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SITTING DAYS—2009

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RADIO BROADCASTS

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- PERTH      585AM
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FORTY-SECOND PARLIAMENT
FIRST SESSION—SIXTH PERIOD

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

Senate Officeholders

President—Senator Hon. John Joseph Hogg
Deputy President and Chair of Committees—Senator Hon. Alan Baird Ferguson
Temporary Chairs of Committees—Senators Guy Barnett, Cory Bernardi,
Thomas Mark Bishop, Carol Louise Brown, Patricia Margaret Crossin,
Michael George Forshaw, Gary John Joseph Humphries, Annette Kay Hurley,
Stephen Patrick Hutchins, Gavin Mark Marshall, Julian John James McGauran,
Claire Mary Moore, Stephen Shane Parry, Hon. Judith Mary Troeth and Russell Brunell Trood

Leader of the Government in the Senate—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Government in the Senate—Senator Hon. Stephen Michael Conroy
Leader of the Opposition in the Senate—Senator Hon. Nicholas Hugh Minchin
Deputy Leader of the Opposition in the Senate—Senator Hon. Eric Abetz
Manager of Government Business in the Senate—Senator Hon. Joseph William Ludwig
Manager of Opposition Business in the Senate—Senator Stephen Shane Parry

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 Fiona Nash
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
Chief Government Whip—Senator Kerry Williams Kelso O’Brien
Deputy Government Whips—Senators Donald Edward Farrell and Anne McEwen
Chief Opposition Whip—Senator Stephen Shane Parry
Deputy Opposition Whips—Senators Judith Anne Adams and David Christopher Bushby
The Nationals Whip—Senator John Reginald Williams
Australian Greens Whip—Senator Rachel Mary Siewert
Family First Party Whip—Senator Steve Fielding

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

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(1) Chosen by the Parliament of South Australia to fill a casual vacancy vice Amanda Eloise Vanstone, resigned.
(2) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Ian Campbell, resigned.
(3) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Christopher Martin Ellison, resigned.
(4) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

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

Heads of Parliamentary Departments

Clerk of the Senate—H Evans
Clerk of the House of Representatives—I C Harris
Secretary, Department of Parliamentary Services—A Thompson
**RUDD MINISTRY**

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

Minister for Veterans’ Affairs
Minister for Housing and Minister for the Status of Women
Minister for Home Affairs
Minister for Indigenous Health, Rural and Regional Health and Regional Services Delivery
Minister for Small Business, Independent Contractors and the Service Economy, Minister Assisting the Finance Minister on Deregulation and Minister for Competition Policy and Consumer Affairs
Assistant Treasurer
Minister for Ageing
Minister for Early Childhood Education, Childcare and Youth and Minister for Sport
Minister for Defence Personnel, Materiel and Science and Minister Assisting the Minister for Climate Change
Minister for Employment Participation and Minister Assisting the Prime Minister on Government Service Delivery
Parliamentary Secretary for Infrastructure, Transport, Regional Development and Local Government
Parliamentary Secretary for Defence Support and Parliamentary Secretary for Water
Parliamentary Secretary for Western and Northern Australia
Parliamentary Secretary for Disabilities and Children’s Services and Parliamentary Secretary for Victorian Bushfire Reconstruction
Parliamentary Secretary for International Development Assistance
Parliamentary Secretary for Pacific Island Affairs
Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Trade
Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion
Parliamentary Secretary for Multicultural Affairs and Settlement Services
Parliamentary Secretary for Employment
Parliamentary Secretary for Health
Parliamentary Secretary for Industry and Innovation

Hon. Alan Griffin MP
Hon. Tanya Plibersek MP
Hon. Brendan O’Connor MP
Hon. Warren Snowdon MP
Hon. Dr Craig Emerson MP
Senator Hon. Nick Sherry
Hon. Justine Elliot MP
Hon. Kate Ellis MP
Hon. Greg Combet AM, MP
Senator Hon. Mark Arbib
Hon. Maxine McKew MP
Hon. Dr Mike Kelly AM, MP
Hon. Gary Gray AO, MP
Hon. Bill Shorten MP
Hon. Bob McMullan MP
Hon. Duncan Kerr SC, MP
Hon. Anthony Byrne MP
Senator Hon. Ursula Stephens
Hon. Laurie Ferguson MP
Hon. Jason Clare MP
Hon. Mark Butler MP
Hon. Richard Marles MP
SHADOW MINISTRY

Leader of the Opposition
Shadow Minister for Foreign Affairs and Deputy Leader of the Opposition
Shadow Minister for Trade, Transport, Regional Development and Local Government and Leader of The Nationals
Shadow Minister for Broadband, Communications and the Digital Economy and Leader of the Opposition in the Senate
Shadow Minister for Innovation, Industry, Science and Research and Deputy Leader of the Opposition in the Senate
Shadow Treasurer
Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House
Shadow Minister for Infrastructure and COAG and Shadow Minister Assisting the Leader on Emissions Trading Design
Shadow Minister for Finance, Competition Policy and Deregulation
Shadow Minister for Human Services and Deputy Leader of The Nationals
Shadow Minister for Energy and Resources
Shadow Minister for Families, Housing, Community Services and Indigenous Affairs
Shadow Special Minister of State and Shadow Cabinet Secretary
Shadow Minister for Climate Change, Environment and Water
Shadow Minister for Health and Ageing
Shadow Minister for Defence
Shadow Attorney-General
Shadow Minister for Agriculture, Fisheries and Forestry
Shadow Minister for Employment and Workplace Relations
Shadow Minister for Immigration and Citizenship
Shadow Minister for Small Business, Independent Contractors, Tourism and the Arts

The Hon. Malcolm Turnbull MP
The Hon. Julie Bishop MP
The Hon. Warren Truss MP
Senator the Hon. Nick Minchin
Senator the Hon. Eric Abetz
The Hon. Joe Hockey MP
The Hon. Christopher Pyne MP
The Hon. Andrew Robb AO, MP
Senator the Hon. Helen Coonan
Senator the Hon. Nigel Scullion
The Hon. Ian Macfarlane MP
The Hon. Tony Abbott MP
Senator the Hon. Michael Ronaldson
The Hon. Greg Hunt MP
The Hon. Peter Dutton MP
Senator the Hon. David Johnston
Senator the Hon. George Brandis SC
The Hon. John Cobb MP
Mr Michael Keenan MP
The Hon. Dr Sharman Stone
Mr Steven Ciobo

[The above constitute the shadow cabinet]
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<th>Shadow Minister</th>
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<td>Shadow Minister for Financial Services, Superannuation and Corporate Law</td>
<td>The Hon. Chris Pearce MP</td>
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<tr>
<td>Shadow Assistant Treasurer</td>
<td>The Hon. Tony Smith MP</td>
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<tr>
<td>Shadow Minister for Sustainable Development and Cities</td>
<td>The Hon. Bruce Billson MP</td>
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<tr>
<td>Shadow Minister for Competition Policy and Consumer Affairs and Deputy Manager of Opposition Business in the House</td>
<td>Mr Luke Hartsuyker MP</td>
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<tr>
<td>Shadow Minister for Housing and Local Government</td>
<td>Mr Scott Morrison</td>
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<tr>
<td>Shadow Minister for Ageing</td>
<td>Mrs Margaret May MP</td>
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The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9.30 am and read prayers.

NOTICES

Presentation

Senator Eggleston to move on the next day of sitting:
That the time for the presentation of the report of the Economics References Committee on the unlimited deposit and wholesale funding guarantees be extended to 17 September 2009.

Senator Milne to move on the next day of sitting:
That there be laid on the table, no later than 4 pm on Wednesday, 16 September 2009, a map of Australian forest cover using the Kyoto definition of ‘forest’ for each year since 1990 in MapInfo format.

Senator Ludwig to move on the next day of sitting:
That the government business orders of the day relating to the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Bill 2009 and the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009 may be taken together for their remaining stages.

Senator Bob Brown to move on the next day of sitting:
That the Senate—
(a) notes:
(i) the recent 6 per cent pay rise given to the Commonwealth Bank chief executive, Mr Ralph Norris, providing him a salary package of $9.2 million at the same time as the bank’s annual profit is dropping,
(ii) that in 2008, in response to the financial crisis, Australian taxpayers guaranteed deposits in the four major banks to the value of $700 billion, and
(iii) that tougher rules on banker remuneration was a key topic at the G-20 Finance Ministers’ meeting held in September 2009; and
(b) calls on the Government to regulate the banks and link bank executive salaries to the performance of banks.

Senator Bob Brown to move on the next day of sitting:
That the Senate, following allegations in the Fairfax press about contractors used by subsidiaries of the Reserve Bank of Australia (RBA), Security International Pty Ltd and Note Printing Australia, calls on the Government to explain by Tuesday, 15 September 2009:
(a) what the RBA, Austrade and the Government knew about the employment of arms trader Mr Abdul Kayum Syed Ahmad by Securency International Pty Ltd and Note Printing Australia to secure contracts in Malaysia;
(b) when the RBA, Austrade and the Government were made aware of any issues with Mr Ahmad; and
(c) what action each took in response to such information.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.34 am)—I move:
That the order of general business for consideration today be as follows:
(1) general business notice of motion No. 544 standing in the name of Senator Cormann relating to the aged care challenges; and
(2) orders of the day relating to government documents.
Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Meeting

Senator NASH (New South Wales) (9.34 am)—I move:
That the Rural and Regional Affairs and Transport References Committee be authorised to hold a public meeting during the sitting of the Senate today, from 5 pm till 7.30 pm, to take evidence for the committee’s inquiry into the fee rebate for the Australian Quarantine and Inspection Service export certification functions.

Question agreed to.

NOTICES
Postponement

The following item of business was postponed:

General business notice of motion no. 531 standing in the name of Senator Ludlam for today, proposing a reference to the Joint Standing Committee on Foreign Affairs, Defence and Trade, postponed till 17 September 2009.

COMMITTEES
Privileges Committee
Reference

Senator BARNETT (Tasmania) (9.35 am)—I move:

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

Having regard to the report of the Legal and Constitutional Affairs References Committee on a possible contempt in relation to a witness to the committee’s inquiry into access to justice, whether there was any interference with, or imposition of a penalty on, a witness before that committee, or any threat or attempt to carry out those acts, and whether any contempt was committed in that regard.

Question agreed to.

Economics References Committee
Reference

Senator O’BRIEN (Tasmania) (9.35 am)—I, and also on behalf of Senator Colbeck and Senator Milne, move:

That the following matter be referred to the Economics References Committee for inquiry and report by 28 February 2010:

The current circumstances of the varying prices being paid to dairy farmers in different Australian states, including:

(a) the economic effect on the dairy industry of announced reductions in prices to be paid to producers by milk processors;
(b) the impact of the concentration of ownership of milk processing facilities on milk market conditions in the dairy industry;
(c) the impact of the consolidation of the ownership of the market or drinking milk sector with the manufacturing milk sector on milk market conditions in the dairy industry;
(d) the impact of the concentration of supermarket supply contracts on milk market conditions;
(e) whether aspects of the Trade Practices Act 1974 are in need of review having regard to market conditions and industry sector concentration in this industry; and
(f) any other related matters.

Question agreed to.

Community Affairs References Committee
Reference

Senator SIEWERT (Western Australia) (9.36 am)—I move:

That the following matter be referred to the Community Affairs References Committee for inquiry and report by the last sitting day in February 2010:

Hearing health in Australia, with particular reference to:

(a) the extent, causes and costs of hearing impairment in Australia;
(b) the implications of hearing impairment for individuals and the community;
(c) the adequacy of access to hearing services, including assessment and support services, and hearing technologies;
(d) the adequacy of current hearing health and research programs, including education and awareness programs; and
(e) specific issues affecting Indigenous communities.
Question agreed to.

Community Affairs References Committee
Reference
Senator SIEWERT (Western Australia) (9.36 am)—I move:
That the following matter be referred to the Community Affairs References Committee for inquiry and report by the last sitting day in April 2010:
The impact of suicide on the Australian community including high risk groups such as Indigenous youth and rural communities, with particular reference to:
(a) the personal, social and financial costs of suicide in Australia;
(b) the accuracy of suicide reporting in Australia, factors that may impede accurate identification and recording of possible suicides (and the consequences of any under-reporting on understanding risk factors and providing services to those at risk);
(c) the appropriate role and effectiveness of agencies, such as police, emergency departments, law enforcement and general health services in assisting people at risk of suicide;
(d) the effectiveness, to date, of public awareness programs and their relative success in providing information, encouraging help-seeking and enhancing public discussion of suicide;
(e) the efficacy of suicide prevention training and support for front-line health and community workers providing services to people at risk;
(f) the role of targeted programs and services that address the particular circumstances of high-risk groups;
(g) the adequacy of the current program of research into suicide and suicide prevention, and the manner in which findings are disseminated to practitioners and incorporated into government policy; and
(h) the effectiveness of the National Suicide Prevention Strategy in achieving its aims and objectives, and any barriers to its progress
Question agreed to.

COAL EXPLORATION AND MINING IN THE GALILEE BASIN
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.37 am)—I move:
That the Senate—
(a) supports the protection of farming and conservation areas from coal exploration and mining and its effects in the Galilee Basin in Queensland;
(b) declares that it does not support the massive increase in coal exports flowing from the Galilee Basin through Abbot Point and Hay Point because of the climate change ramifications of burning more coal; and
(c) expresses concern about the potential impact of the industrialisation of Abbot Point on the Caley Valley wetlands and the endangered and vulnerable bird species that depend on that area.

Question put.
The Senate divided. [9.41 am]
(The President—Senator the Hon. JJ Hogg)

Ayes............ 6
Noes............ 40
Majority....... 34

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

NOES
Adams, J. Back, C.J.
Barnett, G. Bilyk, C.L.
Bishop, T.M. Boswell, R.L.D.
Brown, C.L. Bushby, D.C.
Cameron, D.N. Colbeck, R.
Cormann, M.H.P. Crossin, P.M.
Farrell, D.E. Feeney, D.
Fielding, S. Fisher, M.J.  
Forshaw, M.G. Foster, M.L.  
Humphries, G. Hogg, J.J.  
Hutchins, S.P. Ludwig, A.  
Lundy, K.A. Marshall, G.  
McEwen, A. McLucas, J.E.  
Moore, C. Nash, F.  
O’Brien, K.W.K. Parry, S. *  
Polley, H. Pratt, L.C.  
Ronaldson, M. Ryan, S.M.  
Stephens, U. Trood, R.B.  
Williams, J.R. Wortley, D.  

* denotes teller

Question negatived.

NOTICES

Postponement

Senator HANSON-YOUNG (South Australia) (9.44 am)—by leave—I move:

That general business notice of motion no. 546 standing in my name for today, relating to current protocols for the interception of SIEVs in Australian waters, be postponed till 16 September 2009.

Question agreed to.

SOLAR FLAGSHIP PROGRAM

Senator MILNE (Tasmania) (9.45 am)—I move:

That the Senate—

(a) notes:

(i) that United States of America company, First Solar, has signed a memorandum of understanding to build a 2GW solar power station in China and that this single plant will be eight times larger than projects called for by the Solar Flagship Program (the program),

(ii) that the program depends for success on significant levels of private sector capital,

(iii) that the global financial crisis is exacerbating difficulties Australian companies are experiencing in accessing private sector capital for innovative renewable technologies,

(iv) that, in Australia, Solar Systems has gone into voluntary administration because of a lack of investment capital, and

(v) the lack of a comprehensive or coherent policy framework to encourage private sector investment in renewable energy; and

(b) calls on the Government to underpin the success of the program by:

(i) providing loan guarantees for commercial-scale demonstration projects,

(ii) implementing a gross national feed-in tariff for small to utility scale renewable energy projects, and

(iii) planning and funding electricity grid extensions to connect remote utility scale projects.

Question put.

The Senate divided. [9.46 am]

(The President—Senator the Hon. J J Hogg)

Ayes………… 6
Noes………… 37
Majority……… 31

AYES

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

NOES

Adams, J. Back, C.J.
Barnett, G. Bilyk, C.L.
Bishop, T.M. Boswell, R.L.D.
Brown, C.L. Cameron, D.N.
Colbeck, R. Cormann, M.H.P.
Crossin, P.M. Farrell, D.E.
Feeney, D. Fielding, S.
Fisher, M.J. Forshaw, M.G.
Furner, M.L. Heffernan, W.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Ludwig, J.W.
Lundy, K.A. McEwen, A.
McLucas, J.E. Moore, C.
O’Brien, K.W.K. * Nash, F.
Parry, S. Pratt, L.C.
Polley, H. Ryan, S.M.
Stephens, U.
Question negatived.

MR GUY CAMPOS

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.49 am)—I move:

That the Senate calls on the Government to ensure alleged war criminal Mr Guy Campos remains in Australia until investigations into the allegations about his actions in occupied Timor Leste are completely finalised.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.49 am)—Mr President, I seek leave to make a short statement.

The PRESIDENT—Leave is granted for two minutes.

Senator FIELDING—Anyone who has watched the reports on Today Tonight will be familiar with the name of Guy Campos. He is a self-confessed child beater and alleged war criminal and murderer. He has been living right here in Australia, only a couple of kilometres away from the family of the boy he allegedly bashed to death. The Australian government has known about these serious allegations against Guy Campos for well over 12 months. The government has taken way too long to ensure that this person is brought to justice. We do support this motion for those reasons. It would be outrageous to see this person being able to leave this country without Australia following through with its obligations to actually bring this person to justice.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (9.51 am)—Mr President, I seek leave to make a short statement.

The PRESIDENT—Leave is granted for two minutes.

Senator LUDWIG—The motion calls on the government to ensure that Mr Guy Campos remains in Australia until investigations against him are finalised. For the record, Mr Campos is currently in Australia on a bridging visa issued by the Department of Immigration and Citizenship. The AFP is investigating allegations relating to the conduct of Mr Campos in East Timor in the 1990s. It is this government’s position that we do acknowledge the grief of people whose lives have been deeply affected as a result of the conflict in East Timor over many years. This motion is misleading and inappropriate as it is currently formulated. As Mr Campos is currently lawfully in Australia on a bridging visa, he is free to leave the country if he chooses to do so. As Mr Campos is currently lawfully in Australia on a bridging visa, a criminal justice stay visa cannot be issued. It is unclear whether the senator is seeking a change to the law and to our system of justice. It is also unclear what the senator has in mind for keeping Mr Campos in the country or what he thinks this motion might lawfully achieve under our current law. The senator has been kept informed of the steps that agencies have taken in relation to Guy Campos and is aware—

Honourable senators interjecting—

Senator Bob Brown—Mr President, I rise on a point of order. I cannot hear what the minister is saying.

The PRESIDENT—Order! There needs to be silence so that Senator Bob Brown can hear what the minister is saying.

Senator LUDWIG—The Senate has been kept informed of the steps that agencies have taken in relation to Guy Campos and is well aware of the laws within which they operate. This motion is thoughtless at best and unfairly misleading to the families affected by war crimes. The government has indicated that it does not support the motion.
Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.53 am)—Mr President, I seek leave to make a brief statement.

The PRESIDENT—Leave is granted for two minutes.

Senator BOB BROWN—It is very alarming indeed that the minister has made that statement, because one has to take from it that Mr Campos may well leave the country before police investigations are finished and before the Commonwealth prosecutors have an opportunity to make a decision as to whether a prosecution can be made against Mr Campos based on evidence from real people who were tortured in Timor Leste during the period of occupation in which it is alleged Mr Campos was a collaborator. I am very alarmed indeed, and I hope the Senate will share that alarm, that Mr Campos may, in the coming days—certainly in the coming weeks—go back to Timor Leste or to Indonesia and be out of reach of the criminal justice system in Australia.

This nation has never, as far as I know, brought to court a war criminal within its borders. There are very serious allegations against Guy Campos. He should not leave the country until the Australian Federal Police has finished its investigations or until the prosecutor has made a determination. That is the challenge in this motion from the Senate to the government. I certainly hope the Senate will support this motion because it puts on notice to the government that it ought to allow the Australian investigation and policing system run its full course before Guy Campos leaves the country.

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

The Senate divided. [9.56 am]

(The President—Senator the Hon. JJ Hogg)
The statement read as follows—

Mr President, I present Report 104 of the Joint Standing Committee on Treaties. The report recommends binding treaty action be taken in relation to the following treaties:

- the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund;
- the Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund; and
- the Proposed Amendment of the Articles of Agreement of the International Bank for Reconstruction and Development to Enhance Voice and Participation in the International Bank for Reconstruction and Development.

Mr President, the Committee has taken the unusual step of making an interim recommendation that binding treaty action be taken while the Committee undertakes a more detailed examination of the three treaty amendments involved.

The Treasurer wrote to the Committee on 27 August 2009, asking that the Committee give urgent consideration to the treaty actions.

The treaties in question have the common aim of improving the effectiveness and legitimacy of the membership-based international financial institutions, the International Bank for Reconstruction and Development (the World Bank) and the International Monetary Fund (IMF).

Australia was a co-chair of the G20 working group on IMF reform, and was instrumental in developing the reforms embodied in these treaties.

The reforms will be an important agenda item at the next G20 Leaders' Summit, to be held on 22-24 September. The Treasurer advised that in order for Australia to perform the leading role expected of it in relation to this matter, Australia will have to take binding treaty action before 10 September.

While the Committee has already taken evidence from the Treasury in relation to the proposed treaty actions and is convinced that taking binding treaty action in relation to these matters is in Australia's best interests, we recognise that this will truncate the opportunity for interested persons to make submissions about the proposed treaties. The Committee will therefore consider any other issues in the framing of its final report, which it intends to table at a later date.

Mr President, I commend the report to the Senate.

THERAPEUTIC GOODS AMENDMENT (2009 MEASURES No. 2) BILL 2009

Returned from the House of Representatives

ACCESS TO JUSTICE (CIVIL LITIGATION REFORMS) AMENDMENT BILL 2009

NATIONAL HEALTH SECURITY AMENDMENT BILL 2009

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (SAFETY LEVIES) AMENDMENT BILL 2009

First Reading

Bills received from the House of Representatives.

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (10.00 am)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator LUDWIG (Queensland—Special Minister of State and Cabinet Secretary) (10.00 am)—I move:
That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

ACCESS TO JUSTICE (CIVIL LITIGATION REFORMS) AMENDMENT BILL 2009

Introduction

Put simply, without an accessible system of justice, the public’s confidence in the rule of law is compromised. If justice is accessible only to the very wealthy, it loses relevance for the vast bulk of Australians.

The great English writer Charles Dickens put it in more eloquent terms. In his savage tale of litigation in the English Court of Chancery he wrote of that 19th century court that it gave ‘to monied might the means abundantly of wearying out the right’.

Australia cannot afford a legal system where the cure of litigation is worse than the affliction of the dispute. Those citizens who have justice on their side, that is ‘right’ as referred to by Dickens, should be entitled to relief against even the better off. We must ensure there exists an effective and accessible system of justice where people are able to resolve their disputes quickly, efficiently and fairly.

It is true that the modern international commerce environment has given rise to difficult matters of law and fact which can lead to complex litigation. However, a number of recent high profile cases have highlighted there is a need to ensure that the use of the public resources of the courts is proportionate to the issues in dispute.

In the case of C7, Justice Sackville went into some detail in his final judgment case to demonstrate the amount of public and private resources that had been expended on the resolution of this dispute. The trial in that case lasted for 120 hearing days, some 85,653 documents were provided through the discovery process, experts’ reports ran to 2,041 pages, transcript to 9,530 pages, and submissions and pleadings to around 15,000 pages. Justice Sackville commented:

It is difficult to understand how the costs incurred by the parties can be said to be proportionate to what is truly at stake, measured in financial terms. In my view, the expenditure of $200 million (and counting) on a single piece of litigation is not only extraordinarily wasteful, but borders on the scandalous.

In addition the recent Bell litigation was of similar proportions. Cost estimates provided by the WA Department of Justice show parties contributed only around $900,000 to the cost of that case. However, the full cost to the taxpayer of the case was around $6.2 million. Of the $3.72 million in hearing fees, actual hearing fees collected totalled only $490,000. Overall, parties to the case paid less than 15 per cent of the actual cost of running the case.

This is money that could have been better used in many other areas of the justice system, not least, of course, the crying need for better resourcing of legal aid and community legal centres.

It is cases like these that show that, if Australia is to have a legal framework that provides fair access to justice for all, reform is essential.

This Bill forms a key part of the Rudd government’s agenda to improve access to justice.

The Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 amends the Federal Court of Australia Act so that cases before the Federal Court will be resolved by the simplest means possible.

The proposed reforms will clarify and strengthen some powers already existing in the court Rules and also introduce new provisions to complement and strengthen those measures.

By setting out the court’s case management powers it will be clear that the court, litigants and
practitioners are expected to conduct litigation efficiently.

The court and parties will be encouraged to narrow the issues in dispute and resolve them in the simplest manner possible.

The Bill introduces a new overarching purpose and that is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.

Parties to a proceeding will have a duty to comply with that overarching purpose and lawyers will need to assist parties to comply. Any conduct by parties or their lawyers that is inconsistent with the purpose can be taken into account by the court when awarding costs. For example, if a party unreasonably refused to participate in alternative dispute resolution opportunities or if a party pursued issues which were manifestly unreasonable, frivolous or vexatious, then the court can consider this conduct when awarding costs. The Bill strengthens the court’s existing power to award costs and indicates the type of behaviour which is expected from legal practitioners. As a result, these provisions will also have the effect of encouraging parties to resolve matters through those alternative dispute resolution mechanisms, potentially saving themselves and the taxpayer the expense of a full-blown hearing.

Significantly, if a party wishes to prolong litigation as a strategy to increase the costs of the other party to wear them down, as it were, the lawyer will be obliged to explain this behaviour as contrary to the overarching purpose and may have adverse consequences in terms of a cost order against their client. The Government is also considering other amendments to further strengthen the court’s mediation powers and focus parties’ minds on resolving disputes by alternative dispute resolution mechanisms. However, we will await the report of the National Alternative Dispute Resolution Advisory Council on the greater use of appropriate dispute resolution in court proceedings before going further down that road.

Use of case management powers may also require parties to limit the length of submissions, limit the number of witnesses called or adhere to a time limit for the completion of part of a proceeding. This will be particularly useful when the Court is dealing with complex commercial litigation, often referred to as ‘mega-litigation’ and also, for instance, in respect of class actions.

With the Court, parties and their lawyers all working towards the same purpose, the government is confident there will be an improvement in the early resolution of disputes in the Federal Court. This will in turn free up resources in the court, allowing other matters to be dealt with more quickly and cost effectively.

Appeals amendments

In addition to case management provisions, the Bill introduces amendments which will provide for more streamlined and efficient appeals pathways through the Federal Court in civil proceedings. The new appeals framework will be reflected in the arrangements for a restructured Federal Court.

The new appeals measures will assist the Court to provide greater flexibility in dealing with appeal proceedings. Uncertainty surrounding appeal rights in relation to interlocutory judgments will be removed, so that the Court’s time will no longer be spent unnecessarily hearing appeals from certain interlocutory decisions.

The court’s power to manage cases will be strengthened. The amendments ensure that a single judge is able to deal with ancillary and interlocutory matters in most circumstances without the need to constitute a Full Court. A single Judge will be able to refer a difficult question of law to a Full Court in all circumstances. This is an important safeguard for litigants.

Judicial responsibilities amendments

Amendments will also be made to the Federal Court Act, the Family Law Act 1975 and the Federal Magistrates Act 1999 to give the head of each federal court the responsibility to ensure the ‘effective’ discharge of the business of the court, in addition to their current powers to ensure ‘the orderly and expeditious’ discharge of the business of the court.

The amendments will clarify the powers of the chiefs to assign particular caseloads to judicial officers to ensure they can manage workloads and deliver judgments in a timely way. They will also
ensure judicial officers have access to periodic health checks and counselling services and appropriate judicial education.

This amendment supports and encourages the education initiatives developed by the federal courts, initiatives which have been enthusiastically embraced by most of the federal judiciary.

In particular, the Federal Court has been a pioneer in judicial education in Australia and its judges make a substantial contribution to judicial education both within Australia and overseas, many judges undertaking that training during periods of their own leave.

The Bill also provides, in the case of the Federal Court and the Family Court, for the commission or appointment of a Judge to a specific location.

Australia has a judiciary of the highest calibre and these amendments will further enhance public confidence in the administration of justice.

Access to Justice Taskforce

Access to justice, as we would appreciate, is about more than just reforms to how courts operate. That is why, as part of the Government’s broader access to justice agenda, a Taskforce was established earlier this year in the Attorney-General’s Department.

The Access to Justice Taskforce is working to develop a framework for a more strategic approach, and to make recommendations to me on ways to improve civil justice outcomes for all Australians. The Government will consult with the opposition and interested groups before introducing any reforms arising from those recommendations. This Bill is a first step to achieving these outcomes.

Conclusion

An effective and affordable civil justice system has even greater importance in the current economic climate.

The global downturn has increased bankruptcies, brought on litigation and triggered complex social issues.

Unnecessary delay and time spent in court also ties up significant capital and managerial time not only from the point of view of the courts but also from the point of view of corporations, businesses and individuals who may be required to appear before the courts. As a result, these pressures are additional financial imposts not only on the companies involved and those involved in the litigation but also on the broader economy.

More than ever before, it is imperative we have a well functioning justice system better equipped to assist people when they most need assistance, advice and guidance.

In combination with other reforms in this area, the Government is confident that the Bill will help achieve those goals. In this context, the Government recognises Federal Court of Australia’s constructive input to these initiatives.

NATIONAL HEALTH SECURITY AMENDMENT BILL 2009

This Bill amends the National Health Security Act 2007 to enhance Australia’s obligations for securing certain biological agents that could be used as weapons. Such a biological agent is also known as a security sensitive biological agent, or SSBA, and includes Ebolavirus and Foot-and-mouth disease virus.

The Bill reinforces the Rudd Government’s ongoing commitment to seek to protect all Australians from emerging health and security threats.

The regulatory scheme for SSBAs currently includes stringent requirements on the notification of the type and location of SSBAs in Australia, along with Standards that must be met by organisations handling SSBAs. The Standards are on matters such as the secure handling and movement of SSBAs, along with personnel requirements and risk management strategies.

Over the past year and a half the Rudd Government has worked closely with organisations that handle SSBAs, and other experts in the field, to ensure smooth implementation of the legislation. During this time, a number of areas have been highlighted where improvements to the scheme might be made. The Bill I am introducing today enhances the SSBA Regulatory Scheme in three important ways.

First, the proposed amendments enable the responsible Minister to respond immediately and appropriately to safeguard public health and safety in the event of an SSBA-related disease.
outbreak. The proposed changes enable the suspension of certain existing regulatory requirements and the imposition of new conditions to ensure that adequate controls are maintained.

The proposed amendments also ensure that the responsible Minister has all relevant information to hand, including advice from the Secretary to the Department of Health and Ageing, the Chief Medical Officer, the Chief Veterinary Officer, and others with scientific or technical expertise in SSBAs.

Second, the amendments will extend reporting controls to biological agents ‘suspected’ to be SSBAs. This measure will clarify the obligations of entities at the early stage of handling a biological agent when, after having performed all of their usual testing procedures for that biological agent, there is a positive presumptive identification for an SSSB. The new provisions will require an entity to report its handling of suspected SSBAs, including transfers of those agents, and will require entities to comply with new SSSB Standards for suspected SSBAs.

Third, the Bill will enhance the investigation powers available under the National Health Security Act. The Act currently provides inspectors with monitoring warrants which do not extend to seizing evidential material. This new measure introduces offence-related warrants that provide powers to search premises and seize evidential material. Importantly, this increase in investigation powers is complemented by necessary safeguards to ensure proper use of the powers. This includes safeguards such as authorisation by a Magistrate, and provisions governing the return of seized property and compensation for damage.

The Bill also makes some less significant but equally important amendments to improve the operation of the legislation and provide greater clarity for those working with SSBAs.

In particular, the Bill requires that, in addition to reporting certain events (such as loss or theft of an SSSB) to the Secretary to the Department of Health and Ageing, the entity must also make a report to local police. While entities would, as a matter of practice, make a report to police in these circumstances, the proposed changes put the matter beyond doubt and ensure a comprehensive investigation of the incident including law enforcement input.

Other measures in the Bill deal with the administration of the reporting scheme. Entities dealing with SSBAs are currently required to report any changes recorded on the National Register (such as changes to contact details) annually or biannually. The proposed amendments will require registered entities to lodge ‘nil’ annual and biannual reports rather than simply lodging no report at all. Nil reporting will ensure that entities do not forget to check if they have changes that need reporting, and will ensure that information recorded on the National Register is kept up-to-date.

The proposed amendments also enable the Secretary to the Department of Health and Ageing, on application by a registered entity, to cancel the registration of an entity or its facility, if they no longer handle any SSSB. This is a sensible change that simply ensures that the entity or its facility is no longer captured by the Act and its reporting obligations.

Finally, the proposed amendments include a new definition of ‘biological agents’. The definition of ‘biological agents’ currently includes bacteria and viruses ‘that can spread rapidly’. The requirement that the bacteria or virus be able to spread rapidly unnecessarily limits the definition of biological agent and excludes agents such as Anthrax that do not spread between humans but are highly dangerous. An amendment is therefore proposed to address this issue.

Given the importance of the National Health Security Act, I have ensured that the proposed changes have been subject to extensive consultation with experts. This has included consultation on an exposure draft of the Bill with agencies such as ASIO who assess the risks and threats from SSBAs, public health laboratories, State and Territory government agencies and other experts in SSBAs.

I am confident that the Bill before us appropriately enhances the existing regulatory scheme for SSBAs. It underlines the Rudd Government’s continuing commitment to keep Australia secure from potential threats and uphold the health and security of all Australians.
OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (SAFETY LEVIES) AMENDMENT BILL 2009

This Bill amends the Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Act 2003 to remove references to the pipeline safety management plan levy and also allows a pipeline licensee to pay a safety case levy for a pipeline.

The new arrangement for the payment of levies for pipelines will be as a safety case levy instead of the current pipeline safety management plan levy. These arrangements will take effect from 1 January 2010 in order that they start at the beginning of a levy year rather than part way through a year. This will avoid unnecessary administrative burdens on industry. There are no changes to how much levy is paid, when it is paid or who pays it.

Amendments to regulations which set out changes in levy arrangements for pipelines are currently being prepared and will come into effect at the same time as these amendments.

Debate (on motion by Senator Ludwig) adjourned.

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

AVIATION TRANSPORT SECURITY AMENDMENT REGULATIONS 2009 (No. 1)

Motion for Disallowance

Senator XENOPHON (South Australia) (10.01 am)—I move:

That the Aviation Transport Security Amendment Regulations 2009 (No. 1), as contained in Select Legislative Instrument 2009 No. 24 and made under the Aviation Transport Security Act 2004, be disallowed.

This motion disallows the Aviation Transport Security Amendment Regulations 2009, as contained in the Select Legislative Instrument 2009 No. 24 made under the Aviation Transport Security Act. While many of the provisions within this legislative instrument are worthy measures, two key components are not acceptable—hence my move to disallow.

These two provisions are internationally unprecedented and unacceptable. The first provision can be found in regulation 4.67E, where a pilot allowing an ineligible person into the cockpit is subject to an offence of strict liability. This is a significant departure from global safety practice, where airlines are always responsible for the actions of their pilots. I note that the Australian and International Pilots Association here in Australia sought advice from Bret Walker, an eminent Senior Counsel, and his advice was that the effect of these regulations is to create an offence of strict liability committed by a pilot in command if the cockpit door is not locked during flight or an ineligible person enters or remains in the cockpit during flight.

Previously, it was the operator of the aircraft rather than the pilot in command of the aircraft who would commit an offence in such circumstances. Bret Walker SC went on to say that if the position had been that there were no such existing provisions then it would be difficult not to agree with the government that some such provisions would be necessary, but the opposite is the case. There were ample provisions—and they remain in effect—to sanction regulated cockpit access before these new regulations were made. That is the case. What the government is attempting to do is unprecedented. It is also interesting to note that there has been a lack of consultation by the government with airline pilots, contrary to standard practice, in relation to this.

This provision not only covers entry but also makes a pilot responsible if a door is left unlocked or if another person leaves the door open. Pilots should be focusing on flight safety, not flying while looking over their shoulders to see if the door is closed. More importantly, at no time has it been made clear why this provision is so necessary. I have had considerable discussion with pilot representatives about the issue and they are
strongly opposed to the measure. We have a system that is operating well—it is similar to others overseas—so why do we need the change?

It is interesting that I received information from the pilots in relation to this. They have indicated to me that, in a review of overseas aviation practices, advice was sought of pilot association representatives from the United Kingdom, the United States of America, New Zealand, South Africa, France, Germany, Portugal, Greece, the Netherlands, Denmark, Finland, Norway, China and Israel regarding the respective airline aviation authority provisions on access to the flight deck. They found that what we are doing is unprecedented. It is interesting to note that that applies even to Israel. Anyone who has been to an Israeli airport knows what they are like in terms of security measures. We know how strict they are. That degree of strictness also applies to the flight deck, no doubt, yet even the Israelis are not going down this path. This is totally unnecessary and counterproductive.

There have been concerns about who can access the cockpit, and it would be good to see guidelines that stipulate pilots, crew and operators as those suitable for entry. However, one important group has not been included—that is, off-duty pilots. When emergencies occur, passengers want to know that every available resource is employed to ensure their safety. Data provided to me by a pilots association in the United States lists multiple instances where having a pilot in the jump seat has had important positive safety ramifications.

There have been a whole swag of recent jump-seat contributions. For instance, in June 2009 in an A300 there were fumes in the cabin. The note from the pilots indicated:

During climb our jump-seater stated that they smelled an oily caustic smell on takeoff roll and that it was still present. We declared an emergency and turned back for landing.

That is a case where it was a jump-seater who picked up on something. There was another instance involving the left-main cabin door of an A300 in July 2007:

A crew member in the jump seat called from the courier area. He reported the left door alarm in one position indicated between the locked green and unlocked red. There was no e-cam warning in the cockpit.

That was picked up by the jump-seat operator. That could have been a serious incident. There have been other incidents: right-inner tank fuel loss, locks being down, an unsafe pin-pull, a hydraulic leak, a gauge error, hydraulic system problems, jammed flight controls and crew member incapacitation. All those were occasions where the jump-seat pilots actually made a very positive and important contribution. These are things that we will miss out on with these particular changes. Further, a letter from the Australian and International Pilots Association reports that when similar measures to the ones proposed were attempted in the United States they adversely affected safety and security and had to be changed.

Put simply, the proposal will not make our skies safer; it will make air travel more dangerous. Further, the Australian pilots association has provided information that confirms 14 nations, which I have listed, allow jump-seat access for pilots. Unfortunately, we cannot amend this legislative instrument to add a new category of current off-duty pilots. This leaves us with the only option to disallow this regulation and call on the government to introduce it in a more appropriate form. The government will no doubt respond by saying that this will mean that we will revert back to the old system for the next six months. That is the not case. The fact is that, if the government wants to bring back a new regulation, if it wants to do so with the consent of
the Senate, it can do so. It can fix this up by consulting with pilots and by consulting with the experts who know and with whom we entrust our safety. However, if the new instrument is substantially different, as I believe it must be, it could be reintroduced immediately. My understanding of Senate procedure is that we can rescind this regulation and deal with it and not be fettered by the six-month rule in relation to it. I would support the government if it chose to bring back a suitable legislative instrument, and I also strongly urge my colleagues to support rescinding the six-month rule. The government can handle this swiftly and without fuss, if it wishes, and I would encourage it to do so.

What the government should not do is use this issue to chase easy headlines about security compromises. In fact, if the government wants to talk about genuine airline security issues then I suggest that it looks to the front pages of the Australian from earlier this week. If it did, it would see retired Customs officer, Mr Allan Kessing, being persecuted and pursued for exposing serious breaches in airport security four years ago. Also, I note that Mr Kessing, in his revelations at a media conference earlier this week, went to the office of the shadow transport spokesman, now the minister, four years ago, before publication in the Australian of his concerns. Mr Kessing confirmed this week that many of the shortcomings in the process still exist today. So I say to the government: fix real security problems and do not make problems by trying to change procedures that are working. I think everyone in this chamber trusts a pilot with their life every time they come to Canberra. Surely, we should trust them when they say that there are practical problems with this proposal. I urge all senators to support this disallowance motion.

Senator Ludwig (Queensland—Special Minister of State and Cabinet Secretary) (10.09 am)—The Aviation Transport Security Amendment Regulations 2009 close a dangerous loophole in our aviation security law. The key purpose of the regulation is to restrict who can enter the cockpit of an aircraft. The regulation makes it clear that the cockpit is reserved for persons with an operational, safety, security or training need. Hardened cockpit doors and restricting cockpit access are the last lines of defence to prevent a terrorist from using the aircraft as a weapon in an attack. Consequently, stringent rules must apply to who can open the hardened cockpit door and enter the cockpit.

The debate we are having today is essentially about one thing—that is, whether the rules of governing who can open hardened cockpit doors and enter the cockpit should be made by parliament or whether this matter should be left to the discretion of pilots. Senators know that planes have been used by and are targets of terrorists. It is well known how al-Qaeda’s Hamburg cell of terrorists trained to become pilots. Mohamed Atta was one of those pilots and senators well know his terrible deeds on 11 September 2001. On Monday this week, three people were convicted in Britain of plotting to murder thousands of people by downing at least seven airlines bound for the USA and Canada in what was intended as the largest terrorist attack since September 11. Early today, in Mexico City, a plane with 104 passengers was hijacked. It is the responsibility of the government and this parliament to ensure the security of all Australians, and with terrorists targeting planes we must ensure that aviation security measures are strong and tight.

Australia’s aviation security regime relies on a number of layers of security measures that, operating together, ensure that the travelling public is safe. The layers are designed to prevent a catastrophic event caused by persons gaining control of or destroying an aircraft. Specific measures required by legis-
lation include screening of passengers and baggage to prevent explosives, prohibited items or weapons from getting into the cabin of an aircraft. These are things that could destroy an aircraft or be used to gain control of it.

A critical layer of aviation security is the hardened cockpit door. This is the final layer of security preventing unauthorised persons from gaining access to the cockpit and control of an aircraft. Hardened cockpit doors were part of an enhancement in aviation security around the world in 2002. On 26 November 2003 the previous government determined that, from 1 July 2004, all regular passenger transport and open-charter aircraft of 30 seats or more were to install hardened cockpit doors. This measure was seen as important enough for the previous government to fully fund the installation of hardened cockpit doors for all non-jet regional aircraft registered at the time the decision was announced.

The regulations which some senators want to disallow remove the unfettered discretion previously granted to pilots to permit any person to open the hardened cockpit door and access the cockpit. Under the cockpit access rules set out in these regulations, only people with a genuine safety, security, operational or training requirement may be permitted to enter and remain in the cockpit of an aircraft. The regulations create a strict liability offence for a pilot or company who lets an unauthorised person into the cockpit. However, importantly, the regulations make specific provision to ensure a pilot can let a person into the cockpit to protect the safety or security of the plane or its passengers. In the unfortunate situation where there is a medical or some other emergency on an aircraft, the pilot’s judgment to allow a person to access the cockpit is not fettered by this regulation.

As I noted earlier, these regulations close a loophole in the aviation transport security regulations which commenced on 10 March 2005. The previous government’s policy intention for cockpit access was to prevent persons without a security, operational or safety need from accessing the cockpit of an aircraft fitted with a hardened cockpit door. However, due to a drafting error, the 2005 regulations effectively allowed a person to enter and remain in the cockpit of an aircraft if he or she was permitted to by the pilot in command. The previous government knew about the loophole that existed late in 2005. The then Minister for Transport and Regional Services, Mr Truss, stated in a letter to the pilots association on 16 November 2005:

It is the government policy that only those people with a genuine safety, security or operational need have access to the flight deck.

The previous government knew there was a loophole, but they did not take action to fix it. If these regulations are disallowed, the legislation regarding cockpit access will return to the state it was in prior to the commencement of the regulation on 12 March this year. There will be no legal restriction on who can enter a cockpit and there will be no penalties for unauthorised access to the cockpit. If these regulations are disallowed, access to the cockpit will effectively be left to industry self-regulation. It is completely unsatisfactory for such an important measure in such a vital regulatory regime to rely on industry regulating itself. The government has made it clear to the pilots association, to the opposition and to Senator Xenophon that it will look closely at the issue of access of off-duty pilots and also at the strict liability offences in the regulations.

The government will continue to work on these matters with relevant stakeholders, including the Australian and International Pilots Association. If an agreed position can be reached, and further assessment by the Of-
fice of Transport Security determines that the integrity of the aviation security regime would not be compromised, the government will consider amending the regulations accordingly. Until that time, the Senate has a choice as to what the security regime will be for hardened cockpit doors and access to the cockpit of a plane. These regulations are important for aviation security and they should be allowed to stand, particularly while the government has said that it can work with those associations to ensure that there is consultation. More importantly, it is necessary to ensure the continued safety of airline passengers. That is the focus which the government has on this issue.

Senator IAN MACDONALD (Queensland) (10.17 am)—I am disappointed to hear Senator Ludwig’s speech. He has done precisely what Senator Xenophon, in moving the motion, asked him not to do; he is indicating that, because the majority of senators will be opposing this—I think they will; although I am not sure of the Greens’ position, at least one of the Independents will oppose this—we will be opening the gates to airline insecurity. We, along with all senators who will be voting for the motion to disallow, reject that out of hand. It is disingenuous for the minister to have raised that in his speech.

Before I state the grounds upon which the opposition will be supporting the motion to disallow, I indicate to Senator Wortley, the chair of the committee which put in the original disallowance motion, that I congratulate her on her courage and on her contribution to Australia in doing what is right. Senator Wortley acted very appropriately and was very courageous in carrying out her duties as chair of the committee. Not many people in the Labor Party would be prepared to stand up to Mr Albanese and wear the wrath which we know would be imposed upon those who dare to cross him, but it is good to see that there is a senator who is prepared to put her duties to the Australian public and to the Australian parliament ahead of any other consideration.

I also congratulate Senator Chris Back. As I understand—I was not a member of the committee and I am not sure how secret the dealings of the committee are—it was Senator Back who, in this committee, first raised the issue of lack of consultation and, as a result, convinced the committee that a disallowance motion should be moved. The coalition has attempted very consistently and strongly to work with the government to get a resolution to this issue. As Senator Ludwig said, some of the issues raised in the regulations are issues which our government instituted in the first instance. It was all towards making airline travel safer and securing the cockpit, making it safer for Australians to travel by air. When we saw this regulation, we were concerned about it initially. Mr Truss, as shadow transport minister, made a mighty effort to work cooperatively with Mr Albanese in relation to the regulation. As I understand, all of the loopholes—we concede there is a loophole—could be fixed on Monday with a bit of goodwill from Mr Albanese, but he has chosen to proceed with this regulation knowing that it is flawed.

The concern is that, had the minister done what he is required to do and consulted widely, we would not be in this situation today. It is because the minister did not do what he was required to do and chose to ignore those who are most involved in this—the airline pilots themselves—that we are in this situation today. The airline pilots association have made their view very clear. They do not want to widen the class of persons who have cockpit access. They do not want to include general entry to family members or friends, as is being suggested by the minister. The airline pilots association have also noted that such a general class of
persons are not permitted to enter the flight deck of an airline in any flight in Australia at this time in any case. They further point out in their submissions that Australia’s professional pilots would not support any widening of the access. So we in the coalition dismiss any assertion that somehow we are compromising the security of the flight deck by supporting the disallowance motion. Access to the flight deck is suitably limited and will remain so in the immediate future.

Qantas now only permits its employees access to the jump seat in the cockpit, and then only at the pilot’s discretion. Prior to our government restricting access to the flight deck in 2005, it was commonplace for passengers to visit the flight deck at the pilot’s discretion. This was often permitted. But, as we know so well, times have changed since 11 September 2001, and the coalition government moved to responsibly restrict access to only those the airline felt appropriate to enter their flight deck. In providing airlines with the discretion to decide who entered the flight deck, the coalition in 2005 recognised the emerging world’s best practice concept of outcome based safety regulations. This concept is today the foundation principle underpinning Australia’s approach to aviation regulations and is recognised globally as the most effective way for delivering the best safety in critical industries such as aviation.

Airlines know far more about operating large aircraft worldwide than our government. That is a self-evident fact, of course. In the case of Qantas they have been doing it for nearly 90 years. Outcome based safety systems tap into this extensive knowledge and allow the airlines to figure out how to run their businesses safely and effectively. The coalition recognises this principle by permitting airlines to develop their own flight deck access plan. I am conscious of the fact—

Senator O’Brien—that is just the silliest thing I have ever heard.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Just move on and keep speaking, Senator Macdonald.

