performance criteria for teachers and so on, and that teachers are going to be expected to do the impossible with fewer and fewer resources and less and less money. Then the Commonwealth may bring in new schemes to attract the best graduates into teaching by way of some arrangement with industry, saying ‘We’ll bring these graduates into teaching, they’ll be there for two years and then they can go back to industry.’ That is really just a small step. Yes, you might get some of those outstanding graduates, but to be a good teacher you not only have to be intelligent and insightful but you also need experience. The more experienced you become, the better you become at teaching. If we are going to just bring people in for two years and then allow them to go off again, then we are not going to have the permanent
benefit to the education system of getting those teachers.

If you want your best graduates to go into teaching, you have to pay them. You have to pay teachers decent wages because, in a comparative sense, teachers are poorly paid. That is why you are not getting your best graduates going into teaching. It is a challenging profession and if it is poorly paid people do not go into it. You can set up any number of arrangements you like for a two-year experience of teaching, but you need those people to stay in the education system. The way to do that is to fund schools, to educate students and to pay teachers a wage that is attractive in comparison with other options that they might have upon leaving educational institutions, tertiary institutions, around the country.

The final point that I would like to make is in relation to the protection of data that is collected by the authority. I alluded to that before. As I said, while the minister may or may not want to produce league tables, league tables will be able to be produced if the data is all released by the authority. I want to ensure that the regulations or protocols that are going to be used to protect the data are very, very well designed and thought through and that we do not have an unintended consequence of the collection of the data being that that data can be run through anybody’s models—with anybody’s assumptions going into those models—to be used for whatever purpose anyone might choose to use it for.

In terms of the national curriculum itself, there has been for a long time a discussion around the country about what happens when students move from state to state and have difficulties or otherwise integrating into systems. At the University of Tasmania just this week I was listening to an honours student’s presentation about an analysis of the experience of students moving from interstate to Tasmania and the difficulties they may or may not have encountered in entering the school system. What was interesting about that honours student’s analysis was that the issue was not so much of what was taught in the curriculum; it was first of all of the different age structures. For example, a student may come from one state where they are going into grade 7 and go to another state and be put back to grade 6, or however it might operate. That issue of getting some consistency around the country is a critical issue in terms of childhood development.

The other issue is to support those students in their social integration into the schools, so that they are not isolated and going for weeks without having any friends or any real interaction in their school. It was suggested that just a buddy system is not enough. There need to be programs developed to sort of force the integration of the new students into the existing programs of the school in various ways so that we do that better. I think it is an interesting point that the national curriculum will not overcome some of the social issues associated with moving from state to state and some of the issues around age, for example.

On the content of the national curriculum, we heard a lot from the previous government about political correctness, but over the Howard years there was a major attack on public education—a suggestion that public education is not a values based education. I want to reiterate here that a national curriculum is important, but the values of public education have always been there and they remain, and they are values about equity, equal opportunity, excellence, compassion, tolerance, inclusiveness and innovation. All of those things are in public education, have always been in public education and will continue to be there, but they can be better...
demonstrated by a larger investment in public education.

I hope that the Commonwealth’s negotiations with the states make sure that the states do not get away with cutting the education funding and therefore increasing the gap between the funding of non-government schools and the funding of government schools. Fund education and fund teachers properly and you will attract the best graduates and you will get a better performance in schools.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

CONDOLENCES

Mr Gordon Adams

Senator ABETZ (Tasmania) (2.00 pm)—by leave—Mr President, in the absence of Senator Nick Minchin, I will be Acting Leader of the Opposition today. Senator Minchin is, along with our Western Australian Liberal colleagues, attending the funeral service for Gordon Adams, the husband of our esteemed colleague Senator Judith Adams. I am sure all honourable senators will be upholding Senator Adams and her two sons in their prayers and thoughts at this difficult time.

Honourable senators—Hear, hear!

Senator CHRIS EVANS (Western Australia—Leader of the Government in the Senate) (2.00 pm)—by leave—On behalf of the government, I express our condolences to Senator Adams and her family. Senator Moore will also attend the funeral representing the government. Our thoughts are with Senator Adams at this time.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (2.01 pm)—by leave—I add to those words the Greens’ condolences to the senator on the sudden and unexpected bereavement she has suffered. We hope Senator Adams and her family know that our thoughts and our condolences are with them all at this terrible time.

MINISTERIAL STATEMENTS

Mumbai Terrorist Attacks

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (2.01 pm)—by leave—I thank the Senate for leave to make this statement. A similar statement will be made by the Prime Minister in the House of Representatives. Overnight in the Indian city of Mumbai there has been a series of coordinated attacks on hotels, train stations and other public places. It is unclear at this stage who is responsible for those attacks, although one organisation has claimed responsibility. The Australian government unreservedly condemns the atrocious attacks on innocent people in Mumbai, whoever carried them out. I know that is a sentiment that is shared by all senators in this chamber.

As we speak, events are still unfolding, but we understand that up to 80 people have been killed and 250 injured. Our sympathy and condolences go to the victims and their families. Attackers still may be in hotels and there are reports that hostages have been taken. The government is seeking to confirm as a matter of urgency the safety and welfare of Australians who may be affected. We have 317 Australians registered with us as being in Mumbai. Our consular staff are currently attempting to contact all of the Australians who are registered. At least two Australians have been injured and our thoughts are with them and their families. We have been advised that Australian casualty numbers may rise. The Department of Foreign Affairs and Trade has been in contact with the families in
Australia and of course is providing consular assistance in Mumbai. Australians who are concerned about the welfare of loved ones can contact a hotline that has been established by the Department of Foreign Affairs and Trade. The number of the consular hotline is 1800 002 214.

The Prime Minister has just spoken to the Australian High Commissioner to India, who is in Mumbai and is leading the government’s consular response. Officials from the Australian Consulate General in Mumbai and the Australian High Commission in Delhi are checking with local authorities to determine exactly how many Australians may have been caught up in these incidents.

The group that has claimed responsibility for this attack calls itself the Deccan Mujahideen. At this stage little is known of this group, at least those using this name. But whichever group perpetrated this attack they are cowards. It is likely to take some time to identify all the perpetrators. This cowardly attack on India’s stability, peace and democracy reminds all of us that international terrorism is far from defeated and that we must maintain our vigilance. We have to continue to work closely with our allies and partners around the world to defeat terrorism.

In light of this attack, we have revised our travel advice for India today. I am advised that the previous advice stated that travellers should exercise a high degree of caution in India because of the high risk of terrorist activity by militant groups. The revised travel advisory advises Australians to avoid travel to Mumbai at this time. We are offering, through the Australian Federal Police, assistance with counterterrorism and forensic policing to Indonesian authorities, and we are ready to assist India in any way it needs.

This latest attack on Indian peace, stability and democracy reminds us that we must remain vigilant. Terrorism continues to pose a threat around the world and we must resolve afresh to work with our allies and friends around the world to defeat the terrorists who threaten us.

Senator COONAN (New South Wales) (2.07 pm)—by leave—These are truly dreadful events that have happened in Mumbai. I note the minister’s statement and of course associate the coalition unreservedly with the sentiments expressing sympathy to those who have been targeted and to their families. All Australians condemn the perpetrators of these cowardly and frightful attacks on innocent civilians in Mumbai, which do demonstrate, I agree with Senator Faulkner in the clearest terms, that terrorist groups are active in South Asia. So we unreservedly associate ourselves with the sentiments of the government and extend our deepest sympathy to those who have been targeted.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (2.08 pm)—by leave—These are indeed shocking events. Senator Faulkner is right. The perpetrators are absolute cowards and disgusting people who would use the name of the deity to perpetrate broad-scale murder against innocent people. The Greens add our words of hope that no greater death toll or injury toll comes out of this, and in particular we are thinking of those people who may be hostages or the security people who have to confront these murderers now. We certainly wish a speedy recovery for those people who have been injured and extend our condolences to the relatives and friends of those people who have died so needlessly today in Mumbai.

Senator FIELDING (Victoria—Leader of the Family First Party) (2.09 pm)—by leave—I also concur with all the remarks that have been made that these attacks are cowardly and do show that we can never rest up on this issue of fighting terrorism. So I extend condolences also from Family First to
all those who have been attacked. It is an attack on all of us that fight for peace and to make sure that there is a safe world.

Senator XENOPHON (South Australia) (2.09 pm)—by leave—I associate myself with and endorse the remarks made by Senators Faulkner, Coonan, Bob Brown and Fielding and express my abhorrence at the events that have occurred in Mumbai.

QUESTIONS WITHOUT NOTICE

Mumbai Terrorist Attacks

Senator COONAN (2.10 pm)—As we all agree, all Australians do condemn the perpetrators of these very cowardly and frightful attacks on innocent victims, which, as I said in my remarks, demonstrate in the clearest of terms that terrorist groups are active in South Asia. I ask the Minister representing the Minister for Foreign Affairs, Senator Faulkner, if he is able to provide any information about this: what steps are being taken by the Australian government to strengthen our security ties with India and her neighbours and, in particular, to support them to identify militant groups and to root out terrorism?

Senator FAULKNER—Senator, what I can say to you in this very difficult circumstance is that the Prime Minister has ensured that Australian authorities have advised the Indian authorities, the Indian High Commissioner to Australia, that Australia is ready, willing and able to assist India as it deals with this very serious situation. The Prime Minister has ensured that the Indian High Commissioner to Australia has been informed of our solidarity with the Indian government and people in the face of this appalling assault on peace, stability and democracy in India. I can assure Senator Coonan and all senators that Australia stands by India and is ready to assist in any way during this difficult time.

Child Care

Senator POLLEY (2.12 pm)—My question is to the Minister representing the Minister for Education, Senator Carr. Can the minister update the Senate on the status of ABC Learning?

Senator CARR—Yesterday the ABC Learning receiver announced that the majority of the company’s childcare centres will continue to operate in 2009. A total of 656 centres will go on trading as normal. The receiver’s announcement gives parents and employees a measure of certainty less than a month after the company went into receivership. The receiver believes there is ‘a sustainable business model’ for these centres. That is great news for thousands of parents and for staff of the centres. The government is working closely with the receiver to determine future arrangements for the remaining 386 centres which are still under review. The receiver expects that a number of these centres will also remain open. We should know more on that matter next week. As for the suggestion that the Commonwealth should buy them: as the receiver made clear yesterday, and I am sure Senator Polley is aware, these centres are not for sale.

The government has taken strong and decisive action to minimise disruption to families and workers. On 7 November the Minister for Education committed up to $22 million in conditional funding to ensure that all ABC centres remain open and provide care until at least 31 December. This support has allowed the receiver to work out an orderly transition program. As far as the government is concerned, the interests of parents, their children and the ABC Learning employees come first. That is why we have acted to maintain the continuity and stability—(Time expired)

Senator POLLEY—Mr President, I ask a supplementary question. Can the minister
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explain to the Senate how this situation arose?

Senator CARR—Senator Polley, the situation that we now find ourselves in is in fact a direct result of the previous government’s ineptitude. First they drove prices up by choking off the community sector. Working families were being crippled by childcare costs. Of course, from the opposition the view was expressed that we should not worry. They said: ‘Don’t worry; we’ll let extreme capitalism sort it out. We’ll entrust the care of Australian preschools to the property development industry.’ So they took the view that they should let the market rip. They removed the cap on taxpayer funded childcare places. And they did not have a workforce plan. They did not have a quality plan. They did not even have a plan to determine community needs. (Time expired)

Senator POLLEY—Mr President, I ask a further supplementary question. Can the minister inform the Senate what the government is doing to improve childcare services for Australian families?

Senator CARR—The government is implementing an integrated $2.4 billion childcare plan. We have eased the burden on working families by increasing the childcare tax rebate from 30 per cent to 50 per cent. We have invested $533.5 million over five years to ensure that all Australian children have access to 15 hours a week of play based learning and development programs in the year before school. We are creating 1,500 new Commonwealth supported university places in early childhood education to increase the supply of professionally trained workers—500 a year in 2009, 2010 and 2011. We are establishing 260 new early learning and childcare centres. (Time expired)

Budget Surplus

Senator ABETZ (2.17 pm)—My question is to the Minister representing the Treasurer, Senator Conroy. When will the government deliver a budget surplus?

Senator CONROY—I thank Senator Abetz. The government will do everything possible in these difficult global conditions to support both growth and the surplus. As global conditions deteriorate, that task will become tougher and tougher. As I noted yesterday, already a number of developed economies, including the US, the UK, Japan, France, Italy and Germany, have forecast a deficit and negative growth for 2009. And the OECD’s latest economic outlook report provides yet another sobering assessment of the difficult global conditions that we face and the impacts the global financial crisis is having on advanced economies everywhere.

If global conditions continue to worsen, there will be a further slowing of growth and a further impact on budget revenues. If that slowing occurs, we have said it would be the responsible thing to draw down further on the surplus and, if necessary, use a temporary deficit to invest in the economy. Any such action would be temporary and consistent with the budget discipline of maintaining a surplus across the economic cycle. This cycle takes into account times when the economy is strong and times when it is confronting serious challenges like those we are now facing in the global economy. The length of the cycle will depend on the types of shocks that are buffeting the economy. (Time expired)

Senator ABETZ—My question actually was: when will the government deliver a budget surplus? By that answer, I dare say he does not know. But, Mr President, I have a supplementary question following on from the answer. When the government talks about going into temporary deficit, for how
many years does it expect its temporary deficit to last?

Senator CONROY—Our position is to support growth and jobs. Failing to act if needed would be irresponsible and would sacrifice growth and jobs. There is not a single credible economist in this country who does not share that view—not one credible economist. As we have said, in the current circumstances it is not necessary. Our current forecasts are for modest growth and modest surpluses. But it would be irresponsible to rule it out, given the dimensions of the global crisis. We will continue to take whatever action is necessary to strengthen growth and limit the impact of the global recession on jobs. (Time expired)

Senator ABETZ—Mr President, I ask a further supplementary question. Given that growth is forecast at a modest two per cent, the cash rate is at 5.25 per cent and the stimulus package is yet to be delivered, why has the government thrown in the towel and gone into deficit?

Senator CONROY—Perhaps I could just repeat something I said in my earlier answer, because Senator Abetz appeared not to hear. In the current circumstances our current forecasts are for modest growth and modest surpluses. That is our forecast. Those opposite apparently want to put themselves against every credible economist in the country on the issue of budget policy. Let me read what just a few experts have said on this issue. The Reserve Bank Governor, Glenn Stevens, said:

If we see governments at state level or federal level pull back from worthwhile things because of the budget balance deteriorating, which it is going to do in this environment, that is not stabilising. That is potentially destabilising.

Westpac chief economist Bill Evans said:

We have already seen a very laudable $10 billion—

(Time expired)

Greenhouse Gas Emissions

Senator MILNE (2.22 pm)—My question is to the Minister for Climate Change and Water, Senator Wong. It relates to the climate model chosen for the Treasury modelling and notes further that the choice of climate model determines how much we will need to reduce greenhouse gases in order to meet the government’s specified targets of 450 and 550 parts per million of CO2e. Can the minister confirm that the government chose to use only the MAGICC climate model and did not use other models like the Hadley Centre or the University of Victoria, Canada, climate models? And can the minister explain the climate consequences of basing global and domestic action on the MAGICC model instead of the Hadley or the University of Victoria models?

Senator WONG—To assist the chamber and to ensure that I also understand the question: I understand that when the senator talks about ‘MAGICC’ she is talking about the model for the assessment of greenhouse gas induced climate change—is that correct?

Senator Milne—Yes.

Senator WONG—That is the model that Treasury chose to use for the modelling. It is a model that I am advised was also used by the Intergovernmental Panel on Climate Change, and it is highly regarded and well established for this type of analysis. The cumulative global emissions in the scenarios in the government’s report are consistent with estimates of global emissions projected for the relevant stabilisation levels also presented in the Stern review, and I know that the senator would be familiar with those.
In relation to the Hadley Centre and the University of Victoria, Canada, as I said, I am advised that it was the model for the assessment of greenhouse gas induced climate change that was utilised by Treasury. I am advised that it is a model that incorporates a suite of coupled-gas-cycle climate and ice-melt models integrated into a single software package. This software allows the user to determine changes in greenhouse gas concentrations, global mean surface air temperature and sea level resulting from anthropogenic emissions. The current version of MAGICC was developed primarily with funding from the United States Environmental Protection Agency.

Senator MILNE—Mr President, I ask a supplementary question. I thank the minister for her answer but note that she failed to indicate to the Senate that by choosing only the MAGICC model the government chose a path that would allow Australia and the world to emit up to 30 per cent more greenhouse gases in order to meet the same climate outcome than would have been the case had other models been chosen. I ask the minister: if a more pessimistic model such as the Hadley model proves to be a more accurate reflection of reality, could the government’s choice of model contribute to tipping points in the climate being triggered and, if so, why did the government choose only one relatively optimistic model when it would have been more sensible and risk averse to base action on the more pessimistic models?

Senator WONG—First, in relation to the risk analysis, I would make the point that I have been very—

Honourable senators interjecting—

The PRESIDENT—Order! It is disorderly for those on my right to be interfering while your minister wants to answer the question.

Senator WONG—As I was saying, I have made it clear that there are a range of matters that the government will draw on in making its decisions in relation to the Carbon Pollution Reduction Scheme. As the senator knows, there are four different models in the Treasury modelling—two Garnaut and two government models. There is also the range of discussions and consultations in relation to the green paper. So the modelling was never put forward as a blueprint because by definition it is modelling of a range of different scenarios and it is important information for the community and the government to consider. Of course we remind—

(Time expired)

The PRESIDENT—I draw the attention of the chamber to the fact that when the clock was stopped for interjections during the minister’s previous answer the clock would not reset properly, which is why it advanced so quickly towards the end of her answer. I assure you, though, that the appropriate time was allocated for the answer.

Senator MILNE—Mr President, I ask a further supplementary question. I did ask the minister why the government chose one relatively optimistic model when it would have been more sensible to look at the more pessimistic models. I ask: in view of the fact that other countries going to the global climate negotiations in Poznan will have conducted a more robust and risk averse analysis based on a range of models, will the government now rerun the Treasury modelling using a range of climate models so that Australia’s targets can be more rigorously assessed in the global context, and will the government now rerun the Treasury modelling to examine the 350 parts per million trajectory, and, if not, why not?

Senator WONG—The answer to the last one is no, and I think I have previously indicated that to you, Senator Milne. We have
undertaken the modelling and we have put it out. I disagree, with respect, with the ‘relatively optimistic’ description. We used a model that, on my advice, was used by the IPCC. As in any area of science, there is ongoing research into the relationship between global emissions and greenhouse gas concentrations, which is the issue that underlies your question. The government will continue to support climate research and analysis, including economic and climate model development by CSIRO, ABARE and the Treasury. I would remind the Senate that the modelling undertaken by Treasury is the largest modelling exercise that has been done by government in Australia. It is rigorous and it has provided very useful information to us all. (Time expired)
Honourable senators interjecting—


Senator CONROY—The Reserve Bank of Australia, in its November Statement on monetary policy, stated:

The renewed financial turmoil which began in the second week of September materially altered the balance of risks and raised the prospect that global economic conditions could be significantly weaker than previously assumed.

The Reserve Bank has responded swiftly to the deterioration in global conditions, reducing the cash rate by 200 basis points in the last three meetings. The government has also taken early and decisive action to strengthen growth and to support households—unlike those opposite, who continue to just say: ‘No. Wait and see.’ Well, the Rudd government has taken early and decisive action, because that is what the Australian public want. (Time expired)

Economy

Senator PRATT (2.36 pm)—I have a question this afternoon for the Minister for Superannuation and Corporate Law, Senator Sherry, and I would like to note the extreme daily volatility on our stock markets, which seems to be driven by low levels of confidence and low levels of certainty. I would like the minister outline to the Senate why now more than ever the role of responsible government and independent regulators is to deliver as much certainty as possible to Australian financial markets. I would also like the minister to outline if he is aware of any regulatory gaps in the market, and, if so, why the previous government might have failed to act on these after more than 11 years in government. Also, can the minister outline how the Rudd government has taken decisive action aimed at providing certainty to our financial markets during these uncertain times?

Senator SHERRY—It is a very important and timely question, given the volatility and the general downward trend we have seen in the Australian markets over the last year. Of course, this is a consequence of the global financial crisis and its onflowing economic impacts. Whilst Australia is better placed than other countries, it is not immune to this crisis. As global conditions deteriorate, the task for the government becomes tougher and tougher. As the Prime Minister indicated yesterday, the global financial crisis continues to evolve in unpredictable ways. But the government will do everything in these difficult conditions to support our economy and our financial system. It requires strong leadership and decisive action to assist in restoring business and consumer confidence.

One of the vital areas in which to restore confidence is the area of the stock market; confidence in this area has been lacking in recent times. This has been a flow-on consequence of the US subprime crisis. There has been significant price volatility in the markets. There has been a significant debate around what is known as short selling. The government has acted. It has introduced legislation to close a regulatory gap that has existed since 2001 under the former government. The former Liberal government left a gap—

Senator Fifield—So this is all our fault?

Senator SHERRY—No, it is not all your fault, but I am just pointing out that you left a regulatory gap.

Opposition senators interjecting—

The PRESIDENT—Senator Sherry, ignore the interjections; they are disorderly. Address your comments to the chair.
Senator SHERRY—The government have acted decisively to close this regulatory loophole, which the previous Liberal government left unplugged for some seven years. We will ban naked short selling. We intend to boost the powers of ASIC so it can act when it needs to do in these volatile times, and we intend to put in place a regulatory regime to ensure world’s best practice in respect of transparency and disclosure to the market of covered short selling. (Time expired)

Senator PRATT—Mr President, I ask a supplementary question. Can the minister outline any timing sensitivities that might need to be taken into consideration when implementing the government’s plan? Also, does the minister anticipate any possible threat to being able to take decisive, responsible and timely action to ensure certainty in our markets?

Senator SHERRY—As I have said, we have acted to restore confidence in the market. Certainly, it is particularly important. With the lifting of the recent temporary ban on covered short selling in respect of non-financial stock, the regulator has introduced an interim disclosure regime in respect of covered short selling, but it needs legislative support. It needs a legislative framework. Therefore, we presented legislation to the parliament that will come into the Senate next week. But, unfortunately, there is a threat to ensuring certainty around this legislative framework. The Liberal opposition, after three inquiries, have indicated that they are going to remove the disclosure requirements—the reporting requirements—and the penalties in respect of nondisclosure of covered short selling. After a year and three inquiries, including one they initiated, the Liberal opposition cannot make up their mind. (Time expired)

Senator PRATT—Mr President, I ask a further supplementary question. Can the minister outline the views of the regulator ASIC and the ASX with regard to the government’s decisive plan? Is he aware of any alternative views to those that oversee Australia’s financial markets? Also, can the minister outline to the Senate just how damaging any delays to setting up a legislative regime to require disclosure of covered short selling would be to Australia’s financial reputation?

Senator SHERRY—As I have indicated, the government have acted decisively. We have concluded consultations in respect of the best way to ensure effective disclosure of covered short selling. The Liberal opposition, after a year and three inquiries and after ignoring the issue for seven years, still cannot make up their mind. The government is acting on the advice of the independent regulator ASIC and the Stock Exchange. They are the two expert bodies that have provided advice as to the detail of the regime to ensure the integrity of the markets in respect of covered short selling. But the Liberal opposition still cannot make up their mind one year on. We have had three inquiries, including one they initiated. They were against inquiries, apparently. On these vital issues of confidence and of the regulation and supervision of the share market in this country, we have acted on the advice of ASIC and the Stock Exchange.

Broadband

Senator BIRMINGHAM (2.42 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. I refer the minister to comments made by the Auditor-General in relation to the National Broadband Network on 26 May this year. I quote the Auditor-General, who said: Amendments to the RFP would be required for non-compliant bids to be accepted.
How can the minister claim that Telstra’s letter can be formally considered under this process?

Senator CONROY—I thank Senator Birmingham for his ongoing interest in these issues. Before 12 pm yesterday, Telstra submitted a document into the box designated for receiving proposals under the government’s National Broadband Network RFP.

Honourable senators interjecting—

The PRESIDENT—Senator Conroy, resume your seat. It is disorderly to debate this across the chamber when we are trying to hear Senator Conroy and get an answer to the question that was asked by Senator Birmingham. I ask senators to desist. Senator Conroy, you are entitled to be heard in silence.

Senator CONROY—This proposal included a signed proponent’s declaration form. Yesterday morning, Telstra released a media statement in which Telstra chairman, Don McGauchie, stated:

Telstra believes the Government can consider its proposal under the existing terms of the RFP…

Yesterday afternoon, Telstra Policy and Communications GMD David Quilty told CommsDay:

It’s a request for proposals. We put in a proposal. We believe it enables us to be assessed.

Last night, Telstra Chairman Donald McGauchie told Lateline Business:

… we have put in a proposal to the Government which is within the terms of the RFP.

They are certainly more right than those opposite. In this context we have said that Telstra’s proposal will be assessed against the RFP by the expert panel in exactly the same way as those of all other bidders. To do otherwise could unnecessarily expose the government to legal action. The government’s NBN process is being conducted subject to strict probity principles for very good reason.

It is because we take the integrity— (Time expired)

Senator Coonan interjecting—

Senator BIRMINGHAM—Mr President, I ask a supplementary question. The minister seems to be suggesting that Telstra, rather than the government, are setting the rules for this process. If the minister wants to quote Telstra, my supplementary question is as follows: Telstra equally said that they were unable to submit a full and detailed bid as part of the minister’s tender process. In light of this, and given the Auditor-General’s advice, how can the minister justify allowing Telstra’s letter to be formally considered under exactly the same process as other full and detailed bids, directly in contravention of what seems to be the Auditor-General’s own advice?

Senator CONROY—It is disappointing that Senator Birmingham, who is somebody who has diligently applied himself to the issues around the RFP—

Senator Carr—He’s read the newspapers!

Senator CONROY—No, no! To be fair, Senator Carr—

The PRESIDENT—Senator Conroy, ignore the interjections. Refer your comments to the chair.

Senator CONROY—Senator Birmingham has done more than just read the newspapers. He has questioned my department and me at considerable length about the RFP. I know that he even has a copy. So it is disappointing that he has not bothered to read it in its entirety. The government’s NBN process is being conducted subject to strict probity principles for very good reason.

Senator Coonan interjecting—

Senator CONROY—It is because we take the integrity of this process very seriously. Unlike those opposite—and I am hear-
ing continual interjections from Senator Coonan—we are not going to do what Senator Coonan did last year— (Time expired)

Senator BIRMINGHAM—Mr President, I ask a further supplementary question. The minister indicated in his opening answer that the government did not wish to be exposed to unnecessary legal risks. Does the minister accept that his whole process is at risk of becoming a farce if Telstra’s letter, rather than its full and detailed bid, is in fact treated equally to all other formal bids? In terms of the legal risk, does the minister agree that other compliant bidders, who have lodged full and detailed bids, may have every right to challenge such a decision if the government ignores the Auditor-General’s advice?

Senator CONROY—We are committed to conducting a fair, equal assessment process. As I said, Senator Birmingham, you have a copy of the RFP. Let me be clear: I did see some commentary yesterday from some members of the opposition, less informed than you, who claimed that there were threats that legal action would be taken if the Telstra document were admitted. I note that you chose not to name anybody.

The PRESIDENT—Senator Conroy, address your comments to the chair.

Senator CONROY—You have every opportunity in the take note of answers debate after question time to name a company that has suggested that it is considering legal advice. You are welcome to name anyone who has suggested that. What we have to do is follow the process set in train. We will not do what Senator Coonan did last year, when she was running this portfolio—that is, start a process and then, halfway through it, change the goalposts and only tell one bidder. And, funnily enough, the one bidder was the winning bidder. Twenty-seven other bidders did not even know the process had been changed— (Time expired)

Attention Deficit Hyperactivity Disorder

Senator XENOPHON (2.49 pm)—My question is to the Minister representing the Minister for Health and Ageing, Senator Ludwig. Attention deficit hyperactivity disorder is the most diagnosed childhood disorder in Australia. Research by Dr Constantine Berbatis of Curtin University has found that Australia, along with the United States, has amongst the highest rate of psychostimulant treatment for ADHD internationally. In the past, the UN has warned Australia about its high levels of drug use to treat ADHD. I draw the minister’s attention to articles published in the Advertiser and the Daily Telegraph on Monday, 17 November this year which reported financial links between the members of the panel currently preparing the national review of ADHD and the large pharmaceutical companies that provide psychostimulant treatment for ADHD. This panel, from the Royal Australasian College of Physicians, has been commissioned by the National Health and Medical Research Council to develop a new set of guidelines for the management of ADHD. Has the government investigated the veracity of these reports, and if they are true what action will the government take?

Senator LUDWIG—I thank Senator Xenophon for his question. The issue surrounds the raising of a conflict of interest. What I can say is that I understand that there are concerns in the media regarding conflicts of interest for members of the ADHD guideline development working party. The Minister for Health and Ageing advises that the current chair of the working party is Associate Professor David Forbes. Professor Forbes is a highly regarded paediatrician in the area of gastroenterology. His area of clinical practice and research is not associated with
ADHD in any way, but he is very familiar with the NHMRC guideline review process.

Professor Forbes has declared that he has no pecuniary or professional interest in any companies involved in the development, manufacture, marketing and distribution of, or education about, drugs. In addition to the NHMRC recommended processes, the RACP have a rigorous process for the declaration of conflict or duality of interest for work that is in any way related to pharmaceuticals or their associated companies. This ensured that any potential conflicts were known by the RACP and all members of the working party.

In accordance with the NHMRC policies, a summary of the declarations of interest provided by each working-party member will be included in the guidelines once they have been finalised and approved by the NHMRC. The minister has been advised that the conflicts of interest declared by working-party members are consistent with the normal range associated with clinician review committees of this nature. These include private practice work relating to the diagnosis and management of ADHD, and the publication of booklets.

Senator XENOPHON—Mr President, I ask a supplementary question. I draw the minister’s attention to the evidence appraisal form used by the national inquiry into ADHD. This appraisal form favours large-scale studies with the emphasis on clinical impact. These evidence evaluation methods emphasise drug efficacy studies of the type that are funded by pharmaceutical companies. Does the minister agree that this emphasis may overlook research that reports on the social and educational interventions for ADHD?

Senator LUDWIG—Mr President, I ask a further supplementary question. Is the minister aware of concerns among non-medical experts on ADHD, such as Dr Linda Graham of the University of Sydney and her colleagues, that their research has been overlooked by the review? Will the minister explain why Australians should not be concerned that this report is only asking medical questions which will only get medical answers and could result in more drug use?
ment and, as I indicated in my earlier response, there have been many submissions put forward in respect of this. The government does have concerns about the delay in getting those draft guidelines finalised and put into practice. There are alternatives to the treatment— (Time expired)

Economy

Senator FERGUSON (2.55 pm)—My question is to the Minister representing the Treasurer, Senator Conroy. Given the Treasurer’s admission last night that Australia’s economic growth will be lower than the MYEFO forecast of two per cent, what is the government’s latest growth forecast?

Senator CONROY—The government has taken early and decisive action to strengthen growth and support households during the global financial crisis. If global conditions continue to worsen, there will be a further slowing of growth and a further impact on budget revenues. We have said that, if that slowing occurs, the responsible thing to do will be to draw down on the surplus and if necessary use a temporary deficit to invest in growth. MYEFO was published just a few weeks ago and we stand by those forecasts. But any action to use a deficit would be temporary and consistent with the budget discipline of maintaining a surplus across the economic cycle. This action would support growth and jobs. Failing to act, as those opposite are now advocating, would be irresponsible and would sacrifice growth and jobs. There is not a single credible economist in this country who does not share that view.

It is because we have made the hard yards in the budget to build a strong surplus that we now have the flexibility to respond to the deterioration in global conditions. It means that fiscal policy is working in tandem with monetary policy to support growth during the global financial crisis. In times like these you need a decisive government staying ahead of the game, not an opposition who try to have it both ways. (Time expired)

Senator FERGUSON—Mr President, I ask a supplementary question. I remind the minister of the fact that, as recently as last Monday, the Treasurer said:

We stick by our forecasts. There are many forecasts out there but the official forecasts of the Commonwealth are for moderate growth and modest surpluses.

Senator Conroy interjecting—

Senator FERGUSON—You have said it about three times, Minister. What new information has the government received in the past three days that has caused it to panic and abandon its forecast and predict a temporary deficit?

Senator CONROY—Notwithstanding the fact that those opposite are again taking an irresponsible approach on the subject of the economy, it is interesting to look back at what the Leader of the Opposition has previously said about the intensification of the global crisis:

There is nobody that would have predicted these events a year ago or even a few months ago. We have seen remarkable events right around the world—bank failures in the United States, in Europe—very big challenges and, you know, we cannot … we cannot underestimate the gravity of the challenge.

That was the Leader of the Opposition’s press conference on 30 September 2008. Those opposite ask: what has happened? Mr Turnbull himself has indicated that there have been significant changes— (Time expired)

Senator FERGUSON—Mr President, I ask a further supplementary question. Perhaps I could remind the minister that there is nothing irresponsible about asking ministers questions about the government’s actions. Given that MYEFO was out of date in less than a month, how can the Australian people
be expected to believe that the government can predict economic growth 40 years from now, as it is asserted in its emissions trading modelling?

Senator CONROY—The government, as I said, stands by the MYEFO forecasts released on 5 November. We stand by them. Those opposite continue to try to ignore the commentary of their own leader from as recently as 1 October, when he said:

Now, everyone’s been expecting slower economic growth anyway this year, following on the events in the United States, the sub-prime crisis from last year, but as recently as March people felt—March, April—people felt the worst had passed. But it has got a lot worse and the events of the last few weeks would not have been predicted a few months ago.

Those opposite want to try and play a game where they say, ‘You don’t do anything; just sit there and do nothing,’ because what they are about is short-term political opportunism—(Time expired)

Workplace Relations

Senator CROSSIN (3.01 pm)—My question is to the Minister for Innovation, Industry, Science and Research, Senator Carr. Can the minister inform the Senate how industry has responded to the Fair Work Bill?

Senator CARR—I thank Senator Crossin for her question. The Fair Work Bill, which was introduced into the House of Representatives earlier this week, marks a new beginning for Australian workplace relations. It marks a decisive break from Work Choices. This bill actually maximises cooperation, increases productivity and lifts prosperity. That is good news for employers and employees alike. The Australian Chamber of Commerce and Industry—that is, ACCI, Senator Ludwig—has acknowledged the reality—

Honourable senators interjecting—

The PRESIDENT—Senator Carr, ignore your colleagues and those comments coming from across the chamber; just address the chair.

Senator CARR—While ACCI did not get everything it wanted, it has said that changes were warranted and of course can be welcomed. It also noted that the new legislation creates ‘opportunities for increased productivity through enterprise bargaining’. The Australian Industry Group has welcomed the emergence of ‘a workable compromise’ from what was otherwise called excessive and testing negotiations over many months. It says the legislation has addressed the Ai Group’s concern that ‘important protections for employers’ be put in place. The Fair Work Bill delivers on Labor’s promise to create a new workplace relations system, and it builds on earlier action to abolish individual Australian workplace agreements. It restores balance and fairness to the workplace relations system. It restores dignity and respect for Australian workers. Unlike those opposite, Australians believe in giving people a fair go. (Time expired)

Senator CROSSIN—Mr President, I ask a supplementary question. Minister, thank you for that information informing us of the endorsement of the Fair Work Bill. I wondering whether you could now let us know how that bill will further the government’s innovation agenda.

Senator CARR—This bill provides certainty. I have said before that there is no more precious commodity in difficult times than certainty. The Fair Work Bill gives industry the certainty it needs to plan for the future. It gives employees the certainty they need to invest their time and their talents in their chosen work. It will foster mutual respect and cooperation. This is the key to harnessing creativity throughout the workplace—from the boardroom to the mailroom,
from the executive suite to the factory floor. It gives the key to building partnerships and to reform and renewal in industry. The Fair Work Bill gives us more collaborative workplaces, more productive workplaces and workplaces where innovation can flourish. It will make Australia fairer now and stronger for the future. It is a marked departure from Work Choices. (Time expired)

Senator CROSSIN—Mr President, I ask a further supplementary question. Minister, given that further explanation about the government’s innovation agenda, could you now let us know how the Fair Work Bill differs from other alternative approaches in the industries you look after?

Senator CARR—I certainly could offer some advice here. There are different views on workplace relations, and the opposition holds all of them. There are those who pine for a return to Work Choices and there are those, of course, who cannot repudiate the Howard legacy fast enough. There is, of course, Senator Abetz, who introduced the Work Choices legislation in this chamber, promising that it would give Australia ‘a brighter future’. Instead, it has left many Australians with no future at all.

Honourable senators interjecting—

The PRESIDENT—Order! I know we have but a few minutes left of question time, but it would be good to be able to hear the end of Senator Carr’s answer.

Senator CARR—Senator Abetz contributed significantly to the election of a Labor government. He now takes the view that we should not give any blank cheques. That did not stop him spending 120 million taxpayers’ dollars on Work Choices propaganda. We simply do not know what the opposition stands for at the moment. (Time expired)

Economy

Senator RYAN (3.07 pm)—My question is to the Minister representing the Treasurer, Senator Conroy. Does the government believe that the hallmark of responsible economic management is ensuring that you have a decent budget surplus?

Senator CONROY—Thank you for that question. Clearly it is the last question on a Thursday afternoon, because this government is at one when it comes to taking the decisive action necessary to strengthen growth and to limit the impact of the global financial crisis on Australian jobs. Those opposite might think that the global economic crisis has been hyped up, but the sobering reality is that we are facing the most significant upheaval in global financial markets since the Great Depression. The government will do everything possible in these difficult global conditions to support growth and jobs in this country.

Those opposite are incapable of settling on a consistent position throughout this global crisis. One day they support the Economic Security Strategy; the next day they oppose payments to families. One day they offer bipartisanship; the next day they do all they can to create instability and uncertainty. So let me repeat: this government is at one when it comes to taking the decisive action necessary to strengthen growth and to limit the impact of the global financial crisis on Australian jobs.

What is really disappointing is that they have given this question to one of the new senators, because one of the new senators will not have the corporate history to remember when those opposite ran a deficit. They actually ran a deficit themselves. Senator Fifield ran a deficit. So they give you a question lauding the idea that you must stay in surplus—an economically irresponsible position—when their own Treasurer, and
Senator Fifield before him, ran a deficit.

(Time expired)

Senator RYAN—Mr President, I ask a supplementary question. I may be new in this place but I have a long memory and I do recall what it was like in my home state when Senator Conroy’s colleagues were managing Victoria. My supplementary question to the minister is: was the Prime Minister wrong when he said in the other place on 27 May:

These are the hallmarks of responsible economic management: ensuring that you have a decent budget surplus …

Senator CONROY—As has been repeatedly stated by the Prime Minister, the Treasurer and me, the medium-term strategy is to run surpluses over the business cycle. It is exactly the same as I said to Senator Fifield earlier in the week. This is exactly the same position as those opposite practised when they were in government. As I have already mentioned in the answer, it is quite simple: they ran a deficit. They have given the newbie the question when those who have been around a bit longer clearly would not take it, because it is clearly completely inconsistent to suggest—(Time expired)

Senator RYAN—Mr President, I ask a further supplementary question. Is the minister saying that the Prime Minister is also wrong when he said on the same day:

Responsible economic management means that you do something about ensuring that you have got a reasonable surplus …

By plunging into deficit after only 12 months in office, how can the government, by the Prime Minister’s own definition, qualify as responsible economic managers—or is this simply another example of the hollow nature of the hollowmen’s promises of responsible financial management?

Senator CONROY—I do appreciate that you have the new standing orders to deal with, Mr President, but it is very hard to be relevant to a question built on so many false assertions and false assumptions. We have consistently said that the economically responsible thing to do is to protect Australian jobs and Australian families. If you do not want to sign up to that, just put your hand up. But no, you walk both sides of the street. This government has taken decisive and early action, and we stand ready to take whatever measures are needed to keep Australian families in jobs. That is why we have indicated we are prepared to consider further measures. And those opposite who want to try and pretend that it is responsible economic management to permanently stay in surplus are truly deceiving themselves, because they do not believe in it—(Time expired)

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

Senator Abetz—Mr President, I raise a point of order under the definition of direct relevance. I would invite you, in relation to the definition of direct relevance, to have a very close look, in your consideration at the end of this sitting fortnight, at every single question asked of Senator Conroy today and at every answer given today.

Senator Chris Evans—On the point of order, Mr President: there is no point of order. While Senator Abetz might be trying to impress whilst his leader is away, what he says is complete nonsense and I urge you not to take up the suggestion.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Disability Services

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (3.14 pm)—I seek leave to incorporate further information with regard to my answer to a question Senator Bernardi asked of me on 25 November.
Leave granted.

The document read as follows:

At the 2 October 2008 meeting, COAL agreed to progress reforms to roles and responsibilities between the Commonwealth and States and Territories for community and residential care services for aged people, community care and residential care for people with disabilities, and community care and support services for people with a mental illness.

The Home and Community Care program (HACC) is one program under consideration as part of this reform agenda.

Our aim is to provide people with better services that are easier to access and which can respond more flexibly as people’s needs change.

These proposed reforms aim to create single integrated service delivery systems in each reform area.

This is so that people with disability, mental illness, or aged Australians, have to deal with only one access point getting the services they need.

This will reduce confusion, buck passing, and better integrate services, making it easier for people to get the help they need.

The Commonwealth retains its strong policy role in all of these areas.

For example in the disability area, under the proposed reform the Commonwealth will retain a central role in policy making, and development of new reforms.

Already, in disability the Government has an ambitious reform agenda and has already injected significant additional funding—including the $100 million for capital announced by the Prime Minister in May, and $900 million into the new disability agreement for accommodation, respite and care services. State and Territory Governments also agreed to contribute additional funding of $900 million.

The next wave of reform will introduce national tools to identify service benchmarks; plan for changing needs; identify people at risk; and work towards program and service delivery consistency across jurisdictions.

The Australian Government is mindful of the concerns of service providers and employees whose role in providing community care services is vital.

Under the proposed reforms the current mix of community care service providers will continue, including local government, state agency and non-government providers.

We will work with stakeholders to ensure that the future system of community care builds on the strengths of the existing service infrastructure, the experience of the workforce and the needs of local communities.

Broadband

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (3.14 pm)—On 26 November, Senator Ludlam asked me a question about the Australian Communications Consumer Action Network and the national broadband network. I seek leave to incorporate the response in Hansard.

Leave granted.

The answer read as follows—

On 26 October 2008, Senator Ludlam asked me a question on notice regarding the Australian Communications Consumer Action Network (ACCAN).

Specifically the Senator asked:

“Can the minister tell us the status of the new consumer protection body, the Australian Communications Consumer Action Network, in particular what date it will be established, who is on it and what role this network will play in the deliberations on the National Broadband Network tender?

… My question was specifically on what role this network will be playing as the tender process unfolds. Further to that, given that the operator of the network will, in effect, have control over a natural monopoly and that Telstra has indicated that it wants an 18 per cent return on investment, which according to some commentators could raise broadband prices by 50 per cent per month for users, what measures will be taken to protect...
consumers from price-gouging, particularly in regional areas?"

I undertook to provide the requested information.

**Australian Communications Consumer Action Network (ACCAN)**

ACCAN will be funded under section 593 of the Telecommunications Act 1997. It will commence operations as the peak communications consumer body representing the interests of communications consumers from 1 July 2009.

ACCAN has elected its founding Board, comprising:

- Nan Bosler, President, Australian Seniors Computer Clubs Association, and current Director of Consumers’ Telecommunications Network (CTN).
- Len Bytheway, Chief Executive Officer ACT for Kids and Director (Deputy Chair) of CTN.
- Aaron Davis, Chief Executive Officer, Indigenous Consumer Assistance Network.
- Gerard Goggin, Professor of Digital Communication, and Deputy Director Journalism and Media Research Centre, University of New South Wales.
- Catriona Lowe, Co-Chief Executive Officer, Consumer Action Law Centre and Chair of Consumers Federation of Australia.
- Kyle Miers, Manager, of National Information and Projects with Deaf Children Australia, President of Deaf Australia, and Founding member of Australian Federation of Disability Organisations.
- Holly Raiche, Executive Director, Internet Society of Australia, Director of CTN.
- Sue Salihhouse, Director, Didactic Enterprise, Chair of the Communications Alliance Disability Council.
- Alex Varley, Chief Executive Officer, Media Access Australia.

The National Broadband Network (NBN) Request for Proposals (RFP), which sets out the Commonwealth’s objectives and evaluation criteria for the NBN, was released on 11 April 2008. The RFP details the respective roles of the Panel of Experts, the Minister for Broadband, Communications and the Digital Economy, government agencies and specialist advisers involved in the evaluation process. NBN proposals will be evaluated by the Panel of Experts, who will provide a report to the Minister for Broadband, Communications and the Digital Economy.

Several consumer organisations responded to the Government’s public invitation for submissions on the NBN, including the Australian Telecommunications Users’ Group and Telecommunications Disability Consumer Representation (TEDICORE, a project of the Australian Federation of Disability Organisations), and a number of organisations which have representation on the founding board of ACCAN such as the Internet Society of Australia and the Consumers’ Telecommunications Network. As detailed in the NBN RFP (clause 10.6.2), the Panel of Experts will be able to have regard to the regulatory submissions in its evaluation of proposals.

**National Broadband Network and consumers**

Clause 1.3 of the RFP clearly sets out the Commonwealth’s 18 objectives to establish a national broadband network that, amongst other things:

- enables uniform retail prices on a national basis;
- continues to promote the long-term interests of end-users;
- facilitates competition through open access arrangements that ensure equivalence of price and non-price terms and conditions, and provide scope for access seekers to differentiate their product offerings;
- enables low access prices that reflect underlying costs while allowing Proponents to earn a rate of return on their investment commensurate with the risk of the project;
- provides benefits to consumers by providing choice to run applications, use services and connect devices at affordable prices.

Clauses 1.5.10 - 1.5.23 of the RFP provide guidance in relation services, competition and open access, including the long-term interests of end-users and pricing.

In particular, clause 1.5.12 states:

Proponents should outline how consumers will be able to run applications, use services
and connect devices at affordable prices. Proponents should outline the type of retail services that could be offered, for both business and residential consumers. The Commonwealth expects that consumers will enjoy affordable retail prices for NBN services, but also notes that services need to be priced so they are economically viable.

As indicated in clause 10.3.2, Proposals will be assessed by the Panel of Experts against the evaluation criteria specified in the RFP to identify the Proposal or Proposals that represent the best value for money. The evaluation against criterion 1 will involve an assessment of the extent to which a Proposal meets the Commonwealth's objectives for the NBN process as set out in clause 1.3.

As indicated in clause 10.1.3 of the RFP, the value for money assessment of Proposals includes the overall costs and benefits of the Proposal (including long-term costs and benefits) to the Australian community as a whole.

Section 10.4 of the RFP outlines the role of the ACCC in the NBN process. Clause 10.4.2 states:

The ACCC will provide the Panel with ongoing advice on Proposals, including advice on issues such as wholesale access services and prices, access arrangements, proposed legislative or regulatory changes and the likely impact of Proposals on pricing, competition and the long-term interests of end-users in the communications sector.

Clause 10.4.2 of the RFP further states that the ACCC will provide a written report to the Panel. Clause 10.4.3 states that the Panel will consider the advice provided by the ACCC as part of its assessment process.

Schedule 2 of the RFP describes the information that Proponents should provide in their Proposals. The information provided by Proponents will be used in the evaluation of their Proposals.

Clause 1.5(a) of Schedule 2 of the RFP states:

Proponents should describe the extent to which the Proposal will benefit consumers (residential, business and others) over the short and long-term through the availability of communications services and applications at affordable prices.

Clause 1.5.4 of Schedule 2 of the RFP further states:

For wholesale-only Proposals:

(a) Proponents should provide estimated price and non-price terms and conditions,* key entry-level and basic retail services that a wholesale customer could offer consumers. Proponents should also set out the rationale for this estimate.

(b) Proponents can if they wish also provide anticipated price and non-price terms and conditions for any other retail services and applications that a wholesale customer could offer consumers. Proponents should also set out the rationale for this estimate.

For Proposals that offer retail services:

(c) Proponents should describe the arrangements for the supply of retail: services and applications and the range and nature of the proposed retail services and applications (i.e. the levels of functionality and performance).

(d) Proponents should describe the proposed price and non-price terms and conditions for key entry-level and basic services to be supplied, including:

(i) price and non-price terms and conditions,* the key entry-level and basic retail services over the investment term of the infrastructure;

(ii) any geographical variation in pricing, noting the Government's objective of uniform national pricing, or non-price terms and conditions—for example, connection or fault repair times: and

(iii) any proposed approach to the re-adjustment of price terms and conditions over the investment term of the infrastructure.

(e) In describing price and non-price terms and conditions,* the retail services and applications, the Proponent should provide, on a per service basis, to the extent relevant, information including: downlink and uplink speeds, connection and disconnection fees, service activa-
tion and deactivation fees, any periodic charges, billing arrangements, data usage allowances, any excess data fees, shaping policies and service level assurances.

(f) In providing pricing information for key entry-level retail services, the Proponent should identify any differences in proposed prices and non-price terms and conditions for residential and business customers.

All Proponents:

(g) Proponents should provide a comparison between the price and non-price terms and conditions of the proposed services and applications with those currently available.

(h) Proponents should explain the basis and rationale/or the proposed price and non-price terms and conditions described above.* retail services and applications, including costs and costing methodology, expected take-up rates and price adjustment mechanisms.

(i) Proponents should describe what will happen to retail prices over time if network traffic differs significantly from forecasts.

Clause 3.1 of Schedule 2 of the RFP requests, amongst other things, that Proponents indicate how any requested legislative or regulatory changes may impact on consumers.

Clause 3.2 of Schedule 2 of the RFP goes to compliance with legislative and other regulatory requirements and states:

Particular regard should be given to compliance with law enforcement, national security, emergency service and consumer safeguard requirements.

These and other relevant sections from the RFP are provided at Attachment A.

Attachment A

Select clauses from the NBN RFP relating to consumer interests and protection

Services

1.5.10 Proponents should specify the services they intend to offer. Consistent with the network covering homes, businesses and other users, the Government is interested in both residential and business services. The network should be able to support a full range of services and applications that can be facilitated by greater access to high-speed broadband, including multicast, virtual private networks, high-definition video-conferencing, peer to peer content delivery and IPTV, as well as basic services such as telephony and other services such as smart meters.

1.5.11 The Government considers that consumers and businesses should be able to purchase key entry level voice and broadband services for the same price, irrespective of where they live or work. The NBN should enable uniform prices for basic entry level services. Proponents should provide the relevant pricing details for these services in their responses to Schedule 2.

1.5.12 Proponents should outline how consumers will be able to run applications, use services and connect devices at affordable prices. Proponents should outline the type of retail services that could be offered, for both business and residential consumers. The Commonwealth expects that consumers will enjoy affordable retail prices for NBN services, but also notes that services need to be priced so they are economically viable.

1.5.13 The Government will need to be assured that existing retail customers will experience no or minimal disruption to their services, and also that the migration of wholesale customers will not be subject to anti-competitive delays or processing timetables. Proponents should ensure that equivalent (or superior) services to those that are currently available can be offered to all existing customers.

Competition and open access

1.5.14 As noted above, the NBN will be a central platform for the Australian communications sector. The Government considers that the long-term interests of end-users should continue to be promoted. The Government is therefore determined to ensure that appropriate open access arrangements are in place to promote competition and ensure efficient investment. In this context it will be important to ensure that access is provided
on equivalent price and non-price terms and conditions.

1.5.15 Proponents should clearly specify the wholesale access services they are proposing to offer in accordance with the details requested in Schedule 2. For example, Proponents should include details such as the proposed locations of Points of Interconnection, technical arrangements for service providers that acquire wholesale services and (where relevant) the availability of backhaul capacity to and from Points of Interconnection. In setting out these details, Proponents should keep in mind the Government’s objective of providing scope for access seekers to differentiate their product offerings.

1.5.16 Open access arrangements should apply to wholesale services to be provided over the NBN, including upgrades of services, as specified in the contract for the NBN. In accordance with section 1.4 of Schedule 2, Proponents should submit their proposed arrangements for ensuring open access to the NBN, including measures or models to ensure that access is provided on equivalent price and non-price terms and conditions. If a Proponent proposes to supply both wholesale and retail services it should demonstrate what structural measures or models it proposes be put in place and maintained to prevent inappropriate self-preferential treatment and ensure that effective open access is achieved on the terms required by the Commonwealth.

1.5.17 Proponents should outline how their proposed access prices have been determined with reference to the underlying costs of providing services and demonstrate that the underlying costs are incurred on an efficient basis. Access prices should be set as low as possible, to ensure the best outcome for consumers, while allowing Proponents to earn a rate of return on their investment commensurate with the risk of the project. Proponents should explain the basis on which they have derived the cost of capital, including how investment risks have been calculated.

1.5.18 As requested in Schedule 2, Proponents should describe how arrangements will provide scope for access seekers to differentiate their services by allowing the customisation of technical parameters (including but not limited to speeds, quality of service, latency, jitter, contention ratios and interleaving).

1.5.19 Proponents should also describe how access services will allow access seekers to offer enhanced applications such as multicast, virtual private networks, high definition videoconferencing, peer to peer content delivery and IPTV if desired.

1.5.20 If Proponents are proposing to roll-out new network infrastructure in regions where competing networks already exist, including in some cases existing FTTN and FTTP networks, they should indicate this as requested in Schedule 2. The Commonwealth expects that there will not be economically inefficient duplication of existing FTTN or FTTP infrastructure. Proponents are also encouraged to consider interconnecting with existing FTTN or FTTP roll-outs.

1.5.21 Where Proponents intend to use infrastructure owned by third parties they should indicate the type of access they will require and what arrangements have been reached, or would need to be reached, to ensure it is granted on terms and conditions that are satisfactory to it. Proponents should indicate their pricing assumptions for access to third party infrastructure, as requested in Schedule 2.

1.5.22 Proponents should identify the parts of the network that are commercially viable in their own right and those parts that would not otherwise be commercially viable without financial support.

1.5.23 If a Proponent considers that mechanisms are required to facilitate the Government’s objective of enabling uniform retail prices and the delivery of services to premises within the NBA footprint, it should clearly set out the nature of this mechanism. For example, if Proponents are proposing cross-subsidy arrangements within access prices to enable uniform retail prices, they should clearly identify the extent of any cross-subsidization, as well as other relevant details (see Schedule 2). If a Proponent proposes another type of mechanism to enable uniform retail prices, it should set out details about the nature of its proposed mechanism and other relevant details (see Schedule 2).
Mr Deputy President, I take a point of order while Senator Evans is still in the chamber. I notice Senator Evans was not in the chamber when the President gave his ruling on Senator Evans’s behaviour at question time yesterday. In view of the President’s ruling and comments indicating that he thought Senator Evans did reflect in a personal way on another member of another house, could I suggest that we afford Senator Evans the opportunity now of withdrawing his comment and apologising to the chamber and to the person he mentioned yesterday in question time.

Senator Faulkner—On the point of order, Mr Deputy President, quite clearly Senator Macdonald must have misheard the President’s ruling earlier in relation to Senator Evans’s comments. I was in the chamber at the time—

Senator Ian Macdonald interjecting—

Senator Faulkner—Senator, unlike you, I did not mishear what the President said. The President made no requirement at all that Senator Evans take any action and did not request Senator Evans to withdraw any comments he made. All we can say in response to that point of order is to respectfully suggest that Senator Macdonald reread the Hansard. He would then be aware that the President this morning made no requirements of Senator Evans to take any further action.

Senator Coonan—Mr Deputy President, on the point of order—and obviously we do not want to take up too much time with it—irrespective of the content of the ruling by the President, which I think we all heard, can I just say on the record that I have normally found Senator Evans to be a person of decent instincts and someone who is not normally given to the kind of comments that caused offence to this side of the chamber.
If a senator wants to address this chamber they must seek leave for themselves.

Senator Sterle interjecting—

The DEPUTY PRESIDENT—Order! Senator Sterle, when I am speaking from the chair you will refrain from interjecting. There is no point of order, Senator Macdonald and, as I said, a senator cannot seek leave for another senator to make a statement.

Senator Faulkner—Mr Deputy President, I rise on a point of order. Your ruling is a sage one, but I point out to you, just so we do not establish a precedent, which I know is not your intention, and for the completeness of the record, that there are times when those involved in chamber management—a whip, a manager, sometimes a leader—seek leave on behalf of a colleague; for example, to incorporate a speech. I understand that is not your intention but I just make that qualifying point. The substantive way you have ruled of course I accept. But I do not want anyone, and I know this is not your intention, to misunderstand the ruling that you have made—for example, when a whip acts on behalf of a colleague, which is quite common practice in the chamber. The point of order is clear and you can read it in the Hansard.

The DEPUTY PRESIDENT—Senator Faulkner, I was remiss in not correctly saying that there is no provision for a senator to seek leave for another senator who is in the chamber to make a statement to the chamber.

Senator Ian Macdonald—Mr Deputy President, I rise on a separate point of order. I wonder if you could rule on the question of whether the words ‘I’ll whack you in the gob’ are parliamentary—not that they frighten me at all, particularly coming from Senator Sterle, who has no capacity to carry out his threat. But I just wonder, as a matter of parliamentary procedure, whether those words are in fact parliamentary.

Government senators interjecting—

The DEPUTY PRESIDENT—Order! Senator Sterle.

Senator Sterle—Mr Deputy President, on the point of order: I did not hint to Senator Macdonald that I wanted to whack him in the gob. What I did say was, ‘Any husband or father, if Troy Buswell had done it to their daughter or wife, should whack him in the gob.’

The DEPUTY PRESIDENT—Order! That is not a point of order, Senator Sterle.

Honourable senators interjecting—

The DEPUTY PRESIDENT—Senator Macdonald took a point of order and raised the issue of an interjection. Senator Sterle sought the call which I gave him. If you had given me time I would have asked you, Senator Sterle, whether you said that and asked you to withdraw it if you had. There is no need for it to be continually debated in the chamber.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Economy

Broadband

Senator COONAN (New South Wales) (3.22 pm)—I move:

That the Senate take note of the answers given by the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to questions without notice asked today.

I never thought I would actually feel sorry for Senator Conroy, but I do when I consider Senator Conroy’s performance in the chamber today. Not only has he been mugged by the extravaganza of his broadband process but, on top of that, he seems to be blissfully and totally unaware, as the Minister representing the Treasurer, that the Treasurer said that growth will be slower than forecast just three weeks ago in the Mid-Year Economic and Fiscal Outlook.
What is emerging from the Rudd Labor government’s lazy handling of the economy is that, after just one year, they have run up the white flag. They have pronounced it all too hard and they have declared that Australia is headed for a budget deficit and possibly a recession. If this sounds familiar to Australians—to mums and dads, working families and small businesses—it is because it is, very familiar. The ghost of Labor governments and their extreme failure to run the economy competently is well and truly back with us.

The last time Labor went into a budget deficit, it lasted six long years and saddled Australians with $96 billion worth of debt and, if my memory serves me correctly, unemployment that peaked at nearly 11 per cent. Just three weeks ago, in the MYEFO, the government was projecting growth of two per cent. Remember that Mr Rudd was proclaiming that the growth forecast had a two in front of it? Well, not anymore. The Treasurer, who is understandably a very worried man, yesterday conceded that growth will most probably be slower than he had forecast just three days ago.

If growth is slower then, as night follows day, Labor’s unemployment forecast will also likely be out. The OECD predicted, just overnight, unemployment of six per cent by 2010. What, we might ask, is Labor’s plan for the economy? We have had the events of the last six weeks and the bungled deposit guarantee scheme that lurched along until eventually Labor fell over the line and put in legislation to support the wholesale term funding guarantee that we had suggested they needed six weeks ago. It is clear that, while Labor have a political strategy, they do not have a plan to keep the budget in surplus or to keep the economy strong. In just one year in office, they have galloped through the surplus. They are already predicting a deficit and are now softening up the community, for the possibility of a recession.

This is sloppy economic management and it is unjustified. What has changed in the last three days to cause the government to believe that we will go into deficit and a possible recession? We certainly did not get much enlightenment from Senator Conroy’s bumbling performance in question time. The government is already spending one per cent of GDP on a $10.4 billion stimulus package for the economy. It has not even hit the ground yet and Labor have already, in effect, given a vote of no confidence that the stimulus package will work.

The OECD said only yesterday that Australia would avoid a recession. The government has forecast growth of two per cent, with Mr Swan softening a bit on that yesterday. The government has in place the stimulatory package, as I mentioned. The Reserve Bank cash rate is still at 5.25 per cent. There is a lot of room to move, if you are competently managing the economy in terms of monetary policy, to bring interest rates down to stimulate the economy. There is certainly no need for the government to abandon the discipline of keeping the budget in surplus.

Labor’s talk of deficit is nothing less than a vote of no confidence in their own strategy and in their own stimulus package to keep our economy in growth. The hard decision for the Rudd-Swan government is to keep the budget in surplus and the economy in growth. The lazy decision is exactly what they are doing—for the government to run up the white flag on deficit with the economy in growth. Here is a prediction for you, Mr Deputy President: we will not have a temporary deficit; we will have one that lasts for as long as we have a Labor government.

(Time expired)

Senator MARK BISHOP (Western Australia) (3.27 pm)—If one had to find two
words to define the quality of the economic administration of this country in the 12 months since the election of the Rudd Labor government, those words would be ‘flexible’ and ‘responsible’. What do I mean by flexible? It is a very simple proposition. When economic conditions change, when change is imposed on this country from outside, those who are responsible for determining the economic policy settings of this country respond by changing those settings as well. That is how you do it if you are being flexible—you change when the circumstances change.

What does it mean if you are being responsible? In changing those policy settings to respond to the global financial crisis which is being felt in this country, you properly have regard to jobs, inflation, interest rates, the terms of trade and the current account. They are the key drivers of economic policy that any responsible Treasurer and any responsible leader would have regard to when a situation comes upon this country out of the blue, not forecast by one reputable body or economist around the world, which requires a response by the government of the day. You have regard to jobs, inflation, interest rates, the terms of trade and the current account.

What do we know in terms of those five matters? We know that this country has full employment and growth is still around the corner and is of the order of a positive two per cent—unknown in the rest of the Western world. It does not matter whether it is the United States, the United Kingdom, Korea, France, Germany or major powerhouses like China and India; all of those countries have negative job growth and real job declines.

Secondly, in terms of inflation, what is occurring in this country is that inflation is coming down—on every key measure inflation is coming down. Thirdly, in terms of interest rates, there have been record reductions of interest rates—the cost of money to families, the cost of money to business—in this country in the last 12 months, and undoubtedly interest rates will continue to reduce over the next six or 12 months, which will be an incentive required, organised, requested and encouraged by this government to get the economy moving again, to get investment going into business and to get people maintained in employment.

Similarly, in terms of the current account, we do not accept that because, for the first time in over 14 years, for two successive months there has been a significant surplus on the current account, that is enough. All of the things that were outlined by Senator Conroy today in terms of work, a responsible approach to changed circumstances, getting the policy levers right, and the things outlined by Senator Carr in response to questions in terms of getting a new labour market regime by having innovation in science and technology responsive to the demands of a changing economy, will result in the current account remaining in surplus, which in turn will result in investment coming into this country and jobs being maintained.

As Senator Conroy said, they are not just the views of this government. What are the views of reputable outside observers? Senator Conroy, in response to one or two of the questions, made the point that two senior public economists, from Westpac and ANZ, had said that it is necessary when circumstances change that you revisit the need to have a huge surplus or to go into deficit. Senator Conroy was exactly right when he said that there is a current need for a temporary deficit to allow sufficient funds to go into the economy for the government to borrow to keep economic growth active, to keep economic growth going and to keep people and families employed in jobs. He was right to quote Mr Eslake and Mr Evans from those two banks— (Time expired)
Senator IAN MACDONALD (Queensland) (3.32 pm)—Senator Bishop’s fine oratory cannot hide the facts of the matter. The facts of the matter are simply that this government has no idea what it is doing when it comes to the financial management of our country. That was exemplified today by the answers given by Senator Conroy. I do not want my discussion to be seen as a personal attack on Senator Conroy, who I quite like. I think he is a fine fellow. Not being from the Victorian Left, I guess I can say that. I bear him no personal ill will. But have a look at the answers today: poor Senator Conroy is completely out of his depth.

It is quite clear that Senator Lundy—a person who has had a long involvement in broadband and clearly understands it far better than Senator Conroy, with the mess he has got himself into—should have been the broadband and communications minister and Senator Sherry should be doing the Treasurer’s work. Senator Sherry could not be worse than Wayne Swan, with his appalling position last night on the ABC’s The 7.30 Report, or Lateline, was it, with Kerry O’Brien—Kerry it is, Wayne, not Terry. Poor old Mr Swan could not answer a question. He could not define how long this temporary downturn would be, the temporary deficit that the Labor Party have now admitted the government will have. As Senator Conroy said today, Mr Swan and Senator Conroy were standing by the midyear economic financial outlook projections. But already, two weeks later, they are resiling from them.

As I say, fine words from Senator Bishop, but what are the facts? The Labor Party claim that they are putting big money into this building fund and by spending the building fund that will indeed get the country out of the recession that it is heading towards. But this building fund that he talks about was totally and entirely the work of the previous government. The money came from T3, it came from last year’s surplus and it came from the telecommunications fund—all three funds set up by the previous government. So what the Labor government is now doing is spending the savings of the previous government to try and get the economy going.

I think most Australians were prepared to give Labor a bit of a go. They started off with a $22 billion surplus given by the previous government, but within a year that will disappear and we will be borrowing again. Those of us who have been around for a while sat through the years when Labor borrowed up to $96 billion. It was $96 billion the Labor Party had to borrow to try and keep Australia running. What happened when the coalition took over government? We did not have any fat to deal with. We had to start and pay off Labor’s $96 billion. Over six or seven long years we scrimped and saved, ran the economy well, got the economy into a positive economic outlook, created jobs and paid off Labor’s $96 billion debt. Could you imagine how this government would be today in the face of the economic downturn facing Australia if they had inherited a $96 billion deficit rather than a $22 billion surplus? Can you just imagine the state Australia would be in? When we took over in 1996, Labor left us huge double-digit unemployment and just about double-digit inflation, plus a $96 billion deficit. If they had been left with that in December last year, the country would be just about in ruins at the moment. Unfortunately, and I regret to say this, I, and I think increasingly every other Australian, have absolutely no confidence in Mr Rudd and Mr Swan in managing our economy.

Senator CAMERON (New South Wales) (3.37 pm)—I must say that I have been absolutely amazed at the arrogance of the opposition this week in question time. Senator Feeney made the point yesterday: when are the opposition going to deal with the issue of
the economy? It is the big issue facing the whole global community, yet question time was being taken up with anything but the economy. We have this born-to-rule arrogance on the other side. I take the view that the opposition are in an absolute time warp. You refused to accept that global warming was a reality, and you are now refusing to accept that the economic crisis that is facing economies all around the world is a reality. You only have to listen to the contributions here today on the issue of a deficit. There is absolute incompetence and absolute denial of the economic factors facing this community.

You really want to hark back to the theories of Friedrich Hayek and Milton Friedman that the government should do nothing. All you want to do is say that the budget should stay in surplus and should stay there forever. That is the argument you are putting up. It does not matter that all other countries in the world facing this problem are setting about stimulating their economies, with decisive government intervention to ensure that their communities, their workforces and their families have a future in terms of some security. This Labor government will not stand by and watch while this economy is driven into the ground by government incompetence. We will deal with it fairly, we will deal with it effectively and we will deal with it decisively. We will not repeat the incompetence of the last Liberal government.

You go back and claim this great historic economic credibility. Let me tell you about your economic credibility. Under Menzies you allowed this country to plod along with no major economic intervention or change for the good for decades. You plodded along on the sheep’s back under Menzies. And under Howard we had a decade of lost opportunity, when we had the mining boom to build the future of this economy. And what did you do? You laid back and let the market rip and did nothing in terms of positive intervention to ensure that we built for the future. The Labor government will not do that. We will ensure that in the face of a global economic crisis the government acts decisively, that the government acts responsibly, and we will look after the communities of Australia. We will not argue about some theoretical point about maintaining a budget deficit, which you are arguing here is a great, great evil. If a budget deficit means keeping communities at work and keeping our economy ticking along, then we will take a budget deficit in the interests of this nation.

It is absolute nonsense for you to argue here that there is no economic problem that requires a government to make a change in its economic policy in terms of the budget. In fact, your line is being criticised by some of the economists who you quote all the time, your favourite economists. Look at Chris Richardson of Access Economics on Lateline last night. What did Chris Richardson say? He said:

The debate about deficits is a silly one.
As silly as the performance of the Liberals here today. He went on:
It’s a politicians’ debate. They’re the ones who’ve drawn the line in the sand about deficits being evil. We don’t want deficits to be a habit, but we want them to help and we do need them now.

We need intervention in the economy in the interests of the nation, and yet you sit back with your silly carping views, your born-to-rule arrogance and your arguments that are in the past. You do not accept the reality of the global economic— (Time expired)

Senator FISHER (South Australia) (3.42 pm)—The government promised Australians to partner with the private sector to upgrade the existing fibre network to deliver speeds of a minimum of 12 megabits per second to 98 per cent of Australians. That is what the government promised. Not only have they not delivered it; there is no vestige, no rem-
nant, of a prospect that they will. This is tragic for Australians at large, particularly those in currently underserviced areas. The government’s promise is in tatters, as exhibited and writ large by the tender process thus far. Prior to this there have been public comments by tenderers and would-be tenderers about the frustrations that they have experienced in trying to say what they would do to bid to be part of the government’s proposal, while the government has refused to set out what the regulatory environment would be, what the regulatory rules under which a successful bidder would operate would be.

Worse than that, we have essentially seen a stand-off between Telstra and the government, with Telstra wanting one thing and the government refusing to commit to that thing or to something else—or to anything else. And then at the last minute a would-be tenderer effectively puts in a proposal, a proposition, an invitation to treat—we know not what it is. What are the other tenderers who have complied with the government’s rules thus far—as best they can, given that they do not know what they will be, should they be successful—supposed to think of, do with, provide for in respect of a proposal put up by another would-be bidder? The environment is totally uncertain. It is wholly unsatisfactory. And this is a tragedy for Australians.

Debate interrupted.

PERSONAL EXPLANATIONS

Senator FIFIELD (Victoria) (3.45 pm)—I seek leave to make a personal explanation.

Leave granted.

Senator FIFIELD—I have been most grievously misrepresented. I was flicking the other day through a terrific publication by the Australian Electoral Commission, the 2007 Electoral Pocketbook, which contains the results of the 2007 election. I was flicking through the House of Representatives results and I was reliving what was, from our point of view, the horror of 2007. In an effort to lift my spirits, to feel a little better, I turned to the Senate results, which were much more agreeable. I looked at the Victorian Senate results and saw Senator Collins elected in the No. 1 position—congratulations to her. I cast my eye down and saw the terrific results of Senator Kroger and Senator Ryan. Then I cast my eye up the page to look at my own election, for which I was very grateful and which I was very pleased to see recorded, but to my absolute horror I saw after my name the letters ‘ALP’. The document has me listed as a member of the Australian Labor Party. I also checked the AEC website, which compounded the error by also listing me as a member of the Australian Labor Party.

Mr Deputy President, you can imagine my distress. I was inconsolable at this misrepresentation. I wish to assure the Senate that I have not had a change of heart, that I have not sought to change political allegiance. I know senators opposite are quite fond of me and would not mind me going across to that side of the chamber. Indeed, I am often tempted to go across to that side of the chamber, particularly when Senator Conroy is answering questions. He does need a little bit of assistance. But I am resisting that temptation, tough as it is!

I am pleased to say that the Electoral Commission have been in contact and they have apologised for this gross misrepresentation. They will be issuing an erratum to the 2007 pocketbook and they will also be changing the AEC website today. I thought the Senate might appreciate that reassurance that I will be remaining on this side of the chamber.

Senator IAN MACDONALD (Queensland) (3.48 pm)—I seek leave to take the same sort of liberty, very briefly, to show
where I have been misrepresented in the same publication.

Leave granted.

Senator IAN MACDONALD—Senator Fifield’s contribution reminds me that when I was looking through the 2007 Electoral Pocketbook I saw that there was someone called Ian ‘Dougalas’ Macdonald, who had led the Liberal Party ticket and who had been elected first in Queensland to the Senate. I would hope that the Electoral Commission was not making any reference to me by saying I am ‘Doug-alas!’ rather than Douglas.

BUSINESS

The DEPUTY PRESIDENT—Order! Pursuant to order of the Senate agreed to on 25 November 2008, government business is to be called on at this time. Is leave granted for documents listed on today’s Order of Business at items 12 and 13 to be tabled and for a motion to be moved with respect to committee memberships?

Leave granted.

COMMITTEES

Reports: Government Responses

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (3.45 pm)—I present two government responses to committee reports as listed at item 12 on today’s Order of Business. In accordance with the usual practice, I seek leave to have the documents incorporated in Hansard.

Leave granted.

The documents read as follows—

The removal, search for and discovery of Ms Vivian Solon

Final Report (December 2005)

Government Response

Introduction

The events surrounding the removal of Ms Vivian Solon in 2001 have become symbolic of the problems that emerged in the immigration portfolio at that time.

This case was made public in 2005, and was investigated by both Mr Mick Palmer AO and Mr Neil Comrie AO.

The Committee and the investigation by Mr Comrie both highlighted the failure of DIMIA, as it then was, to more thoroughly investigate Ms Solon’s identity prior to her removal, given that at the time Ms Solon insisted she was an Australian citizen.

The most shocking element to this case was that when Commonwealth officials subsequently discovered that they had removed an Australian citizen, action was not immediately taken to remedy the situation.

In this context and in response to the earlier reports of Mr Palmer and Mr Comrie the Department has engaged in a process of business and cultural reform.

As part of this organisational transformation, DIAC has implemented improvements to training, data management and information systems, compliance activity, case management, detention services, client services, health services and identity verification. These improvements have been most profound in the areas of instruction and training on the initial decision to detain an unlawful non-citizen, structured reviews of detention decisions, and the case management of non-citizens in detention.

These reforms have been supported by strengthened governance, stakeholder engagement, risk management and quality assurance processes, to ensure high professional standards in decision-making, particularly in relation to decisions to detain and remove people. Many of the initiatives that DIAC has implemented are cited here in response to the recommendations of this Senate Committee Report.
Recommendation 1
The committee recommends that in relation to the interviewing of detainees, if a detainee is unable to sign the record, there must be certification by a third party that the record of interview is correct.

Response - Agree
Since the finalisation of the Senate Committee Report, considerable efforts have been made by the Department to ensure transparency and fairness for those people in immigration detention who are unable, for whatever reason, to sign and endorse the record of interview. Revised instructions require officers to consider whether the person may require a third party present during the interview and inquire whether the person wishes a friend, family member or other third party to be present for support.

Where an assessment has been made prior to interview that a person can be interviewed but is unable to sign the record of interview, a third party will be made available to attend the interview and provide certification of the record of interview.

Officers are also required to consider before an interview whether the person is well enough to be interviewed. Priority is given to addressing any health issues before an interview is conducted. As part of the case management of people in immigration detention, consideration is given to circumstances where the person appears to be in a confused or distressed state or experiencing a mental illness. In such circumstances, DIAC will seek expert advice from its detention health services’ provider about the best way to proceed.

Where the health services’ provider advises that a person in immigration detention is not competent to make decisions about his or her welfare or provide informed consent because of mental health issues or intellectual disabilities, the Department, the person’s family or a representative may apply to the relevant State Guardianship Board for the appointment of a Public Guardian to act in the person’s interests.

Finally, in the case of people in immigration detention who are unable to sign because of insufficient competence in English, DIAC’s procedures require the record of interview to be signed by the interpreter assisting in the interview as well as the person.

Recommendation 2
The committee recommends that DIAC staff are reminded that independent and accredited interpreters must be used and that the use of a departmental officer as an interpreter should only occur in exceptional circumstances.

Response - Agree
In relation to compliance and immigration detention activities, departmental instructions remind staff to use independent qualified interpreters, such as those available from TIS National (Translating and Interpreting Services), wherever the client has difficulties understanding or speaking English. This is consistent with DIAC’s commitment to the Charter of Public Service in a Culturally Diverse Society. In exceptional circumstances, such as where an independent and accredited interpreter is not available (for example, because interpreters for some emerging community groups are yet to achieve National Accreditation Authority for Translators and Interpreters (NAATI) accreditation), DIAC seeks to use people who it is satisfied are competent to interpret in the circumstances. This may include departmental officers.

DIAC’s College of Immigration also provides compliance officers with formal training sessions conducted by NAATI relating to the professional use of interpreters. This training reinforces and reminds these officers of existing departmental instructions that require them to seek the assistance of accredited interpreters.

DIAC’s intranet provides staff with contact details for TIS National. When contracting the services of an interpreter, TIS National gives preference to interpreters who are NAATI accredited or recognised.

DIAC staff with language skills are sometimes used to assist in a wide range of departmental services and activities which do not relate to compliance or immigration detention activities. These include citizenship and settlement activities, over-the-counter services, offshore services and services for refugee and humanitarian entrants.
Recommendation 3
The committee recommends that DIAC carefully consider the process to ensure that someone in a confused and distressed state has access to legal advice.

Response - Agree
During the reception process, people in immigration detention are informed that they can seek legal representation or contact a consular representative. This is done through a written notice which is available in a number of community languages.

As part of the case management of people in immigration detention, consideration is given to the particular circumstances of each individual, including their competence to make decisions about their welfare or to provide instructions to a legal representative. Where a person appears to lack mental competency, the Department will receive expert advice from its detention health services’ provider. Depending on the advice of the health services’ provider, the Department will then consider appropriate case management and where required will approach the State Guardianship Board for consideration of the case in respect of whether a guardian should be appointed under the relevant state or territory legislation.

Recommendation 4
The committee recommends DIAC review checklists regarding identity checking and the decision to detain and remove process to ensure that the actions outlined above regarding contact with the police and advice regarding legal assistance are captured so they are addressed by DIAC officers when effecting removal.

Response - Agree
DIAC has made major changes to policies and procedures relating to the detention of unlawful non-citizens. These focus on establishing correct identity and escalating matters where identity is not able to be confirmed at the outset, and are reinforced through the training program DIAC compliance staff now undertake.

DIAC will continue to review and refine these procedures to ensure that all reasonable lines of enquiry are pursued and embedded into our processes to ascertain a client’s true identity. DIAC will include specific references to include the requirement that local police be contacted where a possibility exists that a person of interest may have been subject to actions which could have affected their capacity to clearly establish their identity, such as assaults or motor vehicle accidents. The capture of this information will be supported with policy advice on how this information may be used to help establish a person’s identity. Responsibility for the investigation of alleged criminal action would remain a matter for the appropriate law enforcement authority.

DIAC has also implemented procedures that ensure that a person is not removed from Australia without a formal assessment of the case being done by a senior officer. This assessment includes satisfaction about confirmation of the person’s identity and immigration status as well as satisfaction that visa applications, litigation and other proceedings relating to immigration status have been finalised. The assessment may also involve assessment of whether proceedings with relevant authorities such as the police have been settled.

The measures in place for ensuring that people in immigration detention are afforded reasonable facilities for obtaining legal advice are discussed in response to recommendation three above.

Recommendation 5
The committee recommends that the Australian government review the adequacy of section 189 of the Migration Act 1958 and/or the introduction of a regulation that stipulates the evidence required for a person to be detained as an unlawful non-citizen.