Senator IAN MACDONALD—Thank you. I am not sure why I would ever be interrupted by anything Senator O’Brien might say. I do not think he has made a worthwhile contribution to any debate for a long time, but I am sure we will hear his expert opinion on this matter later. I was going on to say that I am conscious of the fact that there are a number of my colleagues who want to speak on this issue. Accordingly, I will not be taking my full allowable time so that we do not delay the Senate unnecessarily.

We are concerned about the strict liability issue. If the government feels it necessary to close a possible legal loophole that may give undue discretion to a pilot in permitting access to the cockpit of the plane with a secure door, then clearly the coalition supports this. The coalition, like the government, is committed to a robust aviation security regime and is prepared to work constructively with the government to this end.

In dealing with this loophole the regulations impose a penalty of strict liability upon the airline company if they permit a person onto the flight deck outside of the prescribed class, and the coalition is happy with this provision. However, the regulations also impose a strict liability offence of 50 penalty units upon the pilot if they permit an ineligible person to enter the flight deck. In both these cases—the imposition of the penalty of strict liability upon the pilot regarding an unlocked door and ineligible access to the flight deck—we believe the regulations have gone too far. The people most involved in this are of course those who fly the planes and they have made very good submissions on why this is so.
I could refer the Senate to the legal advice on these regulations prepared by one of Australia’s leading barristers, Mr Bret Walker SC, that strict liability unreasonably places the burden of evidence upon an individual pilot in command, and to the coalition this seems unreasonable. It also seems unduly harsh to impose a strict liability offence upon the pilot where the state of mind is not a defence. In the normal operational flying environment pilots are harnessed in their seat and are occupied with the demands of flying. In many cases they cannot even reach around and close the door. While pilots are extremely mindful of cockpit security—probably more so than anyone else—to hold them strictly liable for any transgression, rather than their employer, seems unreasonable and excessive. Mr Walker also quite correctly points out that the imposition of criminal sanctions upon pilots is disproportionate and unnecessary. He points out that the increasing risk of these punitive sanctions upon skilled professionals such as pilots only diminishes safety as it increases the fear of self-incrimination. This would obviously inhibit self-reporting—one of the key safety features of a mature aviation safety system. By inhibiting reporting, these security provisions actually reduce safety.

I further point out Mr Walker’s point that the shortcomings of paragraph 227(1A)(b) of the Civil Aviation Regulations 1988 that may give undue discretion to pilots in determining flight deck access could have been dealt with by just amending it so that pilot permission could be only for a safety, security, operational or training purpose. We believe, as most independent observers do, that the making of regulation 4.67E, which removes the application of paragraph 227(1A)(b) and includes a penalty of strict liability, is unnecessary and excessive. The transference of criminal liability also undermines an important global principle that airlines are responsible for the operational actions of their pilots. It must be remembered that airlines control flight operations, standards, training and checking, and any other approach runs the risk that airlines could attempt to duck their responsibility for accidents. There is a lot more that could be said and will be said by my colleagues.

I finish by indicating again that we will be supporting the motion for disallowance. I plead with the government to properly consult not only with the airline pilots but with other senators in this chamber and the shadow minister, Mr Truss, who stands willing, as he has over the last several days and several weeks, to get a resolution to this issue. I would urge the government to work with goodwill with other parties to ensure that we can get regulations that are fair and reasonable and ensure the safety and security of the travelling public.

Senator MILNE (Tasmania) (10.29 am)—I rise today to support the disallowance. The reason for this is pretty clear to me, having worked in a number of workplaces in my life. The best way to encourage increased performance is to have a culture in which people can talk about ways to improve what they do and cite examples of where things have not been done as well as they might. If you introduce a criminal sanction for individuals, as this does by bringing in a criminal sanction against a pilot who for some reason does something such that the cockpit door is unlocked or some issue occurs in relation to cockpit security, then they will not report. If they know that by reporting on that they will incriminate themselves and then be liable for a serious criminal offence, you are going to introduce a culture of secrecy and cover-up and at best people turn-
ing a blind eye to things that have happened, because they do not want other people to suffer criminal consequences over matters that might be inadvertent and quite innocent.

It is appropriate that the companies have liability, because it is up to the corporation to have a culture of self-improvement and improved safety standards and it is up to airlines to institute that with their pilots. But I really do not like a scenario where a criminal sanction is introduced such that it is not in the pilot’s interests to report and to engage in real self-monitoring of the security system. It is pretty clear to me that you are changing from a culture of encouraging appropriate monitoring and appropriate self-evaluation and improvement to a culture of secrecy and cover-up. That is not in the best interests of security.

It will also cause a lot of conflict, I believe, because there will be people who think that something ought to be reported but who are reluctant to report it because they know that someone is going to suffer the consequences of criminal sanctions and so on and so forth. Everybody is clearly interested in airline security.

I concur with what Senator Macdonald has said. I have been on many flights across Bass Strait in the old days of the Focker Friendships when the pilot encouraged children on board to visit the cockpit. When we got underway, parents would ask whether their children could come up and have a look in the cockpit. That was organised. It was a pleasant and exciting thing for young people—especially if they had never been in a plane before—and it let them learn new things. It was a way of encouraging them to feel safe and secure in flying, and so on. Things have changed. Security is critical. We have to make sure that the travelling public is protected. But the best way of protecting the travelling public is to encourage a culture of openness, transparency, self-evaluation and improvement. I do not think that putting criminal sanctions on pilots is the way of doing that. In fact, it is counterproductive in an age in which we need people to be very upfront about mistakes that are made, so that we can correct those mistakes immediately and not make the travelling public vulnerable rather than cover mistakes up and perpetuate them, which might in the end lead to a disaster.

Senator O’BRIEN (Tasmania) (10.33 am)—It was not my intention to speak in this debate, but a couple of the matters raised by Senator Macdonald provoked my intervention. Firstly, there was a suggestion that somehow it was wrong for the government to think that its view should prevail over the view of an airline, which seems to me to fly in the face of the proposition that we should have a government backed regulator telling the airlines what to do in the interests of safety. The suggestion advanced by Senator Macdonald has no weight at all. It is, frankly, ridiculous to say that government is not the responsible entity to enforce the safety regime for the airline industry. It is in this country. It has been for many years. It is in the rest of the world, effectively. I am not sure what provoked the senator to make the quite ridiculous suggestion that he made.

The other matter that he raised was the suggestion that Mr Truss was very keen to be involved in negotiations and consultation about this regulation and that somehow the government had failed to consult with Mr Truss about this regulation. My advice is that there have been significant consultations with Mr Truss and his staff and that of the Leader of the Opposition. Indeed, I understand that there was an understanding reached earlier this week that, on the basis of undertakings which the government was prepared to give about returning to some aspects of these regulations that are complained of,
the opposition would support the passage of the regulations and not support this particular disallowance motion. For it to be suggested that somehow we have not dealt with the opposition in good faith in any way on this is preposterous and is not true. The minister, I can tell you, is quite outraged at the suggestion that there has not been proper consultation about this. And we believed that there was an agreement to pass this legislation, because some of the critical issues we were quite happy to return to.

But in the interests of aviation safety, if there are matters that can be addressed following the promulgation of this regulation, then that is the way it should be done. This should not be left in a void whilst the matters are resolved. This matter is being dealt with today because it is the last day for it to be dealt with and that has put some time pressure on things. Frankly, it would be better in the government’s opinion if the regulation were to be not disallowed and we quickly got on with dealing with some of the issues that, whilst important, are less important than the issue that underlies the whole regulation. Given that it is not something that can be resolved in a five-minute exercise, I think that would be a better outcome. It sounds as though that will not happen and the regulation will be disallowed. We think that that is a very bad thing. It really is made worse by the fact that we thought that the opposition was going to be much more responsible and reasonable on this matter.

In relation to Senator O’Brien’s comments, I will need to re-check the Hansard but I do not remember at all any commentary from Senator Macdonald that would indicate that there had not been consultation with the opposition spokesman in relation to this matter. In fact, there has been quite considerable discussion and I did not hear anything in Senator Macdonald’s comments that indicated otherwise.

But in the interests of aviation safety, if there are matters that can be addressed following the promulgation of this regulation, then that is the way it should be done. This should not be left in a void whilst the matters are resolved. This matter is being dealt with today because it is the last day for it to be dealt with and that has put some time pressure on things. Frankly, it would be better in the government’s opinion if the regulation were to be not disallowed and we quickly got on with dealing with some of the issues that, whilst important, are less important than the issue that underlies the whole regulation. Given that it is not something that can be resolved in a five-minute exercise, I think that would be a better outcome. It sounds as though that will not happen and the regulation will be disallowed. We think that that is a very bad thing. It really is made worse by the fact that we thought that the opposition was going to be much more responsible and reasonable on this matter.

In relation to the comments of Senator O’Brien, the two issues that he refers to are not separate to the issues that underpin this regulation; they are actually pivotal to the matter. They are absolutely an imperative and integral part of the safety discussion. There is no-one in this chamber and no-one in the other place who is not absolutely passionately committed to security on aeroplanes. It would beggar belief to think that we would be anything other than as one on ensuring the safety of passengers and ensuring that nothing is done to compromise it.

The residual issue in relation to off-duty pilots is absolutely fundamental to that security question. So this is not a matter that should be debated after the event. It should not be a matter that might be the subject of further amendment. It actually completely and utterly underpins the security aspect upon which the regulations are based. That is the real issue—and we have seen information from the Australian and International Pilots Association. Senator Xenophon has quite rightly referred to it. They are public documents and I would encourage people to have a look at the very examples of where passenger safety was improved by the presence of off-duty pilots. They actually save lives both in the air and on the ground. I am completely and utterly stunned about a number of things. As Senator Milne said, why would you not consult with the very group of people who you will demand to implement the policy that you want to bring in? On what
basis could you not actually consult with the very group of people around which the regulation is based, to ensure passenger safety? It beggars belief as to why that was not done.

Passenger safety will actually be improved by the admission of off-duty, licensed pilots into the cockpit. Our view—and this has been expressed by Mr Truss—has been that we believe that the definition of who can have access is too narrow because it does not enable those people to have access to and join their fellow pilots in the cockpit. This ridiculous notion that was floated earlier in relation to this matter—that it was about pilots protecting rights to have family up the front of the plane in the cockpit—is quite obscene and is simply not true. The pilots themselves have made it very, very clear that they are not talking about the access of family to the cockpit. Those days are long gone, and so they should be in the current context of the threats to passenger safety. They have quite rightly said: ‘We were not consulted. We are the ones with whom the ultimate buck stops in relation to this issue with this regulation, and we were not consulted.’

The second aspect is that they are absolutely adamant that passenger safety will be improved by the ability of off-duty pilots to have access to the cockpit. That will actually improve passenger safety. I am not for one minute suggesting the government is not concerned about passenger safety and I take it at face value what the rationale for these regulations is. I do not attack the minister for the rationale behind the regulations. But I do ask: how can you not consult those who you are imposing a liability upon? And why would you not maximise passenger safety by having access of those off-duty pilots? Why would you compromise passenger safety by their not having a right to do so?

The third part of the argument, which Senator Xenophon, Senator Milne and Senator Macdonald referred to—and passenger safety is clearly paramount—is the imposition of strict liability on the pilots when they may in some cases actually be operating an aircraft and sitting in the cockpit when requests are made in relation to access. This is public documentation, to the extent that it has been widely circulated—I am very circumspect about discussions in the committee. Paragraph 29 of the opinion of Bret Walker SC reads:

The way in which the offences under Reg 4.67E are created, as offences of strict liability, is that the pilot in command will commit such an offence by permitting a person to enter or remain in the cockpit, in flight, if the person does not meet the requirements of subreg 4.67E(3) or subreg 4.67E(4); subreg 4.67E(1). The requirement for operator’s authorization does not readily adapt to circumstances that may arise during flight, and it is not necessarily the case that the general dispensing provisions of sec 10A of the Aviation Transport Security Act 2004 will avail the pilot in command. Certainly, invidious questions may arise as to whether the person protected by subsec 10A(1) includes the pilot in command whose conduct may absolve such a person under those provisions. As well as that legal question, there is a factual question, equally invidious, whether the conduct of a pilot in command could be seen as “reasonable in the circumstances”, within the meaning of para 10A(1)(d), if eg the pilot did not inspect ID or documentation concerning authorization, or did not scrutinize purported ID or documents in order to detect forgery.

This regulation refers to real-life situations. It is not someone sitting in a company’s office for a week or so prior to a flight taking off where there might be the ability for the pilot to check matters. These are real-life, real-time situations where the pilots are required to make split-second decisions and they are entitled to rely, in my view, upon what they have been given. But, under this, there is a very real risk that the pilots themselves, because of the strict liability provisions, will wear the outcome personally.
In my view it is simply not good enough to say that the test of reasonableness will be imposed. You are actually putting the onus back onto the pilots to prove that their actions were reasonable. The strict liability puts the onus back onto those pilots to say that their actions were reasonable. How can you impose strict liability upon a person who is about to take off or is in the air? I think it is totally unreasonable.

The strict liability question and the off-duty pilot issue should have been resolved this week. It was made quite clear by the opposition, the pilots, the Greens and Senator Xenophon that these are the two pivotal issues. My view is that to say, ‘We will closely look at the strict liability and the off-duty pilot issues’—to quote the minister—is, quite frankly, not good enough because, once this goes through, that strict liability is imposed upon those pilots immediately.

There has to be a sense of fairness in relation to government regulation and legislation. You cannot impose upon an individual those sorts of strict liability requirements and say that you may well look at them more closely further down the track. I do not think that is fair to the individuals involved. This should have been resolved. This should have been removed. It should have been replaced with a regulation which addressed both of these issues and then we would not be here today on the back of that.

I have had some pretty serious barneys with the pilots association over the years. I had some pretty serious barneys with them over the Qantas Sale Act and the Senate committee surrounding that. I come to this completely with clean hands, but I come here to defend the rights of individuals in this country to not have strict liability imposed on them in circumstances where they are not the masters of their own destiny, and no-one would reasonably believe that they were the masters of their own destiny.

From what I have read and heard, the pilots association have made it quite clear that the fundamental issue for them is to make sure that we improve passenger safety and not minimise it. We can improve passenger safety by having access to those off-duty pilots. The second issue is—and I will repeat it again—the strict liability offence. I think it is totally unreasonable for this parliament and legislators to impose upon a group of people, such as the pilots in this situation, this strict liability offence.

Senator BACK (Western Australia) (10.51 am)—I also rise to speak on the disallowance of the Aviation Transport Security Amendment Regulations 2009 (No. 1). I want to make the point initially that, as all of us in this chamber travel often, we do not need to be lectured by Senator Ludwig on aspects of airline safety. We all have a keen interest in ensuring that airline safety is at its maximum at all times for everybody in this country, both aircrew and passengers. We certainly would not dispute the right of the government of the day to legislate to ensure this, but neither does this go to that point.

I congratulate the Chair of the Regulations and Ordinances Committee. I have learnt enormously under her chairship. I draw attention to a point made already in the chamber this morning, and that is that this matter could have been dealt with expeditiously and quickly had the responsible minister taken the advice and the suggestion of the Hon. Warren Truss and dealt with this matter prior to it actually coming before us. It is not a difficult matter to finally resolve and it is disappointing that the time of the Senate is being taken this morning on this particular matter. I do not wish to repeat at length comments made already by Senator Xenophon and others, except to say this goes to a
principle of equity, the principle of equity being that pilots were to have removed from them the right to determine who would be in the cockpit of their aircraft but, worse than that, criminal liability was to transfer from the airline operator to the pilot for actions over which they did not have a say and were not consulted. I have not long been in the Senate. I have long been an employer and an employee, and I certainly looked at this and said to myself: is this fair? If I were in that position, firstly, I would have been denied the opportunity to be informed of or to have commented on something that was going to affect me and, secondly, criminal liability was going to transfer to me from my employer for actions over which I had no control. I certainly took the position that that was not fair and should be dealt with.

Senator Ronaldson made some comments about the pilots. A position put to me was that, under these regulations, a pilot could fly an aircraft from Los Angeles to Sydney and then be a passenger on another aircraft of the same company from Sydney to his or her home in Melbourne and be an ineligible person. How they could be an ineligible person and not be allowed to be in the cockpit at the request of the pilot of that aircraft was just simply beyond me.

We did what the regulations required, and that was to consult with the association. Criminal liability has been outlined by Senator Ronaldson. We looked at the 50 penalty points associated with, for example, the door to the cockpit being left open. We could potentially have a situation in which a member of aircrew goes into the cockpit and the pilot, who at the time might be very busy in the midst of a storm, tells that person from the aircrew, ‘Make sure you close the door on the way out because I’m busy doing something else, I’m strapped into my seat, I’m concentrating on the instruments,’ and that person, whether deliberately or inadvertently, fails to close the cockpit door. Under these regulations, we have a scenario in which the pilot would then be criminally liable for the fact that the door had not been closed. Criminal liability, of course, turns to that person losing their employment and losing their future capacity to be able to fly commercial aircraft.

I say again, without taking more time of the Senate, that this could all have been dealt with outside this chamber had common sense prevailed. I am sure common sense will prevail so that we can return to the scenario of the government enacting correct regulations in this matter.

Senator HEFFERNAN (New South Wales) (10.56 am)—I think all that needs to be said has probably been said, but I would just like to make a couple of remarks and to declare an interest as I am probably the only pilot who is taking part in this debate.

Honourable senators interjecting—

Senator HEFFERNAN—Joe has got one, has he? Well, there you go! I got my pilots licence in 1965.

Senator Chris Evans—Now I’m scared about flying!

Senator HEFFERNAN—Yes, I know—it was a pretty scary bush experience for anyone that came flying with me! Four pound 10 an hour it cost. The poor bloke that taught me to fly, the late Dick Cuthbert—

Senator Cormann—Are you current?

Senator HEFFERNAN—No, I am not current. It would not be hard. All I would have to do is go back for—

The ACTING DEPUTY PRESIDENT (Senator Bernardi)—Senator Heffernan, please address your comments through the chair.

Senator HEFFERNAN—Talking about aviation safety, Dick Cuthbert got killed giving an endorsement on a Twin Comanche
when the student pilot feathered one engine and turned the fuel off to the other.

I would like to clarify a couple of things about the disallowance motion by Senator Xenophon. This really is not about anyone saying we should not have the ultimate in security in airlines. That is not what this is about. This is about several issues, including the pilots. If anyone thinks that there is anything wrong with the security of Qantas or that Qantas is not a great airline, go and fly on American Airlines. If you want to frighten yourself, go and fly on some of the other overseas airlines in their domestic situation—they are scary. This is not about lowering the safety standards. This is about not being obstinate. This is not about the old days when if you wanted to impress your girlfriend you took her up the front and put her in the jump seat, or about any passenger that was a bit starry eyed asking to go up and sit next to the pilot. This is about common sense. This is about assisting pilots who want to get home when there is no room in the back of the plane. This is about adding to security, not taking away from security.

The shadow minister, Warren Truss, did write to the minister and ask for a written commitment to extend the prescribed class of persons able to enter the aircraft to include off-duty crew or employees of the aircraft operator, not to someone who had taken a fancy to someone in the back of the plane. And if anyone thinks there is something wrong with the qualifications and the ability of airline pilots to be in command of the aircraft then they should not be flying in the aircraft. Our pilots are well qualified and well drilled in emergency procedures, and that has been demonstrated many times in recent days. Mr Truss also asked for a written commitment to be provided to remove the strict liability provisions. I will not go on about those because enough has been said. The pilots, in writing to the minister, simply set out a similar position. Obviously, the pilots who have been to see me were disappointed they were not consulted in the way they should have been. I have here the opinion of Bret Walker SC, which I have distributed and I would like to table in due course.

I do not doubt that Minister Anthony Albanese wants to maintain security at the highest level and I do not doubt that there has been a bureaucratic trail of indecision on this. That has been demonstrated this week. This could have been fixed up earlier in the week, as many people have said, and I think that it can be brought back in six months. As I understand it, if anyone thinks that prior to February this year there was not the security that there is now, they ought to think again. But in talking about airport security, I have full confidence in the pilot to make the right decisions and full confidence in our air security officials to make sure that security levels are high.

But there is a doubt level—not as to aircraft but as to airports. There is an ICAC inquiry underway in Sydney as to the qualifications of some of the so-called security guards who do other guard duties—not the internals of the aircraft though they are the last people to leave the aircraft after the cleaners. These people are subject to an inquiry. If the government wants to do something useful, instead of attacking the pilots, who are well-qualified, they could go and have a look at some of the airport security people who do dodgy tests where the answers are supplied to the questions before you get the questions. That has been demonstrated many times. The same companies that provide some of the labour to these security situations also provide it to the military installations. I will not name the companies to the point of embarrassment because the matter is the subject of an ICAC inquiry, but there are some dubious practices at other levels in security.
But one area where there are no dubious practices and where there is full focus on the safe flying of aircraft and the safety of the passengers and the provision of good service is in the cockpit. So this is not about airport security. I think that it has been a bureaucratic blunder and it ought to be sorted out.

Senator XENOPHON (South Australia) (11.01 am)—I thank my colleagues for their contributions and I think that Senator Heffernan summed it all up pretty well. This is a bureaucratic blunder and it needs to be sorted out. Let us look at where the priorities are. I will just comment on what Senator Ludwig said. I trust Senator Ludwig on most things because he is a trustworthy person, but if it is a question of aircraft security I will trust the pilots. Senator Ludwig says that this will close a dangerous loophole. Well, it is dangerous for this regulation to stand given what the airline pilots have said about it.

I also think that it is very unfortunate that the government has gone down the path of invoking the terrible events of the September 11 terrorist attacks and those who were convicted only recently in the United Kingdom who were planning to blow up a number of transatlantic aircraft. So do not invoke September 11. Do not invoke terrorist attacks and planned terrorist attacks as some sort of shield to say that this is a good piece of regulation. I think it is clear that all of us want to maximise airline security and safety of passengers, but it is about how we do it and the best way of achieving it.

If the government wants to fix this up, it involves, effectively, two lines in the regulations: get rid of strict liability, and allow other pilots to sit in the jump seat—and this can be brought back very quickly. Let us reflect on what the airline pilots have said. They have said that there has been a lack of consultation and what I have been told by Australian airline pilots in relation to this is that there was no consultation on the development of these regulations with the airline pilots as required by the Legislative Instruments Act. Australian airline pilots were not advised of the development of this legislative instrument or given the opportunity to contribute to the development of a regulation that relates directly to their area of expertise and imposes criminal liability upon them. Going back to what Senator Ronaldson said about those split-second decisions, let the pilots do their job. Don’t let them have the spectre of strict liability, criminal liability, against them in terms of this.

There was no regulatory impact statement, according to the pilots, by the Office of Best Practice Regulations as required by government policy. And in terms of what Senator Back has said, Bret Walker SC has indicated that this regulatory change could have been achieved by minor amendments, but the government has not gone down that path. We have got a situation here where the pilots say that this will reduce rather than increase airline safety, that these regulations are punitive and that the regulatory change is inconsistent with global best practice. To this extent, I commend the work of Senator Wortley and Senator Back and all those who worked on the Regulations and Ordinances Committee because they have revealed what I see as significant problems with these regulations.

The Airline Pilots Association International has 58,000 members. It is based in Washington DC, and this is what they said about these proposed changes. They said:

We struggled with the issue of cockpit access here in the United States after the terrorist attacks of September 11, 2001. The initial government response was similar to what you are facing in Australia in the ban of all nonoperational crew members from the cockpit.

They went on to say:
We found that contrary to the intent of our regulators and legislators it did not increase safety and security but, in reality, adversely affected it. So that is what we need to look at.

I think that what Senator Milne said about the issue of the culture of safety is important. What this will do is shift responsibility away from airline management and onto airline pilots. It is entirely counterproductive. That would be a retrograde step in terms of safety. I think that Senator Macdonald also made a number of important points in terms of the process here: it can be fixed with, effectively, two lines to resolve this once and for all.

I think that we need to sort this out. We need to do our job in the Senate to knock out these punitive regulations. They will be counterproductive in terms of airline safety. The government can go back to the drawing board and with some simple, clear and relatively minor amendments we can sort this out once and for all, and I urge all honourable senators to disallow these regulations.

Senator IAN MACDONALD (Queensland) (11.06 am)—On behalf of Senator Heffernan, I seek to table the legal opinion to which he referred in his speech.

Senator Chris Evans—Have you showed it to anyone?

Senator IAN MACDONALD—I have not but I am not sure about Senator Heffernan. I did overhear—

Senator Chris Evans—we will, provided we have had a chance to have a look at it. Given Senator Heffernan’s form in the past, quite frankly I do want to see it. But leave will be granted if we have had a look at it.

The ACTING DEPUTY PRESIDENT (Senator Bernardi)—For the benefit of the chamber, I have been advised by the Clerk that this evidence has already been tabled as part of the committee’s report. I explained that to Senator Heffernan, but he asked once again that it be tabled. So was leave granted, Senator Evans?

Senator Chris Evans—I just want to have a look at it first.

Leave granted.

The ACTING DEPUTY PRESIDENT—The question is that the motion moved by Senator Xenophon be agreed to.

Question agreed to.

COMMITTEES

Education, Employment and Workplace Relations Legislation Committee

Report

The ACTING DEPUTY PRESIDENT (Senator Bernardi)—I call Senator O’Farrell.

Senator FARRELL (South Australia) (11.07 am)—Mr Acting Deputy President, it is Senator Farrell, not ‘O’Farrell’.

The ACTING DEPUTY PRESIDENT (Senator Bernardi)—I beg your pardon, Senator Farrell.

Senator FARRELL—Nothing could be more insulting than to be compared with the Leader of the Opposition in New South Wales.

On behalf of the Chair of the Education, Employment and Workplace Relations Legislation Committee, Senator Marshall, I present the report of the committee on the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009 together with the Hansard record of the proceedings and submissions received by the committee.

Ordered that the report be printed.
Second Reading

Debate resumed from 9 September, on motion by Senator Faulkner:

That these bills be now read a second time.

That these bills be now read a second time.

(Quorum formed)

Senator JOHNSTON (Western Australia) (11.08 am)—I rise to speak on the Military Justice (Interim Measures) Bill (No. 1) 2009 and the Military Justice (Interim Measures) Bill (No. 2) 2009. The first thing that I would like to do is thank the minister for the expeditious way he has dealt with a very unfortunate and not entirely unforeseen event—the High Court striking down, in the case of Lane v Morrison, the hybrid military justice court that was established in 2007. The minister has been confronted with a very significant problem, given that people have been prosecuted and are suffering detention and that some people have left the service because of charges pursued in the court. The High Court finding the court to be unconstitutional has created, for the Minister for Defence, a very significant difficulty, one which the opposition is very keen to assist him in resolving.

I would like to revisit a little bit of the history here, because the parliament has been very, very clear, I believe. The parliament has sought to set out a path for the Australian Defence Force on this vital subject and has, to some degree, been ignored—not to a great degree but to a degree—and here we are today with the premier judicial court of the ADF having been struck down by the High Court.

We have, in the last decade, observed substantial changes in the administration of military justice in comparable jurisdictions around the world, particularly the United States, the United Kingdom and Canada. Australia has been conspicuous—or had been conspicuous, I should say—in not following the trend. There were very, very serious problems in Australia with respect to military justice. Indeed, many senators know this, having sat through a number of hearings and inquiries over the last seven years since I became a senator. We have seen: in 2002 and 2003, the State Coroner of Western Australia’s investigation into the Westralia fire; the 2001 Burchett inquiry into military justice in the Australian Defence Force; the 2001 Joint Standing Committee on Foreign Affairs, Defence and Trade ‘rough justice’ inquiry; the 1999 Joint Standing Committee on Foreign Affairs Defence and Trade military justice procedures in the ADF inquiry; the 1998 Commonwealth Ombudsman own motion investigation into how the ADF responds to allegations of serious incidents and offences; and the 1997 Abadee study into the judicial system and the Defence Force Discipline Act. They are the principal points of reference in what has been, I think, a very troubled and troubling history of military justice in the Australian Defence Force.

I remember the plight of an SAS soldier who was accused of war crimes. As a last resort and through his own strengths—and, I dare say, experiences—he came before the Senate committee and gave in-camera evidence as to what happened to him, and senators received a very wide-eyed understanding of what perils confront a person who gets on the wrong side of a process that is not equitable or just. We saw the parents and families of suicide victims inside the ADF. We saw the parents and families of those who had been victimised. We saw people who had been the subject of sexual harassment. And so it went on—a very sorry blot on what is an otherwise outstanding Defence Force.
The then Senate Foreign Affairs, Defence and Trade References Committee set about the task of trying to improve the situation. Indeed, in 2005, we set out a number of recommendations, including calling for an independent director of military prosecutions. We made 40 recommendations, and I want to talk about what some of those recommendations were. Recommendation 18 stated:

The committee recommends the Government amend the DFDA to create a Permanent Military Court capable of trying offences under the DFDA currently tried at the Court Martial or Defence Force Magistrate Level.

This was the next recommendation, 19:

The Permanent Military Court to be created in accordance with Chapter III of the Commonwealth Constitution to ensure its independence and impartiality.

- Judges should be appointed by the Governor-General in Council;
- Judges should have tenure until retirement age.

So the parliament, including now-opposition senators, took a big, leading role through that committee, trying to chart a proper course so that we too could have someone like—if I can put it in common parlance—Major Mori, who stood up for David Hicks without fear or favour for his own career, because his Judge Advocate General’s Corps was completely separate from the military chain of command in the Marine Corps. Now, we cannot have a Major Mori in Australia, because what this hybrid court sought to do was stay within the chain of command.

A number of senators said to the department, and the government did the department’s bidding, ‘This will not work.’ We put them on notice that this was problematic. You cannot have judicial powers unless you adopt them pursuant to the Australian Constitution. But no; as is common, the Defence Force knew better! So here we are, with the Minister for Defence put in a most invidious position—I have the utmost sympathy for him and again I congratulate him on the way he has shouldered this burden that has been cast upon him—with the mess this has created for people, with penalties that have been dealt out illegally, unconstitutionally.

So it comes to this legislation. Now, the legislation is not perfect, and my good friend and colleague Senator Brandis will take up the cudgels to point to where there is cause for concern. Suffice it to say, this is the best that we could do as a transition. I give the minister my undertaking to assist him in whatever way I and we in the opposition can—and those members of the committee who are still very interested in this area—to assist in formulating a chapter III court that works properly, that is independent, so that we do not revisit this mess.

There are a number of concerns and issues with the method of resolution, none of which we can do much about. We simply offer words of caution. I will say what I am sure my friend and colleague Senator Brandis will say: detention is an area of great concern, as to whether we can substantially adopt what has gone before without acting judicially. So there are very technical issues here, but we want to be seen assisting, certainly not standing on the hose. In closing, the lesson to be learned is that the parliament was ignored and so here we are today.

Senator LUDLAM (Western Australia) (11.19 am)—I rise to make a brief contribution, which I think will be in substantial agreement with the previous contribution, on the Military Justice (Interim Measures) Bill (No. 1) 2009 and the Military Justice (Interim Measures) Bill (No. 2) 2009. The Australian Greens acknowledge the importance of acting very quickly to address the implications of the High Court invalidation of the Australian Military Court. We certainly appreciate the extreme importance of a func-
tioning military justice system. The Australian Greens will therefore be supporting the government’s interim measures. The measures include reintroducing the former system of trials by court martial and Defence Force magistrates, and the interim legislation will also give effect to punishments—other than imprisonment—and orders that were imposed by the former Australian military court.

It is important to acknowledge, though, that the military justice system we are temporarily reverting to was abolished because it was deemed unsatisfactory. While the interim measures will seek to transpose some of the improvements adopted by the AMC—and we acknowledge that those attempts have been made—the system remains flawed and should be relied on only as a truly interim measure. So the key contribution from me this morning is really that we are seeking assurances from the government that it will be as brief an interim measure as is legislatively possible.

In establishing the AMC, the military justice system was subject to extensive review, as has been indicated, by the Senate Foreign Affairs, Defence and Trade References Committee. Following the recent High Court decision, the committee’s work, specifically the committee’s recommendation that the AMC be constituted as a chapter III court, has attracted considerable attention, as it has effectively been shown to be correct. It has also shown the importance of Senate inquiries and Senate review of these sorts of matters. The work of the committee and its recommendations should now, obviously, be revisited by the government and used to enable the government to act as quickly as possible to establish an impartial, transparent and independent military justice system.

Lane v Morrison has prompted a need for quick action, as these interim measures are. It has equally prompted a need to ensure that an effective and enduring military justice system be established. To balance the need to act, on the one hand, quickly and, on the other hand, effectively and put this matter to rest once and for all, it is essential that we recall our obligations under the ICCPR to ensure that all Australians are provided with the right to a fair trial. It is essential that we ensure that our military justice system meets the minimum guarantees for a fair trial, consistent with best practice in the civilian justice system and indeed with our obligations under international human rights law.

Senator BRANDIS (Queensland) (11.22 am)—As my colleague Senator Johnston has indicated, the opposition supports both of these bills. They are of a bipartisan character, and I want to congratulate the Minister for Defence, Senator Faulkner, for addressing this urgent issue with appropriate dispatch. The origin of the bills, as Senator Johnston has indicated, lies in the decision of the High Court on 26 August in Lane v Morrison, when the High Court held that the Australian Military Court, which was not established under chapter III of the Commonwealth Constitution, could not validly exercise judicial power for that reason and, because it was purporting to do so, its determinations were invalid.

There is a package of two bills, both of them interim. The first bill, the Military Justice (Interim Measures) Bill (No. 1) 2009, proposes to reinstate on a temporary basis the pre-existing system of courts martial. The second bill, the Military Justice (Interim Measures) Bill (No. 2) 2009, in effect deems determinations by the Australian Military Court in relation to sentence but not in relation to findings of guilt to always have been valid. As I said, the opposition supports both bills, but I just want to say a word or two about the second bill—that is, the retrospective deeming of the validity of the imposition
of penalties by the Australian Military Court. I must say that it occurred to me, when I heard of the government’s intention, that there may be a constitutional problem here because the imposition of penalties is not a legislative act but a judicial act on ordinary concepts. Therefore, the imposition of penalties by the parliament would seem to be ultra vires section 1 of the Constitution, which, as you know, Mr Acting Deputy President, confers upon this parliament legislative power but not judicial power. Nevertheless, at my request, Senator Faulkner has been good enough to furnish to the opposition access to advice taken from the Commonwealth Solicitor-General, Mr Gageler SC, which addresses this matter.

The method of this legislation and the approach taken to overcome that potential constitutional problem are set out on page 5 of the explanatory memorandum, in the second paragraph. The key clause in the No. 2 bill—that is, the deeming order in relation to punishments—is clause 5. The explanatory memorandum says:

The clause is modelled on the legislative approach upheld in The Queen v Humby; Ex parte Rooney (1973) 129 CLR 131. The clause does not change the status of the punishments and orders invalidly imposed or made by the AMC, but rather effects a direct legislative alteration of rights and liabilities in the exercise of the legislative power conferred on the Commonwealth Parliament under s 51(vi) of the Constitution. The purported punishments and orders of the AMC are merely historical facts by reference to which to the clause’s alteration of rights and liabilities is made to occur.

So the approach has been by this statute—that is, the No. 2 bill—to declare that punishments that were imposed were valid not because they were the result of a judicial act which the High Court said in Lane v Morrison was invalid but rather as an exercise of the defence power under section 51(vi) of the Constitution.

I have had a look at the principal decision relied upon in support of that approach, the decision of the High Court in 1973 in Humby; Ex parte Rooney, which was a case arising under the old Matrimonial Causes Act. In that case it had been earlier held that decisions by masters of state supreme courts in relation to matrimonial causes orders were, for various reasons which I do not need to go into, invalid. So section 5(4) of the Matrimonial Causes Act was enacted, containing provisions somewhat resembling clause 5 of this bill, deeming such orders always to have been valid. The basis of it was that, under the matrimonial causes and divorce power in section 51(xxii) of the Constitution, it was competent for the Commonwealth parliament to make orders altering the status of parties and that that was not an exercise of judicial power but an exercise of legislative power under, as I said, section 51(xxii).

The opposition, let me emphasise again, supports the bill, but I do flag a concern that there is a significant difference between a legislative enactment altering or giving retrospective effect to declarations of alteration of status and a legislative enactment giving retrospective effect to penalties. The three categories of penalties which apparently have been imposed by the Australian Military Court are demotions, fines and periods of internment. I can readily accept that a demotion is an administrative act, notwithstanding that, in the historical circumstances in which these demotions occurred, they were imposed as a result of an invalid judicial determination. Plainly, the parliament, under the defence power, could give retrospective effect to a demotion without validating the purported judicial act upon which the decision had initially, but only historically, been based. Plainly as well, as it seems to me, the imposition of a fine, as long as it did not constitute the acquisition of property on
other than just terms and thus violate section 51(xxxi) of the Constitution, would also be regarded, well arguably, as an administrative act or perhaps a disciplinary act, not a judicial act.

I have a little more of a problem with treating an order for the internment of a person as other than a penalty imposed in consequence of a judicial act. I would of course respect of the confidentiality of Mr Gageler’s opinion, which was the basis on which it was furnished to the opposition, but appropriately the opinion was guarded in relation to that matter, although on balance he concluded that that would also fall within the type of legislative scheme approved by the High Court in Humby; ex parte Rooney. The opposition will support this legislation and we hope that it is constitutionally valid.

In closing, let me make one other point. In May this year, the government announced that it would abolish the Federal Magistrates Court. The reason given by the Attorney-General when he announced the government’s decision to abolish the Federal Magistrates Court was entirely to do with the relationship between the family law jurisdiction exercised by that court and the Family Court of Australia. So the report upon which the government’s decision was based, the so-called Semple report, concluded that the Federal Magistrates Court should be abolished because that would promote efficiencies in the family law system. As I said at the time and I say again, the government, in making that decision, gave the wrong answer to the wrong question. The question that it should have addressed is whether it was useful or serviceable for the Commonwealth to have a chapter III court of general jurisdiction in summary matters, not merely family law matters but all summary matters.

I know my friend Senator Faulkner is now seized with considering what is to happen after the interim measures expire and how the military justice system can be re-established on a surer footing. It seems to me, with respect, Mr Acting Deputy President, that this, the Lane v Morrison decision, is as plain an example as anything could be of the unwisdom of doing away with the Federal Magistrates Court, of doing away with a federal court of general summary jurisdiction. When the interim measures expire and the government has to decide with what judicial apparatus to replace the Australian Military Court and take over from the interim measures embodied in these bills, the obvious solution would be to have a military division of the Federal Magistrates Court or certain dedicated federal magistrates to deal with military justice matters.

This is but one example of the tremendous utility to the Commonwealth of having a general federal court of summary jurisdiction that can be divisionalised and can deal with all matters, including military justice matters, arising under Commonwealth law. Because of the government’s decision to do away with that court, it would seem that that option—the obvious option—has now been foreclosed. I should say that no legislation has yet been introduced into the parliament to give effect to the government’s decision to terminate the existence of the Federal Magistrates Court. I invite the government, on the basis of the lessons we have all learned from the Lane v Morrison decision of the High Court and for the reasons I have explained, to revisit that decision.

**Senator MARK BISHOP** (Western Australia) (11.33 am)—The two bills before us today, the Military Justice (Interim Measures) Bill (No. 1) 2009 and the Military Justice (Interim Measures) Bill (No. 2) 2009, are quite urgent. I am sure the government appreciates the cooperation of the opposition in facilitating their speedy passage. The bills, as has been said by a number of speakers, are
urgent simply because the High Court has found the Australian Military Court is constitutionally invalid. That is because, as we all know now, it is not established under chapter III of the Constitution but under the Defence Force Discipline Act. As a consequence, every action taken by the court since its inception is necessarily invalid. Those actions are to be revalidated by these bills, as made clear by both the EM and the various speakers to date.

I have spoken numerous times on this matter over the last five or six years, including on the adjournment earlier this week, to put some context into the debate, so today I will be very brief. The first bill re-establishes the previous court martial system for an interim period until a chapter III court can be legislated for. The second bill aims, necessarily of course, to maintain the continuity of military discipline in the meantime. The first bill reinstates courts martial and Defence Force magistrates. It establishes the positions of Chief Judge Advocate and the Registrar of Military Justice. It also includes the establishment of reviews and petitions in respect of summary trials and trials by magistrates and courts martial. It also re-establishes reviewing authorities.

The Judge Advocate-General effectively plays the role of the former Chief Military Judge. In this context, it has been very interesting to revisit the original report of the Senate Foreign Affairs, Defence and Trade Committee and go through its findings chapter by chapter. That original report, which is really the genesis of everything that has occurred since then, made serious findings as to the administrative systems, the disciplinary system and, more particularly, the investigatory services at the root of all the problems that latterly emerged in both the administrative and the disciplinary systems. There certainly have been significant reforms to date, on both the admin side and the disciplinary side, although it is fair to comment that the work to fix up ATFIS and the investigatory services is but a work in progress and best described as slow progress. Hence it has been necessary to recreate, as an interim measure and hopefully only for a short period of time, the old systems of courts martial and Defence Force magistrates, both of which had very adverse findings made against them in that Senate report in 2005. Whilst there are probably now different personnel and there have been behavioural and cultural changes with new organisational patterns put into place, I suspect that if there was any suggestion to go back to the old system, other than as an interim measure, it would be simply unacceptable to go down that path.

The bills make provision for the transition of appeals on foot, but other consequential amendments to other acts are also required. These are set out in part 2 of the bill and relate to the Defence Force Discipline Appeals Act, the Judges’ Pension Act and the Migration Act. Again, there is a change in the terminology with ‘court’ to ‘court martial’ or ‘military tribunal’. In other words, the first bill seeks to restore much of the previous judicial machinery in the invalid legislation, but within the authority of a military tribunal, not a court. We surmised that for many years but we have now been reminded that that is a fact.

The second bill seeks to deal with penalties under the new interim regime to make sure that they are consistent with the invalid scheme. This is important for the sake of continuity. Importantly, the second bill seeks to preserve the disciplinary measures formally imposed by the now invalid court. The explanatory memorandum on clause 5 states: In respect of punishment purportedly imposed or order purportedly made, the clause declares the rights and liabilities of all persons to be, and always to have been, the same as if the amended
DFDA had been in force and the punishment had been imposed by a general court martial ...

For those concerned at the law on this matter, I refer them to page 5 of the EM. And for those who might think that just as the court has been invalidated so too are its penalties, let me again quote the EM. It says:

... the rights and liabilities of all persons are ... the same as if the punishment or order of the AMC had been imposed or made by a properly constituted court martial and confirmed by command review.

It is likewise for dismissal.

No doubt this interim bill of stopgap measures will contain some uncertainties, but at least a gap in the military discipline scheme has been filled. In my view—and this has been made clear by opposition speakers and will be made clear by the minister in due course—there is no other option in the short term, but it is salutary to acknowledge that not all of the reforms will be wasted by this means.

Finally, it is appropriate at this stage, as we enter a new chapter in addressing the problems of military justice, to place on record—and in no particular order—the fine work that has been done by Senator Hutchins, former Senator Sandy Macdonald, Senator Marise Payne and Senator David Johnston in their former capacities and lives. They have over many years taken a continuing interest in matters associated with military justice. They have devoted many hours to this work and have participated in various inquiries concerning it. They have all made significant and sustained contributions to this issue over time, and it is worthwhile to place that on the record.

Senator FAULKNER (New South Wales—Minister for Defence) (11.39 am)—in reply—In summing up the debate on the Military Justice (Interim Measures) Bill (No. 1) 2009 and Military Justice (Interim Measures) Bill (No. 2) 2009 I want to begin by thanking those senators who have contributed to the second reading debate and also the Senate for supporting what is a very urgent piece of legislation.

As we have heard, on 26 August 2009, the High Court declared that the provisions establishing the Australian Military Court were invalid. The purpose of bill No. 1 is to return to the service tribunal system that existed before the creation of the Australian Military Court. In summing up on the bills, I want to stress: this is an interim measure. These two bills contain those very important words in their titles. This is an interim measure until the government can legislate for a chapter III court, which it will do as a matter of priority.

To re-establish an effective military justice system, the pre-2007 Defence Force Discipline Act 1982 will be reinstated. These measures include courts martial and Defence Force magistrates, positions of Chief Judge Advocate, judge advocates and the Registrar of Military Justice, reviews and petitions in respect of both summary trials and trials held by courts martial or Defence Force magistrates and reviewing authorities.

Transitional provisions will be inserted into the DFDA to cover all matters that have been referred to the AMC but were not concluded prior to 26 August 2009. The provisions will also address the AMC office holders, including among other things provisions for their automatic transition to the relevant positions of Chief Judge Advocate, members of the Judge Advocates Panel and Registrar of Military Justice.

The main object of bill No. 2 is to maintain the continuity of discipline in the Defence Force in the light of the High Court’s decision. The principal mechanism by which this bill seeks to maintain the continuity of discipline within the ADF is by imposing disciplinary sanctions on persons corre-
sponding to punishments imposed by the AMC and, to the extent necessary, summary authorities in the period between the AMC’s establishment and the declaration of invalidity by the High Court of Australia.

This bill does not purport to validate any convictions or punishments imposed by the AMC, nor does the bill purport to convict any person of any offence. Rather, the bill, by its own force, purports to impose disciplinary sanctions. The bill does not purport to impose any liability in relation to imprisonment and further, consistent with the exclusively disciplinary purpose of its provisions, the bill is expressed to have effect for service purposes only. In other words, the bill will not affect an individual ADF member’s civilian rights and entitlements. The bill recognises that there may be circumstances in which a person affected by a disciplinary liability imposed by the bill wishes to contest whether that liability should remain imposed. The bill gives all affected persons a right to seek review of their case and whether they should remain liable under the act, and the reviewing authority is given power to discharge persons from such liability. In cases where the disciplinary liability imposed by the bill relates to detention, a serious disciplinary measure—I think it is fair to say it is peculiar to the ADF—the bill requires automatic review by the reviewing authority to determine whether that disciplinary liability should be discharged.

Senator Brandis mentioned, in his contribution, legal advice the government has received from the Solicitor-General. The legal advice from the Solicitor-General, I can say to the Senate, is that the Commonwealth parliament can, in the exercise of the defence power, directly alter the rights and liabilities of members of the Defence Force by imposition of disciplinary punishments and orders.

The No. 2 bill is modelled, as we have heard, on a legislative approach upheld by the High Court in R v Humby; Ex parte Rooney (1973) 129 CLR, and that was again endorsed in Re Macks; Ex parte Saint (2000) 204 CLR 158. Sentences of imprisonment awarded by the AMC were served in civilian prison facilities but the punishment of detention is a peculiarly military punishment. It is served in dedicated detention facilities such as No. 1 Defence Force correctional establishment at Holsworthy and has as its primary purpose to rehabilitate ADF members back into the Australian Defence Force.

As I have mentioned, and I want to restate very clearly to the Senate in this second reading debate, the government is in the process of establishing a military justice court which complies with chapter III of the Constitution. I can also assure the Senate again that it is my intention and the government’s intention that that be done as a matter of priority. I again thank senators for the contributions they have made to debate on this bill. I thank the opposition and those who sit on the crossbenches for their cooperation in enabling this bill to be dealt with as a matter of urgency in the Senate. I conclude remarks by commending the bills to the Senate.

Question agreed to.

Bills read a second time.

Third reading

Bills passed through their remaining stages without amendment or debate.

TAX LAWS AMENDMENT (2009 MEASURES No. 4) BILL 2009

Second Reading

Debate resumed from 8 September, on motion by Senator Carr:

That this bill be now read a second time.

Senator COONAN (New South Wales) (11.51 am)—I rise to speak in response to
the proposed Tax Laws Amendment (2009 Measures No. 4) Bill 2009 and confirm that the coalition will be supporting this bill. It amends various tax laws and has five schedules. I want to address each of them briefly. The first schedule deals with increases to the research and development expenditure cap for determining eligibility for the R&D tax offset from $1 million to $2 million. It should be noted here that the R&D tax offset was an initiative of the Howard government in order to assist innovation amongst small businesses, a constituency we support, and to assist those small businesses that do not benefit from the R&D tax concession, especially those in a tax loss position. This is because we do understand very clearly the importance of cash flow to small businesses and the difficulties it can pose when small business is seeking to invest in R&D.

The second schedule improves the integrity of prescribed private funds. The changes effectively mean that such funds will now be treated similarly to other fundraising organisations known as public ancillary funds. To reflect this change, the prescribed private funds will be renamed as public ancillary funds. We note that within this schedule provisions exist for the Treasurer to issue guidelines governing the creation and regulation of these funds, and a range of administrative penalties have been introduced which may be applied to enforce the guidelines. However, we further note that the schedule does not provide for any changes to the mandatory distribution rate which many in the not-for-profit industry have been concerned about, as it does severely affect the ongoing nature of these funds. It is our understanding that Treasury has undertaken consultation relating to draft guidelines. I think it was during July of this year.

The coalition encourages the government to listen carefully to industry concerns regarding this matter in order to avoid any of the funds being frozen, as opposed to setting off on a course with their own policy prescriptions. We only need to look at the problems which arose from the changes to employee share schemes back on budget night as an illustration of the fact that not listening carefully to industry and to stakeholders can have very unintended and very adverse consequences.

The third schedule provides capital gains tax relief to members of friendly societies which demutualise. Such changes help to ensure that these societies are treated the same as standalone private health insurers or life insurers if they decide to demutualise. This schedule effectively means that friendly societies which demutualise into a for-profit entity will not be liable for capital gains tax on any shares they may receive; as well as providing amendments to ensure that those who receive cash through demutualisation are treated exactly the same as those who receive shares and immediately sell them.

The fourth schedule allows for the losses of an entity joining a consolidated group to be transferred to the head company of that group. It is interesting that changes to the consolidation regime just keep coming. I well remember kicking off the whole process of consolidation. With such a major change it is to be expected that there would be some need to continue finetuning, and that will happen with this amendment. It is a retrospective change to the consolidation regime which takes effect from 1 July 2002. The amendment will allow the head company to use the tax loss to reduce a net forgiven amount derived under the commercial debt forgiveness rules; any capital allowance that has been adjusted using the limited recourse debt rules; and any capital gain in the situation where a capital gains tax event L5 occurs when the joining entity then leaves the consolidated group.

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The final schedule deals with minor amendments addressing some areas and anomalies within the existing tax legislation. It is a tidying up schedule. I again confirm the coalition’s support for the Tax Laws Amendment (2009 Measures No. 4) Bill 2009. It is a very sensible process, even though it sometimes can be difficult for those members of the public who are not closely engaged in some of the minutiae and technicalities of the operation of the tax law to understand the so-called TLABs. But it is a necessary ongoing process to improve the operation of the tax law and it has the coalition’s support.

Senator MILNE (Tasmania) (11.57 am)—I rise today to indicate that the Greens will be supporting the Tax Laws Amendment (2009 Measures No. 4) Bill 2009 but we will be moving some amendments. Senator Brown has some amendments that will be moved in the Committee of the Whole and I wish to now foreshadow an amendment that I will be moving in the Committee of the Whole in conjunction with Senator Joyce, the Leader of the Nationals in the Senate. I welcome the fact that Senator Joyce is joining me and that the Greens and the Nationals are again working together on the issue of carbon sink forests.

I alerted the Senate to the fact that every time a tax bill came before the Senate henceforth I would stand up and move the same amendment until such time as the parliament recognised the disaster that is happening in rural Australia because of the tax rorts that have been set up by successive governments. It was the coalition that brought in the managed investment scheme tax deduction and it is the Labor government that has brought in the carbon sink forest tax deduction. Together they continue to support what is effectively a completely failed scheme.

The reality is that plantation managed investment schemes have quadrupled the cost of growing wood in Australia. They are an unnecessary drain on the public purse. Plantation managed investment schemes are boom and bust by nature, because the investment in wood is driven by the demand for tax minimisation, not wood market realities. The combination of investment driven by demand for tax minimisation and highly profitable MIS plantation companies receiving their income upfront has generated a hardwood chip glut.

An investigation of late 1990s hardwood plantation prospectus documents—and this is according to Dr Judith Ajani—revealed a wide chasm between chip and paper market expectations and actual market realities. With prospectus company profits not pinned primarily to revenue from wood sales, there is little commercial motivation for them to invest in rigorous market research or to respond to wood market realities. Dr Ajani points out that, if the Commonwealth government decides to engage in tackling the woodchip glut and acknowledging its substantial hand in creating the arrangements that generated the glut, it will need to attend to the entrenched alliance between the bureaucracy and the forest lobby groups. In particular, it must rise above a handful of lobbyists who peddle perceptions of wood
shortages, including on the domestic front, through misrepresenting the wood and wood products trade deficit despite the hardwood chip glut.

What she recommends is that the Commonwealth government terminate immediately the arrangements enabling plantation managed investment schemes. Further, she recommends that the Commonwealth terminates its policy of tripling Australia’s plantation estates by 2020, that the Commonwealth should engage in tackling the woodchip glut by stopping the logging of native forests in Australia, that plantation managed investment schemes should be investigated more deeply than has occurred in the parliamentary committees and that the carbon sink forest legislation be revisited in the light of the plantation MIS corporate and system failure.

That is what I am doing today. I am revisiting in this Senate the fact that the MISs failed and that from one end of Australia to another—from the Queensland sugar fields to the Tasmanian dairy industry—there is ample evidence that agricultural land prices go up, water scarcity occurs with higher water prices in the water market, there is a loss of viability in rural towns and there is a loss of land to food production. And instead of addressing it and stopping it, we now have a Senate report saying that the 100 per cent tax deduction for managed investment schemes should stay and the carbon sink forests investment should say.

People might wonder why the Greens would be opposed to carbon sink forests. They are not carbon sink forests; they are plantations. There is no requirement for these forests to be biodiverse in nature—none at all. The regulatory framework is that of the states, and we have seen a complete failure of the states to regulate. We still do not have groundwater assessments in a state like Tasmania. We still do not know what the implications for groundwater are. We have seen catchments cleared of native forest and planted with plantations. Now, under the government’s Carbon Pollution Reduction Scheme, not only would you be able to get a 100 per cent tax deduction for planting a carbon sink forest but you would also be rewarded under the CPRS in terms of the credits that you would get—never mind what that might do to water in the community, food production, the viability of those rural communities or the whole ecosystem.

There is no doubt that there are parts of Australia that should be planted with biodiverse plantings for the longer term. But there are no specifications in these carbon sink forests provisions that the trees have to be in the ground for anything like 100 years, that they have to be diverse or that they have to be on marginal land. We hear the government say, ‘Oh, it’s not going to be very much in terms of hectares, therefore you’re worrying unnecessarily.’ Wrong—absolutely wrong. There is no restriction. What we know is that the best land with the best rainfall grows the best trees. If you want to maximise the carbon that you store in a carbon sink forest for the purposes of carbon trading then you will be putting those carbon sink forests on the land where you bulk up the carbon fastest. That is the reality. Just like with managed investment schemes, you will get a whole lot of sharks operating as middlemen in this market. You will see people operating in the carbon market and growing the trees for the carbon and not being in the least bit interested in what the ramifications are for the rural communities in which they operate.

I cannot emphasise enough that the government refused to negotiate on these matters and in relation to biodiversity in particular. Since the legislation came in, we have now had a whole analysis of greenhouse gas mitigation and carbon biosequestration opportu-
nities for rural land use. It sounds great. But when you go into it you find that the estimates of area that could be covered in carbon sink forests are huge. If you look at this report, you see a figure of 20 million or 30 million hectares that they are proposing will be used for carbon sink forests. Where in Australia are you going to have the rainfall to cover 20 million hectares of land, that is not currently in some form of agricultural production, with these so-called carbon sink forests? And why would I assume for a moment that these plantings would be biodiverse? There is no substance at all in this claim. Yet again, the plantation industry companies have another rort coming. You would have thought that this parliament might have learnt something from the collapse of Timbercorp and of Great Southern. But, no, apparently we have learnt nothing and want to continue with 100 per cent tax deductions for planting more plantations while at the same time adding this on top of it.

The government says that it cannot be rorted like the managed investment schemes. Yes, it can, because it allows the aggregation upfront of all of the costs associated with establishing a carbon sink forest. Just as with managed investment schemes, you can include all of the costs, including water licences and land. The government says, ‘No, you can’t include land’, but, as the Senate will recall, I brought in advice from a senior tax barrister in Australia saying that the capital cost of land is included, plus the cost of water, plus the establishment costs—all of the costs associated can be put together and claimed upfront as a 100 per cent tax deduction. That is why I said that you will get exactly the same rorts appearing, along with the middlemen and the commissions being paid. All the costs will be aggregated upfront so that the 100 per cent tax deduction is there and so on and so forth. I cannot emphasise to the Senate enough what a terrible idea this is. I find it extraordinary. There is no rational explanation out there at all as to why this parliament is continuing with the 100 per cent tax deduction for MIS plantations and adding this on the back of it.

I note in today’s Financial Review that there is a push on from the Victorian and New South Wales governments to include offsets for a voluntary carbon trading system and offsets for agricultural land in terms of carbon stores. I say to these people: watch what you ask for, because you might get it—and, if you do, you are going to be in real trouble because a voluntary carbon market that allows people to opt in is going to continue to exacerbate this problem. And it is only going to be for a small amount of time because you will have to account for your emissions. It is all very well to say, ‘We will get a credit for the carbon sink forest upfront’, but you will also be given the cost of your emissions, and when there is a drought rural Australia releases huge amounts of carbon emissions. If people think that you can just get credit for the carbon you take up but you are not penalised for the carbon you release, think again because any accounting system that has any integrity has to have both sides of the equation. So be careful here because, if you want to rush in with half of it, you might get governments to be supportive of you in the short term but you will find that full carbon accounting is what is required. Therefore, you have to add up what your net emissions are likely to be in that balance and go out and get some assessment done of the real emissions coming out of rural Australia in the midst of a drought.

I think there are some very great issues to be considered here. That is why the Greens have said all along that we think agriculture should be out and there should be a parallel mechanism for green carbon, which is a fully autonomous system that rewards the right
things and penalises emissions. It will actually provide some internal consistency and not just allow the opting in of plantations, which will drive investment in plantations in these carbon sink forests. Because the current accounting system does not account for the logging of forests you are going to end up with the plantations being grown for wood production ending up as carbon stores and the native forests, which ought to be carbon stores, are going to have logging driven deeper and deeper into them because the accounting system does not require you to account for the emissions from that logging. That is completely the reverse of what was supposedly talked about with this plantation vision. The whole idea behind it was that Australia would get its wood products from plantations and not from native forests—we would get out of native forests. That has not happened and this is going to drive a further complete distortion in the market.

I return to the point that I was making at the beginning in terms of profitability here. Everyone is rushing around assuming that these plantations are going to be profitable, either in the carbon market or in the wood market, in terms of managed investment schemes, and that there is absolutely no justification, when you have a look at what is actually happening on the global market, to substantiate the claims in terms of hard cash realities and returns.

I think it is time we had a very good look at who the government is listening to. We have a greenhouse mafia in Australia where people go in a revolving door from the coal industry into ministerial offices, then become lobbyists and then go into the department for a while—and round and round they go, giving one another the same advice. We have exactly the same thing here: from government to forest lobbying. Alan Cummine, for example, used to be an adviser to environment minister Ros Kelly. He went across to the forest lobbies through Australian Forest Growers, Treefarm Investment Managers Australia, and Australian Plantation Products and Paper Industry Council. Allan Hansard went from ABARE and DAFF across to the National Association of Forest Industries. Miles Prosser went from state forests in New South Wales over to NAFI, Plantations Australia and A3P. Richard Stanton from DAFF and state forests in New South Wales went over to NAFI and then A3P, the Australian Plantation Products and Paper Industry Council. Phil Townsend went from DAFF across to NAFI, to Tree Plantations Australia and then to ANU—round and round the revolving door goes. And what a surprise that they all give one another the same advice! Not only do they go round and round but they spin off occasionally into the carbon fossil sector, where you have Robin Bain, who used to work for NAFI, for Timber Communities, which used to be called the Forest Protection Society or whatever. She has gone across to be the chief lobbyist for the cement industry. It is a beautiful thing—round and round they go, giving one another the advice they want to hear.

I think it is about time the government actually had a look at the real economies that are facing people in the plantation sector. Contrary to the idea that we need more plantations, we actually have a glut of plantations. Isn’t it time someone actually had a look at the realities of that? We do not want to complicate matters further by giving people a 100 per cent tax deduction to drive the investment for tax minimisation purposes and not because they are the least bit interested in doing anything about the climate or ecosystem resilience. No, just as we have managed investment schemes, the primary interest is going to be tax minimisation. Once you take away the investor from the outcome by putting tax minimisation in the middle, you end up with rotting of the sys-
tem, and that is exactly what is going to happen here. So I implore the Senate to join the Greens and the National Party in using this opportunity in this tax bill to get rid of the 100 per cent tax deduction for carbon sink forests. I would be more than happy to take an amendment from the government or the Liberal Party to amend it further to get rid of the 100 per cent tax deduction for managed investment schemes, while I am at it. I would be very happy to accommodate that should anyone decide to assist me in this process and move that.

Nevertheless, this is just adding insult to injury. I urge the Senate to support the opportunity that is given here to the people of Australia through their parliament to stop this rort and go back and recognise that, if we are to deal with climate change, and deal with it sensibly in terms of land use, the first thing we would do is stop the logging of native forests around Australia and rehabilitate native forest areas that are degraded. The next thing we would do is stop land clearance of native vegetation. The next thing we would do is build resilience in those ecosystems by getting connectivity in the landscape and creating jobs in rural and regional Australia in those rehabilitation activities.

You could give people on the land a payment for their stewardship of dealing with weeds and feral animals and restoring native vegetation on their properties. That could be a mechanism. Anything to do with green carbon needs to support people doing the restoration work that is needed to be done in rural Australia. So many people are already doing this through Landcare and voluntary programs, but if they were supported in doing it then they would be able to do it in a more comprehensive way than they currently are able to.

You would plant out some biodiverse areas as carbon in the longer term to give you improvements in productivity on your property and to improve biodiversity, but this is not the way to do it. A tax rort will not guarantee any environmental, biodiversity or carbon outcomes; all it will guarantee is more land being taken out of food production, exacerbating the problems that are already out there because of MISs. We will see them on an even grander scale because this continues to stand.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (12.15 pm)—The National Party have been very clear on the measures pertaining to carbon sink forests. In fact, we lost Senator Nash from her shadow position because of our position on this. It is extremely important that we remain consistent in our opposition to carbon sink forests. We are not going to be fighting every time a TLAB comes up. We have put our position on the record twice. I think everybody can work out from that exactly where we stand. We do not intend for it to be used as a wedge in the future. In this instance we were happy to approach Senator Milne when we saw the amendment on sheet 5906 tabled because it does reflect our sentiments.

The amendment relates to tax deductibility for carbon sinks. I say to the people who sent us here that we will not be supporting—and we will do everything in our power to make sure this does not happen—taking prime agricultural land out of food production and moving it to a carbon sink. That is wrong. It works against market principles. It is against ethical principles. It is an infliction on the local economies where this comes about, and I refer specifically to Tully and other cane-growing areas. A mill needs certain tonnage for it to operate. Policies such as these put that under threat. Last time this came up we tried as hard as we possibly could to get an exemption for prime agricultural land, but it went nowhere. Therefore, we had no other option but to oppose it.
Unless humankind is going to evolve into a higher form of termite, there is no point in carbon sink legislation taking prime agricultural land out of production. There is the potential for 20 million hectares to become carbon sink forests. In the regular parlance of regional areas, that is 50 million acres. That is larger than our wheat crop. This is an absurd predicament for our nation to be put in.

We looked at the legislation at the start—and there was discussion around it—and it did say that capital expenditure was tax-deductible upfront for a carbon sink forest. Expenditure is either capital or income—there is no other place for it to be. Capital expenditure includes the price of the land. It is a capital item. It goes on the books as capital. We asked for that to be better prescribed in the legislation, but it was not, so it remains there. This remains a problem.

It is terribly important when people like Senator Nash lose their position over this that our position remains consistent. The National Party has no problems with carbon sink forests. If people want carbon sink forests, they can have carbon sink forests, but why do they have to have an upfront tax deduction for them? If they believe they stand the test of market principles then put them on the market with other things, such as sugar-cane, pineapples, beef, wheat and sheep.

When you create an imperfection in the marketplace you put other people who live in the same district and have to compete with them at a distinct disadvantage. It is peculiar that on one side of a fence a person will be growing food to feed a very hungry world and be involved in the tax system like everybody else while on the other side of the fence a person will plant a forest and produce nothing for the hungry world but get an upfront tax deduction. That is bizarre. We have to bell the cat on this one and say, ‘If you want a carbon sink forest, go right ahead, but stand in line with everybody else and make sure that it stands the principles for which it is put forward.’

If this legislation achieves its objective of 20 to 30 million hectares of carbon sink forests, it could bring about the decimation of so many regional towns. Sugar mills will reach their critical mass of tonnage and shut down. All the rest of the sugar farmers will suffer because of the sins of some who exploit a perverse section of the tax act. People will go out of business not because of the global recession or global warming but because of a peculiarity in the tax act. That is not right. That is not just. Obviously, once the sugar mill closes, the chemist will leave and the school will close. The National Party will always fight for the people who are left behind, even though they are small in numbers, in these enclaves of poverty and destitution that are brought about by the unnecessary hand of government coming into their lives.

Similarly, the wholesale or complete purchase of water licences in a certain area causes massive problems. You can purchase some of a water licence from an area, but if you go into an area and purchase the whole of the water licence, then it is all very well for the person whose water licence is sold but it is not very good for all the people who live in the fibro-and-iron or weatherboard-and-iron houses in the towns that surround it. They are left with no hope and with no future. It is not a fair or a just outcome.

In the case of this legislation, it is not about purchasing the water licence; it is about a mechanism for turning the construct and the application of the land into something which does not support the regional economy in any way, shape or form. If it is a carbon sink forest, I imagine we are not milking it, therefore there are no timber jobs. If it is a carbon sink forest, therefore we are not
cultivating it; therefore we do not need an economist, we do not need a sugar mill, we do not need a chemist, we do not need a school, we do not need the infrastructure. In the National Party we believe in the support of regional towns and we are the party of regional Australia, so as a core position we could not support a movement in the tax act that would be completely and utterly to the detriment of people living in that regional area. And, to add insult to injury, the beneficiary of the carbon sink forest will possibly be someone living in an urban metropolitan area, maybe even overseas. It would be taking the wealth associated with that area that benefited the people in that area and, by a movement in the tax act, moving the beneficiary of that area to a person in an urban area or overseas and, in the same breath, removing the capacity to produce food to feed a hungry planet. It just does not stack up as a piece of legislation.

We implored the government to be part of the process of moving strategic amendments so that that would not be the case. We were willing to find a middle ground. We said: ‘If you want to have a carbon sink forest on lesser agricultural land, sure, let’s work out how we can do that. If mankind can put a man on the moon, I am sure we can devise an amendment that will fulfil that proposition.’ But we ran up against an almost die-in-the-ditch mentality, one of: ‘Thou shalt not discern or describe prime agricultural land. We can’t go forward with this amendment because it’s too difficult.’ Apparently it is not too difficult to give people an upfront tax deduction, but it is far too difficult to excise prime agricultural land so that we can go back to these regional towns and say, ‘You are not at threat; this is going to be used on lesser agricultural land.’ Everybody always used as a metaphor that it was only going to use lesser agricultural land, that it was going to be used in deserts and up ridges and in caves which no-one goes to, and they would say, ‘Don’t worry, it’ll never affect you.’ The reality is that it does. The reality is that the application of the legislation has been and is being seen as applying to prime agricultural land. That is where it is going. Why? Because people want to utilise what provides the greatest capacity to increase their potential for a carbon credit by bringing about the greatest increase in the weight of carbon per acre of land. Where are you going to do that? You are going to do that in areas which enable the growth of carbon, which is seen in trees, and that is land with the appropriate soil, the appropriate rainfall and the appropriate area—and, ladies and gentlemen, that is prime agricultural land.

Senator Milne interjecting—

Senator JOYCE—It is similar to MISs. To be honest, MISs have been a big problem in many areas. I can understand that there are arguments, and I will not disagree with the Greens on this, of the worth of MISs maybe in Tasmania, but in other areas they have been a huge problem. They are an unnecessary influence once more of the hand of government coming in and prescribing winners and losers and creating differentiation and opportunity by reason of a fence line—and that is strange. If people want to go to undeveloped areas in undeveloped markets, then maybe you have an arguable case. But to go to an area which is developed and has a developed market, and the effect of your legislation is to swamp the market with a product, then that just works against all the other people who have made sacrifices to be in that market. That is a kind of badness, but at least they are generally producing something that has an employment outcome or a food outcome. So it is the lesser of two evils because at least you have a food outcome or an employment outcome or some form of production coming off that land. What carbon sink legislation does is just throw the whole lot
out the window. What you are left with is towns in the form of Hansel and Gretel desti-
tution: the house in the middle of the forest is apparently the desired outcome. That is en-
tirely unfair for the people who live in the area.

So today we will once more stand to re-
peal section 40J of the Income Tax Assess-
ment Act 1997. That is the capacity for up-
front tax deduction and the tax deductibility status of carbon sink forests. There are other amendments proposed by the Greens; with due respect, we will not be supporting those. But we are making a clear statement that will spell out once more to the Australian public that this is an issue that we brought up at the start and that we have been consistent about. We have voted in a consistent way and we will vote in a consistent way today. I ac-
knowledge also the sacrifice that Senator Nash has made because of her stand on this. For the future it is on the record once we have dealt with this today and the Australian people will know where we stand. Every time this issue comes up we are not going to vote in this way because it then becomes a wedge and it is used as a wedge mechanism. By doing this today we are clearly saying to the Australian people and to this chamber: we must once more readdress this carbon sink issue. We are pleading for a more prag-
matic and practical approach to this: go into it, find a definition of prime agricultural land, excise prime agricultural land so it is not covered by this and then you will solve so many problems. Once we have that definition of prime agricultural land then, yes, there are other areas in agriculture that could be utilised.

In the history of land tenure in such places such as New South Wales, once an area had been cultivated mining was proscribed. Provisions such as these, over a period of time, have been whittled away and whittled away, but we have a responsibility, as one of the great food-producing nations of this lonely planet, to produce food to feed people. We have a responsibility to make sure that those people who make the sacrifice to produce the food are looked after. We have a responsibil-
ity to promote that production of food as something that is morally good, just and right. The efforts of this chamber should be to engender a sense of support for the people who produce the food that feeds the planet.

But when we come up with legislation like this we might hear someone who is probably doing it extremely tough in a re-
gional area saying: ‘I get up every morning and I work with my hands to fix the tractor—
to put new pistons in it—and to feed the stock. I live on the barest minimum of a margin. My family’—it is the case in many instances—‘live at the lower end of the social spectrum because of the effort they put in.’ Instead of saying: ‘We know the sacrifice you make. What you are doing is incredibly just and good and should be promoted and we will stand by you because of that,’ we say to them: ‘We will give an upfront tax deduc-
tion to the person who does nothing but plants trees in the paddock next door so that that area can grow wild and be infested with pigs. We put more worth on that forest— that scrub or, in many cases, that mess—than we do on your getting out of bed in the morning and trying to achieve a just outcome by feeding Australia and the world.’ We make that statement when we put up pieces of legisla-
tion like this.

It is our job in the National Party to say, ‘No, that is not the metaphor that we will sell
to the Australian people.’ We are saying that it is more just and proper to give a tax deduc-
tion to the person who feeds people—who puts food on the Australian table—than to have an arbitrary, uninspired tax deduction that has come out of the workshop of some inner-city accountants and found its way onto our nation’s books as legislation. That is
not what this country is about. That is why the National Party today says: ‘No, we will reinvest in this message. We will sell it back to the Australian people. We will say, “For goodness sake, this is ridiculous.”’ As I said at the start, unless you believe that the Australian people will develop into a higher form of termite then you have nothing in this legislation but a problem for them.

It is unusual that the National Party and the Greens are as one on an issue but today is the day that I concur with their remarks. It just goes to show, also, the dynamism of this chamber and that this chamber has the capacity, on issues, to reflect the intent of those people who sent us here. It shows that this chamber has the capacity to make sure that those people who sent us here are supported through the way we vote. At a later stage, in the Committee of the Whole, I will commend this amendment and I will call on the government to see sense, to promote justice and not to stand by a proposition that a tax deduction for an urban constituent who will never actually see the farm is more just and worthwhile than supporting a person who works on the barest minimum margin and puts their family and their life in an area where they at an inherent financial disadvantage. We would be adding insult to injury to say, ‘Not only do we believe that you can live almost in poverty and destitution because your margins are so tight—you are being squeezed out by the margins of the major retailers and other such people who stand over you—but we believe that the government should be standing over you and rubbing your nose in it.’ The government will be saying, ‘If you did nothing but planted trees and wandered away, that would be an inherently better outcome than your producing food and feeding people.’

Senator NASH (New South Wales) (12.34 pm)—Last year I crossed the floor on this issue because I absolutely believe that there should not be tax deductions for carbon sink forests. And over the intervening period of time I have not changed my view one bit. I fully support the amendment that is being put forward today and concur with all of the remarks that my leader, Senator Joyce, has just put forward to the chamber.

Colleagues, we need to have a debate in this country about whether or not we want a sustainable rural and regional Australia, because it certainly seems, from the actions that are being put forward through the institution of the tax breaks for carbon sink forests, that we are completely ignoring the future of regional Australia. This is about the sustainability of regional communities. This is absolutely about having a viable future for rural and regional Australia. And we need that. As my very good colleague Senator Joyce has already pointed out, we are feeding not only ourselves but the rest of the world, and our capacity to be able to do that has to increase, not decrease.

When you look at what the legislation does you see that it is completely unfair and inequitable in how it treats regional communities. We are not saying, and we never have said, that there should not be carbon sink forests. We are absolutely supportive of them. What we have said is that there should not be a tax break to put those forests in that goes to the big end of town. Why on earth would we do that? Our role as the National Party is to make sure that we stick up for, and go into bat for, regional communities and make sure that there is fairness and equity for the people and the working families living in those communities. The legislation that is in place simply does not do that. Why on earth would we expect the taxpayers of Australia—the working mums and dads—to give a tax break to the big end of town to put in carbon sink forests?
These forests are on our prime agricultural land. This is one of the key issues. The population across the globe is going to increase by, I think, 50 per cent by 2030. We are one of the few countries that actually has the ability to increase its productive capacity. So not only do we have a responsibility to ensure that we can feed ourselves as a nation; we have a particular responsibility to provide for developing nations across the world also. Yet we have a piece of legislation in place which does precisely the opposite. As someone mentioned to me just a couple of weeks ago, we are at risk of becoming a nation of forests, energy plants and mines. We do not want that to happen. We need to ensure that the productive capacity is there. Why on earth would we put at risk our food security?

We are very supportive, obviously, of this amendment today to get rid of this tax break on carbon sink forests. As my good colleague Senator Joyce has already pointed out, we are not going to go on and on with this every time it comes back to the chamber, but it is extremely important that people across this nation, particularly people in rural and regional communities, know that we are absolutely rock-solid in our view that those communities need our assistance and know that we will stand up for them in this place time and again to make sure that they get the fairness and equity and the bright and sustainable future that they deserve. They are the ones that feed and clothe and provide for this nation, and it is about time the farmers across this nation get the respect they deserve for what they do. It is very easy to say, ‘We’ll whack in a whole lot of carbon sink forests; that prime agricultural land disappearing doesn’t really matter too much.’ But it does matter. Unless we want to become a nation that predominantly imports, we need to look after those farmers on the land who are producing for us.

Let us look at the scenario if we did become a predominantly importing nation. There are two very clear and distinct reasons we should not do that. One is about security in the quality assurance of those foods that come into this nation. You only have to look at the melamine issue in China to know that we do not have the capacity here to ensure that quality assurance is going to be undertaken across the board 100 per cent of the time. There is also the issue of security of supply. If we become a predominantly importing nation, what security will we have in terms of supply into the future? They are key issues that we need to recognise, as we are doing today, to make sure that the productive capacity is there and that the prime agricultural land is there to do what it does best, and that is produce food and fibre for this nation.

We need to respect those communities that work so hard to provide for this nation. You only have to look at many of the regional communities that have gone through years and years of drought. That is by no means an issue that has fallen off the agenda. The drought that many of our regional communities have experienced continues in many areas. We know that a lot of our farmers have their backs against the wall. I was recently up in the North Coast of New South Wales with a group of farmers who very clearly and succinctly pointed out that they could not go on, that there was no future for them. What they wanted to know was that we would be in this place batting for them, making sure that we did everything possible to assist them to have a sustainable future.

That is exactly why we are standing here today with the amendment. It is not right and it is not fair to have a tax break for those people in the cities to put in carbon sink forests while at the same time potentially taking away that productive capacity from the regions. It is simply stupid, it is wrong and it lacks common sense. This is about having
fairness. It is about having a level playing field. As I said at the outset, we are not against carbon sinks—not by any stretch of the imagination—but why on earth should our farmers in regional communities have to be pitted against a tax break for the big end of town? It is just not right.

Another interesting thing surrounding this is that no hydrological studies have been done on the impact of the interception. We all know that these forests are going to exponentially explode and yet there is no work being done at all. We have a government on the other side that consistently jump up and down about the importance of the Murray-Darling Basin, and yet they are prepared to stand there and support this legislation when they know that no hydrological work has been done. They are completely inconsistent and they have no understanding of how this is going to impact the regions. There has also been no work done on the socioeconomic impact of carbon sink forests and what they will do to regional communities—none whatsoever. And they are quite happy to sit in this place and let this remain in place when there is still no idea of the impact it is going to have.

It is about time that we stood up in this place for our farmers and our farming communities and that, as I said earlier, they get the respect they deserve. They should get the respect they deserve through support for the amendment that will get rid of this tax break on the carbon sink forests, because it is simply not right. If we want to ensure that we have the ability to feed this nation into the future then we need to ensure that we support amendments like the one we are putting forward.

I do not think people really think about the potential for our ability to feed ourselves to decrease or disappear. It sounds like something that it is not real. Let me tell you that this issue of food security is going to be one of the most significant this nation will face over the coming decades. We need to do everything we can to support our regions’ ability to be sustainable and viable in the future, not rip it apart and take it away.

This is a vitally important piece of legislation. We have been very consistent, and we will continue to be consistent, in our view on this. As I said, we are not going to stand up and do this again every time a tax bill comes through, but it is very important that particularly the people of regional Australia know that we will stand firm, whether on this issue or on the issue of going back to some kind of single-desk arrangement for orderly marketing for wheat. We will absolutely stand behind our farmers and our regional communities in what they need to have to have a sustainable future. We will not back away from this. When we get to the Committee of the Whole stage, this will go forward, and I implore senators on both sides of this chamber to give this the consideration it deserves. This amendment needs to succeed. There should not, by any stretch of the imagination, be a tax break available for carbon sink forests. It is simply wrong and it goes right to the heart of the viability of our regional communities.

Senator BOSWELL (Queensland) (12.45 pm)—This managed investment scheme issue is absolutely basic to the National Party. It is fundamental to the National Party. It is a question of life and death to the National Party. I will offer to take anyone on a tour of places where these managed investment schemes have eroded the viability of the sugarcane growers, the dairy farmers and the banana growers. We should have learnt our lesson. We developed an MIS and we thought it would help build industries. Everyone let it go through, but we saw what it did. We saw how it was impacting on rural Australia. I had the experience the other day
of going to Tully. A big banana grower and sugar grower said that a block of land became available next door to him and he thought he would test the market. He was quite a wealthy man. The MIS tried to buy the block of land and it became a bidding war. He just got blown out of the market. He was a genuine farmer, farming sugar and bananas, and he could not compete. This is happening right across rural Australia.

It is bad enough with an MIS, where you give a tax break, if you actually include land in that tax break. I do not know if it is included, but Senator Joyce, who is an accountant, says it is, and Senator Milne has an opinion from a barrister who says land is included in the tax break. We will never know, I presume, until someone takes it to the High Court and has it tested. But if it is included, goodness help Australian farmers as there will not be any farming land left.

Australia is a huge empty land, and we do have lots of land. But we do not have lots of good land. In fact, we only farm about 20 million hectares. That is our total farming land. This measure has the potential for taking 20 million hectares out. Where are we going to farm? And where are we going to put the trees? We are told we will put them in land that is not highly productive. You put the trees where the trees grow fattest, and where they grow fattest is on productive land where it rains. Trees grow where it rains and they absorb more carbon. If you want to go and put trees out in the Simpson Desert I do not think we would have any objections to that. But putting them on prime agricultural land is just wrong. One of the other things that would happen—if people would ever care to go out—is that once you put those trees down next to a productive farm it becomes a haven for pigs, and—

**Opposition senator**—Feral goats.

**Senator BOSWELL**—I have never seen feral goats, but I believe that could be the case where you come from, Senator. Certainly where I come from you would then have to set up traps and have shooters go in to shoot them out. The pigs and feral goats go through the fences and destroy crops, and put mud in the rivers and the creeks. All those things do happen.

Today, the Greens and the Nationals find themselves in alignment. It is slightly different though, as I think the Greens are actually concerned about monoculture taking over the land, and it is a legitimate argument. Where the National Party is coming from is a bit different but we end up at the same place. We are concerned about very scarce good farming land in Australia being taken over. We have seen this happen in MISs. I was very disappointed the other day when the Senate brought down a report virtually giving the MISs a bit of a free kick, or a tick. Now we are just going to make it worse—100 times worse.

I cannot support something that will see people marooned, as in Tully. I talked to a guy the other day who had been a fourth-generation unionist. He was a fitter and turner in Tully and he was a fourth-generation mill worker. He appeared in the *Australian*. He said, ‘There will not be a fifth-generation worker in the Tully mill, as much as I would like to see my children being involved in the tools and work on the mill. I don’t think there will be one.’ He is not only a mill worker and a fitter and turner, but also a union rep in the factory who is saying that this is wrong. I suppose it is another indication of the Labor Party not being particularly worried about the blue-collar worker. But these people are worried about their jobs. As has been said before, we actually export about 60 per cent of our primary product and that feeds the world. The world is becoming more populated, and there is
less and less land to feed the people. Why, in the name of goodness, are we going to do this? This is stupidity at its highest level and it should be opposed. We opposed it last time. In fact, it is only the second time we have crossed the floor on this, and we do not enjoy doing that as we understand the problem it causes.

We, the National Party, have to run up our banner and fly our colours. We have to say to the people in rural Australia: ‘We are not going to let this happen to you. If our vote means anything, it will not happen to you.’ We can only cast our vote; we do not expect to win. But at least it says to the people: ‘If you back us and give us your vote, we will back you in return.’ That is what we are doing today. I saw this coming when the bill was first introduced, and I think someone said at the time that this was an MIS on steroids—and it is. Senator Milne is right, we do not need this and, in fact, we should oppose it. We will be opposing this bill.

Senator WILLIAMS (New South Wales) (12.53 pm)—I would like to add a few words to those of my colleagues, Senator Joyce, Senator Nash and Senator Boswell. I said on 15 September last year in my maiden speech to this parliament, ‘Do not ever take the supply of food for granted,’ and I meant it.

I just want to relate a brief story. I live in Inverell in northern New South Wales and our parish priest is Father Joe Adriano. I got to know Father Joe in 1995 when he first came to Australia from the Philippines. We were fishing in the creek on my property one night and he said to me: ‘John, you’re so lucky here in Australia. You walk into your supermarkets and all the shelves are full. You walk around to the butchers’ section and there are all sorts of lamb, steak and pork.’ Of course, I was pig farming at the time. He was simply amazed at the stocks of food that we had in our supermarkets in Australia. He said that back in the Philippines the shelves are mostly empty. That is why I say, ‘Don’t take our supply of food for granted.’ We are lucky. The nation was built by our farmers and now we have policies that do their utmost to destroy our farming sector.

Life is about fairness, and when you have a situation where a large company with a pocketful of money can go in and buy up agricultural land, inflate the prices and prevent the traditional farmer from buying the land, that is wrong. As Senator Boswell just pointed out, when farmers want to expand their acreage, perhaps because their son has just left school and wants to go onto the land to keep the generations going, they get done over in a bidding war. That is wrong. Inflating the price of land is keeping the genuine farmers from producing food for feeding not only Australian but the rest of the world as well, because we are a major food supplier for many areas of the world. The laws as they stand are simply wrong and that is why we are going to support the amendments put forward by Senator Joyce and Senator Milne.

The upfront tax deductions of planting down good agricultural land with trees are simply wrong in every way. We cannot eat trees, we cannot eat bark and it is simply wrong for the future. My fear arises when I hear statistics and forecasts that in the next 30 to 40 years the world is going to have to double its food production to meet the demand for human consumption. How are we going to do that when our nation is being planted down with trees? It is ridiculous. That is why a commonsense attitude should be brought to this whole debate.

The Nationals have stood by their argument all the way through this debate. We are not going to continue this debate for years to come, day in, day out.. Senator Joyce has made that quite clear. We stand by what we believe in and we stand by our regional
We do not want to see this huge tax incentive for these turbocharged managed investment schemes, known as carbon sinks, to continue when the genuine farmers are squeezed out. The genuine people who actually feed our nation, who put the food on our table every day, are the people we need to support and who we will continue to support. That is why we find ourselves in this position in this upcoming vote.

**Senator STEPHENS** (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (12.56 pm)—I seek leave to table a correction to the explanatory memorandum relating to the Tax Laws Amendment (2009 Measures No. 4) Bill 2009.

Leave granted.

**Senator STEPHENS**—In summing up this second reading debate on the Tax Laws Amendment (2009 Measures No. 4) Bill 2009 I thank the members who contributed. It would probably benefit people who have been listening to this debate and those in the gallery, who might be wondering what this piece of legislation is all about, if I revisit for a minute and explain that the debate that we have heard from the National Party senators today goes to an amendment that is being proposed to this large piece of legislation.

Schedule 1 of this bill lifts the expenditure cap for access to the existing research and development tax offsets from $1 million to $2 million with effect from 1 July 2009. This measure provides a further boost to small pre-profit companies in research-intensive industries ahead of the introduction of the new R&D tax incentive in 2010-11. It also mitigates the incentive for firms to keep their R&D spending below the current expenditure cap.

Schedule 2 of this bill honours the government’s 2008 budget commitment to improve the integrity of prescribed private funds and to provide the trustees of such funds with greater certainty as to their philanthropic obligations. The government has recently consulted on draft guidelines, which will be shortly made into a legislative instrument. Following a thorough public consultation process, this schedule amends the Income Tax Assessment Act 1997, the Taxation Administration Act 1953 and A New Taxation System (Australian Business Number) Act 1999 to improve the integrity of prescribed private funds.

Schedule 3 of the bill amends the income tax law to provide relief from capital gains tax to members and insured entities of friendly societies that have either a life insurance business, a public health insurance or both and the society demutualises to a for-profit entity. Depending on how the friendly society chooses to demutualise, these entities do not easily fit within existing demutualisation regimes. These amendments will provide a broadly equivalent capital gains tax outcome for members and insured entities of these friendly societies relative to what members and policyholders of a stand-alone life insurance or private health insurer would receive if the insurer demutualised.

Schedule 4 amends the Income Tax Assessment Act 1997 to ensure that losses transferred to the head company of a consolidated group or a multiple entry consolidated group by a joining entity that is insolvent at the time of joining are not wasted. The head company will be able to apply the transferred losses in one of three ways. The loss can be applied to reduce a net forgiven amount under the commercial debt forgiveness rules. Alternatively, they can be applied to reduce a capital allowance that is adjusted under the limited recourse debt rules or to reduce a capital gain that arises when the...
joining entity subsequently leaves the group. As the amendments have been official to taxpayers, they apply from 1 July 2002—that is, from the commencement of the consolidation regime.

Finally, this bill includes minor amendments to the tax laws. The amendments ensure that the laws operate as intended by correcting some technical or drafting defects, removing anomalies and addressing unintended outcomes. The minor amendments are part of the government’s commitment to the care and maintenance of the tax law. Minor amendment packages now include addressing minor legislative issues raised by the public through the recently introduced tax issues entry scheme, or TIES for short. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.02 pm)—by leave—I move Australian Greens amendments (1) and (2) on sheet 5918 together:

(1) Schedule 2, item 22, page 9 (after line 22), insert:

426-117 Commissioner must prepare annual report on private ancillary funds

(2) Schedule 2, item 22, page 11 (after line 12), insert:

426-117 Commissioner must prepare annual report on private ancillary funds

(a) As soon as practicable after 30 June in each year, the Commissioner must prepare and give to the Minister a report on the activities of private ancillary funds during the year ending on that 30 June.

(b) The report must include but is not limited to:

(a) the number of, and value of, grants dispersed by these funds; and

(b) the range of activities supported from these funds and the amount of money going to each class of activity.

(3) The information required by subsection (2):

(a) must be prepared using the information provided by each private ancillary fund in submitting a return of income to the Commissioner each year; and

(b) may be aggregated in the report to a level that protects the privacy of individual private ancillary funds and donors to those funds.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report, together with a statement containing the data from item A70 in the relevant Tax Expenditures Statement (Deductions for donations to prescribed private funds).

We have here important amendments to enable the public to be better informed about the quite massive amount of money going into quite a large number of trusts called private ancillary trusts. The amendments introduce a range of measures to schedule 2 of the legislation to improve the governance and administration of these private ancillary trusts. The changes that we are proposing will ensure that private philanthropic trusts are more accountable to the tax office in the amount of money they earn and how much is dispersed.

However, the activity remains pretty translucent, if not opaque, to the public. For example, we do not know how many activities these trusts support or who they are. We do not know how much tax revenue is foregone when donors receive a tax donation from contributions to the trusts or how much
Senator COONAN (New South Wales) (1.08 pm)—I have listened carefully to Senator Bob Brown’s comments and his rationale and to what he is trying to achieve in putting forward these amendments. However, on my understanding and reading of the act, this information relating to private ancillary funds is, broadly speaking, already published by the Australian Taxation Office on their website, following completion of the financial year. That is my first point. This information is also published in the Commissioner of Taxation’s annual report, released in December each year, and further informa-

money the trusts disperse. I remind the committee that this provision for these trusts was part of the Howard government’s effort to stimulate philanthropy, and that in itself is a good thing. But the fact is that we are not assured that the money is directed to philanthropic outcomes rather than to a tax remediation opportunity for those who are involved. We would like to know how much these trusts are dispersing and to what philanthropic ends it is going. Without that information it is not possible determine whether the community as a whole is benefiting rather than just the people who are using the trusts gaining from the forgone tax revenue.

The vast majority of trusts are engaged in good works, but this continuing lack of transparency will inevitably raise suspicions about whether the trusts are using their funds to support non-charitable activities or whether they are simply, to put it bluntly, tax havens. Under the legislation, the government will be requiring private ancillary trusts to submit a tax return to the tax office. The amendments I am bringing forward on behalf of the Greens ask for information from the tax returns to be submitted to parliament so that a transparent and public evaluation can be made of the benefit of providing these tax deductions through the philanthropic outcomes of these trusts. We recognise that privacy has to be an issue for donors and trustees. Therefore, we have formulated the amendments in a way that accepts that this information is to be provided as an aggregate, and is not going to require that the trust funds or the donors—or one might say investors in the trust funds, whichever way—have their privacy compromised.

I commend the amendments, which would have the commissioner prepare an annual report on their activities in the previous financial year. The report would include, but would not be limited to, the number and value of the grants dispersed by the funds, the range of activities supported by them and the amount of money going into each form of activity. That would include preparing information provided by each private ancillary fund that goes to the Commissioner of Taxation, and that being aggregated in the report to a level that protects the privacy of individuals, as I have said.

The minister would then have a copy of the report brought before the Senate and, indeed, the House of Representatives. That would enable the parliament to be reassured that the deductions and donations to prescribed private funds are being used for philanthropic purposes and are not simply being used as a tax haven—dare I say, a tax-avoidance mechanism. It is a worthwhile set of amendments. It is simply to give transparency to taxpayers all over the country. Millions of dollars are going into these funds that are set up for philanthropic purposes and many taxpayers will want to know that, in fact, the nation is gaining by a due amount of money being spent on a philanthropic outcome and not being squirreled away to the benefit of the investor but to no benefit to the wider community.
tion that goes to some of these points is con-
tained in the taxation statistics publication
released by Treasury in December or January
each year. I am concerned that the prescrip-
tive requirements and the way in which these
amendments are framed could potentially
have the effect of restricting the Australian
Taxation Office from actually providing any
additional useful information on these funds.
Sometimes, with some of these reporting
requirements, you can actually do more by
letting the existing provisions work the way
in which they are intended to work rather
than trying to take this additional step.

I have made these comments to place on
record my appreciation of the sentiment be-
hind Senator Brown’s amendments, but I
also place on record that we do not really
think it will achieve what he is trying to do.
In addition, we do not think that there is go-
ing to be any additional useful information
and we do not think that the provisions are
required in those circumstances, because of
the existing provisions. That is the basis on
which we do not support the amendments.

Senator STEPHENS (New South
Wales—Parliamentary Secretary for Social
Inclusion and the Voluntary Sector and Par-
liamentary Secretary Assisting the Prime
Minister for Social Inclusion) (1.10 pm)—I
also thank Senator Brown for explaining
what it was that he was seeking to achieve
through presenting these amendments, which
seek to require the commissioner to annually
give the Treasurer a report on the activities
of the private ancillary funds. Senator
Coonan, my understanding, too, is that this
information is already publicly available, as
you said, by the ATO and the Treasury in a
timely way.

I would like to go to the concerns that
Senator Brown has raised about transparency
around the distribution of funds through pri-
ivate ancillary funds. I advise him of the sig-
nificant piece of work that has been under-
taken this year, in very close consultation
with Philanthropy Australia, to review the
integrity, I suppose, of prescribed private
funds and to improve certainty as to philan-
thropic obligations when using those particu-
lar instruments. The government, as I said in
my speech summing up the second reading
debate, has been consulting very widely on
some draft guidelines, which will be made
by legislative instrument. There is wide sup-
port for improved transparency and clarity
through those guidelines. That has been
demonstrated to us through the work being
led by Philanthropy Australia.

Having said that, though, what you are
seeking to do is less than what is already
available. The reporting that is currently in
place—actually, the taxation revenue for-
gone—is reported in the Treasury’s tax ex-
penditure statements released around De-
cember each year, as Senator Coonan said.
That is something that is required by the
Charter of Budget Honesty. Secondly, both
the number and the value of the distributions
and donations and the range of activities that
are supported—reported as per the DGR
categories—are regularly published by the
ATO around June each year and again in the
commissioner’s annual report later in the
year.

I am sure Senator Brown would also be
interested to know that there has been sig-
nificant additional consultation and work
undertaken through COAG and through the
Productivity Commission about the reporting
requirements of not-for-profit organisations
generally. In a commissioned study into the
contribution of the not-for-profit sector, the
Productivity Commission has been specifi-
cally asked to identify unnecessary impedi-
ments to the efficient and effective operation
of not-for-profit organisations, which go
quite substantially to the issue of access and
use of philanthropic funds. The regulation of
the not-for-profit sector is being considered by the COAG Business Regulation and Competition Working Group. We think that there is a significant piece of work currently underway that will address many of the concerns that you have and, therefore, we are not supporting those amendments.

Going to the second amendment, as the ATO acts as the primary government agency that oversees the activities of PPFs, it is appropriate that the ATO be given greater oversight of PPFs, including the power to impose penalties and to replace trustees. Therefore, the amendments proposed by the Greens are unnecessary. Again, this information is already being provided by either the ATO or Treasury in line with their existing responsibilities. As your amendments are currently framed, they do not acknowledge the respective responsibilities that already exist in those two agencies or the fact that the information is already being provided.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.15 pm)—That tempts me, of course, to ask Senator Stephens—or Senator Coonan: could you now tell the committee what the range of activities of these philanthropic trusts is and how much money in the last financial year was spent on each of those activities?

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (1.15 pm)—I cannot respond chapter and verse on that. The place to go to find that information is the ATO website as part of the reporting that is currently in place. But I have some advice for you. Thankyou to the advisers here.

In the last financial year, the donations received were $471,711,556, the distribution from those funds was $117,072,842 and the closing value of the prescribed funds total was $1,234,105,542. The ATO website also provides public information on the distribution by categories. The categories are health, education, research, welfare, defence, environment, industry trade and design, family, international affairs, sport and recreation, philanthropic trusts, cultural organisations, fire and emergency organisations, and other.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.17 pm)—It is easy to mention health or one of the other categories that the parliamentary secretary listed, but we need to know what philanthropic activities are involved there. Putting money into, for example, infrastructure may not be philanthropic, but putting money into research which is not taken up by the private sector will be philanthropic, by and large. My amendment is seeking to get at the philanthropic nature of the outcome of these trust funds. There are many more trust funds in Australia which have much more invested in them than the $1 billion to $2 billion that the parliamentary secretary just spoke about, but we know that they go to a whole range of private activity and the sky is the limit with them.