Response - Agree
Since the Committee’s report and informed by both the Palmer and Conrie reports, the previous Government initiated considerable improvements to the policies and operational procedures around the power to detain at section 189 of the Act. These improvements are based on the proposition that immigration detention is a last resort, and many have been developed and implemented in consultation with the Commonwealth Ombudsman.

For example, current procedural instructions on the application of section 189 of the Act specify a list of objective indicators upon which officers
must base their knowledge or reasonable suspicion that a person’s status is unlawful. These instructions are reinforced in the departmental College of Immigration training program.

In August 2007 the Ombudsman’s office commenced ad hoc inspection visits accompanying departmental compliance teams. These visits are being conducted under the preliminary inquiry powers at section 7A of the Ombudsman Act 1976. The Department also provides the Ombudsman with six-monthly reports on instances of people detained under s189 who were subsequently released having been determined to be lawful.

Further improvements to policy settings, training and quality assurance have been made to enhance sensitivity to the individual’s circumstances. These reforms include, amongst others:

- the development of improved training and instructions relating to the application of section 189, and what constitutes the formation of a reasonable suspicion;
- the establishment of a quality assurance framework, including mandatory managerial review of all decisions to detain people under the Act;
- the appointment of Detention Review Managers to provide independent assurance, removed from compliance activities, that decisions to detain are made lawfully and reasonably; and
- a Compliance, Case Management and Detention Integrated Business Model, developed to ensure the provision of coordinated services that achieve immigration outcomes in a timely, fair and reasonable manner.

These approaches have halved the rate at which unlawful non-citizens located by departmental compliance work are taken into immigration detention. Thirty per cent of compliance locations resulted in detention in 2004-05, but for the 2007-08 year to date this figure is down to under 15 per cent. The overall number of people in detention has also been reduced from 862 in June 2005 to 456 at 14 March 2008.

This Government proposes to continue and extend these changes where necessary and to provide humane, fair, reasonable and timely outcomes for people who are detained as unlawful non-citizens.

**Recommendation 6**

The committee recommends that the development of appropriate standards for health and care needs for detainees in transitional detention – identified in Recommendation 9 in the Ombudsman’s report – specify mental health as an area to be addressed.

**Response - Agree**

The Detention Health Framework articulates the broad principle that fair and reasonable standards of health care, including mental health care, be provided to people in all forms of immigration detention within the immigration detention network. Fair and reasonable health care means a comparable standard of health care in terms of quality and timeliness that is available to members of the Australian community. The Detention Health Advisory Group (DeHAG) advises DIAC on policy and procedural matters related to immigration detention health issues. Following a DeHAG recommendation, DIAC has worked with the Royal Australian College of General Practitioners (RACGP) to develop health standards for immigration detention centres. Where people are immigration detained in a community setting, DIAC’s health service management organisation prefers to engage health care services which are accredited against the RACGP Standards for General Practice.

**Recommendation 7**

The committee recommends that the explanation of rights regarding the medical examination be included in a relevant checklist as discussed in recommendation 4 above.

**Response - Agree**

People in immigration detention are provided a standard of health care commensurate with that available to the Australian community. Consistent with this, all people in detention who are offered medical examinations are informed of the purpose of the examination and have the right to refuse (i.e. consent is sought). The requirement for consent to a medical examination is part of the Department’s health induction assessment and discharge health assessment protocols.
A refusal to agree to a medical examination is recorded in the client’s health file. Advice is provided as to any health risks associated with such a refusal. Advice to the Department on the health status of a person is based on the best available health information when so requested.

Where clients are medically examined as part of a removal process they are advised of the purpose of such an examination unless clinical advice to the contrary is given by the health service manager. In this unlikely event, the information would be recorded in the Removal Availability Assessment, a document which is provided to the responsible SES Band 1 Officer, seeking approval for the removal to proceed.

The requirement for consent to medical examination is contained in the RACGP Standards for health services in Australian immigration detention centres (June 2007) which is the Department’s policy document regarding this issue.

Recommendation 8

The committee recommends that DFAT review internal processes regarding the treatment of concerns expressed by other governments that have the potential to affect bilateral relationships, with a view to ensuring that appropriate senior officers in Canberra and in relevant posts are made aware of these concerns.

Response - Agree

DFAT has looked closely and critically at its involvement in Ms Solon’s case. A number of steps have been taken to ensure effective checks are in place and that any similar cases in the future are exhaustively followed up. The steps include tightening DFAT’s rules requiring reporting and tasking of overseas posts to be communicated through the cable system, thereby ensuring significant developments – which would include expressions of concern by other governments – are brought to the attention of senior staff.

Recommendation 9

The committee recommends that DIAC review its procedures to ensure that formal procedures are in place for the reception of people being removed from Australia in circumstances similar to Ms Solon and that their final destination is recorded on file.

Response - Agree

DIAC notes that the responsibility for citizens of a country to which they are returned lies with the authorities of that country. The Australian Government can only have a limited role in the initial reception of non-citizens upon return to their home.

In keeping with DIAC’s case management approach, individuals’ needs for post-removal support or reception arrangements in their country of destination are assessed on a case by case basis. Depending on the needs identified in a person’s specialised case management plan, the post-removal care provided by DIAC may, for example, involve arranging:

- for individuals to be transported to or met by medical and/or welfare staff;
- short term accommodation or clothing;
- contacts for post-removal health support and continuation of treatment regimes, where possible; and
- a small allowance and provision of information on welfare organisations.

Reception arrangements for individuals are detailed in the removal planning documentation, and escorts are required to complete a post-removal report which is retained on the person’s file.

In some cases DIAC may not be informed of a person’s final destination within the country of removal. However, where there are contact details available for the removed person in the country of removal, these will be recorded by DIAC officers and retained on file.

Recommendation 10

The committee recommends that DIAC review and advise staff when their responsibilities for a detainee begin and end, noting there may be circumstances like that of Ms Solon where there may not be a strict legal obligation but a moral obligation to ensure their welfare.

Response - Agree

The Government recognises that sometimes the welfare of people can initially be affected by their removal from Australia. Extensive training has been, and is being, delivered to DIAC staff to...
ensure any removal arrangements appropriately reflect the needs of the individual.

In addition, initial post-removal support can be, and is, arranged for clients who are identified by their departmental case managers as having special needs. Under the revised procedures, before any person is removed from Australia a formal assessment of the case is done by a senior officer. This assessment includes satisfaction about confirmation of the person’s identity and immigration status, and satisfaction that visa applications, litigation and other proceedings relating to immigration status have been finalised, and that arrangements for the removal including any on-arrival arrangements are appropriate.

These arrangements provide clarity for DIAC staff on the extent of their responsibilities for immigration detainees. However, once a person has been properly and lawfully removed or deported from Australia, Australia’s obligations in relation to that person have been substantially discharged.

There are limits on what Australia can do in other countries’ jurisdictions.

Recommendation 11
The committee recommends that the independent investigation into whether the actions of individual officers breached the APS Code of Conduct include consideration of any systemic issues that may have contributed to the lack of action. Furthermore, if the investigation identifies any systemic issues that it make recommendations to address them.

Response - Agree
Mr Dale Boucher, the former Chief Executive Officer of the Australian Government Solicitor, finalised his independent investigation into possible breaches of the APS Code of Conduct arising from the recommendations of the Comrie inquiry report in September 2006.

The Terms of Reference for this investigation required that Mr Boucher investigate allegations of staff misconduct. Mr Boucher was not required to consider potential systemic issues that may have contributed to the lack of action in this matter. As a consequence, Mr Boucher did not undertake a review that focused on these potential issues.

The report, however, does make comment on the need for DIAC to provide advice to staff on how to deal with and escalate difficult client service related issues associated with people in immigration detention. This has been addressed through DIAC’s approach to individual case management of people in immigration detention who have particular needs. The issue was discovered in the course of undertaking the investigation inquiries specified in the Terms of Reference, and not as part of a broader review of potential systemic issues.

Systemic issues have been addressed throughout the Department in a broader reform process which includes the implementation of the Palmer, Comrie and Ombudsman reports’ recommendations.

Recommendation 12
The committee recommends that DIAC and DFAT remind staff of the correct procedures to be followed when making requests for passport information.

Response - Agree
DFAT has ensured that staff are reminded through regular passports and consular training that they are required to bring to the attention of senior departmental staff any requests from other agencies for passport information.

DIAC has issued an instruction for compliance staff which clarifies the procedures for obtaining Australian passport information, including the procedures for making formal requests for passport information from DFAT.

Government response to the report on Australia’s aid program in the Pacific September 2007

Pacific Partnerships for Development

The Prime Minister announced an intention to commit Australia to a new and elevated engagement with Pacific island nations in the Port Moresby Declaration in March 2008. A central focus of this new engagement with the Pacific is the Government’s commitment to pursue Pacific Partnerships for Development which will provide a new framework for Australia and our Pacific neighbours to commit jointly to making more rapid progress towards the Millennium Develop-
ment Goals (MDGs) and partner countries’ achievement of their own development objectives.

In line with the Port Moresby Declaration, the Partnership will respond to individual circumstances of our respective partners, reflecting the fundamental underlying principles of mutual respect and mutual responsibility. These principles are given effect in the following ways:

- **Mutual respect**: through commitments which underline Australia’s recognition of Pacific partner country leadership and ownership of development strategies. The Partnerships also provide for acknowledgement by partner governments of the Australian Government’s responsibilities to its own citizens to ensure Australian development assistance is used appropriately and effectively to promote economic and social development; and

- **Mutual responsibility**: the partnerships are explicitly based on mutual, long-term and measurable commitments. The Partnerships will provide a framework for mutual commitments by Australia and Pacific island nations to achieve shared goals, noting Australia’s willingness to provide increased development assistance over time in return for commitments by partner governments, including; to improve governance, increased investment in economic infrastructure, better outcomes in health and education, and to undertake agreed measures to achieve this. The Partnerships also commit Australia and Pacific island countries to strive for better development results and good practice in aid effectiveness through a sharper focus on shared accountability based on regular, joint reviews of progress and evidence-based decision making.

As initial countries to be offered Partnerships for Development, PNG and Samoa have welcomed the initiative. The Government intends to pursue similar agreements with other Pacific partners who share Australia’s ambition for better development results in the region over the coming years.

Australia’s commitment to the Pacific is demonstrated through the recently released 2008-09 Budget for Australia’s International Development Assistance Program, which foreshadows development assistance for PNG and the Pacific estimated at $999 million in 2008-09, a substantial increase on the amount budgeted in 2007-08 of $872 million.

**Recommendation 1**

The Committee notes the importance of financial services in the development of Pacific Island economies, and recommends that the Australian Government develop a focused strategy to encourage financial services development, including microfinance.

The Australian Government agrees that it is important to increase access by the poor to financial services. Achieving this at scale and on a sustainable basis requires a broad focus on the financial sector, including but not limited to support for microfinance services.

The Australian aid program has provided an average of $10 million a year in direct support to microfinance initiatives around the world over the last 8 years. Recent projects in the Pacific include support for the Bougainville Microfinance Association; the establishment of Microfinance Pasifik, the regional microfinance network; the Foundation for Rural Integrated Enterprises’ N’ Development, (FRIEND) in Fiji; and volunteer support placements with microfinance provider Vanuatu Women’s Development Scheme (VanWODS). Australia’s support for programs such as the Asian Development Bank’s Pacific Private Sector Development Initiative goes, in part, to improving access to finance through the introduction of new technologies and by extending financial services to outlets such as schools and shops.

AusAID is currently exploring a range of programming options to increase the number of poor people accessing financial services in the Pacific, and to give them more choice in products and providers. These options include strengthened support for regional and multilateral organizations that support Pacific microfinance providers, and an examination of ways to encourage private lenders, not-for-profit financial providers and NGOs.

**Recommendation 2**

The Committee recommends that the Australian Tax Office, in conjunction with AusAID, consider
and report on the merits and practicalities of Mr Roland Rich’s proposal to amend the Australian tax rules to encourage companies to become directly involved in building private sector capacities in developing countries in the Pacific by allowing them to deduct from their taxable income the full costs incurred in providing such assistance.

The Government does not support this recommendation.

The Government already provides tax concessions for organisations undertaking charitable development programmes in developing countries under the Overseas Aid Gift Deduction Scheme (OAGDS). The OAGDS provides a tax deduction for public donations collected by organisations that are considered under the scheme to be overseas relief funds, to assist with their overseas aid and development activities.

Moreover, an outlay to assist Australians directly involved in building private sector capacities in developing countries would be preferable to government providing additional tax concessions. Direct delivery programs are more transparent and can be better targeted to achieve desired outcomes.

For example, the Enterprise Challenge Fund awards grants of $100,000 to $1.5 million to business projects that will have pro-poor outcomes, and that could not obtain financing from commercial sources. At least 50 per cent of the project costs must be met by the partner business, and all projects must be commercially self-sustaining within three years. This program encourages business activity in areas where the private sector may be reluctant to undertake projects or have difficulty obtaining finance because of perceived risks, lack of information or the high costs of creating new markets.

Recommendation 3

The Committee notes the evidence of the importance to Pacific Island economies of access to developed economies for seasonal workers, and recommends an active and serious evaluation by the Australian Government of the possibility of such a scheme.

The Australian Government understands the importance of labour mobility to many of the economies in the Pacific and the desire of Pacific island states to pursue greater access to the Australian labour market for unskilled and semi-skilled workers.

On 17 August 2008, the Government announced a three-year Australia - Pacific Seasonal Worker Pilot Scheme. The pilot aims to enable workers to contribute to economic development in home countries through employment experience, training and remittances. It will also examine the benefits to the Australian economy and to employers who can demonstrate they cannot source local labour.

The pilot scheme will focus initially on the horticulture industry, which claims up to $700 million of fresh produce is left to rot because of a lack of reliable workers. The details of the pilot scheme are subject to further consultation with Pacific island countries and Australian employers and industry groups.

It is anticipated that the pilot could begin as soon as the end of 2008 with a small group of workers. The pilot will provide opportunities for up to 2500 workers over a three year period, subject to labour market demand.

Recommendation 4

The Committee supports the consideration of each of the issues raised by the students, and in particular recommends that the Australian Government conduct a regular review of the stipend rate for Pacific Island students on Australian Development Scholarships to ensure that it remains commensurate with the cost of living, and is at a reasonable level for those students with accompanying dependents.

AusAID provides scholars with comprehensive pre departure briefings which include information on the cost of living in Australia and training in budgeting. AusAID scholarships do not provide stipends but comprise a package of benefits including a contribution to living expenses (CLE); overseas student health cover; an allowance for additional study assistance and attendance at professional development opportunities (depending on the conditions of the scholarship); an establishment allowance to cover the cost of establishing living arrangements in Australia; payment of
all tuition fees; reunion airfare(s) and airfares to/from Australia.

In response to concerns raised by scholars in early 2007, AusAID funded an independent review of scholarship benefits. The 2007 review included an examination of the CLE. This component has been increased, with effect July 2008, in recognition of the increase in the cost of living in Australia, and to maintain competitiveness with other comparable scholarship programs. In addition, as part of this review, AusAID also extended the reunion fare benefit to all unaccompanied scholars regardless of their marital status (previously it had only been available to those who left spouses in their home country).

**Recommendation 5**

The Committee recommends that the Australian Government consider establishing a Pacific Island Youth Ambassador Scheme (similar to and possibly linked with the Australian Youth Ambassador Scheme, or AusAID scholarships), whereby young skilled Pacific Islanders can apply for placements in an Australian host organisation workplace for the purpose of work experience and cultural exchange.

Young Pacific islanders can participate in the Australian Leadership Awards Fellowships Scheme (ALAS) that provides a mechanism for placement with Australian host organisations. Fellowships grants are available for short-term study, research, and professional attachment programs in Australia delivered by Australian organisations. Fellowships target current and emerging leaders from the Asia-Pacific region and foster existing linkages between community, civil society, private sector, research, academia and Australian government agencies. Prospective Fellows identified by Australian organisations must be professionals already in leadership positions or have a potential to assume leadership roles that can influence social and economic policy reform and development outcomes, both in their own countries and within the Asia-Pacific region.

A review of Australian Government support for overseas volunteer programs, including the Australian Youth Ambassadors for Development Program will be undertaken in the second half of 2008. As well as looking at the development effectiveness of volunteer programs, the review will assess the demand for volunteers in Pacific island countries and how the contributions of volunteers could be enhanced, including through other models such as the “exchange” concept as recommended in the JSCFADT report on Australia’s aid program in the Pacific.

**Economics Committee**

**Report**

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (3.49 pm)—On behalf of the Chair of the Standing Committee on Economics, Senator Hurley, I present the report of the committee on the provisions of the Corporations Amendment (Short Selling) Bill 2008 together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**AUDITOR-GENERAL’S REPORTS**

**Report No. 9 of 2008-09**


**DELEGATION REPORTS**

**Parliamentary Delegation to Croatia and Bosnia and Herzegovina**

The DEPUTY PRESIDENT—I present the report of the Australian parliamentary delegation to Croatia and Bosnia and Herzegovina which took place from 29 September to 8 October 2008.

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7566 SENATE Thursday, 27 November 2008
COMMITTEES
Education, Employment and Workplace Relations Committee
Membership

The DEPUTY PRESIDENT—The President has received a letter from a party leader seeking to vary the membership of a committee.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (3.51 pm)—by leave—I move:

That Senator Hanson-Young replace Senator Siewert on the Education, Employment and Workplace Relations Committee for the committee’s inquiry into the oversight of the child care industry, and Senator Siewert be appointed as a participating member of the committee.

Question agreed to.

FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (EMERGENCY RESPONSE CONSOLIDATION) BILL 2008
Second Reading

Debate resumed.

Senator PAYNE (New South Wales) (3.51 pm)—I think I had uttered one sentence on the matter of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008 before we went to government business at 12.45 pm today. I will continue, but this will not be a long contribution.

The amendments proposed in this bill by the government relate to a number of issues: the viewing of R18+ programming, the transport of prohibited materials through prescribed areas, the status of roadhouses as community stores in some remote communities and the resumption of the permit system. These amendments seek to make changes to the special measures to protect Aboriginal children in the Northern Territory that were introduced by the former coalition government through the Northern Territory National Emergency Response Act 2007 and the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007.

I want to speak briefly this afternoon about the particular changes the government’s amendments will make to the permit system in the Northern Territory. They will repeal the changes to the permit system that were put in place by the former government in order to give public access to certain Aboriginal land in the Northern Territory. The changes have been in force since February of this year. The government’s amendments will reinstate the permit system for major Aboriginal communities, while enabling the minister to allow access to certain people, such as journalists.

A number of my colleagues in the coalition have spoken already about the negative impact the reinstatement of the permit system will have, particularly on women and children in remote Aboriginal communities, and our concerns in relation to that. I do not think that the seriousness of this impact can be taken lightly, and we certainly do not do so. From some reporting over recent times, it seems that as a result of the intervention—especially the introduction of income management and the rollback of the permit system—after experiencing well-documented abuse and violence and poverty, in some cases, women in remote Aboriginal communities are finally finding their voice and the ability to assert some greater control over their own lives and, consequently, the lives
of their children. In fact, this week on Tuesday, 25 November, I was interested to read in the Age newspaper some writing by Russell Skelton on the positive impact the intervention, including the abolition of the permit system, has had on the lives of women through remote areas in the Northern Territory, transferring power—I suppose that would be the word—away from the ‘big men’, as they were described in that article and others, of these communities. Professor Marcia Langton, foundation chair in Australian Indigenous studies at the Melbourne university, has called it ‘big bunga’ politics. That sort of politics has allowed relatively small cliques of very powerful men to assert their control over communities without the sorts of checks and balances that we might expect. There are many reports of the abuse and the violation of process and the disadvantage that have flourished under that, with patronage the decisive factor in the allocation of jobs, of houses, of cars and of other benefits.

The abolition of the permit system by the previous government’s legislation was part of the means of addressing that situation—of shining some light into those areas and on, most importantly, those leaders. It put them in a position where they were not able to avoid the scrutiny of the management of resources in the same way. Now, as should be the case, the leaders in these communities have to account for the way that government funding, particularly, is managed and one would hope, consequently, put the security and the safety of their people and the communities first.

An equally important consequence of this aspect of the previous government’s legislation was to allow a door to open a little further to greater economic development in some of these communities. It seems to me to be logical to contemplate that long-term security and viability of remote and regional communities is absolutely tied to effective development. I cannot see how it is in fact logical to close them off. By abolishing the permit system, amongst other impacts, the former coalition government endeavoured to give the communities a greater chance at economic development. Any decision to reinstate this permit system by this government in such communities would be a disappointing setback to the possibility of this economic development.

That is not just my view or our view in the coalition. There have been a number of reports in this calendar year and more in recent months and weeks about these issues. In the Australian in January this year former president of the Australian Labor Party Mr Warren Mundine said:

If we are looking at building economies in these communities then we need to have a free flow of people to create commercial activities. The permit system didn’t stop crime. In fact, if you look at all of the reports that have come out in the last few years, crime has flourished under the permit system, so it’s a fallacy to say that it helps law-and-order problems. It really embedded these problems because some powerful people were able to get away with things without being watched.

He further said:

If you want to create a real economy you’re going to have to have more commercial activity happening and that happens by allowing people to flow in and out of places.

I think the government would do well to listen to those words and words of others who have raised similar sorts of concerns.

I wanted to make a couple of other comments in relation to economic development and to the potential for benefits that go far beyond the security and prosperity of remote and regional Aboriginal communities. An Access Economics report commissioned by Reconciliation Australia and released in August this year found, in relation to the economic impact of Indigenous disadvantage,
that, if the health, educational and economic circumstances of Indigenous Australians improved to match those of the Australian average, ‘government revenue in 2029 would be $4.6 billion higher than otherwise’ and ‘government expenditure in 2029 in key portfolios relevant to Indigenous Australians would be $3.7 billion lower than otherwise’. I do not think a government can afford to be insensitive to those sorts of compelling figures, nor to any step that might help in getting even closer than we currently are.

I began my remarks today on the need to ensure the safety of women and children in remote communities. I want to finish with some brief words about the other changes that the bill will make that could impact negatively on those children the intervention was in fact designed to protect.

The government’s amendments will change the nature of bans on pornographic material in prescribed areas and on the transport of such materials through prescribed areas. In communities where it is reported that children do remain at risk from a range of factors and where there are serious concerns about levels of functionality, there is no reason at this time to be loosening these sorts of restrictions. It seems to me to be a regressive step and one which I regard very seriously.

As has been stated in the other place and by other speakers to this legislation in this chamber, the opposition’s amendments reflect these concerns. I will reiterate those points and will of course call on the government to adopt them. The opposition has called on the government to impose a blanket ban on all pornographic material in prescribed areas and to prohibit the transport of pornographic material through any prescribed areas. We further urge the government to leave in place the permit system amendments, which have enabled greater access to public land.

Senator IAN MACDONALD (Queensland) (4.00 pm)—I also wish to contribute to the debate on the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008, but I want to confine my remarks simply to the permit system, the abolition of which I think was a step in the right direction. The provisions of this bill, which effectively bring back the permit system, are in the worst interests of Indigenous people and indeed of all Australians.

I refer the chamber to the Australian Crime Commission’s report into the abuses that occurred in Indigenous communities in the Northern Territory. The task force chief said as recently as June of this year that the permit system had been put in place to keep wrongdoers out of communities but history had clearly shown that it protected the wrongdoers. Powerful clans and families had manipulated the system to prevent the scrutiny that I and the majority of sensible legislators think is necessary to give these communities, particularly young people in them, a bit of a chance.

It almost seems that governments have been prepared to accept this permit system because it meant that nobody really got in to see what was happening in these remote communities. I ask this question: if the permit system was so amazingly good, how is it that some of the worst prevalence of criminal behaviour in the world has occurred in these prescribed communities, which are hidden behind a veil of silence? There is also a question of basic human rights in relation to the reintroduction of permits. Under the changes proposed by the Labor Party, Indigenous organisations such as land councils will decide who can come and who can go, indicat-
ing who Indigenous people can associate with and who they can do business with. The right of free association that other Australians enjoy is going to be denied to Indigenous communities. It seems to me quite contradictory that when the emphasis is on creating proper jobs for Indigenous people, for improving communications and encouraging cottage industries and tourism, that, rather than turning these isolated communities into open communities engaged in commercial enterprises, the permit system puts up the shutters. Nowhere else in Australia would this fundamental denial of the right of association and interaction be tolerated. Yet legislators and bureaucrats in Canberra, the people who always know what is best for Indigenous people, are going to put in place this system that will deny Indigenous people that basic right of association.

Just a few weeks ago I had the pleasure of re-engaging with the Hon. Fred Chaney, who, you will recall, has amongst his many other pursuits an involvement with Reconciliation Australia. We met up while looking at remote desert communities. Mr Chaney is a former—and I think well-regarded by everyone—federal Aboriginal affairs minister. Mr Chaney launched a campaign to draw attention to remote Australia, a region which he described as a failed state awash with dysfunction, violence and illiteracy. Mr Chaney quite perceptively said that, when it came to Indigenous policy, nothing good ever came out of Canberra. I fear that this government legislation is going to again give proof to those prophetic words.

On a different note, I also find it quite offensive that any Australian should be denied the right to go to any other part of Australia. I do not for a moment suggest that anyone should have the right to invade my house and my background—although they do, I might say, but I reject them having that right; it is criminals who do that. Your home is your private castle, and the same is the case for Indigenous people. Certainly their traditional lands, their cultural lands, their homelands, should be protected. But it seems to me offensive that access to roads into a public community and that access to public assets like schools, halls, police stations and shops in these areas should be denied to other Australians. It seems to me that preventing certain people from going to certain parts of Australia that are public property is a way that Australia should not head.

Mr Acting Deputy President, you might recall that, in Mr Brough's original legislation, there was a distinction made between those public areas and private areas. I urge the government to think very seriously about that and readopt those provisions that Mr Brough inserted. I am searching for my notes which list those. Not being able to put my hand on them, I refer senators to the original list of areas that were addressed in Mr Brough's legislation.

Under the Brough reforms, permits were no longer required to travel to Aboriginal townships on designated roads. Sacred sites and traditional lands were protected, and access to them was made strictly off-limits. These were the protected lands and sacred sites—traditional lands. But in the run-up to the last election—and I quote the respected journalist Russel Skelton here: … the ALP campaigned vigorously, and dishonestly, against the reform, saying grog-runners and art carpetbaggers would swamp communities and sacred sites would be trampled on by insensitive and unknowing tourists.

It was, as Mr Skelton pointed out, nonsense but it did win support for the ALP. It is the sort of typical populist mantra that you would run around in an electorate like the Northern Territory. No doubt the Labor Party did that and did it in other parts of Australia and succeeded in that populist promise on the basis of improper facts.
Under the proposed legislation, as I understand it, only journalists, some public servants and police will be exempt. Everybody else will be required to get a permit from an Indigenous organisation in order to go there, although I understand that, under this bill, the minister has power to allow people in. She has already indicated that she will give permission to journalists to enter. If journalists get into these communities by grant of the minister, one wonders how constrained those journalists might be in what they write. It seems to me unclear whether the grant given by the minister will be given to any journalist for any day or whether the approval will be given on a restricted and selective basis. Perhaps the minister, in responding to this speech in the second reading debate, might be able to elaborate on that.

Who else will be able to go into these closed Indigenous communities? I have seen somewhere in my research that political candidates can go in. Isn’t that lovely? No other Australian has the right to go there, but if you happen to be running for a political party then, sure, that is all right—you can slip into the community; you can promise what you like. I am aware of some of the promises that have been made in the Northern Territory by candidates in both federal and state elections. I have to say—putting this as delicately as I can—that some of the promises made by ALP candidates at the state and federal levels have been very ‘puffed’, if I can say that in polite-ish sort of way. No other Australian can get there. They cannot go to these communities, but political candidates can. Tell me the sense in that.

The whole purpose of this legislation was to address the evils that we became aware of a few years ago. According to the head of the Northern Territory Police Association, there is no evidence that the permit system hinders illegal behaviour. He is quoted as saying:

The permit system does not stop grog-running or sexual assault. It did not stop these things in the past; it will not stop them in the future. These are policing issues unrelated to the permit system.

Quite frankly, there is no moral, legal or other justification for imposing this permit system on these parts of Australia. Others in this debate have quoted—and the figures are readily available—that:

... grog smuggling is largely conducted by indigenous men who live in the dry communities and not by outsiders. If there has been a fall in the incidence of grog smuggling, and that is questionable, it is because there are more police on the ground to enforce bans.

Police and authorities directly involved have said this on a number of occasions. Plainly, the grog-running problem is a problem not about outsiders but about insiders.

I think a lot of the bill is fatally flawed, especially that part dealing with permits. The original system of doing away with the permits was made to ensure that normal interactions of society can occur, including external scrutiny. It would allow individual Aboriginal people to engage with and benefit from a market economy without the hindrance of someone else telling them who they can deal with and who can come into their communities and cut a deal with them. It would distinguish, under the Brough legislation, between communal or public space and private space on Aboriginal land.

That is the same as it is in the community I live in in rural North Queensland. There is a public area, such as roads, parks and shopping centres, where anyone can go and then there is my private area—my house and my yard. Nobody is allowed there unless I invite them. The legislation as it now stands, which this legislation is now trying to overturn, ensures open access to public space, including townships and related roads. The legislation as it now stands protects the privacy of those private spaces, including residences...
and most Aboriginal land. It respects Aboriginal culture on traditional lands, particularly through the support it gives to the protection of sacred sites and ceremonies. The legislation as it currently stands, which this bill is trying to alter, continues to allow for effective land management by Aboriginal groups. It was to be simple to administer, preferably by government, to ensure transparency and accountability.

I conclude by simply asking again: if the permit system is so good, why have we become aware of so much trouble there in recent years? That alone would seem to me to suggest that we should try anything else. I urge the Labor Party, the Greens and the crossbenchers to understand the failures of the past. We should not fall into the same old trap of thinking that we in Canberra know what is best for Indigenous people. We have to understand Indigenous traditions, as we understand the Scottish traditions of my ancestors. My ancestors used to wear funny skirts around their waists, instead of manly trousers, until they were cleared from the Highlands by those horrible English all those centuries ago. But I and the rest of modern society have moved on. I no longer wear a skirt—well, only occasionally, and with St Andrew’s Day coming up if I can borrow one I might wear a kilt—but it is something you do on traditional occasions. Nobody can ever take that from me and I am not suggesting that should happen to any people, most particularly Indigenous people.

You cannot live in the past. You have to accept that the world moves on. We live in an age of being able to get from Sydney to London in 18 hours on a regular commercial aeroplane these days. Life has moved on. Technology has moved on. Science has moved on. We have all benefited from that. When I say we have all benefited from that, I mean we on the outside have benefited from it. I cannot see that Indigenous people have shared too much in the benefits of science and good fortune and wealth that the rest of Australia has seen. What we have done in the past has not proved to have been very good. It has been done with the very best of intentions by those doing it, but it simply has not worked.

I had a conversation just recently with Mr Mundine and the Bishop of the Northern Territory about the fact that we are doing the wrong thing if we are trying to quarantine Indigenous people from modern life and all the benefits it can give them. Indeed, the retrograde bill before us, which puts back into place a permit system which will lock up the problems that we all know are there, is just wrong. I plead with the Labor Party and the crossbenchers and the Greens not to allow this bill to proceed but to go back to a system which will allow Indigenous people to be part of the world in which we all live.

**Senator FIELDING** (Victoria—Leader of the Family First Party) (4.19 pm)—Just over a year ago, both Labor and the coalition agreed to put in place a range of emergency measures in response to the problems of child sexual abuse confirmed in the *Little children are sacred* report. The legislation was a sweeping and far-reaching response to a terrible problem and it went more broadly to addressing Aboriginal disadvantage. It relied on a momentum powered by widespread revulsion across the Australian community at numerous cases of child abuse. The *Little children are sacred* report found evidence of child sexual abuse in every one of the 45 communities visited. Indigenous people in the Northern Territory, particularly children, deserve better. They deserve a life that is free from child abuse and free of alcohol abuse and illegal drugs—a life that offers hope of an escape from poverty through good education, health care and housing.
Last year the Senate agreed the situation in the Northern Territory was an emergency and passed legislation that was a radical change in policy direction and that would have long-term implications for Aboriginal people and their communities. The concern last year, when the emergency response measures were about to be put in place, was that the measures would alienate some Aboriginal people and increase the gulf between Indigenous and non-Indigenous people. However, Family First came to the conclusion—and still believes—that we should not and must not leave things as they were when children were at risk from abuse. That is the reason Family First supported the previous government’s sweeping and far-reaching proposals for change.

A key part of the emergency response involved removing the permit system so that visitors to the communities would not have to obtain a permit. It was removed as part of the previous government’s national Indigenous emergency intervention to stop child abuse in remote communities. How disappointing, then, that the Rudd government has failed to fully remove the permit system, potentially leaving children’s lives at risk. In February this year the requirement for permits to visit 73 Indigenous townships was abolished, but the government did not remove all the permits on the access roads. Therefore, no-one can use the access roads to get to the communities. Unless you fly in or go by boat, you cannot get to many of those communities. How can we judge whether the parliament’s decision last year to remove permits has worked or not, when some access restrictions remain?

Many in the parliament have argued over the last few months that the permit system effectively shuts off Indigenous communities and creates barriers between Australians. Again I say: how do we know that this is the case? We do not, because the Rudd government was unwilling to test it thoroughly. For those of us who are considering the permit system, that decision has robbed us of an informed choice, because the information coming from this trial is flawed.

I have seen firsthand the challenges facing Indigenous communities, including the deeply entrenched problems of alcohol abuse and child abuse, and the hopelessness that many of these people feel. It was shocking and profoundly sad—particularly the stories of children who have been caught up in domestic disputes fuelled by alcohol and subjected to horrific sexual abuse. However, alcohol is a huge problem not just in the Northern Territory but right across Australia. In the Northern Territory, nearly every conversation ends up being about grog. Australia has a huge drinking problem in the broader community, but what I saw in the Aboriginal community is much worse. The sheer acceptance of the alcohol problem by most people in Aboriginal communities is staggering. It seems to me that this is ‘just the way it is’. The term ‘dry community’ seems farcical when, outside the gates of these communities, you see dozens of empty tinnies littering the entrance as you drive in.

The enormity of the problems I saw was overwhelming. The Aboriginal people and the welfare workers who are trying to make a difference all sounded tired and worn out. People told me government departments were part of the problem because of the lack of care, lack of action and lack of funds. It is horrifying to contemplate that the next generation is already being condemned to an endless cycle of abuse. It is shameful that this exists in our country and that we have allowed it to happen. I believe this is an issue that affects all Australians. When our Prime Minister said sorry to Indigenous Australians, it began the process of healing the long years of pain between white and Aboriginal Australians. But, since then, not enough has
happened. Children are still at risk from abuse and exposure to pornography and alcohol. Poverty remains an issue. Violence and despair are a way of life.

Will the Prime Minister be apologising to these communities in years to come when abuse and violence continue to fester? I do not want to give the impression that governments are responsible for everything. Clearly, Aboriginal people and their communities have to bear some responsibility too, but they need a helping hand. With the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008, the Rudd government wants to make changes to the emergency response measures generally agreed to last year. The changes the Rudd government wants to make are as follows: schedule 1 to the bill restricts R-rated material on pay TV to 35 per cent of programming; schedule 2 allows pornographic material to be transported through communities; schedule 3 reintroduces access restrictions to communities by way of permits; and schedule 4 allows certain roadhouses to be deemed as ‘community stores’.

Schedule 3 reintroduces the permit system. Family First was aware that, when the permit system was removed last year, it would be of concern to some Indigenous people. But Family First was of the view that towns should be public areas. Family First believes that permits isolate some Australian communities by saying that only some people can enter. Permits have not protected communities from child abuse, alcohol or drugs. Family First is happy for the Senate to reconsider the permit system but believes it is too early to make any decision to reintroduce permits at this stage. Schedule 4 allows certain roadhouses to be deemed as ‘community stores’. Family First can see merit in this proposal as it will provide more locations where people can get access to the services that are provided through licensed community stores.

Family First believes we should not allow the broadcasting of pornography into communities that are already riddled with cases of child abuse. This fails to properly tackle this terrible problem. We already know that pornography is a real concern for communities. Judy Atkinson, the Head of the College of Indigenous Australian Peoples at Southern Cross University, said that Aboriginal communities are ‘saturated with pornography’. She said she had seen ‘uncles watching hardcore, violent pornographic movies while three- and four-year-olds in nappies played in the dust at their feet’.

Family First remains convinced that permits isolate some Aboriginal communities and simply build barriers between Indigenous and non-Indigenous Australians—barriers that we should all be working towards removing. Family First is not convinced that reintroducing the permit system will protect Indigenous communities from child abuse, alcohol or drugs. Family First cannot support this bill.
Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (4.28 pm)—The Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008 makes amendments that consolidate the legislative framework for the Northern Territory emergency response, which was enacted last year. Notably, it delivers on the government’s election commitment relating to the permit system for major communities in the Northern Territory and extends the pornography measures previously enacted.

In summing up the second reading debate on the bill, I would like to thank all senators for their contribution on this important legislation. In particular, I would like to acknowledge the contribution from the crossbenchers. Senator Siewert raised the important issue of the application of the Racial Discrimination Act. This government is firmly committed to the Racial Discrimination Act and will not make any laws that are inconsistent with the principles of that act. That is why we have carefully crafted this bill to ensure that there are no new provisions which exclude the operation of the Racial Discrimination Act. The independent review board considered the issue of the application of this act in the review of the Northern Territory emergency response measures. The government takes the view that the NTER will not achieve robust, long-term outcomes if measures do not conform with the Racial Discrimination Act. The minister has announced that legislative amendments to bring existing NTER legislation within the scope of the Racial Discrimination Act will be introduced in the spring parliamentary session next year.

Senator Siewert sought assurances from the government about the use of ministerial authorisation to allow classes of persons access to Aboriginal land without a permit. The ministerial authorisation provision was inserted by the previous government and is refined by the bill now before the Senate. The minister intends to use the power to allow journalists access to major communities without a permit to report on events. The Department of Family, Housing, Community Services and Indigenous Affairs has consulted with the land councils on the wording and the nature of the ministerial authorisation allowing journalists access. These consultations have included the land councils and the Media Entertainment and Arts Alliance. I can convey to Senator Siewert that the minister has committed to consulting appropriately in the event that future ministerial authorisations are made. These consultations will, of course, include talking to the land councils.

Thank you, also, to Senator Xenophon and Senator Fielding for their contributions. I acknowledge the extensive workload that these senators are undertaking on the consideration of critical public policy issues. In response to Senator Xenophon’s request for more time to consider these critical issues, the government agreed to delay the detailed committee stage of the bill so that the senator could fully consider the important legislation we are putting forward. I also want to acknowledge the constructive discussions that have been held with Senator Fielding on the issues raised in this legislation. We now call on Senator Xenophon and Senator Fielding to make the right decision based on the practical importance of this legislation for Aboriginal people in the Northern Territory.

Before summing up the bill in detail, I would like to specifically address comments from the Liberal opposition about the permit system and the trafficking of alcohol into communities. Media reports that the permit system does not prevent alcohol entering prescribed areas are misconceived. It has been suggested that permits are unnecessary...
because most alcohol is brought into prescribed areas by Aboriginal people. This shows a misunderstanding of the permit system. Senators opposite may not realise that the permit system can operate to exclude Aboriginal people who are not traditional people from an area in appropriate circumstances.

The Northern Territory Police Association has stated that the permit system does play an important role in policing these communities and keeping out grog and drug runners. The government recognises that permits are only one tool in the fight against grog running. More police are also essential to keep out the alcohol and drug runners. That is why we are putting more police into remote communities to address the rivers of grog described in the *Little children are sacred* report.