These funds were set up as philanthropic trust funds. I want to be assured that the parliament has the information which will show that the money being expended—$471 million in this case, as Senator Stephens informs the committee—is being expended on philanthropic outcomes. Maybe she could give examples from the ATO site or the site she refers to that will reassure me and the committee that it is in fact a philanthropic outcome that we are getting here.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (1.19 pm)—Senator Brown, I cannot give you an exam-
ple from the information I have in front of me; what I can say is that there have been concerns raised by you and by other people since the establishment of the prescribed private funds that perhaps there has been suggestion of manipulation—that this has not been wholly philanthropic and that perhaps people have been using it for tax advantages. That is why the government has been involved in a very serious and comprehensive process of consultation around changes to improve the transparency of the PPFs, which will now become private ancillary funds. Under the new regime, which will be in place very soon, I am confident that you will have greater confidence around these processes in the future. It is difficult for us to go back for a retrospective analysis of the information that we have available for 2007. It is incumbent upon those organisations to improve their transparency and their public accountability for these funds, and that is a part of the measures that we are trying to put in place.

Senator MILNE (Tasmania) (1.20 pm)—I heard the parliamentary secretary say that in excess of $400 million had been allocated, and she also listed the range of activities. We were asking for the amount of money going to each class of activity and I would like to know how much of the $400-odd million that was allocated last year went to defence as a philanthropic activity. I would like you to tell me, in some way or other, what sorts of activities were funded for defence for that value of money.

Senator STEPHENS (New South Wales)—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion (1.21 pm)—I have no more comment to make on Senator Brown’s commentary and observation there other than to say, Senator Brown, that you would know that this is an issue of personal interest to me and something that I am intently working upon and want to ensure that there is greater transparency for all of us around these issues.
In relation to Senator Milne’s question, I have some information. The kind of support that PPFs could provide in the defence category include perhaps the Australian War Memorial or other war memorials that have DGR status or programs associated with the Returned and Services League.

Senator MILNE (Tasmania) (1.24 pm)—I, and also on behalf on Senator Joyce, move amendment (1) on sheet 5906 revised:

(1) Page 96 (after line 11), at the end of the bill, add:

Schedule 6—Carbon sink forests

Income Tax Assessment Act 1997

1 Subdivision 40-J

Repeal the Subdivision.

This amendment is jointly sponsored by the Leader of the Nationals in the Senate, Senator Joyce, and me in relation to removing the tax deduction for the establishment of carbon sink forests. The matter has already been well canvassed in the second reading debate, but I want to thank the members of the National Party for the remarks they made in relation to this. There are a couple of clarifications. I can assure Senator Joyce that my opposition to managed investments schemes extends to Tasmania. I have made that very clear throughout. I released a report earlier this year on what has happened in Preolenna and Meunna, in particular, in relation to managed investment schemes. We are seeing dairy country, in particular, turned over into forests in Tasmania to great cost in those communities.

I would also like to say to Senator Boswell that whilst it is absolutely true that the Greens come at this from a perspective of trying to build resilience in ecosystems and maintain the sustainability of those ecosystems so that they can continue to produce food and keep people leaving a decent life in rural Australia, the fact of the matter is that the Greens have also talked at length on issues around increased land prices, increased water prices, the displacement of food growing land and so on. That is a major concern to us. Senator Boswell may not realise but the reason I ran for politics in the first place in 1989 was as a result of a very hard-fought campaign over two years to oppose the construction of a kraft pulp mill at Wesley Vale in north-west Tasmania because of its impact on agricultural land, the pollution that it would have caused on that land and Bass Strait, in addition to the loss of native forests in Tasmania. So I am glad that at least in this Senate there is a combination of senators from the Greens and the National Party who are working to protect agricultural land, ecosystems and to stop the tax rorts that actually lead to bad outcomes for rural Australia. That is what this is: it is about tax rorts. I commend to the Senate the amendment in my name and that of Senator Joyce and the remarks that have been made in the Senate.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.27 pm)—One thing that needs to be pointed out is the conjecture that surrounds this, especially with regard to capital expenditure. As you know, Temporary Chairman Bernardi, things can be either a debit or a credit. They can be either capital in nature or income in nature. There are no other forms in accountancy. It is what this legislation actually says, if we go through it—and the interpretation by the court will be on what is written in this legislation. It says that you can deduct amounts for capital expenditure incurred for establishing trees that meets the requirements for constituting carbon sink forests. The purchase of...
land is most definitely a capital expenditure—without a shadow of a doubt. Any 100-1 accountancy student if asked, ‘Is the purchase of land capital in nature or income in nature?’ Would answer, ‘It is capital in nature.’ This legislation says that expenditure that is capital in nature is deductible upfront. If you go to 40-1005(1) it says:

(a) you incur capital expenditure that is covered under section 40-1010 in relation to particular trees established in the income year; and ...

It goes on later to say in subsequent and previous income years for the establishment income for a carbon sink forest. At section 40-1005(4)(b) it says:

(b) you incur capital expenditure in the next income year for establishing other trees;

in determining whether you can deduct an amount under subsection (1)...

On and on it goes. In fact, what becomes very interesting in the reading of this legislation, is that it actually does go to capital expenditure that is not acceptable. The only two things that are not acceptable are noted in section 40-1020—certain expenditure disregarded—and that is in draining swamps or low-lying land or clearing land. So that says that all the rest of the capital expenditure is obviously allowable. All it requires is someone to wander off into court and say: ‘This is the legislation. This is what it says.’ The legislation even has the opportunity and goes to the process of precluding certain amounts of capital expenditure and in that preclusion it leaves out, or is silent, on the purchase of land. So quite obviously and evidently land is in. Therefore, one person on one side of the fence gets an upfront tax deduction for the purchase of land as they live happily ever after in inner suburban metropolitan Australia or overseas while the farmer on the other side does not get it.

Why? There is the carbon argument and a belief that if we sequestrate more carbon the world will change. That is an argument for another day and that is fair enough. Obviously if you vote for this, it is an endorsement of that principle, and people should be aware of that. We are saying here that you will get an upfront tax deduction for capital expenditure for everything bar the draining of swamps and low-lying land and the clearing of land because you choose to plant a scrub and then wander away. Actually, you cannot plant a scrub—it has to be over two metres high—so it is going to be trees. And where are you going to find trees? You will find them in prime agricultural land. That is where you will find them. Does it go to a section of precluding prime agricultural land? No, it does not. That is what is so wrong about this legislation.

So we are giving people an upfront tax deduction to take out of production the capacity to grow food. I just find that fantastic. I think that is the most peculiar thing that has ever been designed—an upfront tax deduction to remove agricultural land from production. Who becomes the beneficiary of that? Obviously it is not the person living on the land. The beneficiaries are those living in a metropolitan area. So even the benefit of that tax deduction and the income stream from the carbon credit that will be distributed is taken out of the district. It is removed from the district.

This is the irony, the parody of justice: you are removing the means of production from a certain regional area and then giving a benefit to another area away from that land, and you are giving a benefit to a unit holder, or whatever, living in a metropolitan area or overseas. The land is left destitute from the removal of that means of production which was the support of that district, and the benefit is given to a person in a metropolitan area. And the methodology behind the benefit: obviously this is a mechanism to cool the planet; that is what we are doing. They be-
lieve that and that is what this is all about, and that is a fair enough argument.

But I think that it is completely unjust to compromise the food potential of an area. We have asked over and over and over again for someone to direct us to where in the legislation it says that capital expenditure for the purchase of land is not included. But it never made it into the legislation. It was a fast and furious debate. This issue was brought up over and over and over again: why don’t you exclude the purchase of land? It reminded me of a former Premier of my state, a good bloke, saying, ‘Don’t you worry about that. That is not an issue. Don’t you worry about that.’ Well, I am worried about it. This legislation specifically says that the purchase of land is included.

So what is wrong with it? You are giving an upfront capital expense deduction to some people while other people cannot get it. You have allowed the clumsy hand of government to come into the marketplace and pick winners and losers. You have allowed the definition of those winners and losers to be decided by a fence line. You have allowed a deduction for the removal of a productive component that does the decent thing of putting food on the table and feeding our nation and giving affordable food to our Australian people and to the world to be replaced by a carbon sink, which is an issue that you cannot touch—it cannot be milled and you cannot do anything with it.

I live next door to a forest. It is not something to be joked about. It is a complete impost because it becomes the home of vermin and pests like pigs, kangaroos in abundance, rabbits and wild dogs. You might think that is hilarious. How would you like it in your backyard? How many feral pigs and wild dogs do you want in your backyard and how many other examples of vermin do you want before it is not a joke for you? There are some areas now where you certainly cannot have sheep and they are removing the capacity to have cattle as well because of the complete lack of management expertise.

But the core issue here is that you have made a moral statement. You have decided to remove the capacity to grow food and replaced it with an upfront tax deduction to grow a forest that will never actually deliver any sustainable outcome in export dollars or in food that will feed the masses, which I think is one of your primary jobs as a decent human being.

I know that on any TLAB they could bring this issue up and it can turn into a wedge. In the National Party we are not prepared to do that. We have stated our case. We might speak on the issue in the future but today we are prepared to vote in this direction as a measure of how important the National Party feels it is. We tried in the National Party over and over and over again to get to a point of agreement. The last thing we wanted to do was cross the floor on this. We tried and tried to get some mitigator to bring us to an area of agreement, but we did not get there. So at this point in time on this issue we will reflect our deepest concern, and in some instances disgust, with what the government has put forward, because of the statements it makes about how you value things in life. Apparently you value the scrub more than food. We will reflect our concern in the way we vote this time.

I thank Senator Milne for participation in the National Party’s co-sponsorship of this motion. We approach it from slightly different directions, but the intent is clearly spelt out. This was dreamt up by the only practising accountant in the whole of the parliament. It was dreamt up at a free-for-all dinner at which they worked out a great way to get a tax deduction for doing nothing. They have been particularly sneaky in staying si-
lent on the key issue, which is a capital deduction for the purchase of land.

Senator COONAN (New South Wales) (1.37 pm)—I want to place some very brief comments on the record. We have seen this amendment before and we have had this discussion ad nauseam and at great length. The core positions do not seem to have moved very much and the debate is not much advanced by repetition.

I also strongly contend that the debate is not advanced by dropping this on to the end of a TLAB which deals with a lot of other issues and does not deal, in any kind of primary sense, with carbon sinks. However, that is what we are currently considering in the Senate.

The Greens have foreshadowed that, with every tax bill, we are going to have this debate over and over again and I would suggest to them that they might like to reflect on whether this achieves very much. This has been exhaustively discussed and, from the coalition’s perspective, our views have been well and truly put on the record. So I am not going to burden the Senate and the record with stating them all over again other than to say that, in our view, carbon sink forests are an important tool in the fight against climate change and in reforesting areas of Australia that arguably should never have been cleared in the first place.

We do not believe that there is compelling evidence that the carbon sink provisions encourage the planting of carbon sink forests on prime agricultural land. It is, in our view, highly unlikely, perhaps even improbable, that farmers would allow prime agricultural land capable of producing a crop or livestock for profit to be planted with a carbon sink forest for the purpose of claiming a tax deduction.

I realise that there are strongly held views that are in disagreement with that proposition, but that is the coalition’s position. It is certainly our position in relation to this amendment. We continue to believe in the benefits of carbon sink forests. We have not altered our view about that, despite the heat and light that has been generated by this debate. As I have said, we think that they are an important carbon sequestration technique and tool.

Carbon sink forests currently have support from the majority of the Senate. This amendment of course will not succeed. Having said that, I do appreciate that our friends in the National Party have a passionately held, differing view on this and we respect that. I am very glad that I belong to a party that allows, in such a civilised and civil way, the advocacy of a different viewpoint when members consider it appropriate. The National Party have consistently expressed that view. However, respecting those differences, from the coalition’s perspective we still do not see that there is a compelling case to alter our view.

I could go on and on and take issue with all the points. I do not think anything is to be gained by that, as I have said. It was nevertheless appropriate that I very briefly indicated that the coalition will not be supporting the amendment and the reasons why.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (1.41 pm)—Thank you, Senator Coonan, Senator Milne and Senator Joyce for those contributions about these two amendments to the Tax Laws Amendment (2009 Measures No. 4) Bill 2009. The effect of the amendments would be to remove the tax deduction for the establishment of carbon sink forests. The government is not prepared to do that.
The tax deduction provides an incentive for growing forests for the specific purpose of taking carbon dioxide out of the atmosphere and to help national efforts to reduce greenhouse gas emissions. We have been over and over this issue many times, including through the Senate committee inquiry which reported in September 2008. It found that the carbon sink forest tax legislation is ‘a valuable policy addition that will promote greenhouse gas reductions’. The report notes that the legislation addresses an anomaly in that other forms of greenhouse gas emissions reduction activities by industries are tax-deductible. The amendments would have the effect of reversing that and creating an inconsistency in taxation treatments relating to greenhouse gas emissions.

Your amendment on sheet 5907 would impose additional conditions before a tax deduction could be claimed for establishing carbon sink forests. The Environmental and Natural Resource Management guidelines for the tax measure foster complementary environmental and natural resource outcomes and the Senate committee report of September 2008 recognised the benefits of relying on existing state and territory regulatory structures for the management of impacts of carbon sink forests on the environment. After that Senate inquiry, and in consultation with the crossbenches and taking into account concerns from the opposition, the Minister for Climate Change and Water amended environmental guidelines on relevant legislation to help address this issue. The government is committed to closely monitoring carbon sink forest establishment activity under this legislation.

I now go to a specific issue that has been part of the debate contributions today and reiterated by Senator Joyce, and that is this notion that the legislation can be used to purchase land for growing trees. I would like to draw everyone’s attention to the interpretive decision by the ATO which was recently released on this matter. It is ATO ID 2009/60, which concerns a taxpayer who purchased land for growing trees. The ATO made it very clear that the cost of purchasing land to establish a carbon sink forest is not establishment expenditure. The legislation operates in the same way as arrangements for horticultural plants, and no-one has ever suggested that land is deductible under those provisions. So the government is not supporting this amendment. I think we all understand that, if we continue to have these debates every time we have a tax laws amendment bill, we will not make too much progress.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.45 pm)—Just briefly, the ATO says a whole range of things all the time. In fact, the number of court cases where people have taken on the ATO would fill this room and one besides, I am sure, and there would be myriad court cases currently going. What the ATO says in a decision is not the relevant issue here. The superior document is what the legislation says or, in this case, does not say. The legislation is there for you to read; it is there in black and white. It actually goes to preclusions which, in section 40.1020 of the Income Tax Assessment Act 1997, are quite evident: there are two there, and they do not include land. So land is in. It is capital expenditure, without a shadow of a doubt. It is not precluded, without a shadow of a doubt. Are other items that would be deemed to be capital expenditure precluded? Yes, they are. That is, ipso facto, a statement that all other forms are in. All you have to do is trot off to court and present your case and say, ‘This is the legislation; this is what it says.’ What the ATO says is quite irrelevant.

Question put:

That the amendment (Senator Milne’s and Senator Joyce’s) be agreed to.
The committee divided. 

(The Chairman—Senator the Hon. AB Ferguson)

AyesELLOW 11
NoesELLOW 48
MajorityELLOW 37

AYES
Boswell, R.L.D. Brown, B.J.
Fielding, S. Hanson-Young, S.C.
Joyce, B. Ludlam, S.
Milne, C. Nash, F.
Siewert, R. * Williams, J.R.
Xenophon, N.

NOES
Abetz, E. Adams, J.
Arbib, M.V. Back, C.J.
Bernardi, C. Bilyk, C.L.
Bishop, T.M. Brown, C.L.
Cameron, D.N. Carr, K.J.
Colbeck, R. Collins, J.
Conroy, S.M. Coonan, H.L.
Cormann, M.H.P. Crossin, P.M.
Evans, C.V. Farrell, D.E.
Faulkner, J.P. Feeney, D.
Ferguson, A.B. Fifield, M.P.
Forshaw, M.G. Furner, M.L.
Humphries, G. Hutchinson, S.P.
Johnston, D. Ludwig, J.W.
Landy, K.A. Marshall, G.
Mason, B.J. McEwen, A.
McGauran, J.J.J. McLucas, J.E.
Moore, C. O’Brien, K.W.K.
Parry, S. * Payne, M.A.
Polley, H. Pratt, L.C.
Ronaldson, M. Ryan, S.M.
Stephens, U. Sterle, G.
Troeth, J.M. Trood, R.B.
Wong, P. Wortley, D.

* denotes teller

Question negatived.

Senator MILNE (Tasmania) (1.54 pm)—I move Greens amendment (1) on sheet 5907:

(1) Page 96 (after line 11), at the end of the bill, add:

Schedule 6—Safeguards on the establishment of carbon sink forests

Income Tax Assessment Act 1997

1 After paragraph 40-1010(2)(c)
Insert:

(ca) the trees are a mixture of species that approximate the local native vegetation or, if not available, from an ecologically similar location;

2 After subsection 40-1010(3)
Insert:

(3A) The guidelines provided for in subsection (3) must ensure that:

(a) any property claiming a carbon sink forest expenditure has an environmental management system audited to conform to ISO14001 in place; and

(b) forests over 100 Ha require an ecosystem evaluation to develop recommendations for appropriate planting; and

(c) the owner is required to enter into an easement agreement with the Department of Climate Change preventing any development or modification of the property which would result in the property no longer meeting the conditions specified for a carbon sink forest; and

(d) an easement agreement entered into in accordance with paragraph (c) remains in force for a period of not less than 100 years, or until the Commonwealth determines that the forest no longer requires protection, whichever is the earlier.

3 After section 40-1015
Insert:

40-1016 Ecosystem evaluation

Ecosystem evaluation means an ecological assessment and report prepared by a suitably qualified person which includes, but is not limited to:
(a) an assessment of impact of the carbon sink forest on the hydrology of the catchments within which it is situated;

(b) an assessment of the local and regional linkage and connectivity values of the site, including potential links in relation to any other remnant vegetation areas;

(c) identification of constrained areas such as steep land and land adjacent to waterways which are likely to have particular management requirements;

(d) an assessment of fire risk within the site and in relation to adjacent premises including areas of native forest;

(e) identification of any other environmentally sensitive areas on which the proposed use may potentially impact;

(f) identification of any likely conflicts between the proposed carbon sink forest use and any adjacent or nearby premises or places;

(g) identification of a selection of suitably benign species for planting.

This is an alternative amendment to the one that was just lost. The previous amendment was to remove the tax deduction for carbon sink forests. Since that was not the will of the majority, this is an amendment to place conditions, safeguards, on the establishment of those forests. It is basically to make sure that the trees are mixed species. It is also to make sure that there is an ecosystem evaluation in relation to those carbon sink forests, namely that there be things such as a hydrological assessment of those particular areas and a look at the issues, and to make sure that when you have any prospect of establishing a carbon sink forest there is a proper ecological assessment. The government, quite irresponsibly, do not provide for that in their legislation. Anyone concerned about sustainability would want an ecosystem assessment and evaluation before such a plantation was established. The government say it is their intention, so let them vote for it.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.56 pm)—I wonder if we could have a response from the government to Senator Milne’s proposal.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (1.56 pm)—I am sorry, Senator Brown. I indicated in my earlier remarks that we were not supporting either of the amendments.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.56 pm)—I am well aware of that, but I would expect that the government would be able to give reasons as to why it is not supporting this amendment. It is a very important amendment; it is well reasoned. Senator Milne has presented the argument in favour of it. Surely the government—if it is going to defend the indefensible, as I see it—is going to put to the chamber a reasoned and cogent argument as to why it is not going to support this amendment.

Senator STEPHENS (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (1.57 pm)—Senator Brown, I did speak quite specifically to the second amendment. I indicated that the government was not supporting it because it has the effect of imposing additional conditions before a tax deduction can be claimed for the establishment of carbon sink forests. When this issue was raised following the Senate committee inquiry in September 2008, the Minister for Climate Change and Water amended the guidelines to address...
concerns from the opposition and crossbench senators when the Senate last considered this measure. The government believes that its intention to closely monitor carbon sink forest establishment activity under this legislation suffices.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (1.58 pm)—I will just say that that is a nonsense. It was no response whatever. The crossbench—in this case, Senator Milne again—has brought forward a very logical and reasoned amendment, and it deserves better than that from the government.

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

The committee divided. [2.02 pm]
(The Chairman—Senator the Hon. AB Ferguson)

Ayes…………… 6
Noes…………… 61
Majority……… 55

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

NOES
Abetz, E. Adams, J.
Arbib, M.V. Back, C.J.
Barnett, G. Bernardi, C.
Bilyk, C.L. Birmingham, S.
Bishop, T.M. Boswell, R.L.D.
Brandis, G.H. Brown, C.L.
Bushby, D.C. Cameron, D.N.
Carr, K.J. Colbeck, R.
Collins, J. Conroy, S.M.
Cormann, M.H.P. Crossin, P.M.
Eggleston, A. Evans, C.V.
Farrell, D.E. Faulkner, J.P.
Feeney, D. Ferguson, A.B.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Fisher, M.J.
Forshaw, M.G. Forster, M.L.
Hogg, J.J. Humphries, G.
Hutchins, S.P.
Ludwig, J.W.
Macdonald, I.
Mason, B.J.
McGauran, J.J.J.
Minchin, N.H.
O’Brien, K.W.K.
Payne, M.A.
Pratt, L.C.
Ryan, S.M.
Stephens, U.
Troeth, J.M.
Wong, P.

* denotes teller

Question negatived.

Bill agreed to.
Bill reported without amendment; report adopted.

Third Reading

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (2.07 pm)—I move:

That this bill be now read a third time.
Question agreed to.

Bill read a third time.

QUESTIONS WITHOUT NOTICE

Asylum Seekers

Senator FIERRAVANTI-WELLS (2.08 pm)—My question is to the Minister for Immigration and Citizenship, Senator Evans. Does the minister think that the arrival of 29 boats carrying 1,301 new asylum seekers proves that the Rudd government’s new border protection policies are working?

Senator CHRIS EVANS—I thank the senator for the question. The Rudd Labor government remains absolutely committed to strong border security measures. That is why in the 2009 budget an additional $654 million was dedicated to a whole-of-government strategy to combat people-smuggling as part of the Rudd government’s $1.3 billion strategy to strengthen national security and bor-
der protection. We have established a dedicated Border Protection Committee of Cabinet to drive the whole-of-government strategy to combat people-smuggling and to ensure that the government’s efforts are fully coordinated and resourced at levels which enable us to quickly respond to the factors that contribute to regular people movement. We have also created a single point of accountability for matters relating to the prevention of maritime people-smuggling within the Australian Customs and Border Protection Service. They will create a more effective capability to task and analyse intelligence, coordinate surveillance and on-water response and also engage internationally with source and transit countries to comprehensively address and deter people-smuggling throughout the operating pipeline from source countries to our shores.

The challenge is real and the challenge remains. As I have said previously, we have had boat arrivals in more than 20 of the last 30 years. This is an ongoing problem for Australia, as it is an ongoing problem for the world. Reports indicate that the number of people around the world seeking protection or seeking to move is increasing all the time. We see the international engagement and the regional engagement commenced under the previous government as a vital component of a successful policy to combat people-smuggling, but it is an ongoing challenge and we remain committed to trying to end people-smuggling.

Senator FIERAVANTI-WELLS—Mr President, I ask a supplementary question. I note the minister’s answer. I note that he does not include in that the fact that the government has reduced this year’s Customs budget by $58.1 million. He does not include abolishing detention debt. He does not include removing the 45-day rule for onshore protection visa applicants.

The PRESIDENT—The question, Senator Fierravanti-Wells.

Senator FIERAVANTI-WELLS—I am coming to the question, Mr President. Nor does he include providing 24 new portable accommodation units to the refugee processing outpost, in order to house the extra people that people-smugglers are bringing in, at a cost of $1.5 million to the Australian taxpayer. Can the minister advise why he has not included these amongst his list of so-called policies that are deterring people-smugglers?

Senator CHRIS EVANS—I thank Senator Fierravanti-Wells for what I think was a question. It actually sounded a bit more like a combination of the shadow minister’s press releases, which are incredibly confusing. When you bring them all together they are a complete mess. What we have done is try to implement a policy that is absolutely committed to strong border security and that enhances our border control and border patrolling. Also, we make no apology for the fact that we have introduced legislation measures to ensure a more humane treatment of refugees who have arrived in this country. We made that very clear. A number of the coalition’s own backbenchers have seen fit to support that. I think the Australian community has moved on to understanding that you can have strong border security and humane treatment of those found to be under your protection. I suggest that the Liberal Party, rather than calling for an inquiry, actually work at trying to find a policy that perhaps takes account of modern circumstances. (Time expired)

Senator FIERAVANTI-WELLS—Mr President, I ask a further supplementary question. Will the minister tell the Senate when the Rudd government will reverse its program of softening border protection that gives people-smugglers the green light and
return to the previous strong policies which saw no unauthorised boat arrivals in Australia in 2002, 2003, 2004 and 2005 under the Howard government?

Senator CHRIS EVANS—The senator seeks to repeat the catchcry of ‘soft on boarder security’, but that is all the Liberal Party have got. There is no policy and half the time they do not oppose the measures that we recommend. I remind those opposite that under the Howard government 5,516 unauthorised arrivals arrived in 2001; 2,900 in 2000; and 3,700 in 1999. Were you soft on boarder security then? No. What you were dealing with was the challenge of a surge that occurred at that time, just as earlier governments such as the Fraser government had to deal with the surge of Chinese arrivals in its period. These things occur as a result of people who have been forced out of their home countries seeking asylum. What we have seen over the years is that these figures go up and down as people seek to find safety. I am afraid that will continue—(Time expired)

MINISTERIAL ARRANGEMENTS

Senator CHRIS EVANS (Western Australia—Minister for Immigration and Citizenship) (2.15 pm)—by leave—Before I answer the next question, I forgot to advise the Senate before question time of the absence of Senator Sherry at question time today. I did advise the party leaders earlier that he would not be able to attend today’s question time. I thank the Senate for their indulgence.

QUESTIONS WITHOUT NOTICE

Employment

Senator HURLEY (2.14 pm)—My question is to the Minister representing the Prime Minister, Senator Evans. Can the minister please inform the Senate of the labour force data that was released earlier today? What is the outlook for Australians who are looking for work?

Senator CHRIS EVANS—I thank Senator Hurley for the question. Today’s labour force figures show that employment fell by 27,100 people in August. The unemployment rate held steady at 5.8 per cent, supported though by a fall in the participation rate. The participation rate is still at a high level but it did fall. Everyone is concerned by job losses, which is why the government has acted decisively to stimulate the economy and to support jobs. Today’s figures demonstrate that the government stimulus and combined efforts of employers and employees has helped cushion the impact of the global recession on job losses. The effectiveness of the government’s stimulus in supporting jobs and effort by businesses may mean that unemployment peaks somewhat lower than we originally forecast in the budget. If that is the case, I am sure all senators would welcome it. Unfortunately, though, the unemployment rate will continue to rise as the effects of the global recession continue to wash through our economy.

Even though the Australian economy is looking much stronger than the rest of the world, we need to remember that it will take time for the full effects of the global recession to be felt. We do know that without the stimulus unemployment would be much higher. We know that the government’s action and the combined efforts of employers and employees have helped cushion the impact of the global recession on jobs. Treasury have estimated that without the government stimulus the unemployment rate would peak 1½ per cent higher, or up to 210,000 more Australians who would be out of work by June 2010. The stimulus is supporting jobs now; it will support jobs in coming months. While unemployment in other advanced economies is forecast to reach double figures, our stimulus package will ensure that we should not reach those sorts of levels of unemployment.
Senator HURLEY—Mr President, I ask a supplementary question. Could the minister outline to the Senate how Australia’s employment numbers compare with other advanced countries?

Senator CHRIS EVANS—Australia’s unemployment rate of 5.8 per cent does remain lower than any of the major advanced economies except Japan. In the US, the unemployment rate has reached 9.7 per cent, its highest in 26 years. In the United Kingdom, the unemployment rate is now at 7.8 per cent. In Canada, the unemployment rate is 8.7 per cent. And in the Euro area, unemployment has reached 9.5 per cent. Since September 2008, employment in Australia has fallen by just 0.3 per cent. This compares to much higher falls in the US, Canada and the UK. These figures demonstrate that the government’s approach is working to assist in retaining jobs, helping Australians stay in work. Without that action, unemployment would be much higher today. Compared with the rest of the world we are doing well but we are in a very difficult circumstance. (Time expired)

Senator HURLEY—Mr President, I ask a further supplementary question. Can the minister explain how the government’s stimulus efforts have helped to cushion the impacts of the global recession on Australia’s jobs?

Senator CHRIS EVANS—Australia has coped with the global financial storm because of this government’s assertive and timely policy stimulus. That stimulus plus the combined efforts of employers and employees have helped to lessen the impact of the global recession on jobs. It is our government’s policy actions that continue to be critical factors in supporting the economy—the initial fiscal stimulus to households and businesses combined with a longer term effect from the infrastructure programs. This government knows that we will face a big jobs challenge ahead. The unemployment rate will continue to rise as the effects of the global recession impact our economy. We have already seen unemployment rise by 200,000 people in Australia.

Senator Abetz—So all good things are because of your policies!

Senator CHRIS EVANS—Quite frankly, Senator Abetz, if you had had your way, we would have seen at least another 200,000 people out of work. The stimulus, which you opposed, has supported jobs and continues to support jobs. I urge you to support the—(Time expired)

Quarantine

Senator COLBECK (2.19 pm)—My question is to the Minister representing the Minister for Trade, Senator Carr. Does the minister agree, as stated by Austrade’s now censored submission to the Senate’s inquiry into the removal of the rebate for the AQIS export certification functions, that the changes will have ‘an adverse effect on regional exports and business development and may have a wider undesirable economic impact’?

Senator CARR—I do not agree and the proposition advanced to the Senate inquiry did not reflect the view of the government, nor did it reflect the considered view of Austrade. The Austrade executive realised there had been a mistake and acted appropriately to correct the public record. A wide range of industry representatives have endorsed and supported the government’s decision—the Australian Dairy Industry Council, ABB, GrainCorp, Horticulture Australia and the Australian Livestock Export Council. I would remind those opposite that the export certification rebate—

Honourable senators interjecting—
The PRESIDENT—Order! Senator Sterle and Senator Heffernan, if you want to debate this issue, there is time at the end of question time for both of you to participate in the debate. Continue, Senator Carr.

Senator CARR—I would remind those opposite that the export certification rebate in question was scheduled to lapse at the end of 2008-09, an arrangement put in place by the previous government. There has been no budget to fund it beyond that date. The Beale review found that the funding should be allowed to lapse. As a consequence, the government proposed to invest $40 million in reform of the export certification process. These reforms will reduce costs for exporters and improve efficiencies. Just as it did with the EMDG, the Liberal Party is bleating about a policy reform that they lacked the required political courage to implement when they were in government. They have the hypocrisy to demand that this government—(Time expired)

Senator COLBECK—Mr President, I ask a supplementary question. Why did the government censor Austrade’s submission to the Senate’s inquiry into the removal of the rebate for AQIS export certification functions?

Senator CARR—The government has not censored Austrade. I repeat: what has occurred is that the government is implementing a reform that the Liberal Party did not have the courage to implement when in government. It proposed actions and did not budget for them. As a result, we now have a situation where the Liberal Party is once again acting in a most hypocritical manner in suggesting that changes that it proposed in government are not being followed. The submission was not cleared through the minister’s office—which is custom and practice across the government. As it was under the previous government and as it is under this government, it is custom and practice for departments to present.—(Time expired)

Senator COLBECK—Mr President, I ask a further supplementary question. Will the minister give a commitment that the officials involved in the preparation of the now censored Senate submission will be available to appear before the committee? Further, will the minister guarantee that these officials will be permitted to give full, frank and fearless advice to the committee in the same way as they tried to give it to the government?

Senator CARR—The submission was actually withdrawn by the committee. The Senate committee itself—

Senator Colbeck—Mr President, on a point of order: I suggest that the minister—

Senator Chris Evans—No, you have got to have a point of order, not a suggestion.

Senator Colbeck—The point of order is relevance. I did not ask about the withdrawal of the submission. I can give the minister plenty of advice on that if he needs it, because I actually have the process through which it was withdrawn. I asked about the officials being allowed to appear before the committee.

The PRESIDENT—There is no point of order. The minister has been addressing the second supplementary question for 12 seconds. I draw the minister’s attention to the question. You have 48 seconds remaining to answer the question.

Senator CARR—Mr President, the senator has asked me about the censorship of the submission.

Senator Abetz—Mr President, on a point of order on relevance: Hansard will disclose that the second supplementary question in no way, shape or form dealt with the issue of censorship. For the minister to claim that the question did deal with that shows clearly that he is being irrelevant. The question related to
whether or not the minister would give a commitment that the officials involved in the preparation would be allowed to appear.

Senator Chris Evans—Mr President, on the point of order: if Senator Abetz wants to argue that the question he wrote did not include the words ‘censored report’, he perhaps would like to read the whole question, not just the bit that suited his argument on this occasion. The minister is directly on point and is trying to seriously respond to the question.

Honourable senators interjecting—

The PRESIDENT—Order! There is no point of order. I want question time to proceed. I have already advised the minister that he now has 41 seconds remaining to answer the question.

Senator Carr—Mr Peter Yuile, the acting head of DFAT, has indicated publicly—and the minister has indicated—that he will be available as the senior officer of Austrade to discuss these matters with the committee.

Senator Abetz—Did he prepare it?

Senator Carr—Just because the officer has not been schooled in what he is to say—Senator Abetz has got that sort of experience—does not make it illegitimate. What we have here is Senator Abetz’s experience of going through a tutorial with a witness before he appears before a Senate inquiry. We do not do that. That is not the standard that this Senate has come to expect.

Honourable senators interjecting—

The PRESIDENT—Order! When there is silence I will proceed with question time. Senator Carr, you have four seconds left.

Senator Carr—This government has high standards when it comes to Senate committees. It is a pity the opposition did not express

Burma

Senator Ludlam (2.28 pm)—My question is to the Minister representing the Minister for Foreign Affairs. What has the government done in response to revelations made by defectors from Burma’s nuclear program, reported by Professor Des Ball from the ANU and also raised by the US Secretary of State in a recent ASEAN meeting, regarding the clandestine nuclear weapons program? When will our ambassador in Vienna put this on the agenda of the IAEA board of governors or, for example, raise this with the IAEA Director-General? And has the minister been briefed by the Australian Safeguards and Non-Proliferation Office?

Senator Faulkner—I did not actually hear the last part of your question, Senator Ludlam. Let me respond to those parts that I was able to hear. I certainly can say to Senator Ludlam that I am aware of unconfirmed reports that Burma may be developing a nuclear capability. It is true that Australia shares the concerns of the international community about Burma’s possible nuclear weapons aspirations and its relationship with the DPRK. A nuclear armed Burma would be a serious threat to regional and international security and it would be a setback to efforts to advance nuclear disarmament and the non-proliferation regime. The Australian government calls on the Burmese government to be transparent about any nuclear activities. The fact that Burma is a signatory of the nuclear non-proliferation treaty requires it to place any nuclear facilities under International Atomic Energy Agency safeguards. Australia expects Burma to abide by all its obligations under that treaty. We also call on Burma to meet its obligations under UN Security Council resolutions 1874 and 1718, which in addition to an arms embargo prohibit the procurement from North Korea of items related to nuclear, chemical or biologi-
cal weapons and also ballistic missiles. *(Time expired)*

**Senator LUDLAM**—Mr President, I ask a supplementary question. The minister used the word ‘unconfirmed’. This research has been on the public record now for a matter of a couple of weeks, so I am wondering if the minister can tell me whether the government has done anything at all to confirm or validate these reports. With particular regard to the minister’s understanding of Russian government collaboration with the public Burmese light water reactor, which potentially supports the clandestine factor, will the minister reconsider the wisdom of uranium sales to Russia, given the clear proliferation risks and the risks to regional security implied by a Burmese nuclear weapons program? Has the government done anything at all since these reports were made public?

**Senator FAULKNER**—I have used the terminology ‘unconfirmed’ in relation to the substance of the reports. I accept the point that you have made that reports have been published. There have been articles in a range of Australian newspapers, including reports from an Australian academic, Professor Des Ball, and a Thailand based Irish journalist, Phil Thornton, who according to those reports interviewed Burmese defectors in Thailand, as you are aware. The point that I made in relation to them being unconfirmed is not about the fact that the reports appeared; just about whether the substance of the reports is accurate. In relation to Russia, quite clearly, there is—*(Time expired)*

**Senator LUDLAM**—Mr President, I ask an additional supplementary question. I wonder whether the minister might come back to what he was about to tell us with regard to Russia. Can you specifically confirm for us that the government has not sought a briefing with ASNO, has not raised the issue with the IAEA board of governors, has not done anything to confirm or validate the research that has been put on the public record and has not raised this with the IAEA director-general? Can the minister confirm that none of those actions have been taken and perhaps advise whether anything at all has been done?

**Senator FAULKNER**—I am not aware of the issues in relation to a briefing. I will need to find more information out about that. I am not able to talk about any classified briefings that the government might have received. However, I will certainly seek specific advice in relation to the briefing that you have requested. In relation to the Russian issue that you raised, you might recall that a new nuclear cooperation agreement was signed in September 2007 during the APEC summit by the former Foreign Minister, Mr Downer. That agreement allows for the use of Australia uranium in the Russian civil nuclear sector only and I can say that it does fully meet Australia’s strict safeguard requirements.

**Building the Education Revolution Program**

**Senator MASON** (2.34 pm)—My question is to the Minister representing the Minister for Education, Senator Carr. I refer to Abbotsford Primary School in New South Wales, where the school community has shown greater fiscal responsibility than the Rudd government in trying to optimally use their $2.5 million grant under the so-called Building the Education Revolution. Will the minister now guarantee that the school community’s unanimous voice will be heard and that they will receive their four new classrooms under the BER while at the same time being allowed to keep the existing four classrooms slated by the Rudd and Rees Labor governments?

**Senator Cameron interjecting**—
The PRESIDENT—It is disorderly to interrupt when a question is being asked, Senator Cameron.

Senator CARR—This is yet another matter that Senator Mason has unfortunately been asked to raise in the Senate. I know that it is a dreadful situation, Senator. Through 12 years of opposition there were occasions, I must confess, when there were questions that on reflection I should have sent back. This is—

The PRESIDENT—Senator Carr, I draw your attention to the question. You have one minute and 29 seconds remaining to answer the question.

Senator CARR—And, Mr President, I am directly answering the question. I am just advising Senator Mason that there are occasions when it would be smarter to send these sorts of things back instead of running the lines that appear in the Australian irrespective of whether or not they are correct. We have a situation here—

Senator Parry—Mr President, I rise on a point of order on relevance. You reminded the minister to answer the question. He then continued on with his diatribe and did not start answering the question. Page 37 of the Notice Paper distributed to us reminds him to be directly relevant to the question.

The PRESIDENT—Senator Carr, I draw your attention to the question that was asked and I ask that you answer it.

Senator CARR—As always, I am being directly relevant to the facts in this matter. The circumstances surrounding Abbotsford Public School, where the buildings that we heard about were in fact constructed in the 1950s and are in need of being refurbished—

Senator Abetz—The 1970s.

Senator CARR—They were partly refurbished in the 1970s. The New South Wales Department of Education and Training has advised that the nomination was put forward by the New South Wales government on behalf of the school and it was accepted by the school community on 25 May. Subsequently, the school community indicated that they wished to have additional classrooms constructed. What we have found is that the school currently has four spare classrooms in their current quota. One is being used as a specialist music room, another is a specialist Italian room and there are two spare classrooms that are not currently in use. The New South Wales Department of Education and Training confirms that the demographic data shown on the enrolments of this school are likely to increase in the next few years and the New South Wales department’s view is that even at the future— (Time expired)

Senator MASON—Mr President, I ask a supplementary question. I refer to Evesham State School in Queensland, where a $250,000 grant is attached to the school’s single student and, should that school close down, the grant will follow her to her next school, which has already started a bidding war among other schools for the student. Will the minister explain how a grant can be given to a school with only one student, particularly when that school did not apply for a grant in the first place?

Senator Chris Evans—Mr President, I raise the point of order I raised yesterday, which goes to the question of the opposition’s use of supplementary questions that have completely different subject matters to the original questions. In this instance a primary question was asked about activities at a school in New South Wales and the supplementary is a question about a school in Queensland, with no suggestion that there is any sort of context to that. Mr President, I ask that you have a look at this matter and advise the chamber, because it seems to me that this is an abuse of the use of supplementary questions.
Senator Abetz—Hopefully, Senator Carr has found his brief by now! Mr President, on the point of order, the primary question was about the Building the Education Revolution, and Senator Mason clearly referred to that. He has now referred to another example of the Building the Education ‘so-called’ Revolution, but in Queensland. I thought this Building the Education Revolution program was nationwide, not only in New South Wales, and therefore it is appropriate to ask a supplementary about a particular school in Queensland.

The PRESIDENT—On the point of order I will rule, as I did yesterday, that there is no point of order and the question is in order. However, I will take away the comment that Senator Evans made and I will review the questions and, if needs be, those matters will be referred to the Procedures Committee. If necessary I will bring any detailed statements back to this chamber. But the question stands.

Senator CARR—It is not hard to find the brief; it is the same idiotic question we had yesterday. What we have here is a situation where the Liberals feel the need to mouth the incorrect slogans being voiced through the Australian. Senator Mason, I have more respect for your ability; however, it is falling away, given your capacity not to send these sorts of silly things back. In the case of Evesham State School, the Queensland Department of Education reports that a sudden drop in enrolments was not predicted and it related to the personal circumstances of some families at the school. This is in the context where over the next 12 months there will be 23,000 BER projects in around 9,500 schools across the Commonwealth of Australia. We are in a circumstance where this government is investing $62 billion in school education compared to $33 billion in the entire—(Time expired)

Senator MASON—Mr President, I ask a further supplementary question.

Senator Chris Evans—From Tasmania this time?

Senator MASON—Senator Evans will be happy with this. Isn’t the grandmother of Evesham State School’s only student, Mrs Joanne Hall, correct when she says that spending a quarter of a million dollars on a school library for one student is a ‘waste of money’?

Senator CARR—I think the Liberal Party are having a lot of trouble reading the Australian from day to day, because they are obviously relying upon the same worn-out old stories. The Queensland Department of Education has negotiated with the Commonwealth department—

Honourable senators interjecting—

The PRESIDENT—Order! When there is silence we will proceed.

Senator CARR—I am sure Senator Mason is in fact aware that, under the current administrative arrangements, major constructions at schools that are identified for potential closure pending the outcome of community consultations may well have their constructions delayed. But should a school be approved for closure the Department of Education in Queensland have agreed to redirect the BER funding to the schools that students attend. I say this: in the context where this government is spending $62 billion on school education—the Liberals in their last term spent half that—we have doubled the funding for teacher quality, literacy and numeracy—(Time expired)

Private Health Insurance

Senator MOORE—My question is for the Minister representing the Minister for Health and Ageing, Senator Ludwig. Given the decision by the opposition in the Senate yesterday to defeat the government’s private
health insurance amendment bill, can the minister outline to the Senate how this has put future health reform at risk?

Opposition senators interjecting—

The PRESIDENT—Order! I missed part of that because of injections on my left.

Senator MOORE—I will repeat the question, Mr President. Given the decision by the opposition in the Senate yesterday to defeat the government’s private health insurance amendment bill—

Opposition senators interjecting—

The PRESIDENT—Order! The time for debating this is at the end of question time. I need to hear the question.

Senator MOORE—I thought they might want to jump in straightaway.

The PRESIDENT—Senator Moore, just continue.

Senator MOORE—Given the decision by the opposition in the Senate yesterday to defeat the government’s—

Opposition senators interjecting—

The PRESIDENT—it becomes impossible for me when I cannot hear the question that is coming out. It is just impossible.

Senator MOORE—Given the decision by the opposition in the Senate yesterday to defeat the government’s private health insurance amendment bill, can the minister outline to the Senate how this has put future health reform at risk?

Senator LUDWIG—I hear that those opposite do not like the question. I note that Senator Moore has a significant interest in the government’s commitment to reforming the health system. The proposed means testing of the private health insurance rebate would have made our health system fairer and more sustainable for the future.

The PRESIDENT—Senator Ludwig, resume your seat. I have no intention of proceeding until there is silence.

Senator LUDWIG—The resolve of those opposite to neglect an area in urgent need of reform means that vital changes will be brought to a standstill. After 12 years of doctor shortages, nurse shortages and bed shortages, Mr Malcolm Turnbull and the opposition are still lagging when it comes to improving the health of all Australians.

This government is working towards building a world-class health system. We know that reforming the system to deliver the care we need to improve and extend lives will be expensive and difficult—and, of course, those opposite do not want to assist in that process—but we are making the difficult decisions necessary to build a better health system for all Australians. This morning the member for North Sydney, Mr Hockey, said he would cut $14 billion in government spending, but last night his party, those opposite, blew a $1.9 billion hole in the budget. This shows that Mr Hockey does not have the nerve to make the tough decisions. He wants to cut spending instead. He has just raised it by almost $2 billion. We will bring the bill back. It will be fairer for all Australians. This measure will not affect singles. (Time expired)

Senator MOORE—Mr President, I ask a supplementary question. Can the minister explain to the Senate how the proposed means testing of the private health insurance rebate would affect private health insurance coverage?

Senator LUDWIG—I thank the senator for her supplementary question.

Honourable senators interjecting—

The PRESIDENT—Senator Evans and Senator Abetz, it is very difficult for me to hear the answer that is being given when you two are debating across the chamber. It is
completely disorderly. Senator Ludwig is entitled to be heard in silence.

Senator LUDWIG—I know those opposite do not agree with the direction of our health policy, but they could help. After more than 12 years of neglect one would think that those opposite would want to assist in improving our health system, quite frankly. They have been complacent towards the Australian health system.

Opposition senators interjecting—

The PRESIDENT—Senator Abetz and Senator Fifield, there has been too much interjecting. It needs to cease.

Senator LUDWIG—Treasury estimates that, under the measures blocked in this chamber yesterday, 99.7 per cent of people will retain their hospital cover. This will not have a significant effect on demand for public hospital services—on the premiums of the 9.7 million people with private health insurance. The President of the AMA agrees. On Meet the Press on 7 June this year, Dr Andrew Pesce said:
The AMA has had some modelling done itself by Access Economics, and this would show that there isn’t going to be a huge drop-out at this stage …

(Time expired)

Senator MOORE—Mr President, I ask a further supplementary question. Can the minister inform the Senate how the $2 billion hole in the health budget will affect future options for new policy and approaches in the health area, most especially in preventative health measures?

Senator LUDWIG—What we have seen this week with the opposition is a total lack of concern and regard for our health system. This measure would have saved nearly $2 billion—

Honourable senators interjecting—

The PRESIDENT—The conversation that is going on between Senator Minchin and Senator Faulkner should cease. It is very hard for me to hear.

Senator LUDWIG—This measure would have saved nearly $2 billion for investment in new areas of health reform and health care. The health reform commission report released on 27 July 2009 put the most comprehensive reforms on the table since the establishment of Medicare—

Senator CORMANN—Have you made a decision on that? Is there a government decision?

Senator LUDWIG—and last week the Preventative Health Taskforce report made 35 recommendations to address obesity, alcohol and tobacco issues. This report should be guiding reforms to a health system that is becoming unsustainable after the 12 long years of neglect of the previous government.

Senator CORMANN—You haven’t made one single decision. Tell us one decision you made.

The PRESIDENT—Senator Cormann, you are starting to test my patience.

Senator LUDWIG—He is not testing mine. He is obviously not interested in health reform. We are trying to support the sorts of measures that I mentioned that will have an impact on the budget, but those opposite want to— (Time expired)

DISTINGUISHED VISITORS

The PRESIDENT—Before I call Senator Back, I welcome former Senator Chapman, who is in the public gallery.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Australian Biosecurity Cooperative Research Centre

Senator BACK (2.52 pm)—My question is to the Minister for Innovation, Industry,
Science and Research, Senator Carr. I record yet another outbreak of the Hendra virus in Queensland yesterday. Will the minister explain how the government can possibly justify axing the Biosecurity CRC given that there are 860 known diseases that have originated in animals and passed to humans and that 75 per cent of all new diseases in humans are of animal origin?

Senator CARR—Senator Back, in the last three days you have asked me the same question about the process of Biosecurity CRC funding. The CRC applied for refunding for the 11th round. It was one of the 10 out of 24 that did not make it through to the second stage of applications. It was rejected after careful assessment of the application by an independent CRC review committee. The independent reviewers were not convinced that the CRC would achieve the proposed outcomes necessary to address biosecurity threats such as the Hendra or the H1N1 viruses.

The Biosecurity CRC was advised on 28 April that it would not be progressing to stage 2. In May I announced the CRC program would move from biennial to annual rounds. This meant that the Biosecurity CRC and other CRCs that did not go on to stage 2 of the process would not have to wait two years to reapply. In fact, I opened a new selection around on 26 May, with applications closing on 14 August. I amended the guidelines to allow the CRC committee to provide feedback to the CRCs that made it to interview before the 11th round was completed. The CRC committee chair provided written advice back to the CRC on 26 June this year and expanded verbally on that feedback on 6 July. The committee’s feedback to the CRC noted that while that included many key players it did not include some logical end users such as AQIS and Customs. It also noted the Biosecurity CRC proposal including a large amount of tied cash—

(Time expired)

Senator BACK—Mr President, I ask a supplementary question. I thought that that would have set off alarm bells in the minister to hear such incorrect information. Can the minister advise the Senate which agency will continue field research in relation to diseases transmitted from birds and mosquitoes known to occur in Australia when the CRC is terminated, including the West Nile virus which killed 44 people in America as well as a number of animals in 2008 alone?

Senator CARR—The application by the Biosecurity CRC for refunding was not received. The CRC was encouraged to reapply for funding in the round which closed on 14 August. It chose not to do so. I can only conclude that members of the Biosecurity CRC decided that they would not be able to put together a strong enough application.

Senator Abetz—Mr President, I raise a point of order. Sessional orders require the minister to be directly relevant to the question. The question was: can the minister advise the Senate which agency will continue to do the field research? No longer talking about the Biosecurity CRC being closed down, it was: which agency will undertake it? That is the question, and that is what he needs to directly answer.

The PRESIDENT—I believe the minister is answering the question. The minister might not be answering the question in the way in which you desire the question to be answered. I draw the minister’s attention to the fact that there are 31 seconds remaining in which to answer the question.

Senator CARR—At the end of the day, I cannot force a group of applicants to actually apply, I cannot force the end users to put in an application and I certainly cannot ask the CRC committee to consider an application that has not been received. Diagnostic and
disease investigation studies which focus on investigating and diagnosing outbreaks of viruses as they happen are undertaken by the Australian Animal Health Laboratory—

(Time expired)

Senator BACK—Mr President, I ask a further supplementary question. The minister has stated that the field veterinary work on the Hendra virus is being undertaken in Queensland by the CSIRO. Given that this fieldwork is actually undertaken by the Queensland DPI veterinarians, funded in part at least by the Australian Biosecurity CRC for New and Emerging Diseases, will the minister now correct his answer and will he tell the Senate which government body will carry out this work into the future?

Senator CARR—Diagnostic and disease investigation studies—I repeat, Senator—focusing on investigating and diagnosing outbreaks of viruses when they happen are undertaken by the Australian Animal Health Laboratory and DPI Queensland, with funding provided from the Commonwealth and Queensland respectively. There is no CRC funding involved in this. The AAHL undertakes research on Hendra virus through controlled conditions to investigate the infection in horses and bats, including diagnosis and control approaches, the horse vaccine and the emergency treatment. This laboratory based research is funded both through the CSIRO and external bodies such as the NIH grants. This research is undertaken exclusively by the Australian Animal Health Laboratory and does not involve the Queensland department of primary industries or any fieldwork in Queensland, nor does it involve funding from the CRC. There is a joint research—

(Time expired)

Whistleblowers

Senator XENOPHON (2.59 pm)—My question is to Senator Wong, representing the Attorney-General. In 2005 retired Customs officer Mr Allan Kessing showed a report detailing serious flaws in airport security to Nathan Cureton, a staffer for the member for Grayndler, Anthony Albanese, and he further discussed that report with Mr Cureton. My question to the minister is: given that information subsequently featured in a series of articles in the Australian newspaper which triggered the Howard government to order a review and ultimately allocate $200 million to upgrade airport security, does the minister concede that Mr Kessing was acting in the national interest when he provided this information to the office of the member for Grayndler?

Senator WONG—I thank Senator Xenophon for the question. I am aware of the reports to which the senator refers, reports that suggest that Mr Kessing provided classified information to Mr Albanese’s electoral office and to other persons in 2005. I understand that the Attorney-General has indicated that the government has no plans to instigate an inquiry. It is the case that the appropriate body for investigating this issue or any such issue is the AFP if in fact the Australian Federal Police see fit to investigate. I personally have not been briefed by the AFP in relation to this matter but I again emphasise that the AFP is obviously an independent statutory office and the Australian government cannot and should not direct the Australian Federal Police on any specific operational matters.

Senator XENOPHON—Mr President, I ask a supplementary question. Can the minister provide the precise date when the member for Grayndler first became aware of any of the information provided to his staff and Mr Cureton by Mr Kessing?

Senator WONG—Mr President, obviously I am here representing the Attorney-General and what I would say on this issue is that I am aware of reports in which Mr Albanese has indicated that he is confident that
his office acted appropriately and within the law when dealing with Mr Kessing, and I do not propose to add to those public comments.

Senator XENOPHON—Mr President, I ask another supplementary question. The ALP’s election 2007 policy document relating to government information argues the prosecution of Allan Kessing shows there are inadequate protections for whistleblowers under the current legislation. The document says:

Although Mr Kessing’s actions ultimately made Australia safer, he was nevertheless prosecuted and ultimately convicted.

Will the government now move to pardon Mr Kessing given the ALP’s own policy document used his example to show the unfair nature of current whistleblower protection laws?

Senator WONG—Firstly, in relation to whistleblower issues, I understand that my colleague Senator Ludwig has responsibility for those. It is the case, Senator, regardless of what any individual might think about the merit of the matter, that Mr Kessing was found guilty by a court of law of an offence which, I understand, he claims to be innocent of. There are obviously a number of options available to Mr Kessing going ahead. He may appeal his conviction. He may apply for Commonwealth assistance to do so, and he may apply for pardon. Mr Kessing may appeal the court’s finding by special leave to the High Court.

Senator Conroy interjecting—

Senator Abetz interjecting—

The PRESIDENT—Order, Senator Conroy and Senator Abetz! I am trying to hear the answer.

Senator WONG—I am advised by the Attorney-General’s Department that an application for special leave to appeal to the High Court was filed, which included a constitutional challenge to section 70 of the Crimes Act.

Asylum Seekers

Senator FERGUSON (3.06 pm)—My question is to the Minister for Defence, Senator Faulkner. Given the minister’s obsession with transparency and public accountability and given that it is now five months since the explosion on Suspected Illegal Entry Vessel 36, when will the government release the footage of the incident that has been sitting in Defence headquarters for the past five months?

Senator FAULKNER—I thank Senator Ferguson for his question and I certainly note that there has been some press comment about this issue in the last few days drawing comparisons between my position on SIEV X and my handling of this matter, SIEV 36. Let me be very clear about my approach on this matter. It is an approach, I want to say to the Senate, that has been informed by the experiences of the ‘children overboard’ issue. On this matter I have not, and I will not, cut corners.

Honourable senators interjecting—

The PRESIDENT—Order on both sides! Senator Faulkner is entitled to be heard in silence on both sides.

Senator FAULKNER—I have not, and I can assure the Senate that I will not, put a short-term political fix or my own personal interests above the critical importance of ensuring proper legal processes. That approach, I can say, is in fact the lesson of ‘children overboard’.

The facts of this matter are these. I have made clear that at the earliest possible opportunity I will direct the release of the Defence report and the complete photographic and video record of this incident, and I reiterate that commitment in the Senate chamber today. It has not been appropriate for this mate-
The Northern Territory Police— 

Senator FERGUSON—Mr President, I ask a supplementary question. Minister, given the conflicting reports about the length of time taken to rescue survivors of this event, will the minister take this opportunity to inform the Senate of the facts?

Senator FAULKNER—I thank Senator Ferguson for the supplementary question. Mr President, with the agreement of the Northern Territory Police, who consulted with the coroner, 24 still images of the incident were released. The Northern Territory Police told Defence in April that any images clearly depicting people yet to be formally identified, or unidentified objects in the water immediately following the explosion, were not approved for release given the police investigation.

This week, however, on my instruction, the Chief of the Defence Force contacted the NT coroner to seek his advice on a time frame for when additional material may be released without compromising the coroner’s processes. In response, the coroner— 

Senator FERGUSON—Mr President, I ask a supplementary further question. My first supplementary question was not about the release of footage. I ask again: given the conflicting reports about the length of time that was taken to rescue survivors, will the minister inform the Senate of the true facts?

Senator FAULKNER—Yes, I am in the process of doing so. What I will do, because of the constraints placed by you, Senator Ferguson, on answers by ministers to important questions like the one that you have just asked, is ensure that, after question time, I take the opportunity to fully report to the Senate on this matter. I want to inform the Senate that, in response to CDF’s contact, the coroner advised that, although a decision on the release of the material was a matter for defence, his preference was that the material not be released before the start of the inquest. I then sought legal advice on this issue. I will, after question time, report to the Senate on the advice I have received today.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Whistleblowers

Senator WONG (South Australia—Minister for Climate Change and Water) (3.09 pm)—I have some further information to add in response to Senator Xenophon’s question. I indicated that there was an application for special leave to appeal to the High Court. I can also advise that it has been publicly reported that that application has been withdrawn. In relation to the issue of a pardon, I indicated that it would not be appropriate to speculate on whether a pardon would be granted in any particular case but I am also advised that the option of applying for a pardon remains open to Mr Kessing. I am advised that he has not as yet availed himself of this course of action.

Asylum Seekers

Senator FAULKNER (New South Wales—Minister for Defence) (3.10 pm)—I indicated to the Senate that I wanted to complete my answer to the question and supplementary questions that you asked during question time, Mr Deputy President. I want to inform the Senate that I sought legal advice on this issue and that I was advised today that, despite the coroner’s expressed preference, it is legally open to defence to
decide to release the material but that, before
doing so, it would be prudent for defence to
consult with the police as to whether release
could prejudice an ongoing investigation.

I have also been advised that any decision
about release should take the coroner’s views
into account. I therefore instructed the Chief
of the Defence Force to contact both the po-
lice and the coroner again to advise them that
I intended to release the material shortly
unless they advised me that they believed
that such a release would have an adverse or
prejudicial effect on their investigations and
processes. I have now been provided with a
copy of a letter from the Office of the North-
ern Territory Coroner. As a courtesy, I think I
should check with the coroner about the ap-
propriateness of tabling this. I will seek his
indulgence that I table it.

But let me share the effective content with
you. The coroner has today written to Air
Chief Marshall Houston, the Chief of the
Defence Force, to indicate that, after mature
consideration, discussions with investigating
police and advice from senior counsel, he
has requested that CDF—or the minister, I
interpolate—not release any of the material
mentioned in our correspondence. The coro-
ner said:

In my view, the early release of the material into
the public domain may well compromise the con-
duct of the inquest and prejudice due process.
That is a very frank status report to this Sen-
ate about this incident. I want to repeat that I
want this material to be released as soon as
possible and I will release it as soon as I can.
I hope every senator would agree with me
that I also need to respect legal process. I
will not do anything, nor should any senator
or any member of the fourth estate expect me
to do anything, that would compromise the
police investigation or the coroner’s inquiry
into these matters.

This is a matter of process, not a matter of
politics, and I can assure the Senate that is
precisely how I have treated it. I will seek
further advices about information I would
like to make available to the Senate. If I am
able to, I will do so before the adjournment
of the Senate this evening. I intend, because I
am committed to transparency on these and
other matters, to keep the Senate, the parlia-
ment and the public fully informed, but I also
intend to behave with propriety on these mat-
ters.

**BUDGET**

**Consideration by Estimates Committees**

**Answers to Questions on Notice**

**Senator Barnett** (Tasmania) (3.14
pm)—Mr Deputy President, pursuant to
standing order 74(5), I ask the Leader of the
Government in the Senate, representing the
Assistant Treasurer, for an explanation as to
why answers have not been provided to
questions on notice BET-101 and BET-102
relating to GROCERYchoice asked during
the budget estimates hearings of the Senate
Economics Legislation Committee in June
this year.

**Senator Chris Evans** (Western Aus-
tralia—Minister for Immigration and Citizi-
enship) (3.15 pm)—On behalf of Senator
Sherry, who is absent today—and I apologise
to Senator Barnett for some confusion yes-
terday; I asked for the response to be brought
into the chamber after question time but I am
not sure what occurred—I can say that the
government will be responding to the ques-
tions on notice referred to by the senator as
soon as possible.

I think the government have been upfront
about the reasons why we terminated the
contract with *Choice*. The government’s con-
cern was that the website would not be able
to provide timely, reliable prices for local
stores all around Australia and that consum-
ers who relied on the website might feel mis-
led if the information was not accurate. The proposal was that the prices of at least 5,000 items be provided on a weekly basis. Since there are well over 4,000 supermarkets in Australia, that could involve more than 20 million prices being checked and provided each week. This was complicated by the fact that supermarkets change their prices, especially of fresh food, daily or even more often on a day. The government could not see that it was possible to generate and supply such an enormous amount of pricing information accurately and reliably. The government was concerned that consumers would rely on the website prices and accordingly make decisions on where to shop, and feel misled if the prices were not accurate. The room for error was large on what would have been a government funded website.

The government is working on policy measures to introduce more competition into the grocery retailing industry. It is also working on a range of policy measures to reduce barriers to entry into grocery retailing. These measures include the ACCC working with major supermarkets on removing provisions from shopping centre leases that restrict the entry of rivals and an examination of state and territory zoning laws, designed to enable more competitors to enter the market. Of course, we have already relaxed the foreign investment guidelines, with overseas retailers like Aldi and Costco taking advantage of that relaxation. In addition, we have introduced unit pricing to better enable consumers to make meaningful price comparisons. All of these measures, as the senator would understand, are designed to promote competition and choice for the benefit of consumers.

That is the information that Senator Sherry has been able to provide me with in answer to Senator Barnett’s queries, but the full answers to his questions on notice will be made available as soon as possible.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Burma

Senator FAULKNER (New South Wales—Minister for Defence) (3.17 pm)—Mr Deputy President, you would recall that in question time Senator Ludlam asked me some questions about Burma and I provided him with all the information I had available. He asked two specific supplementary questions which I can now assist him with. Senator Ludlam asked whether the government had received any briefing from ASNO or the department on Burma in advance of or after reports that Burma had a clandestine nuclear program. The answer to that question is yes. He also asked whether the department raised the issue of Burma’s nuclear program with the IAEA. I can inform the Senate that the answer to that question is yes. The IAEA contact said there was no new evidence in the media reports.

BUDGET

Consideration by Estimates Committees

Answers to Questions on Notice

The DEPUTY PRESIDENT—I should explain: I should have called Senator Barnett before in response to Senator Evans’s response. Senator Barnett.

Senator BARNETT (Tasmania) (3.18 pm)—That is not a problem, Mr Deputy President. I move:

That the Senate take note of the explanation.

The answer provided by the Leader of the Government in the Senate on behalf of the Assistant Treasurer is entirely unsatisfactory. I gave the minister notice two days ago in a letter, I rang his office and, indeed, I spoke to the Leader of the Government in the Senate yesterday. So they knew very well that this question was happening today. This is not a question without notice, as it were; they have had notice.
Furthermore, the answers are not just to questions that I put in the Senate Economics Legislation Committee budget estimates hearings in June; there were seven other questions put by other senators in this place and they also have not been answered—and I noted that in my letter of 8 September to Senator the Hon. Nick Sherry. We need those answers, we deserve those answers and, under the standing orders, they are to be provided within 30 days of the conclusion of Senate estimates—in fact, by 31 July. But here we are more than 2½ months after the questions were asked and we still have no answers. It is not that hard. The questions were requests to table the contracts and consultancies relating to the establishment of, and the mismanagement and wasteful spending on, the GROCERYchoice website.

Interestingly, the government have been forced under the ‘Murray motion’ in the Senate to reveal the $5 million contract that the ACCC had with the Bailey Group to monitor grocery prices across this country, as well as a supplementary consultancy contract. They were forced to reveal that. We want all this information, and currently the government are obfuscating. They are blocking the release of this information for no good reason.

The answer provided by the Leader of the Government in the Senate this afternoon is entirely inadequate. It is entirely unsatisfactory. He says the answers will be provided ‘as soon as possible’. What does that mean? They have already had 2½ months. The Leader of the Government in the Senate and the government know full well that there is a Senate Economics References Committee hearing on GROCERYchoice next Friday week. That hearing will be attended by the ACCC, the Treasury, DOFR and other relevant witnesses, and we need that information. We deserve that information. The government is breaching the standing orders by not revealing that information.

We know that prior to the last election Mr Rudd promised that grocery prices would come down. We know that information. They got into government and they established a $13 million website. There was $13 million in the budget committed to the establishment of that website. Everybody knew it was of no use to consumers, to the Australian people. That has been proven correct and they have been embarrassed into closing it down. I am not going to go into all the arguments today as to why it was such a wasteful spend and why this reckless spending is hurting the Australian people. But what we do want is that information.

The National Association of Retail Grocers of Australia, NARGA, have put in a submission. Others are putting in submissions. But the government are refusing to participate in a Senate authorised inquiry. That is wrong. The government know it. They say they are going to provide that information as soon as possible, but that is not good enough. Under the standing orders, it is meant to be there within 30 days. They should deliver it. It should be demanded and delivered forthwith. It is simply not good enough. There has been a 2½-month delay. We need that information prior to next week. I call on the government to reconsider and release that information—the consultancy contracts and all the agreements that they had—and to answer the questions not just from me but the seven other questions put at budget estimates in June.

We will get to the bottom of this. We will find out exactly how much money the government has wasted on the GROCERYchoice website, which is of no use to consumers. We will get to the bottom of it, but we want to do it in the right and proper way. I will leave it there for the moment.

Question agreed to.
QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Quarantine
Building the Education Revolution
Senator COLBECK (Tasmania) (3.24 pm)—I move:
That the Senate take note of the answers given by the Minister for Innovation, Industry, Science and Research (Senator Carr) to questions without notice asked by senators today, relating to quarantine and education.
I will start by talking about the absolutely abysmal performance that Senator Carr gave in response to my question on the now censored submission to the Senate inquiry into AQIS export certification fees. The government’s performance on this matter, I have to say, is symptomatic of their performance on a range of other things. We have seen the debacle of the pink batts scheme. Senator Mason asked questions on Building the Education Revolution. We have also seen issues with respect to Indigenous housing.
This particular issue, the government’s management of the removal of the 40 per cent rebate for AQIS export certification charges, has quite a sorry history. The government commissioned and accepted the recommendations of the Beale report, but they have not resourced it properly. They were prepared just to remove the 40 per cent rebate without any process. They were happy to say, ‘Righto, we’ll rip this $43 million out of industry.’ Once the objections started to be raised, the minister had to take action to put in place a process to try and mitigate the problems. The unfortunate part of it is that he has not actually gone about his job properly. He has not listened to the industry. He has created a number of industry consultative groups that are bound by confidentiality agreements, so they cannot really talk to their industry sectors. Then, when it came to the time for the fees to be exposed, people found out what the impact was going to be.
The government keep trotting out the line that industry supports this. But when you look at the submissions to the inquiry, there are nine that support it—one of those being the government’s own submission. Four of those, including the government’s own submission, express strong support. Five of those nine express qualified support. But there are 19 submissions to the inquiry that oppose it and 12 of them strongly oppose it.
Senator Back—Including Austrade.
Senator COLBECK—Including Austrade. That submission has been officially withdrawn by Austrade today. We understand that process and we have seen that happen in the last 24 hours. This demonstrates the complete mishandling of the whole process by the minister. If industry want to know who to blame if these fees and charges are brought out, they ought to be knocking on the door of Minister Burke. He is the one to blame for his completely incompetent handling of this process. He has been a weak minister. He has not stood up for his portfolio. The department has been completely and utterly gutted. Industry understand that.
Senator Sterle—What a stretch. That is even below you.
Senator COLBECK—Senator Sterle and some of my colleagues on the other side will probably get up and talk about those that support this, but they will not talk about companies like the Mildura Fruit Company, who have pulled out of export markets to China, South Korea and Thailand because of the increase in AQIS fees. They have stopped exporting. They have pulled out because it is not economical to do it anymore.
The Australian Meat Industry Council have said what the opposition have said all along, ‘Put the reforms in place first. Show us the savings and then come to us with the
revised fees and charges.’ That is what the opposition have said all along and that is what the Australian Meat Industry Council say in their submission. They bear $32 million of the $40-odd million cost. They bear most of the cost. They have been saying all along, ‘Put the reforms in place first and then come and talk to us.’ The Australian Ostrich Association tell us that any increase in cost is likely to shut down the industry. What we are getting here is a competition between the big guys and the little guys. The government is happy to go with the big blokes. That is fine, but who on the government side is standing up for the little blokes? Not many that I can see, and certainly not the minister.

The performance, the complete shambles, over the last 24 hours over the Austrade submission demonstrates that the government have absolutely no control. One hand does not know what the other one is doing. There are submissions going through ministerial offices without them even knowing that they are going through. The one thing that we ask, the one thing that the committee have asked today, is that the officers who prepared the submission be allowed to give their evidence tonight. They have been working with industry. That is why they have said what they have said. We know there are some who support this, but we know that there are a lot who do not. That is why we are asking the questions we are asking.

Senator CROSSIN (Northern Territory) (3.29 pm)—If we are going to take note of answers today, particularly answers given by my colleague Senator Kim Carr, let us have a discussion about the Building the Education Revolution program and let us get some facts on the table. One of the reasons this was instigated was that after 11 long years of the Howard government schools in this country had been neglected. Infrastructure was never seriously addressed under the previous government. In fact, education itself had plummeted to receiving the lowest contribution of GDP for many years, as the OECD continually reported and highlighted. I ask my colleagues opposite whether they can tell me how many schools we have in this country, including Catholic, independent Christian schools and government schools. How many schools do we have in this country? There is a deafening silence. They want to stand up and criticise, but they have no idea of the magnitude of this project and they have no alternative policies.

We are talking about $½ thousand schools that will actually benefit from this education revolution, a revolution that was needed because of the abject neglect of the previous federal government. In those schools we have 24,000 projects happening around this country, from remote Indigenous schools to major high schools in capital cities to little primary schools in regional centres—primary schools, secondary schools and rural and remote schools. In fact, 9½ thousand schools around this country are benefiting from the Building the Education Revolution program, covering 24,000 projects.

We knew from the start that this was a massive undertaking. It was part of stimulating the economy through the global financial crisis, making sure that at the end of the day we were protecting jobs. If we had not instigated this project, there would have been an extra 210,000 Australians out of work. This was about not only building up the infrastructure in schools around this country—a neglected part of education under the Howard government—but also stimulating the building industry. It was about Australians having a reason to stay in work through the global financial crisis and a reason to keep collecting their fortnightly pay packet to ensure that the building industry that had gone through a massive slump was stimulated, and 210,000 Australians continue to maintain their jobs.
All you hear from the other side is criticism of the small number of projects that have encountered some problems. As Minister Gillard said this morning when she was interviewed on ABC radio, we anticipated that there would be problems. We have set up a website so that people can contact the federal government about problems. Remember that these schools are negotiating these projects with state and territory authorities. Federal government does not deliver services; it provides money to the state and territory government authorities who roll this out. School by school, projects were identified and these were negotiated with state or territory government authorities. We anticipated that projects at 9½ thousand schools would not be rolled out perfectly, and if you thought that was going to happen then you are in a fool’s paradise.

Senator Mason—You weren’t wrong there.

Senator CROSSIN—How many complaints have we had or how many problems have we had? We have had 49 problems, Senator Mason, out of 24,000 projects at 9½ thousand schools. I would have thought that that was a pretty good example of how this government works cooperatively with state and territory governments, even your mates in WA, to ensure that what we are doing is not only stimulating the economy but also putting back into schools and building in schools the capacity to deliver future education in a modern and stimulating learning environment. That is what this government is about. This government is about ensuring that the schools in this country move into the next century with classrooms that are not falling down around their ears, with sporting facilities that can be used, with science laboratories that can be used and with libraries that are productive, inviting and encourage learning, investigation and research by students in this country. (Time expired)

Senator MASON (Queensland) (3.34 pm)—Given the scale of the government’s maladministration, I might have to confine myself to the shambles of the implementation of the Building the Education Revolution program. Sir, you would think that if a government was to spend, let us say, $16 billion people would be happy, wouldn’t you? What has in fact happened? All the stakeholders—the students, their teachers, even the education union, the P&Cs—are saying this money has not been well spent. There has been a chorus throughout the country that this has been a very, very poor spend. Why? Let me tell you why: because, as Abbotsford Primary School illustrates so well, there is no flexibility. What is happening is that state governments are telling schools what they need to have. It is the old Labor Party story: ‘We will tell you what you want. If you don’t want it you can’t have it.’

Senator Cormann—Command model.

Senator MASON—Yes, command model—this whiff of Stalinism. The fact is that it is not flexible, has not been flexible and has not been working. What is worse is that it is costing far, far more than it should. Under the tender processes that the Commonwealth government is supposed to be overseeing prices have gone up. The taxpayer is not getting a good deal out of this, and that is an enormous problem. They say prices have gone up 50 per cent in the last 12 months on the same projects. This is a very, very poor spend. And there has been bullying by state governments. The money is being used to fulfil state government responsibilities and state government obligations. Incidentally, most of the money, the vast majority, that Senator Crossin spoke about is being spent on state government responsibilities. Infrastructure for schools is a state government responsibility, but they have not been performing, so the Commonwealth govern-
ment picks up the tab. So much of the money is being used for state government priorities.

It is a bad spend for another couple of reasons. We do not even know how many jobs are going to be created, because the tenderers were not asked the question about how many jobs were going to be created, although I suppose with Abbotsford Primary School at least we know the government was going to knock down a four-classroom building and replace it with a new one. It is like digging a hole and knowing you are going to fill it up again, like something out of the Great Depression.

It has been an appalling spend, and we do not even know how many jobs have been created, and neither does the government. But even worse—and my friend Senator Back just reminded me about this—with a $16 billion spend, we are not even certain whether educational outcomes will increase, because that was never part of the project. We are not certain with $16 billion worth of expenditure that any student’s HSC score or TE score will rise even one point. We do not know that, and the question was never asked. It is a hell of a lot money—a one-off in the Commonwealth’s history—to give to an education system for no certain educational outcome. It is an enormous amount of money. Perhaps the only exception is my home state of Queensland and Evesham State School, where the lucky student—the single student at the school—has been given $250,000 towards whatever school she decides to go to. I understand that half of the principals in central-west Queensland are trying to find this poor young lady, because wherever she goes, they get the money. I am told they are offering her iPods and Sony PlayStations and that she will not have to do homework for a year as long as she goes to their school—that is because of the $250,000.

This is not a joke, but it just shows us that this whole project is quickly developing into a farce. Last week, poor old Ms Gillard—she has had a pretty bad fortnight—described the fact that this project has been underfunded by $1.7 billion as a mere bump in the road, a mere bagatelle. If you are spending $350 billion, does $1.7 billion more matter? Perhaps it does not. It is the sort of loose change that you find in your lounge suite under the cushions, isn’t it? Who cares about $1.7 billion anymore? It means nothing. Even when it comes to the government’s own advertising of their horrible failures on this project, when they finally put up the billboards in the schoolyards—do you know what, Mr Deputy President?—we will discover that those very billboards that are advertising the government’s failures are illegal. What farce.

Senator STERLE (Western Australia) (3.39 pm)—I would like to take offence at Senator Colbeck’s contribution today. I have worked closely with Senator Colbeck on the Rural and Regional Affairs and Transport Committee and I find him to be one of the better performers on that side of the chamber when talking about agriculture. But Senator Colbeck’s blatant attack on Minister Burke today during his motion to take note of answers was nothing short of disgraceful. On that, Senator Colbeck mentioned how AMIC was one of the representative bodies that have had $43 million ‘ripped out’—that was the wording he used—of the industry, and he quoted AMIC, the Australian Meat Industry Council. To clear the air, I have in front of me the Australian Meat Industry Council’s press release of 17 June 2009. The heading is: ‘AMIC endorses government reform package’. This is their press release. It does not sound like they have had the guts ripped out of them—to use Senator Colbeck’s terminology. In fact, I expect that sort of terminology from the Uncle Festers of the Queensland Liberal Senate team, such as Senator...
Macdonald, but certainly not from Senator Colbeck.

The DEPUTY PRESIDENT—Order! Senator Sterle, be careful when you are referring to another senator.

Senator STERLE—I thought I was being nice, actually. AMIC’s press release states:
The Australian Meat Industry Council has announced today its agreement to the terms and conditions for a return to full cost recovery for AQIS export certification charges based upon a commitment by the federal government to implement—a groundbreaking suite of reforms to the meat inspection system in Australia.
It goes on to state:
In addition to the new AQIS reform agenda, a range of technology improvements, IT upgrades and a new plant performance rating tool and new market access consultation arrangements between government and industry will be implemented.
Further:
Minister Burke has committed over $289 million—
this is to AMIC—
to the various elements of the reform package, the implementation of which will begin immediately. Gary Berridge, Chairman of AMIC’s Australian Processing Council said today.
Mr Berridge went on to say:
We commend Minister Burke for his foresight and willingness to listen to industry in establishing a new framework for exports certification in Australia that will elevate its standing as a leader in this field internationally and provide a platform for Australia’s global competitiveness for the next 10 to 15 years.
It does not sound like they have had the guts ripped out of them—to use Senator Colbeck’s terminology; it sounds like a resounding endorsement of the minister’s hard work. And, not only that, the minister is seeking—lo and behold, this might come as a bit of shock to those opposite—the views of the industry.

The press release goes on to say:
The outcomes achieved today are the result of input by a broad cross-section of industry and government on both sides of the House, and I thank them for all their considered input and guidance in achieving this momentous outcome.
That is Gary Berridge from AMIC. There are also words of encouragement from the Australian Livestock Exporters Council, Horticulture Australia and the like, but I will not go on because of the time limit.

The line of questioning today from the opposition was that, for some reason, there was something sinister going on within Austrade. There has been a lot of commentary on that today. Quite simply, for the record—

Senator Cormann interjecting—

Senator STERLE—and take your fingers out of your ears, Senator Cormann, and have a good listen to this: Austrade’s submission to the Senate inquiry was not cleared through the office nor was it cleared through Austrade’s executive. The letter will be on the website for you, Senator Cormann. You can look for yourself. I know that might involve a bit of hard work.

The DEPUTY PRESIDENT—Order! Address the chair, Senator Sterle.

Senator STERLE—And I will. Mr President, I know that it might be a bit hard for Senator Cormann and others opposite to do a little bit of work and to actually do a bit of reading before they shoot their gob off to the media. The submission did not reflect the views of this government, nor did it reflect the views of Austrade. The Austrade executive recognised that a serious mistake had been made and acted appropriately to correct the public record. A wide range of industry representatives have endorsed, as I have said before, and supported the government’s position: the Australian Dairy Industry Council, ABB, GrainCorp, Horticulture Australia and
the Australian Livestock Exporters Council, to mention a few. (Time expired)

Senator BACK (Western Australia) (3.45 pm)—I rise to support the motion to take note of answers from Senator Carr moved by Senator Colbeck. It is terribly distressing because this is the third day on which I have questioned Senator Carr on these matters and he continues to state points which are incorrect. One of the points I have made is the fact that the fieldwork associated with the Hendra virus research in Queensland is partially funded by the Australian biosecurity CRC, undertaken by the Queensland DPI. The minister continues to refute that view and I cannot understand why he does. It is clear, it is the fact: it is not work undertaken by the CSIRO. The minister has said that for whatever reason this particular CRC did not renew its application when it was refused earlier this year. I would have thought that, acting responsibly, the minister may himself have queried why such an important CRC did not reapply, particularly after we had the outbreak of the swine flu pandemic—it is transferred between humans and animals—and of course the fresh outbreak of Hendra. Why then did he not call the parties together to find out why that CRC had not reapplied? I did, and there was a considerable level of distress when that particular CRC learnt that their application had not been peer reviewed, that it had been the basis of a study and a recommendation by the review committee—no members of which had any expertise, as I said yesterday in this place, in areas such as infectious disease, biosecurity, quarantine, animal disease or the like.

Surely the minister must have had some alarm bells ringing. So incorrect was the advice of that committee to the minister that they said to him that the Quarantine and Inspection Service was not part of that bid. I would have thought that the minister would have had the opportunity in the last 24 hours to avail himself of the fact that AQIS is merely a service of the Department of Agriculture, Fisheries and Forestry, which was a main participant in the bid. That committee advised the minister again that the Customs service was not part of the bid. Of course it was not part of the bid or the CRC because the Customs service does not do research.

Why is it so critically important that this CRC continues? There are three reasons. Let me come back to the agreement of Senator Sterle and Senator O’Brien yesterday, who visited the facility with me in Geelong. We all agree that it is world’s best practice, but it is a laboratory based service. The strength of this CRC has been the fact that it combines members who do the fieldwork—in the case of the Hendra virus, the Queensland DPI; but state organisations around Australia—and feed that material into the CSIRO at the Animal Health Laboratory in Geelong, which does phenomenally good work. Let me make the third point, which will be lost when this CRC is terminated—and this is where it is so unique: we have been able to take the quality of the work done by the Animal Health Laboratory in Geelong, with the brilliance and speed of the testing, and, through the excellence of the CRC, transfer that out to laboratories around Australia. That is not a feature of other organisations around the world; it is a role of the CRC and is not something undertaken by the CSIRO. It does not have that role. I urge the minister to reconsider and to invite an independent assessment to see whether or not this CRC should continue.

I made the point today about the West Nile virus, a viral disease which has killed hundreds of people in the USA and in the north of America in the last couple of years and which affects animals. The two vectors are mosquitos of a type we have in Australia and birds, including crows, which we have in Australia. It is a shame Senator Crossin is
not here, because the Northern Territory is one of the areas at risk. I asked the minister: who will do this work, which has been ongoing at the CRC, when the CRC is finished? I draw the attention of the Senate to the comment by the minister, when in opposition, about the dairy CRC and the weeds CRC. He pointed out that he asked the government of the day why they were being wound up when their research was beginning to bear fruit. I asked the minister today: why is this CRC being wound up when it is so good?

Question agreed to.

MINISTERIAL STATEMENTS
Framework for Referenda in Australia

Senator WONG (South Australia—Minister for Climate Change and Water) (3.50 pm)—On behalf of the Special Minister of State and Cabinet Secretary, I table a ministerial statement on an inquiry into a framework for referenda in Australia.

Senator PARRY (Tasmania) (3.50 pm—by leave—I move:

That the Senate take note of the document.

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

Leave granted, debate adjourned.

COMMITTEES
Reports: Government Responses

Senator WONG (South Australia—Minister for Climate Change and Water) (3.50 pm)—I present three 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 reports read as follows.

GOVERNMENT RESPONSE TO SENATE COMMITTEE INQUIRY INTO THE ADMINISTRATION OF THE CIVIL AVIATION SAFETY AUTHORITY (CASA) AND RELATED MATTERS

Recommendation 1

“The Committee recommends that the Australian Government strengthens CASA’s governance framework and administrative capability by:

• introducing a small board of up to five members to provide enhanced oversight and strategic direction for CASA; and

• undertaking a review of CASA’s funding arrangements to ensure CASA is equipped to deal with new regulatory challenges.”

Response to Recommendation 1

A CASA Board has been established. The Board of five members has been appointed by the Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, and comprises a Chair, Deputy Chair, the Director of Aviation Safety as an ex officio member, and two other members. Board members are appointed for terms of up to three years. The Board’s primary purpose includes deciding on the objectives, strategies and policies to be followed by CASA, ensuring that CASA performs its functions effectively and efficiently and complies with the reporting and other requirements of the Commonwealth Authorities Companies Act 1997 (CAC Act) and the Civil Aviation Act 1988. Legislative amendments to the Civil Aviation Act 1988 to give effect to the governance changes were passed by Parliament in March 2009, with the new arrangements in place from 1 July 2009. Future funding arrangements for CASA will be addressed in the National Aviation Policy Statement later in 2009.

Recommendation 2

“The Committee recommends in accordance with the findings of the Hawke Taskforce, that CASA’s regulatory Reform Program be brought to a conclusion as quickly as possible to provide certainty to industry and to ensure CASA and industry are ready to address future safety challenges.”

Response to Recommendation 2

In the National Aviation Policy Green Paper, the Government reaffirmed its commitment to have the regulatory reform program completed by 2010-2011.
Recommendation 3
“The Committee recommends that the Australian National Audit Office audit CASA’s implementation and administration of its Safety Management Systems approach.”

Response to Recommendation 3
This is a matter for the Auditor General.

REPORT BY THE JOINT STANDING COMMITTEE ON MIGRATION: Temporary visas - Permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program

THE GOVERNMENT RESPONSE TO THE REPORT
Preamble
The Australian Government welcomes the opportunity to respond to the report of the Joint Standing Committee on Migration’s inquiry into temporary business visas titled Temporary visas ... permanent benefits: Ensuring the effectiveness, fairness and integrity of the temporary business visa program. The report was tabled in Parliament on 12 September 2007.

The Australian Government agrees with the Committee that temporary skilled migrants are essential to meet current and future skills shortages in Australia and make a significant contribution to the Australian community. The Subclass 457 visa is the main temporary visa for skilled temporary workers. Many people on this visa apply for permanent residence through the employer sponsored migration visas. The employer sponsored visas, both temporary and permanent, provide a targeted response to skills shortages. These migration programs complement the government initiatives to increase the skills levels of Australians.

The Government also agrees that it is important to restore public confidence and support for the Subclass 457 visa program. While most sponsors comply with the requirements for the Subclass 457 visa there is a small group that seeks to exploit or abuse the program. The Government introduced to the Parliament, the Migration Legislation Amendment (Worker Protection) Bill 2008 that strengthens the capacity to monitor sponsors, share information with other regulators and to take strong action against those who abuse the program, including pecuniary and other administrative sanctions. The Bill was enacted on 18 December 2008 and is to commence by mid September 2009.

Training Australians and not just relying on the temporary employees from overseas is an important part of the Subclass 457 visa requirements, as discussed in the report. The training standards have not been clear in the past. The training requirement and ways in which it can be met and measured were considered in the reviews that the Government has instituted since taking office, especially the Skilled Migration Consultative Panel comprising representatives from state governments, unions and industry. The reviews also considered other key aspects of the Subclass 457 visa including adequate remuneration and regulations to prevent exploitation and undercut Australian working conditions.

The reviews of the Subclass 457 visa program that the Government commissioned are:

- the business-led External Reference Group (ERG) established by the Minister for Immigration and Citizenship in February 2008 to examine ways to make the program operate as effectively as possible. The ERG presented its report in April 2008. Fourteen of the sixteen recommendations have been agreed to and are being implemented;
- the Subclass 457 Integrity Review led by industrial relations expert, Ms Barbara Deegan, which examined ways to improve the integrity of the program. Ms Deegan presented her final report in October 2008;
- the Subclass 457 Inter-Departmental Committee (IDC) comprising representatives from Department of Immigration and Citizenship (DIAC), the Department of Education, Employment and Workplace Relations (DEEWR), the Department of Foreign Affairs and Trade (DFAT), the Treasury, the Department of the Prime Minister and Cabinet and the Department of Finance and Deregulation. The IDC was created to consider the reform package for the Subclass 457 visa.
The reports from the IDC and the Skilled Migration Consultative Panel brought together the issues raised in the reviews undertaken, including the findings and recommendations of the Joint Standing Committee on Migration, for Government consideration of the long term reform of the 457 visa. The aim of the reform is to increase the effectiveness of the program, restore the integrity of the program and public confidence, ensure that it meets the skill needs to contribute to the Australian community, and, using a risk based approach, provide fast processing for genuine sponsors and strong actions against those who may attempt to exploit or abuse the program. The report was presented to Ministers on 19 December 2008.

The Government is grateful for the work the Committee has taken in respect to this important subject and for all those who contributed with their submissions and evidence to the Committee. The Government’s response to the recommendations made by the Committee follows. A number of the recommendations have already been implemented. Others will be announced following the Government consideration of the reviews and consultations. The delay in responding to the Committee’s report has been due, in part, to the number of changes to the Subclass 457 visa program that were being considered and implemented in 2008.

Recommendation 1

The Committee recommends that the Department of Immigration and Citizenship, together with the Australian Federal Police and other relevant agencies, review the character requirements of the 457 visa program to ensure the integrity of security and police checks, particularly with reference to any variations in these procedures for overseas trained doctors entering under the Medical Practitioner visa (subclass 422) and the 457 visa.

The Government notes this recommendation.

The Australian Security Intelligence Organisation (ASIO) is the competent authority which conducts national security assessments on visa applicants. ASIO assess visa applicants referred by the Department of Immigration and Citizenship (DIAC) as per the requirements of Public Interest Criteria 4002 (PIC 4002) under the Migration Regulations 1994. At the completion of a security assessment, ASIO provides advice to DIAC as to whether the applicant is assessed as a direct or indirect risk to security.

The character requirement of the 457 visa program is detailed in Public Interest Criterion 4001 (PIC 4001) of the Migration Regulations. The Australian Federal Police (AFP) is not a direct stakeholder in these requirements. Under current processing arrangements, Subclass 457 visa applicants are not required to provide police clearances except in situations where they have declared a previous criminal history in their application.

All overseas trained doctors have their medical qualifications verified through the International Credentials Service of the Educational Commission for Foreign Medical Graduates of the United States (ECFMG). State and Territory Medical Boards also have a legislative responsibility to ensure that they only register people of good character.

Subclass 422 (Medical Practitioner) visa applicants are required to provide police clearances for any country in which they have lived for more than 12 months in the last 10 years.

The Australian Government continues to monitor the security and police clearance requirements against risk assessments.

Recommendation 2

The Committee recommends that the Department of Immigration and Citizenship commission research into sectoral usage of the 457 visa program, commencing with the meat processing sector, with a view to further refining temporary skilled migration policy and the 457 visa program with reference to specific industry sector needs.
The Government supports this recommendation.

The specific needs of some industries warrant the development of Labour Agreements. Labour Agreements allow the Australian Government to stipulate certain requirements relating to the recruitment of overseas workers, which may not be applicable under the standard Subclass 457 visa program.

In 2006-07, the Commonwealth and the Australian Meat Industry Council negotiated a Meat Industry Labour Agreement that enables meat processing companies to regularise the status of existing overseas meatworkers on Subclass 457 visas where they can demonstrate the skills are not readily available in Australia.

Changes to the Migration Regulations introduced on 10 September 2007 have made the Labour Agreement the only pathway available to access overseas meat workers under the Subclass 457 visa program. These changes have received some criticism from the industry.

This approach was extended to the on-hire industry. On 1 October 2007, access to the standard Subclass 457 visa program was removed for on-hire employers that seek to place overseas workers with other unrelated businesses. A Labour Agreement is now the compulsory pathway for access to overseas workers for the on-hire industry. The agreement provides checks and balances to assist in managing prevalent practices such as ‘benching’ (not paying salary between contracts) and the underpayment of workers.

Further analysis of sectorial usage of the Subclass 457 visa program, and the suitability of certain industries to access a Labour Agreement, will be considered on a case-by-case basis.

Recommendation 3

The Committee recommends that the Department of Immigration and Citizenship:

- clarify the purpose of the Business (Short Stay) visa (subclass 456) in terms of whether it permits employment options—that is, valid entry for short-term specialists to meet the urgent needs of business;

work with stakeholders to ensure an effective, streamlined migration option to meet the short-term temporary employment needs of business; and

- rename the long-stay and short-stay business visas and the business visitor visas to more accurately reflect their employment or business visit purposes, with consideration to be given to renaming the Temporary Business (Long Stay) visa as the Temporary Skilled Employment (Long Stay) visa.

The Government supports point one and two of this recommendation.

DIAC is currently developing policy options that aim to:

- clarify the distinction between the Subclass 456 Business (Short Stay) and 457; and

- ensure visa options are available that balance the need to be responsive to the short-term demands of the labour market with the need to protect Australian workers and their conditions.

Under current policy, short term employment, generally no more than four weeks, for Subclass 456 Business (Short Stay) visa holders may be possible where it is:

- highly specialised in nature and not ongoing; or

- an emergency or urgent situation and not ongoing; or

- in Australia’s interest.

In 2008, an investigation by the Workplace Ombudsman found that workers on a vessel laying a gas pipeline touching the seabed were considered to be within the Australian Migration Zone. These workers had originally been granted Subclass 456 visas. Following the Workplace Ombudsman’s findings, the Minister for Immigration and Citizenship directed that where people are employed on vessels carrying out similar work, they will be required to apply for a Subclass 457 visa. This will ensure that overseas workers employed within the Australian Migration Zone are properly paid and Australian wages and conditions are not undermined. Changes are being made to the Subclass 457 visa enabling sponsorship for periods of less than three months.

CHAMBER
The Government notes point three of this recommendation.

The Government has conducted a comprehensive review of the Subclass 457 visa program. This has included external consultation with stakeholders on changes to improve and streamline the visa. Consideration may be given to the names of the visas after the Government has considered the reforms of the Subclass 457 visa program.

Recommendation 4

The Committee recommends that, in light of the serious concerns raised during the inquiry about skills assessment processes for overseas trained doctors (OTDs), the Department of Health and Ageing, together with the Department of Immigration and Citizenship, work to ensure initiatives announced by the Council of Australian Governments to establish a national process for the skills assessment of OTDs are implemented as a matter of urgency.

The Government supports this recommendation.

At its 14 July 2006 meeting, the Council of Australian Governments agreed to a nationally consistent assessment process for the assessment of overseas trained doctors. Details of the new assessment model have been agreed and the new assessment pathways were phased in across States and Territories. The new assessment model will ensure all overseas trained doctors undergo adequate assessment, supervision and orientation. This will ensure that only appropriately qualified doctors are registered. The new assessment model has been fully implemented from 1 July 2008.

Recommendation 5

The Committee recommends that the Department of Immigration and Citizenship investigate alleged misuse of the Occupational Trainee visa (subclass 442) and take action to address any problems identified with the program.

The Government supports this recommendation.

A national assessment model for overseas trained doctors has been introduced. The Department of Health and Ageing has also worked with DIAC to develop processes that will minimise misuse of the Occupational Trainee visa. The new measures have been implemented by all specialist colleges and medical registration boards. DIAC also monitors the use of Subclass 442 visas in other occupational groups to ensure the integrity of the visa program is maintained. The Workers Protection Act 2008 will apply to sponsors in the Subclass 442 visa program.

Recommendation 6

The Committee recommends that the Department of Immigration and Citizenship, together with the Department of Employment and Workplace Relations, investigate and report to the Minister for Immigration and Citizenship on the adequacy of the salary system under the 457 visa program, underpinned by the minimum salary level, to identify if viable alternatives exist for calculating salary levels.

The Government supports this recommendation.

The Minimum Salary Level (MSL) for Subclass 457 visa holders was increased on 1 August 2008 when a new legislative instrument came into effect. The MSL increased by 3.8 per cent and applies to new sponsored worker visa applicants and to all existing visa holders. The revised formula applies to all sponsored workers who are paid in accordance with a MSL.

The Subclass 457 Integrity Review conducted by industrial relations expert Ms Barbara Deegan investigated the MSL as part of the broader package of reforms for the Subclass 457 visa program. This issue was considered in the Subclass 457 Integrity Review’s first discussion paper titled ‘Minimum Salary Level and Labour Agreements’ published in July 2008. The Subclass 457 Integrity Review has reported to the Minister and includes further consideration of the MSL under the Subclass 457 visa program. The Government has announced market rates of salary will be introduced as an alternative to the current MSL arrangement from mid September 2009.

In the interim, the MSL will be increased for all new and existing 457 visa holders by 4.1 per cent on 1 July 2009, in line with all employees total earnings as reported by the Australian Bureau of Statistics.
**Recommendation 7**
The Committee recommends that the Australian Government proceed with its proposal to index the salaries of 457 visa holders in line with increases to the minimum salary level or, alternatively, the award conditions under which the visa was granted.