The Liberal opposition has muddied the waters on the important issue of combating substance abuse. The previous government introduced amendments to abolish the requirement for people to seek permits prior to visiting alcohol communities. The current government, however, does not think these amendments contribute to the emergency response. In the view of this government, Indigenous people should, like other Australians, be able to decide who can enter their land. This bill honours our election commitment—let me re-emphasise that: this bill honours our election commitment—to revoke the public access permit changes introduced by the previous government. As part of this measure, the bill will clarify the power of the minister to authorise people to enter Aboriginal land. When the bill is passed, the government will make sure that journalists are able to enter communities for the purposes of reporting on events in those communities. This will be achieved by means of ministerial authorisation.

The permit changes in the bill before the Senate include in the legislation an explicit reference that the minister may not authorise entry to a sacred site under the ministerial authorisation power. This flows from a suggestion made by the Australian Greens during the inquiry into the bill by the Senate Standing Committee on Community Affairs—a suggestion with which the government has agreed. Similarly, the government has agreed to a request from the Northern Territory government to extend to candidates for local government elections the existing exemption from permit requirements for candidates for federal and Northern Territory Legislative Assembly elections.

Last year’s major legislation included prohibitions on the possession, control and supply in prescribed areas of certain pornographic material. To address a further area of concern expressed by Aboriginal people in the *Little children are sacred* report about R-rated material available through pay television subscription, this bill makes further amendments that are in addition to the provisions enacted by the previous government in 2007. The X- and R-rated pornography bans introduced by the former government remain firmly in place. This bill extends the former government’s measures to pay TV R-rated material. It does not usurp or replace them.

The Broadcasting Services Act 1992 and the Northern Territory National Emergency Response Act 2007 are being amended to establish a new class licence condition for subscription television narrowcasting service licences. The new condition will prevent these licensees from providing subscribers in a community declared by the Indigenous affairs minister with access to a subscription television narrowcasting service declared by the communications minister. So that services like the pay TV World Movies channel can continue, services cannot be declared unless they transmit more than 35 per cent of
R18+ program hours over a seven-day period.

A community cannot have its access to the television service restricted unless it is in a prescribed area under the Northern Territory National Emergency Response Act 2007. Also, the restriction will depend on the Indigenous affairs minister being satisfied, following consultation, that the restriction is appropriate. A restriction can be requested by any one person in a community or on behalf of any one person. Community agreement is not required and the minister makes a decision having regard to the wellbeing of women and children. Consistent with the pornography amendments already made to the Classification (Publications, Films and Computer Games) Act 1995, the new arrangement will include a five-year sunset provision.

The R-rated pay television provisions in this bill now include minor workability improvements recommended by the industry and raised by the Senate Standing Committee on Community Affairs. The provisions, as presented to the Senate, cut red tape by allowing industry to self-declare an R-rated service and improve the record-keeping requirements. The alcohol bans under the emergency response make allowance for alcohol to be transported through a prescribed area to a destination outside the area. For greater consistency with the alcohol bans, this bill will amend the Classification (Publications, Films and Computer Games) Act 1995 to allow prohibited pornographic material to be transported through a prescribed area to a destination outside the prescribed area; thus, industry members conducting their business will be able to transport goods lawfully to areas that are not prescribed. This will mirror the existing alcohol related provisions.

Lastly, the bill will make sure that if a roadhouse effectively takes the place of a community store in a remote area, it can be properly treated as a community store in having to meet the new licensing standards introduced last year. The new community store’s licensing regime is intended to ensure that community stores meet minimum standards and also gives assurance that stores have the capacity to participate in income management. When a community substantially relies on a roadhouse for grocery items and drinks, the roadhouse should be able to be part of the scheme applying to community stores. In other cases, roadhouses will continue not to be regarded as community stores.

As the government has made very clear, we are committed to closing the gap between Indigenous and non-Indigenous Australians on life expectancy, educational achievement and employment opportunities. The government is keen to work in partnership with Indigenous communities and the Northern Territory government to tackle the problems of child abuse and improve the prospects of Indigenous children and their families. We are also committed to an evidence based policy. We have now had the report from the independent review of the Northern Territory emergency response. The review board found that the emergency response is making some important progress. To name a few important achievements: families in remote communities report feeling safer because of the increased police presence; there is a reduction in alcohol consumption and there are additional night patrols and safe houses; women say that income management means that they can buy essentials for their children such as food and clothes; school nutrition programs are running, and child health check-ups and follow-ups are being conducted.
The existing legislation for the Northern Territory emergency response contains provisions for income management, changes to land and housing arrangements and changes improving law and order and the safety and wellbeing of children and their families. The legislation also contains provisions which deem the measures to be ‘special measures’ and exclude them from the operation of part II of the Racial Discrimination Act 1975. Given our commitment to maintaining the overall direction of the emergency response and to focus on effective implementation, the bill contains some amendments to existing measures which continue to be covered by the operation of the racial discrimination provisions in the legislation for the Northern Territory emergency response. Importantly, the bill contains no new provisions which exclude the operation of the Racial Discrimination Act. The new R18+ measures have been designed as special measures and do not have a provision excluding the operation of part II of the Racial Discrimination Act. The government intends, in the spring 2009 sittings of the parliament, to introduce legislation to lift the RDA suspension. I thank senators for their contribution.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SCULLION (Northern Territory) (4.31 pm)—The opposition oppose schedule 1 in the following terms:

1. Schedule 1, item 3, page 3 (line 9) to page 4 (before line 1), item 3 TO BE OPPOSED.
2. Schedule 1, item 13, page 10 (lines 17 to 19), item 13 TO BE OPPOSED.
3. Schedule 1, item 16, page 10 (line 28) to page 14 (line 6), item 16 TO BE OPPOSED.

These amendments are proposed in order to prevent the possibility of proscribed communities in the area of the Northern Territory emergency intervention being placed in exactly the same circumstances they were in prior to the intervention. Under this bill, the transmission of R18+ pornography would be able to be transmitted into communities where, today, that is not permissible. Immediately this proposed bill from government gains assent, it will be permissible to transmit R18+ pornography to a greater or lesser degree—and we can talk about percentages—into these communities.

Everybody in this place, and in Australia, would, I think, agree that the intervention has moved these communities, in so many ways, in the right direction. This clearly is a retrograde step. In the current circumstances in these communities it is not the pornography that is the problem; it is the dysfunctional nature of the community that is the challenge. It is not in every suburb of Australia that groups of 20 or 25 children can be found, with absolutely no supervision whatsoever, sitting around a television set with a DVD or movie player. That is the real issue. It is not the nature of the pornography, or how much pornography you have.

We have already had a great deal of evidence, over a period of time, that tragically indicates that across Australia, and particularly across many of the remote communities in Australia characterised by large numbers of Indigenous people, this lack of supervision means that many very young children are watching pornography and have already been exposed to degrees of pornography to the extent that they have become sexualised. They become more sexualised than they need to be at four, five, six, 10 or 13 years old. That fact has provided by independent sources, whether it was the Little children are sacred report or one of the number of other reports that have looked into child abuse in other Indigenous communities in other jurisdictions.
I am sure that all those opposite would agree that there is no doubt in anyone’s mind that we want to avoid the further sexualisation of children, particularly as a lot of the children in these communities at the moment are not your average run-of-the-day children. It is very difficult to make generalities without giving offence, but many of these children—not all of them—have already been exposed. And that is the challenge. They have already been exposed. So they are the most vulnerable. The notion that we would in any way allow into these communities any further exposure to any type of pornography that is deemed for adults is, I believe, simply an unacceptable situation.

I will give the minister opposite an opportunity to explain, but I really have absolutely no understanding of the motives for this. I know that those opposite believe the same as I do that these children fundamentally need as much assistance and protection as possible. I know that you are convinced by the reports and the science that you have already received. You have not argued the case at any time. You have said, ‘We accept this.’ Yet you know that this particular part of the legislation allows for the potential for some increase of pornography in the most naive community, who have already been affected by this, to be once again exposed.

We all heard about the precautionary principle, and I think this is one of the ways that you can really do it. We can argue the technical aspects of it—maybe it is 35 per cent; is it on one channel; is it across a narrowcast spectrum? We can have all of those arguments but, if you are applying any precautionary principle about legislation, you would say: ‘Why would it be that we currently have a situation where there is no permissible transmission of R18+ material into communities and we are now moving to an area where there is potential for more pornography to be transmitted into the community where there are young children and where it has not been demonstrated that individuals within that community are suddenly being supervised or that the circumstances behind that has changed at all?’

So, Minister, I hope that, when you have an opportunity, you will reflect upon the motive behind this. It is beyond me. I have guessed at some things. I thought that maybe it is too hard—and I say that with some sincerity. With the Telecommunications Act it might be too hard or too difficult to stop subscriptions. I am not really sure. But what I know for sure is that it has to be a retrograde step to take if today we have a situation where the figure is zero. That is a really good figure. I think anybody who has been working in this field would say that. You can ask: ‘How much more pornography do you reckon these kids can handle? What is the level of pornography in addition to what they have been exposed to already?’ People might say, ‘This is the number,’ and say it is 10 per cent more, or five per cent, or one per cent. But everybody in Australia would agree with me that the only answer to that is zero.

It is a little bit like the last solution. You know you have that solution in chemistry and it is the last drop that changes the colour? Many of these children may well be at that stage. We do not want any further pornography transmitted into these areas. I do not think any other Australian wants it. I can see absolutely no benefit whatsoever in that regard. The communities currently enjoy protection under the law from pornography. I am completely miffed about what particular mischief it is that we want to prevent. Whenever we come to this place with legislation or amendments, it is some particular innocent passage or it is some particular mischief that we wish to prevent. Minister, I will be extremely respectful because I know that you believe in the same things that I believe in—and everybody in this place does—but I have
absolutely no idea about the motive of bringing this particular change to the legislation that will allow more pornography into these communities.

There is an opportunity, I suppose, to talk about whether or not it is 35 per cent of one channel or whether it goes right across the spectrum at 35 per cent of an entire subscription. To me it does not matter. I am not going to go into that detail; that is for government. I am supporting an environment which is so important—and we are making such inroads there—and if one more iota of pornography gets into those communities we know it has the potential to do extreme damage with our most naive first Australians. And that is unacceptable. That is the reason I will spare you from going into the criticism of the details that have been proposed.

There is one other aspect where the minister has decided that there will actually be a declared prescribed area. At the moment we have prescribed areas but we now have a new notion—and it is a difficult notion to accept. If we support this legislation, what will happen is that, if you are a prescribed area, the rule changes. The day this legislation has assent, pay subscription pornography can be transmitted into these communities. Imagine: here I am, I have woken up on a Tuesday and it has been transmitted into my community. The government is expecting that someone—in that community will put their hand up and say: ‘Excuse me, I think we have a problem in our community. I would like you to stop transmitting pornography.’ Where have you been? With all due respect, we get advice from all sorts of people—and those in the advisers box may have had something to do with that process. We can all remember the voluntary welfare quarantining would not work because they would not put their hands up. Why wouldn’t they put their hands up? Because people have a vested interest in standing over the women in the communities and saying: ‘Oh, you are going to put you hand up for voluntary welfare, are you? We’ll see about that, mate.’

It is the same circumstance and environment. It is just foolishness to say that someone will put their hand up. One of my Senate colleagues suggested something to me today, and I think it is a good suggestion—certainly a lot better than this. He said: ‘We could come from a default position of no pornography, where you have to put your hand up to have pornography. The minister might consider that. That default position would at least be reasonable to most Australians. At least protection would be the default position, rather than something else.’ I think there is a great deal of difficulty with the assumption that people in these communities are going to stick their hands up, that the most vulnerable people in these communities are going to say, ‘I’m going to be a leader; I’m going to stick my hand up.’ Let me tell you, Mr Temporary Chairman, it has not happened before and I suspect it will not happen in the future.

By doing this, we are actually creating two types of communities: we are having a declared prescribed community and just a prescribed community. The practical difficulties in doing this are just mind-boggling. Take one of the places in the Northern Territory within the intervention area, Wadeye. Wadeye is about 1,200 metres away from Melpi Ville—that is how close they are. If Leon Melpi or one of his mob, or someone from Wadeye, puts their hand up and says, ‘I would like you to stop transmitting pornography into my community,’ how are we going to divide those communities? Is Melpi Ville actually going to be seen significantly
differently? As we all know, aspects of these communities are not neatly divided up so that you can say, ‘That is an aspect of your community and therefore Wadeye will not get a transmission,’ or ‘Some will and some will not.’

This whole process is fraught with difficulties. I wonder that this is now being suggested. It just beggars belief when you understand the practicality of trying to implement these sorts of changes and know the environment in which we are trying to make these changes. I really wonder about how much effort has been made with regard to these changes. But I say, with all respect, that I know that everybody is trying to do the right thing here. I just do not think they really understand the communities if they think people are actually going to say, ‘I’m going to put my hand up,’ when we know that, in every other case, the people who need to put their hands up never will.

As I said earlier, one of my mates suggested not long ago that we should have a default position. At least the default position would be something you could have a sensible conversation about. The default position would be no pornography, but somebody could put their hand up and say, ‘I’d like to have the transmission of R18+ because we can demonstrate to the government and to the minister that our children are actually being looked after, we can demonstrate that they are supervised, we can demonstrate that the nature of our community has changed, we can demonstrate you do not have to wait until the sunset clause which is placed on this and all other legislation associated with the Northern Territory emergency response; you can do it today, because we can demonstrate and the minister can have a great deal of satisfaction and confidence that the community is up to the place where they can supervise the children and there won’t be any accidental or deliberate grooming or any of those horror stories that we heard before the intervention, from many reports.’

In the absence of that, I have to say that I hope all Australians would see why we simply think that those aspects of schedule 1 are laughable. They are only laughable because I do not understand the motive. I am trying to be really respectful. We have had a very strong bipartisan approach to this. I cannot see any motive of difficulty that makes these communities a better place than today with regard to R18+ transmission. There is none, there should be none, and that is exactly how we should keep it. If we support the legislation that is being put forward by the government, there will potentially be some that is viewed by people. There is some shaking of heads. I am looking forward to an explanation from the minister about how that possibly cannot occur—that you can have absolutely no adult material being transmitted into these communities. Because that is the only way. That is what is happening today. If that is happening, that is great. We do not need any changes whatsoever to the current circumstances. We certainly do not need any changes. Even if the current circumstances are that there may be opportunities for people to get access to it, we do not want to make that access any greater because of the naivety— (Time expired)

Senator SIEWERT (Western Australia) (4.57 pm)—The Greens, as everybody in this chamber will be extremely well aware by now, oppose the Northern Territory intervention. I articulated our concerns about the elements of these amendments in both the minority report that the Greens submitted to the committee inquiry and during my speech in the second reading debate. We have some concerns about the workability of these issues. We have been, however, very clear in our support for the fact that these amendments are not exempt from the RDA. I made that very clear. So you can take it as read we
will not be supporting the amendment from the opposition that puts this back under an exemption from the RDA.

As I said in our minority report and in my speech, at the moment there are an estimated 50 households in prescribed communities that may be viewing R18+ programs—50 houses in 73 communities. So we are talking about a small number of households that have access to this material. Secondly, if Senator Scullion had been at the two committee hearings we had on this, he would have had a demonstration from the pay TV people, who showed us the very detailed process you go through to get access to these programs. I do not want one person to go away from this place saying, ‘The Greens support pornography into these communities.’ We do not support the transmission of this material. However, as was pointed out on a number of occasions, there are very small numbers involved, there is a quite complicated process of excluding this, in terms of the narrowcasting, and we question the efficiency of going down this route.

We would prefer to see the expense that is used here invested in, for example—as we articulated previously—education about access to this material, education for parents about exposing their children to these sorts of materials, and working with the Northern Territory government to provide more counselling services. For example, you can go up to Darwin, where this material is not banned—and the evidence we received during the committee hearings was that people are going up to Darwin and doing this—and access DVDs that are far more pornographic than the R18+ programs that we are talking about regulating here.

However, while we think that this legislation is going to a lot of trouble to regulate a low level of access to this material, when there is far worse material that people have access to, and would prefer to see the limited resources we have for dealing with these issues spent elsewhere, we will not be opposing these amendments, however unworkable we think they are. We support the government for the small step that they have taken in not requiring these to be exempt from the RDA. We will not be supporting any of the opposition amendments that seek to make these subject to exemption from the RDA and we will not be supporting amendment (1), which takes away appeals to the AAT.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.01 pm)—I will make some more detailed observations about Senator Scullion’s comments in respect of the amendments he is moving. I would not disagree at all with his passion, concern and observations about the impact of pornographic material. I would, however, disagree with his analysis of the legislation and with what he is attempting to do in respect of the amendments and the conclusion he has reached.

The Liberal opposition are seeking to return to the measures that the then government tabled in a bill introduced in the previous parliament in September last year. I would contend that they know—they certainly should know—that the measures from last year were unworkable and that officials were developing amendments. Our bill will introduce practical measures to extend—and I want to emphasise this—the ban on X18+ rated and unrated material in prescribed areas to include pay TV channels with substantial R18+ content where restriction is requested and there is community consultation and involvement in decision making. Consultation and involvement makes for better implementation and better results. Importantly, our measure in schedule 1 of the bill is designed as a special measure compliant with the Racial Discrimination Act.
Our argument is, as I have emphasised, an extension—not a removal or part removal, as the Liberal opposition has been claiming. I say, respectfully, that I think this has been a deliberate misrepresentation for political purposes, because we have heard, time and time again, opposition speakers on this bill making this misrepresentation of the government’s position. The government supports the emergency response. We have extended its operation. The bill extends measures that work and repeals measures that do not work. The bill extends—for the benefit of the opposition—the banning of pornography to include R-rated pay TV. The extension of this ban follows consultation with people in the community, including women. Importantly, we have done this in a non-racially-discriminatory manner, unlike the previous government, and the consultation has led to better outcomes.

So, in conclusion, the Labor government oppose these three amendments, which we are dealing with together. The bill extends the ban, and it is quite mischievous, to say the least, to suggest otherwise. I would urge the Senate not to agree to the three amendments we are currently considering.

Senator SCULLION (Northern Territory) (5.05 pm)—I will answer from the point of view of the opposition; the minister may wish to deal with some of the other aspects, Senator. You are correct in that it is certainly our view that we should simply put a blanket ban on the extension of R18+ material. The differential clearly is that there is a process of, as they say, consultation and a process where the government will require one person or part of the community to put their hand up and say: ‘We feel vulnerable. We somehow feel threatened. There are things within our community that might need special consideration, so we would like that transmission to end.’

I will give the minister the opportunity to answer a couple of things, but while I am on my feet could I deal with the Greens’ submission. I acknowledge I was not there with the committee, Senator Siewert, but I did hear about it and I understand it is a very complicated issue for a child to be involved when a subscription is the complicated. There are a whole range of issues within that.

I guess my concern is, from anecdotal reports that I have, that this exact system had extensive use prior to the intervention. I do not know how it happened. Adults may have been involved. I am not sure how the children worked it out. But, because they were unsupervised for a long period of time, they have developed skills that are not normally associated with people of that age. That is my concern. I do recognise that it may seem to be such a long bow when you hear those sorts of submissions. I will not take you up on the issue of it being expensive. I under-
stand that you think that there may be better things to spend it on in the general context, but I certainly think that this is very important at any cost. I do know that you really understand and sympathise with these circumstances, Senator, and I know that you are aware that there are pockets and demographics of children in these communities that have already been exposed to high levels of this material. I know that there is far worse material, but my concern is that exposure to any further extent—even to R18+ material for short periods of time—may rekindle issues. I am not sure about the technical details of it, but the fact that they have already been exposed puts them in a whole new area than what would be accepted under normal circumstances. We believe that these are not normal circumstances, so we need to take further steps. But I do understand the thrust of what you are saying; I am not being critical.

In terms of the government, perhaps the term ‘mischievous’ switched me on to a slightly new level, Minister, but I will do my best. The Rudd government in their first-100-day report said, ‘We are extending the ban.’ I am not sure how many Australians can do their sums. Perhaps those in the gallery might have a crack at it. Today there is zero per cent chance of R18+ pornography being transmitted into communities. On the day of assent, it will be 100 per cent. You can do the maths and say that that is an extension of the ban; in fact, it is quite the reverse. I object to being called ‘mischievous’. I believe that the opposition and most involved in this process—

Senator Sherry—I could have been tougher!

Senator SCULLION—Not in this debate, Minister; I have been very reasonable. There is absolutely no mischief in my motives in this event. To say that the achievement of the Rudd government in its first 100 days was to introduce legislation that extended the ban on pornography when, the day after the legislation was introduced, it was increased by 100 per cent really beggars belief. I would say that that is the complete definition of ‘mischievous’.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.10 pm)—If I could, I will come to the issue raised by Senator Xenophon. As I indicated in my unruly interjection, I could have been a bit stronger than ‘mischievous’. I accept that Senator Scullion is very passionate and concerned about these issues, as we all are. He has demonstrated his passion and concern. But we do not accept the conclusion or observation and analysis of what the government is intending. Therefore, we do not accept or support Senator Scullion’s amendments.

The Minister for Families, Housing, Community Services and Indigenous Affairs will receive a request. There will be community consultation by officials according to FaHCSIA guidelines, including consulting an organisation such as the women’s centre et cetera. Community agreement is not required. The minister then decides whether to declare an area. Upon the area being declared, AUSTAR either self-declares channels or keeps records for 21 days to inform declaration. The Minister for Broadband, Communications and the Digital Economy considers whether to approve self-declaration or declare a station according to records. That is the process for the implementation of the provisions with respect to R18+ restrictions and is in addition to the provisions enacted by the previous government in 2007. I will conclude my remarks with this: the bans introduced by the former Liberal government remain in place. Our bill extends the former government’s measures
via the process that I have outlined. It does not usurp or replace them.

Senator SIEWERT (Western Australia) (5.12 pm)—Minister, perhaps you could answer this question for me. It is my understanding that there are around 50 houses. I understand from evidence received during the committee’s inquiry that it is a bit hard to count the number of houses or residences in those communities which are already receiving narrowcasting. There are already at least 50 houses in communities that can receive narrowcasting. Is that a correct understanding?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.13 pm)—There are two different methodologies. The methodological approach that AUSTAR takes in mapping is different. We would accept that it is in the order of 50. We cannot be any more precise than that.

Senator SIEWERT (Western Australia) (5.13 pm)—Can they receive R18+ programs at the present time?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.13 pm)—Yes, they can.

Senator SIEWERT (Western Australia) (5.13 pm)—If I understand this correctly, we think there are already around 50—we will not quibble about whether it is greater or fewer—locations that are in prescribed communities that are already receiving R18+ programs. The argument is that this extends this material into communities, when the fact is that it is already there. What this amending legislation does is enable a community to say, ‘Uh-uh, we don’t want it.’

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.13 pm)—Correct.

Senator SCULLION (Northern Territory) (5.14 pm)—Minister, I have a question with regard to the declaration and the prescribed area, and about the minister making the decision, on receiving information, that they would make a declared area. I would like to understand a bit more about the privacy issue. Somebody rings up and says: ‘Hi, how are you going? I’m Johnny Nabada, and I’m really concerned about this. I wonder if you can come and do something about it.’ The minister goes to the community and they ask who brought it up. What are the issues around giving some level of protection to the people or person who made that call, and what surety can the community have that somebody has, in fact, made that call?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.16 pm)—Let us take Johnny, who has a concern. He obviously does not have to contact the minister directly. The minister does not have to go and do this firsthand. He contacts the department and the officials carry out the check, the interview and the conversation. There is no obligation on them to disclose to anyone in that community that Johnny has complained in whatever form. So that would be the process, followed by a recommendation to the minister.

Senator SCULLION (Northern Territory) (5.16 pm)—If you take away the current circumstances and the circumstances since the intervention with the intention of introducing legislation, the narrowcasting still occurs today. But at the end of a cent, if it was our way, it would be zero, but your way it would be 100 per cent. That is the differential between the government’s position and our position. I acknowledge that the differential effectively is about consultation. I acknowledge that the significant difference is in consultation. Has the department received any information or done any work on how the communities actually feel about this? Apart from the communities generally saying, ‘We did not like the consultation process of the
intervention,’ do you have any indications about how many communities will be saying that they would like to be declared? I know that is a difficult question, but perhaps you could just give me some indication about whether or not the department has had any investigations in that regard.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.18 pm)—No. The department officials are not aware of any feedback in respect of a specific matter relating to this particular measure other than the general concern about pornography in communities.

Senator SCULLION (Northern Territory) (5.18 pm)—We know that material like this is very dangerous in these communities at this time. In the event that a period of time passed—let us say a year or so—and there were no applications and nobody said, ‘Listen, I would like a hand,’ is there any consideration of a fallback position in which you would say, ‘Well, we cannot naturally assume that they really all want to have R18+ material in their communities’? Is there a fallback position? For example, if you have police reports that the sexualisation of children is still continuing—they somehow find a whole bunch of kids sitting around watching ‘Debbie Does Godzila II’ and they know that this is happening from information received anecdotally from police officers—is the minister then capable of independently declaring it a prescribed area?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.20 pm)—I just want to provide some additional information as well. I want to make it clear that the person making a request does not need to be a representative or an official of a community organisation. It can be a person living in the prescribed area who makes a request on behalf of an Aboriginal person in that area. I just wanted to add that to clarify the process. The communities will be made aware, by the local business manager, if this new process is put in place as a consequence of the legislation, and there will obviously be ongoing monitoring of what actions flow as a consequence of the change in the legislation and any requests made by any individuals under the new provisions of the act in respect of R18+. So that will be the process. Beyond that and beyond what would be the normal and, I am sure, diligent oversight of the implementation of this by the department and the minister, there is nothing specifically proposed at this point in time.

Senator XENOPHON (South Australia) (5.21 pm)—Can I get some clarification from the minister in relation to this. I say at the outset that it was very useful and helpful for me to visit a number of these communities, namely Hermannsburg, Santa Teresa and Papunya, on 6 and 7 November to talk to communities about the permit system and to talk to them about these issues. I had a number of informal discussions with people in those communities, both for and against some aspects of the intervention and the permit system. It was very instructive. I do not pretend to have the same depth of knowledge as, for instance, Senator Scullion or Senator Siewert would have, given their longer involvement in these issues. But in relation to the issue of R18+ programs, one of the issues that was put to me in these communities was that, for a number of reasons—whether because of social disadvantage or for cultural reasons—where you had a number of people living in a house there was an issue of a lack of supervision of kids and in some instances the kids would be exposed to pornography. That was one of the issues that was put to me. I am also mindful of the issues put in relation to the Racial Discrimination Act. But I ask the minister to clarify: this amendment relates to R18+ programs being broadcast, but what is the posi-
tion on R18+ DVDs or videos coming into a community? Are those prohibited or does that only apply to X-rated material?

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.23 pm)—I am informed that there is no restriction in respect of R18+ material in the previous government’s measures or in this measure.

Senator XENOPHON (South Australia) (5.24 pm)—Can I just clarify my position in the debate. For me it is a difficult issue. My preferred position on R18+ material being broadcast into communities is that there ought to be an opt-in situation for communities. That is not the way it is drafted here. So the minister can have a discretion to say that this material ought to be allowed—in other words, the first position is that it is banned but it can be allowed after consultation with communities. I know that is not the government’s position. I am not entirely comfortable with the opposition’s amendments, but I would support those, given the choice between the two. But I do acknowledge it is a difficult issue.

The TEMPORARY CHAIRMAN (Senator Humphries)—The question is that items 3, 13 and 16 of schedule 1 stand as printed.

Question negatived.

Senator SCULLION (Northern Territory) (5.25 pm)—by leave—I move opposition amendments (2) to (6) on sheet 5566 revised:

(2) Schedule 1, item 5, page 4 (line 9), omit “declared”.
(3) Schedule 1, item 5, page 4 (line 19), omit “declared”.
(4) Schedule 1, item 9, page 5 (line 22), omit “declared”.
(5) Schedule 1, item 10, page 6 (line 1) to page 9 (line 16), omit clause 12, substitute:

12 Condition applicable to certain subscription television narrowcasting services provided in the Northern Territory under class licences

(1) The provision by a person of a subscription television narrowcasting service under a class licence is also subject to the condition that the licensee will not broadcast an R18+ program in a way that will enable a subscriber in a prescribed area (within the meaning of the Northern Territory National Emergency Response Act 2007) to view the program.

Sunset provision

(2) Subclause (1) ceases to have effect at whichever is the earlier of the following times:

(a) the end of the period of 5 years that began on the day after the day on which the Northern Territory National Emergency Response Act 2007 received the Royal Assent;

(b) if a shorter period is specified in a written instrument made by the Minister for the purposes of this paragraph—the end of that shorter period.

(3) An instrument under paragraph (2)(b) is a legislative instrument, but section 42 (disallowance) of the Legislative Instruments Act 2003 does not apply to the instrument.

R 18+ programs

(4) For the purposes of this clause, an R 18+ program is a program that has been classified and/or assessed R 18+ by:

(a) the Classification Board; or

(b) the provider of the subscription television narrowcasting service concerned.

(6) Schedule 1, item 10, page 9 (after line 16), after clause 12, insert:

12A Application of Racial Discrimination Act 1975

(1) Clause 12 of this Schedule and the remaining provisions of this Act in so
far as they relate to clause 12 of this Schedule, and any acts done under or for the purposes of those provisions:

(a) are special measures for the purposes of the Racial Discrimination Act 1975; and

(b) are excluded from the operation of Part II of the Racial Discrimination Act 1975.

(2) In this clause, a reference to any acts done includes a reference to any failure to do an act.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.26 pm)—In view of the previous outcome there is no need to make any further contribution. I have already made it on behalf of the government.

Senator SIEWERT (Western Australia) (5.26 pm)—I reiterate the Greens’ opposition to these amendments. We have opposed all along the exemption from the Racial Discrimination Act. We continue to oppose that—in fact, I will very shortly be putting amendments to overturn the exemption from the RDA. I point out that the point about the government’s new approach on this one is that there is no exemption from the RDA and requiring consultation is consistent with the very first recommendation of the Little children are sacred report, which gets misrepresented widely and used as justification for this discriminatory and racist approach that is taken through the NTER. The authors of the report disassociate themselves from that approach. The very first recommendation says:

It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.

So, even though I do not agree with the government’s approach on a whole range of things on the intervention, I do agree with the government’s approach on this—that is, they are implementing that recommendation requiring consultation with Aboriginal communities before the decision is made by the minister over the R18+ exclusion. We definitely will not be supporting the opposition amendments.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.27 pm)—I do want to make it clear to the chamber that, in indicating that I was not going to speak on these consequential amendments, I was adhering to my earlier position consistently—we do not support them. But the debate has been well had, and they are consequential amendments.

Secondly, in terms of Senator Siewert’s comments, the government has indicated that it does want to ensure in future, and indeed has foreshadowed legislation to ensure, that provisions are consistent with the Racial Discrimination Act. We have indicated that, so I agree with you in principle. Whatever happens on this legislation, we will maintain that principle and we will be continuing to advance that legislation we foreshadowed last year.

Question agreed to.

Senator SIEWERT (Western Australia) (5.29 pm)—The Greens oppose schedule 1 in the following terms:

(1) Schedule 1, item 10, page 9 (line 17) to page 10 (line 2), clause 13 TO BE OPPOSED.

The two amendments I am moving basically relate to removing the exemption from the Racial Discrimination Act. As I have already said, and I will reiterate for people who may not know or may be under false illusions, the Greens have been opposed to the nature of the NT intervention ever since this discriminatory legislation was introduced by the then government last year. I have also said for the record that we do not object to the increase in resources that are available under the NT intervention for spending on the ongoing disadvantage in the Northern Territory. We object strenuously and loudly to the way the
NT intervention was applied and continues to be applied and continues to be supported by the current government.

When the current government were in opposition they objected to the exemption from the Racial Discrimination Act quite loudly but supported the legislation nevertheless. Despite their loud protestations at the time, the government continue to support the continuation of exemptions of the various measures in the NT intervention—there are five pieces of legislation that cover the Northern Territory emergency response—from the Racial Discrimination Act.

Let me remind people that the government at the time sought to say that these intervention measures were special measures that were supposed to be of benefit to the Aboriginal community. In case they were not—because there was a pretty strong likelihood that they were not special measures and would not be considered as such under the Racial Discrimination Act—they gave themselves the all-out dropout clause, ‘Let’s exempt everything from the Racial Discrimination Act,’ which then allowed them to change the permit system and to quarantine people’s income despite the fact, contrary to what Senator Scullion said, that there was a voluntary income-quarantining system being run by Tangentyere Council, which had over 2,000 people on the books and 800 people voluntarily quarantining their incomes on a regular basis. And, by the way, Tangentyere Council was underwriting that scheme quite substantially at the time by covering the transfer fee that was being charged. The measures also enabled the government to come in and take control of townships and to prescribe the townships.

The Greens always said that was racially discriminatory, and we still say that it is racial discrimination. That is in fact why the government had to exempt those measures from the Racial Discrimination Act. In the Social justice report 2007, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, included a human rights analysis of the Northern Territory intervention. The report raised very significant human rights concerns with the intervention legislation and the approach taken by the then government. It also made some very strong comments about deeming these acts as special measures and about excluding them from the RDA. On page 295—and I will not quote all of the things that Mr Calma said about the RDA because it would take a significant amount of time—the report says:

It is entirely unacceptable to remove the protection of the RDA for any acts performed under or for the purposes of the NT intervention legislation. This is particularly given the broad discretion that the legislation vests in decision makers at various levels.

The report notes that the exemption from the RDA means:

… that there can be no challenge to any exercise of discretion by officials purporting to act in accordance with the legislation (for example, decisions of government business managers, variations of contract conditions, seizure of assets and so on).

He goes on to say on page 266 that the rationale for the exemption is partly:

… to address the consequences of section 10(3) of the RDA. Section 10(3) of the RDA makes it unlawful to manage the property of Aboriginal and Torres Strait Islander people without their consent …

Such a measure cannot also be classified as a special measure …

The report goes on to say that this provision would affect the compulsory acquisition of Aboriginal land and the powers of government business managers. Quite clearly this legislation is racially discriminatory. If you need no further evidence, the Social Justice
Commissioner, who is now the Race Discrimination Commissioner as well, has found that to be so.

The *Little children are sacred* report has been misused in a number of way. Specifically, it was used as the justification for the intervention despite the fact that we have known about child abuse and Aboriginal disadvantage in the Northern Territory for years and years, and it was not until last year that it suddenly became an issue that the government felt it had to do something about—and what better report to use than the *Little children are sacred* report, of which I have the executive summary here with me. Nowhere in this report does it say that you should take measures that contravene the Racial Discrimination Act and then exempt those measures from the Racial Discrimination Act.

The Greens were dismayed and continue to be dismayed that this government continues to foster and progress the discriminatory Northern Territory emergency response because we believed that it would take a much more socially inclusive approach and would act on the comments it made before about the fact that the emergency response contravened the Racial Discrimination Act.

The minister for Indigenous affairs ignored the Northern Territory emergency review report, which recommended that the minister remove the exemption from the Racial Discrimination Act and make compulsory income quarantining a voluntary scheme and which made many other recommendations, instead announcing the extension of the compulsory income quarantining. I was further dismayed when the minister said, ‘We’re going to do that for at least another 12 months, and maybe in spring next year, when we will have continued this racially discriminatory approach for another 12 months’—and, by the way, we will then have had that discriminatory approach for longer under this government than under the last government—‘we’ll remove the exemption from the Racial Discrimination Act.’

That is not good enough. We cannot afford to wait that long with the shame that Australia now suffers from the fact that we have introduced measures that we have had to exempt from the Racial Discrimination Act. We cannot wait until at least spring next year. The Greens are moving these amendments to ensure that the measures that are being put in place in the Northern Territory, which are supposedly designed to end Aboriginal disadvantage and to close the gap—as the government keeps saying is one of its priorities—can be put on a footing that is not racially discriminatory and can genuinely help communities.

Let’s start genuinely implementing the recommendations of the *Little children are sacred* report, the first of which, as I said, is to commit to genuine consultation with Aboriginal people. I might add that that was reiterated in the review of the NTER. They also said the government need to re-establish their relationship with Aboriginal communities after the damage that has been done in the last 16 months. They need to repair that and go back and talk with and genuinely consult Aboriginal communities. I commend both this amendment and the amendment I will move in the future to the Senate.

*Senator Scullion* (Northern Territory) (5.39 pm)—The opposition will not be supporting the Greens amendments. I acknowledge the position of the Greens, who are representing a particular view in these communities that pretty much does not support the intervention. I acknowledge that, and that is their right. If I were not supporting the intervention, the first thing I would do is say, ‘Listen, we need to get rid of that suspension of the Racial Discrimination Act so we can
immediately take the whole thing to court and throw it out.’ I acknowledge that that is their right and I acknowledge that that is what it is about.

When I first went to the communities, many people said to me: ‘This is just dreadful, Nigel. Under the Racial Discrimination Act people can just discriminate against me now. People have told me that you can beat me now and I can’t do anything about it because I’m not covered under Racial Discrimination Act.’ There is a whole range of that stuff. For whatever reasons that poisonous story got amongst them, that is very sad. But I think as I move amongst the communities that, since the communities are much better off in every measurable way, anything that would move towards removing aspects of the protection the intervention provides is something I will not support.

I have to commend the government for continuing to look for ways to take away the suspension of the Racial Discrimination Act. When Minister Brough was here, of course, they were declared ‘special measures’ and consideration was undertaken—as I am sure those advisers can recall. It was not something they just rushed into, saying, ‘We’ll just suspend that’. They considered things at the time. We would, of course, over time continue to look at ways to ensure that this was not something that hung over our heads—well, that may not be the case, but I am reasonably assuming that history will paint it that way. So we would certainly commend the fact that the government is continuing to look at approaches and that in time it will look at lifting the suspension. I commend the government on what is a very difficult task, but I certainly think that the lifting of it at this stage as per these amendments would simply be the death knell of the intervention, and that is something the opposition will not be supporting.

Senator SIEWERT (Western Australia) (5.42 pm)—I am sorry, Senator Scullion; history will not paint this as an appropriate way to deal with Aboriginal disadvantage in the Northern Territory. It just will not. It is discriminatory. They are not special measures; they clearly do not meet the definition of ‘special measures’, which is why you had to exempt this from the RDA in the first place. History will show this for the discriminatory measure and the waste of money that it is. Not one of the safe houses that were supposed to be built under the intervention is operating yet—unless they have managed to get one operating since estimates. Yet how many houses have they managed to build for government business managers? Not one safe house is operating to protect anybody—men or women. Some of them were built in the wrong location. There was no consultation, which is the first recommendation of the Little children are sacred report. They were built in the wrong location because there was no proper consultation. Going around and consulting specific people so you get the answers that you want is not the way to start addressing Aboriginal disadvantage in the Northern Territory. Putting in discriminatory, punitive measures does not work. The international evidence shows it does not. The review showed that there needed to be significant reform, and the government has chosen to amend it. That is what will go down in history. It does not work and it will not work.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.43 pm)—The government will not be supporting these amendments. It is a subject which does warrant proper consideration. The government is firmly committed to the Racial Discrimination Act and will not make any laws which are inconsistent with the principles of that act. That is why we have carefully crafted the bill we are currently
considering to ensure there are no new provisions which exclude the operation of the Racial Discrimination Act, and the new R18 measures we were debating earlier were designed as a special measure.

The amendment moved by the Australian Greens seeks to amend the original racial discrimination provisions enacted by the previous government—cross-amend, effectively—across the whole package of Northern Territory emergency response laws. That goes well beyond the limited range of issues we are considering in this bill, and it enters into a much broader discussion which warrants its own consideration and debate.

The independent review board specifically considered the issue of the application of the Racial Discrimination Act in the review of the emergency response measures. The government takes the view that the NTER will not achieve robust long-term outcomes if measures do not conform to the Racial Discrimination Act. I repeat: this particular bill contains no new provisions that exclude the operation of the Racial Discrimination Act. This bill is not the place for that wider consideration. Legislative amendments to bring existing NTER legislation within the scope of the Racial Discrimination Act, as I have already indicated on a number of occasions, will be introduced in the spring parliamentary session next year. Therefore, the government does not agree with these amendments.