**The Government supports this recommendation.**

On 23 May 2008, the Minister for Immigration and Citizenship announced a 3.8 per cent increase to Minimum Salary Levels (MSLs), which took effect from 1 August 2008. This increase was based on the increase in total employment earnings in the period from November 2006 to November 2007.

The MSL will be increased for all new and existing Subclass 457 visa holders by 4.1 per cent on 1 July 2009, in line with increase of all employees total earnings to November 2008 as reported by the Australian Bureau of Statistics (ABS).

In addition to the MSL, there is a requirement that Subclass 457 visa holders be engaged in accordance with Australian work standards including industrial instruments (where they refer to a higher salary than prescribed by the MSL Legislative Instrument), superannuation, occupational health and safety, workers compensation, workplace relations and taxation legislative requirements.

The Government has decided to replace the current MSL arrangement with a system of market rates of salary, whereby Subclass 457 visa holders would be paid the market rate for their specific occupation, thereby ensuring parity with Australian workers.

**Recommendation 8**
The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations:

- work with stakeholders to review the impact on the 457 visa program of the transition from the Australian Standard Classification of Occupations to the Australian and New Zealand Standard Classification of Occupations (ANZSCO);
- regularly review the list of approved occupations gazetted under the Migration Regulations 1994 that meet the minimum skill level for the 457 visa as defined under the new ANZSCO to ensure that this list maintains the integrity of the 457 visa program in listing only ‘skilled’ occupations; and
- communicate to stakeholders and the Australian public what impact the adoption of the ANZSCO system will have on the definition of a ‘skilled’ occupation under the 457 visa program in terms of ensuring a continued benefit to Australia.

**The Government supports this recommendation.**

DIAC will make the necessary changes to its visa processing computer systems in 2009. These changes will affect the processing of Subclass 457 visas, but also include changes affecting skilled migration, students and a broad range of other departmental business, such as reporting.

Significant work is required in a number of DIAC’s computer systems as well as the new Generic Visa Portal being developed under the DIAC’s Systems for People Project. An implementation date for the systems changes required is yet to be finalised. The aim is to have the necessary work completed in 2009 to coincide with the ABS and DEEWR moving to ANZSCO as the single reference for analysing and recommending changes to the list of skilled occupations for the Subclass 457 visa program.

DIAC has, as part of the transition planning, consulted with stakeholders. Assessing authorities had the opportunity to comment on a draft of the new Skilled Occupations List (SOL) for permanent migration and to affirm which occupations they are able to assess under ANZSCO.

DIAC, ABS and DEEWR officers meet regularly to develop the strategy to shift from ASCO to ANZSCO. The new arrangements will be outlined on DIAC’s website. DIAC’s network of Regional Outreach and Industry Outreach Officers are supporting the change strategy and providing advice on the changes. DIAC will also engage the Migration Agent Industry, which plays a significant role in preparing sponsorship documentation for Subclass 457 visa processing.

The Minister for Immigration and Citizenship last changed the Legislative Instrument that includes occupations and minimum salary levels for the Subclass 457 visa in August 2008. This change...
was part of a program to reform the Subclass 457 visa program. Whilst this list still used ASCO numerical codes and occupation titles, the changes followed consultation by DEEWR and DIAC with stakeholders.

DIAC invited community comment on the reform of the Subclass 457 visa program through the Subclass 457 Integrity Review led by industrial relations expert, Ms Barbara Deegan. This review also included references to skill levels. The report is being considered by Government.

**Recommendation 9**

The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations work with stakeholders to improve the flexibility of the Australian Standard Classification of Occupations and the Australian and New Zealand Standard Classification of Occupations in defining new/emerging occupations and specialisations.

The Government supports this recommendation.

Occupations eligible for various visas are based on the Australian Standard Classification of Occupations (ASCO) and, in the future will be based on the Australian and New Zealand Standard Classification of Occupations (ANZSCO). This provides structure and consistency to eligibility criteria. There is flexibility to add new and emerging occupations and specialisations or to exclude specific occupations from the lists, including the Subclass 457 list of acceptable occupations. The Minister for Immigration and Citizenship can amend by legislative instrument, the list of eligible occupations in response to changing demands and when new occupations are to be included in the program due to a skills shortage or when existing occupations are to be excluded due to an oversupply in the labour market.

On 1 July 2008, for example, the Minister amended the legislative instrument to exclude ‘Heavy Truck Driver’ as an eligible occupation in the regional Subclass 457 visa program, following a recommendation from the Trucking Industry Working Group. At the same time, the Minister added ‘Mining or Construction Site Heavy Truck Driver’ as an eligible occupation, to take into account the specific labour requirements of the mining and construction industries in regional areas.

The Subclass 457 Integrity Review conducted by Ms Barbara Deegan recommended that new skills lists be developed by DEEWR in consultation with DIAC and industry parties to ensure that only occupations requiring genuine skill are included. This option is being considered as part of the ongoing review of the Subclass 457 visa program.

On 1 April 2009, the Government announced that all occupations in ASCO Major Groups 5-7 (applicable to regional Australia) would be removed from the approved lists and be required to use Labour Agreements.

The current Subclass 457 visa program has the flexibility to include and exclude specific occupations and specialisations as required, based on consultations between DIAC, DEEWR and relevant stakeholders. There is also the option to request a labour agreement for occupations not on the list of occupations for this visa.

**Recommendation 10**

The Committee recommends that the existing 457 visa subclass be maintained in its current form and not be divided into two visa subclasses for higher and lower (regional) Australian Standard Classification of Occupations classifications.

However, the Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations further investigate this area, with a view to enhancing monitoring and reporting, and improving arrangements for regional areas of Australia.

The Government supports this recommendation.

Regional arrangements for the Subclass 457 visa subclass were addressed as part of the review of the Subclass 457 visa program. The Government has decided that the special need for lower skilled occupations in ASCO 5-7 will not have regional concession and will be considered under labour agreement. This provides enhanced reporting arrangements.

The Government has also announced that the MSL and regional MSL concessions will be re-
The Migration Legislation Amendment (Worker Protection) Act 2008 has been passed by Parliament and will come into force in September 2009 to better define employers' obligations and employees' rights. The obligations will be incorporated in the Migration Regulations, allowing greater flexibility where required for changing circumstances. The Act and associated Regulations will strengthen the monitoring and enforcement regime.

Any further changes to the current form of the Subclass 457 visa program will be informed by the findings and recommendations from the review of the program, including the Skilled Migration Consultative Panel (comprising representatives from State Governments, industry and unions); the Subclass 457 Integrity Review conducted by industrial relations expert Ms Barbara Deegan; and the Subclass 457 Inter-Departmental Committee.

Recommendation 11

The Committee recommends that the Department of Immigration and Citizenship commission an independent review of the structure and roles of Regional Certifying Bodies (RCBs), with particular regard to:

- the capacity of RCBs to fulfil their specified functions;
- the differing organisational structures of RCBs; and
- the adequacy of the ‘regional’ 457 visa and associated concessions.

In addition to reporting on the issues outlined above, this review should aim to:

- produce clear operational guidelines for RCBs; and
- identify mechanisms for the communication of relevant procedural, legislative and statistical information to RCBs.

The Government supports this recommendation.

In the current Subclass 457 visa program review, the structure and roles of Regional Certifying Bodies (RCBs) were considered by an Inter-Departmental Committee including DIAC, DEEWR, DFAT, the Treasury, the Department of Prime Minister and Cabinet and the Department of Finance and Deregulation. The review has been submitted to Government for consideration.

Recommendation 12

The Committee recommends that, to ensure the 457 visa program is limited to skilled occupations where there are demonstrated skills shortages and there is no negative impact on Australian jobs, the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations:

- regularly review the gazetted list of approved occupations and give consideration to ensuring that it lists only skilled migration occupations in demand—for example, through the possible implementation of a Temporary Migration Occupations in Demand List; and
- work with industry and other stakeholders to trial a limited labour market testing process to agreed standards for a narrow range of identified occupations.

The Government notes this recommendation.

The eligible occupations for the Subclass 457 visa are based on the Australian Standard Classification of Occupations and are listed in a Legislative Instrument, which can be changed quickly. New and emerging occupations and specialisations can be added to the approved list of occupations and occupations of concern can be removed from the list with a change to the Legislative Instrument. This ensures that the program can respond quickly to changes in the labour market. The list is monitored to ensure that it reflects skill needs.

There is no proposal to introduce a temporary Migration Occupations in Demand List (MODL). The list of approved occupations for the Subclass 457 visa program enables close monitoring of occupations accepted under the program. However, any changes to the gazetted list of approved occupations or consideration to introduce labour market testing (LMT) procedures must be consistent with Australia’s international trade commitments. Under the WTO General Agreement on Trade in Services (GATS) Australia has made certain commitments to allow the entry and temporary stay of executives and senior manag-
ers, independent executives and service sellers and to allow the entry and temporary stay of specialists (persons with trade technical and professional skills) subject to individual compliance with labour market testing.

Our commitments largely relate to Australian classifications of ASCO 1-4 occupations.

Australia’s free trade agreements also commit Australia on the temporary entry of executives, managers and specialists as intra corporate transferees, independent executives, and contractual service suppliers without limits and without labour market testing. Australia has also made sectoral commitments which relate to certain specific professions, specifically Thai chefs in the Thailand-Australia Free Trade Agreement (TAFTA).

It is important to avoid reforms that could be inconsistent with Australia’s commitments under World Trade Organization/General Agreement on Trade in Services (WTO/GATS) and free trade agreements.

As part of the current Australian Mode 4 offer for the Doha round of negotiations Australia has offered additional concessions regarding the entry and temporary stay of skilled persons, including the removal of labour market testing for specialists.

Some Free Trade Agreements have specific occupational concessions beyond WTO GATS commitments, which must be complied with. Australia should also be cautious about measures that could limit our capacities in future negotiations.

The Government has decided to include a sponsorship criterion that employers demonstrate a record of employing local labour and non-discriminatory employment practices.

Recommendation 13
The Committee recommends that, in referring specific cases for formal English language testing with a focus on occupations with a high occupational health and safety (OH&S) risk or history of sponsor non-compliance, the Department of Immigration and Citizenship also take into account that the need for 457 workers to have a higher level of English language proficiency for OH&S and broader communication reasons remains relevant, regardless of the sector or region in which they work.

The Government supports this recommendation.

An English language requirement for Subclass 457 visa applicants was introduced in July 2007. All primary Subclass 457 visa applicants must meet the English language requirement unless they fall within certain exempted categories. This measure was specifically introduced to address occupational health and safety concerns in the workplace and better equip Subclass 457 visa holders to bring any issues or concerns to appropriate attention. English language skills also assist in the settlement of Subclass 457 visa holders into their local community.

The Subclass 457 Integrity Review conducted by Ms Barbara Deegan recommended that the current English language requirement be retained with some minor changes to exemptions.

The Government has agreed to increase the English language requirement for ASCO 4-7 occupations and chefs to IELTS level 5 from 14 April 2009.

Recommendation 14
The Committee recommends that the Department of Immigration and Citizenship:

- work with stakeholders to develop best practice benchmarks for training requirements to be met by sponsoring employers—this should ensure effective training objectives under the 457 visa program that uphold the commitment to training Australians;

- implement mechanisms to ensure improved communication of training requirements under the program and training outcomes; and

- ensure that appropriate resources are committed to monitoring compliance with training requirements under the program.

The Government supports this recommendation.

Training benchmarks were considered as part of the current review of the Subclass 457 visa program by the Inter-Departmental Committee comprising DIAC, DEEWR, DFAT, the Treasury, the Department of Prime Minister and Cabinet and the Department of Finance and Deregulation.
The Government has agreed that DEEWR develop training benchmarks for all sponsorship applications.

**Recommendation 15**

The Committee recommends that the Department of Immigration and Citizenship and the Department of Employment and Workplace Relations work with stakeholders to improve:

- the process of negotiating Labour Agreements;
- the consistency of such agreements with aspects of the overall 457 visa program; and
- the operation and transparency of such agreements.

The Government supports this recommendation.

The Department of Immigration and Citizenship and the Department of Education, Employment and Workplace Relations are working towards a more streamlined process for Labour Agreement negotiations. A process for consulting with industry stakeholders on individual Labour Agreement proposals was introduced in early 2008. This process supports other consultative arrangements under Labour Agreements. The views of industrial stakeholders are integral to Labour Agreement but do not constitute a veto. Requests to access Labour Agreements remain commercial-in-confidence during the negotiation process although a company may choose to make certain information available to industrial stakeholders on a commercial-in-confidence basis.

The terms and conditions included in Labour Agreements generally mirror those in the existing Subclass 457 visa program. All Labour Agreement visa processing has been co-located with standard Subclass 457 visa processing. This will also increase the consistency and integrity of decision making.

Labour Agreements will be subject to provisions of the Worker Protection Act 2008 which is to be implemented in September 2009. This will ensure greater monitoring and enforcement powers with respect to Labour Agreements.

**Recommendation 16**

The Committee recommends that, given the number of significant changes made to the 457 visa program in 2007 and past concerns about the program, the Department of Immigration and Citizenship commission an independent review of the program in 2008-09 to assess the impact of these changes on the program’s effectiveness, fairness and integrity.

The Government supports this recommendation.

In February 2008, the Minister for Immigration and Citizenship appointed a business-led External Reference Group (ERG) to consider the Subclass 457 visa. The final report reinforced the existence of skill shortages and labour market pressures and the important role of the skilled migration program. The Government accepted 14 of the 16 recommendations and a number of immediate measures have been initiated including:

- arrangements to eliminate the back-log of Subclass 457 applications;
- establishing three dedicated Subclass 457 processing centres in Sydney, Melbourne and Perth from 1 July 2008; and
- a comprehensive and targeted information strategy to reduce the potential for exploitation by promoting awareness of rights of visa holders and obligations of employer sponsors.

On 14 April 2008, the Australian Government appointed industrial relations expert Ms Barbara Deegan to examine the integrity of the Subclass 457 visa arrangements. The terms of reference for the Subclass 457 Integrity Review included examining:

- Measures to strengthen the integrity of the temporary skilled migration (Subclass 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 Integrity Review has reported to the Minister for Immigration and Citizenship and the Deputy Prime Minister. The Integrity Review will complement the recommendations of the External Reference Group (ERG).

The final reports from Ms Deegan and the ERG will inform the Australian Government’s medium and longer term strategy to improve the transparency, accountability and integrity of the temporary skilled migration program.

On 8 July 2008, the Minister for Immigration and Citizenship announced the establishment of a Skilled Migration Consultative Panel including representatives from State Governments, unions and industry. The Panel:

- considered and provided advice to Government through an Inter-Departmental Committee on matters referred to it regarding temporary skilled migration policy changes;
- considered and provided advice on issues referred by the 457 Integrity Review, consulting with their members and constituents when appropriate; and
- provided informed feedback on reform proposals based on a sound appreciation of the issues and the impacts these issues have on business, the Australian workforce and the broader community.

The Panel provided advice through the latter half of 2008 to assist the Government in its development of a package of longer term measures.

The reforms will complement broader labour market policies, including the development of a new fair and flexible workplace relations system.

**Recommendation 17**

The Committee recommends that the Department of Immigration and Citizenship ensure that adequate resources are allocated to the compliance regime under the 457 visa program and, in particular, to the implementation and enforcement of the new arrangements.

**The Government supports this recommendation.**

Significant additional resources have been allocated to the compliance regime under the Subclass 457 visa program. A comprehensive monitoring officer training program has been developed to prepare monitoring officers for their roles as inspectors after the implementation of the Worker Protection Act 2008.

The training content was adapted to focus on the new policies and procedures introduced on 15 October 2007. This shifted the monitoring environment to a targeted risk-based approach to monitoring.

On successful completion of the training course, monitoring officers are awarded the national qualification of Certificate IV in Government (Statutory Compliance). The course was developed to ensure that monitoring is conducted in accordance with the strategic themes of DIAC, and focuses on record keeping, site visits, handling cases in line with national standards and conducting thorough audits. The program runs for 23 days and is divided into four blocks focusing throughout on:

- Standardised record keeping procedures;
- Consistent and transparent decision making; and
- Relevant legislation and policy.

The Government will provide $19.6 million over four years to strengthen the integrity of temporary working visa arrangements, including the 457 visa program, by clarifying the obligations and rights of employers and workers, further protecting workers from exploitation. As part of the Government’s broad reforms, the Minister for Immigration and Citizenship introduced a Bill to amend the Migration Act (1958) to better define employers’ obligations and employees’ rights. It was enacted on 18 December 2008 and is to commence by mid September 2009. It will strengthen the monitoring and enforcement regime. The Act:

- better defines the obligations of sponsors in regulations;
- enhances the capacity of the Department to investigate non-compliance;
• expands the range of sanctions that may be imposed in respect of non-compliance by allowing a court to impose civil penalties; and

• facilitates information sharing across government and with the community at large to further support a monitoring regime.

Recommendation 18
The Committee recommends that the Department of Immigration and Citizenship regularly report on its website details of monitoring and enforcement activities—for example, on the number of employer sponsors monitored, site visits conducted, sponsor approvals cancelled, sponsors banned and sponsors fined.

The Government supports this recommendation.

DIAC provides detailed statistics on the Subclass 457 visa program on a monthly basis. DIAC is planning to expand this reporting to include more general monitoring and enforcement activities. Information on statistics can be found on the DIAC website at: www.immi.gov.au/media/statistics/statistical-info/temp-entrants/subclass-457.htm.

Recommendation 19
The Committee recommends that the Department of Immigration and Citizenship introduce a more comprehensive, confidential complaints mechanism so that 457 visa holders are able to report potential breaches of visa requirements without provoking retaliatory action. This mechanism should also be widely promoted to 457 visa holders.

The Government supports this recommendation.

DIAC has in place a compliments and complaints policy which ensures all complaints are dealt with in a confidential manner. Feedback received by DIAC is handled in accordance with the Information Privacy Principles (IPP) of the Privacy Act 1988. In particular:

• Information is only collected insofar as is necessary and lawful (IPP1);

• Information is only stored for as long as necessary and with appropriate security to prevent unauthorised access (IPP4); and

• Information is only disclosed to the person the information is about, not to any other person or organisation (IPP11).

In addition, the immigration ‘dob-in’ line which is used by members of the public to report a person working or living illegally in Australia is being enhanced to include reporting sponsors who are breaching their obligations to overseas workers. To raise awareness of and encourage use of the facility, details will be included in information material provided to Subclass 457 visa holders.

There are also alternative complaints mechanisms which can be used by Subclass 457 visa holders, including the Commonwealth Ombudsman and the Workplace Ombudsman.

• The Minister for Immigration and Citizenship introduced a Bill to amend the Migration Act (1958) to better define employers’ obligations and employees’ rights. It was enacted on 18 December 2008 and is to commence by mid September 2009. The Act will strengthen the monitoring and enforcement regime and will:

• better define the obligations of sponsors;

• enhance the capacity of the Department to investigate non-compliance;

• expand the range of sanctions that may be imposed in respect of non-compliance by allowing a court to impose civil penalties; and

• facilitate information sharing across government and with the community at large to further support a monitoring regime.

In the 2008-09 budget, the Australian Government announced funding for a comprehensive and targeted information strategy to reduce the potential for exploitation by promoting awareness of rights and obligations of visa holders and awareness of obligations amongst employer sponsors. For visa holders, this measure includes a comprehensive information pack that will be translated into community languages. For sponsors, this measure includes requiring employers themselves to declare that they understand their obligations under the program prior to accessing the scheme.

Recommendation 20
The Committee recommends that the Department of Immigration and Citizenship (DIAC) develop
and distribute promotional material for 457 sponsors and visa holders that clearly sets out the rights of visa holders and the process that follows employment cessation. This information should:

- clearly state that DIAC has the power to allow 457 visa holders to stay beyond a 28-day period following the cessation of employment;
- be distributed to all new 457 visa holders and sent to the known postal addresses of 457 visa holders currently in Australia; and
- be provided in both English and the first language of the visa holder.

The Government supports this recommendation.

A Frequently Asked Questions (FAQ) flyer for visa holders, providing information on the Subclass 457 visa program and contact details for further assistance, was sent to all active sponsoring employers within Australia in September 2007. The information package also included advice about the strengthening of employer obligations. The FAQ sheet states that a visa holder has 28 days to find a new sponsor and apply for a new Subclass 457 visa if their employment with their original sponsor is terminated. It also states that the visa holder has the option of applying for another visa subclass. If the visa holder does not apply for another visa, they have to leave Australia before the end of the 28 days, unless they have received approval from DIAC for an extension.

In recognition that many visa holders change their Australian addresses on a regular basis, the information was not sent directly to Subclass 457 visa holders, but to all Subclass 457 visa sponsors, with a requirement that they provide all sponsored workers with a copy of the flyer within five working days of receipt of the letter or of their commencement in the sponsor’s employment.

The material was provided in English. This initial version of the Frequently Asked Questions has since been updated and will be translated into the most widely used language groups of Subclass 457 visa holders.

Information on the Department’s website is available in seven community languages.

**Recommendation 21**

The Committee recommends that the Department of Immigration and Citizenship develop a communications strategy to ensure that stakeholders, including sponsors and visa holders, and the broader Australian population are adequately informed of the proposed changes to the 457 visa program. This should provide clarity on sponsors’ legal obligations, including the payment of travel costs, medical expenses, recruitment and migration fees, and the necessity of adequate record keeping.

**Recommendation 22**

The Committee recommends that the Department of Immigration and Citizenship (DIAC) provide clear guidelines for 457 sponsors and visa holders on their rights and obligations. At the time of granting a visa DIAC should provide:

- sponsors with a checklist outlining their obligations; and
- visa holders with a list of their rights and their sponsor’s obligations in both English and their first language.

In addition, this information should be provided to existing sponsors and visa holders in Australia.

The Government supports these recommendations.

DIAC has developed a comprehensive information strategy to improve transparency in and understanding of the Subclass 457 visa program, and to ensure that stakeholders, including sponsors, visa holders and the broader Australian population, are adequately informed of changes to the Subclass 457 visa program. This will provide clarity on visa holders’ rights and sponsors’ obligations. A range of information products has already been developed for both sponsors and visa holders.

Approximately 20,000 employer sponsorship requirements brochures, outlining employer undertakings under the Subclass 457 program, with an accompanying letter from the Minister for Immigration and Citizenship, were mailed to Subclass 457 sponsors in July 2008.

An information sheet on Minimum Salary Level (MSL) requirements and advising of the increase
of the MSL on 1 August 2008 was developed and was included in the Employer Responsibilities Kit distributed in August 2008. The kit included the MSL information sheet, the employer sponsorship requirements brochure, a Work entitlement checklist, the Quick reference guide to checking work entitlements and a document titled “Do your employees have a valid visa to work in Australia?”.

The previous FAQ for visa holders has been redeveloped into three separate documents. These cover “Pay, tax and superannuation, recovering earnings”, “Accommodation, family and health care” and “Sponsors, contracts, unions and workplace conditions”. These have been translated into some of the languages of the nationalities most frequently using the Subclass 457 visa program.

In order to raise awareness about visa requirements and to encourage decision-ready applications, a comprehensive set of checklists for the sponsorship, nomination and visa application stages of the visa process have also been developed.

All of the above information is available on the DIAC website.

Pilot information sessions to inform visa holders of their rights and obligations and focus groups to investigate the different ways visa holders find out information about their rights in Australia, are also being developed.

Recommendation 23

The Committee recommends that the Department of Immigration and Citizenship collect and publish, as appropriate under privacy laws, more detailed statistics on the 457 visa program—for example, on the occupations and actual base salaries of 457 workers—to enhance transparency and reinforce public confidence in the operation of the program.

The Government supports this recommendation.

Following an announcement by the Minister for Immigration and Citizenship, a report containing statistics on the Subclass 457 visa program has been published on the Department of Immigration and Citizenship’s website. The report is located at www.immi.gov.au/media/statistics/statistical-info/temp-entrants/subclass-457.htm and contains the following information:

- Number of visa grants by location of the nominated position and applicant type;
- Top 15 citizenship countries for visa grants by applicant type;
- Number of visa grants to primary applicants by government sector and location of the nominated position;
- Number of visa grants to primary applicants by location of nominated position;
- Average nominated base salary for visa grants to primary applicants by industry of sponsor and location of the nominated position;
- Average nominated total remuneration for visa grants to primary applicants by industry of sponsor and location of the nominated position;
- Number of visa grants to primary applicants by industry of sponsor;
- Number of visa grants to primary applicants by industry classification of sponsor and location of the nominated position;
- Number of visa grants to primary applicants by ASCO major group;
- Number of visa grants to primary applicants by ASCO major group and location of the nominated position;
- Average nominated base salary for visa grants to primary applicants by ASCO major group and location of the nominated position;
- Average nominated total remuneration for visa grants to primary applicants by ASCO major group and location of the nominated position;
- Top 15 nominated occupations for visa grants to primary applicants;
- Top 15 nominated occupations for visa grants to primary applicants by location of the nominated position;
- Top 15 citizenship countries for visa grants to primary applicants;
- Top 15 citizenship countries for visa grants to primary applicants by location of the nominated position;
• Number of primary visa holders in Australia by industry of sponsor and location of the nominated position;

• Number of primary visa holders in Australia by ASCO major group and location of the nominated position;

• Top 15 nominated occupations primary visa holders in Australia by location of the nominated position;

• Top 15 citizenship countries for primary visa holders in Australia by location of the nominated position; and

• Top 5 subclasses for persons granted a permanent visa who last held a subclass 457 visa.

The report for the 2007-08 Financial Year to 30 June 2008 was made available on the Department’s website on 22 July 2008 and includes total program numbers as well as statistics for each State and Territory. Updated reports are published on a monthly basis.

Recommendation 24
The Committee recommends that, to ensure fast-tracked service standards for processing times are met, the Australian National Audit Office undertake a performance audit of the administration of the 457 visa program next financial year. This audit should examine processing efficiency—that is, the extent to which the fast-track processing initiative leads to faster processing times compared to the rest of the caseload.

The Government supports this recommendation.

DIAC notes the Committee’s recommendation and would welcome an ANAO audit, should the Auditor-General decide that it is an audit priority. In addition, the Department is undertaking a related audit of the Effectiveness of Controls over the Regional Certification of Concessional 457 Visas and Monitoring of 457 Visas as part of the Financial Year 2008-09 Internal Audit Program.

A number of measures were also introduced in July 2008 to improve processing times for Subclass 457 visas in response to the External Reference Group report. These measures included reducing the backlog of Subclass 457 applications; establishing three dedicated Subclass 457 processing centres in Sydney, Melbourne and Perth; and introducing a comprehensive and targeted information strategy to reduce the potential for exploitation by promoting awareness of rights of visa holders and obligations of employer sponsors. The processing times for Subclass 457 visas have been significantly reduced as a result of these measures.

Recommendation 25
The Committee recommends that the Department of Immigration and Citizenship improve its visa electronic lodgement procedures to ensure the effectiveness of the 457 visa program.

The Government supports this recommendation.

Since July 2007, there have been three computer system releases containing improvements to increase the effectiveness of Subclass 457 processing. These include textual enhancements to the electronic lodgement forms, an increase to the size limit of allowable attachments, enhancements to the document checklist list within departmental systems, enhancements to the storage of authorised recipient contact details, and the automated storage of application attachments into the Department’s record keeping system. In addition, hardware within the electronic business environment has been upgraded, which is expected to improve the availability and capacity of all electronic business applications including electronic visa applications.
Agencies and FMA Bodies, issued by the Department of the Prime Minister and Cabinet.

DELEGATION REPORTS

Official Visit to Chile

Parliamentary Delegation to Canada and Mexico

The DEPUTY PRESIDENT (3.51 pm)—I present a report by the President of his official visit to Chile from 14 to 17 April 2009, and the report of the Australian parliamentary delegation to Canada and Mexico, which took place from 18 April to 1 May 2009.

COMMITTEES

Selection of Bills Committee

Report

Senator McEWEN (South Australia) (3.51 pm)—by leave—I present the 13th report of 2009 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator McEWEN—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 13 OF 2009

1. The committee met in private session on Wednesday, 9 September 2009 at 7.20 pm.

2. The committee resolved to recommend—

That—

(a) the provisions of the Crimes Amendment (Working With Children—Criminal History) Bill 2009 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 29 October 2009 (see appendix 1 for a statement of reasons for referral); and

(b) the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 be referred immediately to the Economics Legislation Committee for inquiry and report by 26 November 2009 (see appendix 2 for a statement of reasons for referral); and

(c) the provisions of the Migration Amendment (Complementary Protection) Bill 2009 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 16 October 2009 (see appendix 3 for statements of reasons for referral).

3. The committee resolved to recommend—

That the following bills not be referred to committees:

• Foreign Acquisitions and Takeovers Amendment Bill 2009
• Higher Education Legislation Amendment (Student Services and Amenities) Bill 2009
• Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009
• Military Justice (Interim Measures) Bill (No. 1) 2009
• Military Justice (Interim Measures) Bill (No. 2) 2009.

The committee recommends accordingly.

4. The committee deferred consideration of the following bills to its next meeting:

• Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009
• Special Broadcasting Service Amendment (Prohibition of Disruptive Advertising) Bill 2009.

(Kerry O’Brien)
Chair
10 September 2009

APPENDIX I

SELECTION OF BILLS COMMITTEE

Proposal to refer a bill to a committee

Name of bill:
Crimes Amendment (Working With Children Criminal History) Bill 2009
Reasons for referral/principal issues for consideration:
Whether the requirement under the Bill for the reporting and exchange of information on spent, quashed and pardoned convictions is:
(a) consistent with the presumption of innocence and other rights of individuals; and
(b) consistent with the National Privacy Principles.

Possible submissions or evidence from:
Various State and Territory Police Departments and organisations, Child Protection Agencies and peak bodies, welfare groups, childcare providers, Attorney-General’s Department, the Privacy Commissioner, the Human Rights Commission, the Law Council of Australia and civil liberties organisations.

Committee to which bill is to be referred:
Legal and Constitutional Affairs Legislation Committee

Possible hearing date(s):
Throughout 4 week break - beginning 21 September
Possible reporting date: 23 October

Stephen Parry
Whip / Selection of Bills Committee member

APPENDIX 2
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee

Name of bill:
Food Standards Amendment (Truth in Labelling Laws) Bill 2009

Reasons for referral/principal issues for consideration:
As an issue which affect consumers, Australian producers and retailers public consultation is important. Issues which could be considered are: issues facing consumers wishing to buy Australia; operation of current labelling requirements; impact on Australian economy; possible expansion of the application of bill to other areas of labelling or beyond food products;

Possible submissions or evidence from:
CHOICE, Food Standards Australia New Zealand, Australia Made Campaign Ltd, Australian Food and Grocery Council, National Farmers Federation, Consumer Action Law Centre; Australian Vegetables and Potato Association; Horticulture Australia Council; Pulse Australia; Nuts Producers Australia, Australian Nut Industry Council; Tasmanian Apple and Pear Growers

Committee to which bill is to be referred:
Economics Legislation Committee

Possible hearing date(s):
Week of 28th September - 2 October
Possible reporting date:
16 November 2009
John Williams
Whip / Selection of Bills Committee member
Senator Bob Brown
Senator Nick Xenophon
Senator Barnaby Joyce

APPENDIX 3
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee

Name of bill:
The Migration Amendment (Complementary Protection) Bill 2009

Reasons for referral/principal issues for consideration:
Examine the proposed provisions of the Migration Amendment (Complementary Protection) Bill 2009

Possible submissions or evidence from:
A just Australia
Amnesty International Australia.
Australian Human Rights Commission
Foundation House (Victorian Foundation for Survivors of Torture and Trauma) Professor James Hathaway (Dean and William Hearn Chair of Law Melbourne University Law School)
Hotham Mission Asylum Project
Immigration Advice and Rights Centre (IARC), NSW
The speech read as follows—

Today I introduce a Bill which will amend the Corporations Act 2001 to strengthen the framework relating to termination benefits, otherwise known as ‘golden handshake’ payments.

There is significant community concern about the levels of termination benefits paid to company management. Such payments are given to outgoing company directors and executives at a time when they are no longer able to influence the company’s future performance. The Government’s reforms will empower shareholders to more easily reject such payments where they are not in the interests of the company, the shareholders or the community.

Currently, termination benefits, unlike other components of remuneration, are subject to a binding shareholder vote. The Corporations Act requires shareholder approval to be obtained for termination benefits, subject to certain thresholds.

However, the existing thresholds allow termination benefits to reach up to seven times a person’s total annual remuneration before shareholder approval is required.

This is a very high threshold, which leaves shareholders powerless to stop excessive termination benefits. The Bill will address this, by lowering the threshold required for shareholder approval to one year’s base salary.

The reduction in the threshold is two-fold. Firstly, the quantum of the threshold will be reduced from seven years pay to one year’s pay. Secondly, it will no longer be calculated by reference to the person’s ‘total remuneration’, and instead will be calculated by reference to a person’s ‘base salary’. The definition of ‘base salary’ will be specified in regulations and finalised following further targeted consultation.

This is a significant reduction in the threshold for shareholder approval, and will ensure that shareholders have the power to reject excessive termination payments where they are not in the interests of the company or the shareholders.

In addition, the Bill widens the scope of individuals subject to the regulatory framework, by extending the application of the provisions to ‘key management personnel’ for companies that are a disclosing entity. This will ensure that all key
individuals, who have their remuneration disclosed in the remuneration report, will be captured by the regulatory regime.

The Bill also broadens and clarifies the definition of a termination benefit, to capture all types of termination benefits. The Bill provides a clear statement that a broad interpretation of the term ‘benefit’ should be taken, and requires that the substance of the payment should prevail over its legal form. This will address existing loopholes by ensuring that termination benefits that are disguised as other forms of payments will be captured by the regulatory regime.

In addition, the Bill provides a new regulation making power to prescribe certain types of payments which are, or are not, considered to be a termination benefit. This will clarify existing legal ambiguity on whether specific types of payments require shareholder approval. It also provides flexibility to quickly respond to any new methods of providing termination benefits which seek to circumvent the law.

The Government will undertake further targeted consultation on the detail of the regulations, which will be finalised in time for the commencement of the Bill.

The Government has been responsive to submissions received as part of the public consultation process, and has decided not to change the shareholder voting arrangements.

A number of stakeholders identified practical difficulties with changing the timing of the shareholder vote until after the departure of the director or executive. As such, the Government has decided to retain the status quo which allows the shareholder vote to be held at any time prior to the termination benefit being paid to the director or executive.

Retaining the current timing requirements maintains the primary objective of these reforms, which is to provide shareholders with a greater ability to reject excessive termination benefits given to company directors and executives.

The Bill also improves the integrity of the shareholder vote, by ensuring that directors and executives, who hold shares in the company, cannot participate in the shareholder vote to approve their own termination benefit. This removes the conflict of interest which exists with a director or executive voting to approve their own remuneration, including their own termination benefits.

There is an exception to this requirement where the director or executive casts a vote as a proxy on behalf of another person who is entitled to vote, in accordance with the directions on the proxy form.

The Bill also introduces an express requirement to immediately repay a termination benefit, where it has been given without seeking the necessary approval from shareholders. Directors and executives will continue to hold such unauthorised benefits on trust for the company. This will facilitate recovery of unauthorised benefits, particularly where they have not been repaid immediately.

The Bill also substantially increases the penalties associated with paying a termination benefit without seeking the necessary approval by shareholders. Potential fines will now be set at $19,800 for individuals, and $99,000 for corporations.

This is intended to send a clear signal of the Government’s intention to crack down on termination benefits paid in contravention of the law. The new penalties will also provide a stronger deterrent and better reflect the seriousness of the offences.

The Bill will not affect existing contracts, and will apply to all new contracts which are entered into, extended or substantially varied after the commencement date.

In summary, these reforms will strengthen the accountability of company management in providing termination benefits, and further empower shareholders to reject excessive termination benefits. These measures are designed to promote responsible remuneration practices, particularly with respect to termination benefits.

More generally, the Government has tasked the Productivity Commission with undertaking a broader review Australia’s remuneration framework. This is a very wide-ranging review, which will examine the existing regulatory arrangements that apply to director and executive remuneration for companies which are disclosing entities. The inquiry will also examine international trends and
responses to the problems of excessive risk taking and corporate greed.
The inquiry will be led by the Chairman Gary Banks and Professor Allan Fels AO has been appointed as an Associate Commissioner to assist with the inquiry. The Commission will provide a final report in December this year.
Finally, I can inform the chamber that the Ministerial Council for Corporations was consulted in relation to the amendments to the laws in the national corporate regulation scheme, and has approved them as required under the Corporations Agreement.
I therefore present the Explanatory Memorandum to the Bill and commend the Bill to the House.
Ordered that further consideration of the second reading of the bill be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

AGED CARE
Senator CORMANN (Western Australia)
(3.53 pm)—I move:
That the Senate—
(a) notes that:
   (i) Australia has an ageing population, which will cause a significant increase in demand for aged care services over the coming decades, including aged care facilities,
   (ii) the Federal Government has direct responsibility for the provision of aged care, while the states have responsibility for a range of matters, including the provision of education,
   (iii) the Rudd Government has failed to do anything to tackle the capital funding crisis in the aged care sector,
   (iv) the Rudd Government’s reckless and irresponsible inaction, if left unaddressed, means that the current crisis in aged care will only get worse into the future, and
   (v) the Rudd Government has wasted significant sums of money on the poorly-designed and poorly-implemented Building the Education Revolution program, while failing to tackle the significant challenges faced by the aged care sector;
(b) is very concerned that the failure of the Rudd Government to act and address the significant challenges ahead in aged care means that elderly Australians will not be able to get access to affordable, high-quality aged care places in the future; and
(c) calls on the Government to take decisive action forthwith to address the significant challenges facing aged care.

The Rudd government is failing senior Australians in desperate need of timely access to quality aged care services. They are failing senior Australians and their families. Right now we are facing a crisis in aged care which will only get worse if it is left unaddressed by the Rudd government.

We have a government that is spending like drunken sailors. They have been going on spending spree after spending spree. They have been borrowing money to give it away. We have had billions of dollars in $900 cheques go out to people, including to people who are overseas, people who are in jail and people who are dead. We have had waste and mismanagement with the so-called Building the Education Revolution. Billions of dollars are being splashed around like there is no tomorrow. We have got $1.7 billion of overspending and $7 million to $8 million for signs.

We have got spending, spending and spending. Yet in the very crucial and important Health and Ageing portfolio we have got no action whatsoever: budget cuts and reviews to waste time—or gain time, if you look at it from the government’s political point of view. The government has got its head in the sand while people are out there struggling to get timely access to the aged care services they need.

Australia has an ageing population. That is one of the biggest social issues that we are
facing as a nation. With an ageing population comes a significant increase in demand for a range of related services, including aged care services and facilities. What has been happening is that under the regulatory and funding regimes that are currently in place it is no longer financially viable for providers to invest in the facilities that are needed to provide high-care services in aged care, in particular.

Our aged care system today is overregulated and underfunded and it is failing to deliver a good standard of care. At a time when there is increasing demand for services, providers are walking away from the industry because of the non-viability of high care and the compliance demands of the government. Senior Australians are increasingly finding they are unable to access the services and care they need, and this is putting additional pressure on our hospital system.

As I have mentioned, in the 2009-10 budget there is a spendathon going on, with waste and mismanagement everywhere. What do we see in the area of aged care? Budget cuts—in a portfolio that is supposed to be one of the highest priorities areas of the government, or so we were led to believe in the lead-up to the last election. But no. While the government is throwing money around everywhere else, in health and ageing we are seeing budget cut after budget cut and inaction, completely ignoring the significant crisis that is currently going on.

What has happened? As I have mentioned, there are increases in demand coming from the ageing population. The department goes through an exercise every year called the aged care approvals round, where the department determines what the need for services is going to be. They come up with a figure and it is broken down by state; in fact, it is broken down by what is called a planning region. Based on population, demographics and a whole series of trends, they map out the number of services we need. You have only got to look at how those numbers have been developing over the last two years to get a sense of the extent of the crisis that we are facing. It has been worse in my home state of Western Australia over the past two years—and in the great state of Tasmania where Senator Polley comes from, and I see she has just walked into the chamber.

I will go through the figures now, Senator Polley. This is what was allocated in the great state of Western Australia in the round done towards the end of 2007: 1,006 places were made available. That is what the government thought was needed to address the likely demand. How many places were taken up by providers in the aged care sector? Six hundred and sixty-four. There was a shortfall of 342 beds. There were 342 fewer beds than the government thought were required to provide the services.

Why is that? Because under the current funding and regulatory arrangements, investment in aged care is not viable. And the government is not doing anything about it. The government is spending everywhere else, but in the aged care sector, and in the Health and Ageing portfolio more generally, we are talking fiscal restraint and budget cuts. They are making sure that senior Australians are paying the price for Labor’s reckless spending everywhere else.

I promised Senator Polley that I would focus on Tasmania as well. In the 2007 round, the government thought that 167 beds were needed. Only 63 of them were allocated. That was a shortfall of 104 beds out of 167 in 2007. That is significantly more than half of the beds that the government thought were needed in aged care in Tasmania that were not allocated. At the time these figures came out, the minister put out a press release and said, ‘Everything is fine; the aged-care in-
dustry is nice and healthy and financially sound.' Do you know why she said that? Because in the states of New South Wales and Victoria there was no shortfall. Some of these eastern-state-centric Rudd government ministers find it very difficult to look past New South Wales and Victoria when it comes to assessing the need for services in states like Western Australia and Tasmania.

What about the next year? Maybe 2007, after the Rudd government was elected, was a bad year. Many people would say that that was a bad year. Certainly people in the Health and Ageing portfolio found that that was a terrible year, because all we have had since is inaction, reviews followed by reviews into reviews, budget cuts, tax hikes and the old-fashioned crusade against private health. That is all we have had in the Health and Ageing portfolio, and they have their heads in the sand on the aged-care sector. They are not facing up to the serious crisis that is taking place.

So what happened in the subsequent year, the 2008-09 round? Remember that a year before it was only Western Australia and Tasmania that were under-allocated. In 2008-09, all states but South Australia—every single state but South Australia—had fewer beds taken up by providers than what the government thought were needed to provide adequate levels of services. In New South Wales 114 fewer beds were taken up by providers than what the government thought was required, which was 2,106. In Victoria, 1,486 beds were made available and there was a shortfall of 148 beds, or 10 per cent. In Queensland, there was a significant shortfall. The government thought that 2,416 beds were required to provide an adequate level of service. How many were taken up by providers? Only 1,603. That was a shortfall of 813 beds. In my home state of Western Australia, what happened was an absolute disgrace. Out of the 1,208 beds that the government thought were required, only 519 were taken up—less than half of what the government thought was required. And it keeps going.

This is not the only problem. Aged-care providers are not only not taking up the bed licences that are being made available by the government—because they cannot see that it would be financially viable for them to do so—but also handing licences back. In Senate estimates, we have asked very detailed questions about what has been happening. The answers are terribly concerning. Between 1 December 2007—a short time after the Rudd government was elected, of course—and 25 March 2009, 786 bed licences were handed back.

So here we have a situation in which there is increasing demand because of an ageing population, people not taking up the bed licences made available by the government and people handing back bed licences that they have previously been allocated. And how many of those 786 come from Western Australia, Senator Sterle? You are a senator for Western Australia. You should care about this. You should stand up to your government. You should say to the Prime Minister that it is time that he took some action and that it is time that he remembered that the buck stops with him. Clearly, the Minister for Health and Ageing and the Minister for Ageing are too junior and do not have the pull across cabinet. They clearly cannot get the Prime Minister to focus on this. It is time that the Prime Minister remembered that on aged care and health the buck stops with him. It is time that he took some action. Out of 786 beds that were handed back, 283 came out of Western Australia.

Senator Wong interjecting—

The ACTING DEPUTY PRESIDENT (Senator Humphries)—Order, Minister! Senator, if you do not direct comments at the other side, they might be less likely to inter-
ject. I ask members of the government not to interject while Senator Cormann is speaking.

Senator CORMANN—Thirty-six per cent of all the bed licences that were handed back to the government since the election of the Rudd government were handed back in my home state of Western Australia. The Labor senators from Western Australia are not doing anything about it. The few House of Representatives Labor members from Western Australia are not doing anything about it. It is time that they stood up for Western Australia and for the needs of senior Western Australians when it comes to aged care. It is time that they stood up to the Prime Minister.

We have had a whole series of reports. You, Mr Acting Deputy President, would be well aware of the report that was put out by the Senate Standing Committee on Finance and Public Administration on 29 April in relation to residential and community aged care in Australia. That inquiry received 125 submissions. The committee made 31 recommendations. This was five months ago; nearly half a year ago. The minister has still not responded to any of the recommendations. There has been report after report. We had the Trends in aged care services: some implications report from the Productivity Commission in September 2008. We had the Annual review of regulatory burdens on business: social and economic infrastructure services from the Productivity Commission, in which it was stated:

Meeting regulatory requirements can come at the expense of providing better care as staff are directed to paperwork—a perverse outcome in a regulatory system that is designed to improve the quality of care.

Rather than assisting senior Australians, the minister’s approach is clearly compromising their care.

These are just a few of the reports. We have also got the residential aged-care surveys, like the Grant Thornton review, and there is a whole series of other reviews: the Bentley’s MRI/James Underwood and Associates 2007 survey and a whole series of surveys, which all say the same thing. Here we have a statement provided to the Senate inquiry into residential and community aged care by Grant Thornton Australia, James Underwood and Associates and Stewart Brown Business Solutions, together, which said:

Our research confirms that modern, single-room High Care services make very poor or negative returns on average. These returns are far below the returns achieved in older, shared-room High Care services.

In our opinion, modern, single-room High Care services—other than those with extra services approvals—are not viable under current funding and regulatory arrangements.

The time for reviews is over. The time for more reports is over. It is time for action. It is time that the government pulled their head out of the sand and took some action when it comes to the needs in the aged-care industry.

I mentioned budget cuts before. We are talking about a situation that is developing where increasing demand—beds handed back and fewer beds taken up than the government thinks are needed—and here we have the Rudd government actually cutting funding to aged care in the 2009-10 budget. I will go through some of the examples. The indexation of the conditional adjustment payment subsidy has been cut. The CAPs remain at 8.75 per cent until 2011-12. There is discontinuation of the assistive technology in community care program—$25.8 million lost over four years. Hearing Services will introduce a minimum hearing loss threshold of more than 23 decibels to determine eligibility for hearing devices—losing $33.9 million over four years.
This is just extraordinary. Aged-care services are a direct responsibility of the Commonwealth. We have got all of these spending sprees and cash splashes—this spendathon—for the Julia Gillard memorial halls and the signs in front of state and territory government schools. There is mismanagement and waste—a $1.7 billion overspend, $7 to $8 million for signs—and a core responsibility of the government is not being looked after. It is being neglected and people are going to get hurt. If we do not take some action, very soon we are going to have some serious issues.

The industry puts all of its surveys and data out there for peer review. They say to me: ‘This is why we think the aged care industry is really facing a serious funding crisis. This is why we think that under the current funding and regulatory framework we are going to have a problem in aged care moving forward unless there are some changes to the funding and regulatory framework.’ Do you know what the government—the aged-care divisions in the Department of Health and Ageing—do? They spend most of their time explaining, defending and ducking and weaving as to why what everybody else is saying is wrong. They come out and say, ‘They are wrong because of this.’ They say something different and there is inconsistency there. The industry has to continue to organise themselves and say: ‘Hang on and let’s get together and swap notes and see what we have all said. And, yes, we will all say in a joint statement that we all agree with the same thing.’ What does the government do? The government is collecting all of this data and doing all of this internal research and, when we ask questions at estimates or during Senate inquiries, they say: ‘No, our research does not say that. In our assessment of the data across Australia we come up with very different conclusions.’ So we say: ‘Show us your data. Tell us what you think so that we can again swap notes, there can be a peer review and we can scrutinise what you are basing your conclusions on.’ The industry experts say that the return on investment is about 1.1 per cent on high-care places in aged care. The department says, ‘Oh, no, it is a 10 per cent return on investment.’ But how do you get to that conclusion? So the Senate passed an order of the Senate a little while ago that ordered the government to release all of the audited general purpose accounts from aged-care providers since the 2004-05 financial year. Essentially, information has to be submitted by aged-care providers as a condition of receiving conditional adjustment payments every year. There is national de-identified comparative data from those accounts, and it was expected that it would be made available every financial year to assist in performance benchmarking and in industry planning and investment decisions. But only the 2004-05 data was made available to the aged-care industry—the Bentleys MRI report. Subsequent reports are being kept secret.