Senator SIEWERT (Western Australia) (5.45 pm)—I appreciate the commitment by the government that they will not introduce any further legislation that seeks an exemption from the RDA, but that has not stopped them making use of exemptions from the RDA, as is evidenced by the extension of income quarantining, which is clearly contrary to the RDA. It has not stopped them continuing to take control of townships. So while they may be trying to appear squeaky clean by not making any further laws that seek to exempt them from the RDA, they are already making use of exemptions to the RDA.

They could either move their legislation right now, or as soon as possible, or they could support these amendments right now—amendments that will deal with it straightaway. They will not do that because it is very convenient for them to keep the exemption to the RDA in place while they progress measures that would not meet the requirements of the RDA. Australia needs to be very clear about this: they are keeping the exemptions in place while they use those exemptions to push their agenda.

The TEMPORARY CHAIRMAN (Senator Humphries)—The question is that clause 13 in schedule 1, item 10, stand as printed.

Question put.

The committee divided. [5.51 pm]

(The Temporary Chairman—Senator G Humphries)

Ayes.......... 44
Noes.......... 4
Majority........ 40

AYES

Barnett, G. Bilyk, C.L.
Birmingham, S. Bishop, T.M.
Boswell, R.L.D. Boyce, S.
Brandis, G.H. Brown, C.L.
Bushby, D.C. Cameron, D.N.
Colbeck, R. Collins, J.
Crossin, P.M. Farrell, D.E.
Feeley, D. Ferguson, A.B.
Fielding, S. Fifield, M.P.
Fisher, M.J. Forshaw, M.G.
Furner, M.L. Hogg, J.J.
Humphries, G. Humphries, S.P.
Hutchins, S.P. Hurley, A.
Landy, K.A. Kroger, H.
McEwen, A. * Marshall, G.
McGauran, J.J.J.
Senator SCULLION (Northern Territory) (5.55 pm)—I oppose schedule 2 in the following terms:

(9) Schedule 2, page 15 (line 2) to page 16 (line 22), Schedule TO BE OPPOSED.

This relates to schedule 2 of the bill, which is about the transportation of prohibited material. This is a matter of nuance. We understand what the clear intent is: to make some clear consistency in terms of alcohol. But we want to ensure we are sending a consistent signal in the circumstances where pornography may occur in communities. We accept that it is on the grey end of the nuance but we thought long and hard about this. We are not accepting that a defence needs to be provided in the same way as for alcohol, because of the nature of the way pornography is transported. It may go in the post or by courier. We believe that that could provide a potential defence for anybody who has it on their person but is carrying it in such a way that it could be for someone else’s consumption.

Knowing the prescribed areas as I do—and no doubt as those in government do—that there could be circumstances under which you would say, ‘I am just carrying this pornography via Kintore to Perth,’ or some other place is a little far-fetched. It could create a defence when there is clearly an offence. I think a defence exists if you are a postal worker, but to take pornography to a place outside a prescribed area by necessarily driving through a prescribed area—

Senator CROSSIN—Not Kintore. Elliott community is on the Stuart Highway.

Senator SCULLION—Some elements are a prescribed area, if I can take the first and only interjection in this debate from Senator Crossin. She wants to interject about elements of the Stuart Highway, which is not part of the intervention area, although there are elements of Elliott there. It is very disappointing to see her come into this place and make such an unconstructive contribution, but, frankly, I am not surprised.

There are a number of ways that can occur. We believe that in any event there is a judicial system and a defence exists. If this were a strict liability offence, I would understand why you would have to create a particular defence around that. It is not a strict liability offence and I believe the government has made quite a significant effort to provide a reverse onus of proof in that regard. We simply do not think it goes far enough, and that is the reason we will not be supporting these changes.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (5.58 pm)—The government opposes the amendment moved by the opposition. I note the very helpful contribution of my colleague, Senator Crossin, in pointing out one of the communities—Elliott. From the government’s perspective, it is unclear why the opposition is opposing this sensible workability measure. The prohibited materials ban was intended to be consistent with the alcohol ban, which allowed transit. Schedule 2 to the bill addresses this anomaly by allowing prohibited material to be transported through prescribed areas as long as its destination is outside a prescribed area. We just cannot see why the Liberal opposition is persisting with this amendment in light of the eminently
sensible position—even half-conceded or a bit more than half-conceded by Senator Scullion—that the government is advancing.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—The question is that schedule 2 stand as printed.

Question agreed to.

Senator SCULLION (Northern Territory) (6.00 pm)—I am sorry, Mr Temporary Chairman. I was just having a conversation with another senator at the stage the question was put and he has indicated that he wished to vote with the government if the wish was to divide on the matter. We did not want to rush that. Perhaps you may wish to put the question again.

The TEMPORARY CHAIRMAN—No. I put the question in the positive—that schedule 2 stand as printed.

Senator SCULLION (Northern Territory) (6.01 pm)—The opposition opposes items 1 to 9 in schedule 3 in the following terms:

(10) Schedule 3, items 1 to 9, page 17 (line 10) to page 18 (line 12), items 1 to 9 to be opposed.

I think the fundamental amendments that have been brought to this place relate to schedule 3. Next to those, the rest pale into insignificance. I question the motive behind the government’s insistence on this schedule, but I would like to acknowledge the consistency of the Labor Party on this. From the day of the intervention they have consistently said that they support every aspect of the intervention. They actually divided on the permit system in this place, so their position has been consistent and I acknowledge that. But I would have thought that you would have to question the motive or have a little understanding of the motive. Much of the discussion at the time of the intervention revolved around the capacity, for example, of the police force. We have had Police Federation of Australia representatives come out and say that this is a very important piece of legislation because it allows a great deal of leeway in being able to have discussions with people moving in and out of the community. They said: ‘We just simply pull them up and have a bit of a chat to them. We can search their cars. We can ensure that they are not bringing drugs, alcohol or other substances in the community, and they are generally good guys.’

As the government well knows, since the intervention became law there have been a raft of significant legislative changes in the Northern Territory in regard to the movement of alcohol in the prescribed areas. You can run out terms like ‘draconian’ but, whatever they are, there is now legislation that gives the police the right to stop anybody and search the car—and they do. I was pulled up the other day—

Senator Crossin—Do you think they’re draconian, Senator?

Senator SCULLION—No, I do not. That is one term that has been used, but I think they are very significant laws.

Senator Crossin interjecting—

Senator SCULLION—I absolutely think they are needed, Senator Crossin. But they are laws that mean the permit system is no longer required. People like Senator Crossin say that you absolutely need the permit system so you can pull cars over. What I am saying is that significant legislation has been put in place that does just that. It gives the police powers not only to pull over people and ask, ‘Hi, how are you going—do you have a permit?’ but also to question people and to search the vehicle. I was pulled over the other day. I went out to have a look at a tree and a rock, as you do when you are in Alice Springs of an evening. On my return to Alice Springs the police stopped my car. They searched my car for alcohol and went right through the car—
Senator Sterle interjecting—

Senator SCULLION—There was absolutely no alcohol on board, which was very pleasing. I think these powers really negate any argument at all that the permit system needs to stay to give police extra powers to protect people within the community.

There is another issue that I am still a bit miffed about. Before the intervention and the *Little children are sacred* report and all of the other reports about the circumstances in the communities, what was absolutely self-evident to the people who visited the communities was that the communities were under the permit system. The permit system existed, yet it did not provide any level of protection. We had unbelievable circumstances prior to the intervention, and the permit system did not protect any of those people. People said that with the permit system there was this notion that someone with villainous and evil intent could say, ‘I know: I would like to smuggle some drugs into the community,’ or, ‘I’d like to go to that Aboriginal community to go and do things; I’d better go and get a permit.’ That would be important on the list of a villain. He would go to the Central Land Council and submit an application for a permit. The police themselves have said that the permit system does not actually stop any of the substance abuse and other criminal behaviours of people visiting the communities. In fact, I think it is widely accepted that most of the apprehensions—in the high 90s in percentage terms—are in fact people who live in those communities. The others are unknown but, principally, that is the case.

I am not really sure what else you need to discuss in terms of the permit system. I do know, as does Senator Crossin—she talked about this in her speech on the second reading—that there was a terrible lot of resistance in the communities. People have come to me in this place and said: ‘I think it is an outrage, Nigel, that you are supporting legislation that lets people come in and walk all over our sacred sites, lets them come into our house,’—imagine that—‘lets them watch the television, lets them walk around the place and lets them do what they like, with whoever, all over my country with no permission at all. I think that is an outrage.’ So do I, I have to say. But that is not what the cessation of the permit system was really all about. It was about one specific road, a gazetted road into a community—not the myriad roads that go in but one specific road. It was generally the communal area or a part of the township. Generally speaking, it gave access to facilities like the medical facility, the post office and, potentially, the barge landing or the airport. That is what it really did.

I am not surprised that people were absolutely outraged by this legislation in the consultation on it, because they completely had the wrong end of the stick. I do not know how they got that idea. I am told that people came to the community and told them that that was the way. I would really love to know who those people were, because that would be about the most evil thing you could perpetrate on a community—to tell a community that naive that this was going to happen and to frighten people, saying, ‘We are going to do nasty things to your sacred sites and come into your house.’ I think that is nothing short of evil.

We do not seem to have a motive to now say we really need the permit system. In this legislation it is suggested that we give the minister the power to provide permits. I will not verbal the government, but I understood they were saying, ‘We’re going to be providing access to journalists.’ That is a great thing, except that, in the legislation, the fine print talks about defined areas and community areas. Well, first of all, the notion that journalists are somehow exempt from this
system is not the same as going to a minister and the minister saying, 'Here is specifically where you can go.' That is not what I understood. I understood that the proposal from Labor was that journalists would be exempt from the permit system, that they would not need a permit. No doubt the minister or government advisers will be able to show me that aspect of the legislation that says journalists are exempt and how they will exempt them, but I certainly cannot see it. As I see it, journalists are still going to require permits. That is an interesting process, and I thought they might be able to explain it. Of course I and the opposition support it, but we think it should go much further than that.

These are closed communities and they continue to be closed. There are all sorts of closed communities, and I have been thinking about what it is like to live in a closed community. If you speak to people in prison, they will tell you what it is like to be in a closed community. There are no journalists. There is no reporting. You are shut off from the outside world. Yes, you get visitors and those sorts of things, but fundamentally that is how it is. Not surprisingly, the sorts of violence and the sort of abuse that we find in prisons, which is largely unreported because people always feel intimidated, is not completely different from the issues that we find in some of these prescribed communities.

I think we need to move to the single most important reason why we should be able to open these communities up by having a single gazetted road and access to aspects of the communal area. The reason is that the intervention has a number of phases. There are ones that are perhaps unpopular, where it is hard to see how they are going to really help these children and how they are going to make intergenerational change. But the roads are the arteries to opportunities that other people around Australia take for granted. Every other community on the east coast of the same size as these Indigenous communities enjoys access to the economy. People drive in, they put fuel in their car, they have a hamburger, they stay in the hotel, they go and look at the magnificent products and they do all sorts of other things.

Within the Northern Territory we have the single best, most magnificent tourist products on offer. People come to Australia looking for two things: a biodiversity experience and an Indigenous experience. Only six per cent on exit from Australia say they had the Indigenous experience that they wanted. I have a vision that, if we open these communities up, people will be able to go there and experience Indigenous Australia, and the Indigenous Australians will benefit in so many ways, not only because other people will understand their culture but also because they will be exposed to economic opportunities.

So many people who live in Indigenous communities that I know and visit have had training. They know all about interpretive work, but there is nobody there to take out. There are very few opportunities to actually use the skills that they have beyond their natural skills and their wonderful knowledge of country. I remember going to many places during the election where people from the Labor Party had quite reasonably said, 'If we are elected, we’ll keep the permit system.’ Because of what the people in the communities thought the permit system actually was, they gave some pretty overwhelming support to the Labor Party, and I am not surprised about that.

If we allow the permit system as it stands today to remain unchanged, these communities will remain unchanged and there will not be the opportunities that my sons and daughters take for granted. I think that everybody in this place should think very carefully, because this is the most fundamental reversal
of the intervention. It was clearly the intent that we would have an emergency intervention for the sake of normalisation and stabilisation, because these places should be like everywhere else. Making sure that the permit system provides all of the things I have been talking about is fundamental to the future of intervention.

We will not be supporting schedule 3, items 1 to 9 of the bill, and the reason for that is very clear, as I have indicated. There is really no motive any more to say we need a permit system. We are talking about public roads, not private land. If you go anywhere off those roads you are on private land. It is a bit like driving down the highway—there is a fence on the side of the highway and you might see a sheep on the other side of it, but you do not go over the fence because that would be trespassing. You will still require a permit to go and do things like that, so there is no motive any more to keep the permit system.

The ministerial power to somehow allow journalists to go into these communities of course is a good thing, but obviously it does not go anywhere near far enough. They will remain closed communities. If you compare the communities in some of the prescribed areas that are closed with communities on the east coast that are similar in terms of size, demographics and opportunities, the fundamental difference is the latter are doing fantastically and the former have absolutely no bloody opportunities at all. The single reason for that is that they do not have access to economic opportunities and they are closed communities. They will continue to be closed communities, and that is why we will not be supporting these parts of the legislation.

Senator CROSSIN (Northern Territory) (6.14 pm)—I rise to provide some commentary on and response to some of the comments that Senator Scullion made, because I think it is important that there be a response to this element of the debate. I am glad, Senator Xenophon, that you are in the chamber, and I must say publicly that I welcome your willingness to go to the Northern Territory and to look at and talk to a number of communities. However, it is unfortunate that you did not get to some of the communities in the Top End and get a more balanced view about what people think about the permit system in the Northern Territory. I am aware that you went out with Adam Giles, a candidate for the seat of Lingiari in the last federal election, who is quite clearly not in this parliament because of the outstanding result that Warren Snowdon got, which was based on a platform of, amongst other things, listening to Indigenous people and ensuring them that we would reinstate the permit system as they had asked us to do. They voted for us to do that. Outside the two or three communities that you went to in the Northern Territory, you would find that there is a much, much broader, stronger and more prominent view about why Indigenous people want to keep the permit system and had asked us to do that. Our position following the last federal election clearly shows that the member for Lingiari, Warren Snowdon, was re-endorsed and put back into this parliament to represent those people, as well he does. The reason he does an outstandingly magnificent job is that he listens and talks to Indigenous people. He is one of the best members of the House of Representatives that I know in terms of representing his constituents.

I talk about the places we went to during the election. Senator Scullion and I were actually at one place together on the same day. We were both at Galiwinku, on Elcho Island, and people there were lined up 100 deep every hour for nearly eight hours of the day. I can tell you now that, when they were given a how-to-vote card for the Country
Liberal Party, they squashed it up, screwed it up and threw it on the ground. So they not only were keen to vote for the Labor Party because of our policies but also physically showed to everyone at that polling booth exactly what they thought of the policies of the then government.

Senator Scullion talks about closed communities. It is a furphy. There are no closed communities. They are not closed communities. It is simply a term that Senator Scullion and the coalition use to try and justify their position. Hermannsburg is not a closed community; it has a tourist outlet. On Groote Eylandt there is now a tourist resort. Titjikala has tourist operations happening. Look at communities that have allowed mining to occur in and around their communities. To say that the permit system is a barrier to economic development is an excuse and an argument that is used to justify the position that is given by those who quite clearly want—let us get to the bottom line here—the abolition of the Aboriginal Land Rights (Northern Territory) Act. That is what this argument from the previous coalition government is about. Getting rid of the permit system is the thin end of the wedge. They would probably then hand the land rights act over to the Northern Territory government and make any other changes they possibly could to chip away at the rights of Indigenous people in the Northern Territory.

Land that is acquired under the land rights act is different to any other land in this country. It is land that is owned by those Indigenous people and they have the title to that land. Why do people like the permit system? Because it protects their culture, their sacred sites, their language and to some extent their way of life. This is a culture that has survived for 40,000 years. So who are we in Canberra to act, I will say here, in quite a racist way? This is a white people’s policy. We go into a community, and we probably spend fewer than three hours there—if we are lucky, we might sleep there overnight—and suddenly we come away with a view that they are a closed community and that permits are actually a barrier to economic development. We do not really understand why they want the permit system, but somehow we think that getting rid of it is going to be one way to start to solve some of the problems, rather than looking at it in a positive way and seeing that keeping the permit system is one way of recognising these people’s culture. One way of building bridges in our relationship in this country and handing out a token of reconciliation would be to say to Indigenous people in this country: ‘Yes, you have a permit system. You got that because of the land rights act. You got that because a Prime Minister, Gough Whitlam, with Vincent Lingiari, decided that this legislation would give you the title to this land forever.’ I might say that that legislation was finally put through this parliament by Malcolm Fraser. So these are rights that have finally been hard won by Indigenous people. There are reasons that they want the permit system in place.

In my speech on the second reading of this bill, I demonstrated that there are in the Northern Land Council region alone 22,000 permits given out per year. There are very few examples of permits being rejected. There was a case where one particular journalist breached the permit system—and quite rightly was taken to task about that. But, by and large, I have not seen examples of people in communities rejecting an application for a permit. In other words, I think there is demonstrable evidence to prove that the permit system is not a barrier to economic development on Indigenous land. In fact, if anything, it enhances the cultural rights of Indigenous people in those communities.

We might talk about the fact that crimes are committed in these communities and argue that perhaps without the permit system
these crimes suddenly will not exist or these people will not go to these communities. The reality is that none of that is going to change. Crimes will continue to exist in these communities whether people do or do not have a permit. And most times they probably do not have a permit. We were able to hear directly from police officers in north-east Arnhem communities, who clearly said to us: ‘One of the reasons I can stop a car is because I can ask them whether they have a permit. If you take that ability away from us, you lessen our policing role.’ We have had evidence from the Northern Territory Police Association and the Federal Police Association that that is one tool they use. The new laws in the Northern Territory with respect to alcohol are another tool that they can use.

Do Aboriginal people need permits to go in and out of each other’s communities? Predominantly, no, they do not. If I live at Yirrkala and I am down at Hermannsburg, I do not need a permit. And, if you have a look at the crimes that are being committed against children and women in those communities, it is predominantly Aboriginal people committing those crimes. The police are out there on top of, arresting people for and tackling those crimes. So it is an excuse and a fabricated reason for why the permit system has to be abolished. We do not have closed communities in the Northern Territory. Indigenous people do not consider them closed; I do not consider them closed. I simply ring up, I ask and I am welcome to go there. Evidence from the CLC and the NLC during the community affairs inquiry showed that that is predominantly the case: where there have been permits refused, there have been good reasons given.

We do have people coming in and out of these communities without permits. We know that there are carpetbaggers going in and out, trading in the arts industry. That is one of the reasons I would have thought you would keep this kind of permit system. It is a bit of a track for Indigenous people, as to who can come in and who can come out. Has it been successful in the past? By and large, I say, yes, it has been. It gives Indigenous people a reason to ask people to leave their community. If you remove the permit system, then you have no means by which you can ask people to leave the community, other than to go through a court process and an unwieldy process of issuing a common law trespass notice. But Aboriginal people do not want that; they want a system that they have liked, that they have designed, that they are committed to and that they want retained. The Labor Party was elected at last year’s election on a platform to not abolish the permit system and to protect the permit system. Warren Snowdon represents Lingiari. All of the people affected by this legislation live in that seat—not the seat of Solomon. Every single Indigenous person affected by this legislation in this country only lives in the seat of Lingiari. We got a 94 per cent return in the polls up there.

I put to you that we have a mandate to ensure the permit system is protected and retained. I put to you that if we are true about reconciliation in this country, about building genuine relationships with this country, we will drop this mantra of ‘Canberra knows best’, of ‘non-Indigenous knows best’, we will start to work with these people and we will start to make changes to their lives and listen to what they say. One of the things they have clearly said to us—loud and strong, last year and for many years—is that they want the permit system retained. I put to you that I do not think any changes should be made to the permit system unless there are discussions, consultations and agreement with people. Do some communities want some aspects changed? Yes, they do. I know of some communities that are quite happy to have no permits in their community but I
know of others who want the permit system retained. The current act does not allow for opting in or opting out. So let us just talk to people about what future changes might be. But the way the previous government moved on those communities last year and simply decided to ensure that the permit system was restricted and now hold to that view, despite the outcomes of last year’s federal election, shows they are not listening to Indigenous people in the Northern Territory.

In fact, Senator Scullion, I am embarrassed to think that you would want to represent those Indigenous people right across those 70 or more communities when they quite clearly would have said to you, as they have said to me thousands and thousands of times: ‘We want the permit system retained. We want you to go to Canberra and represent us, and that representation means standing up for our permit system, standing up for our culture and standing up for protecting, maintaining and strengthening the Land Rights Act.’ So I put to this chamber today that, if you really want to build bridges with Indigenous people and start to turn the corner in our relationship with Indigenous people—particularly in the Northern Territory, given the last 18 months—you will listen to them, to all of them, not just to two or three communities but to all of the communities around the Territory, who resoundingly voted for the Labor Party at last year’s election because we stood on a platform of protecting and maintaining their permit system.

Senator SIEWERT (Western Australia) (6.27 pm)—The Greens will be opposing the opposition’s amendment to this bill. I endorse the comments of Senator Crossin. In all the travelling that I have done in the Northern Territory—which I acknowledge is nowhere near as extensive as Senator Crossin’s and Senator Scullion’s—I have overwhelmingly been told that the communities want to retain the permit system. The evidence to the Senate committee from communities all said, ‘We want to keep the permit system.’ When Minister Brough introduced this legislation, in particular these measures to abolish the permit system, he referred specifically—and I know Senator Crossin touched on this in her speech on the second reading as well—to the review of the permit system conducted by FaCSIA in February 2007 and used that to justify taking away the permit system. He implied that there was a large level of community dissatisfaction with the permit system. In fact, he even said that in his second reading speech:

The government has been considering changing the system since it announced a review in September 2006 and the changes follow the release of a discussion paper in October 2006 and the receipt of almost 100 submissions.

Over 40 communities were visited during consultations following the release of the discussion paper. It was disturbing to hear from officials conducting the consultations that numerous people came up to them after the consultations, saying that the permit system should be removed. … They were afraid to say this in the public meetings.

However, despite requests, the minister refused to release this report and did not substantiate his claims of the numerous calls to remove the permit system.

In evidence to the committee of inquiry into this bill, the Law Council of Australia, through a freedom of information request, found:

All 80 consultations—
and the minister, I might add, said almost 100—
revealed unanimous support among Aboriginal communities, individuals and organisations for NO CHANGE to the permit system.

The minister was implying that a lot of people came up after consultations and implied that really they could not say they did not want the permit system when they were in
the consultations. But these submissions said, ‘No, we don’t want any change.’ The submission from the Law Council of Australia said that they could find no record, in any of the documentation provided, to support the minister’s claims that individual community members had made private submissions to departmental officers. All the records showed that the submissions and the consultation process supported no change to the permit system.

The Greens have said all along that we do not support the permit system. Besides that, we have seen no evidential base to support the abolition of the permit system. The rationale given for its abolition in fact seems to be at odds with the evidence that was provided during the official consultations, which clearly the minister hoped would say, ‘Yes, the community wants change,’ but which in fact said, ‘No, we don’t want change.’

It has often been said that we need the permit system so that people can go in and reveal the child abuse in these communities. But for 20-odd years report after report has indicated the level of disadvantage, child neglect and child abuse in communities, and do you know what? They were done with the permit system in place. Governments of various ilks failed to take any notice of those reports. But, when it became politically advantageous to the then government to start raising those issues, all of a sudden it was the permit system that was hiding this child abuse. We knew about it; we just did not do anything about it! There was nothing in the Little children are sacred report that said, ‘Take away the permit system’; it was what the minister wanted. The government had been after it for ages and could not achieve it, so they used this excuse to get rid of it. To be fair, Minister Brough had been absolutely clear about his agenda; he just could not achieve it. So he used this as a way of achieving that agenda. There is no evidence that communities want to get rid of the permit system; there is ample evidence that they want to keep it. That evidence was provided to the Senate committee and it has been provided to me in innumerable emails.

Senator Crossin mentioned that when she was on Elcho Island people were screwing up how-to-vote cards. I would also put to this place that it is no coincidence that the Greens vote in the NT went up substantially during the last election, and I would say it partly reflected our strong stance on the intervention and our strong opposition to changes to the permit system. It is very clear that communities do not want the permit system removed. If this chamber does not support this legislation it is flying in the face of what the community wants, again taking a paternalistic, discriminatory approach to the Aboriginal communities in the Northern Territory. I have not had one email, letter or phone call from an Aboriginal person in a community saying: ‘Senator, you are wrong. You shouldn’t be supporting the permit system. We want you to support getting rid of it.’ Not one! The Greens will be strongly opposing the opposition’s amendment. We support the government’s intention and the amendments in this bill to ensure that the permit system in the Northern Territory remains.

Senator SCULLION (Northern Territory) (6.34 pm)—I will try to keep this brief but I think that some of the remarks, particularly those from Senator Crossin, need a response. To Senator Siewert: if you think this is politically advantageous you certainly were not standing in Lingiari with me; I can give you the drum. But I will get to that in a minute.

I would like to take the opportunity to thank Senator Crossin for making my argument. She does make the point that of course open communities are doing so much better—places like Hermannsburg—and the developments in some other places are al-
ways associated with open communities. This whole notion of the permit being somehow part of reconciliation and somehow part of recognising culture is absolute and utter garbage. It is the sort of leftie statement that belongs back in the ‘I don’t even get it’ days. It makes absolutely no sense whatsoever to connect a lawful right of access with reconciliation.

I am not sure if you have been listening to your own media, Senator Crossin, but do not get us wrong: I support the permit system too; of course I do. I believe that for those people who have land we should have the permit system to go there. But I believe the excision of a main road to a hospital, a post office or an airport is entirely legitimate because it provides opportunities for those communities and in fact opens up those communities. But all other areas, 99.8 per cent of Indigenous land, will still require a permit, and of course we support that.

I want to revisit for a moment what Senator Crossin said, which was that the permit is still an important tool for police officers. I do not know how many times you change a tyre, Senator Crossin, but one spanner at a time is really advised, and you use the best one. The capacity for police officers in the Northern Territory to pull people over and search them completely is a far greater and more comprehensive power than the permit system. That is the point I am making.

I turn back to Senator Siewert’s remarks— I am not directing this at you, Senator Siewert—about how politically foolish this all was. Perhaps it might have been, but I can recall being in those areas and people coming to me very angry. In fact, when they were screwing those how-to-vote cards up they were throwing them at me. I was spat on; I was threatened. Many of these people are my friends. I have known them for some time. I asked them, ‘What is the problem?’ They said there were three problems with this. They said that they had been told; they understood what was happening: I personally was going to come and take their children from them, Senator Crossin. They were pretty cross with that, I can tell you, and I do not blame them.

Senator Crossin—You are making that up.

Senator SCULLION—No, I am sorry; I am not making this up, Senator Crossin. Then they said, and you are aware of this because you were there, that I was somehow going to take away their sacred sites. There was somebody who suggested we were going to bulldoze them, but there was a general belief that there was going to be an impact on their sacred sites and, with their great connection to the land, we were going to take their land from them. I understand completely why a community that thought that a government was going to impose those sorts of impositions on people would absolutely reject you in an election. Of course they would. If I believed that, I certainly would. But make no bones about the conditions and circumstances in those communities. I am not aware of who misled them with such poisonous disinformation, but it is a great sadness when that happens to that sort of people, and it was a great sadness to me on that day. With no amount of rhetoric will you ever convince most Australians, and I think most people, certainly in the Northern Territory, that hanging on to this antiquated permit system either is going to continue to protect people or provide a further level of protection to people in the communities or is somehow going to protect their culture.

What the intervention has done is fundamentally protect their culture because it stopped the rivers of grog; it stopped so many of the things; it stopped the violence. Anybody who goes there, as you do, Senator
Crossin, would recognise that that is the case. I do not intend to get into a diatribe with you over this matter, but I thought, since you provided your commentary, there were some aspects that needed some clarification.

Senator XENOPHON (South Australia) (6.39 pm)—As I indicated earlier, I had the privilege of visiting only three communities, Papunya, Hermannsburg and Santa Teresa, on 6 and 7 November and I wish I could have spent more time there. I spent several hours in each, and it was very useful for me to go there. I did go with Adam Giles, who is a Country Liberal Party member out of Alice Springs in the Territory parliament. Though initially there were plans to go with a Labor Party member, unfortunately that fell through and I did not get the benefit of that. I will say this about Mr Giles. Whilst he has firm views about the permit system and introduced me to several people on communities that he knew, I was left to my own devices with my adviser, Rohan Wynn, and we spoke to quite a few people in each of those communities, on many occasions well away from Mr Giles, so there was no question of any interference on his part. I think it is fair to say that I got mixed messages, that there were some people who were quite in favour of the permit system and others who were not. I appreciate what Senator Crossin said, that I have not visited other communities that she referred to. I think Senator Siewert said that she has not had the same exposure and does not have the same degree of knowledge as Senators Scullion and Crossin would have in terms of visits to Aboriginal communities. I probably do not have anywhere near the level of knowledge, in a sense, or experience visiting Indigenous communities that Senator Siewert has.

In those communities, there were mixed views. I was concerned at what some people put to me—that there was a misconception. They said that removing the permit system would allow people to go onto sacred sites. That was put to me by a couple of people, and that clearly is wrong. There was a concern that it would allow access into people's homes. One person put that to me, and clearly that is wrong. I think it is fair to say that there has been a degree of misapprehension and misinformation in relation to that.

I will canvass the arguments about the permit system briefly. There is an argument that it encourages self-determination for Indigenous people, that it gives some control as to who is able to work on or go onto Aboriginal land. There is one argument that it could hurt the economic development of local artists. I think Senator Crossin is right in that the permit system has not hurt economic development in relation to mining. That is clear. But I think it is also fair to say that the permit system in its current form could provide a disincentive to tourists to visit Indigenous communities where they have to apply and go through a process to visit an art centre, for instance, or an art gallery. I think it is fair to say that in those circumstances that could be a negative factor in terms of tourism.

One of the key issues that I have canvassed is the whole issue of wrongdoers, of having undesirable elements in Territory communities, and the fact that the permit system acts as a measure to block those undesirable elements. I note that in response to the emergency intervention the Police Federation of Australia argued in support of the permit system, but there have also been some contrary positions put. I am relying on the briefing paper provided by the Parliamentary Library research service for information on assertions and counterassertions in relation to this. Vince Kelly, the head of the Northern Territory Police Association, has more recently asserted, according to the information provided by the library research service, that
there is no evidence that the permit system hinders illegal behaviour. He said:

The permit system does not stop grog running or sexual assault. It did not stop these things in the past, it will not stop them in the future. These are policing issues unrelated to the permit system.

I do not know if Senator Crossin wants me to take her up on her invitation, but I would be happy to visit communities at some stage in the future with Senator Crossin.

Senator Crossin—Come fly with me!

Senator XENOPHON—Time is my enemy, Senator Crossin.

Senator Crossin—And the weather.

Senator XENOPHON—Weather does not worry me.

Senator Crossin—It will.

Senator XENOPHON—In the three communities that I went to, I spoke informally to police officers, to government officials and particularly to members of those communities, including people with a leadership role. It seems to me that the key issue is that there needs to be an adequate police presence: Indigenous police, liaison officers or police assistants and police aides. That link between the police and the Indigenous communities is very important. That is the key issue. As I understand it from my formal discussions with a number of police officers, they already have pretty broad powers to deal with the issue of pulling people over. To me, it is a key issue of policing. That, to me, is fundamental. If the argument about the permit system is that it is keeping undesirable people off communities, then I do not believe that that is the strongest argument. I think it is clear from a number of reports that, in terms of grog running and drug running, the perpetrators have been people who have not needed permits.

One issue that does trouble me is that the permit system can be open to abuse. There was a report in the *Australian* earlier this year relating to the APY lands. I know this does not relate to South Australia, but the principles are still the same or very similar, and I should disclose that, as a member of the South Australian parliament, I attempted a couple of times, unsuccessfully, to change the APY lands act to allow journalists to go onto those lands. Senator Siewert is right that, in the context of what has occurred, these issues—of abuse, of child abuse and of the terrible living conditions in some of these communities—have been around for many years and yet no action has been taken. But there is merit in the argument that, if you have actual scrutiny of these communities, if they are opened up and, at the very least, journalists have access, then you do get some action.

I remember several years ago there were front-page stories in the *Adelaide Advertiser* by Miles Kemp, a senior journalist, who did get permission to visit the lands, and he reported quite graphically on petrol sniffing. As a result of those reports, the state government were prompted into action. I am sure the government were acting in some way with respect to that, but it spurred them on to spend more money to take further steps in relation to petrol sniffing. And I note, from a coronial inquest that Coroner Johns in South Australia is undertaking into the death of a person in relation to petrol sniffing, that there has been a significant improvement in the APY lands as a result of some very sensible measures that have worked in discouraging kids from being petrol sniffers or taking up petrol sniffing. But that was a clear case where media focus, shining a light on this problem, made a big difference. I have spoken to journalists who had trouble in getting permits. To put it colloquially, they were mucked around, stuffed around, over a number of days on the APY lands, and they put to me that by the time it was—
Senator Crossin—That is not the Territory.

Senator XENOPHON—I think Senator Crossin says that that is not true.

Senator Crossin—No. I just said that that is not the Territory. There’s a different principle.

Senator XENOPHON—I apologise, Senator Crossin. But I think the principle is the same—that, with respect to permits, there is still that discretion and that power on the part of the permit-issuing authority to delay the issue of a permit to any individual. I spoke to two journalists who had a real complaint about getting access to lands when they were aware of some issues that they believed it would be in the public interest to reveal.

There is a claim in relation to the permit system that it can be manipulated by those people who have the power to issue the permits. There have been allegations. I hope Senator Scullion does not mind me mentioning this. There was a claim made with respect to a person whose permit was revoked, and that may have been linked to that person’s political affiliations or getting CLP endorsement. I have not checked the veracity of that. I am not doubting Senator Scullion, but I am concerned that that power can be abused to issue permits, and the key issue here is one of policing. I understand the arguments, but my concern is that the principal arguments that have been put to me in relation to the permit system about undesirable elements can be dealt with by adequate policing and adequate resources—that, on balance, in terms of policing powers, if there are undesirable elements, the police can pull over vehicles and make inquiries. There has been a degree of misinformation in some quarters of communities that this goes even beyond public roads, public buildings and the actual townships to sacred sites. That is not the case.

Senator Crossin has expressed a concern that this is the thin end of the wedge in relation to the abolition of the Northern Territory Land Rights Act, or indeed that the Northern Territory Land Rights Act could be put under the control of the Territory parliament. I do not support that. That is not my position and I would not support that. So, on balance, I cannot support the retention of the permit system in its current form. It is a vexed issue, it is a difficult issue and it is an issue that I have struggled with. But I believe that there are safeguards in place with adequate policing, and that the permit system has not worked insofar as it has protected, in some cases, people who have done the wrong thing from appropriate levels of scrutiny. I believe that where there is common ground is the belief that these communities do need significantly more resources to deal with huge issues of social disadvantage. The fact that there is still a very significant gap between the life expectancy of Indigenous Australians and non-Indigenous Australians is a matter of great shame. That is my position. I expect I will be criticised for it in some quarters, but it is the best decision I could reach in good conscience.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (6.52 pm)—I am anticipating closing the contributions on this. I did want to just respond briefly to some of Senator Scullion’s points. On the issue of journalists, the ministerial authorisation power, proposed section 70(2BB), allows the minister to specify persons or classes of persons authorised to enter and remain on Aboriginal land without a permit. The ministerial authorisation power operates only for the duration of the emergency response. The previous minister made an authorisation allowing people working on the emergency response access to Aboriginal
land without a permit. This bill is refining the authorisation power in order to clarify that authorisations can be limited to particular areas of Aboriginal land. Authorisations will also be able to be issued subject to specified conditions. If a person breaches a condition, they will no longer be covered by the authorisation. These refinements will allow for better targeting and effective authorisations to be made.

Following the passage of the bill, it is proposed that an authorisation be made allowing journalists to visit major communities without a permit. The authorisation would allow journalists to visit communities in their professional capacity to report on events in the communities. We would expect the authorisations to include conditions preventing journalists from entering sacred sites, premises or living areas and from interfering with ceremonies. The government has consulted with the Media, Entertainment and Arts Alliance and the Northern Territory land councils on the details of the proposed authorisation.

On the general issues, the government opposes the amendment moved by Senator Scullion on behalf of the opposition. The opposition has obviously stated that it opposes the restoration of the permit system. I just want to make some points briefly. I referred to them in my earlier remarks at the conclusion of the second reading debate. The permit system has nothing to do with protecting children. That is why we made an election commitment to restore the permit system for major communities. Schedule 3 of this bill restores the permit system for major communities. Policing, income management and improved infrastructure can all be delivered without interfering with the privacy of Aboriginal people. Everyone associated with delivering the emergency response can access Aboriginal land.

We reject the amendment about access roads into Aboriginal communities. The minister has made the decision not to exercise this determination power, in line with our election commitments. We are getting to that shortly, I know, but I am anticipating a reasonably rapid conclusion. We are refining the ministerial authorisation power so that the government can ensure access for journalists to major communities. I have outlined the issues in respect of journalist permits helping to keep grog, drugs and criminals out. The Northern Territory Police Association says that permits are a useful tool in protecting communities. Unfortunately, the opposition continues to simplistically support the abolition of permits. We need to base our policy on evidence and not ideology.

The CHAIRMAN—The question is that schedule 3 stand as printed.

The committee divided. [7.00 pm]

(The Chairman—Senator the Hon. AB Ferguson)

\[\begin{array}{c}
\text{Ayes...........} & 25 \\
\text{Noes...........} & 28 \\
\text{Majority........} & 3 \\
\end{array}\]

\textbf{AYES} \\
Arbib, M.V. Bilyk, C.L. \\
Bishop, T.M. Brown, B.J. \\
Brown, C.L. Cameron, D.N. \\
Collins, J. Crossin, P.M. \\
Farrell, D.E. Feeney, D. \\
Forshaw, M.G. Furner, M.L. \\
Hanson-Young, S.C. Hurley, A. \\
Ludlam, S. Landy, K.A. \\
Marshall, G. McEwen, A. * \\
McLucas, J.E. Polley, H. \\
Pratt, L.C. Sherry, N.J. \\
Siewert, R. Sterle, G. \\
Wortley, D. \\
\textbf{NOES} \\
Barnett, G. Bernardi, C. \\
Birmingham, S. Boswell, R.L.D. \\
Boyce, S. Brandis, G.H. \\
Bushby, D.C. Colbeck, R. \\

The amendment, when put, would have been put as ‘that schedule 2 stand as printed’. Quite clearly from my second reading debate speech, I was opposed to that schedule. If the vote were recommitted now, with the opposition’s and my vote, schedule 2 would be knocked out from the bill. That would not reflect what is current at the moment.

Senator XENOPHON (South Australia) (8.33 pm)—Can I indicate for the sake of clarity that I did indicate that I supported the government earlier in relation to this particular amendment. There may be some ambiguity there. I indicated earlier that there may be some senators who were of the view that I supported the coalition. But in relation to that amendment I supported the government.

Senator PARRY (Tasmania) (8.33 pm)—Could I outline the events that occurred during that call of the vote. Firstly, the question was put and Senator Bishop, who is in the chamber at present, was in the chair at the time. What occurred was that when the vote was put the first time we called ‘no’, which in effect meant that we were not supporting the schedule to stand as printed. Senator Sherry, who was the duty minister at the time, called the same as we did. Senator Sherry then wanted to know whether we had
made the incorrect call. We said no, we had made the correct call and Senator Sherry had in fact made the incorrect call. We accept that; it happens from time to time. It is confusing when you have the reverse onus on the amendments.

The chair, Senator Bishop, put the motion again. At that stage, I think Senator Xenophon was confused as to what was happening with the motion. Senator Xenophon then attempted to speak with our duty shadow minister after it had been put a second time. We wanted to divide on that particular amendment, as we did on amendment (10). For amendments (9) and (10) we had always had the intention to divide because we were unsure of exactly the position of Family First and the Independent, Senator Xenophon. We wanted to test that on the floor of the chamber. In doing so, with the interruption from Senator Xenophon, and Senator Scullion and I in consultation with Senator Xenophon, we missed the opportunity to call for a division. Once that occurred, Senator Scullion got to his feet and indicated that Senator Xenophon was voting with the government and asked where we would go from there. The chair, Senator Bishop, ruled that he had already put the vote, and that was the end of the matter.

Immediately after that I approached the chair privately and also then discussed it with Senator Siewert, Senator Xenophon, the duty minister and also Senator Farrell, who was the duty whip, asking if we could put that vote again. Everyone agreed, and we were going to do it after the next vote. Unfortunately, at 7 pm, at the very end of the last division, we could not put that vote at that particular time. We were going to seek to put that vote again now, but Senator Fielding has come into the chamber and sought it before I had an opportunity to do so. Those are the facts of the matter. I think it would be in good spirit of the Senate to allow that vote to be put again. We may very well not win that vote; I do not know the intention of the two minor parties.

\textbf{Opposition senators interjecting—}

\textbf{Senator PARRY}—I understand that potentially we may have Senator Fielding voting with us. We may have Senator Xenophon voting with us. I am not sure. But I think that in the spirit—

\textbf{Senator Forshaw}—They may abstain!

\textbf{Senator PARRY}—They may abstain. Thank you, Senator Forshaw. Irrespective of what the outcome would be, it is in the best interests of the Senate and the people of Australia that we put the vote again and enable a division to be called where one was not called because of two errors in the previous calling of the vote.

\textbf{Senator XENOPHON} (South Australia) (8.37 pm)—I reiterate—and perhaps Senator Parry did not hear me earlier—that I made it clear that I am supporting the government in relation to this particular amendment with respect to the transportation of material and defences therein. I just want to reiterate that that is my position. I indicated that before the dinner break as well.

\textbf{Senator CHRIS EVANS} (Western Australia—Minister for Immigration and Citizenship) (8.37 pm)—As I have indicated previously, we have always taken the view that the chamber’s view ought to be properly reflected, and that has been a longstanding position of the Labor Party. But I think some of this has been a bit disingenuous in the sense that what is clear is that, given the indication of the two Independents and the Greens, this will change the vote in that what was carried will now be defeated. I am happy for that to be the case if we are honest about it—and I do not think that contribution was all that frank, Senator Parry—but, if that is your claim, be upfront about it and say that you think the will of the chamber was not reflected and that senators were not in the
chamber. Quite frankly, Senator Fielding, we are happy if people miss a division, but to come in and say, ‘I wasn’t here; can we do it again?’ is pushing the courtesies to a great extent.

Having said all that, as long as we are upfront about this—not misleading and not having Senator Xenophon talking or whatever—and if the claim of the opposition is that they did not win the vote because it got mucked up and they would rather that we extend them the courtesy of having the vote again so they can get a different result, and they are prepared to say that, I am prepared to agree to it.

Senator PARRY (Tasmania) (8.39 pm)—I need to respond to two matters in that. Firstly, we gave the courtesy to Senator Sherry of enabling that vote to be put again. Otherwise, it would have been clearly in our favour without any question. That was the first issue. The second issue is that Senator Fielding was not in the chamber and there was no division—I say through you, Chair, to the Leader of the Government in the Senate—so we did not know the will of the chamber. It was carried on the voices, and clearly Senator Fielding was not in the chamber at the time, so that could not have exposed the will of the chamber without a division. Our intention was to call a division. We were distracted (a) because of Senator Sherry calling it incorrectly and (b) because of the interruption of Senator Xenophon, and the chair indicated that the vote had been put. So I think it is quite clear that we were very tolerant at the time. All we are asking now is to test the floor of the Senate on that particular amendment.

The TEMPORARY CHAIRMAN—Is leave granted for the question to be recommitted?

Leave granted.

Senator SCULLION (Northern Territory) (8.40 pm)—I move opposition amendment (11) on sheet 5566:

(11) Page 18 (after line 12), after Schedule 3, insert:

Schedule 3A—Access to Aboriginal land
Aboriginal Land Rights (Northern Territory) Act 1976

1 Subsection 70B(2)
Omit “may” (first occurring), substitute “must”.

This is a very simple amendment. This is an issue that simply deals with the current discretion of the minister in whether or not they change regulations or impact on regulations to ensure that the permit system changes are invoked. I am not sure of the exact events, because we are no longer in government, but I am simply assuming that this was a drafting error that was not picked up in the House of Representatives. It certainly was not picked up here in the dozens of hours that we have been here. It is a bit of an old chestnut in politics—‘may’ is one term and ‘must’ is another. One is a compulsion and the other is obviously a matter of discretion. The legislation says that it is a matter of discretion.

As I have indicated before, the Labor Party have been consistent on this matter. During the debate on the intervention, they actually voted against the permit system. They lost that vote. Everybody thought it became law. That in fact was not the case, and my best recollection is that the legislation said, ‘On or before 18 February the minister may make regulations with regard to changing the permit system.’ On 17 February this year, the Minister for Families, Housing, Community Services and Indigenous Affairs released a media statement to say that the
permit system currently in place for the use of major roads to communities in the Northern Territory will continue, so certainly any notion that people have had that this is a reinstatement of the permit system is a falsehood. It is no mischief that there has been always been a permit system. You have always been required, in any part of Indigenous land, to have a permit. I think a lot of people were confused by that, and perhaps the media release was not circulated widely enough, but certainly that is the way it is. As I said, I am quite happy to accept the fact that the Labor government have done that—that has been completely consistent with their position.

What I think is so important is that when we go from this place, whatever the vote is on how we go about this matter, this is not a matter of discretion for the minister. It was never intended to be a matter of discretion for the minister and should not have been. When we pass things in this place, we do not say, ‘Whatever you reckon.’ We say that this is the way it should be, and that is why I think it was a drafting error. Our amendment simply puts beyond doubt the fact that the minister actually has to regulate to ensure that there are changes to the permit system that allow economic benefits to flow to these Aboriginal communities.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (8.44 pm)—We oppose the amendment on two grounds. One is the basic argument about the attempt to undermine the capacity to issue permits where appropriate. This is part of that overall approach by the opposition. The other aspect is that it is a nonsense. It does not have any effect, as far as we are concerned. The idea is that the minister must make a determination, but it does not say about what, where or when. I think it does not make any sense. But, in the sense of the main argument, it is just a continuation of the earlier and longstanding arguments about the role of the permit system.

Senator SCULLION (Northern Territory) (8.45 pm)—I accept a couple of your principles, Minister—that it does not really make a great impact. I take you on face value, in that you may not understand why we are putting it forward and you may not understand the importance of it. But the importance is that, without this change—and I think it was a legislative drafting process—on 18 February, the minister would have made the changes to the permit system. We would have been in a considerably different position now. As I have said, it is entirely consistent with Labor policy, and there is no mischief in this.

But I think it is really important that we ensure that, if regulations are to be made and if that is a determination of parliament, that is the way it should be. We should not have a vote in this place about the permit system, vote that the permit system should be changed and then say, ‘Except, of course, if the minister just says, “No, I don’t feel like it”,’ which is what happened last time. There is no mischief, but it was clearly not the intention to say, ‘We are going to give the minister discretion to be able to either change a regulation or not.’ Clearly it was the intent of parliament. Certainly it was my view that that was the case as we went through the permit system. In fact, the minister in her press statement indicated that it would continue on the day before the regulations said it had to be done by. I think that was timely, and, as I said, there is no mischief to it. But it is not the intent of the opposition to have the will of the Senate say, ‘We have to change these things—unless, of course, the minister decides otherwise.’ It really would not be a direction at all.

Senator SIEWERT (Western Australia) (8.47 pm)—I want to register the Greens’ opposition to this amendment. We have been
through this discussion on the permit system, so I am not going to hold up the chamber any longer, but we do not support this.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.47 pm)—I would like to record that Family First supports this. I know this is a new parliament, but the will of the last parliament was that permits be removed. Until the will of the parliament reflects a change to that, that should be the intention of it from there. The parliament so far has not agreed to have those permits put back in place. That is the reason why Family First supports the amendment by the opposition.

Question put:
That the amendment (Senator Scullion’s) be agreed to.

The committee divided. [8.52 pm]
(The Temporary Chairman—Senator GM Marshall)

<table>
<thead>
<tr>
<th>Ayes...........</th>
<th>28</th>
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<td>Noes...........</td>
<td>26</td>
</tr>
<tr>
<td>Majority.......</td>
<td>2</td>
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AYES
Barnett, G. Bernardi, C.
Birmingham, S. Boswell, R.L.D.
Boyce, S. Brandis, G.H.
Bushby, D.C. Colbeck, R.
Cooman, H.L. Ferguson, A.B.
Fielding, S. Fieravanti-Wells, C.
Fifield, M.P. Fisher, M.I.
Humfrries, G. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J. Nash, F.
Parry, S. * Payne, M.A.
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Williams, J.R. Xenophon, N.

NOES
Arbib, M.V. Bilyk, C.L.
Bishop, T.M. Brown, B.J.
Brown, C.L. Cameron, D.N.
Collins, J. Crossin, P.M.
Evans, C.V. Farrell, D.E.

Forshaw, M.G.
Furner, M.L. Hanson-Young, S.C.
Hurley, A. Hutchins, S.P.
Ludlam, S. Landy, R.A.
Marshall, G. McEwen, A. *
Pratt, L.C. Sherry, N.J.
Siewert, R. Stephens, U.
Sterle, G. Wortley, D.

PAIRS
Abetz, E. Hogg, J.J.
Adams, J. O’Brien, K.W.K.
Cash, M.C. Milner, C.
Cormann, M.H.P. Faulkner, J.P.
Eggleston, A. Wong, P.
Ellison, C.M. Moore, C.
Heffernan, W. Polley, H.
Johnston, D. Carr, K.J.
Joyce, B. Ludwig, J.W.
Minchin, N.H. Conroy, S.M.
Troof, R.B. McLucas, J.E.

* denotes teller

Question agreed to.

Senator SIEWERT (Western Australia) (8.54 pm)—I move Greens amendment (2) on sheet 5555:

(2) Page 19 (after line 8), at the end of the bill, add:

Schedule 5—Application of National Emergency Response Laws

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007

1 Section 4
Repeal the section, substitute:

4 Racial Discrimination Act

(1) Without limiting the general operation of the Racial Discrimination Act 1975 in relation to the following Acts:

(a) Aboriginal Land Rights (Northern Territory) Act 1976;

(b) Australian Crime Commission Act 2002;

(c) Australian Federal Police Act 1979;
(d) Classification (Publications, Films and Computer Games) Act 1995;
the provisions of the Racial Discrimination Act 1975 are intended to prevail over the provisions of this Act.

(2) The provisions of this Act do not authorise conduct that is inconsistent with the provisions of the Racial Discrimination Act 1975.

(3) The provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the Racial Discrimination Act 1975, intended to qualify as special measures.

(4) Any act done, any decision made and any discretion exercised under or for the purposes of this Act must be consistent with the intended beneficial purpose of this Act.

(5) In this section, a reference to any act done includes a reference to any failure to do an act.

4 Section 133
Repeal the section.

Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007

5 Section 4
Repeal the section, substitute:

4 Racial Discrimination Act

(2) The provisions of this Act do not authorise conduct that is inconsistent with the provisions of the Racial Discrimination Act 1975.

(3) The provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the Racial Discrimination Act 1975, intended to qualify as special measures.

(4) Any act done, any decision made and any discretion exercised under or for the purposes of this Act must be consistent with the intended beneficial purpose of this Act.

(5) In this section, a reference to any act done includes a reference to any failure to do an act.

6 Sections 5, 6 and 7
Repeal the sections.

This is the second part of the amendment that I referred to earlier regarding removing
the exemption from the Racial Discrimination Act. The two amendments are designed to reinstate the Racial Discrimination Act. I acknowledge that we have had the substantive debate. I am pleading to the government to have a change of heart and realise that this is implementing what they said they would do but earlier so that the exemption from the Racial Discrimination Act can be applied from now on. It is unjustifiable that they are waiting until a year from now before reinstate the Racial Discrimination Act to ensure that the Northern Territory emergency response and the provisions under that are no longer exempt from the RDA. As I said, we have had the substantive debate, so I simply move the amendment.

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (8.56 pm)—Senator Siewert made the point that we had the debate earlier when Senator Sherry had carriage of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008 for the government. As we made clear there, the bill before the Senate was crafted to ensure there were no new provisions which exclude the operation of the Racial Discrimination Act and, as the Senate is aware, our response to the review of the Northern Territory emergency response on 23 October was to commit to introducing legislation in the spring sitting of next year to bring the NTER legislation within the scope of the Racial Discrimination Act. I know Senator Siewert was urging us to do that earlier, but that was the view the government took. I do not think we ought to delay too long because, given what has happened to the bill with the amendments carried, the bill will be dead on arrival.

Senator SCULLION (Northern Territory) (8.57 pm)—I will just reiterate some of my earlier remarks for the benefit of the minister. I acknowledge the work that is being done by the government. When the previous government dealt with this, it was an emergency response. We acknowledge the time that it takes. It is a very difficult area, and we run the risk that, if extended legal proceedings take place, it will put at risk some of the principal planks of the intervention. That is something the opposition would be opposed to.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (8.59 pm)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [9.04 pm]

(The Acting Deputy President—Senator GM Marshall)

Ayes............. 28
Noes............. 26
Majority........ 2

AYES

Barnett, G. Bernardi, C.
Birmingham, S. Boswell, R.L.D.
Boyce, S. Brandis, G.H.
Bushby, D.C. Colbeck, R.
Coonan, H.L. Ferguson, A.B.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Humphries, G. Kroger, H.
Macdonald, I. Mason, B.J.
McGauran, J.J. Nash, F.
Parry, S. * Payne, M.A.
Ronaldson, M. Ryan, S.M.
Scullion, N.G. Troeth, J.M.
Williams, J.R. Xenophon, N.

NOES

Arbib, M.V. Bilyk, C.L.
Question agreed to.

Bill read a third time.

TAX LAWS AMENDMENT (2008 MEASURES No. 5) BILL 2008

Second Reading

Debate resumed from 25 November, on motion by Senator Ludwig:

That this bill be now read a second time.

Senator COONAN (New South Wales) (9.07 pm)—I rise tonight to support the Tax Laws Amendment (2008 Measures No. 5) Bill 2008. Like many of the TLABs that come before the Senate that have come before the Senate this year, this schedule is based on the work undertaken by the previous coalition government. I will briefly discuss the background to this schedule. The measures addressing the GST margin scheme were initially announced in 2005 as part of the Tax Laws Amendment (2005 Measures No. 2) Bill 2005. That bill proposed amendments to the GST margin scheme which the former Treasurer announced on budget night in May 2005 in Budget Paper No. 3. The coalition, after the announcement, embarked on extensive and widespread consultation regarding the changes. Following consultation, on 7 June 2005, the then Minister for Revenue and Assistant Treasurer, the Hon. Mal Brough, foreshadowed amendments to the bill and the coalition government deferred the tax integrity measure so that there could be further consultation. The consultations continued after the change of government, leading to the amendments seen in the bill that we are debating today. The point is, of course, that this has had a very long gestation.

The GST margin scheme essentially allows for the GST on certain taxable supplies of real property to be calculated on the margin—the margin being the difference between the purchase price and the sale price. The first aspect of schedule 1 ensures that, where the margin scheme is applied to real property that was previously acquired on a GST-free basis, the value added by the entity that made the GST-free sale is included in calculating the GST payable under the margin scheme. This ensures that the rules are brought back into line with the original intent of the legislation. The second aspect of schedule 1 ensures that the eligibility to use the margin scheme cannot be reinstated by
interposing a GST or non-taxable sale. The third aspect of the schedule strengthens general anti-avoidance provisions for schemes that are entered into with the sole or dominant purpose of gaining a GST benefit. According to the explanatory memorandum, schedule 1 is expected to have a positive impact on revenue collections of $523 million over the forward estimates.

Schedule 2 is a noncontroversial schedule that amends accounting standards in relation to the thin capitalisation regime. Specifically, it modifies the accounting treatment of specified assets and liabilities in relation to thin cap provisions. This amendment was necessary because of the adoption of the Australian equivalents of international accounting standards in 2005.

Schedule 3 is another noncontroversial schedule that extends an exemption from interest withholding tax for state and territory government bonds. This schedule amends section 128F of the Income Tax Assessment Act 1936 and is expected to see a reduction of $64 million in revenue over the forward estimates.

Schedule 4 is also a noncontroversial schedule that makes changes to the fringe benefits tax treatment of jointly-held benefits. In National Australia Bank Ltd v Federal Commissioner of Taxation, the court held that an employer could reduce the entire taxable value of a fringe benefit provided jointly to an employee and third party—typically their partner—in relation to an income-generating asset. This was a significant departure from the generally held tax principles of income and deductions. Schedule 4 seeks to address this anomaly by requiring an employer to adjust the taxable value of the fringe benefit according to the proportion of the jointly-held asset that the employee owns. This schedule is expected to deliver a revenue-positive amount of $49 million over the forward estimates.

The last schedule in this bill, schedule 5, amends division 6C of the Income Tax Assessment Act 1936 to change the eligible investment business rules for managed investment funds. This is likely to be an interim measure. The measures in this schedule, subject to certain conditions, include a definition of the term ‘investing in land’ to include fixtures, chattels and moveable property. The schedule also expands the range of financial instruments in which a managed investment trust can invest from the current specified instruments that are listed in division 6C. The schedule also introduces the following safe harbours: a two per cent safe harbour for non-trading income set at a whole-of-trust level and a 25 per cent safe harbour for non-rental, non-trading income from investments in land for public unit trusts investing in land for the purpose of deriving rent.

This bill was referred to the Senate Standing Committee on Economics for inquiry and recommendation. The committee received six submissions and also held a public hearing in Canberra on 28 October 2008. And I should record my thanks to the committee for their usual diligence and good work—with, I must say, an enormous workload in looking at many bills. During this inquiry, only schedule 1 attracted any significant criticism, which was why I spent a little more time on it earlier in my remarks. The committee, likewise, also paid attention to the detail of schedule 1 in its report.

The Urban Development Institute of Australia and the Property Council of Australia both expressed concern that the proposed legislation would act as ‘an increased tax on new housing developments’, thus ultimately being passed on to the home buyer. Treasury, however, disagreed and suggested that
groups like the Urban Development Institute of Australia and the Property Council of Australia had overstated the effect that the proposed changes would have on house prices and housing supply. Interestingly, the committee’s view of this was:

The committee agreed with the Treasury that the proposed changes to the legislation would not have a significant impact on the cost of housing. The measures—in schedule 1—

only affected a very small proportion of the housing market. Moreover, only a proportion of the cost would be passed onto homebuyers, with some passed back to the suppliers of land and some borne by the property development sector in reduced profits.

So, obviously, I have put some weight on the committee’s finding. It was the recommendation of the committee that the Senate support the bill, and that is a view that I share. Again, on behalf of the coalition, I indicate our support for this bill.

Senator HURLEY (South Australia) (9.16 pm)—I think Senator Coonan has outlined very clearly the schedules involved in the Tax Laws Amendment (2008 Measures No. 5) Bill 2008. Indeed, as Senator Coonan said, the Senate Standing Committee on Economics spent most time looking at schedule 1, which was the subject of the submissions to our committee. Schedule 1 seeks to amend the GST act—A New Tax System (Goods and Services Tax) Act 1999—to overcome tax minimisation involving the use of the margin scheme and the sale of real property as a tax integrity measure. There is no suggestion that people have been acting illegally in the past, but there was concern that it might have become an avoidance measure under the act. This schedule seeks to align the antiavoidance provisions in the GST act with the antiavoidance provisions in part IVA of the Income Tax Assessment Act.

This arose because special rules existed for real property that allowed taxpayers an alternative means of calculating GST. These rules became known as the margin scheme. The margin scheme was generally used for new residential property developments. The example was given that party A, a GST registered party, sold land under the margin scheme to party B, a GST registered property developer. Party B began construction on new residential premises on the land and then sold to a third party as a GST-free going concern. The third party then completed the construction and sold to the consumer. In this case, the only GST collected from the transactions between A, B and C and the final consumer left a loophole where no GST was paid in the interim period. That had some justification, I think, because the example used was where farmers, for example, developed land to a certain stage and then on sold it. There was no suggestion that the farmer as a going business should pay GST on the partly developed land, but there was a concern that it had developed into an avoidance provision.

There was then the concern, as Senator Coonan mentioned, that the measure to close the loophole might add to the cost of housing property. Of course, at this particular time, this is a great concern. So the committee did consider this in detail. The committee did accept the Treasury’s position that it would not cause a significant increase in property prices. The ABS data of building activity in Australia indicates that only 1.5 per cent of all residential property sales will be affected by the amendment, thus counteracting any concerns as to housing affordability. So there would be a minimal impact on house prices from this measure. It will ensure a level playing field for those in the property industry; whereas, under the current scheme, there may be an opportunity for above normal profits for certain property developers. The
committee agreed that this measure overcame an anomaly in the GST act. The financial impact of the proposed change will be a total of $523 million over the next four years. This is within the context of the total taxable value of new residential property, which is estimated at least $120 billion over four years. I think this small proportion of properties that would be affected allayed the committee’s concerns about any impact on housing prices arising out of this measure.

The other schedule which attracted some interest from submissions was schedule 3, which seeks to extend the interest withholding tax exemption to state and territory government bonds to bring about a better functioning state and territory bond market. This was strongly supported by two submissions and does indeed allow state and territory governments to have a better functioning bond market. The main concerns of the state central borrowing authorities were that the current arrangement segments the market, reduces liquidity and efficiency for the state markets and causes some hampering of the role of the state bond market. The extension of the eligibility for the interest withholding tax to domestically issued state government bonds was welcomed by operators within that market and, so I understand, state governments. I commend this bill to the Senate and am pleased to support all the schedules contained within it.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (9.23 pm)—I thank all honourable senators who have made a contribution to this debate on the Tax Laws Amendment (2008 Measures No. 5) Bill 2008. The GST and sale of real property measure was announced in the 2008-09 budget. The GST and sale of real property measure was announced in the 2008-09 budget. The changes will only apply prospectively from the date of royal assent so as not to impact on existing contractual arrangements.

Schedule 2 modifies the thin capitalisation rules to allow entities, when identifying and valuing assets and liabilities for thin capitalisation purposes, to depart in certain circumstances from the treatment provided by Australian accounting standards. The amendments are necessary to adjust for certain impacts of the adoption of Australian equivalents of the International Financial Reporting Standards on the thin capitalisation position of complying entities.

Schedule 3 makes bonds issued in Australia by state and territory central borrowing authorities eligible for exemption from interest withholding tax. This amendment will result in the states and territories being able to bring their offshore bond issuances onshore, unifying their issuances into one pool of funds, and improving depth and liquidity in the market. This should lead to a lower cost of capital and financing costs for the states and territories and aid in easing some of the pressures currently facing the Commonwealth government securities market.
Schedule 4 rectifies an anomaly in the fringe benefits tax law to ensure that fringe benefits associated with jointly held investment assets are calculated appropriately. Under certain salary sacrificing arrangements, associates of employees can receive a share of a fringe benefit made available to an employee. The current anomaly is that the associate’s share of the fringe benefit may often not be considered in the calculation of fringe benefits tax. As a result of these changes the fringe benefits tax law will now recognise the benefit being provided to associates of employees who hold investment assets jointly with the employees. The measure will have effect from 7.30 pm Australian Eastern Standard Time on 13 May 2008. However, there will be a transitional period for employees who have already entered into salary sacrificing arrangements with their employer. Arrangements that were put in place prior to announcement in this year’s budget will be able to continue under the existing law until 1 April 2009—that is, the end of the current FBT year. This will provide time for employers and employees to adjust salary packages as appropriate for those private arrangements.

Schedule 5 implements amendments to the eligible investment business rules for managed funds contained in division 6C of the Income Tax Assessment Act 1936. These amendments were designed following extensive consultation with the managed funds industry and with professional bodies. The safe harbours address industry concern with the operation of division 6C by making it easier for managed funds to comply with the eligible investment business rules. The amendments reduce the scope for funds to breach these rules inadvertently, thus lowering their compliance costs.

These amendments are part of the government’s plan to make Australia a financial services hub in the Asia-Pacific region. To date, the government has taken action on a number of fronts to further this objective, including reducing the level of withholding tax on distributions from Australian managed funds to non-resident investors. The government has also asked the Board of Taxation to review the taxation arrangements applying to managed investment funds. The board is due to report to government by the middle of 2009. These amendments are an initial reform, pending the outcome of the board’s review. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

Ordered that consideration of this bill in Committee of the Whole be made an order of the day for the next day of sitting.

TAX LAWS AMENDMENT (EDUCATION REFUND) BILL 2008

Second Reading

Debate resumed from 12 November, on motion by Senator McLucas:

That this bill be now read a second time.

Senator MASON (Queensland) (9.27 pm)—The Tax Laws Amendment (Education Refund) Bill 2008 amends the Income Tax Assessment Act 1997 to introduce the education tax refund. The education tax refund will provide a 50 per cent refundable tax offset for eligible education expenses up to a maximum of $750 for children undertaking primary education studies and $1,500 for children undertaking secondary education studies. The coalition will support this bill.

The education tax refund is a budget measure which has its origins in a 2007 Labor Party election policy. The education tax refund will provide a 50 per cent refundable tax offset for eligible education expenses up to a maximum of $750 for children undertaking primary education studies and $1,500 for children undertaking secondary education studies. The coalition will support this bill.

The education tax refund is a budget measure which has its origins in a 2007 Labor Party election policy. The education tax refund will provide a 50 per cent refundable tax offset for eligible education expenses incurred from 1 July 2008 and will therefore be claimable from 1 July 2009. Eligible expenses for the education tax refund include the purchase, lease or hire-purchase of computers and computer related equipment,
computer software, home internet connections, school textbooks and other paper based school learning material, and prescribed tools of trade.

Senator Parry interjecting—

Senator MASON—I may get to that shortly, Senator Parry. The government is right to be concerned about primary and secondary education in this country. I have little doubt about the sincerity of the Minister for Education, Ms Gillard, and indeed the minister representing her in the Senate, my good friend Senator Carr. They are right to say that the challenges that face us are large. And while the detail is still sketchy, I am pleased to note the new approach to schools and teaching outlined recently by Ms Gillard. Standards, accountability and transparency are goals very well worth pursuing. I wish the minister luck and I hope that she will not be hindered in pursuing these reforms by recalcitrant teaching unions, as the Howard government sadly was.

The Chief Executive of News Corporation, Mr Murdoch, said in his recent Boyer Lecture that education in this country is not a pretty picture. He said:

The unvarnished truth is that in countries such as Australia, Britain, and particularly the United States, our public education systems are a disgrace. Despite spending more and more money, our children seem to be learning less and less—especially for those who are most vulnerable in our society.

Mr Murdoch’s views are supported by research conducted by the Australian National University. This research published early this year found that despite per child spending on education having increased substantially since the 1960s, literacy and numeracy performance among Australian students is no better now than it was back in the 1960s and the 1970s.

Senator Conroy interjecting—

Senator MASON—The finding that the literacy and numeracy of Australian students has not improved since the 1960s truly is a disgrace. Mr Murdoch is right about that. This is not a partisan point, Senator Conroy. This is a point that goes not so much to federal governments but also to state governments. The fact that there has been this extra expenditure by state and federal governments and no increase in literacy and numeracy is a disgrace. Moreover, Mr Murdoch concludes:

… a public school system that does not serve the least of society betrays its mission. The failure of these schools is more than a waste of human promise, and a drain on our future workforce. It is a moral scandal that no one should tolerate. A basic education—and the hope for a better life that it brings—ought to be the first civil right of any decent society.

It is all very well to talk about equality but schools must also be held accountable. I was very lucky and had a good education and indeed I think most people here did as well. But it is always the children of the disadvantaged that suffer the most and have fewer options than the elite because of poor education. As Mr Murdoch points out, it is not that the poor are getting poorer; it is that the economic rewards to the skilled and the educated are making them much richer. Certainly the Senate Standing Committee on Economics and their report on this bill unanimously agreed with that and said:

Cross-country comparisons of economic growth generally suggest that increasing education is beneficial for the economy (in addition to its other merits) …

It is not only the interests of the individual students and their families that benefit from this program but society much more generally. I have always thought that education is more than simply an economic good. It promotes civility, it appreciates complexity and it provides those with an education a critical capacity and a sense of perspective and of
proportion. These are all things that I am sure you would agree were perhaps lacking seriously in the 20th century.

The coalition supports this bill because it does provide some relief to parents in relation to certain education expenses. But we believe that the bill could have been improved by more fully promoting choice and promoting flexibility.

The government’s proposal centres on information and communications technology. While important perhaps—and we concede that—these expenses are not necessarily the most important faced by parents. Parents should have greater flexibility to make choices about the sorts of expenses they can claim under the education tax refund. For example, for many low-income families their greatest priority is not securing a computer or internet access but getting uniforms and paying the costs of excursions and school camps. Many parents might believe that their refund would be better spent on these more immediate priorities.

While the government has said much about early childhood education and has even devoted a member of the executive with a special responsibility for early childhood education, the opposition also notes that education expenses in relation to preschool education are not eligible for the education tax refund. Again, parents might believe their child would benefit from assistance with these expenses more than with the narrower opportunities provided pursuant to this bill.

Perhaps the most fundamental problem with this bill is that, whereas the government is keen to assist parents in ICT related matters, that assistance will only go so far. We now know that the cost of computers, for example, is only about one-fifth of the total cost of operating them. We now know that the Rudd government has grossly under-budgeted its digital education revolution by failing to take into account those one-off and ongoing costs connected with the installation and maintenance of computers. We also now know after exhaustive sessions in Senate estimates, from public stoushes between the federal government and state Labor governments, including former New South Wales Treasurer Mr Costa’s infamous attempt to extort money from the Commonwealth government, as well as documents available under FOI, that state governments have refused to pick up the tab and pay the costs of implementing federal Labor’s election promises. And who can blame them?

The Labor government has promised to deliver computers to the one million year 9 to 12 secondary students in this country. They have budgeted $1,000 for the capital costs of each computer and all the associated costs such as internet connection, software, computer support, upgrade and electrical wiring, storage, insurance and so on. Everyone now knows that even if each laptop only costs $500—and that is a very low and a very generous estimate—based on the one to four ratio I mentioned earlier, all the additional one-off and ongoing costs will be at least $2,000 on top of that. So $1,500 has not been budgeted for.

Just tonight, very cunningly, at five to five this evening, in response to a question on notice I had asked at Senate estimates about the Commonwealth’s estimates of the ongoing costs of computers—guess what? The final report entitled Review of legitimate and additional financial implications of the national secondary school computer fund was released. I might add that it is dated 3 September 2008. So it has been sitting on the desk of the Deputy Prime Minister and education minister, Ms Gillard, since 3 September. Now we have it, nearly three months later.
I quote from the top of page 7: ‘The Commonwealth’s review has determined that a reasonable overall estimate of the cost of deploying each additional computer is $2,500 over four years.’ So, after all the horror, all the tempestuous behaviour at estimates, in the end the government finally conceded that the $1,000 they budgeted for is $1,500 under budget per computer. Multiply that by a million computers—my maths is not very good, but that is about $1.5 billion.

But I also learnt something very interesting a bit after five o’clock this evening. The government proposes to give $800 million to the state governments at the COAG meeting on the weekend to help pay for this, so there is another $800 million that has not been looked at in the forward estimates that will also be added to the budget deficit—$800 million at least—and the government itself says that will not be enough. So we are really looking at an extended budget deficit probably in excess of another billion dollars. It is a huge turnaround, but at least, after making an election promise in November last year, the government has at long last—12 months later—finally released some estimates to the public. The government is pretty generous to itself; they are very low estimates, but even the government has said $2½ thousand. On page 27 of the report, we see the estimates that the states believe and they are nearly always between roughly $4½ thousand and $5,000, which is roughly twice the estimate of the Commonwealth government. But, even if we take the Commonwealth government’s very, very low estimates, it is still $1½ billion underbudgeted. We will no doubt hear a lot more about that in the ensuing week.

The New South Wales Labor government have said that they will not pay the difference and they will not take any more computers until the federal government accepts the expenses and commits to footing the bill. Other governments say the same thing. Whether the $800 million secured for COAG by the Commonwealth government this weekend will satisfy the states, I do not know, but it is another $800 million to the deficit.

Just as with all other initiatives of the Rudd government: voter beware! So it is too with this bill. The refund will cover some but not all the costs of acquiring and running a computer. It is a good start perhaps, but parents should be mindful that it is not a one-stop-shop solution to their educational IT needs at home. The coalition believes that greater flexibility in the sorts of eligible expenses claimable as an education tax refund would be beneficial to parents and students, especially expenses such as school fees. This was the coalition’s policy before the last election, and we believe that such flexibility would greatly enhance the utility of this bill. Still, this bill is a step forward for education in this country, and the opposition will support it.

Senator FARRELL (South Australia) (9.40 pm)—I seek leave to incorporate the speeches of Senator Catryna Bilyk and Senator Helen Polley.

Leave granted.

Senator BILYK (Tasmania) (9.41 pm)—The incorporated speech read as follows—

I am delighted to rise in support of the Tax Laws Amendment (Education Refund) Bill 2008. This Bill will be of great benefit to parents across the nation—and it is a Bill that many people have been waiting for over a very considerable time, over 11 years, but of course it falls to us, a Rudd government to deliver it.

About the Bill

This Bill will deliver to parents a refund of 50 per cent of eligible expenses incurred in meeting the costs of their children’s primary or secondary education.
Parents will be entitled to a tax offset of up to $375 per child in primary school and $750 per child in secondary school.

Assuming these amounts aren’t increased this adds up to a saving of $7,125 per child over the course of their schooling.

Some of the equipment for which parents may incur expenses eligible for the Education Tax Refund (or ETR as it is commonly known) include laptops, home computers, internet access, printers and paper, educational software, school textbooks and prescribed trade tools.

This Bill delivers on the Rudd government pre-election commitment to introduce the ETR and provide some welcome relief for families with schoolchildren.

And of course, every parent wants their child, or children, to have the best opportunities in life - and that means giving them the best education possible.

Providing even the basics for a child’s education involves some financial sacrifice and that can put some strain on the family budget.

This Bill will deliver realistically in the budgets of ordinary, everyday families. It will help to ease some of that burden.

The Rudd Government made this commitment before the last Federal Election because we recognise that you can’t have an Education Revolution without parents being able to meet the basic costs of putting their children through school.

The ETR will be provided to families on the basis of need.

This is why parents will be eligible the Education Tax Refund in respect of children for whom they are also eligible for Family Tax Benefit Part A.

However, there are concessions for certain families that fail to meet the full eligibility for the ETR.

The ETR has been expanded to include these concessions so that its administration is fair and it is applied where it is most needed.

For example, if a parent has a child who receives income support such as Youth Allowance, AUSTUDY or the Disability Support Pension — but would otherwise have been eligible for Family Tax Benefit Part A in respect of that child, they will still be eligible for the ETR for that child.

Families who share receipt of Family Tax Benefit Part A or have shared care arrangements will share the ETR just as Family Tax Benefit Part A is shared.

If a child enters or leaves school in any year, their parents will be eligible for an amount of the ETR attributable to the half of the financial year that they attended school.

If a student transitions from primary to secondary school during a financial year their parent will be eligible for the ETR based on the secondary school rate.

Parents with home-schooled students will be eligible for the ETR if their child is registered with the relevant state or territory authority.

Students living independently will also be eligible for the ETR.

It is estimated that eligibility for the ETR will extend to 1.3 million families extending to 2.7 million students.

And may I say, one of the great things about this Bill is that it doesn’t matter which school you go to.

Promoting the ETR

I have written to a number of schools in Tasmania advising them of the Rudd Government’s commitment to legislating for the Education Tax Refund.

Some schools have communicated this information to parents through their school newsletters or other means.

I have done this because it is important for parents to be aware of the ETR even before it has been legislated.

I have been urging parents to make sure that they keep receipts for expenses incurred in respect of their children’s schooling in case they are eligible to claim the ETR in their 2008-09 income tax return.

Parents should keep receipts for any expenses incurred after 1 July 2008 for which they think they may be eligible for an Education Tax Refund.
Of course, parents should seek advice from the Tax Office or a registered tax agent if they’re not sure whether they are eligible for the ETR or don’t know what expenses they are entitled to a refund for.

Those eligible to claim the ETR will be able to claim it for the first time in their 2008-09 tax return.

There are some parents eligible for the ETR who will not otherwise be required to lodge a tax return.

For these parents, a simple form will be available from the Tax Office to allow them to claim the ETR without having to complete a tax return.

**Importance of the ETR**

It is estimated that the Education Tax Refund will cost $4.4 billion over the next four years.

It’s important to remember that when the Prime Minister—then Opposition Leader—announced Labor’s policy of delivering the ETR during the 2007 Federal Election, it was released at the same that we announced our income tax policy.

We were able to fund the ETR by holding off tax cuts that the Coalition had proposed for people earning a taxable income of over $180,000 per year.

It was our view at the time—and it remains our view—that people earning that sort of money are probably doing okay at the moment.

We thought that parents struggling to meet their children’s school expenses are in a bit more need of help.

Of course, we could have just as easily offered a general tax cut to parents of schoolchildren so that they would have had a choice to spend it on whatever they liked.

But the ETR is about more than just assisting parents to meet the expenses of raising school age children.

It’s about providing incentives for parents to invest in their children’s education.

And what better incentive is there than reducing those costs each year by $375 or $750 per child?

A general tax cut could be spent indiscriminately, but some of the constituents who have contacted my office have commented to my office that they are considering purchasing computers for their children’s education if they are eligible for the ETR.

Given the prevalence of information and communications technology in schools nowadays, being able to study on a home computer puts students at a huge advantage.

Of course, there are many other basic expenses that parents could have subsidised by the ETR.

Many public and private schools prescribe specific textbooks for their subjects.

The way the Australian dollar has been performing recently as a result of the global financial crisis means that prescribed textbooks sourced from overseas will now be more expensive than before.

School textbooks will now be more affordable from year to year, as will the large quantities of stationery that parents often have to buy.

As has been the continuing case since the change of government last year the Coalition has yet again criticised a Rudd government initiative.

There have been comments made that the ETR is not broad reaching enough, but let’s consider what would have happened had they been elected.

Not only were they going to retain their tax cuts for people earning over $180,000 a year, … but that were going to add to that an Education Tax Refund that would have cost three times as much as ours.

Of course they only came up with their policy for a tax refund as a direct response to ours.

But faced with a proposal that was so well received by ordinary Australians—one that helped families with schoolchildren meet the costs of living but also gave them some incentive to invest in their children’s education—they reverted to their instinctive response—which is to try and spend their way out of trouble.

Rather than consider how best to target assistance they took a scattergun approach and decided to try and outbid us.

This was a pattern they began in 1998 and it saw them through several elections, so much so that their response to a political crisis became almost involuntary in their response:

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**CHAMBER**
Oh! We have a problem with this specific demographic—let’s throw some money to that area—and hopefully this will get us votes.

It was partly because voters were sick of this reckless spending and, of course, they knew they were being misled—that many people decided to vote the Coalition out.

It has only been by putting the brakes on reckless spending that the Rudd Labor Government was able to build up a $22 billion surplus, a surplus that was continually attacked and eroded in this place by those opposite.

I would like to know how the Coalition would have responded to the global financial crisis without a decent surplus to use to stimulate economic activity.

They would have had two choices, revert to borrowing for their economic stimulus or ignore the crisis and let the economy suffer.

While Australia’s economy is in a better position than most to withstand the global financial crisis, our position could have been much improved had the previous Government not failed to invest in the drivers of productivity.

And one of the greatest drivers of productivity is education, training and skills development.

That’s why Australia needs an Education Revolution.

The Education Revolution

The Education Tax Refund is an important plank in the Rudd Government’s Education Revolution.

All up the 2008-09 Budget includes $19.3 billion to deliver the Government’s election commitments to education over the next four years.

The Rudd Government has established an Office of Early Childhood Education and Child Care in the Department of Education, Employment and Workplace Relations.

One of the Office’s major roles is to implement our commitment to deliver universal access to 15 hours a week of early childhood education for four-year-old children.

The early years of a child’s life are the most crucial in regard to brain development.

And scientific research points to the critical importance of an appropriate learning environment for very young children.

I cannot emphasize enough how important this fact is.

In fact—the foundation of neural structures in the frontal lobes of the human brain are not fully developed until approximately the age of twenty-four.

This means the brain continually develops, and we know that in order to achieve full potential a child needs interaction in all types of environments, and it is easier to learn new skills and take in knowledge when young as opposed to later in life.

An extra year of early learning could make a huge difference in the educational attainment of Australia’s children.

The Rudd government focus is revolutionary.

It starts with very young children and if we want to look for the areas of greatest disregard by those responsible for education during the Howard years, then this is where we begin—because there has been many OECD surveys pointing to the shameful underperformance of Australia when it comes to investing in the early years of education.

Let’s remember that in 2006 Australia was ranked 25th out of 26 countries on the OECD indicator looking at the proportion of students enrolled in pre-primary education—hardly a ranking to be proud of, in fact members of the Howard Government should hang their heads in shame.

Let’s also remember, there was a comprehensive failure by the Howard government to invest in the professional training of those who care for very young children.

That is an area where the education revolution is being focused: on investing in the qualifications of those who care for our very important young people.

The Rudd Government believes it important for students to develop the basics in education and we want a focus on skills in literacy and numeracy.

The Government’s National Action Plan on Literacy and Numeracy targets the students who need
it most and includes funding specifically targeted at Indigenous students.

Another important initiative is the development of a National Curriculum, which will ensure that there is consistency across states and territories in what students learn.

One of the advantages of the National Curriculum will be that students can move across state borders and continue their education where they left off with minimal disruption.

It will also help to develop more comparable university entrance criteria.

We also need to make sure that students of the twenty-first century are equipped with the tools of the twenty-first century.

The Rudd government is working hard to develop a highly skilled workforce, including funding for trades training centres in secondary schools which will encourage more secondary students to learn a trade.

Our pre-election commitment to provide 450,000 new training places over four years was extended by the 2008-09 Budget.

We will now provide 630,000 new training places over five years including 85,000 apprenticeships.

We have established Skills Australia to advise on current and emerging skills needs.

The Howard Government in its 11 years failed to undertake a serious assessment of Australia’s skills needs and it was this failure that led to the skills crisis that we faced when we took Government in 2007.

The Rudd Government will also be undertaking a major reform of employment services, which will provides incentives to Job Network members to support the most disadvantaged job seekers.

Finally, we have created an $11 billion Education Investment Fund, which includes the $6 billion from the existing Higher Education Endowment Fund.

This fund will support capital works at educational institutions throughout Australia including universities, research facilities and vocational institutions.

The Education Revolution may be a series of programs, but it is a comprehensive series that addresses the various aspects of education that need addressing.

We have provided funding that supports the built infrastructure in our educational institutions.

We have invested in early childhood education and are undertaking reforms to ensure that schools provide quality education right through primary and secondary school through our initiatives on school accountability, the National Curriculum and literacy and numeracy.

We are investing in skills through new training places and trades training centres.

And finally, we are undertaking major reforms of employment services to make sure that all Australians regardless of their educational attainment are able to find work, especially the most disadvantaged jobseekers.

All these policy proposals do not stand alone but fit together like a jigsaw puzzle to create a comprehensive, quality education system from early childhood right through to vocational education and training and university.

Throughout the development of the Education Revolution, we are implementing our policies through a process of negotiation through COAG.

This is a recognition of the role of the states and territories in education as well as the need for a national education agenda.

This is why a spirit of co-operation with the states and territories is vital to the Education Revolution.

It is a stark contrast with the big stick approach to dealing with the states taken by the previous Government.

Instead of negotiating with the states they threatened to withhold new funding unless the states did things their way.

You would think that they would have used this power for a serious undertaking like comprehensive reform in education or helping lift the performance of underperforming schools.

But instead, they used it to make sure that schools installed flagpoles.

I don’t recall flagpoles ever being particularly high on the COAG education agenda.
So where does the Education Tax Refund fit in to the Education Revolution?

- It recognises the important role of families in supporting students through school.
- It provides an incentive for parents to invest in the education of their children and to take an interest in their children’s material educational needs.

The ETR is of particular importance to my home state of Tasmania.

According to ABS statistics, Tasmanians earn less income on average than any other Australian state.

One of the really unfortunate impacts of socio-economic disadvantage is that some parents, while able to get a quality education for their children through the public school system, cannot always afford to support them with the basic expenses that inevitably arise.

Ironically, education is most reliable way of getting out of a cycle of poverty.

The ETR will go some way towards helping families meet those expenses.

The fact that it is a fully refundable tax offset rather than a deduction, means that although it supports families of various means it still provides relief to those most in need.

It is with great pleasure I stand here to talk about this very important bill which delivers on the promises that Labor made during the campaign and continue to fund and maintain while in office.

I commend the Bill to the Senate.

Senator POLLEY (Tasmania) (9.41 pm)—The incorporated speech read as follows—

Mr President, thank you for allowing me this opportunity today in the Senate to speak on the Tax Laws Amendment (Education Refund) Bill 2008.

This Amendment was one of our key election commitments. It will enable thousands of Australian school children to obtain necessary items for their schooling.

Parents understand the importance of their children’s education. That’s why Australian parents work so hard to give their children the best possible start in life. Parents make sacrifices so their children can succeed. Parents face a range of pressures and they have many responsibilities.

The Education Tax Refund comes in the wake of reports over several years that have highlighted the difficulties of schooling costs for low-income families.

For example, the Brotherhood of St Laurence’s 2007 Education Costs Survey found 72 per cent of respondents could not afford items for that would ‘improve the education experience of their children’ and two-thirds did not have a home computer with Internet access. About 60 per cent had difficulty paying for books and almost half reported difficulty paying for equipment.

Federal Labor believes that Australian parents are doing a great job. But we also understand that parents appreciate a bit of extra help when it is available.

The cost of equipping children for school is significant. Computers, printers, scanners, computer software, internet connection, text books—these all add up.

Families are already facing a range of cost pressures—mortgages, petrol prices and grocery bills, just to name but a few. Add the costs of getting your kids ready for school, and then supporting them throughout the year with uniforms and school camps fees present a real challenge for a lot of families.

Research from the Department of Families, Community Services and Indigenous Affairs suggests that the costs of raising a child increase as children grow older.

The costs for one child can increase from $8,300 a year for a six year old, to over $10,000 a year for a 14 year old. These are gross costs, before government payments and child care costs.

We recognise this, and that is why we are offering this help.
Surveys show that parents of primary school children can expect to pay between $58 and $129 in books alone, and an average of over $1,300 for computer and Internet costs. For secondary school children it can cost parents from $148 to $619 for books, and an average of over $1,600 for computer and Internet costs. This survey is across government, Catholic and Independent schools.

Investment in education is central to the next wave of economic reform that will position Australia as a competitive, prosperous, knowledge-based economy that can compete and win in global markets.

If Australia is to continue to succeed economically it needs a highly skilled and productive workforce. The key to building such a workforce is ensuring that all kids get a world-class education.

Our $4.4 billion Education Tax Refund builds on Labor’s Education Revolution - a core part of Labor’s strategy to drive Australia’s long-term economic prosperity.

The Rudd Labor Government is committed to implementing an Education Revolution. We recognise that education is the engine room of prosperity and helps create a fairer, more productive society.

Ultimately, it is the most effective way we know, to build prosperity and spread opportunity.

The Education Revolution is a key element of the Australian Government’s agenda as it is central to the goals we have for this nation:

- Building a Stronger Future—Increasing Australia’s capacity to sustain higher economic growth with low inflation through increasing the skills base of the labour force and aligning that skills base with the needs of the economy.
- Building a Fairer Australia—Raising the skills and capacity of all Australians, particularly those with low skill levels, is essential to ensuring equity in the economic, social and political life of the nation and
- Preparing for Future Challenge—Australia faces significant changes to its social and economic environment through an ageing population and increasing international competition.

The nation must invest in developing a world class education system and drive development of a workforce that is highly skilled, flexible and adaptable in responding to increasing global competition for skills.

If Australia is to rise to these challenges, we need a revolution in the quality of our education outcomes, the nature of our investment in education and in collaboration between governments and the education and training sectors.

The Australian Government considers that the COAG reform agenda must deliver real changes in three core areas:

1. Raising the quality of teaching in our schools.
2. Ensuring all students benefit from schooling through strategies based on high expectations of attainment, engagement and transitions for every student, especially in disadvantaged school communities.
3. Improving transparency and accountability of schools and school systems at all levels.

A key part of our education revolution is helping parents meet the everyday costs of their children’s education.

We want to helping parents meet the costs of the books and the computers and the software our kids need, to get the best start.

That’s why the Federal 08/09 Budget included $4.4 billion to create a new Education Tax Refund.

The Education Tax Refund is a refundable tax offset of 50 per cent of eligible education expenses for children undertaking primary and secondary school studies.

About 1.3 million families, with 2.7 million students, will be eligible for the Refund.

Under the plan eligible families will be able to claim 50 per cent of eligible education expenses up to $750 for each child undertaking primary school, to provide a maximum tax offset of $375 per child, per year.

For children undertaking secondary school studies families will be able to claim 50 per cent of
their eligible expenses up to $1,500 per child, to give a maximum tax offset of $750 per child, per year.

Families entitled to Family Tax Benefit Part A for children in primary or secondary school in the relevant financial year are eligible for the Education Tax Refund.

Eligibility for the Education Tax Refund also extends to parents with school children who would be eligible for Family Tax Benefit Part A but for the fact that the child is receiving certain payments or allowances, such as Youth Allowance, ABSTUDY Living Allowance, Disability Support Pension, payments under the Veteran’s Children Education Scheme and payments under the Military Rehabilitation and Compensation Act 2004.

We have also taken into consideration families with shared care arrangements. In this instance, arrangements for the Education Tax Refund will be shared, just as Family Tax Benefit Part A is shared.

Families with home-schooled students, who are registered with their State or Territory government, may also be eligible to claim the Education Tax Refund. It is important to note that students undertaking school studies who are independent of their parents may also be eligible.

For students making the transition from primary to secondary school in a single financial year the full Education Tax Refund, based on the secondary-school rate, can be claimed. Families with students who enter or leave school in any school year are able to claim the Education Tax Refund for the half of the financial year that they attend school.

Eligible expenses that have been incurred by a parent or guardian with more than one child with an Education Tax Refund entitlement can be pooled and claimed against the children’s combined Education Tax Refund entitlement, provided that the children all have access to the purchased items.

As you can see, this program is available to many students. This program will help so many working families meet their children’s educational expenses. This Government cares about working families, and, unlike the previous Government, we are not going to deny our children of the education they deserve.

Eligible expenses for the purposes of the Education Tax Refund are laptops, home computers, printers, paper, education software, school textbooks and associated materials and trade tools. This includes purchase, lease, hire or hire-purchase costs of these items. In addition, the expenses of establishing and maintaining a home Internet connection are also included.

This measure is designed, together with other measures in Labor’s Education Revolution, to lift school retention rates long-term — where Labor’s target is to increase year 12 equivalent retention to 90 per cent by 2020.

According to research by the OECD, the growth rate of the economy would be up to 1 per cent higher if the average education level of the working-age population was increased by one year.

This plan is an excellent example of how the Rudd Labor Government is doing the right thing by working families.

The tax offset will apply to eligible expenses incurred from 1 July 2008. Those eligible for the Education Tax Refund should start keeping receipts to allow them to claim the tax offset in their 2008-09 income tax return from 1 July 2009.

For those not required to lodge an income tax return, they will be able to access their entitlement to the offset through the Australian Tax Office by lodging a separate form at the end of the 2008-09 financial year.

This scheme will help families invest in their children’s education — at the same time that the Government is investing in a better education system.

Federal Labor believes that better education is the cornerstone of a decent society. We know that education increases productivity and participation, it builds prosperity, and it also offers the hope of breaking the intergenerational cycle of poverty.

While our predecessors spoke of improving Australia’s education system, we are getting on with the job of real education reform. Those opposite should be ashamed of their record on education.
May I take this opportunity to remind the Senate that the Howard Costello 2007 Federal Budget delivered private schools a $1.7 billion increase over the next 5 years to rise to $7.5 billion, while public schools received only $300 million to rise to $3.4 billion.

It is shame that those opposite used their position in the Senate to underfund our public school system and blatantly spoon feed money to private schools.

In our first Budget we allocated $19.3 billion to education initiatives over the next four years to help deliver our commitments on:

• A national curriculum in English, Maths, the Sciences and History;
• $1.2 billion Digital Education Revolution;
• $2.5 billion Trades Training Centre program; and
• Guaranteed funding to both government and non-government schools.

The Liberal Government talked about teacher training, performance standards, literacy and numeracy, but after 12 years, 24 reports and 220 recommendations, there was nothing much to show of it.

No national teaching standards. No national curriculum. Too many kids still leaving school too early. Too many who are unable to read or write. We understand there is much to do to right to the wrongs of the past. We have to make up for 12 years of neglect.

Our Prime Minister Kevin Rudd and Deputy Prime Minister and Minister for Education Julia Gillard are working very hard and acting now for Australia’s long-term future.

During last years’ Federal election campaign, Kevin Rudd did something that hadn’t happened at national level in 12 years. He put education at the front and centre of the public policy debate in this country.

On November 24 last year, the Australian people voted in favour of the Education Revolution and voted against the 12 years of neglect administered by the Howard Government.

After 12 long years of neglect, we can’t deliver an education revolution overnight. But, the Rudd Labor Government has made a solid start because we want every child to get the best possible start in life.

The Rudd Government is committed to creating an education revolution to build a world class education system, which would establish Australia as one of the most highly educated and skilled nations.

This commitment recognises the central role that education plays in the economic and social strength of our nation. Education not only drives productivity but also empowers individuals to reach their full potential, and helps overcome disadvantage.

So I say to the eligible parents in Australia of this Education Tax Refund, KEEP YOUR RECEIPTS!

I commend this Bill to the Senate and I encourage those opposite to do the same. Working families need this support. Our children deserve to be equipped with the best technology that will enable them to learn and be equipped for the future. A key part of the Education Revolution is helping parents meet the costs of their children’s education.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy) (9.41 pm)—I would like to thank all senators who have taken part in the debate on the Tax Laws Amendment (Education Refund) Bill 2008. An important aspect of the government’s education revolution is assisting parents with the everyday costs of providing an education for their children. That is why the government has provided for a $4.4 billion investment in the education tax refund, as announced in this year’s budget.

The education tax refund is aimed at parents and other caregivers and consists of a refundable tax offset for 50 per cent of eligible education expenses for children undertaking primary and secondary school studies. Importantly, this bill delivers on the government’s election commitment to assist families with the costs of educating their children. From 1 July 2008, eligible parents and
guardians will be able to claim a 50 per cent refund each year on up to $750 of eligible education expenses for each child undertaking primary studies. This will provide a maximum refund of up to $375 per child per year. For children undertaking secondary studies, families will be able to claim a 50 per cent refund on up to $1,500 of education expenses per child. This will provide a maximum refund of up to $750 per child per year. Not only does this refund apply to primary and secondary students attending school; it also applies to home-schooled students who are studying a primary or secondary course, provided that they are registered with their relevant state or territory.

There are a wide range of eligible educational expenses which can be claimed as part of the education tax refund. These include laptops, home computers and associated costs, printers, computer software, trade tools for use at school, school textbooks and stationery, as well as a home internet connection. These educational costs can be incurred by way of purchase, lease, hire or hire-purchase, which gives families choice in how they go about incurring the expenses. This will be particularly helpful for those families who cannot purchase a laptop or home computer outright, as they will have the opportunity to obtain these types of educational items by way of a lease or hire arrangement.

Parents and others entitled to family tax benefit part A and who have children undertaking primary or secondary studies will be eligible for the education tax refund. Eligibility for the education tax refund is also extended to those who would be eligible for family tax benefit part A in respect of a child but for the fact that the child, or they on the child’s behalf, is in receipt of other support payments, such as youth allowance or ABSTUDY living allowance. Students who are living independently from their parents may also be eligible for the education tax refund in respect of their own expenses.

The education tax refund will apply to eligible expenses incurred from 1 July 2008. So I would say to all eligible parents: if you have not already started doing so, please start keeping receipts for educational items so that you can claim the tax offset in the 2008-09 income tax return from 1 July 2009. As the education tax refund is a refundable tax offset, this means that even if you do not pay tax you will still be able to benefit from this offset. For those people in this situation who are not required to lodge a tax return, they will be able to claim the tax offset by lodging a separate form to be available from the Australian Taxation Office. The first claims for the education tax refund will be accepted following the end of the financial year, from 1 July 2009.

This bill implements the government’s election commitment. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

TEMPORARY RESIDENTS’ SUPERANNUATION LEGISLATION AMENDMENT BILL 2008
SUPERANNUATION (DEPARTING AUSTRALIA SUPERANNUATION PAYMENTS TAX) AMENDMENT BILL 2008

Second Reading

Debate resumed from 10 November, on motion by Senator Sherry:

That these bills be now read a second time.
Senator COONAN (New South Wales) (9.45 pm)—I rise to support the Temporary Residents’ Superannuation Legislation Amendment Bill 2008 and the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008 as they are important, much needed reforms to the way that superannuation accumulated by temporary residents is treated when they leave the country. The purpose of the first bill, the Temporary Residents’ Superannuation Legislation Amendment Bill, is to require superannuation funds to pay the unclaimed superannuation of departed temporary residents to the Tax Office. The purpose of the second, related bill, the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill, is to enable departed temporary residents to claim their superannuation benefits through the existing departing Australia superannuation payment process before it becomes unclaimed. These bills are necessary because of the increasing number of unclaimed superannuation accounts from departed temporary residents, including backpackers and other temporary residents.

According to the Australian Taxation Office’s 2006-07 annual report, the number of unclaimed or lost superannuation accounts is over 6 million, equating to over $12 billion remaining unclaimed. Whilst compulsory superannuation has served workers in Australia very well, one of the downsides has been that because of the complexity of the way the system operates a number of people have lost money that they have legitimately earned. Whilst this money is still available to them if they come back to claim it, it is often the case that they do not know about it, are simply unsure about how to claim it or, indeed, are unwilling to claim it because the amount of administrative time spent chasing an often small amount of money from overseas is just not worth it.

It was the previous Howard coalition government that had the foresight and wisdom to seek to change the legislation to clean up the system and stop these problems from occurring. The then coalition government announced in the 2007-08 Mid-Year Economic and Fiscal Outlook that these reforms would be implemented by 1 July 2008. However, the legislation did not pass because of the federal election. The Rudd government continued with this legislation but deferred its commencement to allow for more time for consultation. The coalition will be supporting this legislation because it was initially our proposal last year, and we welcome this legislation’s improvement to the current arrangements.

I will now go briefly to the specifics of the bills. When these bills come into force, superannuation funds will be required to pay to the Taxation Office any unclaimed superannuation balances of any temporary residents who have not claimed their benefit within six months of leaving Australia. Superannuation is currently concessionally taxed because of the acceptance of the principle that retirement savings are a public good that should be encouraged. Under current arrangements, when a temporary resident leaves Australia they can apply for their superannuation balance to be paid as part of a departing Australia superannuation payment, or DASP. Departing Australia superannuation payments attract a 30 per cent withholding tax for the taxed element of a benefit and a 40 per cent withholding tax for the untaxed element.

Under the scheme proposed in these bills, the Australian Taxation Office will be required, after a six-month period, to advise superannuation providers that a former temporary resident with a superannuation account has departed Australia. The superannuation fund will then be required to remit to the Taxation Office the balance of the superannuation account less any benefits that have
already been paid. After the balance has been transferred to the Australian Taxation Office, the departed temporary resident may apply to make a claim for the Australian Taxation Office to pay their benefit to them, their legal representative or, indeed, another fund if they again return to Australia. The Australian Taxation Office will then be required to pay the balance, less any applicable withholding tax payable. Effectively, this means that six months after leaving the country a departed temporary resident will have to apply for their DASP through the Australian Taxation Office instead of the original superannuation fund. This effectively means that it is far easier to track down lost super from the time when someone was, for example, on a working holiday in Australia. This centralised process will be an improvement to the current system whereby there are, as I mentioned a little earlier, 6 million lost accounts, which of course is unsatisfactory from anyone’s viewpoint.

The inquiry of the Senate Standing Committee on Economics into these bills found that they have support, and the committee recommended that the bills be passed by the Senate. Once again, I do want to commend the serious work done by the Senate Economics Committee. They have a huge workload and always produce reports of a consistently high standard in relation to these often quite complex bills. Because they are referred to in the report, I will only speak very briefly about a couple of minor issues that were brought to the attention of the committee.

The coalition senators on the committee noted that this bill will automatically force benefits to be transferred six months after the temporary resident either leaves Australia or his or her visa expires. Even if the person is actively managing their account—that is, staying in touch with their fund—under this legislation, at the six-month mark their account will be closed. There has been a call for the government to do more to promote awareness amongst people leaving Australia that they are able to claim any superannuation that they have accumulated. The fact that there are six million lost accounts suggests that we have not done as well as we could in informing departing residents of the process for claiming the DASP they are entitled to. I accept that this is a difficult challenge. I faced it myself many years ago, and it is obviously still a significant issue. I would ask that the minister in his remarks in his reply indicate to the Senate what additional plans he may have in mind by way of an information campaign to better inform departing temporary residents. I make these remarks not critically but simply to note that existing mechanisms are not having the desired effect and some better mechanisms need to be employed.

According to the Bills Digest, the financial consequence of the bill is a net positive increase in the underlying cash balance of the Commonwealth over the forward estimates. These bills will help to streamline the claims process for lost superannuation and will remove the compliance burden caused by inactive accounts. This, as I mentioned a little earlier, is an original coalition initiative. I think it is a very worthwhile improvement that has been proceeded with by the current government and I am pleased to commend this bill to the Senate.

Senator HURLEY (South Australia)
(9.53 pm)—I am pleased to speak for the Temporary Residents’ Superannuation Legislation Amendment Bill 2008 and the related bill. As Senator Coonan indicated, this measure was initiated by the former government and it is a useful measure that has been continued after a consultation period by the current government. The current situation is that people working temporarily in Australia have superannuation paid by their employer,
as is usual for all employees, and then have the option to take it with them when they go back to their home country. But, often, it is left in superannuation accounts in Australia and in many cases these very small amounts of super are eaten up by fees charged by the superannuation fund. This measure makes sense in a lot of ways. That money will instead be paid into the government revenue and will be held there in case those temporary residents wish to claim it. In that case, they will pay the relevant departing Australia superannuation payment, the DAS payment. I think this is a very sensible arrangement.

During the Senate Economics Committee process, some concerns were raised about this, and the committee listened very carefully to those concerns. One of the chief ones was that some temporary residents paid money into their super account above and beyond the required statutory payment, expecting to be able to come back and claim that money, with the tax concessions given by the Australian government, at a later date. The committee accepted the view that the tax concessions allowed by the government for superannuation in Australia are to ensure that Australian citizens make sufficient provision for their retirement income and in turn create a smaller burden for future taxpayers. But there is no reason that the Australian government should in any way make concessions for temporary residents who go back to their own country. Temporary residents can of course withdraw their superannuation on their departure if they wish, in which case the government recoups some of the tax concession they have been given by applying that final tax through the DAS payment.

The concern about the retrospectivity aspect being unfair on these former temporary residents is not really valid. It is not the role of the Australian taxpayer to subsidise an ongoing savings vehicle for former residents who have left the country. The committee found that there was no reason for the taxpayer to continue to do that. It acknowledged that it is a change in the system but that there is no guarantee for those temporary residents that that advantageous system for them would continue.

There were also concerns expressed by some from the superannuation industry about the cost and time of implementing the changes. Again, the committee listened to these problems carefully. As has been noted, this was initially proposed last year, there was consultation done by the former government and it was well signalled that this was the proposed change. The incoming Labor government then took it out for further consultation. Super funds have known for some time that this was a likely outcome. So the committee did not accept that superannuation funds could not have expected this measure to be implemented. The committee also noted that, if there was a delay in implementation of these bills, there would be a delay in the revenue available to the government. The superannuation industry was fully involved with the government’s consultation process. We heard evidence in the Senate Economics Committee that there was no convincing case that the work they claimed would take 12 months could not in fact be done by the end of April next year. The committee took into account that superannuation funds might be a little reluctant to lose the fees on the accounts that they do have and would not necessarily be keen to implement the changes quickly.

The third and final strand of submissions, as Senator Coonan noted, was that there was some concern that people were not fully informed about their entitlement to take their superannuation entitlements when they left the country or indeed to claim them when they were back in their home country. The committee did make a recommendation that there should be better education of tempo-
The committee asked that the government look to making a better system to ensure that people knew of the superannuation payments and to ensure that there was a range of promotional material in a range of languages provided to universities so that they could hand them out to their foreign students to remind them to claim their superannuation before they departed. There was also a request that the Department of Immigration and Citizenship consider the feasibility of writing to international students and other workers on temporary visas, reminding them about withdrawing their super just before their visa was due to expire. The Senate Economics Committee concluded that these bills should be passed and I commend them to the Senate.

Senator BUSHBY (Tasmania) (10.01 pm)—I rise to contribute to the debate on the second reading of the Temporary Residents’ Superannuation Legislation Amendment Bill 2008 and the associated bill, the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008. The overall objective of the bills is, as I understand it, to address the situation where superannuation earned under the Compulsory Superannuation Guarantee requirements by temporary residents is left indefinitely unclaimed in super funds. The first step in doing this should be to do what is reasonably possible to ensure that those who actually own those superannuation funds have the opportunity to access them. Beyond this, where it is not possible to reasonably ensure temporary residents are reunited with their superannuation and they lose contact with it, I think it would be reasonable to take steps to consolidate that super into consolidated revenue.

The detail of this legislation will have the effect of gathering all moneys held by temporary residents in super accounts in Australia out of those accounts once they have been gone for six months, regardless of the wishes of those people, the degree to which they remain in contact with the super funds, whether they are actively managing their Australian super funds or even whether they have voluntarily deposited sums themselves into their super accounts on the understanding that they can invest it in Australia until they reach retirement age. The legislation contains no provision to try to ensure that these people are aware of amounts they might have deposited into super accounts before leaving or to make it easier for them to claim them. The only notification that they get is a question on the departure card as they are getting on the plane to leave.

This legislation does contain some concerning aspects and could come at a significant cost to Australia, to Australians and to our ability to attract talented people to work and study in Australia. As always, the devil is in the detail. The proposed legislation presented by the government has attracted strong and, in some cases, very reasonable representations from stakeholders highlighting a number of legitimate concerns, many of which appear to have been brought to the attention of the government and subsequently ignored. Effectively, what the bills do is as follows. Once a temporary resident has left the country for six months, or it is six months after their visa has expired, all funds paid into their super funds whilst earning in Australia will be paid into consolidated revenue to be used without restriction by the government. This is the case regardless of whether those funds were paid into super funds as part of the superannuation funds.
guarantee requirements or as voluntary contributions over and above those requirements. It is the case regardless of whether the owner of those funds knows they are there, remains in direct contact with the relevant super fund or is actively managing those funds. There is no requirement that those funds be ‘lost’ in the sense that the fund managers have lost contact with the owner.

Of course, the owners of those funds can access them upon the leaving the country—if they are aware of the existence of those funds, are able to understand and complete the relatively complex paperwork and are able to provide the proof required. But, even if they can, they will be required to pay an increased departing Australia superannuation payment of 35 per cent of the total amount in the fund. I do not have any issue with people being required to pay what is effectively a penalty tax on early access to their super; it is an appropriate thing. The money was paid into their super account on a concessional basis, and if they access it earlier it is right and proper that they pay a penalty. But this increased penalty tax, when combined with the 15 per cent contributions tax, gives a flat rate of tax paid on those funds of around 50 per cent. It applies even to people who have made voluntary contributions to their super funds on the expectation that they could withdraw it upon turning 60 on the same terms and conditions that apply to Australian permanents turning 60. It is worth noting that such individuals will end up paying a higher rate of tax than if they had taken that money as a cash salary.

It is important to remember that for some temporary migrants their time in Australia may well have been the only opportunity that they have had to save for their retirement and that they did so based on the then legislation. An additional issue is that, once the ATO has gathered up these people’s money into consolidated revenue, no earnings or indexation are to be applied while funds are held by the ATO, even if they hold them for 20 or 30 years until their owner retires and remembers that they have some superannuation that they earned whilst working in Australia all those years ago. What they will get if they actually do access it at that point is the exact amount paid in less the 15 per cent contributions tax and less the 35 per cent DASP. There will be no indexation, no interest and no dividends.

The timing of the measures imposed by the bill has also been raised as problematic, and it seems to me that it is a probably a legitimate issue. Super funds have submitted that it is unrealistic to require them to provide the first report on temporary residents to the ATO by April 2009. One industry group estimated that the cost of trying to implement the measures across the industry in accordance with that time line could be up to $100 million. I do not know what the actual cost will be, and that remains to be seen. But it is apparent to me that there would some additional cost in trying to meet the deadline.

Suggestions were also made at the Senate Economics Committee inquiry hearing that not enough is being done to ensure that temporary residents are put in contact with their super before they leave the country and that education and awareness campaigns or direct contact through immigration would help address this issue. One suggestion by the student representative council of the University of Sydney—and I note that Senator Hurley mentioned some of their recommendations; all of them were good—was that, when those temporary residents on working visas apply to open a superannuation account, the visa holder must declare their visa and supply a domestic and overseas address. Once the final tax return is lodged and/or persons known to be on a temporary visa have not made a superannuation fund payment for six months, the fund could directly contact the person with information about temporary
residents and their right to take their superannuation with them when they leave Australia, along with the application form to make that possible.

Other options exist to ensure that the owners of these funds are better informed about their existence and their rights over them, but of course exercising these options would necessarily decrease the overall quantity of funds available to the government, and hence they are probably not an attractive option. One solution to most of the problems in this bill would be to provide the possibility of giving temporary residents a choice to opt out of the relevant provisions of this bill in circumstances where they can demonstrate that they are actively aware of their Australian super funds and in contact with their fund provider. This would enable temporary workers who move base or other temporary residents who may return to Australia to retain their superannuation investments in Australia until they choose to claim them—subject to a penalty if before retirement age and on the same terms as any Australian if at or after retirement age.

These proposed changes to superannuation do not just affect temporary residents in an immediate sense but could affect Australia’s ability to attract and retain skilled workers. They could act as a disincentive to our attracting skilled and unskilled workers to fill demand needs and capacity constraints in Australia. The principle behind this bill is good and should be supported, and this is the reason why the coalition is supporting it, but to me some aspects of the bill do raise issues of concern that I think could be addressed.

Senator XENOPHON (South Australia) (10.08 pm)—I indicate my support for the second reading of the Temporary Residents’ Superannuation Legislation Amendment Bill 2008. I want to traverse neither the same ground that Senator Bushby did when he articulated so well a number of concerns that were raised, nor the concerns raised by Senator Hurley in the context of the Economics Committee in relation to this. I am also grateful for the time that I have had today with Senator Sherry to discuss with him some of the concerns I have had in relation to this bill. I circulated amendments earlier today in relation to the issue of compliance. Whilst I still have reservations about matters of compliance—the superannuation industry has indicated that there would be a cost of between $10 million and $100 million—I am not proposing to proceed with that amendment on the basis of the discussions I have had with Senator Sherry. I think we will have an opportunity to discuss this in the committee stage, or perhaps Senator Sherry could respond in his summing up to the claims made by the industry of costs between $10 million and $100 million. That is something that has worried me, but I was reassured to a considerable degree by matters raised by Senator Sherry in the context of discussions I have had with him today.

I will go to the nub of what principally concerns me: the issue of retrospectivity. The proposed legislation is retrospective in nature; there is no other way of looking at it. It means that temporary residents who have earned superannuation in Australia in the past on the understanding that when they turned 60 they could have access to their superannuation under existing legislation will now be subject to very significant taxation implications, often paying tax at a higher rate than the top marginal rate they were paying on the income they were earning in the first place. This impact is compounded for those income earners who, in good faith, made a decision based on the tax and super laws at the time to increase their level of contributions to their fund. I am in great sympathy with the comments made by Mr John Fauvet, a partner at Pricewater-
houseCoopers, who gave evidence at the Senate economics committee inquiry:

It is just really a question of the rate and of the retrospective nature that applies to those individuals who are serious savers for their retirement, who were encouraged to do so ... all of the time when they were here. This may well have been the only opportunity they had to save for their retirement, so they did that based on the then current legislation, expecting to be able to withdraw that superannuation in the same way as Australians can: tax free at age 60.

The argument is, ‘They’re not Australian citizens; why should we prop them up?’ but they made these investments in good faith, and I am in agreement with the argument put by Senator Bushby. These are people whom I think we should not dud, to put it colloquially, by making this retrospective in nature.

If this legislation is about lost or unclaimed super, I commend the minister for the work that he has done in relation to this. In fact, earlier this year, when I was trying to make a quid before I got to this place, I was doing a stint as a talkback radio host—I think it is a good thing I am here in the Senate and not doing talkback—and Senator Sherry was my guest on the program, talking about unclaimed super. We got quite a few calls that afternoon because people are concerned about this—lost and unclaimed super. We got quite a few calls that afternoon because people are concerned about this—lost and unclaimed super. Senator Sherry is to be commended for tackling an issue that ought to have been tackled much earlier. There has been a lot of talk about this in the past, and he is doing the right thing by looking at the whole issue of unclaimed and lost super. But in this particular case, when it comes to temporary residents, if a temporary resident is making an effort to keep in touch with their fund and is doing the right thing in the context of maintaining regular contact with their superannuation provider, I do not think it is fair that they should be subject to this new regime. I think it is fundamentally unfair. It is retrospective in nature, and I can foreshadow that I will be moving an amendment at the committee stage to ensure that that does not occur, both for those who already have funds in place and for those temporary residents who continue to maintain contact with their fund, because to me it is a fundamental equity issue. There may be other countries that do not treat Australians working overseas fairly, but that does not mean we should do the wrong thing by those temporary residents who are working here and, I believe, doing the right thing by keeping in contact with their superannuation fund.

Essentially, I believe that this is welcome legislation. I did have reservations—I still do to an extent—in relation to the issue of compliance costs, and I would be grateful if Senator Sherry would put on record his views in relation to that, but my principal concern is in relation to the issue of retrospectivity and for those temporary residents who are doing the right thing by keeping in contact with their super funds. That cannot be described as lost super, which I think is the mischief that this legislation is principally intended to deal with. It is not lost super if you keep in contact with your super fund.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (10.15 pm)—in reply,—Firstly, I would like to thank all of those who have contributed to the debate on the Temporary Residents’ Superannuation Legislation Amendment Bill 2008 and the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2008. There has been a considerable amount of interest in this measure. I will make two points initially. Firstly, I want to make it clear that a departed temporary resident does not lose their legal right to claim the moneys in their account. Even though it is transferred from what are generally lost accounts—although we have no
breakdown, I will accept there is some that is not in lost accounts—the transfer occurs to the ATO. Senator Bushby raised a concern about the interest. At the moment, Senator Bushby, as you would be well aware, there is no interest.

Senator Bushby—Over time! It is going back over several years.

Senator SHERRY—It is going backwards. I accept the validity of the point of long-term rates of return in the context of super. But I would make the point that there will be no admin fees. Often, in a lost account, the admin fees send the account backwards despite the positive interest that would accrue over the long term. So there is an advantage in this methodology that is being taken. Secondly, whilst it is difficult to estimate, there will be a higher claim rate from departed temporary entrants simply because it is easier for them to go to the ATO, an Australian government instrumentality, than to have to find their money in one of 600 superannuation funds, including about 12 eligible rollover funds. So there are actually advantages in being able to access their money back in Australia for those departed temporary residents who do not claim their money when they leave. Whilst it is relevant to lost superannuation—I have made many comments over the years about lost superannuation, and most of the temporary residents’ accounts would be included in that pool of lost superannuation—what the government believes is the ultimate solution to Australians’ lost superannuation accounts is a related but separate issue that I hope we deal with next year.

I want to thank Senator Coonan in particular, because the foundation for this measure actually goes back some five or six years to when Senator Kemp was the Assistant Treasurer. He introduced on behalf of the former government a measure to allow temporary residents to transfer their money out of the country, which they did not have a right to do. Secondly, there was a tax applied on that transfer to offset the tax concession. This measure actually has its genesis in that measure introduced by the former government. Then we move forward to last year. As Senator Coonan has rightly pointed out, and I accept this—we can sometimes be bipartisan in this place—this was an initiative of the former government. It was announced before the election. There were consultations that had commenced with industry before the election, but it was not legislated before the election. We indicated our support for the measure during the election campaign.

I referred the preliminary proposals to go into legislation out for further consultation earlier this year. We did make some substantial changes to the initial proposals as put forward by the former government. We did listen, and we were principally concerned about a number of administrative and practical issues. I can for the record, and it is in the EM, state that the upfront cost for industry as a whole to establish this is $30 million and the ongoing cost is about $3 million. Prior to that consultation occurring and change in the administrative features, the industry had indicated that the upfront cost was going to be $100 million or thereabouts and the ongoing costs about $10 million.

Through the listening process, the consultation process, we did change the administrative operation of this measure very significantly. For example, it was initially proposed to collect the money before the temporary entrant left Australia. We decided that it would be far simpler and less costly administratively if it were done six months after they had left the country. The industry made, I think, some valid points about administrative costs. We took notice of those points, and the final legislation reflects that. It also usefully overcame what I think would have been a
serious moral issue of detriment: if the money had been collected before the temporary entrant left the country, they would not have had death and disability insurance. By collecting the money after they have left, they still maintain death and disability insurance cover. If they are, unfortunately, injured or die on a building site, for example, they are still covered by insurance. So there were some very legitimate issues raised in that initial consultation. As I said, the former government did do a great deal of work. It was their measure, and we are here considering the legislation tonight. As I have indicated, it will help reduce the number of lost accounts and the amount of unclaimed money in our compulsory system, which arise when temporary residents depart Australia without taking their superannuation with them.

I will just briefly digress to the point that Senator Xenophon raised about a person being effectively required to take their money out of the system. The government would argue that it is not appropriate for a nonresident—unless they come back into the country and become a permanent resident; they are treated differently—to receive ongoing tax concessionality once they leave our Australian system. The purpose of the Australian superannuation system is not to provide an ongoing tax concessional subsidy, and presumably tax-free super at age 60, for nonresidents. It is not the purpose of our system to do that. It is not the purpose of Australian taxpayers to cross-subsidise those individuals once they move outside of the Australian system.

As Senator Xenophon has raised, the treatment of Australian temporary residents working in, say, the US or the UK is pretty shameful. If you are in their system, you get nothing back. The money stays in the pool of their consolidated revenue overseas; you get not a cent back when you return to Australia if you are a temporary resident working overseas. It is not true of all jurisdictions, but it is certainly true of places like the UK and the US, where Australians tend to work. While temporary residents who depart Australia are able to take their superannuation with them as a departing Australia superannuation payment, many do not do so. We have a figure. We estimate less than 10 per cent actually transfer it. This contributes to the total amount of lost moneys in the system. The amendments contained in the bill seek to address the lost account problem by requiring superannuation funds to pay the unclaimed superannuation to the tax office. The government has consulted on the measure. We released that discussion paper in May, we made significant changes and we have the legislation that is presented here today.

There are a couple of other matters I will try to cover off prior to the committee stage. Regarding the issue of the communications campaign, it is extraordinarily difficult to contact these people. Senator Coonan knows from her experience just how difficult it is when people leave the country and provide no ongoing forwarding information and no ongoing contact with their fund. To the credit of the previous government, they did introduce onto the back of the departure cards an ongoing forwarding address space. We will be building on that. The ATO is going to develop a communication strategy. The measures will include mail-outs to fund members informing them of the changes, website information, and media and editorial programs. Articles communicating the changes will be submitted to various internal and external publications. This will include targeted publications read by backpackers, international students and other groups associated with temporary residence. Current publications will be updated to reflect the changes. I do not in any way want to suggest to the Senate
that this is easy—it is not, as Senator Coonan knows—but we will be making best efforts, and I am happy to provide further details once that campaign is finalised.

There is one other issue I want to comment on briefly, an issue that has not been touched on by those who attended the Senate Standing Committee on Economics and which is a legitimate issue that has come to the government’s attention only in the last couple of months as a consequence of the global credit crisis. I think it was legitimately pointed out at the hearings that at the present time superannuation funds are experiencing a greater than normal switching or flow of funds from non-cash investment options to cash investment options, and that places a greater pressure on funds to ensure liquidity in these current times. APRA, as the regulator, is well supervising and managing this particular issue, but this measure would place additional pressure on some funds. This was raised at the hearing.

As a consequence of that, the government believes that this is a legitimate concern. It was a new issue that had not been considered by either the former government or us back in May. It is a consequence of recent developments in financial markets. Therefore, we have indicated—we will get to the amendment—that, for a fund where there is a liquidity issue for transferring the moneys, if an application is made to the regulator, APRA, who has responsibility for prudential regulation, including liquidity, and APRA comes to the conclusion that there is a legitimate liquidity issue, the moneys are not forgone but there is consideration and they can be paid at a later date. We think that is a reasonable approach if the fund can show legitimate concerns about liquidity in these current uncertain times.

I think those are the main issues that are being raised in debate. This is obviously an important revenue measure. It is almost $1.2 billion in revenue, so it is significant. I conclude my remarks at this stage. We will get to the amendment to be moved by Senator Xenophon. We will not be supporting the amendment; we have some significant concerns, and I will outline those concerns in the committee stage. I thank all those who have taken an interest. This has been a complex measure by any consideration. It comes at a sensitive time. There is a lot of interest in superannuation at the best of times and, indeed, the not-so-best of times, as the funds are experiencing at present. I thank the various industry organisations and the funds for their ongoing interest and the very positive suggestions they made in the initial rounds of consultations. I thank and acknowledge the former government, including the former minister, Senator Coonan, and thank everyone for their contributions.

Question agreed to.

Bills read a second time.

In Committee

Bills—by leave—taken together and as a whole.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (10.28 pm)—I table a supplementary explanatory memorandum, circulated in the chamber on 26 November, relating to the two government amendments to this bill and seek leave to move the amendments together.

Leave granted.

Senator SHERRY—I move government amendments (2) to (8) on sheet RG296:

(2) Schedule 1, item 16, page 6 (lines 27 and 28), omit “by the next date set for the purpose by the Commissioner”.

(3) Schedule 1, item 16, page 7 (line 2), after “interest”, insert “by the next date set for the purpose by the Commissioner”.

CHAMBER
(4) Schedule 1, item 16, page 10 (line 13), omit “by scheduled statement day”.

(5) Schedule 1, item 16, page 10 (line 23), omit “day.”, substitute “day; or”.

(6) Schedule 1, item 16, page 10 (after line 23), at the end of subsection 20F(1), add:

(c) if a day is identified for the superannuation provider under the regulations that is later than the day described in paragraph (a) and later than the day described in paragraph (b) if it is relevant—that later day.

(7) Schedule 1, item 16, page 12 (after line 4), after subsection 20F(4), insert:

Regulations for the purposes of paragraph (1)(c)

(4A) Regulations for the purposes of paragraph (1)(c) may provide for a day to be identified by the Commissioner or the Australian Prudential Regulation Authority. This does not limit the provision that the regulations may make for identification of a day for those purposes.

(8) Schedule 1, item 16, page 15 (after line 31), after subparagraph 20J(6)(a)(i), insert:

(iia) paragraph 20F(1)(c); and

I have already indicated why the government has moved these amendments. The government heard from the Senate economics committee following its hearings that concerns were raised that some superannuation funds potentially may not have sufficient liquidity to meet their payment obligations to the tax office under the bill. Accordingly, to help address some of these concerns in light of the current economic climate, the government has acted swiftly to introduce parliamentary amendments to the bill. The amendments will enable regulations to be made to defer—I emphasise defer—the due dates for payment by superannuation funds in certain prescribed circumstances. For example, the regulations could provide for a short-term deferral of the payment date if APRA considers payment by the due date would have a significant adverse impact on the fund’s financial position.

This is similar to an existing power that APRA has to vary the requirements for funds to transfer superannuation benefits if it would have a significant adverse effect on their financial position. The amendments do not provide a general deferral, but funds will be expected to continue to make the necessary preparation so that payments can be made by the expected due dates. The first payments are expected to be due in April next year. Further funds are also required, under current law, to have adequate investment strategies in place to take into account, amongst other matters, anticipated liquidity requirements. Accordingly, it is expected that the payments will be deferred only in exceptional circumstances. That is an outline of the two government amendments that I moved.

Senator COONAN (New South Wales) (10.31 pm)—I thank the minister for his comments in the second reading debate acknowledging the former government’s role in the genesis of this matter. I think it is a very good example of how, notwithstanding partisan approaches on many matters, there are a lot of aspects of superannuation affecting Australians on which the government and the opposition can work constructively because we see the point of what is to be achieved. I commend the minister’s efforts in this respect.

We will be supporting the government amendments. They are largely administrative amendments to ensure that the bills operate as intended. In respect of the deferred payments matter I simply note that where there are liquidity problems for funds under stress of course funds may withhold payment to the ATO. These are sensible amendments and
we have no difficulty at all in indicating our support.

**Senator XENOPHON** (South Australia) (10.32 pm)—I indicate my support for these amendments and commend the government for showing the flexibility that is needed with the global financial crisis. I was remiss in my second reading contribution for not acknowledging the role of the coalition in their work on superannuation and the bipartisan nature of the approach in general terms.

**The TEMPORARY CHAIRMAN** (Senator Forshaw)—The question is that item 12 of schedule 1 stand as printed.

Question agreed to.

**The TEMPORARY CHAIRMAN**—The question now is that government amendments (2) to (8) on sheet RG296 be agreed to.

Question agreed to.

**Senator XENOPHON** (South Australia) (10.33 pm)—I move amendment (1) on sheet 5644 revised to the Temporary Residents’ Superannuation Legislation Amendment Bill 2008:

(1) Schedule 1, item 16, page 20 (after line 22), after Part 3A, insert:

**PART 3B—ADMINISTRATION OF TAXATION OF SUPERANNUATION OF ELIGIBLE TEMPORARY RESIDENTS**

**20Q Retention scheme**

(1) The Commissioner must, within 45 days of the commencement of the Temporary Residents’ Superannuation Legislation Amendment Act 2008, determine by legislative instrument a scheme that enables an eligible temporary resident to retain a superannuation interest in a fund until the person reaches the age of 60 or some other later date determined by the person.

(2) Despite anything in section 44 of the Legislative Instruments Act 2003, section 42 of that Act applies to a legislative instrument made under subsection (1).

(3) Section 48 of the Legislative Instruments Act 2003 does not apply to an instrument made under subsection (1).

(4) If, under section 42 of the Legislative Instruments Act 2003, an instrument made under subsection (1) or a provision of such an instrument is disallowed or is taken to have been disallowed (the *deemed disallowance*), the Commissioner must, within 30 days after the disallowance or deemed disallowance, determine a replacement legislative instrument for the purposes of subsection (1).

(5) In this section:

- **eligible temporary resident** means a person:
  - (a) for whom the superannuation provider has a current address and who maintains regular contact with the superannuation provider; and
  - (b) who would otherwise be subject to Part 3B.

**20R Application of Part 3B**

Part 3B does not apply to any person unless the Commissioner has determined a scheme in accordance with section 20Q and the scheme has been implemented.

This amendment addresses the inequity of the operation of the bill for those temporary residents who maintain an active interest in their superannuation fund. The intent of the amendment is to provide a level of protection to those temporary residents who are actively pursuing their superannuation funds by requiring the commissioner to determine a scheme that enables eligible temporary residents to retain their superannuation interests in a fund until that person reaches the age of 60 or some other later date determined by the person. An eligible temporary resident is defined as a person for whom the superannu-
ation provider has a current address, who maintains regular contact with the superannuation provider and who would otherwise be subject to the amendments made by this act—that is, those provisions that would result in the transfer of the benefit to the ATO and be subject to the DASP when claimed. These funds will not be subject to the DASP where the temporary resident claims their benefit at 60 years of age or older.

Subclause 2 of the amendment relates to the application of the Legislative Instruments Act 2003. Section 42 of that act provides for the disallowance of legislative instruments subject to section 44, which lists legislative instruments that are not subject to disallowance. That list includes instruments, other than regulations, relating to superannuation. The amendment is intended to ensure that any scheme determined by the commissioner is disallowable by precluding the application of section 44 of the Legislative Instruments Act 2003.

Subclause 3 relates to the application of section 48 of the Legislative Instruments Act 2003, which provides that an instrument that is the same in substance as a disallowable instrument cannot be remade within six months of the original disallowance. This subclause provides that section 48 does not apply. It ensures that, under subclause 4, the commissioner is able to determine a replacement scheme for the purposes of subclause 1 before the six-month period expires.

Under subclause 4, the commissioner must determine a replacement scheme within 30 days of the initial disallowance. The aim of this amendment is essentially to ensure that the commissioner implements a scheme that is sufficient to meet the intent of the amendment and to require the commissioner to implement a new scheme within a shorter time frame than would otherwise be allowed—that is, 30 days rather than six months, pursuant to the Legislative Instruments Act 2003.

Clause 20R relates to the application of the amendment. It prevents the commissioner from requesting the transfer of benefits from superannuation funds until such time as an appropriate scheme has been determined under subclause 20Q(1) and implemented. The amendment applies to former, current and future temporary residents. It essentially provides an opt-in mechanism for those residents. If this bill is about genuinely lost super then for those who maintain contact with their fund—and there is the flexibility there as to what is defined as regular contact; that needs to be determined—the intent of it is clear. It is to ensure that they are not penalised if they maintain contact. So we are not talking about lost super.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (10.36 pm)—I was going to allow others to speak first, but we have made an error for which I have to take responsibility. I am informed by our very helpful Clerk that amendment (1), which we all voted yes for in terms of supporting the intention, we actually all have to vote no to remove.

Honourable senator interjecting—You’ve had a Parry moment.

Senator SHERRY—And a Sherry moment, because I take responsibility for something that happened earlier tonight—well, not full responsibility; there was a similar type of issue. So I seek leave to put the question on amendment (1) again.

Leave granted.

The TEMPORARY CHAIRMAN—The question is that item 12 of schedule 1 stand as printed.

Question negatived.
The TEMPORARY CHAIRMAN—We will now deal with Senator Xenophon’s amendment (1) on sheet 5644.

Senator COONAN (New South Wales) (10.38 pm)—I spoke sotto voce, but I should place on the record that I do think we need flashing lights on those particular votes, because they do catch you out unless you are thinking perhaps more sharply than we seem to be at this hour. Anyway, we were all caught by it.

I thought it might be useful to just indicate to Senator Sherry—because I am sure were I in his position I think I could almost anticipate what he would say—that the coalition’s disposition is to support Senator Xenophon’s amendment. I will not go into it at great length, other than to say that our reasoning is that it will allow superannuants returning from overseas to opt out of the requirement that their account balances go to the ATO. It will require such superannuants to remain in contact with their superannuation fund. Of course, that is a fundamental requirement. This measure will provide that such fund balances will not be considered as ‘lost’ in the general sense of the word, which is my understanding of what we are really all about here.

As I said, I can almost anticipate what the adviser and Senator Sherry will say. I can even put myself back a couple of years and imagine myself saying what Senator Sherry will say. But that is our approach to this. Our view is that it does provide a better balance, more fairness, for those temporary residents who choose to maintain their superannuation accounts in Australia. I take Senator Sherry’s point that other jurisdictions do not necessarily permit this, but we have taken the approach in Australia where we encourage people to stay in touch with their superannuation. We are trying here to ensure that superannuation is not lost, that people do not lose what they are legitimately entitled to as part of their superannuation savings, particularly because we do have a compulsory system and we take a very robust view of encouraging people to save in our superannuation system.

I do think that this amendment helps to facilitate choice. It is what the coalition have been about in our approach to compulsory superannuation—that people can choose how they place their superannuation, how they transfer it and, ultimately, how they access it. To our way of thinking, choice in superannuation must always be fostered. Choice will remain one of the foundation tenets of our approach to superannuation. We think that Senator Xenophon’s amendment—notwithstanding what I apprehend Senator Sherry will say—will in fact facilitate the objectives of this very important legislation that we support and that fund balances will not be considered lost where superannuants remain in contact with their fund.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (10.41 pm)—Firstly, I would make a couple of points. This was not in the former government’s original proposals and it will impact on revenue. We will make that point very strongly. I would urge the opposition, if this is passed—and there will obviously be time when the message comes back from the House of Representatives—to really have a deep think about what they are doing here. It will impact on revenue. We are talking here about $1.2 billion in the forward estimates—from a measure that you proposed when you were in government. This will impact on revenue. We are talking here about $1.2 billion in the forward estimates—from a measure that you proposed when you were in government. This will impact on revenue. We will obtain an estimate, as best we can, but it is likely to be in the hundreds of millions of dollars. I just issue that word of strong caution about what the opposition will open themselves up to. Having not flagged this approach in their own legislation before the election and putting forward $1.2
billion in revenue, we are now going to lose some part of that—and we will estimate that over the coming days. Obviously we are not sitting tomorrow. So I just issue that strong caution to you about what the opposition will open up in terms of the revenue approach.

The amendment has been put together by Senator Xenophon this afternoon. I do not want to be overly harsh, Senator Xenophon, but the structure of the amendment does reflect, I think, the late drafting of the amendment. If you look at it, there are a number of particular problems with the drafting of the amendment. Firstly, with respect to (5)(a), it says, 'for whom the superannuation provider has a current address and who maintains regular contact with the superannuation provider'. Administratively, practically, how on earth would that be done? What is a current address? Is it a current Australian address? I am not being flippant here. Is it their current Australian address or their current overseas address—after the departing resident has left? We have had a debate about admin costs. Think about the admin costs associated with this. I would suggest that the superannuation industry itself did not put this amendment forward at the Senate hearing—did not make the suggestion of an amendment in this form.

Secondly, what does ‘regular contact’ with the fund mean—monthly, six-monthly, quarterly, yearly, five-yearly? There is no definition of what ‘regular contact’ is. Again, I think that reflects the way the amendment has been drafted. I do not know of any other provision where the commissioner is given this sort of power to make determinations.

Then there is the issue that I touched on in my opening comments. It is not the purpose, once a temporary resident has left this country, to allow them, from overseas, to continue actively operating a superannuation account in the Australian jurisdiction and have the Australian taxpayer pay for it, ongoing. I really do urge great caution on the opposition. They will have some time to think about this if it is passed tonight. The government strongly opposes this—very, very strongly opposes this—for the practical and the fiscal reasons that I have outlined and for the very basic reason that it does come as a surprise to me that the now opposition would support a measure that runs contrary to and indeed weakens their own policy that was announced prior to the election. I think even Senator Coonan would appreciate some of the political points that would be made in the broader community about this. I am just forewarning of the criticism that is likely to flow if this particular amendment is passed.

Senator Xenophon, we had a number of meetings earlier today. You did reconsider other amendments, and I did indicate to you when you mentioned this to me—this is not breaking any confidences—that we would not be supporting this approach and that I had some concerns about it, and I have dealt with those concerns.

Senator BUSHBY (Tasmania) (10.47 pm)—I thank the minister for his comments and I thank Senator Xenophon for his amendment, which, as I understand, probably was a fairly last-minute thing. But I think it does raise some important issues and attempts to deal with them in a way which I believe is reasonably flexible. A lot of the issues raised by the minister can be dealt with by the method and the construction of the instrument that the amendment refers to if it is passed.

I found it interesting that the minister is referred to the principle that it is not appro-
priate or it not the purpose of the system to subsidise people not living in Australia. I do not agree with that as a general proposition. Essentially, we allow people to come here—we give them a visa entitling them to work here. I would have thought the Labor Party, of all the parties, would be inclined to ensure that their rights arising from the work that they do in Australia would be protected and supported. They earn the money here, contributing to Australian society and contributing to our economy.

In many cases, these people are here because we have a shortage in particular skills sets and we have supply constraints in the labour markets. They come here and they help us out. They get paid superannuation in accordance with Australian law. It is paid into an account. Some of them—and I acknowledge that, often, it is those who are in higher earning jobs—contribute voluntarily over and above the amount of the superannuation that is being placed into their superannuation accounts on the expectation that they will be able to access that, up until this point, at 60 when they retire. And if they choose to take it out earlier, they would acknowledge that they would have to pay the penalty tax, the DASP. So I do not accept that principle.

If we are going to invite people from outside Australia to come here and contribute to our economy and to work here under our laws, if superannuation is paid to them whilst they are in Australia for work whilst they are here, the concessions that apply to superannuation, when that is paid, should continue to apply to them even if they move out of the country. I also do not agree with the suggestion by the minister that this has wide-ranging implications, because it is the situation that currently applies and has applied for many years. I do not think it has flowed over into other areas during the years that it has been applying up to this point.

I also take slight objection to his suggestion that there is an ongoing cost. I would think that there is a one-off cost here. If this amendment is passed, there is an opportunity cost that is lost in terms of that proportion of temporary residents’ superannuation that does end up being elected to stay in the super funds. But it is not an ongoing cost; it is a one-off thing. It can be quantified, as the minister says, but I also note that he mentioned earlier that he is not sure what proportion is actually lost and what proportion is not.

Senator Sherry—We will get a cost.

Senator BUSHBY—I would be interested to see the cost. It is certainly not $1.2 billion over four years, as you intimated, because I suspect that the vast majority of superannuation accounts from temporary residents who are overseas will not be affected at all by this amendment.

I think we heard evidence on this in the Senate Economics Committee—if not I stand to be corrected—but I think the vast majority will be for small accounts from people who have come here, for example, students, and worked for short periods while they were here. They will have small balances, as I think the minister mentioned. The vast majority of those people have left the country and they will never think twice about their superannuation. They are not in contact regularly with their super fund and they are not actively managing those funds and looking forward to accessing them when they turn 60. The percentage of temporary residents who maintain super funds in Australia and actually actively manage them are fully aware that they are there and stay in contact with their superannuation fund providers, is, I would suggest, probably very small—probably a smaller percentage in terms of actual numbers than dollars. I concede that, because those who are actively managing
them probably have higher account balances. I put trust in the Treasury that they will actually have a reasonable guess at this or an estimate when they do put those numbers together, but I am sure that they will show that it is a reasonably small percentage of this $1.2 billion that this measure, without the amendment, is expected to raise over the next four years.

Ultimately, the reason I am supportive of this amendment—and I believe the coalition is supportive—is that it comes back to a simple principle of equity. As I said in my speech during the second reading debate, there is no issue at all where the super is lost in the sense that most people would think of lost super—that is, that the owners of that money have lost contact, they are not aware that the money is there or they have forgotten about it, and/or the super funds cannot find the owners of that money. That is good and appropriate. The purpose of the bill, when the coalition was looking at it, was to scoop all that together and put it into consolidated revenue where, as the minister mentioned earlier, it is easier to access. There are certainly advantages in the bill. We are supporting the bill.

But there is the circumstance where the owners of the superannuation are aware that it is there and they have made a conscious decision, under the laws that apply in this country up until the point where this bill may be passed, to leave it there. There could be a number of reasons: they may come from a nation where investing money in superannuation is not a particularly safe thing to do and they like the stability and the security of a well-managed financial system that we have in Australia or they may have chosen to leave it here, comfortable in the knowledge that we have laws that allow them to access it when they turn 60 years of age. I am very uncomfortable with people being in that circumstance, particularly, as Senator Xenophon mentioned, where they put additional funds in themselves out of their own pockets. But I am very uncomfortable with people in those circumstances losing their rights to manage their funds, in the way that they have been, and losing their rights to obtain dividends and returns over the long term and to grow those funds while they remain in Australia, and, ultimately, losing their rights to access them at the age of 60 on the terms and on the basis they expected.

Senator Sherry—Tax free.

Senator BUSHBY—Yes, exactly. They earned the money in Australia contributing to the economy. Just because they are not permanent residents, I do not see why they should lose their rights to access that. We are not talking about their lifetime savings; we are only talking about what they earned when they were in Australia, and I believe that they should have the right to access that on the terms that anybody else who earns money in Australia accesses it.

Senator SHERRY (Tasmania—Minister for Superannuation and Corporate Law) (10.54 pm)—Again, I will be very brief. We may not get to the vote on this tonight, which may perhaps be for the best because it might cause the opposition to seriously reflect on what they are about to do. The government is not supporting this amendment. It came forward this afternoon and is now apparently supported by the Liberal opposition. We are not supporting it because, if we accept the validity of your point, Senator Bushby—and you appear to be running the debate on this—even if we accept your point, why did you not do this before the election when you announced your policy? Why did you not do it before the election when you announced your policy and you began consultation on the legislation? We have adopted your policy, so we have bipartisan commitments from both sides of politics that did not include this
amendment that you are now moving. Even if there is some validity, you should have thought of that before the election. I do not accept the validity of your arguments, but you should have thought of that before the election. You did not. You are now supporting an amendment that is going to cost the government revenue. Think about the current climate we are in. Think about the political position that you have been putting on a budget deficit. I think you should have a long pause for thought about what you are about to do. Frankly, if I were in your position I would be on a hiding to nothing on this one.

This measure is your measure, which you are about to amend at the last minute tonight, and it will cost revenue. It is also a budget measure. It is an election measure that is being supported by both sides of politics. Now we are in an extraordinary position because the Liberal Party, at the last minute, is pushing an amendment in a significant way to cost the budget money. It is amending its own election commitment. If you want to go out and publicly defend this new position, I wish you all the best of luck. I would suggest that Senator Coonan goes to talk to the shadow minister, Mr Pearce, in the other place about all of this before we come to the final vote on this amendment when we get back to it next week. We are giving you the opportunity to think about the consequences of what you are about to do, or what we may not do. But I do not accept your point, Senator Bushby. You did not accept them before the election. I do not believe they have validity in the context of this measure. It is also a budget measure; it is in the budget forward estimates. If you want to go ahead and support something like this you cannot say that you were not forewarned.

Senator XENOPHON (South Australia) (10.57 pm)—In relation to election commitments made by the coalition and by the Labor Party in the lead-up to the last election, as I understand it—and I am sure the minister will correct me if I am wrong—there was a commitment to deal with the issue of unclaimed super and unclaimed super for temporary residents. We are not talking about unclaimed super with this particular amendment; we are talking about—

Senator Sherry—Correct. Temporary residents.

Senator XENOPHON—But it was to deal with the issue of temporary residents with respect to unclaimed super.

Senator Sherry—No.

Senator XENOPHON—Okay. I can stand corrected. But I think that the coalition made a point in their additional comments. The Economics Committee report on this issue is that the devil is in the detail and the issue here is: is it fair? We are not talking about a bottom of the harbour scheme here; we are not talking about some tax scam. They were putting money in super according to Australian law, working in this country, making additional contributions, as they were entitled to, and now that will be taken away from them or they will be paying DASP—a huge tax slug—even if they keep in regular contact with their super fund and maintain their fund so that it is not lost in any sense. To me, that is fundamentally unfair, and that is what the issue is. I think it is good that we are going to have a few days to reflect on this because I would like to hear from the government as to why it says that it will cost so much. I do not think that I am breaching any confidence by saying that in my very useful discussions with the minister today—and I appreciate the time he gave me to discuss this—I did not pursue the compliance issues. I accepted his arguments because I was convinced by his arguments in relation to that. I did not pursue the earlier amendment that would have covered everyone in relation to temporary residents, par
particularly in relation to the retrospectivity aspect. But this is for people who keep in contact with their funds and it is still a fundamental issue of equity and fairness. That is why I urge honourable senators to support this particular amendment.

Progress reported.

ADJOURNMENT

The PRESIDENT—Order! It being 11 pm, I propose the question:

That the Senate do now adjourn.

Economy

Senator FEENEY (Victoria) (11.00 pm)—Tonight I was going to speak on some of the policy issues presently facing Australia, but I have to confess at this early juncture that I was so astonished by the performance of the opposition in question time today that I decided it was impossible to allow some of the statements that were made by opposition senators to pass without comment. In question time today Senator Abetz started the ball rolling by asking in his best and most affected sarcastic tone: ‘When will the government deliver a budget surplus?’ What an astonishing question! Does not Senator Abetz recall that the budget brought down by the Treasurer in only May of this year provided for a surplus of $21.7 billion? Of course, the delivery of that surplus is dependent on the passage of the budget through this parliament. And what contribution has Senator Abetz and his magnificent team opposite made to delivering that surplus, that surplus which he argues is so very essential? His contribution has been to block and obstruct the revenue sections of the budget. It is as simple as that. He opposed the luxury car tax. He opposed the tax on alcopops. He opposed measures that contributed more than $3 billion a year to that very surplus he now pretends to worry about.

The Rudd government came to office determined to maintain a strong budget surplus, and it brought down a budget that provided for that very thing: a strong budget surplus. The government wanted a strong surplus in order to put downward pressure on inflation and downward pressure on interest rates. In the economic circumstances of May 2008, that was absolutely the economically sound and responsible thing to do. Let us cast our minds back. The Labor Party and the new Rudd Labor government had found itself custodians of an overheated economy, an economy that had endured interest rate rise after interest rate rise as it struggled to cope with, amongst other things, the flagrant, outrageous and economically irresponsible pork-barrelling of those opposite. Irrespective of the macroeconomic setting that this country needed, those opposite were determined to spend their way out of political problems.

We did not have to maintain a strong surplus. We could have spent that $21 billion achieving other objectives. We could have spent it fixing some of the things that the Howard government neglected for 11 long years. We could have spent it on schools and universities, on infrastructure and vocational training, or even on raising pensions. But we did the responsible thing and maintained a strong surplus. That fact alone puts paid to the socialist fantasists opposite who are concerned that Labor are not the economically responsible managers that indeed we have proved ourselves to be.

And, in that circumstance, what did the opposition do? They did their best to sabotage the surplus by blocking the key revenue elements of the budget in this Senate. Then they raised a noisy, dishonest, hypocritical campaign—a campaign even they were embarrassed about—demanding that we increase the base rate of the pension. Never
mind that they did not raise the pension when they had the power to do so.

Senator Mason—We gave you the strongest economy in the Western world! You’ve never given us one of those economies; you gave us a $96 billion debt!

The President—Order! Senator Mason, it is the adjournment debate. I am listening with great care to what Senator Feeney has to say. I would ask you not to interrupt Senator Feeney.

Senator Mason—I’m only speaking the truth, Mr President—as I always do!

The President—You can put your name on the list if you want to speak the truth. Senator Feeney, continue.

Senator Feeney—The truth is a stranger to those opposite. I remind the honourable senator opposite that the golden rule in politics is never argue with the bloke with the microphone! So, never mind that they did not raise the pension when they had the power to do so. Never mind the fact that the Howard cabinet, including Senator Minchin, Senator Abetz and Senator Coonan and the rest of the fabulous four over there, rejected Minister Mal Brough’s cabinet submission to raise pensions in the 2007 budget. They presumably rejected that submission at the time because Senator Minchin and others said we could not afford it. Notwithstanding that, the hypocrisy of those opposite, boundless as it is, meant that Dr Nelson went on to say, in the aftermath of all of these anti-budget measures, that this was a government that was itself putting the budget at risk. Next they demanded that the government cut fuel excise by 5c a litre, of course a desperate bid by a failing opposition leader to cash in on the dissatisfaction in the community about what was then a spike in world oil prices earlier this year.

If the government had acceded to the opposition’s various demands, absurd as they were, and allowed them to block our revenue measures in the Senate, the total cost would have been $5 billion a year—almost a quarter of the budget surplus announced in May this year. That is the critical context when contemplating the shambolic performance of those opposite in question time today, when they emerged as the new-found defenders of the budget surplus—just as effectively, I might say, as when they tried to come out as the defenders of pensioners earlier in the year. Mr President, there is a good saying in politics: ‘The mob always works you out.’ And let me tell you, those opposite do not have a scintilla of credibility on these critical issues.

Today Senator Abetz sought to lecture us on the importance of maintaining a surplus. But what did his colleagues say about the surplus earlier this year? Dr Nelson said that his populist demand to increase pensions could be ‘taken out of the more than $20 billion surplus.’ Tony Abbott said that ‘it was not economically necessary to have a surplus of $22 billion.’ And what did the Merchant of Venice say? Malcolm Turnbull, on ABC Radio on 13 October, said when considering the proposed pension rise:

Now in addition to the arguments of compassion … there is also the need for an economic stimulus—and this is one economic stimulus that could be delivered in the near term.

So, only last month, Mr Turnbull was in favour of spending a large chunk of the surplus, not only to achieve social policy ends but also to stimulate the economy. That was what Mr Turnbull said, and it was in line with government policy, because what did the Prime Minister announce the very next day? He announced a $10 billion economic stimulus package, including a $4.8 billion package that included benefits for pensioners, benefits for families and benefits for first home buyers.
In response to the global financial crisis which broke out in September of this year, the Rudd government decided to use half the surplus to stimulate the economy and thus safeguard the most vulnerable sectors of our community against the effects of that crisis—which is, as all concede, a foreign-born crisis. And what did Mr Turnbull say about that? He supported it. He said: ‘It has our bipartisan support. It gives justice to Australia’s aged pensioners, in particular, who have been doing it tough.’

What does all of this tell us? It tells us that, when those opposite meet every morning to plot their cunning strategies for question time, they would do well to have regard for the utterances of their leader, and they would do well to have regard for the comments of their frontbench.

That was six weeks ago, but it has been six long weeks for those opposite. Now Senator Abetz tells us that spending the surplus is wicked and irresponsible. In doing this he is not only apparently contradicting his own leader, and he is not only ignoring the opinions of every responsible economist in Australia, all of whom have supported the government’s actions, but he has forgotten his own best efforts earlier this year to destroy the surplus by blocking those key revenue measures in the budget.

Even more extraordinary was the speech of Senator Coonan immediately after question time, while taking note of answers to questions. Senator Coonan seems to be inhabiting a kind of parallel universe which even the Tardis would struggle to reach, a parallel universe in which the global financial crisis does not even exist. God bless Senator Coonan for inhabiting such a place, where there is not such a crisis. She told the Senate that the Rudd government ‘have pronounced it all too hard and declared that Australia is headed for a budget deficit and probably a recession’. She said:

If this sounds familiar to Australians … it is because it is, very familiar. The ghost of Labor governments and their extreme failure to run the economy competently is well and truly back with us.

That is Senator Coonan’s analysis of our current circumstances.

This is of course an opposition that is struggling to find its way, struggling to find a story to convince Australian voters that its own shambolic performance over 11 years should be vindicated. But let us not forget that in the context of a global financial crisis an economic stimulus package has been completely justified—and despite your very determined efforts to try and persuade the Australian people that the government is in the custody of a group of socialists— (Time expired)

Economy

Senator PARRY (Tasmania) (11.10 pm)—This contribution has been inspired by Senator Feeney. I was not intending to speak, but Senator Feeney cannot leave the record the way he has. Selective quoting by Senator Feeney does not do him or the Labor Party any service. I could spend the full 10 minutes just going through the critical analysis of how bad the Labor Party was at economic management of this country. I am not going to put the Senate through that arduous task because I intend to only speak for a couple of moments, but I will redress the record.

Senator Feeney needs to be reminded of two salient facts. The first one is that, when we inherited government and the Australian people wanted us to severely take over this country’s financial management again, we had a $96 billion debt to pay back that the Labor government of the day had built up. That is the inherited pattern in Australian politics, cycle in, cycle out: what the coali-
tion parties do is rebuild this country. We rebuild the financial stocks. We strengthen the financial management of this country, only for it to be eroded by a Labor government every time they come to office. And that is repeating again.

In 12 months of office, this Labor government has gone into deficit. It is about to borrow money again. It is going to put the burden on future generations of Australian families. Senator Feeney should not be proud of anything he has said tonight. We are the serious economic managers of this country, and I can tell you, Senator Feeney, through you, Mr President: do not ever, ever presume to be anything other than economic wreckers of this country. The Australian people will put us back into office a lot quicker than you understand because we can control the economy, we know what we are doing and we have a fantastic track record.

Could I just make another observation about what happened today. Senator Feeney has only been able to quote Liberal senators today. Do you know why? It is because we are the only senators that make any sense when it comes to economic credentials and economic management. If he wants to come into this place and argue records, we will do him any day on economic management on records. We could go for a long time. I would have to do this on a Tuesday night and get the 20-minute adjournment speech just to cover the issues that we need to cover to prove the economic credentials of this country that the Liberal Party and a coalition government have given.

Senator Mason—Howard versus Keating or Whitlam; try that one!

The PRESIDENT—Senator Mason!

Senator PARRY—Great interjections, I might add. But could I add also that when you came into government—accidentally, I might add—we left you $20 billion in your petty cash drawer. Where is it? What have you done with the $20 billion we left you? Not only that, we put under the mattress another $20 billion in future funds. What are you going to do with that? We accept the Australian people’s verdict on the election, but it was by default that you got in. You did not even expect to come into government. You got there, and you are about to wreck the economy again. Do you know what is going to happen? The Australian people are going to put us back in again to fix the problems, as they always do.

Economy

Senator IAN MACDONALD (Queensland) (11.14 pm)—I am pleased to join the debate today. It just so happens that at this time of night there is not a lot of other entertainment on the radio and there are quite a number of Australians listening to the broadcast of the Senate. I just want to remind those Australians who might be listening to tonight’s debate that when the current government came into being in December last year, they inherited a $22 billion surplus, left to them by the Howard-Costello government. Contrast that with 1996 when the Howard government came in. What did they have then? They had a deficit of $96 billion. In the year that we took office, 1996, the Labor government, after telling the world that they had the economy well in hand, actually had a $10 billion current account deficit in that one year alone.

Australia is facing an economic difficulty at the present time. It sort of started when Mr Rudd and that totally incompetent Treasurer, Mr Swan, took office. They have been able to manage things, to date, alone, but can you imagine what sort of problem Australia would be in today if, instead of inheriting a $22 billion surplus, the current government had instead inherited a $96 billion deficit, as the Howard-Costello government did back in
1996? Had the Rudd government inherited a $96 billion debt plus a $10 billion current account deficit, can you imagine that sorts of problems we would be facing at the moment?

I remember 1996 well, because about 10 per cent of my fellow Australians did not have a job, and that happened under a Labor government. Unemployment was enormous in 1996—

Senator Feeney interjecting—

Senator IAN MACDONALD—Senator Feeney, perhaps you were not around then or perhaps you were getting some union campaign organised. You certainly were not looking after the jobs of your union members, because unemployment in 1996 was at an all-time high. You might remember as well that inflation in 1996, after 13 years of Labor government, was in double digit figures. People complain that Mr Rudd and Mr Swan talk up inflation, but even when they are talking it up they are talking about three, four and five per cent. When the previous government took over in 1996, inflation was in double digit figures and interest rates were up around eight or nine per cent. I remember back when the Paul Keating government was in office. I was buying a house in those days. I was paying 17.5 per cent interest on my housing loan under that Labor government. You can understand why Australians appreciate that Labor cannot be trusted with money.

For those who might be listening, if you think that you are having troubles with your mortgage at the moment, imagine how you would have been if you were paying 17½ per cent interest on your housing loan. That is what happened under the last period of Labor government. Not only did they leave a $96 billion debt, not only did they leave unemployment at record rates, not only did they leave inflation in double digit figures, but they left ordinary householders like me paying 17½ per cent interest on my housing loan.

Senator Mason—Commercial borrowings were over 20 per cent.

Senator IAN MACDONALD—Thank you, Senator Mason. At that time, I was in a legal practice and I had a lot to do with small business people. They were paying the banks 23 per cent. The banks were not lending, so they were paying private lenders 28 per cent to keep their businesses going. That was Labor’s mismanagement of the economy. You simply cannot trust Labor with money.

I draw the comparison: we took over government in 1996 with a $96 billion deficit. Over a period of 11 years and a lot of hard work with a lot of very good management of money, we paid off Labor’s debt after about seven years and then we started putting money aside. As Senator Parry said, we put it under the mattress. We started putting the surpluses away for the future of Australia. When we left office we left this government a $22 billion surplus. Within 12 short months that $22 billion surplus has now turned into what appears to be a deficit.

Government senators interjecting—

Senator IAN MACDONALD—I know that the Labor Party senators—and there are a lot of them here for this time of night; usually they are somewhere else at this time of night—are trying to drown me out, Mr President, because they understand that—

The PRESIDENT—Just address your comments to the Chair, Senator Macdonald. Ignore the interjections; I will deal with those.

Senator IAN MACDONALD—The interjections are so irrelevant and puerile that I am of course ignoring them. On reading the transcript of this you will recognise that I have been addressing nobody else but you all
night, Mr President. So perhaps your comments should be directed to those on your right—that is, those in the Labor Party who are trying to drown me out.

**The President**—Senator Macdonald, you just address your comments to the Chair and do not try to tell me how to do my job.

**Senator IAN MACDONALD**—Mr President, I have addressed my comments to nobody else but you—

**The President**—That is what I am saying; just address me.

**Senator IAN MACDONALD**—but I would expect your protection from the enormous amount—

**The President**—You have been protected, Senator Macdonald.

**Senator IAN MACDONALD**—of interjections that I am getting from the Labor party. The Labor senators do not want the people who are listening to this debate tonight to hear me pointing out that one year ago the Rudd government was left with a $22 billion surplus. And here we are, within 12 months, talking of, in Mr Rudd’s own words, a deficit. How can you blow $22 billion in 12 short months? I know how they ran up a debt of $96 billion in 13 years, because I was there and I saw the second half of it. I saw the ‘recession we had to have’.

I only mention these things because of what Senator Feeney and Senator Parry said—they encouraged me to assist in putting the record straight. When you compare Labor with Liberal, you have a $96 billion deficit by Labor and you have, after 11 years of hard work, a $22 billion surplus by the Liberals. It took us 11 years to pay off Labor’s $96 billion debt and convert that into a $22 billion surplus, but the Labor Party have blown it all in 12 short months. We are now going back into deficit.

How can you ever trust Labor with money? It is an old principle, Mr President. Look around the states. Every state in this country—apart from Western Australia, now run by a Liberal government—is owned by Labor, run by Labor, and now going into deficit, and they are doing the same thing in the federal parliament.

I am delighted to have been able to enter the debate for those people who do quite seriously listen to the debates at this time of night. It is important that we put on the record the real situation and not the Labor rhetoric.

**Senate adjourned at 11.24 pm**

**DOCUMENTS**

**Tabling**
The following document was tabled by the Clerk:

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Agriculture, Fisheries and Forestry: Departmental Staff
(Question No. 635)

Senator Minchin asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 25 August 2008:

(1) How many departmental officers are working in the office of the Minister/Parliamentary Secretary.
(2) How many of these staff are Departmental Liaison Officers.
(3) How many departmental officers, on secondment from the department, are in the office of the Minister/Parliamentary Secretary in personal staff positions.

Senator Sherry—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

The details below are provided as at 25 August 2008:

(1) Two.
(2) Two.
(3) There were three departmental officers, who were on leave without pay from the department, working in the minister’s office under the Members of Parliament (Staff) Act 1984.