I put a question on notice asking if details can be provided for individual facility EBITDA and performance for single-bed and multi-bed facilities. The very helpful answer from this transparent—not!—government was that the de-identified unit record data is available on the department’s internet site at www.health.gov.au. Every single aged-care provider across Australia, my staff and everybody who has an interest in this have been searching that website for the last couple of weeks and nobody can find it. So I thought that, if the government says it is available on the website in an answer to a question on notice, let’s have a Senate order for the production of those documents. What happened then? We got a letter from the minister which states, ‘The files contain various documents that are now being examined with a view to providing an appropriate response to the
Senate’—et cetera, et cetera—’and we are going to take 30 days to have a look at it.’ If it is on the website somewhere, why don’t you just table it? Why don’t you make sure that we can all work on the same basis?

As I am running out of time I will sum up. We are facing a serious crisis in the aged-care industry and it is time for some action. It is time that the Rudd government pulled its head out of the sand and faced up to the crisis. That is the first thing they have to do. It is time that the Prime Minister remembered that in Health and Ageing he promised that the buck would stop with him.

Senator Polley (Tasmania) (4.14 pm)—I am in total disbelief at the hypocrisy of Senator Cormann’s motion on aged care, which is before us, and his comments. Senator Cormann must have the shortest of short-term memories if he wants us or the Australian community to believe that the issues present today in the aged-care sector are wholly and solely the responsibility of this government. He started by saying that the federal government has direct responsibility for the provision of aged care. How astounding! This must be a fact that Senator Cormann has only recently discovered. It certainly appears as though his party were unaware of this during their last term of government, because they actually did so little for aged care.

He seems unable to cast his mind back less than two years to recall nearly 12 years of complete inaction and complacency by the former Howard government. That government, of which Senator Cormann was briefly a part, stood by and did nothing positive for aged care year after year as the reality of our ageing population became more apparent. They ignored outdated infrastructure and capital investment needs. They ignored the mass exodus of nurses from the industry. They ignored increased demands to access community care places. They ignored the unique needs of rural and regional service providers.

During the last five years of the Howard government, residential aged-care funding had an average annual increase of 7.1 per cent. Under the Rudd government this has been 8.5 per cent. Let us get the facts on the record. The average annual increase in total aged-care funding over that same period of the former government was 8.4 per cent. Under the Rudd government that has been 9.1 per cent. These figures underlie the basic difference in the importance placed on aged-care funding between this government and those opposite in the coalition.

Despite this apparent difference, Senator Cormann would have us believe that the Rudd government has done nothing on this most important of issues. As Senator Cormann appears unable to see, hear or remember the multitude of steps taken by the Rudd government to address the aged-care issues, I will remind him and those in the chamber. This government has committed $44 billion over the next four years to aged care, which is an increase of $2.5 billion over that period and more than that by any previous government in our country’s history. Far from failing to address capital funding for aged care, the Rudd government has committed $300 million in zero real interest loans. Half of this money has already been allocated and is expected to produce 1,455 additional places.

Far from exhibiting inaction, as Senator Cormann states, the Rudd Labor government has provided unprecedented funding levels to extend aged-care services further than they have ever been extended before. As of the middle of 2009 there have been more than 178,000 residential aged-care places, half in high care and half in low care. On top of this more than 47,000 community care places have been funded by the Commonwealth.
Funding for aged care increased nearly 10 per cent between 2008-09 and 2009-10 to $9.9 billion. Since the Rudd government came into being in November 2007, overall funding to aged care and community care has increased by nearly 20 per cent. This is the kind of increase that has demonstrated our genuine commitment to meeting the needs of older Australians and it is a far cry from the entrenched neglect of the former Howard Liberal government.

Since the change of government, an increase of 6,100 residential aged-care places and 2,800 community care places has been realised. There is an additional $14.8 million for the viability supplements paid to residential aged-care providers in regional, rural and remote areas, bringing the total funding to $72.3 million over the next four years. Funding for home and community care, which is quickly becoming a key element of aged care and ageing in place, will increase by $180 million, reaching a total of $1.2 billion this financial year. Five hundred million dollars has been added to subacute care through the Council of Australian Governments and $293 million has been provided for the Transition Care Program over four years to create an additional 2,000 places. Add this to the $120 million every year for the dementia initiatives that will reach more than 200,000 Australians, $348,000 for hearing services this financial year and $21.6 million per annum to support the National Palliative Care Program and you will start to get an idea of how inaccurate and blatantly shameful Senator Cormann’s statements are.

Through the federal and state governments $1.1 billion is being invested in our health workforce. The Rudd government has created the bringing nurses back program, with $6.9 million specifically targeted at bringing aged-care nurses back into their profession. This has directly resulted in 100 nurses returning to the aged-care sector. In addition, 21,300 aged-care workers are having their skills upgraded through a $127 million training commitment.

If Senator Cormann’s head is spinning trying to keep up with all these figures, I can stop; however, I will have not exhausted the list of steps this government has taken to support the aged-care sector and older Australians. In this year’s budget an additional $728 million was committed to aged care over the next four years. The increase to the rate of aged-care pensions for singles and couples not only yielded a much-needed boost to meet the cost-of-living pressures for pensioners but also will add an extra $713.2 million to aged-care providers over the next four years.

That same budget also committed $14.1 million over four years to continue palliative care initiatives started under the Australian healthcare agreements. It also retained the conditional adjustment payment at 8.75 per cent. This payment is the lifeblood of many regional aged-care providers and was due to expire. However, through consistent evidence provided to the Senate Standing Committee on Finance and Public Administration in its inquiry into residential and aged care in Australia, the importance of this payment was noted and the payment was retained.

The inquiry, which I was fortunate enough to chair, was a comprehensive look at the current and future needs and circumstances of the aged-care sector. It was a large-scale inquiry that held multiple hearings, received
more than a hundred submissions and took much of the first half of this year to complete. Evidence taken at hearings and through submissions was consistent in its frustration at the worsening state of aged care in Australia in the face of heightened demand. Far from pointing the finger of blame at the Rudd government for supposed ‘inaction’, most stakeholders acknowledged that this was an issue that had been sorely neglected and that manifested during the Howard-Costello Liberal government years. Each and every submission acknowledged that the sector indeed required quick and considerable action. Most of the submissions were consistent in identifying fragmented funding, staffing levels and increased demand for services as the major challenges facing the industry. The government did not shy away from the strong recommendations on the future directions of aged care by the committee in its unanimous report. Indeed, the Department of Health and Ageing has already started working towards realising the recommendations of the report and it moved quickly after the report’s release to continue the conditional adjustment payments.

The continuation of these payments has been particularly important to my home state of Tasmania, which has a rural profile, much like that of outback Australia, with a small and highly decentralised population. More than half our residential aged-care facilities have under 60 beds each, which is considered to be at the margin for viability. On top of this, Tasmania has the second oldest population in Australia and by 2020 it will have the oldest. I have talked in detail with aged-care stakeholders from Tasmania—and, in fact, from around the country—and they have shared with me the need to build a sustainable sector without losing their critical, small, community based facilities that are so deeply connected with their communities. Tasmania is very strong on social inclusion, and allowing people to age in the community they belong to is vital to meeting our social inclusion agenda. Tasmania, with its highly fragmented population, boasts hundreds of small, tightly knit communities, many of which offer small aged-care centres. Pressure on the aged-care sector has resulted in two visible policy drivers: consolidation and a push for efficiency. While it may be viable for many metropolitan residential aged-care facilities, Tasmania is unable to achieve the economies of scale that come from mergers and larger facilities. It is also contrary to the idea of ageing in place to move aged-care places into bigger population centres.

I was pleased to be able to attend recently a meeting between the Minister for Ageing, Justine Elliot, and stakeholders from Aged and Community Services Tasmania to discuss Tasmania’s unique aged-care situation. It was a testament to the importance that this government gives to aged care that the meeting was a positive and productive one. The CEO of Aged and Community Services himself stated that ‘the minister was very interested in what we had to say’ and agreed that ‘Tasmania has had a good hearing on the issue of aged care. He summed up the meeting by stating that the minister was very positive toward some of the options and strategies presented to them during the meeting, calling it ‘a glimmer of hope that we can build a sustainable sector’. That is positive feedback. That is recognition that the Rudd Labor government is actually listening, unlike those opposite who had 12 very long years to address these issues. Senator Cormann was quoting various reports. It would have been more factual if he had given the dates of those reports, then it would have been more than obvious that his own government, the previous government, had failed to act.

There is no faint praise from a sector that has been underfunded and ignored for so long.
long. It is indeed an indication of how productive the relationship between the government and the industry stakeholders is becoming. The industry does understand and acknowledge that we are listening to it about the issues confronting it. I acknowledge there are many issues facing the industry, but you cannot lay the blame on a government that has been sitting on the benches on this side of the chamber for less than two years when the Liberal Howard government had almost 12 years and neglected the industry. The industry itself acknowledges that. That is not a political statement; that is a fact of life.

I also take particular exception to Senator Cormann’s comments that this government has wasted significant sums of money on Building the Education Revolution. What his statement implies is that aged care takes precedence over education infrastructure. This is a ludicrous notion that tries to compare apples with oranges. Both are equally important in society’s eyes. Both have been given much-needed and long-overdue attention by the Rudd government. While achieving record funding in aged care and a multifaceted approach to increasing the effectiveness of aged-care services, we have also embarked on an unparalleled school infrastructure modernisation program. Thousands of schools have benefited from the $16.2 billion investment in upgrading classrooms, libraries, halls and gymnasiums. After nearly 12 years of steady decline in funding for education and an almost complete halt in any form of infrastructure investment under the former government, Australian schools are now being given a sign of faith. They are being given hope. This government has clearly shown that providing good infrastructure in schools not only benefits a community but benefits an entire generation. If we do not invest in our education systems, in learning and in bricks and mortar, how then can we honestly say that we respect the needs of our children? Does Senator Cormann honestly ask us to believe that ignoring investment in our children is justified as a means for channeling additional funding to older citizens? And if he does believe this, why did the former government, his government, do neither? Why did they neglect the education of Australian children and neglect older Australians for 12 long years?

Far from funding one whilst neglecting the other, we have stood firmly by our social agenda and provided more practical support for each layer of our community than the opposition can rightly claim to have done in their last term in office. They glorify the days when they saved and saved until we were rich with savings. But the opposition did not seem to notice that all these savings had been to the detriment of our young, our old, our infrastructure, our health, and our future needs. There is no glory in saving for a rainy day when everything that our society holds as important is pulled back, tightened and starved to the point of collapse. That is what happened to our aged care sector during those 12 very long years and that is the reality that the Rudd government has had to work with since then. And in addressing all these issues that I have outlined from our budget we have done this while under the strains of the global financial crisis, the worst in 75 years.

I do agree though with Senator Cormann on one thing: we do need to take decisive action to address the significant challenges faced by the aged care sector. However Senator Cormann fails to acknowledge that the Rudd government is doing exactly that. The Rudd government recognises the importance of providing a high-quality minimum standard of aged care for all. It recognises that a rapidly ageing population will provide us with unique and critical challenges that require responses in equal measure. The Rudd government is working carefully and
thoughtfully on addressing all aspects of the issues that we will face in years to come—not just nursing homes, but community care, numbers of nursing staff, infrastructure, training, health and safety, medical needs and much more. No other government has recognised more fully that people have a right to age with peace, quality care, dignity and respect. Consequently, no other government in this nation’s history has spent more on aged care. And we do not deny that more needs to be done.

Senator Cormann—Do you understand the growing and ageing population?

Senator Polley—It is very well for Senator Cormann to attempt to champion the cause of the aged care sector at this late hour. Unfortunately it is too little too late. He was very silent when he was on the government benches. I did not hear him speaking up, demanding these changes. I did not hear him voicing his concerns for Western Australia or Tasmania during his time in the Senate chamber. But he has the hypocrisy to come into this chamber and put a resolution like this without anything to back it up. The aged care sector already knows the importance, or lack thereof, that the opposition placed on their industry in the past. The Australian community knows the opposition’s position on aged care, health, infrastructure and skillsing Australia. They made their judgement at the last election and they will once again at the next election make their judgement on what the Rudd Labor government is doing. Likewise, they acknowledge and appreciate the efforts made by the Rudd government to begin the long process of repairing the neglect of this sector. And it will be a long process because it has had so many years of neglect. But we are determined to repair and restore the quality care that older Australians deserve and will get under this government.

We are not talking about a sector that makes inanimate objects, provides intangible services or draws raw materials from the ground. Aged care is a sector that provides care and dignity to human beings who have lived a full life. Sectors such as aged care, health and education deal fundamentally with the human experience and therefore have always, and will always, be given the highest priority by this or any future Labor government.

Mr Acting Deputy President Humphries, I look forward to your contribution, because you and I have had some very interesting inquiries, and I know that you are at least one from that side who has been prepared to say that not enough has been done by the former government. I look forward to your contribution here this afternoon to what I believe is a very important debate. I stand by the report that I happened to be chair for and I stand by the recommendations that we made and will continue to press for the reforms that are needed. We are the ones yet again who have to clean up the mess that the former Howard government left this country in.

The Acting Deputy President (Senator Humphries)—Thank you, Senator Polley. I look forward to rising to your challenge later.

Senator Siewert (Western Australia) (4.34 pm)—I rise to support this motion. I think it might be the third time this week that I find myself in agreement—and again, I am in the twilight zone.

Senator Cormann—we are supportive of you supporting us!

Senator Polley—but you blame both of us!

Senator Siewert—Thank you. I must admit that I am disappointed that we are going back to the opposition and the government—whichever side of the chamber you
happen to be sitting on at the time of the election cycle—fighting over this extremely important issue and blaming each other. We have to get beyond the blame game on this issue of aged care. And, yes, I do blame both of you.

But the substantive elements of this motion are (b) and (c), the first bits of the motion, outlining some of the key information. Section (b) says that the Senate:

... is very concerned that the failure of the Rudd Government to act and address the significant challenges ahead in aged care means that elderly Australians will not be able to get access to affordable, high-quality aged care places in the future; and

(c) calls on the Government to take decisive action forthwith to address the significant challenges facing aged care.

I will acknowledge that there has been some movement by the Rudd government—though some of it I do not think is in the right direction. There has been a focus by this current government, very strongly and unfortunately I think, to hide behind quality assurance and policing. The Greens are not standing here for one minute saying that quality assurance and policing are not important. But it is playing the blame game, taking pot shots at providers rather than looking at the bigger picture: where is aged care going into the future?

But there are some very significant issues now. We know that we have an ageing population in Australia. We also know that that ageing population’s demographic will be very different from that of the past. We have baby boomers starting to move into an ageing population. They will start to need aged care facilities in the not-too-distant future and, for a start, they are expecting a very different approach to aged care from the one we have had in the past. Their sheer numbers, of course, mean that we are going to need significantly more beds, but beds of a very different makeup than we have had in the past.

In my home state of Western Australia, in the last ACAR, half of the licences for beds were not taken up. In other words, the places that were identified by government as needed to accommodate our ageing population were not taken up. The other thing that you would know, if you lived in Western Australia and had an interest in aged care, is that providers are not building the beds that they already have licences for. It is not only in Western Australia that this occurs. I understand there are similar problems in other states.

Not only are providers not taking up the licences that are on offer; in fact, they are not able to build the beds that they have licences for. Not only are they not building them but, when they tell the department and offer the licences back, they are told, ‘No, no. Keep trying. Don’t hand them back yet.’ When you talk to the providers, they say very clearly, ‘We cannot afford to build these. We are not financially viable enough to support these.’

Other providers—big providers—both in the west and in the east of Australia, say to me, ‘We’re going to have facilities closing down unless we get more help.’ Not only is there not enough funding to build beds; there is not enough funding to keep people in care either. Providers have expressed significant concern about the current assessment models and the way that payments are made for both high care and low care. They also express—and this is all contained in our Senate committee report—extreme concern about the balance between low care and high care. They have also raised concerns about community care and funding of community care as well.

So, not only are we not building enough beds for the future—that is not being ade-
quately funded—but we are also not providing enough funding for current care, either high or low care. We are also not providing enough resources for community care packages. That is a significant issue.

In some places we are heading for crisis more quickly than in others, but we are definitely heading towards a crisis for aged care. We are going to end up with a train wreck in aged care unless some dramatic action is taken, unless we get a government which is prepared to develop a vision for the future of aged care in this country. At the moment, we are lacking that vision. It seems to be: hear no, see no and speak no evil about aged care. The government is simply not looking at the facts about aged care.

I also believe that the government is not getting appropriate advice from the department. The department seems to be defending their own patch, not acknowledging there are problems and denying there is a crisis. They have no answer to the fact that beds are not being taken up in Western Australia. They have no answer to that. They have no adequate answer to the question: what happens when beds are handed back? They have no adequate approach for this. They have no adequate approach when people are trying to convert their bed licences to aged-care provision. They have no adequate answer for any of those issues.

All you need to do is to go and talk to both for-profit and not-for-profit providers. You could say, ‘Well, for-profit providers are just worried about making a profit.’ I am sorry, but 65 per cent of our aged care in Australia is provided by not-for-profit providers and they are struggling as well. So you cannot just write this argument off by saying, ‘This is just providers squealing about not being able to make enough money.’ That is simply not the case. It is particularly not the case for not-for-profit providers because they do not have a profit motive. I am not maligning the for-profit providers, by the way. I do not want people running away thinking that. But, if the argument is that providers are simply self-motivated, it is simply not right.

When you talk to care providers, it is clear that they are there to try to provide quality care for the people who use their facilities. I will add that I went through an excellent care facility in Bunbury in my home state not long ago. They provided excellent care. They were very modern and had a very modern facility. I was very impressed. They have been just in the black up until very recently. Now they are going backwards.

When you look at the sort of care and support these people give, it is outrageous that we are letting these services slip back further and further into the red. The people that I went with around the facility knew each patient by name, knew what their issues were and knew what they liked to do during the day. In other words, they knew the patients personally and had a really strong connection. If we could provide that same sort of quality care for everybody that needs it and wants it in Australia, I would be proud of our aged-care services.

Unfortunately, at the moment we are not able to provide that. Unless we get a handle on aged care and start providing a vision for aged care in this country, we are not going to be able to provide that quality care in the future.

There are some very significant issues that we need to be dealing with. Mentioning Bunbury brings me to the issue of regional care. Regional aged care in this country is in an even worse state than is aged care in metropolitan areas around Australia. Many aged-care facilities in regional centres are absolutely struggling. They are in an even worse position than those in our metropolitan areas.
The government has, I will acknowledge, recognised that there is difficulty in providing aged-care facilities in regional areas and they have moved to deal with that through provision of more interest-free loans et cetera. However, they are not being taken up at the rate they need to be taken up at either, so we are seeing an increasing problem in regional areas.

There are also problems when you look at pay disparities and the ability of providers to attract and keep staff. The staff I have met in aged-care facilities go well above and beyond the call of duty. But, as an example from my home state of Western Australia, during the Senate inquiry evidence was given by the Miscellaneous Workers Union that aged-care workers in Perth are paid less than people who work in our zoo. To me, that was pretty shocking. The union raised that as a very stark example of the fact that we are not giving providers sufficient resources to enable them to pay workers and carers in these centres what they are due. People have also expressed concern that they are unable to provide the sort of training which they think is required for those who work in aged-care facilities.

Another issue that was brought up with the Senate committee is the mechanism that determines funding for high care versus low care. The new ACFI model that was brought in was supposed to much more flexible but, from what I have heard from talking to people and from evidence the committee received, it is actually not as flexible as it should be. Again, the evidence you get from the department about what is viable and non viable is different from what the aged-care providers say, and I must admit I get very concerned when I hear the department say, ‘Surveys have been undertaken; it’s nonsense to say that providers are not viable.’ I would think that the providers would know whether they are viable or not and how much it costs to provide a bed and how much it costs to provide care.

Do you know we have not done an assessment of what it takes to provide a bed in an aged-care facility? We have not done that for a long time. Why haven’t we done that? Why aren’t the department and the government able to give the community an understanding of the unit cost of providing a bed in an aged-care facility? That is the sort of information that we need so that we can provide and commit adequate funding to aged care in this country.

The most immediate crisis here is the funding that is provided right now for both high care and low care. A point that was also made to us during the Senate committee inquiry was that the funding available to low care is simply not viable for providing beds. There used to be more of a balance between high care and low care but, because there is not a lot funding now for those in low care, that balance no longer exists.

As I was saying, there is an immediate crisis in funding for people currently in the system and for people coming into the system. The bigger-picture issue is the lack of funding for the provision of beds into the future—not just the distant future but in the next couple of years. There is also the issue of what we want our aged-care sector to look like in the future. That envisioning is not being done, and it is absolutely time that we sat down and did that. In fact, we need to have a community dialogue about what we want our aged-care services to look like into the future; and how we want to age in place, because there has been a big shift to ageing in place. The point was made to us that some people are ageing in place not by choice but because they have to because they cannot get access to an aged-care facility. It is expensive and you cannot find a place anyway, so they are ageing in place. While a lot of people
want to do that and some people might want to start doing that, they are not moving into residential care at a time when they should be because there are no places or because they do not have the resources. So we do need to look at how we facilitate ageing in place into the future and what sort of funding should be made available for that, because we need to make sure the funding matches need, and then we need to look at what sort of funding we should be providing for residential care into the future.

Another point that people raised with us is that people are going to have different expectations of aged care in the future. For example, there is a greater desire now for single bedrooms with an ensuite, but there are a lot of facilities that are not able to provide that. So more resources need to be made available to upgrade facilities and we need to build more facilities that accommodate that. And that gets back to this argument about what is viable and what is not. Honestly, it blows your mind, sitting in Senate committee inquiries and estimates hearings—and I see senators nodding—listening to the department arguing about viability, about what is viable and what is not viable, and ‘this survey says it’s viable’ and ‘this survey says it’s not viable’—

Senator Cormann—Going through semantics and statistics. Lies, damned lies and statistics.

Senator SIEWERT—Yes, exactly: statistics, damned statistics. And you have got the providers saying, ‘Listen, we are just not viable,’ and the department is sitting there going, ‘Well, this survey says you are viable,’ and then arguing about who answered the survey, when they answered it and how many beds they have—how many have got a single-bed facility with an ensuite, how many have got a two-bed facility with an ensuite. It is hiding behind statistics to hide the fact that there is a crisis in aged care and we are just not paying attention to it. We are passing the parcel saying, ‘It’s your fault,’ but one day the music is going to stop and we will have a very significant aged-care crisis. We are heading that way now and we need to plan for the music not to stop. If we do not, at some stage we are going to have a very significant crisis on our hands. We are simply not going to have the beds and we are going to have even longer waiting lists than we have now. Constituents ring me up and say, for example, ‘I’ve been trying to find a place for my mother for nine months.’

Then, when they do find a place, there are other problems. For example, in Perth, some of the older people have been born and raised in Perth, in suburbs close to the city or in the inner city. But, like any city, there are some big distances within Perth, and people may not be able to find a place anywhere close to the city. They have to be miles away—miles away from their family and miles away from the community in which they have grown up or lived, and it is a completely different environment. But people are taking those beds because they cannot find a bed anywhere else, even though they do not like the location. I heard another story which is not from Perth, where the person concerned took a bed in an aged-care facility that they are not entirely happy with; it is not of the quality they hoped they would find for their parent, but they have had to take what they could get. In other words, people do not have choice, and there are long waiting lists so they are taking what they can get. The parent and their relatives are not necessarily happy. People have to travel long distances and those being cared for do not have the support that they need.

That is not the sign of a quality system in Australia. We need to provide high-quality care, where we can pay carers adequately for the work that they do. We need to attract
high-quality carers and staff to these facilities. We need them to be places where people are happy to be and where relatives are happy for their family members to be. We are moving away from that in Australia—unfortunately, in some areas, at a very rapid pace. Bear in mind also that not only does a failing aged-care system impact on the people who are using those facilities; it also impacts on their families. If people cannot get access to good quality aged care and people are ageing in place much longer than is physically good for them, that places an added stress on family members and carers—on their ability to care for that person and to also care for their families. So this has ramifications for the whole of our community.

The sooner we acknowledge that we need to be doing something, the sooner we can start planning a system for the future, instead of continually chasing our tails and handing the parcel to whoever is the decision maker at the time. As I said, somebody is going to get left with a very big mess, because that is where aged care is heading in this country if we do not start doing something. We have already seen facilities close down. Just recently another facility closed down. In the very near future we are going to start to see residential aged-care operators handing back beds and closing down services because they simply cannot afford to run them anymore. That is a very poor state of affairs in Australia.

Unfortunately—and it absolutely depresses me to have to say so—we agree that much more dramatic action needs to be taken to address the significant challenges ahead in aged care. As Senator Cormann’s motion says, there is a very desperate need for the government to act and address the significant challenge ahead in aged care. It does not mean just putting more into quality control—(Time expired)

Senator ADAMS (Western Australia) (4.54 pm)—It gives me pleasure to speak after Senator Siewert. She has given us some very good information. I would like to continue in that vein. I rise today to speak about the mess that Australia’s aged-care sector is in. To highlight that, I would like to inform you of the Aged and Community Services Australia conference which is being held in Perth this weekend. They have named it ‘Get up, stand-up!’ That is the theme of ACSA’s 2009 conference. The conference brochure says:

And who can doubt that it’s time for the aged and community care industry to stand up for their rights and the rights of the people they support? We’ve been knocked from the pillar of a workforce crisis and soaring inflation to the post of the totally inadequate funding regime in a time of global financial meltdown. No wonder the sparks are well and truly flying right now! But, does anybody know and does anybody care? Well, we care and we’re going to show the world what we’re made of!

This Conference is all about rallying, connecting, challenging and asserting—it’s about aged care pride. It’s themed throughout as a “stand up” event in every sense, where the delegates get involved and don’t just sit down and take it.

I wish that organisation well with their conference.

If the Rudd Labor government continues on its present course of poor management of aged care, the growing crisis in the sector will very soon reach breaking point. The government needs to remind itself of its responsibilities and act on them. Aged care is a direct Commonwealth government responsibility. Schools are a state government responsibility, so why is the Australian government spending money on primary schools, plastered with political advertising, and not aged-care facilities? It is because
most people cast their vote in the local school hall and not at the local nursing home.

The extraordinary thing is that the care of senior Australians is being severely compromised by the bad spending decisions of the Rudd government. I would like to touch on that briefly. This past week we have seen the Rudd government try to justify its bad spending decisions and the massive amount of debt it is saddling future generations with. It has tried to distort the seriousness of the situation by saying that many of the major economies are doing the same. The Rudd government is also citing a number of organisations which have supported the spending spree. But how many of those organisations foresaw the financial meltdown? Almost none that I am aware of. There is one that the Rudd government has been as quiet as a mouse about, only one bank to warn of the impending financial meltdown, and that is the Bank for International Settlements—the Reserve Bank of reserve banks. That very same bank has also warned against the stimulus spending, saying it will lead to stagnation, inflation and higher interest.

The Rudd government is not listening to the one bank that foresaw the trouble ahead. But in not reining in its spending, the Rudd government is threatening the care options of millions of senior Australians. That is something that will come back and haunt every single Australian family. Aged care touches most Australian families. Many of our parents and grandparents will spend the final years of their lives in aged care. These people are as important to our community as their children and grandchildren, and the Commonwealth government has a duty of care to give our elderly citizens, who have helped build our nation to what it is today, the very best care in their final years. The government cannot absolve itself of this responsibility and turn its back.

Like most developed countries, our population is ageing as a result of sustained low fertility and increased life expectancy. Over the past two decades, the number of elderly people in Australia increased by 158 per cent compared with a total population growth of 29 per cent over the same period. The Department of Health and Ageing has indicated that within 40 years the number of people aged over 65 will almost triple, from 2.8 million today to around 7.2 million in 2047, or from around 13 per cent of the population today to over 25 per cent. This is a horrifying statistic.

People aged 85 years and over made up 1.5 per cent of Australia’s population in June 2004. This age group is projected to account for around six per cent to eight per cent of the population in 2051 and seven per cent to 10 per cent in 2101. The population aged 85 years and over is projected to experience the highest growth rates of all age groups. We need to be acting on infrastructure requirements in tandem with our ageing population because the problem is not going to go away.

The recent report for Alzheimers Australia by Access Economics projects that the number of Australians living with dementia by 2050 will have quadrupled from 245,400 at present to a staggering 1.13 million people. The first of the baby boomers will be turning 65 in 2010 and by 2020 it is estimated there will be 75,000 baby boomers with dementia. These are horrifying and very sobering statistics that highlight the need to be gearing up, not neglecting, our aged-care sector. Just as we prepared for our retiring Commonwealth superannuants with the Future Fund, so too do we need to prepare aged-care services for the increasing number of our elderly citizens. Treasury projections indicate that in 40 years time government spending needed for aged care will have more than doubled over current expenditure, and the aged-care budgets will be higher than the
chambers for defence or education. These figures must be taken seriously by the current governments as we are rapidly falling behind the eight ball. The disgrace of the situation is that it is our older citizens who suffer directly as a consequence.

The infrastructure costs required to build and service new aged-care bed licences far outweigh the funds that are available. Senator Siewert, before me, described what those infrastructure areas were—that people nowadays would prefer to have a single-bed unit with their ensuite rather than share. This is just what the baby boomers will expect; they will not want to go into four-bed wards or two-bed wards with shared facilities. Unless this is immediately addressed there will continue to be no incentive for aged-care providers to expand their services. These providers are having great difficulty existing as they are now and, what is more, a substantial number are now going backwards in this industry that has become unsustainable in its present form. Approximately 45 per cent of residential aged-care facilities in Australia reported a loss over the past two years, and this is direct evidence of a currently unsustainable industry. The places which are being allocated are not being adequately funded. Not only do aged-care providers not have the capital to expand facilities to meet the number of bed licences issued but, in many of the instances where they do have some construction funds, they cannot get the additional finance required because banks are stipulating that there is no return—the business case is just not there.

The cost of constructing new accommodation far outweighs the funding that is being made available. Last October, the Bethanie Group in Western Australia handed back licences for 110 beds. Each bed would have cost approximately $180,000 to create plus $65,000 to run. However, the funding available was a one-off $109,000, and $41,000 per year to maintain. A recent report by Access Economics estimates that a capital cost of $42.32 per resident per day is needed to contribute to the construction and maintenance of new or expanded aged-care facilities. This is well above what the Department of Health and Ageing allows to be paid. The government allows only $23.88 for a pensioner or a concessional resident or $26.88 for a non-concessional resident per day to be paid towards accommodation or capital costs. This is an $18.44 shortfall below the $42.32 which is needed, according to Access Economics. At an aged-care facility in the federal seat of Hasluck in Western Australia, the funding they receive falls short of the capital needed to build the 24 new places allocated to them.

Senator Cormann—I wonder whether the local member is standing up for them

Senator ADAMS—I do not know; I have not heard anything from the local member on this particular facility. This provider would need to raise an additional $162,000 per year to service a capital loan. The same residential aged-care provider currently has 118 bed-ready prospective residents’ names on their waiting list. These names are of frail, aged persons in a public hospital, in care awaiting placement facilities and in the community of the south-east metropolitan region of Perth. Most of these people require a high-care place. With construction costs in the vicinity of $250,000 per place, there is no way this aged-care provider can afford to build, as the capital funding comes nowhere near this mark for the 24 places that have been allocated. This example demonstrates why aged-care providers are not applying for new bed licenses, as they are unable to justify the expense of creating them.

The Minister for Health and Ageing will carry on about how many bed places are being made available, but what she fails to tell
you is the number of these places which are not being taken up. Of the 1,208 places made available in Western Australia this year, just 536 places—less than half—have been sought. Of those 536, only 519 places have been allocated. This is just 43 per cent of the bed places offered in WA in the 2008 round. This can be regarded as nothing but an indication that there is a crisis in the aged-care sector, and the Rudd government continues in failing to address the serious shortfall of bed license applications in WA. We heard earlier from Senator Polley, and I can recall an adjournment speech in which she spoke on aged-care issues in Tasmania. Obviously it is happening in her state in exactly the same way. I wonder what she is doing to get the Rudd government to improve the situation.

Based on this hard evidence on the ground that I have described, it is breathtaking that the minister has indicated there will be 4,299 beds on offer to WA in the next two rounds. With the industry rapidly going backwards in WA, it is anyone’s guess who will be applying for all these beds. If these 4,299 places were all allocated, providers in WA would need to build more than 40 new facilities at a cost of $800 million. If the minister thinks that Western Australian providers have that sort of capital, she is away with the fairies. Even if they were able to borrow and service these loans, where will they find and how will they pay for the 4,000 staff needed to run these new facilities?

Since December 2007, approximately 786 allocated bed licenses have been handed back to the Department of Health and Ageing, with 283 of those from WA. The 283 places allocated to WA providers were handed back because the providers could not afford to build them. More places are expected to be surrendered in 2010. Most disturbingly, there is evidence that some providers have begun emptying beds because they cannot afford to operate all of them under current funding levels.

In short, aged care is now an unsustainable industry. There is not enough money to run operations at the level that they should be run at and there is not enough money to build new facilities. Without adequate funding, aged-care providers are not able to pay sufficient rates to attract and retain the skilled staff that are required. The pay rates between the acute- and aged-care sectors has a direct bearing on this. Wages in aged care are on average 20 per cent less than in acute care, and the large amount of paperwork also acts as a disincentive. So, once again, red tape is tying up our frontline services.

Operationally, there is another shortfall of approximately $22 per resident per day in funding received from the government or the resident below what is required to look after a person in aged care. Fees are not indexed to reflect the true CPI, which leaves providers with great difficulty in meeting the costs of wages, food and utilities. They are all increasing costs that exceed income. As a result of the non-viability of the sector, staffing numbers in aged-care facilities are now being cut, and this is having a direct impact on the care that our elderly citizens receive.

The crisis in aged care is not restricted to our cities. It intensifies in our rural and regional areas. Not only is there the difficulty with fewer numbers of aged-care beds in regional areas; there is also the unhappiness and often the trauma for people when they are forced to move away from their lifetime homes and families, friends and communities in order to receive the care they need. Regional and remote communities are unable to obtain the residential aged-care places they require, because no-one can afford to build in these areas where the risks are far too high for providers to contemplate a 60-bed aged-care facility.
The simple fact is that the government is doing nothing to address the capital and operational funding crisis in aged care. Every day that passes without new facilities being built is causing problems to snowball that we will have to face in the future. The government needs to address the capital funding issue immediately to enable providers to build the necessary aged-care places, particularly in high care, where there is no provision for accommodation bonds.

By failing to adequately fund each place that has been allocated, there will continue to be fewer and fewer new residential aged-care places coming on stream. This is going to severely impact the frail aged people who will be looking for a place in three to four years time. Simply allocating more community care packages will not solve this problem—in fact, it partly helps to exacerbate it. At some point, many people will need to make the switch from their family home to an aged-care facility and the rooms will not be there waiting for them. What do we do then? The demand for residential places will continue to grow simply because there is an increasing number of frail aged people and they will need this facility in the later stages of their life. Most of these people will desire to stay in their own homes for as long as they can, but many will need to be admitted to an aged-care facility, particularly if they need 24-hour nursing care, to receive the level of care that cannot be given at home. As we have heard, high-care places are becoming very scarce—low care is when people are being treated at home—and this is certainly becoming a very difficult problem.

The Rudd government must immediately address all of these problems that I have spoken of and commence the required structural reform of the sector. The minister must cease her confrontational approach and start supporting and working with the industry to ensure that the care needs of senior Australians are met. The minister could commence by responding to the recommendations in the Senate Standing Committee on Community Affairs report on residential and community aged care in Australia. As a member of that committee, I am very disappointed that we have not had any response to those recommendations.

All older people in our community should have access to affordable, high-quality aged-care services. The Rudd government should leave the politically motivated resourcing of primary school halls to the state governments and focus its attention on meeting its responsibility of looking after our ageing citizens in a compassionate, proper and adequate way.

Senator MOORE (Queensland) (5.12 pm)—When I saw the notice of motion on aged care in the Red today, I became quite excited. The title referred to challenges in aged care and I thought that this would be a great issue to debate. We would be able to have a responsible discussion about it in this place and look at all the things that we know we should talk about in terms of future aged care in our community. I was drawn to going back to the report of the community affairs committee that you and I were on, Mr Acting Deputy President Humphries, in 2005: the Senate Standing Committee on Community Affairs References report entitled Quality and equity in aged care. I was hopeful that the people in the aged-care sector had looked at the 51 recommendations that came out of that inquiry.

Senator Adams and I worked closely together on that committee, and I was interested in her comments, which were strongly backed up by Senator Barnett, that we were waiting for the Rudd government to respond to the Senate Standing Committee on Finance and Public Administration report of April 2009. Those of us who were on the 2005 committee waited two years and five
months for the then government to respond to that report. I can give a clear commitment that it will not be two years and five months until we have a response from this government on where we are going. However, we need to ensure that we work effectively in what are the significant challenges in aged care in this country.

After my excitement at seeing this notice of motion, and the opportunity it provided to look at the challenges of aged care, I read it through. I got to the words ‘We give notice .. and move that the Senate’ and I thought that it was all going really well. When I got to the first point of the motion, which states, ‘Australia has an ageing population’, I was thrilled to think that we had a point of agreement. We agree on the documented information which has developed through the responsible research models in this country that are looking at what our demographic future is.

You may remember, Mr Acting Deputy President, that in one of our committee inquiries—I am not sure which one—we had evidence from a research body which talked about the coffin-shaped graph, which I felt at the time was perhaps an unfortunate title for the area we were talking about. In a very clear and graphic way, it showed us the demographic position of our Australian population at the moment and into the future. As we were encouraged to by that group, we could see the bulge of birth rate through the middle years and into the future. A number of senators have pointed out—and I think as much as possible we should try to keep to where we can agree—that today we have about three million people in our community who are over 65 years of age. The year 2050 may seem a long way away but, in the research patterns we are looking at, it is not that far. When we look at generational increase, by 2050 the number of over 65-year-olds will have doubled to more than 7.5 million and will be 22.2 per cent of the Australian population, according to the current projections of our health system.

People over 70, given the kind of work we are doing to ensure we stay fit and healthy and increasingly active in the workforce, now number about two million, and that is projected to triple to more than six million by 2050, or 16.9 per cent of the population. Over 85 is a fine age. In Australia we have people living to great ages. Now we have around 400,000 people who have reached the age of 85 or over. By 2050, and this is based on what we know at the moment from our health systems, that is expected to quadruple to 1.6 million people, or 4.6 per cent of the Australian population. It is self-evident that our population is ageing. There are great programs operating in our communities, particularly at the local government level, to encourage people to remain healthy and fit. There would be an expectation, if we have such an ageing population, that we will be needing more effective, more responsible aged-care services. So with the notice of motion, I thought I could agree with the fact that:

Australia has an ageing population—
and I went on to agree with:
which will cause a significant increase in demand for aged care services over the coming decades—
yes, yes—
including aged care facilities.

Yes, we were together, as one, and I thought once again here we are looking at the challenges of aged care. So we created the scenario: we agree that there is an ageing population but not just in Australia. One of the things we need to accept is that through most of the developing world there is an acknowledgement that people will be living longer. The kinds of issues we are discussing in Australia are shared by most of the developing nations. Part of the research and the devel-
development of technology and training packages can be shared internationally. Through some significant work, particularly at centres of excellence in some of the universities in this country, we are sharing knowledge. On that point, I think we can continue to agree. Feeling quite confident, I then moved on to point (ii):

the Federal Government has direct responsibility for the provision of aged care, while the states have responsibility for a range of matters, including the provision of education.

I can be pretty certain that I can agree with most of that as well. We know that aged care is a shared responsibility. It is across governments—but not just across governments, because aged care, as we well know, also depends on the direct involvement of business, industry, community organisations, all of us and, most importantly, family, an element which I know has been picked up in previous discussion but continues to be important in the discussion into the future.

In Australia, we do not have a particularly strong history of extended family care. Some cultures do. In terms of looking after aged people, there has been a revised interest over the last 10 to 15 years in keeping people within their home environment and their family environment. We have seen people making family plans on that basis. So, yes, we can accept that there is a shared responsibility in decisions about aged care. One of the things that we do know now much more than in the past is that there is a strong responsibility for individuals to plan their own futures.

In one of our previous inquiries looking at the focus of social welfare into the future, part of the evidence was that people are now looking more clearly at self-funding their futures. That came up very strongly in the issues of superannuation. So with respect to part (ii) of the notice of motion I thought yes, while there could be discussion around who has responsibility for particular parts, I am doing well. We are agreeing on (i) and (ii), and that is not even to take into account the first point, which is to say that there is a notice of motion—and I agreed with that as well. I was becoming encouraged at this point. Then I went to the opening phrase of (iii):

the Rudd Government—and I felt, having seen who put the notice of motion on the Notice Paper, ‘Hang on, this is where there could start to be a point of difference.’ Indeed, when I read on it said:

has failed to do anything to tackle the capital funding crisis in the aged care sector.

I felt almost immediately a lack of agreement. Whilst I totally feel that we need to look at the challenges in the aged-care sector, anything that starts with ‘failed to do anything’ made me think that this could well be moving from a discussion looking at the challenges of aged care in our community to what Senator Siewert referred to in her contribution as our well-known process of buck-passing and politicisation of the issue. I thought: why do this, when we know as a community, when we know as a parliament, that, in the ordinary processes in this place, there needs to be work done on aged care—no-one denies that—yet we automatically lift the issue for discussion into allegation and buck-passing, bringing in an element of politicisation and taking away from the aspects of where we need to move forward?

There is no doubt that there needs to be changes in our aged care system. No-one denies that. Through the processes of our series of committees on this issue, both within the Senate Standing Committee on Community Affairs and the recent Senate Standing Committee on Finance and Public Administration chaired by Senator Polley, I did a quick calculation that there are over
100 recommendations looking specifically at aged care. There is no element that says that there does not need to be changes.

In fact, the National Health and Hospitals Reform Commission, which is the latest group looking across the board at our whole system in this country, has its own section on increasing choice in aged care. I know that they did enormous work led by Dr Christine Bennett, and I trust that as part of their research process the members of this commission were able to look at some of the work that had been done through the various Senate committees. I think they must have. When you read their 11 recommendations—our previous committees had over 100 recommendations, so I think they were quite restrained when they came up with 11—you see that they are identifying the same kinds of issues that we had done, whether when we as the Labor Party were sitting on the opposition benches and talking about this issue with another government or vice versa. They came up with similar issues:

We recommend that government subsidies for aged care should be more directly linked to people rather than places.

That seems to be one of the core issues about which we are most concerned. I think I have heard a number of contributions this afternoon which are focusing on the issue of places. Ministers of all flavours release media releases when they are talking about the allocation of rounds and how many places are available at different times. I can go back to Google, that marvellous system, and find media releases that go back into the '80s talking about aged care places that are going out. It is a positive time when there is funding and allocation of aged care places, but I have always thought it would be more positive if we tried to link that placement process to individual need and people. The National Health and Hospitals Reform Commission have led here and their No. 1 recommendation is:

We recommend that ... aged care should be more directly linked to people rather than places.

That reflects what we have been saying in our previous ideas. It also goes on about the whole idea of accommodation bonds and alternative options for payment. This was a particularly vexed issue in our recent inquiry. I think it was probably a hotter issue than it had been in previous inquiries in which I have been involved. That is an ongoing discussion. I am surprised, Senator Cormann, that one of the challenges in your dot points here was not on that, given the interest that people put into this process. I think that is one of the things that will continue to be an issue. If you look at the Hansard coverage of our previous inquiry you will see that a lot of time was taken up with people discussing that issue.

We also consistently talk about information sharing. I heard previous speakers talk about the fact that at the time when people are seeking aged care help it is often when they are at their most vulnerable and stressed. The whole process becomes so confusing and challenging. People are not able to make the clearest choices and are often lost, despite the wealth of information support that we have. One thing that the previous government and our current government have agreed on is the need to provide effective support information services through the various care links and other organisations. That has been a positive process. People have been getting more access to support so that when they are faced with making these choices they have more information on which to base their decisions and also more security in the choices. Nonetheless, the health reform process has determined that there needs to be more of that so that we can have more confidence that people know what options are available.
Another concern is that when we talk about aged care there seems to be a presumption that we are only talking about aged care facilities and people going into them, whatever they are called. That is not true and I know that Senator Adams referred to the growing number of principal in-place home care positions that are there. Our government has said on many occasions that we believe it is a very important aspect of aged care and there should be more focus on that.

It is not a contest. It is not a competition between someone going into an aged care facility and someone being able to live independently, with support, in their home. I think we should not be talking about having to make that either/or decision. We should be talking about having a more flexible process with a focus on people, so that people are the centre of the discussion and that they can make effective personal choices across a range of options, and these should be funded effectively.

I would think that we would have a degree of agreement on that as well; certainly on the health reform process which is currently up for community consultation. The document has come out, been presented to the minister and now made public. They say that it is the culmination of 16 months of discussion, debate, consultation, research and deliberation; all those things that we know go on. But the important aspect now is to work with the community to see what recommendations will go to government for decision.

Within that process the issues around aged care must not be forgotten. Amidst all the discussion about health reform I do not believe that the area of aged care has received the amount of consideration and public attention that it deserves. I did a quick look at the media coverage of the health reform package and there was not much mention of aged care at all. So one of the responsibilities we can share and can agree on is that it is part of our job to see that these 11 recommendations around aged care do have consideration and are part of the public debate.

I was feeling okay. I knew that there was a bit of a political motive behind this whole notice of motion, but, disappointed as I was that this was the case, I was working through it. And then I got to dot point 4. I was quite stunned by No. 4. It actually said:

The Rudd government—

It is another dead giveaway when the dot point begins with, ‘The Rudd government ...’. And when it has been put forward by Senator Cormann you have to be careful. That dot point went on to talk about reckless and irresponsible action. I was a bit stunned by that but I thought I had best read ahead to make sure I could do all my preparation and get my research ready.

I found dot point 5 and then I worked past ‘the Rudd government’ again and I got to the verb this time, which also caused me a bit of concern. I got to the verb ‘to waste’ and that made me upset. But then I thought, ‘Great, we’re moving on to what we’ve been getting regularly at question time for the last few days: another attack on Building the Education Revolution program.’ Then I realised—it took me a while because sometimes I have to think more slowly and go through it; it could be my increased age—that this was not a motion that was looking at the challenges of aged care in our community, although it led with that title. Once again it was a way to have a political debate in this place—to restate the philosophical approach that people in this place have to various decisions that have been made by government.

You might realise that I am taking a particular line in this debate, but one thing that truly disappoints me is that, by the nature of the way this motion has been developed, we have a form of contest between money being
granted to schools and education and money being granted to aged care. Whilst we know that there are always debates about various decisions and priorities in government, to have created such a division in this motion is not a progressive debate. There has been a decision by government to focus money on an infrastructure process in education but that is being presented as a waste and it is being contrasted with some way of spending money on infrastructure in aged care. It is, once again, an attempt to have a political argument. So be it; but do not pretend that that is part of a focus on the all-too-real need to look at an effective process in our aged-care sector. That, in itself, is worthy of consideration and is something that we should work on in this place, without creating any kind of false impression that because money is being spent on education it is being wastefully spent there rather than on aged care. We can continue looking at the challenges of aged care. We encourage people to look at the National Health and Hospitals Reform Commission, but do not make it into a simple political argument.

Senator Barnett (Tasmania) (5.33 pm)—It is notable that Senator Moore, in her concluding remarks, mentioned the words ‘waste’ and ‘mismanagement’. In and around the same sentences she referred to the so-called Building the Education Revolution. We have seen evidence this week of over $7 million being expended on signs and the Hon. Julia Gillard memorial plaques! Such waste. This is money that could be expended in the aged-care sector rather than on promoting the government.

In fact, they were caught out with their hands in the cookie jar trying to use this money to gain an extra vote for the Labor Party at the next election. The Australian Electoral Commission said that this federal Labor government is in breach of the Australian Electoral Act. This money should obvi-ously have been used more wisely and more carefully. And one of the areas where it could have been used is in aged care. So waste and mismanagement is a key theme that certainly flowed all this week with respect to the actions of the Rudd Labor government. School after school is being built or redeveloped, including when the parents and friends of the school do not want it. So the waste and mismanagement has been reckless in the extreme.

I very much support Senator Cormann’s motion today. We do have an aging population that is putting pressure on the viability of the aged-care sector—and will be doing so into the future. I have always seen the importance of highlighting the need for quality aged care, the need for access to aged-care services and the need for viability. At the moment we know that the viability of aged-care services is going southward in this country, particularly in Tasmania. That reduced viability will compromise the quality care that is to be provided for our elderly citizens—those in residential aged care, in particular.

Only last week I met with the president of Aged and Community Services Tasmania, Susan Parr, at St Ann’s Homes, in Davey Street, Hobart. I am a former board member of St. Ann’s—of some eight years—so I know a little bit about the topic. Susan Parr and Aged and Community Services Tasmania are not happy pumpkins. They are being prejudiced by the lack of action, the lack of a decisive approach and the lack of funding support from the Rudd Labor government. So let us make clear the concerns that are being put to the Senate—

Senator Polley—That is untrue. It is not what they said on ABC radio.

Senator Barnett—It most certainly is true, Senator Polley. You were waxing lyrical about the concerns you had about the How-
ard government with respect to aged care and I will comment on that very shortly. But I want to make something clear with respect to the waste and mismanagement. We had it exposed this week that $7 million was spent on signs to promote the Labor Party, to grab a Labor vote at the next federal election and to honour the Hon. Julia Gillard.

Then, of course, we had the Grocery Choice debacle, when $13 million of wasted taxpayers’ money was borrowed and expended by the Rudd Labor government to establish this website. And then they closed it down. We are going to find out exactly how much waste has been expended by this Rudd Labor government.

We know that the aged-care industry at the moment is underfunded. We know that it is overregulated. We know that there are increasing demands for services. I want to address some of the points that Senator Polley expressed in the Senate, and respond to them. She said that the Howard government did nothing, so let’s address some of those points and then I will get to some of the specific concerns that I want to highlight here in the Senate.

The Howard coalition government was the first federal government to recognise the need for a dedicated minister for ageing. Surely we can take a bow for that one. In terms of operational aged-care places, there was a 48 per cent increase, from 141,292 places in June 1996, when Labor left office and Howard-Costello moved in, to 208,698 places in December 2006. The coalition invested $5.7 billion in the construction and upgrade of aged-care homes from 1998. There was a huge increase in the number of community care packages, which allow older Australians to remain in their own homes with the support and care they need. We provided enormous support for dementia services across Australia; we made it a national health priority. We established the National Respite for Carers Program. The coalition commissioned the first ever census of the residential aged-care workforce. In terms of attacks on the coalition, that is a short response.

Let me say a few other things in terms of Senator Polley’s comments. I have a letter to the editor from the Launceston Examiner newspaper dated 9 September 2009—which happens to be yesterday—by Dick James, President of the Association of Independent Retirees, Tasmania division. He says:

AGED care in Tasmania is in crisis

Is Senator Polley listening? Are the Labor senators in Tasmania listening? He continues:

Two aged-care homes have closed in the past 12 months because they are no longer financially viable.

Several others are operating with deficit budgets.

An immediate and substantial injection of federal money is desperately required.

Tasmanian aged homes’ staff have appealed to the federal Ageing Minister Justine Elliot but without success to this time.

It is pleasing to note the address delivered by Tasmanian Labor Senator Helen Polley in the Senate on June 23.

Here we are; she is being quoted:

Senator Polley described the immense difficulties facing Tasmanian aged-care providers, and being a member of the Federal Government encouraged all to believe relief from this parlous situation would eventuate.

All Tasmanian members of the Federal Parliament are urged to speak up on this issue.

That is what the coalition is doing this afternoon in supporting this motion and putting it to the Senate and the Australian people that aged-care is in crisis. It is in a parlous situation, Dick James—you are right. Well done
on putting your views in the local newspaper the Examiner.

We have had countless articles on aged-care in Tasmania in recent times. Here is one from the Hobart Mercury from Thursday 6 August:

**Aged-care crisis alarm for nation**

... ... ...

TASMANIA’S crisis in aged care is a dire warning about the future of the sector Australia-wide, industry leaders said yesterday.

Peak aged-care organisations met in Hobart yesterday to launch a plan to lobby for reform.

Why would they be doing this if they were not in crisis, if they were not in need? Guess what—they are lobbying for reform. The Rudd Labor government should get off their high horse and actually listen to their concerns. That is what I was doing last week—I was listening. I met with the president of Aged and Community Services Tasmania. The article goes on:

“Aged-care services in Tasmania are disappearing under an intolerable regulatory burden and inadequate funding,” Aged and Community Services Tasmania chief executive Darren Mathewson said.

That is what the chief executive officer for the organisation in Tassie said. It goes on:

“In the past 12 months alone we have seen two aged-care providers close their facilities and the withdrawal of a secure dementia unit on the North-West Coast.”

The National body’s chief executive Greg Mundy said Tasmania’s woes were indicative of those in all regional areas.

There you go. Please listen. Here is a headline from the Hobart Mercury on 4 June 2009: ‘Expert fears for dementia care’. Here is another one from the Mercury on Wednesday 18 March, many months ago: ‘Campaign to improve aged care’. That article quotes Australian Nursing Federation Tasmanian Branch Secretary Neroli Ellis. We know in the aged-care sector there is a wage shortfall of about 20 per cent compared to the acute care sector. Neroli Ellis, who I know, does a great job for the nursing community in Tasmania. There is another headline, from 21 January: ‘Aged-care crisis spurs call for aid’. You can see the writing on the wall. I just wonder if Labor are listening. Have they been out there talking to the aged-care community?

Let’s look at the facts in terms of residential aged-care bed licences, because they are a key indicator. If bed licences are being allocated and taken up, we know that the sector is viable, that it is a goer, that the industry can grow and meet the needs of an ageing population. Minister Elliot, the Minister for Ageing, has allocated 1,852 residential aged-care bed licences less than what was promised in October 2008—a 25 per cent shortfall in residential aged-care bed licences, right from the start.

What is happening in Tasmania? Of 131 new residential aged-care places made available to Tasmania in the 2008-09 ACAR round, only 89 were taken up—a shortfall of 42. That is not a good sign. That is a very significant indicator. Hello, Tasmanian Labor members of parliament. Please listen. That is on the back of what happened in 2007, when 63 residential aged-care places were applied for and allocated out of 167. That is not a good number. That is a shortfall of 104. Hello, Labor Party members in Tasmania. Please stand up for the viability of aged-care services in Tasmania.

In the last 12 months or so we have had 35 residential aged-care licences handed back. Not only are they not applying; they are actually handing them back. Things are getting worse. Can’t the government face up to the fact that aged-care is in crisis? Please listen. Across the country, 786 have been handed back over the last 12 months or so. This is
pretty serious stuff, and I wonder if they are listening; I really do. The writing is on the wall; surely they see it.

What about community care applications that have been submitted? We have talked about residential aged-care places; let's talk about community care, where we provide support to people in their own homes and communities. In 2008-09—let us have a look at the figures which I have in front of me—in Northern Tasmania there are 14 applications. In 2007-08 there were 11 applications. How many were successful in Northern Tasmania? Two! How many were unsuccessful? Eighty-two per cent were unsuccessful. In North-Western Tasmania seven applied in the first year and six applied in 2007-08, and only three were successful. That is a 50 per cent failure rate. Likewise, in Southern Tasmania, there were 19 applications in 2008-09, and 23 applications in 2007-08. How many of those were successful? Five! That is not a good record. It is a 78 per cent failure rate. Come on, Labor Party members in Tasmania, please wake up!

Why would one of the local aged-care providers, Presbyterian Homes for the Aged, approach me to present a petition in the federal parliament? I wonder why! They are concerned about the viability of their home and the viability for aged-care services across Tasmania. They approached me earlier in the year and they said, 'Please, we have had meetings, we have talked to the local federal member of parliament, but we have not had much success there.' So they wanted me, the local Liberal senator to present a petition to the parliament, and of course I did. I wrote a letter and expressed some of the concerns following the Senate Finance and Public Administration References Committee inquiry into residential and community aged care in Australia, which was handed down on 29 April this year. We will come to the reports and the inaction of government in responding to these concerns. In that letter I said:

Overwhelmingly, those who participated in the Inquiry highlighted the enormous pressures their organisations are under with a large number of providers operating at losses. It is apparent that these losses are becoming increasingly unsustainable and providers are closing their facilities, leaving beds empty and handing back licences.

The evidence is on the table. This is happening. This is factual.

At a time when Australians require more and more aged care services, providers are cutting back on services because of the non viability of the sector.

Doesn’t the Rudd government get it? The Rudd government is in denial about this nonviability. It is not listening. It is certainly not offering solutions, and this a lack of policy direction and forward planning will harm for the future care of older Australians. It is a big concern, not just in Tasmania but across the country. Many people are very worried about it.

What about these reports? There has been report after report, and what has the government done? Let me put this to you. I have the Senate report right here in front of me. There are 31 recommendations in this—this was handed down in April 2009—but not a squeak, not a scintilla, of concern or response from this government. This is a big concern and there needs to be a wake-up call, for and on behalf of the Rudd Labor government, to say action is required.

What else has happened? We have had the National Health and Hospitals Reform Commission report in June 2009. We have had Trends in aged care services: some implications from the Productivity Commission. We have had the Annual review of the regulatory burden: social and economic infrastructure services Productivity Commission interim report, and it goes on. There is a lack of action. Guess what is happening all
the time? The aged-care industry is going south; their viability is becoming more suspect every day, particularly in Tasmania. As Senator Adams indicated, it is also particularly so in Western Australia. That is why we are supporting Senator Cormann’s motion this afternoon. It is very well written and well prepared, and the evidence backs it in every way, shape or form.

We do know that the Rudd government cut funding to aged care in the 2009-10 budget. That was a shameful demonstration of their lack of support for aged-care services. I know that Greg Mundy at Aged and Community Services Australia would be very concerned about that. I also know that the aged-care industry across Australia is likewise concerned. The indexation of the conditional adjustment payment subsidy, CAPS, has been cut. The CAPS remains at 8.75 per cent until 2011-12. This is a death by a thousand cuts. This is what the Rudd Labor government is doing to aged care in Australia. There was $25.8 million lost over four years from discontinuation of the assistive technology and community care program.

Let us be thankful for one thing. We can be thankful for Margaret May MP, our shadow minister for ageing, who has been doing a sterling job. She was in Tasmania earlier this year—

Senator Cormann—And her team.

Senator BARNETT—And her team. I am about to talk about her team. They support the shadow minister for ageing, Margaret May. The Leader of the Opposition, Malcolm Turnbull, has been great. They have recently launched the Engaging with Senior Australians initiative. That initiative is to be commended. It should read, considered and supported by all and sundry across the board. Peter Dutton, the shadow minister for health, and Senator Mathias Cormann, who is sitting a few place away from me, in his capacity as shadow parliamentary secretary are a great team. I know all members on this side of the chamber want to support a more viable aged-care sector so that we have quality aged care and we have access to that quality aged care.

There we have it. I want to say that it is tough now in the aged-care sector. I know the providers, in and around Tasmania, have to be so innovative and creative because they are doing it tough. Providers have just a few dollars and many of them are already operating in the red. I do not know exactly how many as it is hard to know in terms of proportions and percentages, but we do know there is a good proportion who have gone out of business and many are now operating in the red.

Tasmania is decentralised. We have many, many aged-care service providers in rural and regional parts of Tasmania and, I tell you, they are doing it tough. It is very hard for them to make a go of it. What is more, you have an ageing population. Tasmania is one of the oldest states in Australia in terms of population above the age of 65 years. I know South Australia is not far behind, but Tasmania is leading the country in terms of their ageing population. Things are not looking that hopeful for them at the moment.

We hope that, as a result of this motion being put and debated today, and hopefully passed and supported, we can make a difference for older Australians who deserve quality aged-care services across this country. We will do our darnedest to make a difference for older Australians.

Senator CAROL BROWN (Tasmania) (5.52 pm)—Before I start into the substance of my address today I would like to ask a question: where was Senator Barnett when the former Howard government was in government? I would like to remind Senator Barnett that there was a particular piece of
evidence given to the inquiry into residential and community aged care in Launceston—my home state and, indeed, Senator Barnett’s local stomping ground—by the Hon. Dr Frank Madill, Chairman of the Board of Directors, Presbyterian Care Tasmania. I know that Senator Barnett knows the Hon. Dr Frank Madill, and he is probably the person that gave Senator Barnett the petition. The Hon. Dr Frank Madill is a former Liberal member of the Tasmanian House of Assembly. This is what Dr Madill had to say. I will paraphrase, of course, as I would not want to take Dr Madill out of context.

Senator Barnett—We will check the quotes.

Senator CAROL BROWN—You can, Senator Barnett. You do that, because I want to know why you weren’t listening. Why weren’t you listening in the five years that you were part of the Liberal Howard government?

Senator Barnett—We were acting.

Senator CAROL BROWN—You were not acting and you were not listening. I enjoyed the inquiry into residential and community aged care in Australia. It was quite a good inquiry and we had a lot of support across the parties in listening to the providers and the consumers. Dr Madill said under questioning at the Launceston hearing—and I am paraphrasing, not quoting: ‘You are right. This is not an issue that has developed overnight.’ He acknowledged that the issues he was raising were issues when the Howard government was in power. I would like Senator Barnett to come in here when he has time, or when he wants to put out a press release, and say why he was not listening. Why weren’t you listening, Senator Barnett?—through you, Mr Acting Deputy President.

It never ceases to amaze me what can be achieved in two short years. What has been achieved on the other side is a renewed interest in issues that they have ignored for over a decade—that is what has been achieved. In his contribution, Senator Barnett would like to suggest that they did wonderful things for the aged-care sector. But the government know and the people that participated in the inquiry know exactly what the providers were saying, which was that they had been struggling to have the issues heard for years under the Howard government.

We have heard through Senator Moore, who talked about the inquiry that took place in 2005, that there was no response to that inquiry from the Howard government. Of course that is not going to happen now, and even if they were still here they would not have a response. As I said, it never ceases to amaze me what can be achieved by those on the other side when they are in opposition. Time and time again in this place we have had a complete turnaround by those opposite on issues which for years they chose to ignore; and this time it happens to be in relation to the very important issue of aged care. For years the previous government almost completely neglected this vitally important area when they had the chance to do something about it. Now it seems, as they are sitting comfortably on the other side, they have conveniently decided that this is an area worthy of their attention. The government on the other hand has been acutely aware of the need for constructive action in this area for quite some time.

I also would like to take issue with something that Senator Barnett mentioned in his contribution. He talked about going to see Ms Susan Parr at St Ann’s, who is also the President of Aged and Community Services, Tasmania, ACST. He indicated some statements that he attributed to her. Senator Barnett talked about Ms Parr, and of course we will have a look at those statements. The inquiry has handed down its unanimous re-
port and, as I said, it was an inquiry that enjoyed quite a lot of assistance and cooperation in trying to get to the bottom of the issues that the providers wanted to put forward. I am sure Senator Barnett would like to know that since we handed down the report we had arranged, through Senator Polley, for Ms Parr and Mr Darren Mathewson, who is the CEO of ACST, to meet with the minister. Mr Mathewson is on record in an interview with the ABC quite recently indicating that he found the meeting with the minister and the discussion that they had to be very positive. ACST are looking forward to working with the minister and, according to Mr Mathewson, have forwarded a copy of their strategy to the minister. They are the facts.

Senator Barnett’s whole contribution basically was an attempt to rewrite history, and also was probably an attempt to rewrite his own history and his own actions in this regard. The combination of a number of factors, such as increases in life expectancy and social mobility, has ensured that the future of aged care in this country has become an increasingly significant issue. Arguably nowhere else is this more evident than in my home state of Tasmania. Senator Barnett indicated, and I agree with him, that in Tasmania aged care is a very important issue because we have one of the most rapidly ageing populations in Australia. Further, the projected population of Tasmania in 2030 is 562,630 people, with the number of people aged 65—

Debate interrupted.

MINISTERIAL STATEMENTS

Framework for Referenda in Australia

Senator PARRY (Tasmania) (6.01 pm)—by leave—I wish to respond to a statement tabled today by Senator Wong on behalf of the Special Minister of State, Senator Ludwig. I make this statement on behalf of the coalition, and in particular the shadow special minister of state, Senator the Hon. Michael Ronaldson. The coalition will closely watch the deliberations and recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into the machinery of referendums. In particular, the coalition will want to see spending neutrality for public education, or other programs, to ensure equal weight is given to potential ‘yes’ and ‘no’ cases. The coalition is also concerned that the Special Minister of State’s statement in the Senate today could be interpreted as a reflection on the community’s ability to understand the issues involved in previous referendums. The coalition believes that any statement by the government to the effect that only eight referendum proposals have been successful is the result of a defect in the machinery of referendums—as opposed to a clearly expressed community view of proposed constitutional changes—should be subject to rigorous scrutiny. Sensible proposals arising from this inquiry will be supported by the coalition, but we reserve our right and our position until the outcome of the inquiry.

DOCUMENTS

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop)—Order! It being approximately 6.00 pm, the Senate will proceed to the consideration of government documents.

National Preventative Health Taskforce

Debate resumed from 7 September, on motion by Mr Adams:

That the Senate take note of the document.

Senator BARNETT (Tasmania) (6.03 pm)—In taking note of this report, I note that the government were forced to table this report as a result of a motion by Senator Cormann and me. They took too long. Yes, it has now been tabled, but the government re-
response is inadequate. In terms of the government’s response to that report, let us just make it clear there are no action items. It is another review; it is another report with no action for and on behalf of this government. We are waiting. This government made obesity a national health priority. Prior to it being elected, they announced that that promise would be abided by and then they did it, but nothing has happened in terms of action. That is what we are concerned about. This report has a lot of very interesting recommendations in it. Now that it is out there and it has been made available to us, we will certainly consider it carefully. Of course the government have had it since 30 June, and their response is effectively a nil response to date. We will consider that and review it in due course.

Debate (on motion by Senator Ryan) adjourned.

Australian Radiation Protection and Nuclear Safety Agency

Debate resumed from 8 September, on motion by Senator Parry:

That the Senate take note of the document.

Senator IAN MACDONALD (Queensland) (6.05 pm)—This document comes to the Senate at a time when the Senate has been debating the Uranium Royalty (Northern Territory) Bill 2008, a bill that was supported by all parties in the Senate and was duly passed yesterday. In the course of discussion on that bill, I sought some advice from the Labor Party on just what their position was on uranium, noting that Mr Garrett—the man who in a former life made his reputation and his fortune out of opposing uranium and singing songs about opposing uranium—curiously, and perhaps ironically, was the minister who signed off on another new uranium mine in Australia. I sought some advice as an interested citizen of Australia, but also as a senator representing the state of Queensland, on just what the ALP policy was on uranium. The parliamentary secretary at the table was kind enough to say that the policy was clear, even though I had quoted from Mr Albanese’s website, which indicated that the three mines policy was alive and well. I was told by the parliamentary secretary that that was not the case, which surprised me considering the Minister for Infrastructure, Transport, Regional Development and Local Government still had it on his website as of yesterday morning. I suspect it is probably gone by now.

The parliamentary secretary said she would get the minister responsible, Mr Ferguson, to send me a copy of the ALP’s uranium policy, which he dutifully did. I appreciate that and thank Mr Ferguson for that. It is an interesting document in that it does not say much about uranium policy; it says that if you do mine uranium it has to be done in the safest way. Well, hello! Why would any country in the world not want to do safely anything, particularly when it comes to mining uranium.

What I was really concerned about, what I really wanted to know, was what the ALP policy was in Queensland, because my state of Queensland is a state that has vast uranium resources and the ability to create jobs for Queenslanders is quite serious. We tried to look it up on the website, but when we came to the tab that said ‘Uranium Policy’ and clicked that it says: you are not eligible because you are not a member of the ALP. Queensland is led by the Australian Labor Party, and you would appreciate that Mr Rudd and Mr Swan are both members of that party. Federally they seem to approve of uranium mining, but in Queensland my understanding of the Premier is that she does not support uranium mining. I wonder how Mr Rudd and Premier Bligh get on, both being members of the Queensland division of the Australian Labor Party, when it comes to
uranium. I am quite aware that the Labor member for Mount Isa, Betty Kiernan, is very much in favour of mining uranium, but Anna Bligh, the Premier, from the south-east corner of the state, who is very reliant on Green preferences, seems to be opposed to it. Senators and listeners might excuse me for being confused on just what ALP policy is on uranium.

The report of the Australian Radiation Protection and Nuclear Safety Agency also highlights some of the inconsistencies you get from nuclear use, as we do in medical areas quite dramatically these days. A lot of Queensland hospitals use the benefits of uranium and nuclear work. When it comes to storing the waste, we seem to again get a very confused message from the Australian Labor Party. The report that we are dealing with today in government documents gives a lot of good information about radiation protection and nuclear safety and brings to light where our current government, the Queensland government and other state governments stand on these very important issues.

Question agreed to.

**COMMITTEES**

**Consideration**

The following orders of the day relating to committee reports and government responses were considered:


Foreign Affairs, Defence and Trade Legislation Committee—Fourth progress report: Reforms to Australia’s military justice system—Government response. Motion of Senator Parry to take note of document agreed to.

Rural and Regional Affairs and Transport References Committee—Report—Investment of Commonwealth and state funds in public passenger transport infrastructure and services. Motion of Senator Parry to take note of document agreed to.

Agricultural and Related Industries—Select Committee—Final report—Pricing and supply arrangements in the Australian and global fertiliser market. Motion of the chair of the committee (Senator Heffernan) to take note of report agreed to.

Procedure—Standing Committee—Third report of 2009—Committee proceedings and public interest immunity claims: order of the Senate of 13 May 2009; Senators caring for an infant: standing order 175. Motion of Senator O’Brien to take note of report agreed to.

**AUDITOR-GENERAL’S REPORTS**

**Audit Report No. 2 of 2009-01**

Debate resumed from 7 September, on motion by Senator Ronaldson:

That the Senate take note of the document.
Senator RYAN (Victoria) (6.12 pm)—

Communications campaigns are an important part of the interaction between government and citizens. Maybe if our government and this Commonwealth were not quite as large and intrusive, this would not be quite as important, but that is a much larger subject that I do not plan to address this evening.

When used appropriately, such campaigns serve an important purpose: they communicate rights, opportunities and obligations to all Australians. Under the previous, coalition government, Mr Rudd and the Labor Party continually made opportunistic attacks on government information campaigns, but for the first time the Australian National Audit Office has examined what Labor have done and their behaviour. They have found that Labor have come up wanting, which is no surprise to many of us who are familiar with their behaviour at the state level. Let’s put aside for the moment the grave concerns that the Auditor-General expressed early last year about having to be involved in the approval process of advertising campaigns. Let’s also put aside the fact that such involvement could severely compromise the independence of the Audit Office.

According to the latest Audit Office report, the Rudd Labor government’s new advertising regime contains a number of serious faults. Again—no surprise to all of us—Labor is failing to live up to its pre-election promises and commitments. Despite spending $87 million on a media buy in 2008, the ANAO points out that there are still government agencies whose processes are not meeting the requirements of the advertising guidelines. Moreover, the ANAO considers that Labor’s guidelines themselves need an overhaul. There are a number of serious deficiencies that require correction.

The Audit Office says that the Rudd Labor government must make greater use of research to inform the communication of strategy. Put simply, firstly, the Rudd Labor government is launching advertising campaigns that have no clear rationale and, by implication, are political feel-good campaigns. Secondly, the Audit Office says that the Rudd Labor government must provide greater clarity on the requirements of the cost-benefit analysis used in these advertising campaigns. In other words, Labor is spending too much money on the wrong sorts of campaigns and advertising.

The Audit Office says that the Rudd Labor government must also provide greater clarity around the boundary between business-as-usual communication activities and those activities which are subject to the guidelines. It says that the government must also provide greater clarity on which advertising activities fall within the campaign advertising definition. Taken together, these recommendations clearly relate to the rort that was exposed when my colleague Senator Ronaldson questioned the ANAO about Labor’s stimulus package website. As the Senate will recall, the website cost millions but was never cleared by the ANAO because it was outside these guidelines. Eventually, officials in the Department of the Prime Minister and Cabinet temporarily closed down the website when it was pointed out that it contained party-political material. We have again seen this week the Rudd government’s signs in schools scandal. This is another example of slipping political advertising through a loophole.

Finally, the ANAO also recommended that agencies present campaign documentation on their own websites. This final failing is worthy of greater comments, because it goes to the lengths to which the Rudd Labor government has divorced itself from the principles it announced before the last election. At Senate estimates, officials were asked about which firms were winning advertising ten-
ders. Previously, all such information had been available through the Department of the Prime Minister and Cabinet. Labor, however, refused to answer this question, stating that the process had now been devolved to individual agencies. In response, my colleague Senator Ronaldson put a question on notice to each individual agency.

Bizarrely, and this shows just how arrogant the Rudd Labor government has become, the Special Minister for State wrote back purporting to answer on a whole-of-government basis, outlining that the information was available in their annual advertising report. But this is simply not true. The Rudd Labor government’s new advertising report is a wasteful waste of paper, delivering less real information about government advertising than was disclosed under the previous government. The report, in its 32 pages, has just one page of useful information: the cost of the overall media buy. The rest of the report is filler that is available on relevant departmental websites.

What is much more important is what is missing from this report. Who were the applicant agencies? Who were the successful agencies? How much were they paid? What amount was spent respectively on advertising, research and public relations? Which campaigns had to be changed during their development because they were outside the advertising guidelines? None of this is in the report. Yet all of this information was available under the previous government and was brought to the public’s attention three or four times every year during the Senate estimates process. Now that Labor has abolished the central agency for government advertising, this vital information has been hidden in the bureaucracies of individual departments. But this is again no surprise. Using the veil of independence and transparency of an outside agency, this report does not conceal what truly lies beneath: more complexity and less information about government advertising programs.

Overall, the ANAO report is a damning indictment of how the Rudd Labor government has been abusing the system over the past year and since it took office. Even the ANAO now admits that the Rudd Labor government has put spin over substance in its advertising campaigns and it is time for the Rudd government to act to fix these problems and fix them now.

Question agreed to.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop)—Order! There being no further consideration of committee reports, government responses and Auditor-General’s reports, I propose the question:

That the Senate do now adjourn.

Relay for Life 2009

Senator FURNER (Queensland) (6.15 pm)—Tonight I rise to acknowledge the hard work and commitment of the Cancer Council and to discuss my involvement as part of the Queensland Senators Team in the Cancer Council’s Brisbane Relay for Life. Every year the Cancer Council puts on the Brisbane Relay for Life, one of the many held around Australia, to raise money for cancer research, provide support for those with cancer and educate the community about prevention. But the Relay for Life is not just a fundraiser for the Cancer Council. It enables people from all walks of life to come together for 18 hours for one common cause: to celebrate cancer survivors, remember loved ones who we have lost and to fight back against the disease which has affected each and every one of us in some way.

According to the Cancer Council an estimated 111,000 new cases of cancer will be diagnosed in 2009; one in two men and one in three women will be diagnosed with can-
cer before the age of 85; cancer is a leading cause of death in Australia, with more than 42,000 expected to die from cancer in 2009; almost 12,000 more people die each year from cancer than 30 years ago; more than 60 percent of cancer patients will survive more than five years after being diagnosed; the survival rates for many common cancer have increased by more than 30 percent in the past two decades; the most common cancers in Australia, excluding non-melanoma skin cancers, are prostate, bowel, breast, melanoma and lung cancers; each year 434,000 people are treated for non-melanoma skin cancer, which is the most common but least life threatening; cancer costs $3.8 billion in direct health system costs; and $378 million was spent on cancer research in 2000-01, 22 per cent of all health research expenditure in Australia.

These numbers are alarming, which is why I decided to embark on this journey with the Cancer Council by participating in the Relay for Life, and have done so over several years now. I have participated in the Pine Rivers Relay for Life three times before as co-captain and in two years won the award for highest fundraiser, raising over $30,000. I have also taken part in the Redcliffe Relay for Life and will be joining the member for Petrie, Yvette D’Ath’s, Petrie Possums on 19 September, along with a team in the Pine Rivers 2009 relay on 31 October.

Participating in these events is important to me. It is not only for a good cause but a chance as a community to provide support and aid to those who need it most. I am sure everyone has been touched by cancer in some way, whether it was your mum, your dad, your brother, your sister or even your child. Cancer does not discriminate, which is why it is important that we support events like Relay for Life to raise much-needed funds for non-government organisations like the Cancer Council to find a cure for a disease which can affect anyone at any age.

Together with fellow Queensland Senator Claire Moore, Abdul Salam Obeid, Wendy Cooke, Russell Vieritz, Christine Stubbs, David Doolan, Abdul Kadir Obeid, Stacey Furner, John Hamze, Annalese Vieritz, Carol Cooke, and John, Carol’s partner, we formed the Queensland Senators Team and participate in the Brisbane Relay for Life held at Mount Gravatt showgrounds from 3.00 pm on Saturday 22 August to 9.00 am on Sunday 23 August. The idea of the event is to have at least one carrying around the team baton for the entire 18 hours. Each team member took turns with a half hour shift, and I thank those who did the graveyard shifts in the early hours of the morning. The event kicked off at 3.00 pm on the Saturday with an opening ceremony and a chance for survivors and carers, wearing sashes, to do a walk of solidarity in the fight against this disease which affects so many Australians. At 6.00 pm there was a candlelight ceremony, where every team member was given a paper bag to decorate. Some people put the names of loved ones who they had lost to cancer on them. After a moving ceremony, a candle was put inside each bag and lit and all the soft lights at the showground were turned off so all you could see were soft lights coming from within the bags.

The following morning was the closing ceremony, where the story of a young woman of just 22 suffering from cancer was played to the crowd. The young lady was diagnosed with bowel cancer and had undergone chemotherapy only to find that it had spread to more parts of her body. But she has not given up and remains optimistic that she will pull through this disease, which has affected her so young. It is stories like this that make you realise that no one is exempt from cancer. As well as the ceremonies, the Cancer Council provided entertainment to get the
500-plus participants going throughout the night, including two movie screenings from midnight for the kids.

This year’s Relay for Life also had a different spin from previous years. Aside from raising money leading up to the event, each of the 50 or so participating teams had to organise a fundraising activity at their tent site. There were cake stalls, shoulder rubs, face painting, raffles, chance games and Smurf muffins to name just a few. Additionally, the Queensland Senators Team had a game called ‘Put money where your mouth is’, where participants got to throw coins through a hole cut out of the mouth of one of my corflutes. The game was a success, with many eager passers-by having a go throwing a coin at me.

The event was an overall success and I would like to thank all my fellow team members for all the hard work they put in by raising funds and helping to set up on Saturday afternoon and pack up on Sunday morning. I would also like to say a big thank you to all our sponsors and those who made a contribution either online or by post to the Queensland Senators Team, including Colgate Palmolive; Kerry Ingredients; Campbells Cash and Carry; ITW Proline; Berri; Bidvest; Metcash—IGA Distribution; Pizza Hut, Holland Park; McDonalds, Carina Heights; Mansfield State High School; the Australian Services Union; Christine Flage; the member for Deakin, Mike Symon; Senator Farrell; Senator Sterle; Senator Bilyk; Senator Hurley; the member for Lindsay, David Bradbury; the member for Blair, Shayne Neumann; and Queensland state member for Murrumba, Dean Wells.

In total the Queensland Senators Team raised $4,764.70 to contribute to the Brisbane Relay for Life 2009 event, which continues to climb and is now over $92,000. I would like to give a big thank you to those who donated to my team members. Your support is greatly appreciated.

**Child Protection**

**Senator WORTLEY** (South Australia) (6.24 pm)—I rise to speak on a subject of extreme importance: that of keeping our children safe. As we have heard already in this chamber, this is National Child Protection Week and Tuesday was National White Balloon Day, which aims to raise awareness in the specific area of child sexual assault.

It may seem that every week of the year recognises, remembers or raises awareness of some cause or other, each with its own ribbons, badges, wristbands, logos and slogans. This cause, however, is one that attracts broad-ranging support across the political divide. Our own children; the children of our families, friends, neighbours, colleagues and acquaintances—our nation’s children and the children of the world—should all have the inalienable right of growing up in a safe, loving and caring environment.

The National Association for the Prevention of Child Abuse and Neglect—known as NAPCAN—tells us that in the past year more than 30,000 Australian children were found to have been abused or neglected. This independent charitable body goes on to say that over the same time frame, ‘hundreds of children died, thousands were seriously injured and tens of thousands of children were physically, psychologically and emotionally damaged’, and these numbers are growing every year. They said:

... the long-term, personal, social and economic costs of child abuse and neglect are immense.

Accounts of child neglect and abuse cases rightly shock, anger and sadden us. In the face of this issue, many people feel helpless; the question often posed being: but what can I do? The safety of children is everyone’s business, everyone’s responsibility—that of
politicians, businesspeople, community groups, the media and of course families and schools. Even as individuals there are things we can do. I am pleased to be among the senators and members from across both sides of chambers who stand alongside NAPCAN as members of Parliamentarians Against Child Abuse and Neglect, or PACAN.

NAPCAN advocates for the prevention of child abuse and neglect before it starts. The organisation is currently: working directly with children and young people to strengthen their protective behaviours and to build their resilience and life skills; assisting at-risk parents through face-to-face programs and, via an extensive network of professionals and practitioners, providing practical support and guidance; working in local communities, strengthening social connectedness and building the support and resources available to families and children; raising public awareness of child abuse and neglect and engaging the whole community in prevention; and facilitating the sharing of knowledge and expertise and the promotion of best practice.

One practical measure each of us—not just members of PACAN—can take today is to complete a simple online survey launched this week by NAPCAN. Developed through collaboration with six of Australia’s top social researchers, this survey is part of a community engagement strategy funded by the federal government under its COAG endorsed National Framework for Protecting Australia’s Children. The campaign theme is: there are many walls in our society that hide child abuse—physical walls and walls of fear, ignorance and disinterest. These walls protect child abuse, not children. The survey aims to uncover abuse and stop it from happening. Businesses, community groups, unions and government departments have committed to completing the survey and it is hoped it will become the largest-ever community study undertaken in Australia. This survey is a major tool in an effort to gain a greater insight into child abuse and neglect and to develop effective strategies to prevent it. It went live at www.preventingchildabuse.com.au this week and will be available until the end of Children’s Week, on Sunday, 1 November 2009. It looks at community attitudes on the safety and wellbeing of children and I commend it to you.

Another group working in this area whose efforts I will highlight tonight is Bravehearts. Since being founded in 1997, this counselling and advocacy body has worked with thousands of Australian children and their families. Its members are abuse survivors and their parents, friends and partners, as well as other community members committed to wiping out child sexual abuse. It aims to:

... ‘break the silence’ on child sexual abuse, provide healing and support, engender child sexual assault prevention and protection strategies, advocate for understanding and promote increased education and research.’

The work of Bravehearts in the community includes: counselling; advocacy and support; educational programs and products including CD-ROMs, booklets and information packs; training workshops; research, policy development and lobbying; the online information forum Respect MySpace; and the White Balloon awareness campaign. Its website, www.bravehearts.org.au, contains valuable information for parents and carers of children, including indicators and effects of child sexual assault, parenting tips, how to respond to cases of abuse, online safety and much more.

White Balloon Day, which was recognised on Tuesday this week, originated in Brisbane during Child Protection Week in September 1997. Founded by Hetty Johnston, it was
created as a result of the revelation that a formerly much-loved member of her family was a paedophile with a 40-year reign of terror. It was a brave seven-year-old child who finally brought four decades of abuse out into the open. Backed by her family, Hetty broke the silence. Silence has for years been the friend and protector of the abuser, while children have remained vulnerable and, often, without a voice. The humble white balloon was chosen as the symbol to spotlight child sexual abuse due to its dramatic and effective presence a year earlier at an emotional public gathering in Belgium. On this occasion, 300,000 people used white balloons and flowers to demonstrate their sympathy and support for the parents of young girls murdered or missing at the hands of a convicted and subsequently released paedophile.

White Balloon Day is now a yearly national event run by Bravehearts and supported across many sectors of the community. The problem—the tragedy—of child abuse is a weighty one. It can prove a paralysing weight on young lives. But it is a weight we can lift from young shoulders together if only we talk about this issue, raising awareness as we go, if only we take the trouble to educate ourselves with the resources available, if only we keep our eyes and ears open, listening to the children we have contact with, if only we support those taking practical steps to eliminate child abuse and neglect, if only we demonstrate that we care.

I commend to you the NAPCAN survey and the resources on the Bravehearts website. I sincerely hope that, by working together as a community, we can make a difference to the lives of the children of yesterday, today and tomorrow.

National Police Remembrance Day

Senator PARRY (Tasmania) (8.33 pm)—
I wish to acknowledge the dangerous and difficult role of police officers in society. I particularly wish to acknowledge it this month because National Police Remembrance Day is held every year on 29 September to remember all police officers who have died on active service in the line of duty. It is quite a poignant reminder that on Monday this week in my home state of Tasmania a police officer was stabbed whilst attending a disturbance. He was taken to ICU, where he is recovering from his wounds. Acting Sergeant Scott Brierley, the police officer concerned, said that he was ‘lucky to be alive’ and that his ‘injuries could have been a lot worse’. Being stabbed in the back and having two punctured lungs is a serious injury indeed.

I think it is fitting for us as legislators to consider the role and plight of police officers around the country. We should also make sure that the penalties we legislate are absolutely spot on when it comes to deterring violence against police officers in the line of duty, who are actively protecting us and our society. There should be no room for leniency when members of the public commit deliberate acts of violence against police officers.

We should also consider—and I know police jurisdictions do—arming and equipping our police officers with the best and most modern equipment and tools available to pursue their jobs and undertake their duties. I know there is some debate in a number of communities about the use of taser weapons and the like; all I would say is that all jurisdictions should look at the best equipment—to be used in the most appropriate manner—to assist police officers going about their duties. If that means that some equipment inflicts injury on members of the public who want to attack police officers, I think that is a fitting response as a great deterrent measure.
I urge all Australians to spare a thought during this month, and especially on National Police Remembrance Day on 29 September, for those police officers throughout this country and the world who have given their lives protecting their communities and their societies. Having a police remembrance day is a very fitting thing—I believe it is the 11th anniversary this year—and I hope it continues into the future and that it is well supported by the public.

Senate adjourned at 6.35 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

Australian Bureau of Statistics Act—Proposals Nos—
8 of 2009—Electricity Generators Survey of Water Use.
Lands Acquisition Act—Statement describing property acquired by agreement for specified public purposes under section 125.

Indexed Lists of Departmental and Agency

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2009—Statements of compliance—
Environment, Water, Heritage and the Arts portfolio agencies [2].
Resources, Energy and Tourism portfolio agencies.

Departmental and Agency Contracts

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended:

Departmental and agency contracts for 2008-09—Letters of advice—
Immigration and Citizenship portfolio agencies.
Treasury portfolio agencies.
The following answers to questions were circulated:

Broadband, Communications and the Digital Economy: Consultants
(Question No. 1886)

Senator Barnett asked the Minister for Broadband, Communications and the Digital Economy, upon notice, on 2 July 2009:

(1) (a) Since November 2007, what is the total number of: (i) completed, and (ii) ongoing, consultancies in the portfolio/agency; and (b) for each consultancy: (i) who is the consultant, (ii) what is the subject matter, (iii) what are the terms of reference, (iv) what is its duration, (v) what will it cost, and (vi) what is the method of procurement (i.e. open tender, direct source, etc.)

(2) Can copies be provided of all the completed consultancies?

(3) (a) How many consultancies are planned or budgeted for (i) 2009, and (ii) 2010; (b) have these been published in the Annual Procurement Plan on the AusTender website; if not, why not; and (c) In each case, what is the: (i) subject matter, (ii) duration, (iii) cost, (iv) method of procurement, and (v) name of the consultant if known

Senator Conroy—The answer to the honourable senator’s question is as follows:

(1) All agencies subject to the Financial Management and Accountability Act 1997 are required to report procurement contracts awarded where the contract value is $10,000 or more on AusTender, the government’s tender and procurement reporting system. From 3 September 2007 departments and agencies have been required to include on AusTender details of those contracts which are consultancies and the reason for the consultancy. The information sought by the honourable member in relation to DBCDE consultancies valued at $10,000 or more is available on the AusTender website (www.tenders.gov.au). Please note that departments have six weeks to report procurement contracts on AusTender.

Further details will be available in the Department’s annual report, which is due to be published in October 2009.

While AusTender and the Annual Report contain details of contracts valued at $10,000 or more, it is considered to be an unreasonable diversion of resources for the Department to provide details of consultancies valued at less than $10,000.

(2) Details of consultancies over the value of $10,000 can be obtained from the AusTender website.

(3) The Department has prepared its Annual Procurement Plan. This plan identifies 31 expected contract opportunities for the next 12 months. This plan was developed on the best information available at the time and is subject to change. The Annual Procurement Plan has been published on AusTender.

Defence: Media Training
(Question No 2000 and 2029)

Senator Abetz asked the Minister for Defence, upon notice, on 21 July 2009:

(1) Has the Minister undertaken any media training since 24 November 2007; if so: (a) when; (b) who was the provider; and (c) what was the total cost.

(2) Have any of the Minister’s staff undertaken any media training since 24 November 2007; if so: (a) who, including their Members of Parliament (Staff) Act 1984 classification; (b) when; (c) who was the provider; and (d) what was the total cost.
Senator Faulkner—The answer to the honourable senator’s question is as follows:

(1) and (2) No.

Innovation, Industry, Science and Research: Media Training
(Question No. 2008)

Senator Abetz asked the Minister for Innovation, Industry, Science and Research, upon notice, on 21 July 2009:

(1) Has the Minister undertaken any media training since 24 November 2007; if so: (a) when; (b) who was the provider; and (c) what was the total cost.

(2) Have any of the Minister’s staff undertaken any media training since 24 November 2007; if so: (a) who, including their Members of Parliament (Staff) Act 1984 classification; (b) when; (c) who was the provider; and (d) what was the total cost.

Senator Carr—The answer to the honourable senator’s question is as follows:

No one from my office or myself have undertaken any media training since 24 November 2007.

Veterans’ Affairs: Media Training
(Question No. 2018)

Senator Abetz asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 21 July 2009:

(1) Has the Minister undertaken any media training since 24 November 2007; if so: (a) when; (b) who was the provider; and (c) what was the total cost.

(2) Have any of the Minister’s staff undertaken any media training since 24 November 2007; if so: (a) who, including their Members of Parliament (Staff) Act 1984 classification; (b) when; (c) who was the provider; and (d) what was the total cost.

Senator Faulkner—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

(1) No.

(2) No.

Small Business, Independent Contractors and the Service Economy: Media Training
(Question No. 2024)

Senator Abetz asked the Minister representing the Minister for Small Business, Independent Contractors and the Service Economy, upon notice, on 21 July 2009:

(1) Has the Minister undertaken any media training since 24 November 2007; if so: (a) when; (b) who was the provider; and (c) what was the total cost.

(2) Have any of the Minister’s staff undertaken any media training since 24 November 2007; if so: (a) who, including their Members of Parliament (Staff) Act 1984 classification; (b) when; (c) who was the provider; and (d) what was the total cost.

Senator Carr—The Minister for Small Business, Independent Contractors and the Service Economy has provided the following answer to the honourable senator’s question:

No one from my office or myself have undertaken any media training since 24 November 2007.
Liquefied Petroleum Gas Vehicle Conversion Scheme
(Question No. 2031)

Senator Abetz asked the Minister for Innovation, Industry, Science and Research, upon notice, on 21 July 2009:

With reference to the LPG [Liquefied Petroleum Gas] Vehicle Scheme in relation to the conversion of a new, used, petrol or diesel motor vehicle to LPG:

(1) For each financial year from 2006-07 to 2008-09, what was the total:
   (a) number of conversions; (b) cost of these conversions; (c) number of new car conversions; (d) number of used car conversions; (e) number of conversions by state; (f) cost of these conversions by state; (g) number of new car conversions by state; and (h) number of used car conversions by state.

(2) How many new car conversions were funded between 10 November 2008 and 30 June 2009.

(3) How much has been expended on the scheme in total since its inception.

(4) What was the original total budget of the scheme from the 2006-07 financial year until the 2013-14 financial year.

(5) For each financial year from 2009-10 to 2013-14, what is the current remaining budget for the scheme.

Senator Carr—The answer to the honourable senator’s question is as follows:

(1) (a) The number of conversions for which a grant has been made under the LPG program (total number of eligible customers) was $59,578 for 2006-07; $81,976 for 2007-08; and $85,065 for 2008-09.

(b) The cost of conversions (grants paid to eligible customers) was $118,583,000 for 2006-07; $163,422,000 for 2007-08; and $169,785,000 for 2008-09.

(c) The number of new car conversions (total number of eligible customers for vehicles fitted with LPG at time of manufacture) was 573 for 2006-07; 530 for 2007-08; and 422 for 2008-09.

(d) The number of used car conversions (total number of eligible customers for registered vehicles converted to LPG) was 59,005 for 2006-07; 81,446 for 2007-08; and 84,643 for 2008-09.

(e) The number of conversions by state for each financial year from 2006-07 to 2008-09 is as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>NT</td>
<td>134</td>
<td>122</td>
<td>122</td>
</tr>
<tr>
<td>NSW / ACT</td>
<td>11,892</td>
<td>16,356</td>
<td>16,046</td>
</tr>
<tr>
<td>VIC</td>
<td>26,669</td>
<td>36,728</td>
<td>41,562</td>
</tr>
<tr>
<td>QLD</td>
<td>5,437</td>
<td>5,992</td>
<td>5,904</td>
</tr>
<tr>
<td>SA</td>
<td>8,423</td>
<td>10,852</td>
<td>10,065</td>
</tr>
<tr>
<td>WA</td>
<td>6,498</td>
<td>10,868</td>
<td>10,335</td>
</tr>
<tr>
<td>TAS</td>
<td>462</td>
<td>718</td>
<td>616</td>
</tr>
<tr>
<td>Undefined</td>
<td>63</td>
<td>340</td>
<td>415</td>
</tr>
<tr>
<td>Total</td>
<td>59,578</td>
<td>81,976</td>
<td>85,065</td>
</tr>
</tbody>
</table>

(f) The cost of conversions by state is as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>NT</td>
<td>$268,000</td>
<td>$244,000</td>
<td>$244,000</td>
</tr>
<tr>
<td>NSW / ACT</td>
<td>$23,666,000</td>
<td>$32,606,000</td>
<td>$32,040,000</td>
</tr>
<tr>
<td>VIC</td>
<td>$53,014,000</td>
<td>$73,137,000</td>
<td>$82,883,000</td>
</tr>
</tbody>
</table>

QUESTIONS ON NOTICE
(g) Data not available.

(h) Data not available.

(2) Grants were provided for 154 new car conversions (vehicles fitted with LPG at time of manufacture) between 10 November 2008 and 30 June 2009.

(3) $467,932,250 in administered funding has been expended on the Scheme since its inception up to 31 July 2009.

(4) The original total administered budget of the scheme from the 2006-07 financial year until the 2013-14 financial year was as follows:

<table>
<thead>
<tr>
<th></th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
</tr>
</thead>
<tbody>
<tr>
<td>QLD</td>
<td>$10,835,000</td>
<td>$11,946,000</td>
<td>$11,794,000</td>
</tr>
<tr>
<td>SA</td>
<td>$16,804,000</td>
<td>$21,685,000</td>
<td>$20,112,000</td>
</tr>
<tr>
<td>WA</td>
<td>$12,947,000</td>
<td>$21,693,000</td>
<td>$20,652,000</td>
</tr>
<tr>
<td>TAS</td>
<td>$923,000</td>
<td>$1,436,000</td>
<td>$1,230,000</td>
</tr>
<tr>
<td>Undefined</td>
<td>$126,000</td>
<td>$675,000</td>
<td>$830,000</td>
</tr>
<tr>
<td>Total</td>
<td>$118,583,000</td>
<td>$163,422,000</td>
<td>$169,785,000</td>
</tr>
</tbody>
</table>

(5) The current remaining administered budget for the Scheme for each financial year from 2009-10 to 2013-14 is as follows:

<table>
<thead>
<tr>
<th></th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$’000</td>
<td>$’000</td>
<td>$’000</td>
<td>$’000</td>
<td>$’000</td>
</tr>
<tr>
<td>Superannuation</td>
<td>140,536</td>
<td>105,340</td>
<td>74,546</td>
<td>50,710</td>
<td>51,837</td>
</tr>
</tbody>
</table>

Superannuation

(Question No. 2052)

Senator Lundy asked the Minister representing the Minister for Finance and Deregulation, upon notice, on 6 August 2009:

Given the large amount of mail and website comments received by senators asking when the report of the review of pension indexation arrangements in Australian Government civilian and military superannuation schemes (the Matthews report) will be released, when will: (a) the report be released; and (b) the government response be made.

Senator Conroy—The Minister for Finance and Deregulation has supplied the following answer to the honourable senator’s question: