INTERNET

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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

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

[The above ministers constitute the cabinet]
RUDD MINISTRY—continued

Minister for Veterans’ Affairs Hon. Alan Griffin MP
Minister for Housing and Minister for the Status of Women Hon. Tanya Plibersek MP
Minister for Home Affairs Hon. Brendan O’Connor MP
Minister for Indigenous Health, Rural and Regional Health and Regional Services Delivery Hon. Warren Snowdon MP
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 Hon. Dr Craig Emerson MP
Assistant Treasurer Senator Hon. Nick Sherry
Minister for Ageing Hon. Justine Elliot MP
Minister for Early Childhood Education, Childcare and Youth and Minister for Sport Hon. Kate Ellis MP
Minister for Defence Personnel, Materiel and Science and Minister Assisting the Minister for Climate Change Hon. Greg Combet AM, MP
Minister for Employment Participation and Minister Assisting the Prime Minister on Government Service Delivery Senator Hon. Mark Arbib
Parliamentary Secretary for Infrastructure, Transport, Regional Development and Local Government Hon. Maxine McKew MP
Parliamentary Secretary for Defence Support and Parliamentary Secretary for Water Hon. Dr Mike Kelly AM, MP
Parliamentary Secretary for Western and Northern Australia Hon. Gary Gray AO, MP
Parliamentary Secretary for Disabilities and Children’s Services and Parliamentary Secretary for Victorian Bushfire Reconstruction Hon. Bill Shorten MP
Parliamentary Secretary for International Development Assistance Hon. Bob McMullan MP
Parliamentary Secretary for Pacific Island Affairs Hon. Duncan Kerr SC, MP
Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Trade Hon. Anthony Byrne MP
Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion Senator Hon. Ursula Stephens
Parliamentary Secretary for Multicultural Affairs and Settlement Services Hon. Laurie Ferguson MP
Parliamentary Secretary for Employment Hon. Jason Clare MP
Parliamentary Secretary for Health Hon. Mark Butler MP
Parliamentary Secretary for Industry and Innovation Hon. Richard Marles MP
SHADOW MINISTRY

Leader of the Opposition  
The Hon. Malcolm Turnbull MP

Shadow Minister for Foreign Affairs and Deputy Leader of the Opposition  
The Hon. Julie Bishop MP

Shadow Minister for Trade, Transport, Regional Development and Local Government and Leader of the Nationals  
The Hon. Warren Truss MP

Shadow Minister for Broadband, Communications and the Digital Economy and Leader of the Opposition in the Senate  
Senator the Hon. Nick Minchin

Shadow Minister for Innovation, Industry, Science and Research and Deputy Leader of the Opposition in the Senate  
Senator the Hon. Eric Abetz

Shadow Treasurer  
The Hon. Joe Hockey MP

Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House  
The Hon. Christopher Pyne MP

Shadow Minister for Infrastructure and COAG and Shadow Minister Assisting the Leader on Emissions Trading Design  
The Hon. Andrew Robb AO, MP

Shadow Minister for Finance, Competition Policy and Deregulation  
Senator the Hon. Helen Coonan

Shadow Minister for Human Services and Deputy Leader of The Nationals  
Senator the Hon. Nigel Scullion

Shadow Minister for Energy and Resources  
The Hon. Ian Macfarlane MP

Shadow Minister for Families, Housing, Community Services and Indigenous Affairs  
The Hon. Tony Abbott MP

Shadow Special Minister of State and Shadow Cabinet Secretary  
Senator the Hon. Michael Ronaldson

Shadow Minister for Climate Change, Environment and Water  
The Hon. Greg Hunt MP

Shadow Minister for Health and Ageing  
The Hon. Peter Dutton MP

Shadow Minister for Defence  
Senator the Hon. David Johnston

Shadow Attorney-General  
Senator the Hon. George Brandis SC

Shadow Minister for Agriculture, Fisheries and Forestry  
The Hon. John Cobb MP

Shadow Minister for Employment and Workplace Relations  
Mr Michael Keenan MP

Shadow Minister for Immigration and Citizenship  
The Hon. Dr Sharman Stone

Shadow Minister for Small Business, Independent Contractors, Tourism and the Arts  
Mr Steven Ciobo

[The above constitute the shadow cabinet]
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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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<td>Shadow Assistant Treasurer</td>
<td>The Hon. Tony Smith MP</td>
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<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</td>
<td>Mr Luke Hartsuyker MP</td>
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<td>Shadow Minister for Housing and Local Government</td>
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<td>Shadow Minister for Ageing</td>
<td>Mrs Margaret May MP</td>
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<td>Shadow Minister for Defence Science and Personnel and Assisting Shadow Minister for</td>
<td>The Hon. Bob Baldwin MP</td>
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<td>Shadow Minister for Veterans’ Affairs</td>
<td>Mrs Louise Markus MP</td>
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<td>Shadow Minister for Early Childhood Education, Childcare, Status of Women and Youth</td>
<td>Mrs Sophie Mirabella MP</td>
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<td>Shadow Minister for Justice and Customs</td>
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<tr>
<td>Shadow Parliamentary Secretary for Northern Australia</td>
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<td>Shadow Parliamentary Secretary for Disabilities, Carers and the Voluntary Sector</td>
<td>Mr Mark Coulton MP</td>
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<td>Senator Mathias Cormann</td>
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<td>Senator the Hon. Brett Mason</td>
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<td>Shadow Parliamentary Secretary for Education</td>
<td>Mr Jason Wood MP</td>
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<td>Senator Concetta Fierravanti-Wells</td>
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The President (Senator the Hon. John Hogg) took the chair at 12.30 pm and read prayers.

BUSINESS

Rearrangement

Senator Wong (South Australia—Minister for Climate Change and Water) (12.31 pm)—I move:

That consideration of government business order of the day no. 1 (Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009) be postponed till after consideration of government business orders of the day no. 2 (Native Title Amendment Bill 2009).

Question agreed to.

NATIVE TITLE AMENDMENT BILL 2009

Second Reading

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

That this bill be now read a second time.

Senator Trood (Queensland) (12.31 pm)—When Senator Brandis spoke on the Native Title Amendment Bill 2009 last week, he made it clear that the coalition support the aims and objectives of this piece of legislation. We well recognise that there is a need to undertake reform of the process by which native title is determined in this country. I know the slow rate of resolution and finalisation of native title claims is a matter of widespread concern in the parliament, certainly on this side of the parliament, so much so that it would appear that existing native title matters for resolution might not be determined until the vicinity of 2035, which is of course a long way down the track. That is really a very unacceptable time frame. Indeed, the average time spans that now seem to be required to complete a determination are in fact themselves a worrying matter. Even for consent claims it is in the vicinity of five years and seven months before there can be a settlement of these claims. If litigation is required for settlement, and that is not unusual, the figure actually moves up to six years and 11 months. So, whether or not these are consent claims and whether or not they are litigated outcomes, it is taking somewhere in the vicinity of five to six years to resolve these matters.

The Howard government introduced quite extensive amendments to the act in 2006 in an effort to try to address this situation. I have to say that in the time that has now passed we really have not had a good opportunity to test the success of those amendments. In some ways the changes before us are perhaps rather premature. Nevertheless, the objective is to try to speed up determinations and in that context we are indeed very supportive. There is a need to do that.

I am not particularly confident that these particular proposals, the amendments that are contained within this bill, are actually going to make material change to the speed with which there is resolution of these matters. It seems to me that the issues which are at the core of resolving native title claims are really matters about the accumulation of evidence and presenting the evidence in a persuasive way. It is not obvious to me that these kinds of interventions of a procedural nature are necessarily going to solve the problems which are besetting the system. In fact, Mr Tony McAvoy, a very experienced barrister in the field of native title matters, in evidence before the Senate Standing Committee on Legal and Constitutional Affairs when it looked at this particular bill, was asked whether or not he thought the reform in these particular amendments was likely to make a significant change to the speed with which these matters were resolved. He answered:
… my personal view is that it will not make any significant change to the speed with which matters are resolved.

So from one who is already in the system the intimations are not very encouraging that we are going to improve the situation. But we ought to be trying and, in the spirit of an effort to try to resolve this problem, the opposition support these amendments.

However, we do have some concerns over the amendments and the direction in which they are moving. In my remarks on this bill I want to draw attention to those concerns that the opposition have about the amendments and the likely impact that they might have on the whole determination matter. I suppose the first and obvious place to begin is the consequences that these amendments might have in relation to the Native Title Tribunal. The tribunal has a central role to play in determinations. The 2007 amendments which were introduced provided to the tribunal a right of appearance before the Federal Court. It seems that the amendments before us are going to withdraw that right of appearance. They are also going to have some widespread consequences in relation to the tribunal’s capacity to be able to provide information to the Federal Court as it takes a larger role in the determination activity. I think the question that we ought to be asking ourselves is whether or not there is something of an ideological agenda here—whether or not the government’s reforms are really less related to a sober and serious assessment of what might be required to try and improve the speed of determinations and ensure that justice is done in relation to those determinations and that, rather, a view has been formed on the government side that the Native Title Tribunal ought to be more marginalised than it is in the process and that these reforms, these amendments, are actually proposed with a view to prosecuting that particular ideological agenda.

The Federal Court will in the end have a very central role to play in the management of determinations, and I will say a bit more about that in a moment. It will also mean that these amendments will marginalise the native tribunal, and I ask myself: to what end? How will that necessarily improve the process by which we reach a determination in many of these cases? It seems to me that the likely consequence will be that the court will be deprived of a very valuable resource in trying to settle these matters with expedition and justice. That is a matter which, I think, the coalition will watch with some interest to see whether or not that is, in fact, the outcome.

As I said, the consequence of these amendments will be that the Federal Court will have a very central role in managing the native title claims which come before it. There is an amendment proposed that subsection 86B of the act, which currently requires that every native title determination application goes before the tribunal for mediation, be removed. Instead, under this bill, the court will be required to send applications for mediation, not necessarily to the tribunal but to ‘an appropriate person or body’, which is the actual phrase contained within the bill. In speaking to this bill the Attorney claimed that it would give the court a central role in managing all native title claims, including deciding who mediates the claim, and I think that that will, indeed, be the consequence of the amendment.

The question that comes to us on this side is: why has the court not actually exercised the power already available to it to take control of native title claims?—which it has been able to do over the last several years. I am a great admirer of the Federal Court and I am a great admirer of the jurisdiction. I think the expedition with which justices of the Federal Court exercise their powers and the speed with which they dispose of their cases
is a standard to be emulated by other courts around the country, certainly by some of the state supreme courts, which have been very tardy in disposing of issues. There is no question, at least in my mind, that the Federal Court will act judiciously in this particular matter. However, I do have a question—and I think the opposition has a question—as to why the court has failed to exercise the opportunities which have already been made available to it through amendments to the act some time ago. Nor is it clear to my mind as to why procedural directions are necessarily going to advance the cause or progress of determinations. It may well be that giving parties particular directions, clear instructions or perhaps intervening more regularly in the whole process will advance the determinations. It will provide speed, it will provide expedition and one hopes it will provide the measure of justice which is required. But it is unclear to me that this will be the consequence by just this process itself.

I dare say that we have all heard stories about some of the legal practitioners involved in this area of law, including, for reasons of their own when acting on behalf of the Indigenous communities involved, that they take a less than diligent approach to some of their clients’ interests. That in itself has been, on the evidence that I have heard from practitioners and those involved in these claims, a problem in determining the outcome of many of these cases. The opposition will be watching to see whether or not these particular reforms, and whether giving the court the opportunity to intervene more actively, are going to deliver the outcome that is expected. It is not clear to me at this juncture that that will be the result.

The third point I wanted to make about the court in general terms is that this amendment would be particularly sorry and regretful if, in fact, one of the consequences of these amendments was that there would be extra resources demanded of the court which the government was unwilling to provide. The registrar of the court, when giving evidence to the committee, assured us that he did not think that this was going to be a difficulty, and I hope that is the case. But it is important that, if these powers are to be exercised truly and with the intent with which the legislation will be amended, the court has the resources to act as it needs to.

We recognise the value of mediation in these proceedings. Mediators can provide a very useful role in relation to the settlement and determination of native title claims, but we are concerned about the dangers of inconsistency and fragmentation of process in the way in which the mediation proposal is set out in the legislation. Mediators have a role to play, but I think it is important that they exercise their powers in a consistent fashion. Some of the evidence that the committee heard when examining this bill suggested that there is a danger that the process of determination of native title claims could become ad hoc, fragmented, less efficient and more expensive as a result of these changes.

Dr Levy, some time ago in an examination of the process of reform in relation to the Claims Resolution Review, made the point that the kind of discretion which is now being given to the court to engage mediators, other than the tribunal, could in fact:

… exacerbate the current problems in the native title system by further proliferating concurrent mediation, thereby leading to cost and effectiveness implications.

So there are already concerns about this kind of process, and the government seems not to have taken those concerns seriously and has pressed on with the way in which it is pro-
posing these amendments. There is a danger of inconsistency. There is already some suggestion that the way in which the various justices of the Federal Court are acting has introduced a measure of inconsistency in the process. That seems to me to be an undesirable dimension of resolving these matters.

There is also a second question with regard to the mediation that is of concern to the opposition—that is, the qualifications of mediators. The bill is silent essentially on defining who might be an appropriate mediator—it takes what might be regarded as a kind of minimalist approach in relation to this matter—whereas, in contrast, tribunal members are required to fulfil certain qualifications. The presidential member must be a judge or a former judge, or have been enrolled as a practitioner for more than five years. The tribunal members are appointed by the Governor-General. None of these particular restrictions, none of these particular constraints, are going to apply with regard to the appointment of a person or a body who might be appointed by the court to mediate on these matters. I think we are entitled to ask questions about whether or not they will have experience in relation to native title claims. Will these people be on a pool list from which the court will be required to draw? Will they be existing mediators, people who have already had some experience in dealing with these questions? None of these matters have been answered, and so the wider question of the qualifications of mediators and the experience that they might have remains unsettled. I think that is rather disturbing when in fact both the justices of the Federal Court and the existing members of the tribunal all have to reach certain standards in relation to their qualifications before they could actually be appointed. There seems to be no such proposal in this bill.

That is of concern to us because the mediators themselves will be given considerable coercive powers under this new legislation. They will have the power to direct parties, refer questions, direct a party to attend a conference, exclude persons from a conference—a wide range of powers which are supposed to have the capacity to be able to advance the case. It seems to me that we ought to be careful about giving these kinds of coercive powers to people with limited qualifications, or over which the act itself proposes no particular accountability. There is almost nothing in these amendments which is going to improve the accountability or the transparency with which mediators are appointed. From a coalition perspective, that seems to be a weakness. It may be that having these kinds of coercive powers is a necessary part of mediators settling these issues, but we would much prefer that they be constrained to some degree and it be clear in the legislation as to the kinds of qualifications that we would expect these mediators to have.

Finally, in the time that remains I would just like to make the point that the Liberal members of the committee were concerned at the suggestion by some witnesses before the committee that there had been limited consultation in relation to the amendments to this legislation. The President of the National Native Title Tribunal, Mr Neate, gave evidence before the committee. Indeed, I specifically asked him whether or not the Attorney or representatives of the Attorney had consulted him about the reforms. His answer was:

I was advised of the announcement of the proposed changes immediately prior to them—the day before.

Somewhat surprised by this response, I asked for clarification. He said:

… the Attorney rang me the day before the announcement and advised me of it.
This hardly seems a satisfactory way to proceed on a matter which is so vitally important to the Indigenous community. These are matters about which there ought to have been wider consultation, and it is a disgrace that the government would seem, at least on the evidence the committee received, to have failed to undertake that kind of consultation. At the very least, one would have thought that the president of the tribunal would have had his views actively and extensively canvassed in relation to these reforms, but that was not done on this particular occasion.

In summary, I hope these reforms work. I hope there is some improvement in the speed with which these matters are determined. There is an urgent need for there to be an increase in the speed of determinations, down from that five- to six-year period. My fear is that this is a rather ideological agenda that the government is imposing on the native tribunal system. They are amendments which have been imposed as a result of some view that exists within the government as to the best way to proceed rather than as a result of some serious and sober consideration of what actually is required to address this serious problem. The opposition will be watching the changes with great interest and hoping that they lead in the direction that the government anticipates. But from my perspective, I have a high degree of scepticism that it is going to achieve the results that are proposed.

Senator SIEWERT (Western Australia) (12.50 pm)—The Australian Greens supported the findings of the majority report of the Senate Standing Committee on Legal and Constitutional Affairs on the Native Title Amendment Bill 2009 and will be supporting the bill because we think it offers some small improvements. However, we believe the legislation does not go far enough and the government has missed an opportunity; we believe there is an urgent need to make much more fundamental reforms to the Native Title Act.

We share the concern of stakeholders and witnesses such as the National Native Title Council and the Human Rights Commission that these relatively minor amendments represent a missed opportunity. There was a chance to address the current limitations of the Native Title Act and to deliver on the intent of the act—in other words, to deliver justice and tangible benefits to Australia’s first people, as stated in a preamble to the act. Native title should offer an opportunity for Aboriginal Australians and Torres Strait Islanders to participate in the management of their land, to maintain and enhance their cultural responsibilities and spiritual connection to it and to benefit from the sustainable use of its resources. The fact that the system of native title law has not enabled them to do so is, we believe, an indictment of the current legal framework for native title. Also we believe the framework has facilitated the misuse of its processes by state and territory governments, allowing them to frustrate the rights of the traditional owners of the land.

The changes proposed in the Native Title Amendment Bill 2009 were considered to be minor and relatively non-controversial by most of the witnesses to the Senate inquiry. I note that the National Native Title Tribunal raised some concerns over how the changes may impact on ongoing operations, some of which I believe were addressed in the hearings and others which we will have to keep monitoring. I remain to be convinced that the additional case load brought about by the handing of responsibility and oversight of mediation to the Federal Court can be addressed without increasing the resources of the court. I hope the government will undertake to monitor how these changes are implemented and the impacts they are having on both the time frames and outcomes of ongoing native title claims, and that they will
commit to make additional resources available if needed or to bring in additional amendments if these minor reforms have unintended consequences or do not achieve their objectives.

I want to focus on the other issues that were raised in the Senate inquiry and which go to the matter of missed opportunity for native title reform. As Tony McEvoy of the National Native Title Council put it:

... the amendments that are proposed in this amendment bill are not controversial. They may make some small difference but they are not going to make any vast change in the way in which native title matters are dealt with. There is not going to be any rush of settlement of native title applications as a result of any of these amendments.

These comments in fact reflect the recent analysis by Chief Justice Robert French, who argues that the heavy burden on the principal parties to native title litigation is a result of these claims being proceedings conducted in the Federal Court. He says the resolution is to a degree constrained by the judicial framework, particularly its requirement that:

... applicants prove all elements necessary to make out the continuing existence of native title rights and interests within the meaning of the NTA and their recognition by the common law.

The Australian Human Rights Commission also argued that further reforms were necessary to realise the human rights of Aboriginal and Torres Strait Islander peoples and to enact international commitments. The Australian Greens consider that the amendments suggested by the Human Rights Commission have merit and recommends that the government consider their adoption. The Human Rights Commission also drew to the attention of the committee the latest statement by the United Nations Human Rights Committee, in which it said that it:

... notes with concern the high cost, complexity and strict rules of evidence applying to claims under the Native Title Act. It regrets the lack of sufficient steps taken by the State party to implement the Committee’s recommendations adopted in 2000.

The small number of submissions to this inquiry by Aboriginal organisations possibly reflects the minor nature of these changes but also the short time frame the inquiry allowed for submissions. It was very short when you consider the time frames that are needed to adequately consult within Aboriginal and Torres Strait Islander communities. Given the current problems, costs and delays faced by parties to the native title process and the significant concerns with other aspects of the native title process that have been highlighted over the last decade, it is very disappointing that more significant reforms have not been brought forward by the government at this point.

The most significant and relatively simple amendment that could be made at this time to help is the burden of proof. The Attorney-General claims that the intent of this is to achieve more negotiated native title outcomes in a more timely, effective and efficient process. That is what he is claiming this bill is trying to do. It was the view of the majority of witnesses who addressed this issue that the problem was the burden of proof placed on native title claimants to prove connection and continuity. The majority of witnesses said that changing that was the biggest thing that would achieve what the government claims this bill is achieving, which is more negotiated native title outcomes in a timely fashion. The Australian Human Rights Commission argues that:

It cannot be disputed that Indigenous peoples lived in Australia prior to colonisation and that the Crown was responsible for the dispossession of Indigenous peoples throughout Australia. It has also been acknowledged by governments over time through various policies, laws and statements of recognition, including the creation
of land rights regimes and other mechanisms, that Indigenous peoples are the Traditional Owners of the land.

It is in this context that the Commission argues that it is unjust and inequitable to continue to place the demanding burden of proving all the elements required under the Native Title Act on the claimants.

The National Native Title Council argued that the burden of proof placed on native title claimants unfairly ties them up in long-winded and costly research and litigation, arguing that in the Federal Court:

The state is a party and is entitled in the way that the law is presently structured to demand that the party seeking the remedy prove its case; it is entitled to do that.

It can sit in mediation and require the applicant to prove each point to a level of satisfaction.

Whilst in a spirit of settlement that might seem to be unreasonable, it is a long way short of being in bad faith or of there being an absence of good faith.

On these grounds the Native Title Council argues that improving mediation processes and referrals or making changes to ‘good faith’ provisions will not result in a dramatic increase in the number of successful native title claims or the speed with which they are resolved. They argue:

Unfortunately, for many traditional owners, simply reaching the point of getting into substantive negotiations with any of the respondent parties is a hurdle that many have been unable to attain as yet.

In many cases, the state will not even talk to them about serious settlement because they have not presented a connection report.

The National Native Title Council further argued that:

The longest delay is in getting into discussions and concluding discussions with the respondent parties, and invariably the primary respondents are state governments or the Commonwealth.

That is where the real delays and problems are, and that is where this shifting of the onus of proof will have great effect.

Instead, the Native Title Council argues for a rebuttable presumption of continuity along the lines suggested by recently retired Chief Justice Robert French, who said:

— one which is described by Chief Justice French in his paper as a modest proposal — would be to introduce a presumption of continuity.

It would require a number of small provisions to be inserted into the legislation. It is my submission that having inserted those provisions the initial premise for the establishment of the presumption could be made out in the application itself and the section 62(1) affidavit which supports the application, and then the burden would automatically shift to the states.

The form of such a provision recommended by Chief Justice French is as follows:

(1) This section applies to an application for a native title determination brought under section 61 of the Act where the following circumstances exist:

(a) the native title claim group defined in the application applies for a determination of native title rights and interests where the rights and interests are found to be possessed under laws acknowledged and customs observed by the native title claim group;

(b) members of the native title claim group reasonably believe the laws and customs so acknowledged and customs observed by the native title claim group;

(c) members of the native title claim group, by their laws and customs have a connection with the land or waters the subject of the application;

(d) members of the native title claim group reasonably believe that persons from whom one or more of them was descended, acknowledged and observed traditional laws and customs at sov-
ereignty by which those persons had a connection with the land or waters the subject of the application.

(2) Where this section applies to an application it shall be presumed in the absence of proof to the contrary:

(a) that the laws acknowledged and customs observed by the native title claim group are traditional laws and customs acknowledged and observed at sovereignty;

(b) that the native title claim group has a connection with the land or waters by those traditional laws and customs;

(c) if the native title rights and interests asserted are capable of recognition by the common law then the facts necessary for the recognition of those rights and interests by the common law are established.

As the Australian Human Rights Commission argues, such an approach is consistent with the stated intent of Native Title Act as expressed in the preamble and is in line with a number of current Australian laws which shift the burden of proof to the respondent, including the Sex Discrimination Act 1984 and the Workplace Relations Act 1996.

Furthermore, given that governments are both the party that granted interests in traditional lands to others and the holders of the vast majority of the relevant records, it would seem both fitting and appropriate that they bear the burden of proof. The main procedural benefit of including a presumption of continuity would be the manner in which it encouraged governments to progress native title claims without first insisting claimants present comprehensive connection reports. It would also provide much greater incentive for them to access their records and provide to the court at a much earlier point the information they hold that could clarify areas that are under dispute. A respondent party, including a state or territory government, could choose to challenge such a presumption and present evidence to make its case, but it could also choose not to challenge and disregard any substantial disruption in continuity of acknowledgement of traditional laws and customs should it desire.

The Australian Human Rights Commission stated:

The Commission does not consider that shifting the burden of proof to the primary respondent in native title cases would result in opening the ‘flood-gates’ for native title claims—provided that existing procedural mechanisms within the Native Title Act that act as safeguards are retained, such as the current notification provisions and registration test.

The existing registration test, which requires claimants to specify the details and merits of their claim, should act to limit ambit and spurious claims. The commission cautions against toughening the existing registration test, arguing that this would simply shift the current problem to an earlier stage and place the assessment of evidence outside of the court. It recommends that, instead, the Commonwealth and the National Native Title Tribunal draft a clear and comprehensive guide to the registration test.

To this end, the Australian Greens strongly recommend that the Native Title Act should be amended to include a rebuttable presumption of continuity. We have in fact taken the suggestions from Justice French and translated those into an amendment that would provide for rebuttable presumption of continuity. I have circulated an amendment to the act, believing that this is what the government should have done if it were serious in its intent to make this act more usable and effective to actually deliver tangible outcomes to the traditional owners in Australia. To deliver tangible outcomes to Aboriginal people and Torres Strait Islanders, there is undeniably a need for change to the Native Title Act.
We encourage the government to support the amendment, which, according to expert witnesses, will have the best chance of ensuring that the Native Title Act finally delivers for Aboriginal and Torres Strait Islander people. It is time that we made those amendments so that we can deliver tangible outcomes and not fiddle around the edges. As I said earlier, we believe the amendments currently proposed by the government to the act will have a minor impact on speeding up the resolution of claims and delivering real outcomes. The real change that is needed is to stop state and territory governments and, in some instances, the Commonwealth government frustrating the claims of native title holders. We urge the government to seriously consider supporting the Greens amendment that reverses the onus of proof.

Senator CROSSIN (Northern Territory) (1.04 pm)—I rise to provide a contribution to the debate on the proposed changes to the Native Title Act contained in the Native Title Amendment Bill 2009, which was introduced into the House of Representatives in March this year. It predominantly seeks to amend the Native Title Act in one area only at this stage. I will make some further comments about why only one change is being made at this stage and respond to what Senator Siewert just said. That change gives the Federal Court of Australia a more central role in adjudicating the native title claims.

Schedule 1 of the bill would make a number of amendments to the native title mediation provisions in the Native Title Act 1993. The amendments, as I said earlier and as other speakers have said, give the Federal Court the role of managing all native title claims, including whether claims will be mediated by the court or referred to the National Native Title Tribunal or another court appointed individual or body for mediation.

The explanatory memorandum to the bill sets out the rationale for the amendments, which is to emphasise the importance of mediation and to draw on the court’s significant alternative dispute resolution experience to achieve more negotiated outcomes. Having one body actively control the direction of each case—rather than, as it is at the moment, having a number of bodies—with the assistance of case management powers means opportunities for resolution can be more easily identified. Parties that are behaving with less than good faith can also be more forcefully pulled into line. Where parties are deadlocked or unwilling to see common ground, the court can bring a discipline and focus on issues through the use of its case management powers to ensure that matters do not languish.
The bill repeals and replaces section 86B(5), which empowers the court to refer a matter for mediation at any stage in the proceedings if it believes that agreement on key facts can be reached. The new subsections would operate together with proposed new section 87C to better enable the court to direct cases to mediation, as well as to recall them and redirect them, possibly to a different mediator, if such a course is deemed helpful to resolution. Section 86 deals with the cessation of mediation. Currently there are two grounds upon which the court can order cessation: there being no likelihood of agreement being reached or further mediation being deemed unnecessary. In this bill a new ground is added under which the court could order cessation if it felt it appropriate to do so. The same subsection is also amended to add a power to make general orders in relation to the cessation of mediation as the court thinks fit.

As I said, the public inquiry received eight submissions. I have to say that, in relation to the Senate Standing Committee on Legal and Constitutional Affairs, eight submissions is pretty minimal. We normally get well in excess of that, but I do not think that is an indication that people were not interested; it is an indication that, with one exception in those eight submissions, the provisions of this bill were met with general approval. The most controversial changes the bill would introduce are those that remove the compulsory reference of matters for mediation from the NNTT to the Federal Court. Significantly, the primary body representing users of the native title system, the National Native Title Council, regarded the changes as uncontroversial.

The government’s proposals aim to address a significant backlog of claims for settlement. During the course of the inquiry we heard that 145 determinations were made between 1994, when the Native Title Act was passed, and the end of 2008. The average time taken to finalise these was about six years where the application was by consent or seven years where the outcome was litigated. The tribunal’s concerns derive largely from the bill’s proposal to centralise the management of native title cases in the court and hinge on the assertion that the amendments would not necessarily bring about a faster or a more efficient claim-settling process—a claim that we heard from Senator Trood who, even though the opposition say they are supporting this bill, still seems to want to defend the way the current process is happening.

The National Native Title Tribunal argued that the bill’s passage would give rise to accountability issues when mediators operate outside a governmental institution and would see further resources being available to fund flexible and innovative solutions in a timely manner. The NNTT also submitted that the amendments would encourage a system that was ad hoc, fragmented, less efficient and more expensive to the Commonwealth and that there could be confusion and lack of clarity about the respective powers and functions between the court and the tribunal, especially the extent of the court’s capacity to direct the tribunal to do things, to allocate tribunal members to mediate particular matters and to direct how mediation is to be conducted, which raise legal and resource issues.

We do not believe that that will be the case at all, because in 2007, when the Senate Standing Committee on Legal and Constitutional Affairs held an inquiry into the provisions of the Native Title Amendment Bill 2006—we were in opposition, of course, so the current opposition was chairing that committee—the minority report of the Australian Labor Party found that there were significant concerns expressed during the course of that inquiry about the expansion of the NNTT’s powers, particularly as most
stakeholders did not have confidence in the NNTT’s capacity or expertise to conduct effective mediation. Evidence received by the committee during the course of that inquiry from native title rep bodies unanimously rejected the expansion of the NNTT’s mediation function, citing past statistics and experience. Like a majority of stakeholders, Labor—and, at the time, Green senators, I have to add—were not convinced that the NNTT was capable of exercising those expanded powers effectively or properly.

I am surprised to hear people like Senator Trood say that there was a lack of consultation about these changes. This has been the position of the Labor Party since 2006 when we handed down our views in the minority report of that inquiry, and certainly people who are in the field and dealing with native title day in and day out—rep bodies, the Native Title National Council, the NNTT and the Federal Court—would have known that that was in fact our position. So I do not accept that there was lack of consultation in relation to this change. Our view and our position in relation to the Federal Court handling the majority or, in fact, all of these matters and directing the mediation, has been on the public record for at least three years. The changes in this bill reflect those concerns and those conclusions. So this is not a new matter. This is not a matter that was suddenly decided upon this year or last year and changed by the federal Attorney-General. This is a matter that has been on the statute of this particular political party for a number of years and, in coming to government, we have augmented those changes.

The NNTT’s contention that the changes will not bring about improvements in the claims process was disputed by the Federal Court and is disputed by us. In his evidence to the inquiry, Registrar Soden told the committee that the change was:

... welcomed by the Court as it supports its long held view that results are obtained through a flexible and responsive approach to mediation. This view is based on the Court’s experience of the beneficial results of active case management by the Court in some native title proceedings.

Mr Soden took the view that the court was in the best position to decide which mechanism was in the best interest of each case, including the existing option of referring the case to the NNTT, and impressed the flexibility that the changed arrangements would bring to the management and resolution of cases. That is, of course, what we want to see. These changes have undergone appropriate and extensive consultation by the Attorney-General’s Department following the release of a discussion paper in December 2008, which elicited 30 submissions.

This takes me to some of the rebuttal that Senator Siewert mentioned about the amendments they have now put before us. I have not seen a copy of them, but they do take this bill further than where this government intends to go at this point in time because we have had a discussion paper—a very extensive discussion paper—about major reforms to the native title legislation put out there by Robert McClelland in December last year. He has spoken extensively around this country at conferences, at meetings, at various venues and organisations about what is in that discussion paper. The discussion paper has been out now for more than six or eight months for the general public and for the people involved in this area to provide input. When we had our hearing back in April, there were, in fact, 30 submissions in relation to that discussion paper at that point in time. Therefore, I am unsure of why we would want to elicit a further amendment from the Greens in relation to changes to the Native Title Act when we have a discussion paper out there that will, no doubt, look at some changes extensively when the minister...
is ready to take the results of that consultation and translate it into changes.

I want to put on record that we do value the input from the Australian Human Rights Commission. They made a very substantive submission to this inquiry covering a number of issues. For example, they recommended: consultation by the court with parties to a mediation; the regulation of a number of parties to a claim; the requirement for court orders to be appropriate; the application of the evidence act be applied to native title claims; funding of participants in a native title claim; and the expansion of ministerial discretion in appointing native title rep bodies. These are all dot points and summaries from some of the aspects of their submission, but they are worth reading. I am hopeful that the Human Rights Commission will send that in to the consultation process on the discussion document that is currently out there.

Unfortunately, they do warrant further examination but they were received after our committee’s public hearings and we were not able to hear in person from the Australian Human Rights Commission. We were not able to test their propositions on the Hansard record for incorporation in this report. No doubt we will get to them in the future. The views of the commission are worthy of further consideration.

There is one particular section that I want to make a specific comment, and that is the proposed amendments that remove the capacity of the NNTT to provide the court with voluntary regional mediation progress reports and regional work plans, if the president considers that such a report or work plan would assist the court in progressing proceedings. In it submission to the committee, the NNTT noted:

... if the Act is amended by proposed s 94N and the repeal of s 136G(3A), the Tribunal will lose the capacity to volunteer such reports, and the Court may be deprived of a valuable source of information for case management in regions where most or all claims have been referred to the Tribunal for mediation.

The explanatory memorandum states:

It is unnecessary for the Tribunal to provide the ... reports ... given the purpose of the amendments is to give the Court the overall control of native title claims.

While these amendments are considered by most to be minor or noncontroversial, the NNTT raised some concerns over how the changes would potentially impact on their ongoing operations. However, as Tony McAvoy from the National Native Title Council put it:

... the amendments that are proposed in this amendment bill are not controversial. They may make some small difference but they are not going to make any vast change in the way in which native title matters are dealt with. There is not going to be any rush of settlement of native title applications as a result of ... these amendments.

The most significantly relatively simple amendment that could be made at this time to help achieve more negotiated native title outcomes in a more timely, effective and efficient fashion, was, in the view of the vast majority of the witnesses who addressed the issue, the burden of proof placed onto native title claimants to prove connection and continuity. The Australian Human Rights Commission argued in their submission:

It cannot be disputed that Indigenous peoples lived in Australia prior to colonisation and that the Crown was responsible for the dispossession of Indigenous peoples throughout Australia. It has also been acknowledged by governments over time through various policies, laws and statements of recognition, including the creation of land rights regimes and other mechanisms, that Indigenous peoples are the traditional owners of the land.

It is in this context that the Commission argues that it is unjust and inequitable to continue to place the demanding burden of proving all the...
elements required under the Native Title Act on the claimants.
While that may well be a valid position put to us by a number of witnesses, the committee deemed that it was outside the scope of our current inquiry. It was not related to the current legislative changes that we were specifically inquiring into. We were asked to specifically look at whether or not the actual application of the NNTT’s handling of claims should stay with them or be transferred to the Federal Court. We are talking not about the nature of the claims but about the actual administration of those claims. For the record, I want to make it clear that that was outside the scope of its work.
In conclusion, I do draw people’s attention to the discussion paper by Minister McClelland. No doubt, we will be back in this chamber debating much more extensive and further changes to the Native Title Act once his response to that discussion paper is made available.

Senator XENOPHON (South Australia) (1.22 pm)—I think Senator Crossin sums it up pretty well when she says that the number of submissions are reflective, not so much of the significance of the Native Title Amendment Bill 2009—because it is significant to speed up the process of dealing with native title claims; that is very important—but of the further reforms being planned by the government. So I think that on issues such as the burden of proof the process that has been instigated by the Attorney-General is appropriate.
This bill, by enabling the Federal Court to determine whether the National Native Title Tribunal or any other body should mediate native title claims, is an important step forward in the process. It gives the Federal Court a central role in managing native title claims. It specifies the manner in which mediations are conducted, changes the power of the courts in relation to agreed statements of fact and consent orders, enables native title proceedings to rely on new evidence rules and allows for transitional and technical amendments.
The motivation of the bill is a good one, because it deals with a backlog of native title claims and allows the Federal Court to more efficiently decide to delegate or set up mediation to resolve these claims. Of course, I welcome any move to more expeditiously and fairly handle native title claims and note the broad support—both political and in the community—for these changes.
I believe that the connection between Indigenous Australians and the land is fundamental. Noel Pearson, in an essay in 2007 for the *Griffith Review* headed ‘White guilt, victimhood and the quest for a radical centre’, made the point:
Our rights to our traditional lands, to our languages and our cultures, our identities and traditions are a constant part of our work for a better future for our people.
And it is that connection to the land that is integral in advancing the betterment of Indigenous communities around Australia. So I believe that anything that can be done responsibly to speed up the native title process can only help the advancement of Indigenous Australians. That is why I support this bill.
I do have some questions I would like to put on notice, and I have briefly discussed this with the government. It is clear that the role of mediation will be expanded under the regime in this bill. My question to the government is: what further funding will there be for what I expect will be an increase in mediation? What sorts of outcomes are expected from that, in the sense of how many more cases will go to mediation and what the impact will be on the backlog of claims? In other words, there is no question that the
government’s intent to more expeditiously resolve claims is laudable. What performance indicators will there be—in the sense of the yardsticks to determine how quickly claims are being resolved and the likely legal costs? There is a real concern about the very significant legal costs of these claims, let alone the time involved. What does the government expect will be the impact of the bill in reducing the time and the costs involved?

There have been some critics, and I refer to a paper by A Chalk, ‘Redefining the Role of the Federal Court in Settling Native Title Matters’, presented to the third annual Negotiating Native Title Forum in Melbourne on 19 and 20 February this year. In that paper he said:

... the current system for resolving matters has not been successful. It has certainly failed the taxpayer. But more importantly it has failed Indigenous people. It has allowed a once in a century opportunity to redress one of the fundamental scars of our country to slip away. In this regard, we all suffer from the failure.

My question is: to what extent will these changes make a difference in terms of both the costs and the time frames involved in resolving claims; and will there be a benchmark or a mechanism to report back within 12 months or 18 months so that we know how successful these reforms have been in terms of process and whether there should be others, so that if there is a need for further change that can be put on the agenda? So, with those few words I indicate my support for this legislation. I certainly hope that it has the desired outcomes in terms of more expeditiously resolving claims, which I think we all agree is a good thing.

Senator BARNETT (Tasmania) (1.27 pm)—I stand this afternoon as a Liberal senator and Deputy Chair of the Senate Standing Committee on Legal and Constitutional Affairs that reported on the Native Title Amendment Bill 2009 some weeks ago—in May 2009. I note that the bill was introduced on 19 March and its primary objective is to give the Federal Court of Australia a more central role in adjudicating native title claims. It invests in the Federal Court the authority to decide whether it, the National Native Title Tribunal or another individual or body should mediate a native title claim and it encourages and facilitates negotiated settlements of claims. It does a range of other technical and administrative things to speed up the process.

The committee received eight submissions and we had a public hearing in Sydney on 19 April 2009. Can I just place on record, certainly on behalf of the Liberal senators and the committee, my thanks to the committee secretariat for their work in assisting our committee in deliberating on this particular bill and delivering the report on time.

A very important issue that I have asked questions on and that has come up time and again at budget estimates is delays in sorting through and delivering on national native title claims. From 1994 to the end of 2008, 145 determinations were made under the act. The average time taken to finalise those was nearly six years when the application was by consent and seven years or longer when the outcome was litigated. That just shows you the concerns, issues and problems we have in dealing with these matters. At the time the report was handed down, about 475 claims were on foot in the system and over a quarter of those cases had been current for at least 10 years. It is estimated that the last of the cases currently active will not be concluded until 2035, another 26-odd years from now.

This is a very lengthy process and one that, frankly, we need to do a whole lot better at and improve. I am not saying anybody has it right or has the solutions. The objective behind this bill, to try and improve the process, is supported. I have asked at Senate es-
timates what processes and administrative arrangements are in place to sort through these concerns so that the process can be speeded up. Justice delayed is justice denied. That is a fact. We know it. It is not just an adage. With respect to determining national native title claims it is an absolute truism and it should be noted not just by us in this chamber but by the parliament and the broader public.

The National Native Title Tribunal have expressed a range of concerns regarding the bill and the amendments, and the Liberal senators have set out our concerns in our report. The tribunal’s concerns derive largely from the bill’s proposal to centralise the management of native title cases in the Federal Court. Along with my colleague Senator Trood, I have a lot of confidence in the Federal Court and their ability, executive judgment and management skills. But these amendments put so much discretion in the hands of the Federal Court that I think we need to watch this very carefully to see if the objectives that the government has are actually going to be met. I note that Senator Xenophon said, ‘Watch this space,’ in terms of the outcomes, because the process is, frankly, not working correctly. We need to do better.

Amendments were introduced in 2007 by the former government, the Howard government. The committee received no evidence as to whether or not those amendments were being properly and fully implemented. That is one concern that the Liberal senators noted in our report. The National Native Title Tribunal also argued to our committee that the bill’s passing could give rise to accountability issues through mediators operating outside the framework of a government institution and that it would see fewer resources available to fund flexible and innovative solutions in a timely manner. That was put on the Hansard record. The Chief Executive Officer of the Federal Court, Mr Warwick Soden, who appeared before the committee, assured the committee that the issue of resources was not a matter for the Federal Court. Well, we hope that that claim will be deemed and proven correct over time. But these are concerns that have been presented by the National Native Title Tribunal. One of the key outcomes, of course, is the appointment of mediators with respect to determining national native title cases.

The Liberal senators do support the aims and objectives of the amending bill, particularly encouraging of settlement by negotiation and building flexibility into the system, thereby maximising the chances of resolution. However, as I have indicated, there was no solid evidence as to how the 2007 amendments have operated, and that is a concern. The government have a job to do. The department should be able to respond and say, ‘These are the benefits of the 2007 amendments.’

The other key concern I have, and this seems to be a revolving consequence, a systemic problem that the government has, is the lack of consultation with key stakeholders. Some senators and the public may be surprised to know that there was entirely inadequate consultation with the National Native Title Tribunal prior to this bill being introduced. Why would that be? Why, when this is the key stakeholder entity, would the government plan to change their operations, their process and the way they do business without consulting them? We have referred to the lack of consultation in our report at page 21:

The Government states it used an evidence-based approach to policy development. Well, hello! It does not really—not in this case. The report continues:

... we are concerned that little attention has been paid to the view of the NNTT—
the National Native Title Tribunal. Of course we are concerned as Liberal senators, and I think the entire public would be concerned. We continue:

In his evidence to the Committee, Mr Neate, the President of the Tribunal, stated that he ‘was advised of the announcement of the proposed changes immediately prior to them – the day before.’...’But this was really advising me of what was about to be announced.’

So it was not really consultation, was it? It was: ‘This is the way we’re going to go, this is our approach, and we’re going to ram it down your throat whether you like it or not,’ That is not appropriate. That is inappropriate behaviour and practice for a government that says that it supports consultation. In this case, there has not been adequate consultation with the key stakeholder, the National Native Title Tribunal. The Attorney-General needs to take that on board and ensure that that does not ever happen again. They must, when developing substantive changes to the Native Title Act 1993 in the future, ensure proper consultation. They have impacted on the core mediation function of the National Native Title Tribunal without even consulting the president of that tribunal. Saying a day before, ‘This is what’s going to happen,’ is simply untenable. It is not on. Certainly our side of the parliament will hold the Attorney-General and the government to account. The lack of consultation seems to be becoming a systemic problem in how this government does business.

In turning to some of the other substantive matters, I note the committee expressed concern that:

... the amendments in Schedule 1 could result in the resolution of national native title claims in a less systemic way and that the process could become ad hoc, fragmented, less efficient and more expensive to the Commonwealth.

We noted the very good reputation of the Federal Court and their management skills and executive skills in implementing administrative and other operational arrangements, and we are willing to support these government amendments, but we will watch carefully to see how they are implemented, what benefits flow from them and whether the committee’s concerns will be vindicated. We expressed concern in our report that:

... private mediators may not possess qualifications and experience of practices, which might actually be important in ensuring their honesty, their integrity and their capacity to do the work required of them.

In the past we have had the mediation being undertaken and conducted by the National Native Title Tribunal and now it will be under the auspices of the Federal Court but with a contracting-out to individual mediators. The concerns that we have are exactly how this is going to operate, what the cost will be, its effectiveness and what outcomes will be delivered. These are fair questions and we will watch very carefully as the government proceeds with this reform. Our report continues:

The Bill is also unclear as to whether a Judge could appoint an organisation to mediate, resulting possibly in a person other than a Judge determining who would carry out the mediation.

Frankly, that is a concern, and I hope that these concerns that have been expressed will be answered and sorted out. The report states:

In summary, the appointment of private persons (and organisations) inevitably raises questions of accountability insofar as those persons and organisations operate outside the framework of a government institution with all of the relevant regulatory checks and balances.’

We will have a watching brief on this side of the chamber, and I know members of the public will have a watching brief on the delays in sorting out native title claims at the moment. They are totally unsatisfactory in their duration and need to be attended to.
do know that the Attorney-General has put on record his strong commitment to sorting through that. I and I know others on this side would like to see targets which show they want to sort this out, not in 26 years time, as is the current prognosis by the department and by others. That obviously has to be significantly reduced. We will be watching this through budget estimates. We put the department on notice to prepare for those sorts of questions when estimates arrives in some weeks time. We put it on notice that there will be further watching by this side of the chamber, and indeed by members of the public, so that we can sort through these very important native title determinations as quickly, efficiently and effectively as possible.

Senator EGGLESTON (Western Australia) (1.40 pm)—Native title is quite a big issue in Western Australia, where I come from, and it has caused an enormous number of problems over the years, largely because of the vagaries—if I might put it that way—in the way native title claims are determined. I think there are something like 100 native title claims current in Western Australia. Over the history of determinations in Western Australia, I think there have been 19 consent determinations and six litigated determinations. The story of native title in Western Australia has not been a happy history and I think the Native Title Amendment Bill 2009 does help bring a little bit of clarity and take it a little step forward, but there are still problems.

This legislation, as has been said, provides a central role to the Federal Court in managing native title claims—that is, instead of the Native Title Tribunal doing so. There is a very long backlog of native title claims. It has been said that a time span of some 30 years would be needed to clear all those claims. But this proposal provides for the Federal Court to actively manage these claims and provides for alternative dispute resolution methodology, which I think is a good thing. There is no doubt that, if left to themselves, lawyers can prolong court proceedings for a very long time. That runs up huge bills in legal fees. Sometimes the participants see it as an advantage to not come to a conclusion.

Native title was introduced in 1964—I think the legislation was passed in 1963. I do not have a problem with the concept of Indigenous people, genuine traditional owners, gaining benefit from the use to which their land is put. Of course, the problem has always been that it is not always possible to prove who the genuine traditional owners are. Sadly, very often other groups who are not the genuine traditional owners seek to become involved in native title negotiations and to gain financial reward by so doing. That points to the fact that one of the central problems that remains with native title legislation is that parties have the right to negotiate without having a proven genuine native title claim. In other words, there may be genuine claimants who put in a claim, but other groups—usually family groups at the periphery—then put in counterclaims as co-traditional owners. That is where there have been enormous rorts in this system. Not only is a lot of time lost but also there is a lot of money paid to lawyers who put up these spurious claims by groups which claim the right to negotiate. More importantly, a practice has developed over the last decade or so of paying off the spurious claimants as the quickest way of getting them out of the field. This occurs with mining developments, tourist developments and farming developments.

A very famous case in quite recent times in Western Australia related to the Yindjibarndi-Wong-goo-tt-oo claim to the northern end of the Burrup Peninsula, which is where the North West Shelf gas projects are located. The Wong-goo-tt-oo-Yindjibarndi

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people were the traditional people of Roebourne, which is nearby, and they claimed the northern beaches of the Burrup Peninsula, which were used for recreational purposes by the people of Karratha. The claim was disputed of course, but the then Carpenter government in Western Australia paid the Yindjibarndi-Wong-goo-tt-oo $15 million or thereabouts to withdraw their claim. They withdrew their claim and it was subsequently proved that they had no legitimate claim whatsoever. They were not in any way traditional owners of the northern end of the Burrup Peninsula. But nobody asked them to repay the money. That group walked off with their $15 million and that was the end of the story. I am not criticising the Carpenter government in particular, although I think as a government they should have perhaps done some more due-diligence work and been a little bit more cautious. But I suppose, like many other groups in the same situation, they decided they just wanted to end this nuisance claim. This kind of thing has occurred all over Western Australia, particularly where claims over mining areas have been involved. It has occurred where tourist developments have been proposed to go ahead. It has caused enormous problems.

Western Australia being Western Australia, and the north of Western Australia in particular being an area where Aboriginal communities still live and have legitimate claims—one would have to say—to traditional ownership of parcels of land, there is a very great need to expedite the legitimate claims to native title so that developments can go ahead. I think everybody has heard about the enormous problems with housing in some of those boom towns in the Pilbara, like Karratha, Port Hedland, Broome, Newman and so on. The problem with housing in those towns essentially is that, although they are surrounded by endless millions of hectares of empty land, none of it can be used for housing because it is subject to native title claim. So you have the ridiculous situation that in Karratha, where there is abundant land—just as there is around Port Hedland—there has not been any land free of native title available for housing. The native title owners or claimants, many and various, have not been able to come to an agreement about settling claims. So, in Karratha, which is bursting at the seams with industrial development, you find people sleeping on pallets next to their four-wheel drives in the car parks of the town because there is no accommodation.

I have a friend who is the CEO of Chubb in the north-west. To accommodate his workers he has to book them into hotels in Exmouth and fly them in and out of Karratha every day because there is simply no accommodation. It is ridiculous that that sort of situation occurs. It is very important that we find a way of expediting native title claims. But, as I said, while this measure, alternative dispute resolution and active management by the Federal Court will certainly speed up claims, we still have not addressed the central issue: the issue of anybody who wishes to negotiate for a native title claim having first to prove that they are the legitimate traditional owners who should be dealt with. The right to negotiate is a very, very important issue, and it always has been in dealing with native title claims.

I was disappointed that, during the years the Howard government had a majority in the Senate, this issue of the right to negotiate was not addressed in the amendments which the Howard government made to the native title legislation, because, as I have said, it is an absolutely key issue and it is at the core of the rorts which have occurred in the native title debate and in the whole saga of native title. Were the issue of the right to negotiate dealt with, then a lot of claims would disappear because, if people were not traditional
owners, they would not have the right to negotiate, to get some sort of payment and be seen off by a company or a government paying them off to withdraw their claim so that the legitimate traditional owners could be dealt with. As I have said, that is the most important issue.

I would suggest there is an equally important issue in terms of native title, though, and that is what is done with the money that comes into the communities or traditional owner groups from native title claims when they are settled. Frequently the Indigenous people concerned have very little to show for the millions of dollars that are paid into the communities or to a group who claim to be the traditional owners. I remember, as I have said in this place before, going to an Indigenous bush meeting in the Pilbara, when I first went up there. It was held on the banks of the Coongan River at Marble Bar, with about 300 or 400 Aboriginals talking about the issues that faced them. Their problems were health services, housing and education. Their problems still are those three things: housing, health and education.

Sadly, in many of the communities which have had large native title payouts, very little money has gone through to the ordinary Aboriginal groups, the whole community, in terms of providing better housing, better health services and better education for their people. Many Aboriginal groups are beset with the sorts of problems which beset ATSIC, in which a family group gets control of the community—it is very political; they have the numbers, as it were—and so all the benefits flow to that family group and they all get new Toyotas and better houses and travel first class on Qantas, and the rest of the community very often miss out.

In resolving the problems associated with native title what is needed is some way for the funding from the claims to be paid into an account administered by trustees to ensure that the benefits flow through to the communities in terms of better housing, better health services and better education. Our aim in native title negotiations should be a win for both the Indigenous traditional owners and for the community as a whole so that we do not have situations like the ones that exist in those Pilbara towns at the moment, where there is no land available for housing in spite of the incredible demand. That has meant that rentals in a town like Port Hedland for an ordinary two-bedroom house are in excess of $2,000 a week. Individual persons cannot afford to pay those rents; only companies can.

As I said, I regard this measure as a step forward. It means that the Federal Court can manage these cases and that alternative dispute resolution will be put in place. But the fact remains that we still have to deal with the issue of the right to negotiate only being given to native title claimants who actually have a proven claim. We also have to think about how the money is dispensed when it is awarded to Indigenous groups.

Senator JOHNSTON (Western Australia) (1.53 pm)—I want to say that I am positively disposed to the solutions that have been put forward by the government’s Attorney-General in the Native Title Amendment Bill 2009 in what is a very complex and difficult legislative environment. Upon the occasion of my first speech here in 2002, I spoke of the false dawn for Aboriginal people, particular in Western Australia, represented by the practical operation of the national native title legislation. I spoke of how no stakeholders were happy or satisfied, least of all the people who were the subject of the beneficial objects of the legislation—namely, Indigenous people.

So it was that in August 2002, almost 10 years after the commencement of the act,
there were some 589 native title claims on
the books. Some seven years later, and some
17 years down the road, there are still 511
claims before the Federal Court—unresolved
matters of native title. Any statistical analysis
of these numbers indicates that we will be
well into the second half of this century be-
fore these claims are resolved—at the indica-
tive rates of resolution inferred from the
numbers that I have put on the record—
unless there is a significant and dramatic
change in the way the process surrounding
the operation of the act is facilitated.

I should comment that in the first 10 years
there were 33 determinations, of which 23
were consent determinations. As at January
this year, there had been 117 determinations,
of which 71 were consent determinations. I
will say that I think that things are getting
better, slowly but surely and in small degree,
and are progressing at a slightly faster rate
than was seen in the first 10 years. The point
is that some 19 years on we still have 511
claims on the books. So the assault in the
process of satisfying and resolving these
rights has been very slow and tortuous.

The answer to this problem is found in the
very heavy legal evidentiary burden placed
upon the claimants in presenting their case
and putting matters formally before the Fed-
eral Court and in mediating those matters
with other land users. The other land users
are miners, pastoralists and farmers. The
most important of all the other land users is
usually the state governments who hold the
land as crown land in right of each of their
respective states.

I will give a general precis of what logisti-
cal and legal hurdles confront claimants. I
will start by mentioning that the claimants
are usually a quite loose knit contemporary
group of tribal and filial people united by
their land, by their customs and by the re-
gions that they live in. They have a require-
ment for some structure or mode by which
they as a unitary group can function and do
business. That is to say it is required that
there be a basis for the group to appoint and
acknowledge a spokesperson or spokespeo-
ple.

Indeed, one of the first and most important
questions confronting any claimant group is
whether they are going to function as a de-
mocracy or whether they are going to func-
tion as some sort of patriarchal or indeed
even matriarchal structure. Do the men con-
trol which way the claim goes, do the women
control which way the claim goes or do they
vote and have equal voting rights? That
question alone is a significantly difficult
question for many claimant groups. It is a
very expensive process to bring them all to-
gether. For many of them, English is not
even a second language—it is down the road
of various languages and customary tongues
used for communication. Bringing them to-
gether and explaining how they need to go
forward in order to pursue their claim is a
very technical sociological and anthropo-
logical exercise. And it costs a lot of money.

Having set out to you the difficulties con-
fronting the claimant group at a first pass, I
will now get into areas such as consultation.
Having resolved a mode of proceeding, they
then need to have some funding and a mode
of talking to each person who is a member of
the claimant group so that they are fully in-
formed, know what their rights are and can
have some knowledge that the people who
they have appointed—and indeed their law-
yers and anthropologists—are doing the right
thing by them. As I said, all of this is ex-
tremely expensive but fundamentally crucial
in creating the integrity and authority neces-
sary to move the claim forward. The ongoing
costs of funding solicitors, anthropologists,
researchers and the general financial com-
mitment to a claim is a very crucial consid-
eration and one that has to be dealt with by
the representative body as a priority. You
cannot start a claim in the Federal Court and
run out of money halfway.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Asylum Seekers

Senator FIERRAVANTI-WELLS (2.00
pm)—Mr President, my question is to the
Minister for Immigration and Citizenship,
Senator Evans. Can the minister please tell
the Senate how many unlawful entrants have
arrived in Australia by boat since August
2008?

Senator CHRIS EVANS—I will add it
up for you if you like, Senator, but this year
we are at a figure of about 1,100, plus the
most recent arrivals. As I say, these things
are all on the public record. I make them
available and provide as much information
as I can. As the senator would well know, we
have seen an increase in the number of arri-
vals in recent months. This is in line with
international trends which show that the
number of asylum seekers seeking protection
in the world has risen considerably. Coun-
tries like the USA, the UK, Canada and Italy
are all facing increased numbers of asylum
seekers, much more in the order of tens of
thousands than those we are seeing.

Senator Abetz—It’s good when you’re
never to blame.

Senator CHRIS EVANS—Senator Abetz
says it is always good when you are never to
blame. I suggest to Senator Abetz that he
think about the proposition that somehow
domestic policies are driving these arrivals.
On that basis you would have to blame the
Howard government for the 10,000 arrivals
that occurred around 2001. That is the logic
of your position. If you are not prepared to
do that, then you have to re-examine your
position. What happened following that pe-
riod is that, when things settled in Afghani-
stan, people were able to be returned to Af-
ghanistan. The large change that occurred
was the capacity for people to return safely
to Afghanistan, and the UNHCR started that
process.

What this country is seeing at the moment
is an increase in arrivals of people from Sri
Lanka and Afghanistan, in particular, as a
result of the worsening situation in those
countries. It is an international problem. We
are committed to international action to try
and stem the people smugglers. We have
invested more in border security than ever
before, and we will continue the fight against
people smugglers. (Time expired)

Senator FIERRAVANTI-WELLS—Mr
President, I ask a supplementary question.
Since 2008, what has been the total cost of
processing, housing and keeping these ‘about
1,000’ unlawful boat arrivals?

Senator CHRIS EVANS—I can take on
notice the exact costings for Senator Fierra-
venti-Wells. No doubt she will be able to
seek as much information as she needs at the
next estimates hearing. I remind her that
those costs are being met while we house
people at the Christmas Island detention cen-
tre, built by the Howard government at a cost
of $400 million.

Opposition senators interjecting—

Senator FIERRAVANTI-WELLS—A lot of the
cost structures associated with the costs of
housing people on Christmas Island are as-
associated with the high costs of having to
transport staff and goods to Christmas Island.
Senator Minchin might well interject, but he
was responsible when the huge blow-out in
the costs of the centre occurred, when the
costs almost doubled. Certainly, I can take on
notice the details for Senator Fierravanti-
Wells, but if the question is, ‘Is it expensive
to house people at Christmas Island?’ the
answer is yes.
Senator FIERRAVANTI-WELLS—Mr President, I ask a further supplementary question. Now that the Christmas Island detention centre is nearing full capacity due to the ALP’s failed policies, what contingencies does the government have in place to accommodate the ever-increasing influx of boat people to Australia?

Senator CHRIS EVANS—First of all, the premise of the question is wrong. With these latest arrivals, the capacity of Christmas Island will not be reached. In fact, with the new arrivals we will have fewer people there than we had a couple of months ago, given the processing that has occurred. But, as I have made clear in the past, extra capacity is being developed at Christmas Island and we also have the Northern Immigration Detention Centre at Darwin that is available if required. There are available facilities to us if we see larger numbers of arrivals. I have been the first to make clear to Senator Fierravanti-Wells that we are going to see continued people-smuggling activity in the near future. We are absolutely committed to combating it. We have had some successes, with the extradition of Mr Ahmadi. We are working closely with Indonesian, Malaysian and Sri Lankan authorities, but the battle against people smuggling continues and will continue to need to be waged strongly. (Time expired)

Economy

Senator BILYK (2.05 pm)—Mr President, my question is to the Assistant Treasurer, Senator Sherry. In light of the government’s quick and decisive response to the global financial crisis, can the Assistant Treasurer outline to the Senate what lessons have been learnt from the collapse of the Lehman Brothers investment bank a year ago and the events that followed?

Senator SHERRY—Thank you for the question. It has been an extraordinary year in financial and economic terms, unprecedented given the size of financial collapses certainly—

Opposition senators interjecting—

The PRESIDENT—Order! Interjections on both sides make it impossible to hear the answer of Senator Sherry. When there is silence we will proceed.

Senator SHERRY—and given the most unprecedented impact in financial and economic terms since the Great Depression of some 75 years ago, and an unprecedented global financial crisis, given the collapse of Lehman Brothers. The collapse of Lehman Brothers highlighted the difficulties that were surfacing and consequently surfaced when Lehman Brothers went into bankruptcy almost exactly a year ago. Lehman Brothers was the largest and most high profile casualty of the meltdown that wiped some $1.6 trillion from the balance sheets of the world’s banks.

Looking back, at the time George W Bush was then President of the United States, as I recall. He was certainly no left-of-centre member of the G20, as Mr Hockey recently twitted in a thought bubble that he outlined last week. President Bush warned of the imminent collapse of the entire capitalist system and his administration enacted several US government rescue packages, including the purchase of investment bank Bear Stearns—that is nationalisation, for those socialists in the Liberal opposition—the nationalisation of mortgage giants Fannie Mae and Freddie Mac and the stabilisation of AIG, the American insurance giant. President Bush at the time said:

I’m a market oriented guy, but not when I’m faced with the prospect of a global meltdown.

But, most worrying, those opposite in the Liberal opposition have learnt little from these experiences. They did support the first
economic security strategy, albeit somewhat grudgingly— *(Time expired)*

**Senator BILYK**—Mr President, I ask a supplementary question. Can the Assistant Treasurer further inform the Senate of other extraordinary policy and economic measures that have been put in place to stave off the collapse of the world financial system and to cushion Australia from the worst effects of the global recession? Has the threat posed by the near collapse passed?

**Senator Colbeck**—Lost in space!

**Senator SHERRY**—The only person lost in space—in response to that silly interjection from Senator Colbeck—is Mr Hockey, particularly when he twitters and poses his thought bubbles. The world faced the worst financial and economic meltdown in 75 years, and that sort of silly interjection from the Liberal opposition is just typical of the lack of seriousness which they have displayed in responding to these issues. Their position has been to wait and see: to sit on your hands, wait and see, until things get worse and worse and worse; to twitter and have various thought bubbles, no policy; and generally to oppose every decisive action that the Rudd Labor government has taken. Criticise the bank guarantee. Criticise the stimulus packages. Criticise the interim ban on short selling. Time and again— *(Time expired)*

**Senator BILYK**—Mr President, I ask a further supplementary question. Can the Assistant Treasurer inform the Senate what dangers there are for Australia if we do not heed the lessons of last year, as exemplified by this week’s anniversary of the collapse of Lehman Brothers?

**Senator SHERRY**—There has been a considerable degree of criticism by the Liberal-National Party of the Labor government’s stimulus packages. Firstly, on the issue of debt, the predominant reason for government debt has been the collapse of revenue, some $210 billion, arising from the global financial and economic crisis. One important aspect of the fiscal stimulus has been to cushion the Australian economy. What the Liberal-National Party effectively is arguing is: no stimulus and let unemployment go up— *(Time expired)*

**Senator Colbeck interjecting**—

**Senator SHERRY**—We have got an acknowledgement of it from Senator Colbeck, thank you. Their policy is: let unemployment go up.

**Senator Colbeck**—That’s not what we said.

**Senator SHERRY**—And we know that there would have been more than 200,000. That is a consequence of your thought bubbles. *(Time expired)*

**Asylum Seekers**

**Senator CASH** *(2.10 pm)*—My question is to the Minister for Immigration and Citizenship, Minister Evans. Does the Labor government accept any responsibility for the surges in asylum seekers attempting to enter Australia unlawfully?

**Senator CHRIS EVANS**—The Rudd Labor government takes its responsibility for combating people-smuggling absolutely seriously. We are doing all we can to try and combat the evil trade of people-smuggling. We believe that excision, mandatory detention and offshore processing of irregular maritime arrivals on Christmas Island signals that Australia maintains a very strong border security stance.

**Senator Cash interjecting**—

**The PRESIDENT**—Order! Resume your seat, Senator Evans.

**Honourable senators interjecting**—
Senator CHRIS EVANS—In the 2009 budget an additional $654 million was dedicated to a whole-of-government strategy to combat people-smuggling as part of the government’s $1.3 billion strategy to strengthen national security and border 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 irregular people movement. The Rudd government has 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. These new arrangements will create a more effective capability to analyse intelligence, coordinate surveillance and on-water response and, of course, engage internationally with source and transit countries to comprehensively address and deter people-smuggling throughout the operating pipeline.

The Labor government are absolutely committed to try and combat people-smuggling. We are working closely with Malaysia, Indonesia and Sri Lanka to deal with what is an increasingly large number of people seeking asylum and moving through South-East Asia. It is a problem that we have come together to tackle under a rejuvenated Bali process, as all countries in the region recognise the challenge people-smuggling makes to us. (Time expired)

Senator CASH—Mr President, I ask a supplementary question. Given that the minister blames everyone else apart from his policies for the surge in asylum seekers, why won’t the minister agree to hold an independent inquiry into the issue? What has the government got to hide?

Honourable senators interjecting—

The PRESIDENT—Order! Time for debating the issue is at the end of question time. When there is silence on both sides we will proceed. Senator Evans.

Senator CHRIS EVANS—Senator Cash condemns the Liberal Party out of her own mouth with her question. She says the recent number of arrivals is all the Labor Party’s fault. Then she says, ‘Put your faith in us because we have an alternative policy. We have a policy that says, “We want an inquiry.”’ That is very courageous of you. It is a very important contribution to national debate. We are not proposing an inquiry because we are proposing to continue strong action to try and combat people-smuggling. We are absolutely committed to the task at hand. We have committed more resources. We have reinvigorated the Bali process. We are doing all we can to deal with these challenges. I do not think an inquiry is an alternative policy or any—(Time expired)

Senator CASH—Mr President, I ask a further supplementary question. Given the Labor government’s refusal to work cooperatively with the coalition to conduct an inquiry into border security, can the minister now release all advice—

Government senators interjecting—

The PRESIDENT—Order! I have got to be able to hear the question.

Senator CASH—Given the Labor government’s refusal to work cooperatively with the coalition to conduct an inquiry into border security, can the minister now release all advice from the Department of Immigration and Citizenship and the Australian Federal
Police regarding all changes made to immigration and border protection policy?

Senator CHRIS EVANS—Thank you—

Senator Cash—What are you going to say when the next boat arrives: ‘Our policies are working’?

The PRESIDENT—Order! You have had your opportunity to ask your question, Senator Cash.

Senator CHRIS EVANS—I know Senator Cash is excited today. I do wonder what she said in 1999 when 86 boats arrived. I do not know whether she claimed that the Howard government was weak on border security, but that is a question—

Honourable senators interjecting—

The PRESIDENT—Order, on both sides! Senator Evans, address your comments to the chair.

Senator CHRIS EVANS—The opposition would accept that that analysis was wrong and unfair. I argue that their analysis now is wrong. Can I also just say that a number of changes we have made, which they now blame the recent arrivals on, they supported. Their own shadow minister has said that they support the closing of the Pacific solution. I would like to give you a chance today, in taking note of answers, Senator Cash, to ask: does or does not the Liberal Party support the ending of the Pacific solution?

Senator Parry—Mr President, I rise on a point of order which goes to relevance. The sessional orders clearly state that the minister should be directly relevant in his answer. So far, it has been a personal assault on Senator Cash. He has been asked a simple question: will he release the information that the Department of Immigration and Citizenship and the Australian Federal Police have provided in the policy formation? It is a simple question: will he release the information?

Government senators interjecting—

The PRESIDENT—Order! When Senator Parry is on his feet, he is entitled to be heard in silence. Anyone on either side of this chamber is entitled to be heard in silence.

Senator Ludwig—Mr President, on the point of order: Senator Evans is being directly relevant to the question. He is not required to answer a predetermined question from the opposition. What he can do is answer the question. That does not mean that they can formulate a question which suggests an answer—either yes or no—and then require him to respond positively to the proposition. What Senator Evans can do is directly answer the question in a way that informs the parliament and in a way that ensures that he is being directly relevant.

The PRESIDENT—Order! I consider the minister to be answering the question. He has three seconds remaining to answer the question.

Senator CHRIS EVANS—I am happy to debate policy when the Liberal Party get one.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of a parliamentary delegation from the Republic of Indonesia, led by Dr Laode Ida, Vice-Chairman of the DPD, the upper house of the Indonesian parliament. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Economy

Senator FARRELL (2.20 pm)—My question is to the Minister representing the Minister for Finance and Deregulation—and a crowing Collingwood supporter—Senator Conroy. Can the minister explain to the Sen-
ate how the government’s economic stimulus measures have provided Australians with confidence—

Honourable senators interjecting—

The PRESIDENT—Order! I need to hear the question. If people would leave their football allegiances alone for this week, I would be very happy.

Senator FARRELL—It will not last long. Can the minister explain to the Senate how the government’s economic stimulus measures have provided Australians with confidence in the face of the global financial crisis? How has the government’s response to the global recession supported Australian jobs and promoted stability in the Australian economy?

Senator CONROY—I thank Senator Farrell for that almost gracious question.

Honourable senators interjecting—

Senator CONROY—Yes, he has paid up! The government’s use of fiscal policy since September 2008 has been framed against the backdrop of the deepest global recession since the Great Depression. Australia has not been able to escape the downturn, but the Rudd government has taken decisive action to cushion us from the worst impacts of the global financial crisis and protect Australian jobs.

When those opposite advocated doing nothing to support the jobs of Australians in the face of the worst global recession in 75 years, this government acted quickly and decisively to protect Australian jobs and support the economy. The success of the government’s stimulus measures has been widely recognised by economic experts. As Christine Christian, CEO of Dun and Bradstreet, said just last month:

The improvement in the key indices such as employment and sales expectations is a sign that the economic stimulus has been successful in encouraging household spending.

Unlike those opposite, leading Australian economists recognise that confidence is crucial to our economic stability. Retail sales figures have demonstrated time and time again that the government’s carefully targeted stimulus packages promoted consumer confidence and supported the Australian economy at a time when other developed economies have been in freefall. As Bill Evans, the Chief Economist at Westpac, has said:

The success which the government’s stimulus package has achieved in boosting confidence will be a lesson to other governments—

(Time expired)

Senator FARRELL—Mr President, I ask a supplementary question. Given the risk to the economy of the loss of consumer confidence, is the minister aware of measures that could undermine the confidence of Australians and undo the relatively strong performance of the Australian economy compared to those of other developed nations where unemployment is on the rise and economies remain in recession?

Senator CONROY—Confidence is crucial to our economic stability, to protecting Australia’s standard of living and to ensuring that we make a strong recovery from the global economic downturn. But those opposite now want to pull the rug out from under Australians. They want to wind back the stimulus and destroy the confidence that Australians have had in their jobs since we abolished Work Choices. Make no mistake: our industrial relations system has been supporting both jobs and small business in the face of the global downturn. That is because we killed off Work Choices—until Malcolm Turnbull brought it to life over the weekend. Those opposite and their out-of-touch leader want to destroy the confidence of Australians at a time when we are still putting in place the foundations for recovery. (Time expired)
**Senator FARRELL**—Mr President, I ask a further supplementary question. Can the minister explain why employment is so crucial to economic stability and why certainty and fairness in employment are so important to Australia’s economic recovery and financial performance?

**Senator CONROY**—The Rudd government understands the damaging impact that unemployment and uncertainty have on the economy, on families and on the wider community. That is why employment will continue to be at the forefront of this government’s economic strategy. In contrast, we heard the shadow Treasurer this weekend say that he did not think that the principal aim of economic policy during a global recession was to stop the damage done to Australian families by joblessness. The shadow Treasurer has come clean and admitted that supporting jobs is no longer his party’s highest priority. His comments prove that those opposite simply want to pull the plug and the rug out from under Australian families. How callous. How disgraceful. *(Time expired)*

**Employment**

**Senator FIFIELD** (2.26 pm)—My question is to the Minister for Employment Participation and the Minister Assisting the Prime Minister on Government Service Delivery, Senator Arbib. Can the minister confirm that, of the 94,000 job seekers referred to the Productivity Places Program between April 2008 and June 2009, fewer than 6½ per cent actually obtained jobs?

**Senator ARBIB**—I thank Senator Fifield for this opportunity to talk about the government’s training programs, in particular the Productivity Places Program. I say from the outset that the government makes no absolutely apologies for matching skills and training with the jobs that are actually there. That is especially the case with Productivity Places. We are trying to line them up with children’s services, aged care and construction—the jobs that are there right now in the community. As Senator Fifield knows, it is only early days for the PPP. From April 2008 until 10 September 2009, there have been 111,897 commencements in PPP—that is 111,897 Australians that now or in the very near future will have new skills and be ready to assist industry in building our economic recovery. Of these, 42,504 were referred by employment service providers and are already completing their training. From these completions, almost 7½ thousand have achieved an employment outcome already. PPP is only one facet of what the government is doing in training, and it is only a small facet. A week and a half ago, I announced round 1 of the Jobs Fund—6,000 jobs. Nothing is more important to training than actually having the jobs in the sector, jobs in industry, and that is what the Jobs Fund is about. *(Time expired)*

**Senator FIFIELD**—Mr President, I ask a supplementary question. I do note that the minister declined to answer as to the percentage of those under the PPP who were actually placed in jobs. This supplementary question might provide the minister with the opportunity to address that. Is the Chief Executive of TAFE Directors Australia, Mr Martin Riordan, right when he says, ‘Two years into the education revolution and we haven’t really made any progress on skills shortages at all’? Will the minister undertake to release a detailed performance review on the employment outcomes of the Productivity Places Program so that taxpayers can judge for themselves whether they are indeed getting value for money?

**Senator ARBIB**—We all know the Liberal Party’s record. We all know their record in terms of skill development and training—

*Opposition senators interjecting—*

**The PRESIDENT**—Order! Order!
Opposition senators interjecting—

Senator ARBIB—We know what the Reserve Bank said—

Opposition senators interjecting—

The PRESIDENT—Order! The minister will resume his seat. Order! I draw your attention to the question, Senator Arbib. You have got 47 seconds left to answer the question. Senator Arbib.

Senator ARBIB—I am very happy to answer the question. We all know their record: 20 Reserve Bank warnings on capacity constraints that led to 10 increases in interest rates. The Liberal Party could not give a damn about training, could not give a damn about—

Senator Brandis interjecting—

The PRESIDENT—Order! The minister will resume his seat. When we have silence, we will proceed.

Senator Bernardi interjecting—

The PRESIDENT—Order! Proceed, Senator Arbib.

Senator ARBIB—Can I tell Senator Fifield: the best thing we can do for training comes straight out of the stimulus package. I am talking about apprenticeships and traineeships. The federal government is working with the state and territory governments to ensure that 10 per cent of contract labour hours in the stimulus are for apprentices and trainees. There is no greater step that any government can take than to ensure that apprentices are being trained through the stimulus package. If you left it to the Liberal Party, there would be no stimulus package; there would be no training. Their policy on jobs? One year in, they have no policy. They have no plan whatsoever, not one job.

Honourable senators interjecting—

The PRESIDENT—Order! Order! On both sides, I need order.

Senator Fifield—Mr President, I rise on a point of order on relevance. The minister was asked a very specific question: is he satisfied with the 6.5 per cent success rate for the PPP?

The PRESIDENT—The minister has addressed the question. I draw the minister’s attention to the fact that there are three seconds remaining. I cannot instruct the minister to give a specific answer but I ask him to
address the question in the remaining three seconds.

Senator ARBIB—As I said, the opposition have no jobs plan except Work Choices.

Opposition senators interjecting—

The PRESIDENT—Order!

Government senators interjecting—

The PRESIDENT—Order! I am waiting to call Senator Bob Brown, who is entitled to be heard in silence on both sides.

Traveston Crossing Dam

Senator BOB BROWN (2.34 pm)—My question is to Senator Wong, Minister representing the Minister for the Environment, Heritage and the Arts. Has the minister received the Queensland Coordinator-General’s draft report on the proposed Traveston dam; and, if so—

Senator Ian Macdonald—Bob, you preferred the Queensland government, didn’t you?

Senator BOB BROWN—The interjection from Senator Macdonald is disorderly.

Opposition senators interjecting—

The PRESIDENT—Order! Senator Bob Brown, please resume your seat. You are entitled to be heard in silence. Interjections are disorderly.—

Government senators interjecting—

The PRESIDENT—on both sides. Order, on both sides! Senator Bob Brown.

Senator BOB BROWN—Is the minister for the environment going to release the report for public comment; and what status does a draft report have in his final deliberations? I also ask: is it true that the minister is considering the failure of so-called protective measures for the Australian lungfish in the Paradise Dam, and has that held up proceedings in the Federal Court?

Senator WONG—I think, of the four questions asked, I can probably assist with three. I may have to take one of them to the minister, Senator Brown. In relation to whether the minister for the environment has received a draft report, I am aware the department has, on 11 September, and also that the Queensland Coordinator-General is in fact still preparing his final assessment report. I should make clear that the minister’s decision-making powers and responsibilities under the EPBC Act in fact do not commence—in terms of the time clock commencing—until there is formal submission by the Queensland government of the Coordinator-General’s final assessment report. So the draft assessment is being reviewed by the department, and they will meet with the Queensland department of infrastructure to discuss the proposal.

In relation to the second question about public comment, that is the issue I probably will have to take on notice. Obviously, there is public consultation under the act, but I do not know the answer in relation to the draft assessment report.

Finally, in relation to the lungfish, it is the case that the minister has indicated that any relevant scientific information relating to the recent death of lungfish following the release of water from North Pine Dam will be taken into account in deciding whether or not to approve Traveston dam. More broadly, the potential for lungfish and other aquatic species’ fatalities as a result of the operations of the Traveston dam is being considered in the assessment process as well as through independent expert reports commissioned by DEWHA.

Senator BOB BROWN—I thank the minister and look forward to the reply on notice. I ask a supplementary question. Is it true that the Federal Court suspended hearings last week because the Minister for the
Environment is doing an assessment of the failure of measures to allow the lungfish to move to and fro past the Paradise Dam on the Burnett River—the other river—which is its natural habitat? Will the minister be ensuring that he takes into account also the 2007 University of Technology, Sydney, report when looking at prudent and feasible alternatives to the Traveston dam?

Senator Ian Macdonald interjecting—

Senator WONG—In relation to the Paradise Dam issue, I am aware of the current civil action associated with Paradise Dam. Perhaps Senator Macdonald might like to hear the question rather than trying to interject.

The PRESIDENT—Senator Wong, ignore the interjections. Address the chair.

Senator WONG—In relation to the issues before the Federal Court, I am not in a position to comment about matters before the court, Senator Brown, and I think that would not come as any surprise to you. The minister is aware of current civil action associated with Paradise Dam. Perhaps Senator Macdonald might like to hear the question rather than trying to interject.

Senator BOB BROWN—Mr President, I ask a further supplementary question. Can the minister tell the Senate whether the measures for the passage of fish around the Paradise Dam have succeeded or failed? Can the minister also say whether the University of Technology, Sydney, report putting forward prudent and feasible and cheaper alternatives for water supply to South-East Queensland than the Traveston dam are being taken into account by the minister in this period when the Queensland government has asked him to take account of matters to do with the Traveston dam before the Coordinating-General’s final report is available?

Senator WONG—I think it is very important to recall what Minister Garrett’s role is here. Minister Garrett has a duty, a discretion, under the EPBC Act to make a decision within the parameters of that act and to take into account issues that are properly before him and relevant to that decision. It is not a wide-ranging general discretion about what is good in the world. It is a very clear set of discretions bounded by the provisions of that legislation. Minister Garrett has made very clear that he will be applying his obligations in relation to this decision, and in relation to all decisions he makes under the EPBC Act, in accordance with that discretion and to consider properly the things which are put before him in accordance with the act. Clearly, there is a great amount of interest in this project. (Time expired)

Environment: Murray-Darling River System

Senator BERNARDI (2.41 pm)—My question is to the Minister for Climate Change and Water, Senator Wong. Is it still the government’s policy, as the minister has often stated, that the fastest and best way to save the Murray-Darling Basin is to buy up water licences?

Senator WONG—We have a very clear plan in the Murray-Darling. First, it is to take over planning across the basin—and we have done that. We have established the Murray-Darling Basin Authority which is undertaking the first ever basin-wide plan based on science, something that never occurred under those opposite. That will result in the first ever scientifically based cap, limiting the amount of water that we can take out of basin rivers. It is the first time in Australia’s history that this will be applied.

The second thing we are doing is investing in infrastructure and irrigation. The reason we are investing in irrigation is that it is important for food security. It is important
also because it is about recognising that we live in an era when we are likely to see less water. I know Senator Bernardi’s views on climate change are well known, but we have a recent report, from memory called the SEACI report, which includes collaboration between the Bureau of Meteorology—and I am coming to your question, Senator Bernardi—

**Senator Bernardi**—Mr President, I rise on a point of order on relevance. I asked the minister whether it was still the government’s policy, as the minister has often said, that the fastest and best way to save the Murray-Darling Basin is to buy up water licences. Senator Bernardi, if you want to come in here—

**The President**—Order! I consider that the minister is answering the question. I draw the minister’s attention to the fact that there are 44 seconds remaining to answer the question.

**Senator Wong**—It is interesting that as soon as one mentions the term ‘climate change’, Senator Bernardi has to jump to his feet and interject. We know it is such a difficult issue for him. The third thing we are doing is investing in water purchase. We are spending an unprecedented amount. From memory, some $2.1 billion over the forward estimates has been budgeted for in order to purchase water to return to our rivers. And whilst on this issue, it is interesting to note that those opposite remain completely divided between those who say to South Australians that they want to purchase more, and those upstream who want us to purchase less. *(Time expired)*

**Senator Bernardi**—Mr President, I ask a supplementary question. Given all the speeches that the minister has made about the benefits of buying up water licences, why has the government now cancelled 400 buyback applications from Murray-Darling Basin irrigators that have met the government’s buyback application timetable?

**Senator Wong**—It is very simple. As a result of the 2008-09 water purchases tender becoming fully subscribed, many offers to sell water had to be rejected. I just remind those opposite that they opposed water purchase. That is what a number of your members say, Senator Bernardi, if you want to come in here—

**The President**—Address your comments to the chair.

**Senator Wong**—Through you, Mr President, if Senator Bernardi wants to come in here and criticise us for not purchasing enough, I suggest he ought to talk to members of the National Party, such as Senators Joyce and Nash, Dr Stone and various others, including I think Mr Cobb, who have said that we should not purchase water. You should have the honesty and strength to go down to South Australia when you attempt to play politics on this issue, and say to them, ‘We cannot get this position up in our party room’.

**Government senators interjecting**—

**Senator Heffernan**—Mr President, I want to raise a point of order on relevance about the accuracy of what is being said.

**Senator Heffernan**—You learn something if you listen. This government recently bought Booligal station for its wetlands and the wetlands are on the property next door. They bought the wrong property. The wetlands are on the property next door.

**The President**—Order! There is no point of order. Senator Wong, you have three seconds remaining to answer the question. You have finished answering the question?

**Senator Wong**—Yes.

**Senator Bernardi**—Mr President, I ask a further supplementary question. Once again, given that the minister has said that
the best way to save the Murray-Darling Basin is to buy up water licences and that 400 irrigators had met the government’s application timetable, what will the Labor government do to rectify the injustice caused to the irrigators who missed out or is the cancellation of these applications further evidence that the government has no effective plan for the future of the Murray-Darling?

Senator WONG—As I said on that issue, regretfully that program was fully subscribed. That is the reality, even recognising the changes that were made as a result of dialogue with Senator Xenophon. I am asked what the government will do. As at 30 August, just on this issue, the government—leaving aside investment and the historic changes on planning—has purchased some 545 gigalitres, worth $840 million. That is a 545 billion litres of water entitlement that was never purchased under you. The reality is that those on the other side have no credibility on this issue. They did nothing in government and even now they have no policy.

Workplace Relations

Senator LUNDY (2.47 pm)—My question is to the Minister for Employment Participation representing the Minister for Employment and Workplace Relations, Senator Arbib. Can the minister inform the Senate of the impact that Australian workplace agreements have had on Australian workers? In particular, could the minister detail how AWAs have been used to strip workers of pay and conditions? What would reintroducing AWAs mean for employees, especially when their jobs are under threat from the global recession? Finally, would the reintroduction of AWAs mean the return of Work Choices?

Honourable senators interjecting—

The PRESIDENT—Order! On both sides, the time for debating this issue is at the end of question time, not now.
Honourable senators interjecting—

The PRESIDENT—Senator Arbib, resume your seat. Senator Arbib is entitled to be heard in silence. Debating the matter across the chamber at this time is disorderly. There is plenty of time at the end of question time to debate these issues for those who want to put their name on the list of speakers.

Senator ARBIB—The member for O’Connor today supported the member for Wentworth, saying:

I was never comfortable with people coming out without partyroom endorsement at the time and saying WorkChoices was dead. The only problem with WorkChoices was its name.

(Time expired)

Senator LUNDY—Mr President, I have a supplementary question. Is the minister aware of any plans to reintroduce AWAs into the industrial relations system? What is the detail of these plans? How could such changes represent a threat to jobs and employment? Could the minister please outline the extent of support for such changes in the parliament and elsewhere?

Senator ARBIB—We do know that AWAs were at the beating heart of Work Choices. Under the Liberals, almost two-thirds of AWAs cut annual leave loading, 63 per cent slashed penalty rates, over half cut overtime and shiftwork loadings, 48 per cent cut allowances, 46 per cent cut public holiday pay—

Opposition senators interjecting—

The PRESIDENT—Senator Arbib, resume your seat. Order!

Senator ARBIB—Worse was to come because AWAs also provided no guarantee of redundancy entitlements. In the middle of a global recession if Work Choices were in place, workers on contracts would have no guarantee of redundancy entitlements. This is what the Liberal Party want to return in the middle of a global recession. It would be absolutely disastrous for workers, especially workers on low incomes. The most vulnerable workers would be disadvantaged—

Opposition senators interjecting—

The PRESIDENT—Resume your seat. When there is silence, we will proceed.

Opposition senators interjecting—

The PRESIDENT—Order! Senator Arbib, continue.

Senator ARBIB—All this is back on the cards. Mr Turnbull let the cat out of the bag over the weekend. (Time expired)

Senator LUNDY—I thank the minister for his answer. Mr President, I ask a final supplementary question. Can the minister further elaborate on the sources of support for such fundamental changes that threaten jobs and entitlements? Can the minister inform the Senate of why such radical changes are being proposed at the height of the global recession?

Senator ARBIB—I can tell you why Mr Turnbull is trying to introduce them now—because he is out of touch. He is completely out of touch with working Australians. He is desperate—there is no doubt about it. His leadership is under threat from hardliners, such as the member for Warringah and Senator Abetz—

The PRESIDENT—Resume your seat. When we have silence, we will proceed.

Opposition senators interjecting—

The PRESIDENT—When we have silence, we will proceed. Order!

Senator ARBIB—Just to show how out of touch the Liberal Party is I will read what Mr Keenan, the shadow minister, said this morning when he was on Sky News. Kieran Gilbert said to him:

CHAMBER
I suppose people would want to know though in this time of economic uncertainty would the coalition’s safety net include, for example, a guarantee on redundancy pay. Would you provide a guarantee for that?

Mr Keenan said:

Look, I think people absolutely have a right to know the sorts of things that we will be proposing, but we will release our policy in the leadup to the next election.

Mr Gilbert said:

So you can’t guarantee something like redundancy …

(Time expired)

Climate Change

Senator BOSWELL (2.56 pm)—Has the minister seen the recent UN report—

The PRESIDENT—Sorry, Senator Boswell, who is this addressed to?

Senator BOSWELL—Senator Wong.

The PRESIDENT—In what capacity?

Senator BOSWELL—As the Minister for Climate Change and Water. Has the minister seen the recent UN World Economic and Social Survey 2009 that calls for existing climate change funding of $21 billion to be astronomically increased to US$500 billion or US$600 billion a year to be paid by the developed countries? How much of taxpayers’ money will the Australian government commit in this regard?

Senator WONG—I say to the coalition and those sensible people, perhaps in the Liberal Party—

Government senators interjecting—

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

Senator WONG—I am trying to not—

Senator Abetz interjecting—

Senator WONG—I am genuinely putting this proposition, Senator Abetz. I know you find that difficult to comprehend. If you are interested in an international agreement then clearly financing is part of that. I suggest those on the other side who want to play a role internationally, those on the other side who say they want a global agreement—and there are many Liberals who do—consider with some—

Senator Ian Macdonald—Do you know the answer to the question? If you do, give it.

The PRESIDENT—Order! Senator Macdonald!

Senator WONG—Those on the other side who say they want a global response to climate change will have to deal with the fact that financing will be part of that agreement. That would be the case under our government or under your government. I remind you also that you and your leader have in fact said you want a global agreement.

On the issue of financing, we have been very clear that this is a matter still for significant discussion and dialogue in the negotiations. We have been very clear that this is part of the whole of the negotiations for an international agreement. I have read with some concern Senator Boswell’s comments. Again I invite those who want to be sensible on this issue to remember that, if an international agreement is in Australia’s national interest, which it is, then Australia, like all other countries, will have to deal with the issue of financing. That is self-evident. (Time expired)

Senator BOSWELL—Mr President, I ask a supplementary question. Has the minister seen reports that the European Union suggest Australia pay $3.8 billion a year in overseas climate aid, which is close to our existing foreign budget? We need answers from the government before you go to Copenhagen with a blank cheque. How much money will come out of the Australian budget over the next few years to help developing countries tackle climate change?
Senator WONG—I want to be clear that financing will require a multiplicity of financing vehicles and it will require significant leveraging of carbon markets. It will require significant leveraging of private sector investment through carbon markets. This is a complex discussion that is being negotiated both through the UNFCCC and has also been discussed in the G20 context. Clearly, Australia will need to be part, as we are, of the current discussions and to be clear about this being part of the international negotiations. There have been no clear commitments made as yet, Senator Boswell, because these issues are still being negotiated. But I do want to again say to the Liberal Party: if you are serious about an international response to climate change, you cannot run away from this issue. And we invite the Liberal Party—

Senator Abetz interjecting—

Senator WONG—I do not include Senator Abetz in the ‘sensible Liberals’ collective, especially with those interjections. I invite those opposite, genuinely, to approach this—

(Time expired)

Senator WONG—The nature of the transformation the world has to make during our lifetime is beyond the capacity of governments alone to fund. That is why policies such as the CPRS and policies internationally that involve the development of carbon markets are so critical. These are issues to be negotiated. And, as I said, I invite the Liberal opposition to take a mature, sensible approach to this issue, because if you want to deal—

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

POINTS OF ORDER

Senator FIFIELD (Victoria) (3.02 pm)—Mr President, my question to you is in relation to the operation of the clock during points of order. During my point of order to Senator Arbib I rose to my feet with a little over 20 seconds to go on the clock. The clock continued to count down after you had acknowledged me, while you were speaking and while I was speaking. It was only just before I finished my point of order that the clock stopped, with about three seconds to go. So I wonder whether you could look at the operation—

The PRESIDENT (3.03 pm)—Senator Fifield, I did not notice that, as I was concentrating on other issues. The clock should be stopped when a point of order is taken. That is why, when people rise to their feet to take a point of order, they should clearly note that it is a point of order being taken so that the clock will be stopped. If that did happen, we will see that it does not happen again. Senator Faulkner?

Senator FAULKNER (New South Wales—Minister for Defence) (3.03 pm)—In a way this is related to Senator Fifield’s point of order. In question time today, on at least two occasions—and I did not quite hear whether there was a third—I believe senators intended to take points of order but did not...
identify the fact that they were taking points of order. What has been happening, with due respect, Mr President, is that the call has been offered to senators in those circumstances. I do not think the call should be provided to a senator who just gets to their feet and starts speaking without identifying the fact that they are taking a point of order. Respectfully, I would suggest—not in the case of Senator Fifield, who certainly did not do that—that it must be extremely difficult for the timekeeper to know what on earth is happening in those circumstances, where a senator is given the call when they do not even identify the fact that they are taking a point of order. I think them being given the call by the President, or by whomever is presiding at the time, is questionable in those circumstances. Anyway, I just respectfully suggest you give consideration to that.

The PRESIDENT (3.04 pm)—Senator Faulkner, that is one of the reasons I made the comment, and I welcomed the intervention by Senator Fifield, that clearly, when a person stands to take a point of order, they should nominate that it is a point of order. It assists both the timekeeper and me, because sometimes people rise to their feet and it has nothing to do with a point of order whatsoever. Senator Fifield, if that did happen to you today—and I have no doubt that it did, based on what you have said—it should not have happened and we will take steps to ensure that it does not happen again.

Senator PARRY (Tasmania) (3.05 pm)—Mr President, on the same matter, I acknowledge what Senator Fifield has said to the chamber. In support, I noted that the clock did exactly what Senator Fifield indicated. Also, when I took a point of order—and I take Senator Faulkner’s point—I certainly raised that it was a point of order relating to the sessional matter in the Notice Paper concerning relevance, which I mentioned first up. But also, in my point of order, the clock continued to run and did not stop. I think it is very easy for us to indicate that the timekeeper has not stopped the clock, but it is very difficult in the volatility of question time. I am wondering whether an additional mechanism needs to be introduced to assist in the timekeeping of those matters relating to question time, because it is very difficult to indicate when the clock should stop. When we are talking about a one-minute response, I think it is important to note that every second does count.

The PRESIDENT (3.06 pm)—I think in the main it is pretty well kept under control. But there will be circumstances from time to time where there will be difficulties. I will watch this matter closely over the next week. If there is any further action that needs to be taken then we will look at further action.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Timor Sea Oil Spill

Senator WONG (South Australia—Minister for Climate Change and Water) (3.06 pm)—On 7 September, Senator Siewert asked me a question in my capacity as Minister representing the Minister for the Environment, Heritage and the Arts. I have some additional further information to add to the answer provided, which I now table and seek leave to have incorporated into Hansard.

Leave granted.

The document read as follows—

On 7 September 2009 during question time, Senator Siewert asked me a question as Minister representing the Minister for the Environment, Heritage and the Arts concerning impacts of the oil spill in the Timor Sea on wildlife.

I would like to clarify a point I made in response to Senator Siewert’s question. At that time, I indicated that the Western Australian Department of Fisheries was pursuing reports of affected wildlife off the Kimberley coast. I am advised that the WA
Department of Fisheries was pursuing reports of fishing activity in oil affected waters after reports by an anonymous West Australian licensed fisherman of affected wildlife and water quality.

Responding to oil affected wildlife in WA state waters is the overall responsibility of the West Australian Oil Spill Response Team, which is led by the Environment and Science Coordinator with their Department of Environment and Conservation. WA Fisheries is a member of the WA Oil Spill Response Team.

I can also advise the Senate that the Commonwealth Department of the Environment, Water, Heritage and the Arts continues to work closely with the Australian Maritime Safety Authority and relevant Commonwealth and state agencies to ensure that appropriate measures are in place to respond to any oil affected wildlife and the broader environment. A plan of action to help any wildlife that might be affected by the oil spill in Commonwealth waters, and to respond to possible impacts on Commonwealth reserves, has been developed by an expert in oiled wildlife response from the Queensland Department of Environment and Resource Management. This expert coordinated the wildlife response to the Moreton Bay oil spill earlier this year. The plan also ensures that the appropriate response equipment is on site should it be needed.

Last week this expert undertook aerial surveillance of the area, including the Ashmore Reef and Cartier Island Commonwealth marine reserves. He is currently at Ashmore Reef undertaking on-ground surveillance of wildlife in the area. Customs and Border Protection Command officers on site at Ashmore are also regularly surveying the reserve for any identifiable impacts.

**QUESTIONS WITHOUT NOTICE:**

**TAKE NOTE OF ANSWERS**

**Asylum Seekers**

**Senator FIERRAVANTI-WELLS** (New South Wales) (3.07 pm)—I move:

That the Senate take note of the answers given by the Minister for Immigration and Citizenship (Senator Evans) to questions without notice asked by Senators Fierravanti-Wells and Cash today relating to immigration and asylum seekers.

Since July last year we have seen this government systematically and deliberately unravelling the whole suite of measures that the previous government had introduced which together, in their entirety, gave us a very effective immigration system and very strong border protection. In a speech on 29 July 2008, entitled ‘New directions in detention’, Minister Evans outlined his manifesto for what has now become the systematic dismantling of the immigration and border protection systems. It is interesting to go back and look at components of that speech. At the time, the minister couched it in language which seemed to say that the government was maintaining its commitment. In fact, the minister said in his speech:

The Labor Party went to the last election with a commitment to maintain a system of mandatory detention and the excision of certain places from the Migration zone, and both commitments will be honoured.

It is all very well to say that but, if you systematically whittle away the criteria and the conditions needed to maintain those systems, it really is a hollow promise and a hollow exercise. It is a false promise.

We are now seeing what was a very effective immigration and border protection system being whittled away bit by bit until it is left as a hollow shell. What do we see? First we saw the minister give us this speech, but then, in October last year in estimates, we started to see how this is actually unravelling. We saw this when the department outlined the details of the 26 program initiatives that the government was changing to give effect to its dismantling of key immigration platforms that had been very effective in giving us a strong immigration and border protection system.

Let us look at what has happened in immigration since that time. One of the most important things is that, while they are now saying, ‘Oh, yes, we have maintained deten-
tion,’ the reality is that 90 per cent of people are given permanent visas within 90 days. In my experience as a government lawyer, one of the difficulties that we most encountered in immigration cases was knowing who people actually were. When people come with false documents or when they do not have documents, it is so important from the perspectives of security and risk to the community to know who people are. One of the reasons why a lot of people spend time in detention is that you do not actually know who they are and you have to go back. My concern is whether there are corners being cut and whether there are circumstances where these proper procedures are not being followed.

Other strong signals have been given, such as the abolition of the detention debt. As I said in my speech, let us not forget that there are about 48,000 overstayers at any given time. Now, when those people, many of whom have been engaged in vexatious litigation, have racked up a huge debt, we are effectively saying to them: ‘It’s okay. Don’t worry about it. We forgive your debt.’ Yes, they will have their costs of removal on their movement alert list, but forgiving the substantial debts that they incurred by deliberately and knowingly overstaying their visas—and let us not forget that there are 48,000 overstayers at any given time—does send a message that you are dismantling this strong fabric.

There was also the abolition of the 45-day rule. What does that mean? Overstayers—people who came in on valid visas—can now suddenly decide: ‘I want to stay in Australia. I am going to whack in an asylum claim and prolong the time that I can stay in Australia.’ These are just two examples, but they contribute to the dismantling of this fabric. *(Time expired)*

**Senator POLLEY** (Tasmania) (3.12 pm)—It is amazing that, whenever we are talking about issues on which both government and opposition should be showing compassion towards people in very difficult circumstances, we have to sit in this chamber and listen to the tripe that is dished up. Look at the record of the previous government in relation to how they actually treated and processed asylum seekers.

Let us not forget that we are in the middle of the worst global financial crisis that this country has experienced in more than 75 years. As we know, that is affecting many, many other countries around the globe. It is very unfortunate that people and those seeking to make money out of the misery of others are taking to the seas and trying to enter our country illegally.

But let us not forget, either, the record of the former Howard coalition government when it comes to refugees. The Australian people very clearly remember ‘children overboard’. I do not hear anyone on the other side wanting to talk about that, apart from trying, as they do on so many issues, to rewrite history. I think the Australian people see a stark contrast between this government and those opposite who were in government under the Howard leadership. They remember very clearly the faces of children being held in detention behind barbed wire fences. It was very appropriate that the first speaker who raised this today reminded us of how little compassion was shown by those opposite when only last week they voted against the bill in relation to detention centre debts.

It is more than obvious that those opposite are still so far out of touch that they do not understand the concern and the compassion that the Australian community want us, as a responsible government, to demonstrate towards asylum seekers. And no-one—certainly no-one on this side of the chamber
and, I believe, the majority of those opposite—want to see asylum seekers entering this country illegally. But the Rudd government have set very clear parameters on how we will deal with those refugees and asylum seekers. We are quite definitely opposed to people smuggling and the organisation of illegal entry and movements across international borders of people who are trying to enter our country. When we look at this very important issue, we must always show some compassion and make sure that these people are treated with dignity and respect. But when we come into this chamber and constantly hear from those opposite about the lack of planning and the lack of policies in this area, it is another example of how they want to incite racism in this country. Those opposite have learnt nothing since they have been on the opposition benches. They have learnt nothing about the way in which they should be listening to what the Australian people expect of them and of those who are fortunate enough to sit on the government benches.

Let us talk about past policies. The issue of policies has been very interesting over the weekend.

Senator Cash—God forbid, we protected our borders.

Senator POLLEY—I will be most interested to hear if and when the opposition come up with policies other than the racial attitudes that they have demonstrated thus far, particularly in relation to their bringing back Work Choices. One can only assume that their old, worn out policies will be reigned at the next election. Those opposite are obviously quite slow at learning the lessons of defeat. The Australian people took very seriously the lies in relation to children overboard. The Australian people do not want to see children locked up in detention centres. They want to see people processed in a speedy manner and in their best interests and those of this country.

Senator Cash interjecting—

Senator POLLEY—Mr Deputy President, I will take the racist interjections any day because—

The DEPUTY PRESIDENT—Order! You will withdraw that reflection.

Senator POLLEY—Mr Deputy President, I withdraw my comments in relation to the racist interjections from those opposite. Getting back to the important issue of people who are trying to come to this country, they see the circumstances for which they left their own country—(Time expired)

Senator BERNARDI (South Australia) (3.17 pm)—I am disappointed in the Labor Party. I thought they would take more issue with this debate on taking note of the answer given by the Minister for Immigration and Citizenship to questions without notice today, relating to asylum seekers. Instead of unleashing the big guns of border protection, the Labor Party have unleashed a trio who are pretending to be tough on border protection and having a mortgage on compassion.

I am disgusted with what Senator Polley said in this debate. She was trying to pick up the racist xenophobia line that is used to so unfairly characterise anyone who wants to be tough on Australian border protection. There are some harsh realities that the Labor Party have to observe here. Mr Deputy President, the Labor Party have to realise that denial is not just a river in Egypt. They are completely in denial about their outrageous policies that are soft on border protection and that are undermining Australia’s border integrity. That much is very clear. For anyone over there to deny that is to refuse reality. Even the minister at question time today said that there were around 1,000 unauthorised arrivals. Minister, I have to tell you that there are 1,456— that is 456 more people than you
were prepared to admit to today. You are still in denial. You are in denial that the changes you have made to Australia’s border protection laws are actually encouraging and abetting people in coming here.

Further, Senator Polley has the gall to suggest that the global financial crisis is driving people to use people smugglers. The reality is that it costs thousands and sometimes tens of thousands of dollars for someone to use a people smuggler to come to this country. People have jumped from one country to another country to another country in the hope of getting to Australia. It is hardly the conduct of people fleeing for their lives when they sit around in hotels in Indonesia waiting for a boat to come out here.

The government talks about compassion. Their border protection policies and the changes they have made to the previous policies that were working very well have resulted in things like two men in an esky floating their way over here. They get rescued and say, ‘No, we don’t want to go home.’ The Labor Party should be ashamed of themselves. They are living in a land where reality will not touch their policies. How else can we explain the fact that 1,456 people, on 31 boats, have attempted to make their way to Australia illegally since August 2008? How can we contrast and compare that with what happened in previous years. In 2002, border protection was strengthened and in that year there was one person; in 2003, there were 53; and, in 2004, there were 15 and so on. But when the border protection mechanisms were softened, those figures jumped from 161 to 589 in one year. Since the Labor Party have been elected, there have been 1,456 people in total. Yet the Labor Party say nothing is wrong. The numbers have doubled annually, yet the Labor Party think nothing is wrong. The Labor Party are saying, ‘We’re not encouraging them to come here, because nothing is wrong’—and they frame this as compassion. Do they know what compassion is?

Compassion is preventing people from doing things that are not in their interests, such as hopping into a leaky boat from Indonesia or anywhere else for that matter and putting their lives and those of their families in jeopardy. Compassion means putting people in a position where they can go through legal channels. Senator Polley, that is appropriate compassion. But we do not see that from the Labor Party. The Labor Party are saying, ‘Come along and enter our waters illegally and we will house you, we will clothe you, we will feed you and we will give you every incentive to stay in this country.’ The tragedy is that the Labor Party are damned by their own policies. Senator Evans, when in opposition, belittled the Howard government for saying that the Christmas Island detention facility was a white elephant. He could have been right. Had we maintained tough border protection laws, it probably would have been a white elephant and might never have needed to be used. But now it is full to overflowing and the government do not know where to put people. The government are now boasting that they have another detention facility available in Darwin. This is wrong. It is wrong for people to come to this country illegally, to jump the queue and to take the place of those who are going through appropriate, prudent and legal channels. Every illegal immigrant who is allowed to stay in this country means that someone who has done the right thing is not allowed to stay. The Labor Party may be proud of that. They may be happy that their record is going to support that sort of conduct but the coalition is not.

Senator CAROL BROWN (Tasmania) (3.22 pm)—Once again, the scaremongering and political grandstanding coming from those opposite is absurd. In the face of difficult times in border security, they are putting
their heads in the sand, pointing the finger and creating unnecessary fear in the community. Senator Bernardi, unfortunately, has obviously come to the view that ranting and raving is the best way to cover up the fact that there is absolutely no substance to his argument.

Senator Bernardi—It is called telling the truth.

Senator Polley—We are talking about ‘children overboard’, are we?

The DEPUTY PRESIDENT—Order! Senator Polley, your colleague is trying to make a speech.

Senator CAROL BROWN—I think it is pretty reflective of the character of those opposite that they are prepared to take this tack with such a serious issue, especially when those opposite really cannot put up a united front on this issue. After all, it is those opposite who are divided on immigration, which is why they are trying to score cheap political points. So for them to come into this place and falsely represent the government on this issue is really beyond belief.

The Australian government remains vigilant and committed to protecting Australia’s borders. The mudslinging continued by those opposite, attempting to claim Australia has changed its policy on asylum seekers, is once again completely false. Unaccompanied children are processed as a matter of priority. This is not a change of government policy. In fact, since being elected, the government has maintained one of the toughest and most comprehensive border security regimes in the world.

Contrary to the false accusations of those opposite, the government firmly believes that the control and management of our borders is integral to the nation’s security. And contrary to suggestions by those opposite that we have somehow gone soft on border protection, we have in fact built on measures by providing more funding and we have increased the extensive patrols of our coastline. Likewise, the Rudd government went to the last election with a commitment of maintaining a system of mandatory detention for all unauthorised boat arrivals, a commitment which has been honoured. We have also retained the excision of offshore islands and the offshore processing on Christmas Island of unauthorised arrivals. As the minister pointed out, the Rudd government believes that the excision and offshore processing at Christmas Island will signal that the Australian government maintains a very strong anti-people-smuggling stance. It also reinforces in the minds of our neighbours our strong commitment and the value we place on their cooperation. As I have mentioned, we have also maintained extensive air, land and sea patrols, we have put a priority on the prosecution of people smugglers and increased our strategic regional engagement.

Senator Cash—And roll out the welcome mat!

Senator CAROL BROWN—Senator Cash may interject all she likes, but that sort of ill-informed comment and interjection does not carry any weight with the Australian people. As I was saying, all of these measures are the actions of a government that is strongly committed to protecting our borders and reducing the number of people arriving illegally in our country.

Senator Cash—You really need to go and listen to what Senator Bernardi said.

The DEPUTY PRESIDENT—Order, Senator Cash!

Senator CAROL BROWN—I listen intently to—

Senator Cash—Then you should not be incorrectly using the numbers.

The DEPUTY PRESIDENT—Order, Senator Cash!
Senator CAROL BROWN—Mr Deputy President, are you sure that Senator Cash has got it out of her system?

The DEPUTY PRESIDENT—Don’t put questions like that to the chair, Senator Carol Brown. Just continue with your speech.

Senator CAROL BROWN—I will continue, thank you, Mr Deputy President. As the Minister for Immigration and Citizenship has pointed out, we are absolutely committed to stamping out people smuggling and are working hard to ensure that this trade, which prays on the vulnerable, is shut down. However, our tough stance on border security does not have to come at the expense of the more humane treatment of those seeking asylum. Any suggestion to the contrary by those opposite is completely wrong. It is possible to be tough on border protection but still respect the basic rights of those seeking asylum.

The government rejects the notion that dehumanising and punishing unauthorised arrivals with long-term detention is an appropriate or effective response. Desperate people are not deterred by the threat of harsh detention; they are often fleeing far worse circumstances. The overly punitive policies of those opposite are completely wrong. It is possible to be tough on border protection but still respect the basic rights of those seeking asylum.

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They talk about compassion, about feeling and about being a caring country. Well that we are. We put in place an important sweep of policies to prevent people from seeing as a reasonable option putting their belongings, their family and their children upon a boat which had, at best, only a reasonable chance of making the voyage. That was a compassionate and thoughtful approach to policy. Perhaps it is difficult for those on the other side to defend their policy, which has failed absolutely. Labor quite often use the new term ‘evidence based policy’.

Senator Cash—Give us the evidence.

Senator SCULLION—I will, Senator Cash. The evidence is quite stark. There has been a heightened incidence of vessels coming to Australia. At the height of it, we had up to 4,000, down to 3,000, 75, 54 and 19 boats. So we changed the policy. We said: how can we provide a legislative environment that will convince people not to put their families and their children upon a boat? We made a number of legislative changes. If you have a look scientifically at the empirical evidence, you will see that it shows our policies worked. In fact, the number of boats went from 75 to 54 to 19 and then to zero, three, zero, eight, four and three. You could say that there were a few people coming over but those policies have had a significant impact. They were excellent policies, put forward by a government which knew that were signatories to the United Nations Convention Relating to the Status of Refugees and that we would stick to that convention and ensure that we provided a disincentive package, which clearly worked.

But, suddenly, in 2007-08 something changed. What changed was Labor’s policy. You can imagine the people smugglers saying, ‘What are the conditions of our business? It is very difficult to get to Australia. When you get to Australia, unfortunately,
they have this nasty mandatory detention.’ That was softened and we took families out but we ensured that there was mandatory detention. On Australia’s approach to forum shopping they said: ‘It’s really difficult. What happens is that, if you go there, they actually believe in the convention that they signed. You can go to Australia but it will not guarantee that the forum you choose, which is Australia, will be where you stay.’ Because we were signatories to a convention that said that is not the idea that everybody signed up to: that if you come to Australia you can get a migration outcome.

So when they were sitting down at Christmas, they would have said: ‘What’s my Christmas list? Dear Santa, I want to make it easier to get to Australia. I don’t want any detention. What about having a few work rights and welfare rights when people get there? Perhaps I could also offer a permanent migration outcome.’ I am sure that they did not vote but they might as well have, because that is exactly what they have got. That is the new environment. And how did we get there? We have made some policy changes. We will slip in straight away ‘abolish the Pacific Solution’, meaning that all applicants will be resettled in Australia, rather than meeting the requirements of the convention. ‘We’ll abolish temporary protection visas. ‘We’ll end the option of returning boats of embarkation.’ Now that was difficult, wasn’t it! Send home a poor old people smuggler trying to make a buck who says: ‘Off we go. We get to the border and Australia tows us back. It was so frustrating—very annoying. People stopped going and people wanted to stop buying my product. It was a terrible business. Now, though, you go out there and they will throw you a towline and they’ll take you across.’ I will tell you what: it is all about inputs and outputs in business, and if you can save half your fuel it is a good thing.

So, then the government abolished the detention debt. The attempt for us was to ensure that we prevented repeat offenders. We abolished the 45-day rule. We publicly announced that the Navy will not actually be operating between December and February because that is the calmest time—

Senator Parry—It’s the peak period.

Senator SCULLION—That is the peak period for business. So the effect of this policy is that it is easier to reach Australia. You are released into the community after a pretty short time. You have work rights, and if you do not have work rights you have welfare rights and permanent migration outcomes. Why would you not say, ‘That’s the product I want because that’s the outcome I want.’ So you wonder why it happens. It has happened because we have had a disastrous change in policy. That policy means that people now seek to get on boats to come here. The reason they all seek to come here is that Labor has failed in its policy. (Time expired)

Question agreed to.

PETITIONS

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

Professional Indemnity Insurance

To the Honourable President and members of the Senate in Parliament assembled: Planned national registration of all health professionals to take effect on July 1st 2010 will mean that midwives in private practice will be unable to seek registration on the basis of their inability to obtain professional indemnity insurance. One of the consequences of this is that home birth will no longer be legal.

We the undersigned, ask that the senate bring this issue to the parliament’s attention and make a speedy redress to assist midwives in private practice to obtain professional indemnity insurance. We also ask that all women maintain the right to choose where and with whom they birth their babies.
by Senator Siewert (from 106 citizens) 
Petition received.

NOTICES

Presentation

Senator Ludwig to move on the next day of sitting:

That the government business order of the day relating to the Telecommunications Legislation Amendment (National Broadband Network Measures No. 1) Bill 2009 be discharges from the Notice Paper.

Senator Mason to move on the next day of sitting:

That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 16 September 2009, from 6.30 pm.

Senator Polley to move on the next day of sitting:

That the Finance and Public Administration Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Wednesday, 16 September 2009, from 1.50 pm.

Senators Barnett and Payne to move on the next day of sitting:

That the Senate—

(a) welcomes the news of recent progress on the Millennium Development Goals (MDGs), particularly Goal 1 which seeks a substantial decline in the proportion of people living on less than US$1 a day and Goal 7 which, among other objectives, seeks substantial increases in the proportion of people with access to clean water, are on track to be met globally by 2015;

(b) notes, with concern, that:

(i) despite some progress, a number of MDGs are off-track and on current progress will not be met globally by 2015, including Goal 1 on hunger, Goal 2 on primary education, Goal 4 on child mortality, Goal 5 on maternal mortality and Goal 7 on access to sanitation, and

(ii) in a world of plenty, each year nearly 10 million children die before their 5th birthday and more than 500,000 women lose their lives in pregnancy and childbirth;

(c) recognises that progress towards the MDGs is being undermined by the global financial crisis, the global food crisis and the slow progress on the Doha trade talks;

(d) welcomes Australia’s progress towards Goal 8 which aims to create a global partnership for development; and

(e) calls on the Australian Government to intensify its efforts towards alleviating global poverty and to match, with action, the ideals and aspirations at the heart of the MDGs.

Senator Hanson-Young to move on the next day of sitting:

That the Senate calls on the Government to:

(a) release the protocols for the Australian Curriculum, Assessment and Reporting Authority’s reporting information and publication of national schools data;

(b) amend the Australian Curriculum, Assessment and Reporting Authority Act 2008 to provide that these protocols be made as a legislative instrument; and

(c) after 2 years, review the impact of the testing and reporting regime on resourcing, educational outcomes and teaching workforce.

Senator Ludwig (Queensland—Special Minister of State and Cabinet Secretary) (3.34 pm)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to bills, as set out in the list circulated in the chamber, allowing them to be considered during this period of sittings.

Asian Development Bank (Additional Subscription) Bill 2009

Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009

CHAMBER
Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009
International Tax Agreements Amendment Bill (No. 1) 2009
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009

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

Leave granted.

The statements read as follows—

ASIAN DEVELOPMENT BANK (ADDITIONAL SUBSCRIPTION) BILL

Purpose of the Bill
The bill authorises the subscription by Australia for additional shares in the capital stock at the Asian Development Bank.

Reasons for Urgency
Introduction and passage of the bill in the 2009 Spring sittings will enable the Asian Development Bank to increase its short term response to the impact of the global recession in the Asia-Pacific region by ensuring further and early increases in lending.

Australia’s early subscription to the capital stock, whilst not impacting the Budget, will enable the Asian Development Bank to provide additional concessional lending to the Asia-Pacific region immediately whilst maintaining appropriate prudential standards. This additional lending will help fill the finance gaps created due to the financial crisis in the Asia-Pacific region. Australia will also encourage other member countries to fast track their subscriptions.

Australia, through the G-20, has committed to ensuring that multilateral development banks have appropriate capital for their resourcing needs. Early subscription of capital stock at the Asian Development Bank will demonstrate Australia’s leadership in this important area.

Failing to subscribe to an increase in capital stock early would limit the Asian Development Bank’s ability to respond decisively and comprehensively to the global recession. This may deepen the impact of the global recession in the Asia-Pacific region.

CORPORATIONS AMENDMENT (IMPROVING ACCOUNTABILITY ON TERMINATION PAYMENTS) BILL 2009

Purpose of the Bill
The bill amends the Corporations Act to urgently address deficiencies in the regulatory framework governing the payment of termination benefits to company directors and executives.

Reasons for Urgency
Passage of the Bill is sought in Spring 2009 to urgently enhance the regulatory framework governing the payment of termination benefits to company directors and executives. The Bill was passed by the House of Representatives on 9 September 2009.

Termination benefits are a unique component of remuneration which warrant greater shareholder scrutiny and approval, particularly as the company and shareholders generally derive little or no value from such payments.

Currently, termination benefits can reach up to seven times a recipient’s total annual remuneration before shareholder approval is required. This is a very high threshold. Urgent action is required to reduce this threshold to better empower shareholders to reject excessive payments where they are not in the best interest of the company.

The reforms will also address growing community concern on termination benefits and provide businesses with certainty on this issue.

CORPORATIONS LEGISLATION AMENDMENT (FINANCIAL SERVICES MODERNISATION) BILL 2009

Purpose of the Bill
The bill amends the Corporations Act to establish national regulation of margin lending and trustee corporations and to improve the regulatory regime for the issue of debentures.

Reasons for Urgency
Passage of the Bill is sought in Spring 2009 to complete commitments under Council of Australian Governments (COAG) agreements made in
2008 to establish national regulation of margin lending and trustee corporations. These are important and long-awaited reforms that will improve market efficiency and enhance consumer protection.

Debate on the Bill in the House of Representatives commenced on 10 September 2009 and is expected to be concluded on 14 September.

Inclusion of margin loans under the Corporations Act will establish, for the first time, a national investor protection regime ensuring that providers of margin loans will be subject to the Act’s licensing, conduct and disclosure requirements, as well as supervision and enforcement action by the Australian Securities and Investments Commission (ASIC).

Transferring regulation of trustee corporations from the States and Territories to the Commonwealth will reduce the regulatory burden on these corporations, create a national market for trustee services and protect consumers by establishing a national consumer protection and disclosure regime.

INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL (NO. 1) 2009

Purpose of the Bill

The bill gives the force of law to:

- the Agreement between the Government of Australia and the Government of the British Virgin Islands for the Allocation of Taxing Rights with Respect to Certain Income of Individuals, which was signed in London on 27 October 2008; and
- the Agreement between the Government of Australia and the Government of the Isle of Man for the Allocation of Taxing Rights with Respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in Respect of Transfer Pricing Adjustments, which was signed in London on 29 January 2009.

Reasons for Urgency

In order for the British Virgin Islands Agreement and the Isle of Man Agreement to take effect (for Australia) from 1 July 2010, it is necessary that they both enter into force by 31 December 2009. Importantly, the legislation supports the Australian Government initiatives to combat offshore tax avoidance and evasion and therefore protecting future revenue sources.

The legislation also coincides with the global initiatives being progressed by the G20 to secure the integrity of the global financial system.

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE LEGISLATION AMENDMENT BILL 2009

Purpose of the Bill

The bill:

- corrects an administrative gap in the provisions of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 to allow for the investigation of significant offshore petroleum or greenhouse gas incidents and provide the responsible Commonwealth Minister with standing powers to appoint a Commissioner to undertake a Commission of inquiry into the operational, human and regulatory factors into such incidents;
- reduces the regulatory burden on the offshore petroleum industry and streamlines and clarifies administrative processes; and
- makes other minor policy and technical amendments to remove ambiguities.

Reasons for Urgency

Provisions in the Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009 will enable the responsible Commonwealth Minister to appoint a Commissioner to conduct a Commission of inquiry into the operational, human and regulatory factors surrounding the uncontrolled release of oil and gas at the Montara offshore oil field in the Timor Sea.

The inquiry will enable governments, regulators and the industry to be fully informed of all matters surrounding an offshore incident. This will enable all stakeholders to learn from these incidents and initiate appropriate changes (legislative and operational) to prevent similar future incidents.
Postponement
The following items of business were postponed:

General business notice of motion no. 527 standing in the name of Senator Xenophon for today, proposing the introduction of the Water Licence Moratorium Bill 2009, postponed till 17 September 2009.

General business notice of motion no. 549 standing in the name of Senator Milne for today, proposing an order for the production of documents relating to a map of Australian forest cover, postponed till 15 September 2009.

AUSTRALIA’S ADMINISTRATION AND MANAGEMENT OF THE TORRES STRAIT
Senator TROOD (Queensland) (3.35 pm)—I seek leave to amend business of the Senate notice of motion No. 1 standing in my name in the following terms:

in paragraph (a), omit the words “and the Torres Strait Regional Authority (the authority)”; and substitute “the Torres Strait Regional Authority”.

Leave granted.

Senator TROOD— I move the motion as amended:

That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 26 February 2010:

The administration and management of matters relating to Australia’s northern air, sea and land approaches in the region of the Torres Strait, including:

(a) the provisions of the Torres Strait Treaty;
(b) the role of the Torres Strait Regional Authority in respect of treaty and border issues, including how the authority interacts with the governments and people of Papua New Guinea (PNG);
(c) the extent of cooperation with, and between, Australia’s northern neighbours, PNG and Indonesia, in relation to the health, welfare and security of the Torres Strait region and communities in and around this region; and
(d) the challenges facing this region in relation to:
   (i) the management of fisheries,
   (ii) the contribution of international trade and commerce to regional economic sustainability,
   (iii) the maintenance of strong border security across the Torres Strait region, including but not limited to, issues related to Australia’s defence, biosecurity, public health, immigration and customs,
   (iv) cooperation between federal, state and local levels of government, and
   (v) air, sea and land transport linkages.

Question agreed to.

RESERVE BANK OF AUSTRALIA: CONTRACTORS
Senator MILNE (Tasmania) (3.36 pm)—At the request of Senator Bob Brown, I move:

That the Senate, following allegations in the Fairfax press about contractors used by subsidiaries of the Reserve Bank of Australia (RBA), Securency 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.
Question put.  
The Senate divided. [3.40 pm]  
(The Deputy President—Senator the Hon. AB Ferguson)  

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<th>Ayes</th>
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<td>Noes</td>
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<td>Majority</td>
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AYES  
Brown, B.J.  Fielding, S.  
Hanson-Young, S.C.  Ludlam, S.  
Milne, C.  Siewert, R. *  
Xenophon, N.  

NOES  
Back, C.J.  Barnett, G.  
Bilyk, C.L.  Birmingham, S.  
Bishop, T.M.  Boswell, R.L.D.  
Brown, C.L.  Cameron, D.N.  
Cash, M.C.  Colbeck, R.  
Cormann, M.H.P.  Crossin, P.M.  
Farrell, D.E.  Feeney, D.  
Ferguson, A.B.  Forshaw, M.G.  
Furner, M.L.  Hurley, A.  
Hutchins, S.P.  Joyce, B.  
Ludwig, J.W.  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.  Troeth, J.M.  
Williams, J.R.  Wortley, D.  

* denotes teller  

Question negatived.  

COMMITTEES  
Economics References Committee  
Extension of Time  

Senator PARRY (Tasmania) (3.43 pm)—  
At the request of the Chair of the Senate Economics References Committee, Senator Eggleston, I move:  

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.  

Question agreed to.  

MATTERS OF PUBLIC IMPORTANCE  
Renewable Energy: National Feed-In Tariff  

The DEPUTY PRESIDENT—The President has received a letter from Senator Siewert proposing that a definite matter of public importance be submitted to the Senate for discussion, namely:  

The overwhelming benefits of a gross national feed-in tariff for renewable energy for creating jobs, revitalising regional communities and reducing greenhouse emissions.  

I call upon those senators who approve of the proposed discussion to rise in their places.

More than the number of senators required by the standing orders having risen in their places—  

The DEPUTY PRESIDENT—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today’s debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator MILNE (Tasmania) (3.44 pm)—  
I rise today to speak on what I regard as an extremely urgent matter of public importance, and that is the critical nature of the need to reduce our greenhouse gases and make the transition to a low-carbon economy as quickly as we possibly can. In order to do that, we need a gross national feed-in tariff. This debate has been going on in the Senate for some years. I have moved legislation in here and we have had a debate on that legislation. The debate has been suspended. We have not had a vote on it yet, but it is critical that we do it. The reason for this is that in every other country where there has been an explosion in renewable energy it has been because they have brought in a gross feed-in tariff.

If you want to see an example of the poor framework for supporting renewables in Australia compared with overseas, look at
what happened in Australia only last week: Solar Systems went into voluntary administration. They were scheduled to build a large-scale new-technology plant at Mildura and they went into voluntary administration. In the same week, First Solar, an American company, announced a decision to build a two-gigawatt solar power station in China. This is what the Chief Executive Officer of First Solar, Mike Ahearn, had to say:

The Chinese feed-in tariff will be critical to this project ...

He went on to say:

This type of forward-looking government policy is necessary to create a strong solar market and facilitate the construction of a project of this size, which in turn continues to drive the cost of solar electricity closer to ‘grid parity’—where it is competitive with traditional energy sources.

Frankly, I could not have put it better myself. China is going ahead with large-scale renewables because of its feed-in tariff. Japan last week announced its intention of going to a 25 per cent reduction in greenhouse gas emissions and the introduction of a feed-in tariff to support that initiative. In the UK, where they have gone to a 34 per cent target to reduce greenhouse gas emissions, the government has acknowledged that its certificate system, which the Australian government has based its renewable energy certificates on, is not working like feed-in tariffs work and so the UK is going to go to a feed-in tariff. In France there is a feed-in tariff. In Germany there is a feed-in tariff. Why is it that in Australia we cannot and will not learn that the best way to support the bringing on of renewable energy technologies is through a gross feed-in tariff?

The legislation that I introduced into the Senate was referred to an inquiry. There were more than 125 submissions to that inquiry and at least 120 of them supported a gross national feed-in tariff. All of them said it was silly to have different jurisdictions in different states, that we needed a national arrangement and that it needed to be a gross tariff. How does it work? A gross tariff works whereby you give a fixed price for a fixed volume of energy that you produce over a fixed period of time. You can go to the bank and borrow the money in order to invest in a project because you know exactly what your return is going to be for 20 years. That is why in Germany we saw farmers go out and borrow the money to cover their winter barns, for example, with renewables—because they knew what their return would be over 20 years and the bankers could see that they could cover the repayments as a result of that.

In Australia we have rural communities desperate for a gross feed-in tariff because, particularly on some of those large properties in outback Australia, they can see huge potential for leasing part of their property or going into a joint venture arrangement with renewable companies to build large-scale solar thermal or wind energy plants on their properties and to make money from the climate instead of being constantly stressed by the climate because it is undermining what they used to do on those properties. So it is good for Australia. It is good for the Australian economy. It is good for the transition to a low-carbon economy. It helps to build manufacturing, because once you get the national gross feed-in tariff you will get investment in those technologies.

Solar Systems fell over, went into voluntary administration, because it could not raise the capital. Why could it not raise the capital? Because there is no economic framework in Australia to support large-scale renewables. The renewable energy target does nothing to bring on solar thermal, to bring on wave power or to bring on geothermal. There is no arrangement in Australia to bring on those technologies. In the absence of a gross feed-in tariff, it is not going to happen. We
will see increasingly that not only do we need to have the economic framework in place for the national gross feed-in tariff but governments need to invest in the grid so that there is an intelligent grid going out to areas where the private sector will invest in these large-scale facilities. That is why they have done so well in Germany.

Just today I worked with Greenpeace International on the release of a report. They say in their report that if Australia is serious about maximising the potential of renewable power and clean energy job creation, it will introduce a national gross metered feed-in tariff for renewable energy technologies. It is that clear, that obvious. The jobs are there—250,000 jobs in renewables in Germany. There are now many more jobs in renewables than there ever were in coalmines in Germany. They are much more sophisticated jobs and they are exporting the technologies. If you go to Denmark, you see that a requirement of their wind industry is that they use Danish technology. They support the technologies, the rollout of the technologies, and then they sell the second-hand turbines overseas while they take on the latest technologies themselves.

It is clever. It is investment in new technology, in new manufacturing, in new jobs, in skills upgrading—in everything. In fact, there is no downside to a national gross feed-in tariff. So, if there is no downside, why is the government so studiously refusing to allow it to happen? Why did it drive it to COAG to get the lowest common denominator outcome? Why is it that the only people objecting to a national gross feed-in tariff were the federal government, the government of South Australia and the large industrial generators like the coal sector? The only answer to that could be: the faith that the government places in coal and its desperate need to keep channelling all of the money. They say that they do not pick winners; well, they did. They have picked a winner and that is carbon capture and storage, which does not exist.

Premier Bligh’s latest notion of her coal-fired power station in Queensland with CCS is a joke—it is just another coal-fired power station minus CCS, which is the green gloss to try to pretend that there is some technology in sight. One can only assume that the Prime Minister, Mr Rudd, and the Minister for Climate Change and Water, Senator Wong, are so intent—along with the Minister for Resources and Energy, Mr Ferguson—on holding up the rollout of renewables in Australia in order to wait for so-called clean coal to come on board that they are prepared to do anything, even if it means undermining the jobs.

Greenpeace modelling shows that, by 2020, ‘By maximising Australia’s potential for renewable energy, Australia can have 33,900 jobs in the renewable power sector alone.’ That is pretty impressive, and they have modelled that by considering the total number of jobs in construction and installation, manufacturing, operational and maintenance and fuel supply. The breakdown of that is that there are 10,700 jobs in photovoltaics, 6,400 jobs in wind, 5,200 jobs in bioenergy, 1,800 jobs in geothermal, 6,900 jobs in solar thermal, 900 jobs in ocean and 2,000 jobs in the hydro sector across the country. That is the kind of potential that we are missing out on.

We must have this tariff in Australia. The House of Representatives will have a chance to vote on this tonight when Rob Oakeshott introduces my legislation there. But this Senate has the opportunity to pass this, and I would be keen to hear from anyone in here who can tell me why it is that Australia will not adopt the very framework that has worked so well in so many other countries overseas in generating jobs, new manufactur-
ing industries and new exports. I thought that was what we were trying to do in Australia, rather than driving those people overseas. That is what has happened with solar heat and power, with Zhengrong Shi and with so many of our best and brightest leaving the country while we simply focus on digging more holes and filling them in again with so-called carbon capture and storage.

Senator McEwen (South Australia) (3.54 pm)—I am pleased to be able to speak on the matter before the chamber. I do acknowledge Senator Milne’s longstanding interest in this matter and her pursuit of legislation to introduce a feed-in tariff scheme. If only it were that simple! Once again, we have heard a speech from the Greens that ignores the reality of how difficult it is to change Australia’s culture from one of using non-renewable energies to one of using renewable energies. I am pleased to say that the current government have already taken significant steps to effect that change.

Since coming to power in 2007, the government have made many changes. As I have said before in this chamber, the first decision we made was to ratify the Kyoto protocol, thereby establishing once and for all that Australia wants to take a leading role in reducing our greenhouse emissions and tackling the insidious problem of climate change. We have also gone to initiate the Clean Energy Initiative: this solar flagship program committed over $4 billion towards energy efficiency measures through the energy efficiency homes package. We have also implemented a $12.9 billion national water strategy, which, for the first time, made a direct Commonwealth investment in water security projects. That, of course, addresses the issue of water security in the face of climate change, which has seen the reliability of Australia’s water supplies under threat. Those are just a few of the initiatives that the federal government have already initiated and will continue to pursue in the war against climate change.

The feed-in tariff scheme is the centerpiece of the matter before us today. Feed-in tariff schemes, for those who may not be aware, are policy mechanisms used to encourage the use of both small, dispersed generating capacity and large, utility-scale generators. The feed-in tariff is a rate, usually set by a regulator or a government, which electricity retailers or a regulator are required to pay to particular electricity generators who want to feed power into the electricity grid. The tariff puts legal obligations on utility companies to buy electricity from renewable energy producers at a premium rate, usually over a guaranteed period, hopefully making the installation of renewable energy systems a worthwhile and secure investment for the producer. So that is the policy position and the theory behind it. I am on the record as saying that I understand the public sympathy for those kinds of feed-in tariff schemes, and, of course, the federal government has not necessarily ruled it out. The matter has been referred to the Council of Australian Governments, where it should properly be referred, for further investigation.

It struck me as somewhat hypocritical to get this motion from the Greens that focuses—or is said to focus—on creating green jobs and reducing greenhouse gas emissions, when it comes from a senator and a party that rejected the government’s CPRS legislation, which was intended to do exactly the same thing. If the Greens were really serious about addressing, in a comprehensive manner, the problem of greenhouse gas emissions and climate change then why didn’t they support the government’s CPRS legislation? Why didn’t they support those initial steps to reduce our greenhouse emissions? That was one of the biggest environmental reforms that had been put before this chamber. That legislation had the capacity to once
and for all change Australia’s direction and convert us into a nation that uses renewable energy sources. Of course the Greens said it did not go far enough, and that is just an indication of how irresponsible they can be in this matter. For them, the most simplistic option is to close down the coalmining industry while somehow expecting that renewable energy will jump into the void left by that. The government takes a much more responsible attitude to this matter.

As I said, the Greens voted against the CPRS legislation. It is galling to have them now introducing legislation for a feed-in tariff when they could not commit to what is probably the most significant legislation this chamber has considered. We hope that, when the CPRS legislation returns to this chamber for debate later in the year, they will have a more responsible attitude. The bill that this matter of public importance motion alludes to, the Renewable Energy (Electricity) Amendment (Feed-in-Tariff) Bill, was put up by the Greens last year. I was chair of the Senate committee at the time that held the inquiry into that particular piece of legislation, and it was a welcome opportunity to hear the pros and cons of feed-in tariff schemes. Certainly, from that inquiry, it was quite clear that, while the Greens would like us to have a simplistic take on things, it is in fact a very complex issue. There are a number of FIT schemes already operating in some Australian states and territories, including in my own state of South Australia, and they vary significantly in design. It was also clear from the inquiry that, if there were to be a national feed-in tariff scheme, it would require very careful administration and design to succeed and do the things that Senator Milne in her contribution alleged such a scheme could do.

I am sure we all wish that we could introduce a scheme as simply and as easily as Senator Milne says that we can. But when you go into these issues—and it was investigated at some length by the Senate environment committee—you find that it is not all about benefit to the consumer and, indeed, it is not that simple. There can be a number of unintended consequences of feed-in tariff schemes. Artificially pricing one energy source 300 or 400 per cent higher than others diverts investment from technologies that might in fact produce better environmental outcomes at lower cost. Legislating a feed-in tariff scheme effectively picks the jurisdiction’s renewable energy of choice, and the result can be very expensive. These are the kinds of policy matters that you have to carefully take into account when designing these schemes.

Senator Milne mentioned European countries where such schemes operate. We know that Germany in particular is often used as an example of where a gross feed-in tariff scheme has worked successfully. That is true, but there has been a cost to the German consumer. In fact, in 2007 German consumers still paid more than $1 billion in additional power bills to cover the cost of that scheme. That would be equivalent to about A$2.5 billion per year. If the government is going to make these sorts of decisions on behalf of the people of Australia, the people of Australia need to know exactly what is at stake, and that there will be a cost.

I should also mention, in connection to Senator Milne mentioning the German situation, that recently in Germany a solar panel manufacturer, Q-Cells, announced that it was laying-off 500 employees. These are facts that are sometimes left out of such debates. We would hope that any kind of feed-in tariff scheme that created jobs in renewable energy would in fact support and sustain those jobs, but that is not always the case. It is a bit glib to stand up here and say that in Germany there have been thousands and thousands of
new jobs in the sector when, at this very moment, jobs are being lost.

The federal government are very mindful of the importance of sustaining jobs in the current global financial crisis and would not do anything to jeopardise the jobs that we have. We will strive to keep those jobs. It is all very well to introduce new renewable energy schemes, but, if people are not in work and cannot afford to buy the solar panels to put on their houses, it is a bit pointless. So, Australia’s government is going to take a very responsible attitude in this matter. The matter is with the Council of Australian Governments and with the government as we speak, and I look forward to further developments in this important area of public policy.

Senator BOSWELL (Queensland) (4.05 pm)—The matter of public importance we are debating today says that a feed-in tariff will create jobs, revitalise regional communities and reduce greenhouse gas emissions. The Greens have got a trifecta there. It will not create jobs unless they are heavily subsidised jobs. It will kill regional Australia; it will increase costs for the people who can least afford it. And it will reduce greenhouse gas emissions but at three times the cost of an ETS. That is what the research from the Productivity Commission, Treasury and a number of other sources has said: yes, it will reduce greenhouse gas emissions but at three times the cost of an ETS. So I have to inform the Greens that they have got it completely wrong, as usual.

A gross feed-in tariff is one where, under gross metering, the tariff is paid for the total amount of power produced without any deduction being made, irrespective of how much of that power is used and fed back into the system. A kilowatt per hour is worth about 16c to 21c. When you put it into a gross feed-in tariff, it goes up to 60c. So a gross feed-in tariff that started at 21c is now 60c. But, due to the generosity of the Greens, people who put these photovoltaic cells on the roofs will get it for the power they use and the power they put back into the grid. It is a wonderful system for those who do not have to pay! A 21c product becomes a product worth 60c, and 60c is the rate paid for all the electricity generated under a gross feed-in tariff. There are only two territories—no states—that have agreed with this, the ACT and the Northern Territory. Every state has avoided a gross feed-in tariff like the plague. They will not accept it.

We can all stand here—and Senator Milne is very good at it—and paint a rosy picture of renewable energy. But let us get down to basics. What is renewable energy? Renewable energy costs, and it costs a lot of money, and it will not work unless it is heavily subsidised. Let us go back. Coal power is $40 a megawatt hour of power. Gas is about $50 to $55. Wind is $100 a megawatt hour of power. Photovoltaic cell power is $200. So you have got a $40 product that has to be subsidised $60 before it will work. Even then it only works when the sun is shining or the wind is blowing. It does not work all the time. You have to have baseload power there, churning away in the background to back it up, and when the power fails you kick it up a bit. So it is an absolute fallacy.

Senator Milne, it is not true to say that these things will create prosperity. They will cost prosperity, and you know it and I know it. And to go back to renewable energy and to give some detail of what it will mean, say, to the Catholic hospitals, it will cost the Catholic health hospitals and their health department and aged care homes $3 million by 2020. That is renewable energy. Someone has got to pay for it; someone has to pay for renewable energy. And who is going to pay, Senator Milne? Is it going to be the pensioner? Is it going to be the unemployed, the...
single mother, the battling family, the blue-collar worker? Who is going to pay for your generosity? Someone has to pay these subsidies.

You say it will create jobs. Yes, it has created jobs in Germany and in Spain—but are they going down like a brick! The Wall Street Journal has reported the collapse in Spain’s photovoltaic sector, saying that it ‘has been so drastic that jobs plunged from a peak of 41,700 early last year to 13,900 in the spring of 2009’. It went on to say that Q-Cells, the world’s largest producer, had been exporting huge quantities of cells. In the first half of the year it operated at a €47 profit but then in the second half of the year 500 workers were laid off and they took a loss of €47 million. So, yes, photovoltaic cells, wind and everything else will work. You can create jobs but you have got to subsidise those jobs. They just will not work because they are up there.

The Greens cannot understand this. I think that they can understand it. I do not think that it is very hard to understand, but ‘none are so blind that do not want to see’ and when it comes to green energy there are none so blind as the Greens. They say that it is going to revitalise regional communities. Every regional community of any size—15,000 or 10,000—will have a fish factory or a fish processing works—and I am thinking of Urangan fish works—or an abattoir. There is a little place like Boonah where they have Bunny Bite food processing. Places like that are all going to pick up this tab. Not every town, but most towns, have some form of primary industry processing, whether an abattoir or a fish processing works or a fruit and vegetable processing works, all using tremendous amounts of power. How is it going to revitalise these communities? How is it going to work for the processing works that have 400 people working in the abattoirs, for example, as Senator Williams would know? How is it going to work when already the ETS and the RET will put their power bills up by 50 per cent? Then we throw this in on top of it. It is not going to do anything positive. It is going to cost jobs in regional communities.

If you think you are going to talk a few farmers into putting a few photovoltaic cells on their roofs and spread the cost out to the rest of the community, I do not think that they are so selfish to start with. I know that Senator Brown is going to tell us about the two-hectare piggery where the farmer got out of pigs and put photovoltaic cells on his two hectares in Germany. He may have found a loophole but it did not do anything for the farming industry at all. Where did the jobs go in the abattoirs and what happened to the people who helped on the farm? They are not there any more. So just wake up. This is a nonsense. What is worse, you know it is a nonsense. I can understand Senator Brown, but Senator Milne, you understand that this cannot work.

Senator Milne—It does work!
Senator BOSWELL—It does not work. Let me quote to you Tony Maher, the CFMEU—
Senator Milne—I never thought I would hear you quote the CFMEU.
Senator BOSWELL—Mr Tony Maher, when the ETS was first announced, was a cheerleader out there. He thought the ETS was the greatest thing since sliced bread. He went out and advocated an ETS. It was going to create jobs; it was going to do all sorts of things. I believe that Mr Maher’s blue-collar workers have told him, ‘Hey, brother, you represent us. You represent the workers of Australia. You represent the people who work in the mines.’ Well, today, in a 180-degree turn, he said: Green jobs don’t exist.
That was CFMEU leader Tony Maher. He went on:

One of Australia’s most powerful union leaders has lashed out at the push for green jobs, labelling it a “dopey term”, and has dismissed environmental campaigns against some of the nation’s major export industries as “judgmental nonsense”.

Hurrah for that. Hurrah for the people who represent the blue-collar workers coming in and actually saying that these greens jobs are a nonsense. Green jobs are not going to fill the positions in the mining industry. These guys get $120,000 a year and they work hard for it. They go and work two weeks on, 12 hours a day, and then they take two weeks off. They do it the hard way. What sort of green job are you advocating that will replace that sort of money? There are no green jobs that will pay that sort of money. This matter of public importance that we are debating in the Senate that says that greenhouse emissions will be reduced is a nonsense too.

Very helpful evidence was given by the Productivity Commission to the Standing Committee on Economics inquiry. We were reminded by the Productivity Commission of its submission to the Garnaut review:

… with an effective ETS in place, the MRET would:

• not achieve any additional abatement but impose additional costs
• most likely lead to higher electricity prices
• provide a signal that lobbying for government support for certain technologies ...

Then the Garnaut review itself says:

There is an interesting and seemingly perverse consequence of expanding MRET at the same time as the emissions trading scheme … Having both schemes operating side by side could see an increase in coal-fired power generation (by more than 2000MW) as gas-fired plants are crowded out …

Treasury says that the impact on GNP of the expanded renewable energy target, taking into account an increased GDP cost, will cost $5.5 billion. So on all scores, Senator, you fail. It does not create jobs and it does not revitalise communities. It does reduce greenhouse emissions but at a huge cost—at the cost of three times what emissions trading will do.

I started off by saying that when you introduce these schemes they are subsidised. By a gross feed-in tariff you are making a 20c product worth 60c. You are not charging the person that actually generates the electricity. What he uses is free but it goes back into the grid. So that probably becomes another 30c or 60c. Who pays for this? You just cannot create or destroy things. It is rule of nature, Senator Milne, and I would have thought you would have known that. What happens is that it gets passed back to the dairy farmers, the cheese-makers and every little employment creator in regional Australia. These are the jobs that you should be protecting. These are the real jobs that do not depend on subsidies. They do not depend on false economies. They have been there and they are the backbone of regional Australia. An abattoir is a great employer of people. For every three beasts an abattoir kills there are maybe two people employed. A small abattoir that kills 400 beasts will probably have 350 people working there. You are increasing the charges on that through an ETS and renewable energy. Now you are passing on even further charges through this subsidy for gross feed-in tariffs. I hope the Labor Party has woken up to itself. It sounds like it has. I see Senator Faulkner over there, who is listening to me carefully, and he will understand what I am saying—

Senator Faulkner—I am listening to you.

Senator BOSWELL—Senator Faulkner, you have got a very senior position in cabinet. Just do not let them push this down your throat. It costs money and it is going to cost
jobs. It will not create jobs. I said this to Ms Burrow when she was talking about jobs: ‘If there are jobs to be created in this, the Chinese might use our technology but these jobs will go to China. That is where the manufacturing will take place and there’s not a thing we can do about it.’

Senator Milne—That is why we need to do this, so it doesn’t go to China.

Senator BOSWELL—It will go to China just as fast. They are the manufacturers; we are the suppliers. (Time expired).

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (4.20 pm)—In the few short minutes I have I simply want to say that Senator McEwen’s disappointing presentation, which was devoid of even-handedness and an informed position, was a poor reflection upon the government’s ability to take up the cogent arguments for a gross feed-in tariff which have led to its adoption not only in Germany but by France, China and potentially now Japan and all our competing nations in the world. At current rates, Australia will be the last left standing. One could wonder why it was that the National Party itself adopted at its recent national conference a motion in favour of a gross feed-in tariff for small solar and in favour of feed-in tariffs. It was a mystery to me. It is one of the recent great mysteries of Australian politics as to how the National Party could have adopted such a policy.

Senator Boswell—It is a mystery to me, too.

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! Senator Boswell, it is disorderly to interject, particularly when you are standing on the way out.

Senator BOB BROWN—As Senator Boswell disappears from the Senate so does the mystery. I have just listened to him—mystery solved. His speech would certainly end up convincing any conference in Australia that a gross feed-in tariff was a good thing. It was a hotchpotch of tired sayings, unreasonableness and, indeed, downright confusion and stupidity, which one does not expect to hear in an important debate like this in this place. Nevertheless, the former Senate leader for the ‘coal before country’ party put forward the view that the coal industry expects from the National Party these days.

Forget the country, forget renewable energies and forget climate change, which is devilling people right across this nation from coast to coast and which is already leading to a massive loss of jobs. Senator Boswell made a vacuous and unsupported statement, which was devoid of any backup argument, about losing jobs. We are seeing jobs lost in industries right across the world at the moment. He did not mention that the industry which he supports at the expense of rural jobs in this country—that is, the coal industry itself—has shed more than 10,000 jobs due to the recession in Australia.

He mentioned the Catholic Church and said that this gross feed-in tariff could cost $3 million by 2020. Of course, there was no supporting argument at all. Let me put a contrary argument. If the Catholic Church were to have a $3 million investment in the option that Senator Milne has put forward then maybe it will make $12 million by 2020 and, therefore, Senator Boswell is stopping the Catholic Church making $9 million. He wants the Catholic Church to be $9 million worse off by 2020. That is an argument that you could not substantiate unless you took Senator Boswell’s confused and silly point of view.

This is a serious matter. Senator Milne is to be congratulated for not only leading the discussion on this matter but having legislation which backs up a gross feed-in tariff for Australia. It is a way that will create many
more jobs than the coal industry will ever do. It is a way forward with much less subsidy than the multibillion dollar per annum subsidy that the fossil fuel industries get at the moment. I cannot credit that we are having this debate on this matter with the Rudd government, which appears to have been voted in for, amongst other things, its policies on climate change. Yet it is a climate change denier when it comes to this gross feed-in tariff legislation, which would create jobs, promote industry and promote small business and would take us out of having to import everything in the renewable energy field, as we do at the moment. Congratulations to Senator Milne for leading the debate on this matter.

Senator FEENEY (Victoria) (4.25 pm)—I am pleased to make a contribution to this MPI debate on a gross national feed-in tariff. I certainly acknowledge the good intentions of Senator Milne in leading the debate in the parliament today. The fact is that Australia is a federation and feed-in tariffs are not a matter on which the Commonwealth can or should be riding roughshod over the states or, for that matter, the territories. That is why it is the government’s view that the correct way to approach the issue of feed-in tariffs is through the COAG process.

It is important to note that COAG decided in November 2008 not to implement a national feed-in tariff but agreed to principles for jurisdictions that implement feed-in tariff schemes of their own volition, on their own initiative, including whether these feed-in tariff schemes would be funded on budget. I think it is worth noting that the principles developed by COAG include actions to ensure small renewable energy generators, including households using solar photovoltaic technologies, are fairly treated under the National Energy Customer Framework.

Several states have already legislated in the area of feed-in tariffs. In my own state of Victoria since we last discussed this subject in November 2008 the Brumby government has introduced the electricity industry feed-in tariff bill 2009. Under this bill, Victorians who put solar panels on their roofs will receive 60c credit per kilowatt hour for the energy they feed into the electricity grid. These amounts will be deducted from their electricity bill and will help make solar panels more affordable. I commend the Brumby government for taking this measure, a measure that will help many Victorians make a contribution to reducing our consumption of electricity derived from coal-fired power stations.

But the Victorian scheme does highlight the challenge that we have in this policy arena. The average retail price for electricity in Victoria is presently at 18c per kilowatt hour, so paying households 60c for every kilowatt hour of electricity that they generate with solar panels does involve a subsidy of around 42c per kilowatt hour. Victorian taxpayers will be paying for this electricity and they will be paying at more than three times the market rate. It is argued by Senator Milne and others that this is still worth doing because it helps reduce our overall CO2 emissions, and I accept that argument and obviously the Victorian government accepts it too.

At the very small scale currently contemplated, this is a sustainable scheme, but we cannot apply that principle across the whole of the economy and indeed the whole of the nation without sharply increasing the price of energy to all consumers. We must pursue technologies that will enable Victoria’s coal and electricity industries to reduce their emissions. This is realistic and achievable, and we are spending a lot of money to help the industry achieve this.
Senator Boswell said in his contribution that renewable energy 'will not work unless it is heavily subsidised'. Frankly, having the government invest in new industries, in new research and development and in fostering and nurturing the environments for new industries to develop is not a proposition that appals me. I am astonished to hear that it is a proposition that appals Senator Boswell. The National Party are not known, generally speaking, as a political party that loathes subsidies. Of course, there is the old adage about the National Party: they are a party that likes to socialise their losses but privatise their profits.

This is why this debate is so important. I guess the views of Senator Boswell bring into sharp relief the fact that this really important public policy debate around feed-in tariffs is happening in the context of one of the major political parties in the debate, the Liberal-National Party coalition, not even coming to the baseline. They have not yet even accepted that climate change is real. They have not accepted that action on climate change is necessary. That is the great shame of the debate on feed-in tariffs: that Senator Milne, the Greens and ourselves are having this debate on our own while across the road there is a major political force in this country that has not yet got its head out of the sand. This is why it is so important that the Senate pass the Rudd government’s Carbon Pollution Reduction Scheme, and does so without delay. By placing a cap on carbon emissions it puts a price on carbon and provides the most critical economic incentive for carbon-intensive industries to invest in abatement technologies. Both the federal and Victorian governments understand this. I think Senator Milne understands this too, which is why I hope she and her colleagues will get behind the Rudd government and the CPRS bills. Those opposite do not understand this. But it is my firm view that actions such as feed-in tariffs being debated in isolation, without there being a CPRS scheme, is frankly missing the main game. As long as the CPRS bills are not passed there remain fewer incentives for carbon-intensive industries to reduce their emissions. That is why it is so important that the opposition get their act together on this issue. That is why we must continue to debate climate change. The fact is that we have those on the other side, such as Mr Robb, who continue to insist this is all a left-wing plot. We have Mr Turnbull, who, when he was environment minister used to think that climate change was real and that an ETS was warranted, but now appears to have changed his mind.

Coming back to the question of feed-in tariffs, we can see the problems inherent in this issue when we look at Germany, the country which has gone furthest down the road in terms of implementing feed-in tariffs and which is frequently pointed to by advocates of feed-in tariffs as their role model. Germany’s feed-in tariff has led to a grand total of one-half of one percent of its gross electricity consumption coming from domestic solar panels in 2007. Yet even that very modest contribution to the national electricity grid has to be so heavily subsidised that it is costing German consumers €1 billion a year in higher power bills to cover the cost. That is A$1.76 billion. Germany has about four times Australia’s population, so the equivalent cost here would be something in the vicinity of $440 million a year—and that’s for one-half of one percent of our electricity consumption coming from solar panels. Obviously, we have to aim for a much higher target than that. That is nonetheless an important contribution to the abatement of carbon and the kind of initiative that needs to be weighed in a considered public policy process when considering how we can foster a photovoltaic industry in this country.
Equally obviously, it is small beer when we consider the size of the challenge and when we look at an instrument like the CPRS, which will do so very much to deal with climate change, to deal with this country’s responsibility to take action on climate change.

The fact is that feed-in tariffs must be seen as part of a broader strategy, rather than being a strategy in their own right. This government has a comprehensive strategy for delivering renewable energy to consumers at the lowest possible price by allowing a wide range of renewable energy technologies to compete in the race to commercialise these technologies. That market based approach sits at the heart of the CPRS and sits at the heart of the government’s policy. And I think that is far superior to any prescriptive approach such as that contained in the motion we are debating today, which would in effect mean that the government would decide what the most effective renewable energy source is and then subsidise it, which in turn involves the taxpayers picking up a very heavy tab. It is one thing for the government to pick winners. It is another thing for the government to create opportunities for all of these various technologies, to try to be part of the solution.

An important part of the present government’s strategy is an expanded renewable energy target. This is something that Germany does not have. The renewable energy target will ensure the proportion of Australia’s energy coming from renewable energy sources is 20 per cent by 2020. This is more than four times the previous government’s target. The renewable energy target, together with the CPRS, is the key to accelerating the deployment of renewable energy in this country. This is a greatly preferable strategy to relying too heavily on feed-in tariffs, too heavily on a single technology, which will pass an unacceptably high burden to the taxpayers. Labor’s philosophy is to help the whole Australian community move towards more efficient energy use and not to allow the minority who can afford to have solar panels on their roofs to benefit while the rest of the community foots the bill. That is why the Rudd government has brought in a series of household assistance measures which will assist people in their homes and their communities to become more energy efficient and to have better access to affordable renewable energy sources.

(Time expired)

Senator BIRMINGHAM (South Australia) (4.35 pm)—I am pleased to speak on the matter of public importance raised by Senator Siewert and Senator Milne, and in particular to acknowledge Senator Milne’s continued advocacy in this area of feed-in tariffs. I have had the opportunity of serving on numerous Senate committees with her and other senators who have assisted with this and related matters, and I know of course that in addition to this motion she has previously introduced legislation into this chamber that has been discussed but not brought to a vote and still stands on the Notice Paper.

The issues we face with regard to this, some of which have been canvassed by a number of the previous speakers, are partly of the government’s own making. Senator Feeney spoke before me. He addressed some of the approaches of the government, not just to the renewable energy sector and the development of more carbon friendly technologies; he also spoke in particular about feed-in tariffs. It is worth looking back on the government’s approach to feed-in tariffs. Back on 30 October 2007 the then shadow minister for the environment, Mr Peter Garrett, said:

… Labor believes it is important that there is a consolidated and consistent approach across jurisdictions to renewable energy policy. A Rudd Labor government will work through the Council of Australian Governments to develop a consistent, national approach to feed-in tariffs.
That is, the type of national approach that Senator Milne is calling for through this MPI and through the other work that she has done.

Then, in the early days of government, Minister Garrett sounded like he was holding his ground on this. On 2 August 2008, he stated:

Through the next COAG meeting in October the Government plans to work towards a harmonised approach to renewable energy feed-in tariffs.
So we have a desire for a consistent national approach and a plan to work towards a harmonised approach. This all sounds very much like the type of national feed-in tariff that Senator Milne and others have aspired to. But we did not have to go too much beyond that October COAG meeting for Minister Garrett to admit, on 18 December last year:

… there will be guidelines, national guidelines, but there will not be a national feed-in tariff.

He also said on that day:
The fact is that there will be feed-in tariffs that operate in different ways in different states.

He is acknowledging that, whilst there would be national guidelines—and Senator Feeney mentioned that the COAG had agreed to principles around feed-in tariffs—such a system and such principles would operate in different ways in different states. There would be nothing national about it whatsoever. There go out the window those promises from October 2007 and from August 2008, that there would be a national, consistent, cohesive, coordinated, harmonised feed-in tariff. They were all thrown out the window for a system that operates in different ways in different states.

That is not to say that a national feed-in tariff is entirely the way to go. Others in this place have already, in this debate, canvassed the cost of such a policy and canvassed the impact that it will have on Australian consumers. I want to look, equally, at the impact it has on climate change policy overall. Right now Australia, like other countries around the world, is developing a raft of climate change policies and, in doing so, risks sending a whole lot of mixed and conflicting messages, within the marketplace and elsewhere, by clutching on to every single idea.

We have the proposal for an emissions trading scheme which has been debated in this place once. I am confident it will be debated again. It is a scheme which clearly needs fixing. The government has brought it forward, but brought it forward with numerous holes, such as the way it treats agriculture and the potential for carbon leakage to other markets and other environments offshore from Australia. These could cost Australia jobs and be of little or no practical environmental benefit.

The coalition firmly believes that we need to get an ETS right and that, in getting one right, we can hopefully deliver for Australia the type of outcome which will reduce emissions without costing Australia jobs. The best way to get it right to start with would be to wait until after Copenhagen and design something that meets the requirements of the rest of the world—that actually works in with what the United States and other major emitting countries agree to and commit to, that does not jump ahead of the game as the government seems intent on doing.

We have the ETS as one option. We then have the renewable energy targets, the renewable energy targets that were increased from the level introduced by the Howard government to the now 20 per cent by 2020 which passed through this Senate only a few weeks ago. That is the second bow. Again, it was regrettable that efforts by the coalition, the Greens and others to try to ensure that, within those targets, there was some recognition of the importance of the development of...
renewable baseload technologies were not successful. The opportunity was there for Australia to try to start making the transition to a renewable baseload future—and not just putting in place further incentives for some of the very good renewable technologies which are currently well developed but which lack baseload potential, such as wind and others. We would have hoped to see changes there; however those changes were blocked by the government. In the interests of seeing the RET passed and providing incentive for the renewable energy sector, the coalition allowed that legislation to pass.

So we have an ETS proposed by the government; we have a mandatory renewable energy target in place; we have a raft of other encouragements and technologies that exist—for example, the replacements to the solar rebate scheme which provide higher incentives for the types of small home-constructed or home-installed solar units that Senator Milne has been talking about in this model—and, across a number of states, we have different programs operating, including gross feed-in tariffs. So there are numerous different things that are in place at present or that are planned, which are all trying to encourage, and provide extra incentive for, the development of renewable technologies.

The problem is that they are not all consistent. They do not all send the same overall message to the marketplace. In sending different messages, you will actually be imposing additional costs on consumers and businesses. They potentially work against each other, rather than being part of the design for the type of correct, integrated system which needs to be in place.

If there is one thing going for Senator Milne’s approach, it is the call for a national system. Then, at least, this Senate, the House of Representatives and the government overall could consider how a feed-in tariff would work as part of an emissions trading scheme, how it would fit in with mandatory renewable energy targets and how it would fit in with all of the other different smaller programs and incentives that are in place. The problem is that we have so many of these proposals at present that there are serious risks of them falling over one another.

I want to turn, for a little bit, to some of the wording in the motion on the matter of public importance that is before us. It talks about:

The overwhelming benefits of a gross national feed-in tariff for renewable energy for creating jobs, revitalising regional communities and reducing greenhouse emissions.

We hear a lot about job creation when it comes to the renewable energy sector. Job creation is absolutely, fundamentally important, but it is also important, when talking about the energy industry, to note that we should not be looking at, as a country, encouraging job creation in the energy industry in and of itself. It is not about direct jobs in the energy industry.

The energy industry should be, for Australia’s long-term benefit, supporting indirect jobs. It should be supporting them by ensuring that Australia continues to enjoy, wherever possible, comparative advantage in the supply of the lowest cost power possible but noting that it needs, over time, to be shifted to the lowest emissions base as well. What is fundamentally critical when debating how we transform Australia’s energy industry to a low-emission economy is not the number of jobs that that creates within any one energy sector but the number of jobs that supports by providing low-emission and low-cost energy to the rest of the economy. For these reasons we urge the government not to rush in adopting the Greens’ proposal but to apply consistency across its environmental objectives and energy policies so as to give Aus-
The time for this debate has now expired.

MINISTERIAL STATEMENTS

Sri Lanka

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The time for this debate has now expired.
Why, I ask, should this parliament exempt buildings which are defence related or which have spy agencies in them from an open parliamentary investigation on behalf of the people and, therefore, from a public debate? The process here has been entirely wrong. This matter should never have been moved from the Public Works Committee in public into the Public Works Committee in secret. That the former Attorney-General wanted it is one thing, but that the Public Works Committee accepted it is another thing. I am very critical of the ease with which this parliament says, ‘Oh, it’s to do with a spy agency, therefore, we mustn’t investigate it’—and therefore we do not have the common sense to be able to establish that which needs to be kept secret in the public interest and that which is of great public interest. The decision on this building should never have been ratified without a thorough public inquiry. This building is a matter of public contention and decisions on it should never been taken out of the public domain in this fashion.

We learn from this letter that the presumption that the public should not know about it is totally spurious. Of course, it was up to the committee to say: ‘When it comes to installations in this building which might further the spy agency’s interests, that’s not what we are here to discuss. We’re here to discuss whether the money is being well spent and, in particular, whether the architecture and the planning of this building are toward.’ I submit there are great questions hanging over that. It is a blight on this committee and, indeed, this parliament, that it allowed the construction of this building to get underway without proper parliamentary scrutiny.

We are not a secret society. Our committee system is set up to be able to establish what is in the public interest and what is not. To say that the whole matter of debate about this building should be swept under the carpet under the guise that there were some defence interests at stake, I think was muddle-headed at best and a failure of acting in the public interest to be direct about it. It should not have happened and I would think the Public Works Committee should go back and do its job of having public submissions on this building, even though it is now underway.

I might ask a very pertinent question here: how is that the spy agencies ASIO and the Office of National Assessment, who ply their trade in the public interest by staying out of public view, want a dress circle location for their building down on Lake Burley Griffin? I would have thought it would be in their interests to stay out of the front row, but no, that is not the case here. I think the Public Works Committee was dudged in this matter. I do not think it did its job. I think it failed the people not just of the Australian Capital Territory but the people of Australia. It was set up, among other things, to ensure that there is proper process and proper inquiry.

That some buildings ought to be exempted from the process of public inquiry in the ongoing work of establishing this great bush capital of Canberra, one of our show places of Australia, because they have a defence function, is insupportable. The process has been wrong. I am making this statement because I hope it is not to be repeated. There is no excuse, when Defence or spy agency buildings come into the dress circle or the parliamentary triangle, for such buildings not to undergo scrutiny. The public has been unfairly kept out of this matter by the committee and, I submit, by this parliament. It is a process that I would not want to see repeated.

Question agreed to.
COMMITTEES
Privileges Committee
Report

Senator BRANDIS (Queensland) (4.54 pm)—I present the 138th report of the Committee of Privileges, entitled Persons referred to in the Senate—the Medical Council of Tasmania.

Ordered that the report be printed.

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

Leave granted.

Senator BRANDIS—I move:

That the report be adopted.

The 138th report of the Privileges Committee is the 55th in a series of reports recommending that a right of reply be afforded to persons who claim to have been adversely affected by being referred to, either by name or in such a way as to be readily identified, in the Senate.

On 19 August 2009, the President received a submission from Dr Peter Sexton, President of the Medical Council of Tasmania, relating to comments made by Senator Barnett in the Senate on 11 August 2009 during the adjournment debate. Although the submission did not explicitly refer to privilege resolution 5, the President accepted it as a submission on that basis and referred it to the Privileges Committee. The committee considered the submission at its meeting on 10 September 2009 and recommends that the proposed response be incorporated in Hansard.

The committee reminds the Senate that in matters of this nature it does not judge the truth or otherwise of statements made by honourable senators or the persons referred to. Rather, it ensures that these persons’ submissions, and ultimately the responses, accord with the criteria set out in privilege resolution 5.

I commend the motion to the Senate.

Question agreed to.

The response read as follows—

Appendix One
Response by Dr Peter T. Sexton, President, on behalf of the Medical Council of Tasmania
Pursuant to Resolution 5(7)(b) of the Senate of 25 February 1988

The Medical Council of Tasmania (‘the Medical Council’) is an independent statutory authority which administers the Medical Practitioners Registration Act 1996. It has a primary role to protect the public, which includes managing risks arising from a doctor’s health, professional conduct or professional performance.

In fulfilling this role, the Medical Council may suspend a medical practitioner’s registration when it reasonably considers the suspension necessary for:

• the purposes of investigating a complaint made against that medical practitioner; or

• investigating on its own motion a matter that could be the subject of a complaint against that medical practitioner;

or that it is in the public interest to suspend the registration.

Such a decision is one of the most important actions for the Medical Council in terms of the difficulty in balancing the need to protect the public and affording procedural fairness and natural justice to the doctor.

In such circumstances, the Medical Council will only consider immediate suspension of a doctor’s registration if Council believes on the basis of the available information that there is a serious risk to public safety if the doctor continues current practice.

The Medical Council received a large volume of information about aspects of Dr McGinity’s medical practice on March 27, 2009, which raised significant concerns that there was a serious risk to public safety if he continued his current practice. Accordingly, the Executive Committee of the Medical Council considered the matter and determined that Dr McGinity’s registration should be suspended immediately, which was imple-
mented on March 28, 2009. The full Medical Council unanimously resolved to ratify the decision on Friday, April 3, 2009.

At the meeting of April 3, Council appointed an investigation committee consisting of an investigations officer and two medical advisors. Dr McGinity received written communication from the investigation officer on April 6, May 6 and May 26. In addition, the Registrar wrote to Dr McGinity's legal counsel on June 30 explaining that due to the investigations officer requiring a prolonged period of sick leave, Council had recruited a new investigations officer to continue the investigations of up to 23 cases related to complaints about Dr McGinity's medical practice (at that time).

Where the concerns of the Medical Council relate to a specific element of the doctor’s practice, the Council can enter into an agreement with the doctor to alter or limit the scope of practice to reduce risks to the public. In Tasmania, the Medical Council has no powers to impose conditions or to require undertakings which limit the scope of a doctor’s practice except at time of initial or re-registration. Thus it may be necessary to suspend the doctor prior to considering a written agreement to address any specific concerns.

The decision to suspend a doctor’s registration and/or to enter into “undertakings” does not indicate guilt or that the complaints have been substantiated. It is, however, a decision which is taken to minimise risks to the public during the investigation process and any proceedings which may follow.

The Medical Council resolved that, as the concerns about Dr McGinity’s practice related to the diagnosis and management of serious and life-threatening conditions, the Council would consider undertakings which would reduce the risk to the public. Dr McGinity met with Medical Council representatives during the first week of April to discuss returning to practise with restrictions. He chose at that time to remain suspended rather than enter into an agreement with the Medical Council.

Decisions of the Medical Council are subject to appeal to the Supreme Court, which has the power to overturn decisions of the Medical Council. In addition, processes and some decisions of the Medical Council may be examined by the Tasmanian Ombudsman or subject to judicial review.

Dr McGinity appealed the decision to suspend his registration to the Supreme Court. The initial grounds for appeal related to the reasons for the decision and issues related to a perceived lack of natural justice. Just prior to the case commencing, Dr McGinity’s defence team set aside the earlier grounds and opted for a new single ground which focussed on the delegation of power to suspend a doctor’s registration by the Medical Council to the Executive Committee, and in particular, on whether a quorum for the Executive Committee had been determined by the Medical Council or the Executive Committee. The appeal was upheld with the decision that the Executive Committee did not have the power to determine its own quorum and as there had been a vacancy at the time of the McGinity decision and the Notice of Motion had been issued prior to ratification by full Council of the Executive's decision to suspend, the suspension was considered invalid.

Given that the successful appeal related only to a legal, technical matter rather than addressing the concerns of the Medical Council regarding Dr McGinity’s practice, the Medical Council again considered Dr McGinity’s registration and he was suspended for a period of six months. Dr McGinity chose not to appeal the second suspension.

Thus, if Dr McGinity was concerned that information available to the Medical Council did not warrant suspension of his registration, he had two opportunities to test this assertion before the Supreme Court of Tasmania. Dr McGinity chose not to do so.

Approximately two weeks after the second suspension of his registration, Dr McGinity approached the Medical Council and undertakings were agreed to which allowed him to return to practise with restrictions. During the (more than) two month period from early April to late June, it is my understanding that Dr McGinity was able to secure locums for his practice and yet refused to sign an agreement with the Medical Council which would have allowed him to work with those locums and provide services to his patients.

The Medical Council is aware that whenever the registration of a doctor is suspended or the doc-
tor’s name is removed from the medical register, there will be concerns expressed by loyal patients. The Medical Council is also aware that such a decision may also reduce patient access to medical consultations and may affect employment in the doctor’s practice. However, it is not possible for the Medical Council to consider such issues when implementing the protective powers of the legislation without seriously compromising the primary role that the Parliament of Tasmania has required of the Medical Council of Tasmania for over 170 years — that is, the protection of the public.

The Medical Council also understands the importance of public and political opinion in raising issues which may result in constructive changes including amendments to the Medical Practitioners Registration Act 1996. It would be, however, an abdication of the fundamental responsibility of the Medical Council of Tasmania to protect the public, if public or political opinion were allowed to interfere with due process and particularly the exercise by the Medical Council of its protective powers in respect to a particular case under investigation.

Most recently, despite an agreement to return to work signed by Dr McGinity, his supporters have continued a campaign which in addition to misrepresenting the facts appears designed to facilitate political interference with due process and to harass members and staff of the Medical Council. I would hope that rather than being encouraged, such behaviour should be condemned by responsible members of the public and elected leaders and I look forward to the support of the Senate in ensuring that like other statutory bodies with protective functions, the Medical Council of Tasmania is allowed to properly fulfil the responsibilities as defined by Tasmanian legislation.

Legal and Constitutional Affairs Legislation Committee

Membership

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—The President has received a letter from a party leader seeking to vary the membership of a committee.

Senator FAULKNER (New South Wales—Minister for Defence) (4.57 pm)—by leave—I move:

That senators be discharged from and appointed to the Legal and Constitutional Affairs Legislation Committee as follows:

Appointed—

Substitute member: Senator Hanson-Young to replace Senator Ludlam for the committee’s inquiry into the provisions of the Migration Amendment (Complementary Protection) Bill 2009

Participating member: Senator Ludlam.

Question agreed to.

FOREIGN STATES IMMUNITIES AMENDMENT BILL 2009

First Reading

Bill received from the House of Representatives.

Senator FAULKNER (New South Wales—Minister for Defence) (4.58 pm)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator FAULKNER (New South Wales—Minister for Defence) (4.58 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

As preparations for another bushfire season commence around Australia, we need no reminder of the devastating effects of emergencies and disasters on the lives and welfare of all of us. In an environment like ours, it is imperative that we have the resources needed to respond quickly and effectively to emergencies and disasters. This
Bill is directed to ensuring that the States and Territories have access to logistical support from overseas to assist them during bushfire seasons.

The Australia-United States exchange programme
For some years now, the United States and Victoria have participated in a cooperative exchange programme for fire suppression resources.

The programme permits fire fighters and equipment from one country to be deployed to the other country to provide vital operational assistance during the bushfire season. It also allows Australian fire fighters to share and develop specialist skills and knowledge through training exercises and study tours.

Over 170 United States fire fighters have been deployed to Victoria since 2003, including for the devastating Black Saturday fires in 2009. Because of their training and the similarity between Australian and United States conditions, United States fire fighters are able to fit straight into crucial roles at short notice. This additional capability is invaluable during long bushfire campaigns, when local resources become overstretched and our fire fighters exhausted.

The new agreement
Negotiations are currently underway to finalise a new agreement with the United States to ensure the continued success of the exchange programme. While the negotiations are being led by Victoria, the new agreement will apply Australia wide, allowing all States and Territories to access United States fire suppression resources.

One aspect of the new agreement which remains outstanding is the status of the United States and its fire fighters in legal proceedings that may be brought in Australia. Due to their domestic legal requirements, the United States cannot finalise the agreement unless immunity from tort proceedings is provided concerning the actions of their fire fighters in the course of their duties.

The Foreign States Immunities Act and the Bill
In Australia, the Foreign States Immunities Act 1985 provides the legislative regime for the immunity of foreign States from the civil jurisdiction of our courts. At present, under section 13 of that Act, foreign State immunity does not extend to proceedings concerning death, personal injury or property damage arising from acts or omissions in Australia. This means that foreign governments could be exposed to legal proceedings as a result of sending their personnel to assist with emergencies in Australia.

Understandably, the United States is concerned about the entanglement of their fire fighters in legal disputes in another country when acting upon a request for assistance.

The Bill amends the Act by inserting a power for the Governor-General to make regulations so that a foreign State that assists the Commonwealth or a State or Territory in preparing for, preventing or managing emergencies or disasters is immune from tort proceedings arising out of that assistance.

This immunity would only apply to acts and omissions of the foreign personnel in the course of providing the emergency management assistance. This means that any negligence by a foreign official outside of their duties would remain subject to the jurisdiction of Australian courts.

I note also that the immunity would not apply in any criminal proceedings.

The agreement under negotiation provides for a reciprocal immunity to be granted to Australia and its fire fighters under US law. This will ensure an equivalent level of protection for Australian fire fighters operating in the US.

Victorian Bushfires Royal Commission
Before concluding on the Bill, I take this opportunity to welcome again the release of the interim report of the Victorian Bushfires Royal Commission.

The Government has commenced a detailed analysis of the recommendations in the interim report and will continue to provide whatever assistance it can to the Royal Commission.

Conclusion
This Bill is one way the Australian Government can assist the States and Territories with bushfire prevention and management.

The bushfire exchange programme with the United States will form an integral part of the fire management and response capacity of the States and Territories.
The Bill, if passed, will facilitate the finalisation of this agreement.

By enhancing our collective ability to withstand disasters and emergencies, the Bill will contribute to the safety and security of all Australians.

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

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (BUDGET MEASURES) BILL 2009

VETERANS’ AFFAIRS AND OTHER LEGISLATION AMENDMENT (PENSION REFORM) BILL 2009

INTERNATIONAL MONETARY AGREEMENTS AMENDMENT BILL 2009

Assent

Messages from the Governor-General reported informing the Senate of assent to the bills.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Report

Senator NASH (New South Wales) (4.59 pm)—I present the report of the Rural and Regional Affairs and Transport References Committee on the fee rebate for the Australian Quarantine and Inspection Service export certification functions, together with the Hansard recording of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator NASH—by leave—I move:

That the Senate take note of the report.

Certainly there is a very strong view across the committee that reform across the AQIS export certification functions is necessary. I think it is very important to make the point that, in terms of the reforms themselves, there was very strong support. However, the separate issue of removing the 40 per cent rebate for the industry is a different matter entirely, and it became very clear to the committee that the measure had taken a lot of the sectors of the industry by surprise. It obviously came out of the bill review, but it was very clear to the committee members throughout the inquiry that there was an expectation that the 40 per cent rebate would remain. We felt the very obvious nature of the government tying the delivery of the reform to government acceptance of removal of the 40 per cent rebate was not in the best interests of the industry. The obvious increase in charges for the industry as a result of the 40 per cent rebate being taken away meant that there were going to be some significant challenges right across the sectors. I think that came through clearly to the committee, particularly from the smaller parts of the industry—the sectors that have the least ability, if you like, to deal with a sudden increase in the charges. Interestingly, the red meat industry, which is responsible for 70 per cent of agricultural exports, was not asked for its opinion of the removal of the 40 per cent rebate throughout the bill review process. We thought that was indicative of the lack of effective consultation with many parts of the industry.

I move now to the issue of 100 per cent cost recovery. There was significant commentary to the committee about the very strong belief that there was a legitimate cost to government in lot of this business and that 100 per cent of the cost should not come back on to the industry itself. The point was made that many countries around the world see this activity as being for the public good and that in Australia we should be looking at it on the same basis. It clearly came through that the increased cost is certainly going to go to the heart of the competitiveness of lot of our industries, particularly with the
smaller operators. We heard a very high degree of concern about the impact of jobs losses, particularly in regional areas; indeed, some industry sectors believed that they would disappear altogether.

We have recommended that the Senate move to disallow the removal of the 40 per cent rebate. We believe that the industry should have the benefit of that 40 per cent rebate remaining. Having said that, we are very supportive of the reform process; there is no doubt about that. We are very concerned that the government has chosen to tie, if you like, the forward progress of the reforms to industry accepting the removal of the 40 per cent rebate. We do not believe that is in the best interests of the industry, and I know that some of my colleagues in the chamber will make some further remarks about that.

I would particularly like to thank the secretariat, as a very tight time frame was involved with the turnaround of the report from this inquiry. I place on record the committee’s very sincere appreciation for the work that the secretariat did in preparing the report.

Senator MILNE (Tasmania) (5.04 pm)—I rise to support the remarks of the chair of the Rural and Regional Affairs and Transport References Committee, Senator Nash, and note that since 2001 the government has provided a 40 per cent contribution towards the cost of providing export inspection and certification services to the meat, grain, fish, dairy, live animal and horticultural export industries. The cost of the services provided was met through a 60 per cent cost recovery from industry and a 40 per cent government contribution. That was in recognition of the fact that the process could have been done more efficiently and that our competitors in many of those export markets had their costs met by their respective governments.

That decision was renewed several years later, so many in those export sectors really did not believe that the government was going to change its position. There certainly was no consultative process with the export industries to make them understand that this was coming to an end, but they had a very clear understanding that reforms would be implemented so that the costs of the service would be significantly reduced. There was no evidence that reforms in AQIS in particular were reducing costs. If you talk to each of the industry sectors, they say that a lot was said about the potential for cost recovery, but not much was actually happening on the ground to demonstrate how those cost savings might be achieved and how we could be more competitive.

I feel very conflicted about this because it was the unanimous view of the committee that we need reform. Nobody is suggesting that the current way of AQIS conducting inspection and certification services cannot be improved. Everybody agrees that we can improve—that there have to be better ways of doing it, that the duplication of service by state and federal bodies must be overcome and that there must be ways of implementing reform. Certainly all of the agricultural sectors that we spoke to agreed that we must have reform.

I do not want anyone to be under any misapprehension here that the parliament does not support a reform agenda. We support a reform agenda. We want to see costs come down. We want to see these services delivered in the most efficient, most modern way we possibly can, and that includes implementation of information technology to better facilitate ways of dealing in a sector, higher skills training, better accreditation at industry level and so on. So that goes without saying. But it is a blunt instrument when an industry is held over a barrel, essentially. The government have come back and said to
the industry, ‘We expect to go to 100 per cent cost recovery this year and in return we will put $30 million into delivering on the reforms.’ The industry quite rightly said, ‘Effectively, we are paying for our own reforms in terms of that cost recovery.’ The government have argued: ‘No, you’re not. We’re recovering the costs of what we do and we’re putting in this $30 million that you are paying in order to deliver reforms.’ Well, it is a bit of an academic argument because the upshot is that industry is going to be paying and the reforms will be implemented, but the industry has little confidence that the reforms will be implemented in the 12-month time frame. That is the next point: how quickly and efficiently can we get the reforms in place? We had quite a bit of evidence from people that there is no way they are going to get approval from some of their export markets to change the protocols, to accept the change processes, in the 12-month period.

The other point to make is that we are in the middle of a global financial crisis. Our rural communities are also struggling in those export markets in the face of a higher Australian dollar. We are talking about giving massive support across the car industry and in all sorts of areas of the economy, but we are saying to the farmers at this time, even with the high Australian dollar and the global economic crisis: ‘We are going to go to 100 per cent cost recovery and, what’s more, we are even going to introduce new fees.’ The government argue they are not new fees, but they are. If someone paid zero last year and they are paying $50,000 this year for the registration fee for an abattoir, that is a new fee, as far as they are concerned. I have had a letter from an abattoir in Western Australia which will effectively be paying an additional $109,000 this year. That is a lot of money for a business.

The point here is that the parliament wants the government to invest in the reform process but we also recognise that farmers are very nervous about whether or not these reforms can be implemented in the 12-month time frame, as is being suggested. So what the government needs to do is commit to the reform process and also commit to providing the rebate for the 12 months in order that the reform process can be delivered. All the evidence that came before the committee was that there is no dissent out there in rural Australia: they want reform. We want reform. But we are also mindful of what this 40 per cent cost recovery will do in the country in the next 12 months—that is, it will send a lot of businesses close to the wall, if not beyond it.

Senator COLBECK (Tasmania) (5.10 pm)—I would like to make my contribution on the tabling of this report by the Senate Rural and Regional Affairs and Transport References Committee on the AQIS fee rebate. As other members of the committee have said, it is with no real joy that we make the recommendation that we do on this particular issue. I said in this place last week, when debating the withdrawal of the submission from Austrade, that if this reform process ran into trouble or if the withdrawal of the 40 per cent AQIS rebate went ahead it would be the fault only of the minister. It is quite clear that the process the minister has put in place to deal with this is flawed. In fact I said to his office two months ago, when we first moved the disallowance motion that will come up tomorrow, that this process was not sufficiently resourced, that it was at least $25 million or $30 million short of the mark. Industry have quite clearly said to us, and this has already been expressed by other speakers, that they want to see the reforms go ahead, as do members of the committee. I do not think it could be any clearer: we all would like to see this process reformed, but it needs to be properly resourced.
You cannot just come along and put a gun to industry’s head and say, ‘Here is your option: reform or rebate.’ That is what the government has done here. It said in the budget that it would remove the 40 per cent rebate on AQIS export fees and charges. Then, after it got into a bit of strife and got some criticism from industry, it came up with $40 million to fund the reform process. It is now saying to industry: ‘It’s the reform or it’s the rebate.’ That should not be the option, and the opposition said that to the government two months ago. We gave them the time to deal with this. We actually took what I think is the responsible way of dealing with this. We moved the disallowance motion for the new fees and charges. We then postponed it. We started getting mixed messages from industry, so we thought the best way to sort this out was to allow industry the opportunity to put their views on the public record. That is what we did last Thursday and Friday, and they were unequivocal: they want the reform, as the committee does, but they do not want to have to effectively pay for the reform. They do not want to have to pay for government to reform itself; the government should be doing that process. The government should put enough money on the table to reform the way that AQIS charges, and then properly fund a continual reform process.

The only thing that has come out of this whole debacle is that it has focused industry’s attention on the reform process. That is about the only positive that I think you could take out of this debacle: that industry are fully and firmly focused on what is going on. Two of the sectors have reform plans drafted; the other four are working on it. But there were even flaws in that process. What I do say is that the opposition gave the government a fair go on this. We gave them a real opportunity to get this right, but they have basically sat back and said, ‘Well, it’s our way or the highway: reform or rebate—they’re the two options.’

What really disappoints me is that the government have put billions and billions of dollars of stimulus into the economy—$42 billion has been put into stimulating the economy—and yet about $30 million would have effectively funded this. It just seems crazy to me that the one sector—agriculture—that provided the stimulus in the economy in that one quarter when we could have slipped into recession is getting nothing out of this. Of the $42 billion in stimulus, the agriculture sector gets absolutely nothing. It cannot even get $30 million to reform the way that it exports. I take Senator Milne’s comment: we are in a recession and the government have said they need to spend money on stimulus. I made a comment in my contribution to that debate that it was poorly focused—and here is yet another example. They could have put $30 million or $40 million into funding the reform of the way AQIS operates and yet what have they done? They have stripped an enormous amount of money from the Department of Agriculture, Fisheries and Forestry, but they have not officially funded the process of reforming the AQIS fees and charges.

I repeat, as have others, that I support the reform process. Industry came and told us that they support the reform process, but what they do not want is a cost shift. They do not want AQIS to be able to give the appearance that they are charging lower fees, but then to have to do the work themselves. They know that they will do it more efficiently and they might pick up something from that, but, quite frankly, this needs to be a genuine process with all parties being brought along. One of the real issues that was brought to the table by industry as part of the discussions last week was the time frame. AQIS told us with great confidence on Thursday night that they thought they could meet the 12-month
They said with great confidence that all of the six programs could be completed within 12 months. We found out on Friday that two of them had stopped because there was still concern about whether or not this disallowance motion would go through. So they have basically pulled up stumps and stopped the process. But they are still taking the hard line: reform or rebate. We have heard that there are still four plans to be developed.

People in the beef industry told us that it would take a minimum of two years, out to five years, to conduct the reform process that needs to take place. The grains industry said the same thing—at least two years. We heard from the horticulture sector that sometimes it takes 18 years to get into a market! And they are expecting industry to turn around not only their own processes within the country but also international acceptance of our processes within 12 months. There is very little confidence that this will be done inside the 12-month time frame that the government have set. I do not mind setting time frames. I think it is reasonable to set time frames. They set up consultative groups to discuss the options with industry, but then they did not take notice of what industry was telling them. They came back at the end of the day and said, ‘We still think we’ll meet the time frames,’ even though all those industry sectors had been before us during the day. Grain, the first cab off the rank, said it would take at least two years to sort this out. The meat industry representatives were quite unequivocal. They know their business. They said it is going to take a minimum of two years for the majority of it, but some of it will take up to five years.

It is really disappointing that we have had to come to the point where we recommend that the new AQIS fees and charges be disallowed. It is a great disappointment to the committee, and the committee members have discussed it at length. This is a situation where a political time frame has been set that is not achievable—and we have seen that with many of the government’s measures. It is a situation where they have put a gun to the head of industry and said, ‘It’s this way or that way.’ Industry came out with letters of support when the initial disallowance motion was moved, but we found out during the hearing on Friday that they were not freely given by industry; they were solicited. A strategy was set up in the minister’s office and in the department to look at how to get a demonstration of industry support. They set up a strategy group to do that. They went out to industry and said, ‘We need you to give us a letter of support for this.’ Industry came to the committee and said, ‘This is how it is.’ It is a really disappointing outcome. After we have given the government every single chance on this, we recommend that we move the disallowance motion—but we do stress that industry reform should go ahead.

Senator BACK (Western Australia) (5.19 pm)—I rise also to speak to the matter and to support the motion that the Senate take note of the report by the Rural and Regional Affairs and Transport References Committee. It is important to understand that agriculture is an industry of some $40 billion of value to the Australian economy. It employs almost 300,000 people, nearly all of whom are in rural Australia. We have been invited to talk about rebate and reform. I suggest that we also need to rethink. Yes, as previous speakers have said, the industry and AQIS, government and us, are very much in favour of reform. What has been put to industry is that it is essential that the 40 per cent rebate be dropped in advance of reform. We have heard very clearly in the last few months, and particularly in the last few days in the committee hearings, that the industry wants to see reform take place before the rebate is dropped. That is not unreasonable.
This is a very, very significant industry. I urge the minister and the government, faced with the size of this industry and the risks to it, to find the sum of $20 million, up to $25 million, so that we can progress. Then we can do what AQIS and the industry are calling for—that is, to set the reform path but to do so in advance of the 40 per cent rebate being withdrawn.

It was of particular concern to me to learn that the Beale report author, Mr Roger Beale, upon whose recommendations most of this decision was based, had in fact undertaken an economic survey to determine what the impact would be on the industry and on rural communities in the event that this 40 per cent rebate was lifted. I have been endeavouring to find out whether the government itself actually undertook such an economic impact statement. It is of enormous concern that our producers would be faced with the removal of the 40 per cent rebate—when nobody seems to understand what the economic impact would be on the industry sectors and on the communities they serve. I believe such an impact statement needs to be done. Again, I urge the minister and those responsible to reconsider this quickly so that we do not interrupt that process.

There is no doubt at all that hard work has gone in—it has gone in from senior AQIS personnel and it has gone in from industry personnel—and we learned of genuine goodwill. But, as Senator Colbeck has said, to think that this can be undertaken in this financial year is also an unrealistic time frame. It is also unrealistic to think that industries can absorb this loss of 40 per cent. Industry have said to us continually, particularly the meat industry that accounts for some 70 per cent of all export certification and inspection costs, that they are quite happy to pay their share of the costs that can be apportioned by AQIS to those services that they perform. But, not unreasonably, they have also said that they do not see why—bearing in mind again that they are 70 per cent of the size of the cake—they should be bearing the costs of head office and other related costs. I cannot see why either. The point was made, for example, that the car industry, a smaller industry than the meat industry with fewer employees and a much lower export income—in fact, only a quarter of the income earned by the meat industry—has received very significant support from government. The point it would make is that it also would be keen to see that continued level of support whilst the reform process is worked out so that it can move on.

When I speak of the meat industry, it is important to understand the impact. For example, in Western Australia we have only one export abattoir responsible for cattle slaughtering, and that is down in Harvey in the south-west. In the event that that export abattoir did not exist, you would have to go up the north coast and across the north of Australia to Townsville before you found another abattoir able to do that work. Our beef producers would be faced with the prospect of trucking cattle to South Australia or to Townsville. That is unacceptable, and I do not think that anybody would want to see that occur. My final point before passing over to a colleague who I know wishes to speak on this is the question of redundancies. Incorporated in the figure that is currently on the table is the funding of redundancies. It really is unreasonable that industry would be expected to fund the redundancies of a government agency.

In conclusion, I also congratulate the committee on the work that they did and on the quality of the report. I congratulate my Senate colleagues and those who appeared on the way in which it was conducted. But I say again: the opportunity is there for the
government to examine this in the coming
days and to put the extra sum of money onto
the table so that this whole process can in-
deed continue.

Senator FIELDING (Victoria—Leader
of the Family First Party) (5.24 pm)—The
Australian government’s management of the
removal of the 40 per cent fee rebate for the
Australian Quarantine and Inspection Ser-
vice export certification functions is in real
disarray. We have heard through the inquiry
and through the Management of the removal
of the rebate for AQIS export certification
functions report of the Senate Rural and Re-
gional Affairs and Transport References
Committee that a common theme in submis-
sions was that the removal of the 40 per cent
rebate should not have been completed ahead
of the implementation of reform. What that
means is that the industry would be suppor-
tive only of the extra costs for the AQIS ser-
vices that they would be liable for pro-
vided that the reform put through AQIS itself
lowered the overall costs. So, as the cost came
down and as the industry paid more of the
costs themselves, they would level each
other out and there would not be more cost to
the industry.

The real problem—and I think it comes
into the conclusions of this report, and this is
the crux of the matter—is that the removal of
the 40 per cent fee rebate for the AQIS ex-
port certification functions increases costs
for Australian exporters, which could ad-
versely affect the competitiveness of many
Australian exporters and, ultimately, impact
trade growth in established markets as well
as new market opportunities. At a time when,
as the government would say, we have a
global financial crisis here, is the govern-
ment whacking Australian industry with
higher costs? This is the wrong time to be
doing it, and it was argued by some that this
should be phased in rather than it all being
done at one time.

Let us look at some of the comments that
were made during the inquiry. The Sheep-
meat Council of Australia and the Cattle
Council of Australia told the committee that
the removal of the subsidy would provide ‘an
incentive to progress badly needed reform
within AQIS’. However, the submission by
the two councils went on to state:

... if the 40 per cent fee rebate is removed without
the necessary reforms being successfully imple-
mented, Australia’s red meat producers would be
forced to shoulder the full cost of inefficiencies
within Australia’s monopoly export certification
body. This outcome is unacceptable to red meat
producers as it places Australian producers at a
comparative disadvantage to our competitors in
international markets who receive taxpayer
funded certification services.

What does the government say? Basically, it
says: ‘So what? Just pay the extra costs.
Trust us—we’ll make sure that costs come
down.’ They have not and they will not. The
Horticulture Australia Council told the com-
mittee:

Horticulture is vehemently opposed, as we put in
our submission, to the removal of the 40 per cent
rebate in advance of the promised reforms. We
think that is poor policy and poor timing, particu-
larly in relation to some of the points that the
other agricultural industries have been making
here today.

Those are just a couple of industries that are
absolutely up in arms about having to pay
higher costs. The government should have
been more focused on reducing those costs
by getting efficiency gains rather than put-
ting the cart before the horse and hitting our
export industries at a time when they can
least afford it. It is an absolute joke that the
government would do this. I see that the
committee’s report reaches the following
conclusion:

The committee recommends that the government
continues the current regulatory reform process,
and commits sufficient public funds to it, until
such time as all reform initiatives identified by
each of the ministerial task forces have been successfully implemented.
But the first recommendation is:
... the Senate move to disallow the Export Control (Fees) Amendment Orders 2009 (No. 1).
We had a chance previously to disallow this and to hold the government to account, and the coalition went soft. Let us hope that the coalition do not go soft the second time around and, instead, really hold this government to account so that reforms are put in place to make sure that there is not an extra cost burden put on industries that can least afford it in these tough economic times. Let us make sure that the government does the hard work—with AQIS, to start with—to get the costs down so that our industries which are exposed to international markets are not slugged unfairly.

Question agreed to.

NATIVE TITLE AMENDMENT BILL 2009
Second Reading
Debate resumed.

Senator JOHNSTON (Western Australia) (5.30 pm)—To continue my contribution from earlier today, the third point that I was making prior to question time was that representative bodies, as constituted under the act, are required to be governed equitably and to have a proper and fair basis for the selection of priority claims. The circumstances that confront claimant groups under the umbrella of one particular rep body is that they are all jockeying for funding and for the use of the anthropologists, the lawyers and all of the professional assistance that each group needs. How that is resolved is a very important matter that requires transparency and equity. Up to this point in time, there have been significant problems with claimant groups not being able to conduct their claims because they have not been able to get onto the priority list of their particular rep body.

Often they have had to go through the future act process and fund their own claim away from the supervision of the rep body.

The final point with respect to the logistical difficulties confronting claimants is that the discipline of communicating the outcomes of the activity of the rep body is expensive but necessary. The claim is managed by the rep body on behalf of the claimants, who often have very limited capacity in terms of expertise to conduct a serious Federal Court litigation. The claimants’ solicitors’ advice and the outcomes of various court hearings all need to be communicated to the claimants by the rep body. This is both expensive and time consuming but ever so necessary.

So, as I have indicated, pursuit of a native title determination is a tortuous, complex and very-high-cost litigation and definitely not to be undertaken lightly or without a great deal of advice and consideration. These matters are besides the technical issues of accuracy of description of the boundaries of the land claimed, which is often very difficult—and I pause to say that the Native Title Tribunal has established a very good mapping system that indicates the precise locations, or as precise as the descriptions allow, of various land boundaries as claimed by the claimants. We then have to have concise elements of connection to the land and compliance with the thresholds set out in the act. These are all very difficult technical matters. I further note that, to have a successful claim determination, the evidence of connection needs to be direct evidence and in vive voce form. The problem with this is that we are talking about a whole host of people whose life expectancy is far below that of mainstream Australian society. Many are already old and English is not even their first or second language. To ask them to come to a sitting of the Federal Court, which is usually in capital cities to give evidence—occasionally there are sig-
significant sittings in country—is therefore a major ordeal for them.

There was a report in 2006 that was commissioned by the former government, by Graham Hiley QC and Dr Ken Levy. They provided to the then Attorney-General, Philip Ruddock, a detailed report in which the success of the process was reviewed. This was a good report. It broadly focused on the issues I have mentioned and sought to offer some solutions. To some extent, unfortunately, the authors differed as to the solutions to the various problems, and it is apparent that the current Attorney-General and government have elected to go with the changes recommended largely by Mr Hiley—that is, that the Federal Court and the registrars be further empowered to deal with claims. I will come to the rationale behind that, but I pause to say that the National Native Title Tribunal paved the way and was a trailblazer in this area. I do hope that the Federal Court will continue to use the mediation powers of the National Native Title Tribunal, because I think they have had a number of successes in very difficult circumstances, and I commend them for that. I think the native title legislation is very difficult, very complex, and continues to present logistical nightmares for claimants, respondents and state governments. I want to see that the legislation is effective and works, and that we come through this period of uncertainty with respect to land use, particularly in my home state of Western Australia.

It does seem to me that greater power to make interim orders in both the management of the claim and the ultimate determination is preferred, such that we are moving, as we are with these amendments, to the Federal Court and the federal registry. I say this because, notwithstanding that much of the work will be done by Federal Court registrars, the Federal Court will provide much more of a one-stop shop capacity. This should—I trust and I hope and I expect—expedite matters and accordingly reduce costs.

I have a view with respect to the entree type of judicial forum required to get these matters into some sort of order prior to their being presented formally before a judge in court. In Western Australia we have an administrative court called the Warden’s Court, where matters proceed with a minimum of court documents and process yet there is a good track record in the summary determination of factual issues. I hope that the registrars in the Federal Court can take a leaf out of the way that the Warden’s Court in Western Australia works, often dealing with very serious and very valuable matters, such that the lion’s share of the work is done before the matter comes before the Federal Court judge.

A move away from formal evidence in chief and cross-examination is desirable in this particular area, with agreed statements of facts and prior published evidentiary statements setting out the perspectives of the claimants and the arguments of the respondents. That is a very positive thing, and I do not think there is anything to stop us doing that. Ultimately, I think everybody has a pretty fair idea of where the matter is going. Setting out evidentiary statements allows everybody to know where they stand, and it is a great aid to mediation such that we can have agreed orders. The ultimate objective of all of this is to minimise the time that the judge has to sit in court and to make the orders as pristine and as practically applicable and effective as they possibly can be.

I pause to endorse very much of the remarks of the Chief Justice of the High Court earlier this year in talking about some of the solutions that are needed here. I do consider that the need to look at the onus of proof is important. My principal reason or the motivation for the need for reform has been the
conduct of the states. Each of the states, to some greater or lesser degree, for their own reasons—some legitimate and some questionable—has been inordinately slow and often parsimonious with respect to the shouldering of the some of the expense and assistance to both claimants and respondents in resolving matters and in obtaining determinations. In Western Australia we have had to review freehold title, mining leasehold title, pastoral leasehold title and so on and so forth. All of this has presented major difficulties just for lawyers examining the position of the claimants and seeking to agree orders, which has meant literally months of examination of the state government records. This is a terribly onerous procedure, and this is why the process has bogged down.

If the states had been more proactive and, indeed, if state politicians had greater understanding of native title, were less fearful of consent determinations and less fearful of compensation and the overall process, we might be much further advanced. I do hope that they heed my words today and start to come to terms with the fact that native title is here to stay. It is an act of the federal parliament. It is not going to go away and the best way to deal with the issues that it presents on the ground is to mediate and to come to agreements. There is a great deal of lip service and hand-wringing, with platitudes offered up by state and federal politicians on this subject while they continue to stand effectively on the hose obstructing reform and progress in this regard.

Native Title Amendment Bill 2009 is no silver bullet or instant panacea to the problems, but it is a beginning. It is a contribution and I think that it is a step forward. A greater and more focused discipline on mediation is a good thing. Greater financial assistance—and I trust that there will be greater financial assistance—for mediation and an increased financial commitment by both state and federal governments is a good thing. However I am very sceptical as to just how much money and how well managed that money will be when committed by those governments. A greater capacity for the Federal Court to make determinations on related matters is a good thing. Refining the process in rep bodies is a good thing, but again I am sceptical as to whether there is a really aggressive and disciplined capacity for rep bodies to effectively and cost-efficiently manage themselves and to properly manage the claimants in a transparent and equitable way. It is not easy. It is difficult and presents a number of problems, but it must be done correctly such that the claimants are fully informed and know exactly where they stand at any given time.

I pause to mention that in one case that I was involved in many years ago a rep body had on its books some 14 lawyers that it employed and yet, with respect to my matter, it still briefed an expensive member of a large city law firm. I just think that we need to get a huge injection of reality here. People who are immersed in native title and who work for rep bodies must conduct their cases in the Federal Court as cost-effectively as possible. The most important thing in this area of public policy is the proper funding of stakeholders and the strictest of cost-efficient management of those moneys, as I have said.

I assure the Attorney-General that many of us in the Senate will be watching the implementation and outcomes of these reforms with a very critical and weather eye. However, I do wish these reforms success, and I trust that in one or two or maybe three years we will be back here to see those 511 cases that are pending substantially reduced.

Senator WONG (South Australia—Minister for Climate Change and Water) (5.41 pm)—I firstly thank all senators for their contribution to this debate on the Native Title Amendment Bill 2009.
Title Amendment Bill 2009. I also want to record the government’s recognition of the work done by the Senate Standing Committee on Legal and Constitutional Affairs in relation to this bill and also to note its recommendation that the bill be passed. This bill will amend the Native Title Act to give the Federal Court key control of the management of native title claims. It also contains measures that will contribute to a broader and more flexible negotiated settlement of native title matters. As the Attorney-General said when he introduced the bill into the other place, ‘... native title can provide an important avenue for economic development for Indigenous people ... [and it can do] more than just deliver symbolic recognition.’

Following the Rudd government’s historic apology to Indigenous Australians, there is a renewed sense of optimism about the relationships between Indigenous and non-Indigenous Australians. Old attitudes are breaking down and there is a sense of renewed hope for what native title can deliver. However it is also clear that this system is in need of reform, and the changes contained in the bill before the chamber will enable faster and better outcomes for participants.

For example, the provision that will allow the Federal Court to accept a statement of facts which has been agreed between certain parties will cut down time spent on issues that are clearly not in dispute and allow parties to focus on negotiating issues central to resolving the claim. Hopefully this means that claims will be settled faster. An amendment that confirms the court can make orders about matters other than native title, again, where parties have agreed, will mean that the court can assist parties to resolve native title and related matters at the same time, again, meaning better outcomes for all stakeholders.

One of the key changes contained in the bill will give the Federal Court the central role for managing all native title claims, including who decides who mediates a claim. It is the government’s view that the Federal Court is in the best position to have overall responsibility for how cases are managed and best resolved. These reforms will draw on the court’s significant alternative dispute resolution experience to achieve more negotiated outcomes. Having the court, with the authority that it brings, actively controlling the direction of each case will mean opportunities for resolution can be more readily identified. The government does not accept criticisms made by the National Native Title Tribunal in evidence to the Legal and Constitutional Affairs Committee. We are confident in the court’s ability to provide a national coordinated approach to the resolution of native title claims and confident that the amendments will result in a more effective and less costly system.

The bill also includes a number of amendments that streamline the processes involved in the recognition and re-recognition of native title representative bodies. There has been widespread stakeholder consultation about the amendments in the bill and it is clear from the consultations that there is a great deal of support for the measures contained.

I want to first reference briefly Senator Siewert’s comments on the need to reverse the burden of proof in native title amendment matters. I do not propose to address that now, as Senator Siewert has proposed an amendment to the bill; obviously, I will comment on that proposal in committee. I make the general point that the last 15 years has shown that, in relation to native title, it is extremely important that there be genuine community support for measures that are, after all, intended to promote the welfare of Indigenous owners and their descendants. Without
proper consultation there is always the danger of divisive debate.

I want to reference some of the matters raised in the contributions made by senators. I indicate first that the government welcomes the opposition’s support in passing this legislation. Senator Trood made reference to statements by a Mr Tony McAvoy to the Senate committee. I indicate that Mr McAvoy is expressing his personal opinion, not the opinion of the National Native Title Council. Submissions on the bill from the council are generally supportive of the majority of the proposed amendments. The chair of the council has been reported as welcoming the changes:

In the area of mediation, there is a consensus across the industry that the Federal Court should have more power in being able to get parties to come together to discuss common interests.

Notably, Mr McAvoy also argued that what would make a noticeable change to the speed of resolutions is a rebuttable presumption of continuity. The Greens are, as I have previously noted, proposing that amendment, but this is something that Senator Brandis has expressly opposed.

I also want to make some comments on the suggestion in some of the contributions that there has been insufficient time since the last amendments to assess whether more changes are necessary. The 2007 amendments created a mandatory referral to the tribunal. Those amendments resulted from the 2005 claims resolution review of the relationship between the court and the tribunal. The consultations for the review indicated that a wide range of stakeholders had high levels of frustration with mediation being conducted by the tribunal. The 2007 amendments which followed the review reflect options supported by one consultant. In opposition, Labor opposed those changes, in part because they did not address the extensive stakeholder concerns with the performance of the tribunal, and they were also strongly opposed by a large number of native title representative bodies.

The ability of the tribunal to more effectively mediate was questioned by other stakeholders in submissions to the Senate committee in 2007. The committee’s minority report, by the Australian Labor Party and the Australian Greens, opposed the previous government giving the tribunal the primary role in native title mediation because stakeholders did not have confidence in the tribunal’s capacity or expertise to conduct effective mediation.

Senator Trood asked why the Federal Court had not exercised powers under the act before now. Of course, the 2007 amendments created a mandatory referral to the tribunal with only minor exceptions; therefore, until now the court has been unable to control the mediation of the proceedings, as the bill proposes. The proposed changes mean that rather than automatically referring every case to the tribunal for mediation, the court will decide which individual or body should mediate each matter.

There have also been claims made about the tribunal not being consulted. I can indicate that I am advised that extensive consultations, including with the tribunal, have taken place over the last few years on native title claims resolution. In proposing the changes, the government took into account the claims resolution review and the inquiries held by the Senate committee into the 2007 native title amendment bills. The Attorney-General did advise the president of the tribunal of the proposed institutional changes prior to the announcement. Senior departmental officers and the Attorney-General have met with both the tribunal and the court to discuss the proposed reforms and how they would be implemented in practice.
The tribunal has indicated its intention to work cooperatively with the court and the department to implement the institutional reform.

There has also been a request from Senator Xenophon and Senator Siewert about whether or not the government was intent on providing more resources. Obviously, the government will monitor the resource implications of the amendment. However, the court has advised that presently no further resources are required. At this stage, though, the funding implications cannot be estimated until changes have been implemented. The government will obviously ensure that the court and tribunal are appropriately resourced to carry out their functions.

Senator Xenophon asked what mechanisms are in place to monitor the impact of changes. The federal government convenes the Native Title Consultative Forum three times a year. This forum brings together all stakeholders in the native title system and through this forum the government receives feedback on the operation of the system. We anticipate that we will continue to receive that feedback. In addition, native title ministers also meet every year to discuss the native title system. Undoubtedly, the federal government will receive feedback from state and territory governments on the impact of these changes. Obviously, the Attorney-General’s Department will continue to monitor the impact of the changes in consultation with the court and tribunal.

Senator Xenophon also asked how the changes will help clear the backlog of claims. Obviously, these amendments are in part designed to seek faster settlements. These will be encouraged by giving the court control over native title claims to allow for better identification of opportunities for resolution; by allowing the court to include matters beyond native title in consent determination, which will give the court more flexibility to resolve claims; by allowing the court to refer claims to the most appropriate mediator; by enabling the court to rely on a statement of facts agreed between the parties rather than having to be independently satisfied of the facts; by improving native title representative body provisions to allow them to focus on their client’s claim; and by allowing the court to use recent changes to evidence laws that concern evidence given by Aboriginal and Torres Strait Islander people and to enable those changes to have a wider application to native title claims.

However, the degree of success that these changes have in delivering faster settlements will depend upon behavioural changes by all parties. As a result, obviously no-one can forecast how many more claims can be resolved and by when, but our hope is that the bill before the chamber will enable more resolutions in a more timely fashion. Much, obviously, does depend on the attitude of the parties.

In conclusion, the government’s view is that the amendments in this bill, along with the behavioural change amongst parties to which I have referred, will bring about important and necessary changes in the native title system. Whilst the law of native title may seem somewhat complex, and often is, its objective is straightforward: to recognise Indigenous people’s ongoing relationship with their land. The passage of this bill will mean that the recognition of that relationship can be achieved faster and with better outcomes and certainty for all stakeholders. I commend the bill to the chamber.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.
Senator SIEWERT (Western Australia) (5.53 pm)—I move Greens amendment (1) on sheet 5837:

(1) Schedule 6, page 52 (after line 5), after item 12, insert:

12A After section 61

Insert:

61AA Presumptions relating to applications

(1) This section applies to an application for a native title determination brought under section 61 of the Act where the following circumstances exist:

(a) the native title claim group defined in the application applies for a determination of native title rights and interests where the rights and interests are found to be possessed under laws acknowledged and customs observed by the native title claim group;

(b) members of the native title claim group reasonably believe the laws and customs so acknowledged to be traditional;

(c) the members of the native title claim group, by their laws and customs have a connection with the land or waters the subject of the application;

(d) the members of the native title claim group reasonably believe that persons from whom one or more of them was descended, acknowledged and observed traditional laws and customs at sovereignty by which those persons had a connection with the land or waters the subject of the application.

(2) Where this section applies to an application it shall be presumed in the absence of proof to the contrary:

(a) that the laws acknowledged and customs observed by the native title claim group are traditional laws and customs acknowledged and observed at sovereignty;

(b) that the native title claim group has a connection with the land or waters by those traditional laws and customs;

(c) if the native title rights and interests asserted are capable of recognition by the common law then the facts necessary for the recognition of those rights and interests by the common law are established.

I indicated in my speech during the second reading debate that the Greens would be moving this amendment, which relates to the presumption of continuity or reverse onus of proof. I do not intend to take much time in the chamber, because I did argue my points in my speech during the second reading debate. While the Greens support the amendments in the bill, we do not believe they are going to make the substantive change that we want to see to native title.

I appreciate the Minister for Climate Change and Water’s comments about the need also for behavioural change. I accept that point. Given even that, I do not think we are going to see the major changes that a lot of people are seeking in native title. If we are going to see native title deliver the benefits that everyone has been expecting for the last 15 years from this legislation, we need to see substantive change, which is why we have put forward this amendment around the rebuttal of the presumption of continuity.

This amendment is one that Chief Justice Robert French, a past president of the National Native Title Tribunal, and many others have proposed in terms of delivering better outcomes for native title. This reverses the onus of proof so that native title holders do not have to prove continuity. There is a presumption of continuity. In fact, the state government and those opposing a claim have to prove otherwise.

I did articulate this argument in my speech during the second reading debate and I
quoted extensively from the Australian Human Rights Commission, the Native Title Tribunal and Chief Justice French. The Chief Justice makes the point that the heavy burden on the principal parties to native title litigation is a result of these claims being proceedings conducted in the Federal Court. He says the resolution is to a degree constrained by the judicial framework, particularly its requirement that:

... applicants prove all elements necessary to make out the continuing existence of native title rights and interests within the meaning of the NTA and their recognition by the common law.

I think he argued very eloquently the need for some change to the Native Title Act. I commend this amendment to the chamber.

I believe that, if we are serious about delivering real outcomes from native title, we need to make substantive changes, not just the changes that the government is making. I am not critical of the changes that the government itself is making, but we do not believe they are going to achieve real outcomes from native title. I ask the minister—and the minister referred to this in her summing up comments—is there a formal process of review in terms of the resources that are required and what is the time line for that review?

Senator BRANDIS (Queensland) (5.58 pm)—While the officer is being found, I will indicate the opposition’s attitude to Greens amendment (1) on sheet 5837. The opposition also oppose this amendment. I will say a couple of words about our attitude.

It was very instructive that the rationale of Senator Siewert’s advocacy of this amendment implied that a good outcome is that the applicant succeed. That was the unstated assumption in her whole contribution—if the applicant succeeds then the process has registered a good outcome and if the applicant fails then that is a bad outcome. That is an absolutely absurd way in which to approach contested proceedings.

We are dealing here with proceedings in which there is a dispute. There is a dispute between parties as to whether or not a particular claim falls within the ambit of the statute. The definition of a good process is not whether the applicant succeeds but rather whether the party which has a stronger legal and factual basis for their case succeeds. It sounded to me that Senator Siewert would regard any unsuccessful native title application as a failure if the claimant did not succeed. A legal process is only a failure if the wrong party wins. Senator Siewert would have it that it is only a good process if one side of the record wins—regardless of the facts, regardless of the
the expert evidence, regardless of any other consideration. That is why we have equality before the law, Senator Siewert: so people on both sides of the record, whether they be minority groups, companies, governments, individuals or quangos—wherever they lie in the power structure; everybody, on either side of the record—treated as equals. We do not go into these processes saying the process will not have worked unless a claimant gets their way, but that seemed to me to be the assumption behind your approach.

I have heard—if not from you, Senator Siewert, I have certainly heard this from your leader, Senator Brown, in relation to different legislation, for example antiterrorism legislation—how wicked it is to have the onus of proof reversed. I believe, and I am sure the minister shares my view, that as a general rule the reversal of the onus of proof in any contested proceedings, whether criminal or civil, is a bad principle. There are cases where exceptions need to be made to that principle, but in general I would hope that all legislators would approach the question of whether the onus of proof should be reversed by casting the onus of proof on those who make that argument, to show why there are powerful reasons why the onus of proof should be reversed. Usually, the reason the onus of proof is reversed, in any proceeding, whether it be a criminal proceeding or a civil proceeding, is that the party against whom the reversal of the onus takes place is in a better position than the adverse party to explain its position to the court. So the ordinary situation, whereby a person making an allegation or moving a court for a particular remedy needs to make out their case on the balance of probabilities in a civil proceeding like this, is displaced because the adverse party is better able to explain the situation than the party carrying the proceeding forward, and therefore in those circumstances it is not unfair to reverse the burden, to cast the burden of proof on the party in the better position to explain the situation.

But, in this case, in your amendment, this is the worst set of circumstances in which you would reverse an onus, because who would be the party in a native title claim best able to speak to the issue of continuity, best able to speak to the issues set forth in proposed section 61AA(1)? It would be the native title group themselves. It would be the Indigenous group themselves. They would be in a better position than anyone else to explain to the tribunal why it is that, historically, members of their tribe or their ethnic group have had the required degree of continuity with the land. So, far from being a situation in which a party is at a forensic disadvantage by the ordinary rules as to the onus of proof operating, this is the very case in which the party whom you seek to give the forensic advantage to does not need it. This is the very sort of case in which the party whom you would say should be the beneficiary of a reverse onus is in fact the party that should have the onus, because it is the party in the best position to put before the tribunal the relevant matters of fact, scientific evidence and so forth as to why there was continuity of connection with the land.

I have two propositions, Senator Siewert. First of all, in general reversals of the onus of proof are a bad idea. Secondly, in those cases where we make exceptions to that general rule, those exceptions are made in order to enable a party at a forensic disadvantage to overcome that disadvantage. But these parties not only are not at a forensic disadvantage; they are at a forensic advantage, because they are seeking to prove to the court something which is peculiarly within their own knowledge. So there is no case for creating an exception to the ordinary rule that the onus should lie upon the party seeking the relief from the tribunal at all. For
those reasons the opposition joins the government in its opposition to this amendment.

Senator WONG (South Australia—Minister for Climate Change and Water) (6.06 pm)—I thought it might be useful to give Senator Siewert a brief response on the resourcing issue. I am advised that the funding of all parts of the native title system has historically been reviewed every four years and the last review occurred in 2008. The senator may be aware that, as a result of that, the government allocated an additional $55 million over four years to the native title system. It is the government’s expectation that there will be further such reviews but as yet the timing of those has not been determined.

Senator SIEWERT (Western Australia) (6.07 pm)—I have a number of points I wish to make. I find it interesting that Senator Brandis thinks that he knows more about the native title system and its application than Chief Justice French who, as I said, was the president of the tribunal for four years. Beyond that, native title is not delivering for Aboriginal Australians, so we need to change the system. The cards are stacked against them and it is all very well to say, ‘They’re the ones that’—

Senator Brandis interjecting—

Senator SIEWERT—It is not delivering for Aboriginal Australians. We need to change the system so that it actually starts delivering some benefits. We need to have a system that is fairer and not stacked against Aboriginal Australians, which is clearly where this system is at the moment. It is frustrating to the claimants. It is not delivering the outcomes that were promised when this legislation was first envisaged.

Senator Brandis was trying to imply that it is the poor government and not native title claimants against whom the cards are stacked. In fact, this system is stacked against native title claimants. The government holds all the cards in that it is both the party who granted the interest in the first place and it is also the one who holds vast amounts of records. It is quite clear that these changes are needed. These changes have been recommended by a series of people involved in native title. We are moving an amendment which exactly reflects the words that Justice French proposed. We did not pluck these out of the air. We used expert knowledge to look at what changes were needed to the native title system.

I would like to ask Senator Wong some questions about some comments she made in response to my first comments. The minister said that the Attorney-General has an open mind on further changes and, if I understood correctly, that the government wants to first assess the impact of these changes. I would like to know what processes will be used to assess these changes and what is the timeline for that assessment? On the issues relating to resources, I appreciate the comments about the ongoing review. However, this is a substantive change to the way mediation will be carried out through the Federal Court and I am wondering if that is being factored into the timelines for the review of resources, maybe taking it outside of what would normally be the review cycle?

Senator WONG (South Australia—Minister for Climate Change and Water) (6.10 pm)—In relation to the last issue, Senator Siewert, I do not think I can add anything further to the answer I gave. Historically, these reviews have been done quadrennially—every four years. Given the fact that last year that resulted in additional funding, we anticipate that a further review will occur, but its timing has not yet been determined. I am not sure I can add anything further to that.

In relation to monitoring the impact of changes, which I think you were also allud-
ing to, I did indicate in my summing up—I think in response to points made by Senator Xenophon—that we hold the Native Title Consultative Forum three times a year. This is a forum which brings together stakeholders in the system.Obviously, the government will receive feedback about the operation of the system through that process as well as through the Attorney-General’s process of engagement with different stakeholders in the system.

Senator SIEWERT (Western Australia) (6.11 pm)—I thank the minister for her answer. I am seeking to clarify this so that it is on the record. Should I understand, then, that the government does not intend to carry out a formal process of review—that it will be using its normal consultation processes? Is that a correct understanding of the answer?

Senator WONG (South Australia—Minister for Climate Change and Water) (6.11 pm)—Senator, I think you are conflating two issues. Perhaps because I am the minister representing I am misunderstanding you. I thought you asked questions about the review of funding and I gave you an answer about the funding issue. You then asked questions about monitoring the impact of the system and I gave you an answer which referred to the consultative forum which is already in place. I am not sure whether what you have just said is, in fact, an accurate reflection of what I have said. I have given you answers in relation to, as I understand it, a couple of distinct requests.

Senator SIEWERT (Western Australia) (6.12 pm)—I am not trying to be difficult. The two issues are separate; I did ask about two separate issues. One was about resources. The other was following up comments the minister made in response to our proposed amendments—that is, that the Attorney-General had an open mind and that any changes would need to be subject to consultation, but that before making any other amendments the government would need to assess how these changes had proceeded. My question is—I am not trying to be difficult; I am just trying to get this on record—when the government is assessing the changes, will it be using its normal consultation processes, as the minister outlined, or will there be a separate consultation process?

Senator WONG (South Australia—Minister for Climate Change and Water) (6.13 pm)—Yes, the government will be using its existing consultation processes. No, the government is not ruling out any other consultation process. Obviously, that is a matter for the Attorney-General, but the reference I made in the summing up to the assessment of the impact of the changes also included looking at how the act operates in practice. That is a reasonable thing for the Attorney to want to do—to consider how these amendments operate in practice and to consider what effect they have had in practice before considering further changes.

Senator SIEWERT (Western Australia) (6.13 pm)—I thank the minister. I am wondering whether the government are setting a timeline for an assessment of whether they are achieving their objectives based on when they think these changes will have been in practice long enough to enable such an assessment. The act has been in place for 15 years and a number of us argue it has not delivered enough benefits to the Aboriginal and Torres Strait Islander community. I am keen to know if a timeline has been put in place for an assessment to enable us to say, ‘Okay, these changes are being effective,’ or ‘No, they’re not.’ What is that timeline? Are we leaving it another 15 years? Are we doing it in three or five?

Senator WONG (South Australia—Minister for Climate Change and Water)
(6.14 pm)—We were not in government for a significant part of that time, Senator Siewert. I do not have a date or a time line that I can advise you on. Obviously, the government is keen to ensure that the native title system works effectively, which is why these amendments have been brought forward. I am not able to give you a precise date on which the Attorney will sit down and look at this issue. I have given you an indication about his intentions. If I may say—and you may disagree—in the period that Mr McClelland has been Attorney-General, there clearly has been a willingness to consider these issues and to bring forward these amendments and to consult on them. I would ask that you take not comfort from that but perhaps take note of that approach. I am sure, Senator Siewert, if you remain in the Senate, you will continue to ensure that these matters are brought to the government’s attention.

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

The committee divided. [6.19 pm]
The Chairman—Senator the Hon. AB Ferguson

Ayes............ 5
Noes............. 41
Majority......... 36

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

NOES
Adams, J.  Back, C.J.
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.  Cash, M.C.
Colbeck, R.  Collins, J.
Cormann, M.H.P.  Crossin, P.M.

Farrell, D.E.  Feeney, D.
Ferguson, A.B.  Fielding, S.
Furner, M.L.  Hurley, A.
Lundy, K.A.  Marshall, G.
Mason, B.J.  McGauran, J.J.J.
McLucas, J.E.  Moore, C.
Nash, F.  O’Brien, K.W.K.
Parry, S. *  Payne, M.A.
Polley, H.  Pratt, L.C.
Scullion, N.G.  Sterle, G.
Troeth, J.M.  Williams, J.R.
Wong, P.  Wortley, D.

* denotes teller

Question negatived.
Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator WONG (South Australia—Minister for Climate Change and Water) (6.23 pm)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

BUSINESS

Rearrangement

Senator WONG (South Australia—Minister for Climate Change and Water) (6.24 pm)—I move:
That intervening business be postponed till after consideration of government business order of the day no. 4 (Automotive Transformation Scheme Bill 2009 and a related bill).

Question agreed to.

AUTOMOTIVE TRANSFORMATION SCHEME BILL 2009

ACIS ADMINISTRATION AMENDMENT BILL 2009

Second Reading

Debate resumed from 7 September, on motion by Senator Wong:
That these bills be now read a second time.
Senator ABETZ (Tasmania) (6.25 pm)—
The Senate is considering together the Automotive Transformation Scheme Bill 2009 and the ACIS Administration Amendment Bill 2009. Together these bills will provide almost $35 billion in further assistance to the Australian automotive industry from 2010 to the end of 2020. This is an increase of approximately $2.231 billion over that previously legislated by the coalition government and an extension of assistance for a further five years. It should be noted that these bills do not legislate the government’s so-called $1.3 billion ‘green car fund’, which is funded by way of annual budget appropriations. Taken together, these bills and the green car fund mean that some $3.5 billion in additional funding to the car industry has been provided since the last election, a not inconsiderable amount, especially given the parlous state of the government’s finances.

It is interesting that this is the second piece of significant legislation relating to the car industry that the government has brought into this place. It should not be forgotten that, in its very first budget the Labor government increased the luxury car tax by 33 per cent, mugging car sales, including Australian made cars, at the very same time as sales were put under pressure by the world financial situation. In a perverse outcome, it meant that the luxury car tax component was reduced for 25 imported models and not one Australian made luxury car received such a benefit. There is also the retrograde decision by this government in relation to LPG conversions, but I will keep that for another day.

So for all the noise about our opposition to the tax allegedly blowing a hole in the budget, we now know that, as a result of collapsing volumes exacerbated by the tax increase, luxury car tax revenue is less than it was before the tax was increased. I still recall being told at the time that the government did not believe that there would be a decrease in sales figures as a result of the increase in tax. My rudimentary understanding of economics is that chances are, if you increase the price, the demand may well decline. Of course, that has now been proven to be the case on top of the financial situation.

But back to the bills. Specifically the ACIS Administration Amendment Bill 2009 increases funding in the last year of ACIS stage 2, which was legislated by the previous government, by a total of $79.6 million by increasing the multiplier under uncapped assistance for motor vehicle producers under ACIS from five to 7.5 per cent. It also extends this assistance to vehicles sold for export. This increase is made in the context that tariffs for imported motor vehicles fall from 10 per cent to five per cent next year.

The Automotive Transformation Scheme Bill 2009, which is the more significant of these two bills, will provide assistance to participants for each motor vehicle and engine they produce at a rate gradually declining to zero; will provide assistance for investment in eligible research and development, 50 per cent of eligible investment up from 45 per cent under ACIS; also, will provide assistance for investment in plant and equipment, 15 per cent of eligible investment varying from the current under ACIS of 10 per cent for motor vehicle producers and 20 per cent for the supply chain. Assistance will be provided by way of cash payment as opposed to the ACIS arrangement of duty credits.

Sitting suspended from 6.30 pm to 7.30 pm

Senator ABETZ—As I was saying before the dinner break, under this package of two bills, assistance will be provided by way of cash payments, as opposed to the ACIS arrangement of duty credits. So, for the first time, this assistance to the motor vehicle industry will be itemised in the budget papers.
Australia currently has three motor vehicle manufacturers—Ford Australia, General Motors Holden and Toyota Motor Corporation of Australia. A fourth manufacturer, Mitsubishi Australia, closed down shortly after the election of the Labor government—although I do not draw any connection between those two events. In 2007 the three manufacturers jointly produced 325,208 Australian-made vehicles, including 49,683 Ford Falcons, 18,899 Ford Territorys, 107,795 Holden Commodores and 37,040 Toyota Camrys. For export, Toyota produced approximately 100,000 vehicles, Holden produced about 36,000 vehicles and Ford produced about 6,000 vehicles. Together, they exported around 140,000 vehicles in 2007, although exports have been hit very hard in recent times due to the collapse in the world automotive market. For example, Toyota’s total exports are down by about 80 per cent this year.

Over the years, these manufacturers, which collectively directly employ around 15,000 people, have recorded varied levels of profitability. In the most recent year, which we all know has been incredibly difficult for the car industry globally, Ford and Holden recorded losses of $274 million and $70 million respectively, while Toyota recorded a profit of $124 million. Further, concerningly, despite the Australian car market continuing to grow—it reached over one million units last year and is forecast to be somewhere between 970,000 and 980,000 units this year—the proportion of Australian-made vehicles in this market continues to decline and is now down to just 16 per cent. While it is true that Australia has one of the most open— if not the most open—car markets in the world, with a record number of marques available to consumers, it is of deep concern to the opposition that Australian-made cars continue to lose local market share. With tariffs set to fall from 10 per cent to five per cent next year, it is for this reason that the opposition supports the provision of extra moneys through the ACIS Administration Amendment Bill 2009 to provide extra support to the Australian car industry so that it can adjust to this lower tariff rate.

In the light of all this information, there is a legitimate debate in the community about whether the Australian taxpayer should be providing the level of financial support to the car industry that these bills provide. Unlike Labor the opposition does not shirk from this debate. The opposition believes that it is desirable that Australia has a car-making industry not only to provide cars but also to provide support and spin-offs to the rest of our manufacturing sector. The reality is that, to maintain this industry, we need to continue support simply because of the fact that the global car industry is one of the most corrupt markets in the world—and I use the word ‘corrupt’ in the sense of ‘uneven playing field’, like the shipbuilding and sugar industries. If we withdrew all support from our car industry it would be operating at a significant disadvantage—if it were to operate at all.

In the United States, where taxpayers have forked over literally hundreds of billions of dollars to try and save their car industry, a new term has been coined to describe increasing community disillusionment with car industry support. That term is ‘auto fatigue’. I sense that auto fatigue is developing in Australia too, particularly in light of the government’s latest secret support to the industry of a $200 million line of credit through the National Interest Account of the Export Finance and Investment Corporation. The Australian taxpayer will not keep on providing money to the car industry into the future unless—and I want to stress this caveat—there is more transparency and more accountability, leading ultimately to economic sustainability. That is what is required, and
that is the true leadership that the coalition believes needs to be shown in this debate.

Let me be very clear: we as an opposition support these bills, which are a very considerable investment of money in Australia’s automotive manufacturing sector and the 56,750 persons the sector employs, according to the latest ABS figures. But that does not mean we are prepared to give carte blanche and wave through these bills and the billions of dollars in taxpayers’ money that they contain. As we have consistently said, every cent of taxpayers’ money spent must be spent to maximum effect — nor should more be spent than is necessary. Unfortunately, as we have already seen with this government, who plan on racking up a massive $315 billion debt, their spending is usually ill targeted, wasteful and reckless. That is why, after the legislation’s introduction into the House, the opposition proposed amendments which would require that an economic sustainability clause be introduced into the legislation — something which, I am pleased to see, the government has finally adopted and is now contained in the legislation we are debating today.

But might I say that that would not be in the legislation we are debating today but for the fact that the coalition had to shame the minister into it — and that says volumes about the government not matching its rhetoric with legislation and policy. In the second reading speech in the other place the government insisted that we were having this legislation, and that this money was being made available, for economic reasons, yet, surprisingly, that did not find its way into the bill as one of the objectives. We also believe that, with billions of dollars of taxpayers’ money being made available, full openness and transparency is required as to where the money is going and how it is achieving the bill’s stated aims of economic sustainability and environmental and workskill improvements. Mr Rudd promised us evidence based policies. When we ask for proof and commitment to that, we see Labor squib it. They do not want to provide that sort of reporting so that there can be evidence based analysis of Labor policy.

I might add in brief that there were three amendments we as a coalition put forward and about 80 per cent of two of them were taken up in the two amendments that have been adopted. The opposition believed that that was good enough and those amendments were incorporated in the House. But there is still a third amendment that we will continue with because we believe it is needed, and that is an amendment to provide an important counter to what I referred to earlier as ‘auto fatigue’. The transparency and accountability that amendment will create will enable the community to see clearly for themselves for the first time exactly what they are paying and exactly what benefit that money is bringing. I am disappointed that the government refuses to agree with this important principle and, after breaking off negotiations with us, sought to appease us by inserting a reporting clause — the current clause 27A — which is grossly inefficient and will provide no transparency and accountability at all on this matter. To that end the opposition will be moving an amendment, which I will elaborate on during the committee stage, to require full and detailed reporting and disclosure of the spending under this bill.

At this stage can I also express the opposition’s disappointment about the ‘coathanger’ nature of this legislation, with virtually all of the important aspects of the bill to be prescribed through regulation rather than legislation, thereby diminishing the role of this place and the parliament in amending legislation. This has now become a practice of this government. If you have a look at the Carbon Pollution Reduction Scheme, the Ruddbank proposals, the Health Insurance...
Amendment (Extended Medicare Safety Net) Bill, and the list goes on, you can see that the Labor government is seeking to bypass the parliament as a deliberate policy position to avoid parliamentary scrutiny and to deny parliamentarians and, in particular, this place, the power to amend legislation. As we all know, this place cannot amend regulations; all it can do is either reject them or wave them through. That is why putting important information into legislation is so vital. It has become a practice of this government—and it does not matter in which area: be it the Carbon Pollution Reduction Scheme, be it matters economic or be it matters of health—for the parliament to be bypassed. One only need look at this bill, just 20 or so pages, and compare it to the ACIS bill it replaces, with 124 pages, to demonstrate the point. Take the tip: the regulations will be very detailed, but we will not have the opportunity to amend them.

Finally, in the time I have left, can I say a few words about the so-called green car fund, which the government has chosen not to submit to the scrutiny of the parliament. I have serious doubts about the efficacy of this $1.3 billion fund to achieve its desired aim. Under this fund we have seen $35 million go to Toyota which, according to their then president, Mr Watanabe, they did not know what to do with and, according to their spokesman, was not needed in order to build the hybrid Camry in Australia. We have seen $149 million go to General Motors Holden to build a so-called ‘new’ four-cylinder car which will be more fuel efficient than the six-cylinder Commodore. Well, what a revelation, what an innovation, that a four-cylinder car might actually be more fuel efficient than a six-cylinder car! Really, they are playing with our intellect. More recently, we have seen $42 million go to Ford to develop a four-cylinder Falcon and a diesel powered Territory.

I do not criticise the car companies for these projects or for securing the moneys they have from the government for them, but I do criticise the government. We are told that the so-called green car fund is to fund environmental innovation in the car manufacturing sector, yet none of the aforementioned projects are truly innovative. They are simply importing foreign technology into Australia. We are told the process is competitive. Yet both Toyota’s and Holden’s grants were awarded before the so-called green car program even had any guidelines or application forms. I say to the Labor government: if you want to provide extra support to the car industry, be upfront about it, like through these bills we are debating today, but do not try and hide it behind an environmental facade or as a secret loan through a little-known government agency.

With that can I, and on behalf of the coalition, celebrate the contribution of the automotive sector to Australia and Australian manufacturing. But, as I said earlier, there does come a time when the community has a right to start asking questions as to whether the money that has now been spent, basically ever since the inception of the car industry, over many decades, is in fact paying dividends. That is why we are moving an amendment to seek some transparency and to make out the case for the auto sector that it is money well spent. If the facts determine otherwise, then that will be a matter of concern. But I have every confidence that the transparency we are suggesting will in fact assist the car industry. If it does not assist the car industry, hiding it from transparency will be of no long-term benefit to the sector. I conclude by celebrating the wonderful efforts of the automotive manufacturers and component manufacturers in Australia and, of course, all their workforces that have done Australia so proud.
Senator MILNE (Tasmania) (7.45 pm)—
I rise tonight to make some remarks on behalf of the Australian Greens in relation to the Automotive Transformation Scheme Bill 2009 and related bill. The Automotive Transformation Scheme could really just be called the ‘Automobile Gravy Train Transformation Scheme’, since it is a transformation from one gravy train to the next. Members of the Senate will be aware that when I was first elected and took my seat in the Senate in 2005 I immediately moved for a Senate inquiry into Australia’s future oil supplies and alternative fuels. We had a very substantial Senate inquiry looking at the fact that we were approaching peak oil—I believe we have reached peak oil globally—and at the need to move to a major investment in public transport and fuel efficiency. I said that we ought to be advocating that people drive less and that, when they do drive, they drive more efficiently. Ever since then, the Greens have been arguing for mandatory fuel efficiency standards so that we get what is required, and that is not only investment in public transport, cycleways and the redesign of cities so that they are more pedestrian friendly but that we transform the automobile industry.

In 2006 when I gave my speech in reply to the budget, the then Treasurer, Mr Peter Costello, got up and gave out $61 million in subsidies to the car industry, not tied to vehicle fuel efficiency, not tied to anything. It was just another trip past on the gravy train as the automobile industry put out their hands. At the same time as they did that, arguing that they needed the assistance and that this would take them to some sort of greener future, they brought Hummers into Australia for a big motor show so that they could show off the largest petrol guzzlers in the world as the centre of the motor show that year. I have been arguing ever since then that unless you set rigorous standards for this industry, unless you have mandatory vehicle fuel efficiency standards, this is a recipe for making sure there will be no jobs in the automobile industry in Australia. It means that if you get so far behind the rest of the world in producing what the rest of the world wants then you will automatically shed jobs because people will not want to buy the vehicles that you produce. I remember having an exchange with the minister, in estimates, asking: ‘Why are we building cars that the rest of the world doesn’t want to buy? Everyone wants to buy smaller, more fuel-efficient vehicles. Why are we in Australia continuing to produce vehicles that the community don’t want to buy?’

Governments actually hold up the system through their procurement policies. Look at Mitsubishi in Adelaide. You see the large cars that Mitsubishi used to produce driven round by public servants and politicians because of procurement policies by government. It is the same at the federal level. If you get rid of the fringe benefits tax for motor vehicles, if you start talking about proper procurement policies and getting rid of the fleet fringe benefits, then you will end up with a scenario where you might actually drive a transformation to smaller, fuel-efficient cars.

Twelve months ago I had a meeting with one of the German MPs responsible for quite significant shifts there. He was flying back to Germany at that time to take possession of his plug-in electric car. This was at a time when Australia was still struggling with the notion of hybrids, let alone a plug-in electric car. We are so far behind the rest of the world when it comes to innovation. China had the good sense to bring in a mandatory vehicle fuel efficiency standard that was so high that Australian vehicles would not be acceptable in the Chinese market. They did that in order
to protect their own industry. Of course they did. But they knew that if they set high standards they would produce a small, efficient car that would be cheap enough to drive an export industry for them. The Europeans went to the fuel-efficient, luxury end of the market, and that squeezed countries like Australia and the US. That is why we have seen the train wreck—or the car wreck, I should more appropriately say—in Detroit and here in Australia.

Australia is not doing what the Americans have now been forced to do, and that is have a radical rethink about what their car industry should look like, what it is that they are trying to produce to ensure a sustainable industry into the future. Former Mitsubishi Motors Australia Managing Director Graham Spurling said recently of the Green Car Innovation Fund here in Australia:

It’s the same old ship with the same old deck chairs ... The industry has undergone huge changes overseas and I think Australia needs to understand that there is a need for a substantial paradigm shift. The current automotive regime is becoming outdated.

Furthermore, former Mitsubishi executive Bob Manning said that US President Barack Obama had demanded radical restructuring from car giants General Motors and Chrysler in exchange for industry assistance. He said:

We don’t seem to have any idea of the shape of the industry we want, or (one) that can be viably maintained in Australia, and then how we might spend public funds to achieve it ...

The whole point is that by allowing this industry in Australia to set mediocre standards, we are guaranteeing that it will go out the back door. That is the reality of the car industry in Australia. It gets held up all the time with rescue packages in order to save jobs in electorates, because people rush to say, ‘You can’t put this number of people out of work.’ That is absolutely right. The way to avoid putting people out of work is to set high enough standards that they must meet, to drive innovation in the industry and make them competitive. So does this massive injection of funds, yet again, make this industry competitive? The answer is no. We will be back here again with more rescue packages, probably sooner than 12 months. We will hear then from the government how this has not worked and how we need more. What I find extraordinary is that the government tell Australian primary producers every day of the week that they have to compete on a level playing field, that they have to cut their costs, that they have to be globally competitive, whilst they rush out with the gravy train for some of the biggest multinationals on the planet—for Ford, for GMH and for Toyota.

I want to put some facts on the public record. Data from the Productivity Commission shows that the motor vehicle and parts sector received $4.5 billion in budgetary assistance from the government from 2001-02 to 2007-08—so they have already had $4.5 billion from the public purse. An additional $4.6 billion worth of assistance has been provided from the imposition of tariffs on this sector. Total ATS expenditure will be an additional $3.4 billion between 2011 and 2020, comprising a capped amount of $2.5 billion for the total sector, of which 55 per cent will go to Toyota, General Motors Holden and Ford and 45 per cent to the 297 smaller component manufacturers. That is the problem here: there are so many smaller businesses dependent on the fortunes of these three multinationals, who make their decisions about what they do anywhere but in Australia. Another $850 million is set aside just for Toyota, GMH and Ford. An additional $79.6 million is set aside for transitional assistance, which we are dealing with here, to help the sector move from ACIS to ATS—in other words, as I said at
the beginning, to move the money from one gravy train to another.

Today I learned in a briefing that the average age of a car in Australia is a little less than 10 years. Turnover is slow, but this policy is relying on a strategy of incremental improvement as people upgrade their cars over time. The reality is that that will not lead to innovation that the government talks about. They keep saying that innovation in the car components sector will spill over into the clean energy sector, but the point is that we should be putting money into innovation in clean energy regardless of what we do in this sector.

Today I heard in the briefing that we should be supporting this in spite of the fact that the devil will be in the detail of the regulations and I was told that in the regulations there will be the environmental outcomes that we expect to get from this massive amount of taxpayer money going to the automobile industry. But what do I find in terms of environmental outcomes? What do they have to do to prove environmental innovation and improvement? Well, the only thing they have to do is annual reporting—they have to report on the extent to which being a participant in the scheme is improving their environmental outcomes as demonstrated by but not limited to a reduction in the environmental impact of the participant’s manufacturing process. They look at more efficient and sustainable energy sources, recycling measures for waste products, environmental upgrades of plant and equipment and the use of sustainable materials. But do they have to actually do anything? No, they just have to report on what they may or may not have done.

It is the same with the input into the development or manufacture of more environmentally sustainable cars, where they look at alternative fuels, mass production of components for hybrids, environmentally sustainable materials and increased fuel efficiency, but not mandatory vehicle fuel efficiency standards. Equally, they just have to tell you whether they are participating in government environmental programs—for example, Re-tooling for Climate Change or the Green Car Innovation Fund. So they just have to do a report.

We have had enough of reporting. We have seen it with the Energy Efficiency Opportunities legislation in this place—all they have to do is report. Half of them are exempted from reporting anyway, but the ones who report are not required to do anything; they just have to report. Is it a revolution when people just have to write a report on what they may or may not have done rather than on what they have actually implemented and what they are required to do? How does this compare with what China is doing, with what Europe is doing and with what the US is doing, where government assistance is conditional on them meeting these standards?

In Europe, the European Commission has just brought down a new directive not only on vehicle fuel efficiency but also on pollution standards on emissions from the vehicles themselves. The fact of the matter is that the fastest innovation in automobiles is coming out of China and Europe—Europe for the luxury vehicles and China for the lower priced vehicles—and everyone else is scrambling to catch up. As for this nonsense about having a green car built in Australia, the car that was being talked about was one that only had average vehicle fuel efficiency compared with what was happening in Europe. So let us not pretend that we are suddenly going to have Australia making green cars; we are not. That is because there is no commitment from the government or the coalition to mandatory vehicle fuel effi-
ciency standards. If you are going to drive people, that is the way to drive them.

I guarantee that we will be back here in 18 months with the car industry saying: ‘We’re not competitive anymore. Look what they did in the US. Look what they did in Europe. We need another bucket of money.’ They have already had billions and billions. I asked Senator Carr, the Minister for Innovation, Industry, Science and Research: ‘Why are you making these cars that nobody wants to buy? What about the fringe benefits tax? What about getting serious about this?’ His reply was, ‘You don’t have any evidence for that.’ Well, perhaps the almost complete fall-over of the industry in the US is enough to indicate that I was, in fact, right about that.

As for announcing the green car fund at the same time as rushing off and trying to make a free trade agreement with Middle Eastern countries so that we can dump six-cylinder gas guzzlers into the Middle East, what a fabulous idea! It is totally hypocritical and in total contradiction with where we need to be in terms of a future in the automobile industry. I want to see innovation, but I believe that it only comes when governments mandate standards that drive that innovation—that make money conditional upon that innovation actually being achieved. So, like the coalition—who have got a second reading amendment, I believe in relation to transparency—I too have a second reading amendment—

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Senator Milne, are you seeking to move that now?

Senator MILNE—Yes, thank you, Madam Acting Deputy President. I move:

At the end of the motion, add:

and further consideration of the bill be an order of the day for three sitting days after a draft of the final regulations relating to this bill, which according to the Government will set out the requirements relating to economic sustainability, environmental effectiveness and workforce training that the automotive industry is expected to meet, are laid on the table.

In other words, they are saying, ‘Parliament, hand over billions tonight to the car industry in Australia, owned offshore, and subsequent to that, in October, we will bring in draft regulations which we will circulate to the industry and try and get their agreement to those regulations’—and if they do not like them, no doubt they will water them down—’and after that we will bring in regulations here.’ They are saying, ‘Taxpayers, you give the car industry the money and, car industry, you tell us what conditions you want applied to that and we will just agree with them when we bring in the regulations.’ That is entirely the wrong process. If the government has those regulations ready in October to go out for consultation to the industry, then we should be delaying this legislation until we see those regulations ourselves so that we can see whether the government’s rhetoric about the conditions that they are going to impose in terms of economic sustainability, environmental effectiveness and workforce training actually mean anything or whether they are just to put some sort of gloss over what is effectively a transfer of wealth out of the pockets of Australian taxpayers into the pockets of, largely, three multinational corporations. That is what is going on here with this legislation.

The component manufacturers are important in this, and I understand that: we want to keep those regional jobs. But the best way to keep them is to bring in some accountability, some standards and some requirements that have to be met—not a whole lot of pussy-footing around with a few words that might describe something in the way of environmental effectiveness. And I am amused by the government’s choice of language here, because I would remind them that it was in
fact originally ‘ecologically sustainable development’, the ESD process. Development was not supposed to be sustainable; it was meant to be ecologically sustainable. Now we have dumped all that, so it is economic sustainability that we want for the car industry, and environmental effectiveness and workforce training are just tacked onto that.

We are in an age of peak oil. We are in an age of climate change. The only vehicles that people are going to want to look at in the future are those that have the highest vehicle fuel efficiency, and plug-in electric cars will rapidly be the way the world goes—plug-in electric cars from renewable energy. Countries like ours that have refused to bring in feed-in tariffs, that are still a mile behind the rest on renewables, are going to suffer rather badly. We will be paying higher oil prices or other energy prices, because of the carbon costs embedded in that energy, because we did not move soon enough to where we needed to be and did not redesign our cities to make them urban villages linked by rapid mass transit with highly efficient plug-ins run from the renewable energy that we installed. We will be uncompetitive in a world in which the oil price will go to $200 a barrel. Let us see what that does to food production; let us see what that does to the way that cities are run; let us see what that does to aviation fuel, because that is what we are headed for in the not-too-distant future.

I am really disgusted by the sloppiness and the laziness shown by this rush to sandbag the multinationals in the car industry. They have not served Australian workers and communities well. They have put off workers willy-nilly as it suited them, in terms of not being competitive. Who is holding them accountable now for refusing to move with consumer sentiment? Where is the government education program encouraging the community to buy energy-efficient cars? It is not there, because the government has actually been subsidising, through its procurement policy and its fringe benefits tax, the manufacturing of vehicles which are uncompetitive and which lead to people losing their jobs. Every worker who has lost their job in recent times from the car industry or the car component manufacturing sector should be holding previous Liberal and Labor governments accountable for handing over taxpayers’ money without picking up the trends, without recognising where the world was going in terms of innovation and consumer sentiment.

Frankly, I think it is time we got real with the car industry. It is time we had a revolution in Australia about how we spend taxpayers’ money on industry development. I think it is lazy and rather tragic that we have such weak language around the basis on which we hand over billions of dollars, yet again, to this industry.

Senator XENOPHON (South Australia) (8.04 pm)—In my support of the Automotive Transformation Scheme Bill 2009, I would like to speak about, firstly, the importance of the automotive industry in South Australia, and I would like to comment on Senator Abetz’s foreshadowed amendments and of course the matters raised by Senator Milne and the amendment she has moved.

The automotive industry is not only vital to the national economy but also central to the economy of my home state of South Australia. Adelaide is among the top 20 cities worldwide for competitiveness in automotive manufacturing. In 2008, South Australia produced 34.7 per cent of total cars produced in Australia—this represents over 270 motor vehicle and component manufacturers. South Australia is the home of General Motors Holden, one of the major car manufacturing operations in the nation. Importantly, the presence of Holden has built up a cluster of component manufacturers and suppliers all
dependent on Holden for their viability and survival. It is interesting to note that the closing of Mitsubishi, although it was a blow to the industry, was by no means a body blow. The component manufacturers have been able to adjust to the shock of Mitsubishi closing, and General Motors Holden has taken up the slack.

In the year to April 2009, the state earned $1.4 billion through road vehicle parts and accessories exports, which is approximately 13 per cent of South Australia’s total goods exports. Servicing these very good results were around 40 component manufacturers, 55 equipment and service providers, six special body manufacturers and 20 aftermarket manufacturers. Making this possible were the approximately 9,300 South Australians that were employed in this sector in the year to May 2009. So, clearly, the automotive sector is vital to my state. But I think that the matters raised by Senator Milne are absolutely legitimate. We as taxpayers do need to ensure we get value for money, in terms of how the money is spent, to ensure that we can protect jobs in a long-term, meaningful way.

On 23 December last year I put out a media release commenting on a deal done with the state government and announced by the state government, which involved $150 million of federal money for a new small car to be produced by General Motors. I welcomed that; I made that absolutely clear. But I raised the issue: why isn’t General Motors in South Australians that were employed in this sector in the year to May 2009. So, clearly, the automotive sector is vital to my state. But I think that the matters raised by Senator Milne are absolutely legitimate. We as taxpayers do need to ensure we get value for money, in terms of how the money is spent, to ensure that we can protect jobs in a long-term, meaningful way.

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Senator Milne—Mediocrity!

Senator Xenophon—Senator Milne says it is mediocre technology or a mediocre approach. I am not suggesting in any way that the technology is itself mediocre—I am not suggesting that at all. But what I am suggesting is that there are legitimate questions to ask as to why South Australia did not have an opportunity to build the Volt electric vehicle, which I saw at the Sydney Motor Show last year, which seems to be the way forward in terms of the future of automotive manufacturing industry in this country. I made that statement. It was not critical of the state government, but the Deputy Premier of South Australia, the Hon. Kevin Foley, lashed out. He saw red. I know Mr Foley quite well. I think I have a good working relationship with him, but the vitriol was just unbelievable, suggesting that I wanted workers at General Motors Holden to basically lose their jobs and I wanted them to have a bleak Christmas. This was absolute nonsense. All I was saying—and I maintain it to this day—was that this is about ensuring long-term viability for the industry and the best way to ensure that is by having access to the best and latest technology. General Motors in the United States is producing a hybrid electric vehicle, the Volt, which has tremendous potential. The question I asked was: why aren’t we accessing the latest and best technology from the United States so that we can manufacture it here rather than a fuel-efficient, four-cylinder, all-petrol engine?

I think it is quite reasonable to ask that question and ask the question of the government: with this significant assistance package that we as Australian taxpayers are ensuring, what guarantees are there that our local manufacturers are getting access to the latest and best technology from their overseas owners? I think that is a reasonable question to ask in terms of our return for taxpayers’ dollars. I want the workers at General Motors Holden in South Australia, and indeed manufacturing workers in the automotive industry across the nation, to have a bright, long-term future. Senator Milne does have a very valid point in saying that we
need to look at the technology of the future in relation to this. My question to the government is: what guarantees will there be that the taxpayer assistance will ensure that we have access to that technology, the best technology available from overseas, and that we are not getting the scraps—that we are not getting second-rate technology that has been superseded by technological advances by the head offices overseas? And that is a key question.

In relation to Senator Milne’s second reading amendment, with reluctance, I will not be supporting it, for this reason: the industry makes the point that they say they need this assistance now. They say that in the absence of this assistance they need certainty, and they need this certainty immediately rather than waiting for the regulations. It is a finely balanced argument. I am swayed by the arguments of those in the industry and, given what has happened in the United States, I do not want this industry to go into freefall.

But the point made by Senator Milne is a valid one. We have a situation where there seems to be a trend by this government to have what I think Senator Abetz refers to as ‘coathanger legislation’—you just have the bare frame and you have to wait for the regulations to be put in place to add to the legislation to see what its final shape will be. That is clearly a regrettable trend. The government is justifying it because it says that it is urgent and that we need to move on this. But it does disturb me and, if the government does not do the right thing in terms of regulations, I, and I hope the coalition, will take the view—the Greens already have this view—not to support legislation in future where it relies so heavily on regulations in the absence of seeing the substance of those regulations before this level of taxpayer assistance is provided.

There is no question that we want a good outcome for the Australian automotive industry. I certainly want it for my home state of South Australia. But on issues such as procurement policy, that Senator Milne raised, I would like a response from the government as to what the government will do about those issues. The government is a huge purchaser of vehicles in this country. It could play a very powerful role in shifting the market in providing that critical mass for the fuel-efficient vehicles, for the smaller vehicles, the vehicles that will move us away from the big gas guzzlers. The big gas guzzlers have really set this industry back. We have seen what has happened over the years to the impact that smaller vehicles have had on the marketplace, because there is a trend. People want smaller, more fuel-efficient vehicles for a whole range of reasons, the most important being fuel efficiency, and we now know that smaller vehicles can be as safe with airbags and other safety features as bigger vehicles in terms of five-star safety ratings. They are the sorts of things that the government needs to respond to. This is a huge assistance package and I want to ensure that this package will mean that this industry has long-term viability.

The other issue relates to the amendment to be moved by Senator Abetz on behalf of the opposition. As to giving details of the amount of capped and uncapped assistance, I have received some very strong submissions from the industry saying that this could be unfair if there is disaggregation. To quote Richard Riley, the CEO of the Federation of Automotive Product Manufacturers:

Any disaggregation of the ATS assistance received by individual companies in the department’s annual report would entail revealing company-sensitive commercial-in-confidence information that would prove detrimental to an automotive supplier company when conducting purchasing and pricing negotiations with original
equipment manufacturers—OEMs—and companies within supply chain. The highly integrated nature of the Australian automotive industry between OEMs, the supply chain, tooling makers and service providers means that the public disclosure of individual company assistance from the Federal Government could compromise decision-making processes and investment decisions.

Whilst I understand and respect the argument put forward by industry, I am not convinced of that approach. I will hear from the Minister for Innovation, Industry, Science and Research, Senator Carr, on this, but the first principle for me is that there ought to be transparency where public funding is involved. That ought to be the first principle. This is no different from the reporting required for other industries such as textile, clothing and footwear with SIP grants, Innovation Australia data on R&D grant recipients and Austrade data on export market development grant recipients.

The suggestion that a bigger player may cannibalise or use that against other players has not been proven. I think that if there is an issue of that sort of market behaviour then it raises other issues about providing appropriate protection through other legislative mechanisms, whether that is through the Trade Practices Act or other legislative avenues. I just do not accept that it will have the effect that the industry says it will. I do not know what my colleague Senator Milne or the Greens will be doing on that, but I think there is some considerable merit in what Senator Abetz is requiring for a greater degree of transparency. The second part of the amendment refers to providing details of:

... the progress of the Australian automotive industry towards achieving economic sustainability, environmental outcomes and workforce skills development.

I support that principle. The only reservation I have about Senator Abetz’s amendment is that it is a report to be prepared by the secretary to give to the minister. It will be tabled. My preference would have been to have perhaps an independent reporting mechanism, but I certainly believe that this amendment of Senator Abetz’s, on behalf of the coalition, is preferable to not having any reporting mechanism at all. I think it is important, particularly for the environmental outcomes that Senator Milne has quite rightly referred to, that we have that relentless focus on making sure we have the best environmental outcomes for Australian made vehicles. That is where the future of the industry is—to have those cleaner and greener vehicles.

Those are the issues that I am concerned about. I support this bill, but I just want to make one final comment. Earlier today this place was noting the contents of an AQIS report dealing with proposed cuts to the 40 per cent rebate for the horticultural and other industries. It is a very important issue. It is being put to me by irrigators in the Murray-Darling Basin that there seems to be one standard for the automotive industry. I do not begrudge that standard at all, because I think it is important that we provide that level of assistance, and I commend all the very hard and good work that Senator Carr has done. I think it is fair to say he is a tireless champion for the automotive manufacturing sector in this country. However, through a whole range of factors, such as climate change, drought, overallocation and poor policies by the states over many years, we are now facing a situation where the horticultural industry in the Murray-Darling Basin is facing significant and severe pressures. What irrigators have said to me, not just in South Australia but in other states, is that they would like to see the same sort of focus and effort that they have seen for the automotive industry by the government put in to ensure the survival of horticulture and the food-producing bowl of this nation, the Murray-Darling Basin. I think that that is a fair
comment. A comparative and a bang-for-your-buck approach for taxpayers’ dollars would stack up very well when you consider the importance of modernising to ensure greater water efficiencies and to ensure that we have an integrated approach to the Murray-Darling Basin with the sort of urgency that the government has taken with the automotive industry. I would like to see sooner rather than later, because we are running out of time, the same sort of approach to the Murray-Darling Basin—the food bowl of this country—that we see with this bill, which I support.

Senator Carr (Victoria—Minister for Innovation, Industry, Science and Research) (8.20 pm)—I thank senators for their contributions to this debate on the Automotive Transformation Scheme Bill 2009 and the ACIS Administration Amendment Bill 2009. I indicate to the Senate that this is an extremely important part of the government’s new car plan, which we are debating tonight. The Automotive Transformation Scheme Bill and the ACIS Administration Amendment Bill are core features of that plan. It supports the renewal and expansion of an industry we expect will provide high-skill, high-wage jobs by producing fuel-efficient, low-emissions vehicles. What this scheme has sought to do is provide the framework for the transformation of the industry and provide new opportunities for the industry to take full advantage of new opportunities that will emerge from the technological and structural revolutions that are occurring in a globalised automotive industry. Therefore, it is important to emphasise the place of the Australian automotive industry within an extremely complex and intensely international industry.

Australia is one of 15 countries throughout the world that can make cars from the point of conception through to the showroom floor. Senator Minchin made the point some years ago that many countries around the world would look at Australia’s place within the international automotive industry with great envy and would go to extraordinary lengths to have the industry that we have got. Our automotive industry is very much a part of a global system in terms of the distribution of the technology, the capital and the skills. It employs, directly and indirectly, some 200,000 Australians.

Our industry is very competitive. Australian car firms compete against 63 brands in the market. Australian consumers can choose from 63 brands. In the United States there are something like 34 brands—and the last time I looked the Americans were reducing the number available. That market used to sell 17 million cars a year and we used to sell one million cars a year, but of course it is substantially different. This has to be seen in the context where our three motor vehicle manufacturers are part of global companies and each subsidiary is crying out for capital and investment. Ford has 50 subsidiaries around the world. Each one is seeking access to the extraordinarily limited and scarce capital. Toyota has 54 subsidiaries and General Motors has 34 subsidiaries. Each subsidiary is demanding access to that limited capital. These subsidiaries all compete, not so much against each other but against each branch within the corporation. Their efficiency is benchmarked against what actually occurs within the GM world, the Toyota world or the Ford world.

Australia has probably one of the most open and competitive automotive markets in the world. This package is vital to securing the future of automobile manufacturing in this country. As we speak investment decisions are being made around the world. I want to highlight that I cannot support Senator Milne’s second reading amendment because it would have the effect of stopping dead that investment, because it would place in doubt those investment decisions.
Our decisions tonight do matter for the 200,000 Australians who depend upon the automotive industry for their living. To delay the passage of these bills while waiting for regulations will serve no other purpose than to create uncertainty for the industry and its future at a time of unprecedented difficulty around the world. There will be the normal public consultations and the normal arrangements in regard to public scrutiny of regulations when they are made.

In relation to some of the points that were made by Senator Xenophon, this is an industry that is transforming itself. To suggest that we can undertake quantum leaps in the deployment of technologies outside of the market is to make a very serious mistake in playing with the future of many hundreds of thousands of Australians. To say, for instance, that we can move automatically from being able to produce very good combustion drive train vehicles to being able to produce full plug-in electric vehicles overnight is a mistake. There are three vehicles that we have just agreed can enter the Australian market. One of those vehicles, a Mitsubishi vehicle, is selling at the moment for $60,000. The equivalent petrol vehicle sells for about $17,000. The economics of what is being proposed just do not stack up.

We have to find technologies that are proven and that meet Australian needs and conditions. We have to be able to do this in a way that will transform the industry with technologies that are able to meet those terms and conditions. There is a lot of loose talk in the motoring pages of our newspapers and it often bears little relationship to the realities that the industry faces in this country.

I will discuss at greater length the details of Senator Milne’s amendments and Senator Abetz’s amendments at the committee stage of these bills. I understand that those amendments are likely to be carried. It is the government’s view that those amendments do not take account of the fact that these bills have already been amended. Senator Xenophon, in the House of Representatives amendments were made. It is simply not true to say that there are not extensive processes of accountability and declaration for the expenditure of public funds. The House amendments, which were initiated by the government, reinforce those arrangements and are already part of the bills we are voting on. We will deal with those matters in detail in the committee stage of these bills.

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

The Senate divided. [8.32 pm]
(The Acting Deputy President—Senator PM Crossin)

Ayes........... 5
Noes.......... 43
Majority....... 38

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

NOES
Abetz, E. Adams, J. *
Arbib, M.V. Back, C.J.
Bilyk, C.L. Bishop, T.M.
Brown, C.L. Cameron, D.N.
Carr, K.J. Colbeck, R.
Collins, J. Crossin, P.M.
Eggleston, A. Evans, C.V.
Farrell, D.E. Feeney, D.
Ferguson, A.B. Fielding, S.
Fisher, M.J. Forshaw, M.G.
Furner, M.L. Humphries, G.
Hurley, A. Hutchins, S.P.
Kroger, H. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Moore, C. Nash, F.
O’Brien, K.W.K. Parry, S.
Payne, M.A.  
Pratt, L.C.  
Sterle, G.  
Williams, J.R.  
Xenophon, N.  
* denotes teller

Question negatived.  
Original question agreed to.  
Bill read a second time.  

In Committee  

Bill—by leave—taken as a whole.  

Senator ABETZ (Tasmania) (8.37 pm)—I move the amendment standing in my name on behalf of the opposition:

(1) Clause 27A, page 18 (lines 9 to 18), omit the clause, substitute:

27A Automotive Transformation Scheme report

(1) As soon as practicable after 30 June each year, commencing 30 June 2012, the Secretary must prepare and give to the Minister a report, detailing:

(a) the amount of capped and uncapped assistance paid to each ATS participant under the Automotive Transformation Scheme during the 12-month period ending on 31 March in that year; and

(b) the progress of the Australian automotive industry towards achieving economic sustainability, environmental outcomes and workforce skills development.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament by 31 July that year.

The effect of the amendment is to insert a new clause 27A into the bill.

In moving this amendment I say, with respect to the Minister for Innovation, Industry, Science and Research, that the insertion of the current clause 27A was not exactly as a result of the government’s thought processes in this matter. It was, along with a few other amendments, the result of the opposition going public, indicating what it believed would be ways to improve this legislation. I note that the government amended, in general terms, along the lines that we had suggested, the objects of the legislation to include in clause 3(1)(b)—the economic sustainability aspect—‘to place the industry on an economically sustainable footing’. I also note that clause 27A was only inserted in the House after the opposition went public with its amendment.

The current clause 27A will not provide the sort of detail which I think the Australian people would want in relation to what is a very large sum of money by any standard or measure. We believe that it is appropriate that the amount of capped and uncapped assistance paid to each ATS participant under the scheme during the 12-month period ending on 31 March of each year and the progress of the Australian automotive industry towards achieving economic sustainability, environmental outcomes and workforce skills development be reported to this house and to the other place by 31 July each year.

As I mentioned in my second reading contribution, I think there is a danger of Australian taxpayers suffering from auto fatigue. What better way to inoculate against that than to have openness and transparency and by indicating to the people of Australia the actual value for money that is being provided and what those benefits are that flow. Sure, we always get grandiose statements from ministers—from both sides of politics, if I might say so—in relation to how investment in the auto sector is a very good investment.

This Prime Minister committed himself to evidence based policy. What we are suggesting, as an opposition, is let us see the evidence, let us see what the actual facts are and let us be able to make the determination as to whether or not this money is being well
spent. With a 12-monthly review, anybody with an interest in this area will be able to make a sound determination on the basis of the information that will be provided.

As a general rule, as I understand it, any—if not all—grants provided to enterprises are usually listed and the information provided to the Australian public. That was so when the Commercial Ready program still existed, before the minister axed it. Those amounts were publicly known when you had export market development grants and when you had R&D development grants in the textile, clothing and footwear sector. They were all known. So for the car industry or the automotive sector to argue that somehow they should be treated differently undermines their position in the Australian marketplace of taxpayers, given the substantial financial benefits that they receive.

Having said that, just in case I am misquoted, I repeat what I said in my second reading contribution—that I accept that the auto sector is one of the most corrupt industries in the world. I use the word ‘corrupt’ in the sense of it not being a level playing field. Just like the sugar industry and just like the shipbuilding industry, the auto sector around the world is the beneficiary of all sorts of government interference and support. Therefore, it makes good sense that we provide similar support to ensure that we have an automotive sector and a good manufacturing sector in this country. But I believe that the money that is advanced should be accounted for, that there should be transparency and that people and analysts can then make a proper determination whether or not this is money well spent. If there are determinations made that it could be better applied, then so be it and let changes be made to the scheme.

I believe that, if a government says that it supports evidence based decision making and is willing to hand out large amounts of taxpayer largesse to an industry where a substantial proportion, if not the bulk, will be going to multinational companies, the Australian taxpayer has a right to that transparency. That is the basis on which I move the amendment on behalf of the opposition. I look forward to any arguments that might be advanced against it and will rejoin those arguments in due course.

Senator MILNE (Tasmania) (8.44 pm)—I rise to indicate that the Greens will be supporting the coalition’s amendment to this legislation. I notice that Senator Carr remarked that, if the Greens’ amendment which was not supported had been supported, it would have stopped the industry overnight. What a load of nonsense. Today the government’s own advisers indicated to the Greens that the regulations will be ready for discussion in October. There will be consultation with the community and the industry in October-November, and those regulations will be in here then. What we are being asked to do is to hand over billions of dollars to the car industry now. After the car industry has got the money, the government will then go back to them and say, ‘What do you want the conditions to be pertaining to this money?’ So the government will give away all its leverage.

I also want to make the point that for years I have been arguing to Senator Carr that people want to buy smaller, fuel efficient cars and that, as I indicated, the money to the industry should be tied to vehicle fuel efficiency and moving to plug-in electrics. I note here that, as recently as August, there were articles in the paper pointing out that, whilst Commodore remains the country’s top selling car, roughly two-thirds of its sales come from government and business fleet buyers. That is precisely my point about procurement. The government is propping up the old industry sector; but, inevitably, it will not be able to do that in the long term. The longer
you prop up inefficiency and things that people do not want to buy, the more guarantee there is that, in the long run, the whole thing will collapse, and you will lose all the jobs associated with it. That is certainly my experience. For years, I have heard people say: ‘You can’t expect this industry to meet these standards. It is terrible. You’ll put people out of work.’ But, by not expecting them to meet the standards, you are guaranteeing that there will be dislocation and that they will be put out of work as the rest of the world moves beyond it.

Interestingly, the same article that points out that two-thirds of the sales for Commodores come from government and business fleet buyers also notes that the Toyota Corolla and the Mazda3 are more popular with private buyers and that, as a result, sales of Commodore and Falcon have halved since 2003. That is the fact of the matter. As I reiterate, the community does not want to buy these big gas guzzlers. Targeting Middle East sales for big cars is, I think, a foolish move. If we want to be cutting edge, we should be setting standards and conditions on public money that require the industry to be cutting edge, because that is the way you drive innovation and that is the way you guarantee jobs into the future. Allowing the industry in Australia to determine its own terms is a guarantee that cutting edge vehicles will be produced in the US, in China and in Europe but not in Australia. It is incumbent on this government to insist that we get cutting edge for $3 billion.

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (8.48 pm)—I want to respond to the opposition’s amendment. Currently, there are 193 participants in the scheme. We would like to ensure that 193 will participate in the new scheme but, as we know, the state of the industry is such that that number may well reduce.

Senator Abetz, the fact of the matter is that there are genuine commercial secrets. There is such a thing as commercial-in-confidence. That is a reality of commercial life. We are dealing, as I have indicated, with a highly competitive industry and a very large number of companies who are trying to operate in what is an extremely competitive environment. My concern is that the disclosure of amounts in the form that you are proposing may have adverse commercial consequences due to the highly integrated nature of the automotive industry in this country. You will indeed compromise investment decisions. A motor vehicle producer can rely on automotive component producers who, in turn, rely on other component producers, automotive machine toolers and automotive service providers.

Disclosure could well distort commercial negotiations between automotive firms. This is the view of the Federation of Automotive Products Manufacturers. Their concern is that revealing sensitive company information may well have a detrimental effect on a company, particularly when it is conducting purchasing and pricing negotiations with original equipment manufacturers and other companies within the supply chain. This may well disadvantage smaller Australian based component manufacturers, limiting their ability to continue investment in innovation and modernisation. The Federal Chamber of Automotive Industries, FCAI, has told us that, given the significant investments required to develop new products, reporting of company specific payments provides clear signals to competitors of product development and time frames and perhaps the nature of these products. It could be concluded that the business plans of companies may well be revealed by the provision of this information. FCAI believe that public disclosure of this information could compromise the decision-making processes within the parent compa-
companies with regard to future investment and research and development decisions within Australia. The coalition amendment—and I take it that Senator Abetz has not deliberately set out to cause this outcome—may well have the unintended consequence of discouraging investment in innovation, especially within the supply chain.

The regulations will contain provisions that will allow the publication of individual assistance, subject to the minister’s discretion. Senator Abetz, that has been the position under your government since 2003. From 2003, Mr Macfarlane had that capacity. Senator Abetz, can you recall the circumstances in which the former minister revealed that information? The answer is no. It did not happen. And the reason it did not happen is that Mr Macfarlane would have received exactly the same advice that I have received. The government has already amended the bill in the House of Representatives to reinforce what I say is already very stringent accountability and transparency requirements of this current scheme.

The amendment is adding new reporting provisions requiring the department to report in its annual report on the total assistance under the scheme and the progress in achieving the bill’s objectives. This demonstrates the government’s commitment to openess and transparency in terms of public expenditure. In addition, clearly and openly details of amounts of assistance provided to the car industry under ACIS for 2007-08 financial year have been published in the annual report. This is the first time that a level of detailed assistance provided to the automotive industry under the current scheme was in fact published—under this government. If this was such a red-hot idea, why did my predecessor not act on it when he had the power? Why did he not seek to use that power in the manner in which you are now asking subsequent ministers to do?

The requirement of separate reporting details of the ATS assistance, as opposed to the department’s annual report, is frankly a duplication and totally unnecessary. The department already prepares an annual report with total amounts of assistance to the automotive industry, which is presented to the parliament on or before 31 October for the previous financial year. This report is prepared in accordance with section 63 of the Public Service Act 1999 and meets the guidelines approved on behalf of the parliament by the Joint Committee of Public Accounts and Audit. So, Senator Abetz, a question arises in terms of your amendment where it clearly and explicitly states that you are requiring the individual details of companies’ payments under a production based scheme. You are in fact asking the government to provide ipso facto the business plan of 193 companies which are participants in this scheme. There would be untold damage to companies should that proposition be accepted. The government will not be accepting your amendment. The numbers are here tonight and it is quite clear that your amendment will be carried and the matter will have to go back to the House of Representatives.

Senator ABETZ (Tasmania) (8.54 pm)—Firstly, if I may briefly comment on Senator Milne’s contribution, all I would ask her to do and those others who are concerned about the so-called ‘big cars’ is that we in Australia should not think of big cars as necessarily being gas guzzlers. I think we can achieve environmental outcomes and fuel efficiencies with big motor vehicles keeping in mind the socio-demographics of Australia where the average family still has 2.1 kids, where you have family outings and Grandma wants to come along as well. The Abetz family being the proud owner of a Hyundai Getz, I can say that not many people fit into a Hyundai Getz. If you want to tow your boat or a cara-
van, as so many Australians do, you require a bigger and sturdier vehicle. So to take all those factors into account I would like to think that there may well still be a very good market for larger vehicles, albeit hopefully more fuel efficient vehicles.

I return to the minister’s rebuttal of my amendment. I am not sure whether I understood the minister correctly, but he was indicating that my amendment would cause a complete breach of commercial-in-confidence considerations and then in the next breath he was telling us we would simply be undertaking a duplication. I hope I have misinterpreted the minister’s comments. One thing I have not misinterpreted—and this is what exposes the government—is that nobody can know the grants that are being given by this government and this minister because business plans might be revealed, commercial-in-confidence could be at stake and investment decisions could be at stake. But guess what? The minister uses taxpayers’ money to fly over to Japan to announce a $35 million grant to Toyota. No problems there, if it gives a headline for the minister. Then $149 million is announced for GM Holden and guess what? The Prime Minister even appears in one of their advertisements. No problem there with commercial-in-confidence, no problem there with giving away business plans. It seems to me that the minister wants to pick and choose.

You see, what the minister and the government have deliberately done since 2003 is change the scheme from a credit scheme to a deliberate grant scheme. As a grant scheme, with every other business that gets a government grant—be it under the much loved Tasmanian community forest agreement that Senator Milne absolutely loves; I do not know why she is shaking her head; I thought she was a great supporter of it—it is made known publicly and the companies have to indicate what the money was made available for, whether it was retooling for new saw-milling facilities or whatever. Indeed I have in front of me a press release by the member for Grayndler, Mr Albanese, announcing grants in the textile, clothing and footwear sector, also a highly integrated sector. They were getting grants for all sorts of purposes, highlighting what the business plan was for the future—how they were going to redevelop themselves, how they were going to position themselves in the marketplace. But bingo! It does not seem to apply in the textile, clothing and footwear sector.

If you look at the grants under the Export Market Development Grant Scheme, which covers all sorts of industries—indeed, even the Tasmanian Symphony Orchestra was the beneficiary of an export market development grant which got them to South America, if I recall correctly—they are all publicly disclosed. The business plan of the Tasmanian Symphony Orchestra, in getting itself into South America and trying to get more recognition on the international stage, was there for people to see. It was put up in lights, with no problems. You have that for the export development grants in, I assume, the trade portfolio. You also have a huge number of grants that have been made in textile, clothing and footwear, all of them available on the AusIndustry website—little grants to all sorts of little companies—and, might I add, I am sure money well spent but publicly disclosed.

I have heard the argument on this commercial-in-confidence aspect changing quite considerably. First of all, I was told by elements—and I am not going to name anybody, but in general terms—that it would be very detrimental to the auto manufacturers. When I said to them that they may well have the capacity to reverse engineer the figures for each to find out what the other was getting, they had the decency to acknowledge that that basically was the case. Then all of a
sudden the FAPN were called into the argument to say that the totality of the component sector was potentially going to be prejudiced. In further discussions with them, it was then refined to potentially just the small businesses. With all the arguments, as the minister has said in every one of his phrases in his commentary on my amendment, what has been exposed is not that it will cause these problems but that it could or may possibly be a problem. I might say the words give a flexibility to allow you to make an assertion without having any conviction behind the assertion being made.

If this was such a sensitive sector where no amounts of money should be disclosed, I would take the minister’s word on that but for the fact that he took himself to Japan to announce the $35 million grant. If I recall correctly, he also went to Adelaide to announce a $149 million grant. There was no commercial-in-confidence there, no undermining of investment propositions there, because it was made for TV. It made for a great announcement. When the minister wants to publicly announce something and make a big man of himself, or indeed the Prime Minister, then it is all okay and the commercial-in-confidence can go out the window.

I believe—and I have said this before—that, when a sector is the beneficiary of straight-out grants of money funded by the Australian taxpayer, the Australian taxpayer has a right to know the amount of money that is being provided. The previous scheme was a credit scheme and it is interesting that the government, by a deliberate policy decision—I am still not 100 per cent sure why—changed it from a credit scheme to a grants scheme. That is fine, but there are consequences that flow from that and people do expect grants to be publicly disclosed.

I say to the minister this was a good attempt to put up an argument, but even if everything that he asserts about a grants scheme being akin to a credit scheme were the case—which I reject—then I simply say that, while certain things may have been done under the Howard government, we do look fresh at things in opposition and it is our considered position that now that this has turned into a grants scheme there should be the sort of transparency that I have been arguing for and that this amendment will deliver.

Question put:

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

The committee divided. [9.09 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes…….. 39
Noes…….. 29

Majority…… 10

AYES

NOES
Monday, 14 September 2009

SENATE

6471

Collins, J. Conroy, S.M.
Crossin, P.M. Farrell, D.E.
Feeney, D. Fielding, S.
Forshaw, M.G. Furner, M.L.
Hurley, A. Hutchins, S.P.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. McEwen, A. *
O’Brien, K.W.K. Moore, C.
Pratt, L.C. O’Brien, K.W.K.
Stephens, U. Schwartz, M.
Wortley, D. Sherry, N.J.

PAIRS

Boyce, S. Hogg, J.J.
Joyce, B. Wong, P.
Johnston, D. Evans, C.V.
Coonan, H.L. Faulkner, J.P.

* denotes teller

Question agreed to.
Bills agreed to.

Automotive Transformation Scheme Bill 2009 reported with an amendment and the ACIS Administration Amendment Bill 2009 reported without amendments; report adopted.

Third Reading

Senator CARR (Victoria—Minister for Innovation, Industry, Science and Research) (9.14 pm)—I move:

That these bills be now read a third time.

Senator Abetz—Playing politics with the industry!

Senator CARR—You have undermined investment and confidence in the industry, and we will not accept it.

Question agreed to.

Bills read a third time.

AUSTRALIAN CITIZENSHIP AMENDMENT (CITIZENSHIP TEST REVIEW AND OTHER MEASURES) BILL 2009

Second Reading

Debate resumed from 25 June, on motion by Senator Wong:

That this bill be now read a second time.

Senator FIERRAVANTI-WELLS (New South Wales) (9.14 pm)—I rise to speak on the second reading of this legislation and I would like to start with a brief outline of it. The purpose of the Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009 is to amend the Australian Citizenship Act 2007 to make it easier for people who have a physical or mental incapacity before coming to Australia, as a result of suffering torture or trauma, to be eligible for citizenship; to allow prospective applicants for citizenship by conferral to sit the citizenship test at the same time as making the application; and, to tighten the eligibility provisions for persons under 18 years of age by requiring that they be a permanent resident. These are the key
provisions of the bill before us at the moment.

I would like to take a few minutes to remind the Senate that the citizenship test was launched on 17 September 2007, with testing commencing from 1 October 2007. The primary reason for introducing the test was to ensure that citizenship applicants had the requisite knowledge to demonstrate the requirements of the Citizenship Act, which, broadly speaking, were to understand the nature of the application, to have a basic knowledge of English and to demonstrate comprehension of the responsibilities and privileges of citizenship. I will take the Senate briefly to the then minister’s speech on 30 May. In talking about the bill, he underlined the values that underpinned the legislation. After speaking about the balance of diversity and integration in our society and underlining the important point that this diversity that we enjoy is as a consequence of shared values that bind us together as one people, he said:

These values include our respect for the freedom and the dignity of the individual, support for democracy, our commitment to the rule of law, the equality of men and women, respect for all races and cultures, the spirit of a ‘fair go’, mutual respect, compassion for those in need, and promoting the interests of the community as a whole.

He also said:

The test will encourage prospective citizens to obtain the knowledge they need to support successful integration into Australian society. The citizenship test will provide them with the opportunity to demonstrate in an objective way that they have the required knowledge of Australia, including the responsibilities and privileges of citizenship, and a basic knowledge and comprehension of English.

I remind the Senate that that bill was supported by the Labor Party, and we were grateful for their support. At the time, the idea of a test was very popular. Indeed, a Newspoll poll published in the *Australian* over 15 to 17 December 2006 specifically going to citizenship tests showed that 85 per cent of people polled were in favour of a citizenship test and only about 12 per cent were against it.

One only has to look at the *Australian citizenship test snapshot report* of July 2009 to see how successful the citizenship test has been. Statistics show that between 1 October 2007 and 30 June 2009 about 138,000 people sat the Australian citizenship test, with a pass rate of almost 97 per cent. Even when one breaks that down into the various streams, the pass rate is still high. For example, in the skills stream there was about a 99 per cent pass rate. For family stream clients the pass rate was about 95 per cent. Even in the Humanitarian Program the pass rate on the first or subsequent attempt was 84 per cent. I remind the Senate that clients can sit the test as many times as they need to to pass. The average number of times a person sits the test is 1.9. The point is that some people do not pass on the first occasion, but when one looks at the high levels one can see that it has been very well accepted, as was certainly the intention when we passed the legislation.

The amendments in the current bill are largely the result of recommendations of the Australian Citizenship Test Review Committee’s report entitled *Moving forward ... improving pathways to citizenship*, which was prepared under the chairmanship of Richard Woolcott in August 2008. I remind the Senate that the coalition gave an undertaking to review the test and the legislation after several years in operation. After the committee reported, it was pleasing from the coalition’s perspective to see that the citizenship test would be retained and that it would be retained in the English language. There was some question as to whether it would be retained in the English language. Of course, English language skills are crucial. Migrants
with English skills will be better able to settle and take advantage of all the opportunities offered by our great country and find employment. So we were very happy that this occurred. However, the downside was that the citizenship test was to be watered down. The government was insisting on changes to the test and resource book, even though the figures that I have quoted show such a very high pass rate on the first or subsequent attempt.

Our concern is that the government plans to abolish all the mandatory questions covering the rights and responsibilities of Australian citizens. We are concerned that, instead of questioning applicants on a range of matters that include obligations, responsibilities, history, values and the Australian way of life, the Labor government is replacing the highly successful system with a limited test focused on the pledge of commitment, which is confined to a few lines that say:

From this time forward, under God,  
I pledge my loyalty to Australia and its people,  
Whose democratic beliefs I share,  
Whose rights and liberties I respect,  
And whose laws I will uphold and obey.

Of course, a person may choose to say ‘under God’ or not. This is only a small part; our concern is that, as rights and responsibilities are no longer mandatorily tested, people who do sit the test will not have an adequate knowledge of these. Most of the recommendations of the review committee which have been accepted by the government can be implemented without the need for legislative change. Hence, the government will go ahead and make this raft of changes to the citizenship legislation, which will not be subject to review in this place.

However, there are two key recommendations which do require legislative amendment to the Australian Citizenship Act to fully implement, and they are given effect in the Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009. The first is an alternative pathway to citizenship for a small group of people who have a physical or mental incapacity as a result of having suffered torture or trauma outside Australia, and this was the recommendation. The second is the better administration of the citizenship and application process by removing the requirement that a person sit and pass a citizenship test prior to applying for citizenship. I will come to the former a little bit later in my speech, because it was the subject of the dissenting report of senators at the Senate inquiry. I will deal first with the other issues in relation to the better administration of the application process, which the coalition does support.

One of the provisions relates to improved administration of the citizenship test and application process. The basis for this change was contained in the submission that the Department of Immigration and Citizenship put to the Senate inquiry into this bill. The bill proposes to amend the act to streamline the citizenship application process. At the moment, there are multiple steps, which is inefficient for clients. The proposed changes will streamline the applications and the test process so that most applicants will only need to attend the department once. The other reason we support this is that many clients seem to have been sitting the test before they were able to meet the residency requirements for citizenship. According to the department’s submission:

In doing this they are using resources, including test appointment times, that should be dedicated to those people who are residentially eligible to apply for citizenship and have a desire to become Australian citizens as soon as possible.

As I said, the provisions will enable streamline and we do support that.

The other provision that was a subject of discussion at the Senate inquiry was the re-
requirement for applicants under 18 to be permanent residents. There was, indeed, quite a bit of evidence given at the hearing about the proposed changes to section 21(5), which reads:

A person is eligible to become an Australian citizen if the minister is satisfied that the person:

(a) is aged under 18 at the time the person made the application ...

There is an intention to change this provision and make it a condition that a person must be 18 years of age in order to apply. I myself practised in this area during my 20 years as a government lawyer and saw, at various times, issues pertaining to immigration, so it is not surprising to me to see the department say in its submission:

In recent years the provision to confer citizenship on children under the age of 18 has been increasingly utilised by clients and their agents in an attempt to circumvent migration requirements or as a last resort when all migration options have been exhausted, including requests for ministerial intervention, and removal from Australia is imminent. This can result in children being conferred citizenship but there being no or little prospect of their family remaining lawfully in Australia or returning to Australia in the foreseeable future because there is no migration option available to those family members.

As a consequence, the government is proposing to change this and anticipates that the small number of people who are in exceptional circumstances can be accommodated under current provisions. Again, we support the government on that.

It is really in relation to changes in proposed sections 21(3A) and 21(3B) that the coalition has some concerns. Indeed, they were the subject of a dissenting report by coalition senators, where we set out our concerns about seeking to remove the requirement for a permanent physical or mental incapacity. We maintain that the exception for permanent physical or mental incapacity should be retained. We do set out in our report some of the other concerns that were raised in the hearing. These include concerns about extending the exemption to one category of people to the exclusion of others: those who had suffered torture or trauma outside Australia on the one hand, as against—for example—women who had suffered torture or trauma as a consequence of trafficking on the other.

So we believe that it is important to retain the parameter of permanency. Anyone who has practised in the medicolegal field knows that there is a great difference between ‘permanent’ and ‘temporary’. We are concerned that removing that parameter could mean, as a consequence, opening that up to other groups of people.

As part of the committee inquiry, we took evidence from Professor Rubenstein, who had been part of the Australian Citizenship Test Review Committee. She put forward the suggestion, reiterating what the review committee had said, that a preferable option would be to amend section 21(3)(d) so that it reads that the applicant has a mental or physical incapacity at the time that means that the person is not capable, due to that physical or mental incapacity, of understanding the nature of the application, demonstrating a basic knowledge of English or demonstrating an adequate knowledge of Australia. We argue that mental incapacity is not just an inability to understand the nature of the test but really does cover all three criteria. So our suggestion was that we do retain ‘permanent’ but that we adopt the review committee’s suggested amendment with some modification. Indeed, that was the gist of our suggestion in the minority committee report.

We also looked at a recommendation to bolster assistance in sitting the test. Of course, there are already provisions in the legislation for people who require help if
they cannot deal with the computer based testing. Greater assistance may be necessary, and we would encourage that.

One concern is: why do we need to change the citizenship test, given the higher pass rate? That was certainly something we questioned in our report.

The government subsequently wrote to the committee and foreshadowed other amendments, which were referred to in the press, relating to amendments to waive residency requirements for athletes and some other categories of applicants. On behalf of the coalition I would like to say that we are opposed to citizenship for medals, the concept of giving citizenship purely for the purposes of winning more medals. We believe that it was regrettable that the government—despite the fact that I understand it did have time—did not bring those provisions to the committee, since the committee was considering other changes to the citizenship legislation. We think it would have been proper for there to have been examination and scrutiny of those provisions by the committee and by other groups and organisations who may have wished to make submissions on those amendments, allowing them to express their opinions of them.

Our concern is that citizenship is very much a right. I would just refer the Senate to the parts of our dissenting report where we actually noted that citizenship can be acquired through application or conferral, basically in seven situations. A citizenship test snapshot shows that 168,000 people acquired citizenship between 1 October 2007 and 30 June 2009 and, of those, about 138,000 sat the citizenship test. So there were about 34,000 people who fell within the category of permanent physical or mental incapacity or other criteria under the legislation that exempted them from sitting the citizenship test.

We also note from the public record that the government is proposing some amendments which deal with people who are employed overseas or in other categories where they are required to travel as a consequence of their work, and we will look at these amendments when they are available. At this point in time, suffice to say that the coalition certainly have some concerns, as I have outlined this evening.

Senator HANSON-YOUNG (South Australia) (9.34 pm)—I rise tonight to add the Greens contribution to the second reading debate on the Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009. I indicate that, while we will be moving amendments that attempt to strengthen and remedy some of our concerns around the proposed changes, we will be supporting the improvements that we believe this bill makes to the overall citizenship test.

Essentially, this bill seeks to amend the Citizenship Act to exempt applicants who cannot complete the test because of mental or physical incapacity occasioned by torture or trauma. In an unrelated matter, it also seeks to tighten the eligibility criteria for persons under 18 by requiring them to be permanent residents before citizenship is granted. As Senator Fierravanti-Wells indicated, there are also amendments that have been circulated by the government relating to a reduced period of residency for persons in special circumstances, such as elite sportspeople, for eligibility to become Australian citizens—and I will have some questions for the minister about that particular amendment during the committee stage.

To begin with, I would like to put on the record that, while the Greens do not support the premise of the citizenship test—we did not support it when it was introduced in 2006 and we do not support the principle of it to-
day—we do acknowledge that this particular bill moves us towards improvements that we think are admirable. We continue to hold concerns about the overall legislation, but we do recognise that it contains recommendations that have come from the Australian Citizenship Test Review Committee that have been implemented, and there are others we would like to see implemented if the minister were to take those on board. They have been recognised by key advocacy groups as positive steps in the right direction.

During the course of the inquiry we heard evidence from key advocacy and legal groups about their concerns with the limitations around the definition of torture and trauma and the removal of the ministerial discretion for minors under 18. In my additional comments to the committee’s report on this bill I outlined that some of the refugee and humanitarian entrants that may have suffered persecution within their countries of origin may fall short of the legal definition of torture.

I was also quite concerned when questioning the department over their definition of torture and trauma that it seems to be simply taken from the Macquarie Dictionary as opposed to being taken from the international law definition as laid out in the international convention against torture. I thought it would be very difficult to apply the Macquarie Dictionary definition in a practical sense as it does not seem to necessarily deal with all of those concerns of people who have suffered torture or trauma. There was very strong criticism in the committee process that this definition, while trying to be inclusive, was actually exclusive. We want to make sure that those people who are most vulnerable are not left out in the cold simply because we have chosen a definition without putting it into the context that it needs to be in order to help them rather than making the situation even harder for them.

The Greens are concerned that relying on such a specific definition as outlined may prevent the practical application of subsection 21(3) from being effective and, as such, we would be seeking to broaden this section. I have circulated some amendments in the chamber earlier today which relate to the types of movement we would like to see in this bill. After listening to Senator Fierravanti-Wells, I hope that she has a good look at our amendments as well and considers them, seeing that they have come directly from the recommendations made by the review committee. They said that the definition of torture and trauma, while admirable, is too exclusive and will not deal with all of their concerns in terms of wanting to ensure that we help make citizenship accessible for people currently unable to sit the citizenship test.

Similarly, we hold concerns that mental or physical incapacity as a result of suffering from torture or trauma outside Australia is too prescriptive, particularly when we look at the issues facing people such as young women who have been trafficked to Australia. Of course, if you are somebody who has been brought to Australia as part of the sex trade then you are not necessarily just relating to the torture and trauma you have had in your homeland but also the torture and trauma that you have suffered here in Australia. So we wanted to make sure that we are not being too exclusive in saying that it is only those people who suffered torture and trauma overseas, and as a result have a mental incapacity to sit the test, who could be considered. It seems to make sense that if we believe that somebody is not able to participate and sit the test because they have an incapacity or an inability to sit the test, it should not matter whether that torture and trauma was carried out in Australia or whether it was carried out overseas. We should accept that it creates an inability to sit the test per se.
The example of the trafficked women, I thought, was a good one in identifying that. But of course there are also people who had been detained for long periods of time in Australian detention centres who could rightly argue that they too have suffered various types of torture and trauma based on their experience, or at least they re-experienced those feelings of torture and trauma because of their long-term detention in Australian immigration detention centres. So I think that we can all acknowledge that if we believe that somebody needs to be given assistance and needs to be given some alternative pathway to sitting the test in order to apply for citizenship, then it should not matter whether their incapacity was created by torture and trauma experienced in Australia or experienced offshore.

While the department has assured my office that such persons are provided with all assistance throughout the test process, surely consideration must be given to expanding the definition to include these various groups of people. I think the simplest way of doing that would be to remove that ‘outside Australia’ category. If we take the view that the actual definition of torture and trauma, as I said, was put forward, admirably, by the government to help this group of vulnerable people, perhaps it has been too exclusive. Let us delete the reference to ‘outside Australia’ and come up with something that is a bit more inclusive and a bit more real in terms of the effects that we are talking about.

It is not appropriate to limit the definition of torture and trauma to those who have only suffered the psychological damage outside Australia. If we are going to apply the definition of torture and trauma that exists in the Macquarie Dictionary—and the reason I reference that is because that was the exact example that was given to me from the department representatives—I do not believe it is an appropriate definition to use when talking about identifying people’s ability or inability to sit the citizenship test. If we want to reference the effects and understand torture and trauma, we should be going with the definition in international law, and that would be in the international convention against torture. As I said, I will be moving amendments to remedy this situation and I do look forward to getting support both from the government and from the opposition to do that. It is not that we do not support the principle. It is about trying to get the right outcome.

Another area of concern that I wish to highlight in my contribution to this bill is about the removal of the ministerial discretion clause which, as it currently stands, effectively allows the minister to grant citizenship to a child or a young person under 18 who is not a resident. However under the proposed subsection 21(5) the government is proposing that a person under 18 years of age would now be required to be a permanent resident at the time of application for citizenship. This begs the question as to whether these decisions are being made necessarily in the best interest of the child or whether the best interest of the child is being taken into account when that decision is being made.

While I appreciate that ministerial discretion still exists under the Migration Act and that the proposed changes may affect only a small number of individuals, the Greens remain concerned that the given visa status of minors is often a result of factors beyond their control. This proposed change could potentially disadvantage a minor’s prospect of being an eligible Australian citizen or applying successfully for Australian citizenship, based on the fact that decisions have been made on their behalf which have not necessarily been made in their best interests. While I understand that this would relate only to a small number of people, the reason...
that we support the continuation of that ministerial discretion is that we believe the minister in those cases should make a decision based on what is best for that child and not necessarily have them caught out because of exclusive decisions that have been made by other people that may not necessarily have been in their best interests. During evidence presented to this inquiry on this bill, the Refugee and Immigration Legal Centre stated:

Australia’s obligations under the CRC to act in the best interests of the child must be the guiding and determining factor in deciding whether a child can be conferred Australian citizenship. Of particular relevance is the degree of the child’s connection to Australia, to the extent that it may amount to a form of citizenship, rather than their formal visa status.

I understand their concerns around the usage of that current allowance of ministerial discretion but, as I said, for the small amount of people that this does affect I would like the minister to have the ability to remedy a solution for these young people which is in their best interests and not something that is simply put in the too-hard basket.

I also acknowledge that perhaps there is a need to change the Migration Act to deal with some of these concerns. If it is not a citizenship issue, then perhaps it is a migration issue about their filing an application for permanent residency. I would like to see that tackled by the minister and the department before we start taking away the ability of young people to be able to access this particular pathway to citizenship.

While I have no doubt that the current Minister for Immigration and Citizenship does take the best interests of the child into account when dealing with visa resolutions, the Greens’ primary concern is that by removing the ministerial discretion clause we are removing any link to the Convention on the Rights of the Child, which could be misused in the future when dealing with these particular cases. It is for this reason that I foreshadow that the Greens will be moving to omit proposed section 21(5) and replace it with a clause that explicitly enshrines within the Citizenship Act that the primary consideration for the minister, on any decision made on the eligibility for Australian citizenship, should be the best interests of the child as per article 3 of the United Nations convention. I have listened to Senator Ferra-vanti-Wells speaking, and it sounds as though the opposition would not support this particular amendment, but I would still like to put it clearly to the chamber that we need to be ensuring that our ministers and our representatives of government have the ability to make decisions that are in the best interests of children and not simply put in the too-hard basket because those decisions may not suit everybody.

Concern surrounding the lack of alternative pathways to citizenship is also one of the Greens’ concerns. We were presented with these concerns during the committee process. Many of the witnesses suggested that this bill was an appropriate avenue for the government to implement these alternative pathways. There is already reference to assistance to undertake the citizenship test through the act, but there is no clear definition of what that assistance should be or how that pathway should look. Although I understand that the government is working on that, I believe that this would have been a good opportunity for the government to implement some of these alternative pathways while we are discussing the importance of ensuring there is a smooth transition from permanent residency to citizenship. If there are groups of people who need alternative pathways, let us talk about that. This would have been the appropriate place to do it. I am disappointed that we do not see the government’s plans which have been foreshadowed in various
forums but which are not in this legislation. I look forward to the minister bringing them forward sooner rather than later.

Ideally, as I outlined in the Greens’ additional comments to this bill in the committee report, we would like to see some sort of review mechanism become part of the Commonwealth Ombudsman’s role so no applicant is unfairly disadvantaged for reasons beyond their control.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Order! It being 9.50 pm, I propose the question:

That the Senate do now adjourn.

Mr Guy Campos

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.50 pm)—I am ashamed that the Australian government has allowed the alleged war criminal, Guy Campos, to leave the country today. I have it on very reliable authority that that is so, although we do not know because the government has chosen not to make any statement on the matter. Madam Acting Deputy President, you will know that I have repeatedly raised this matter in the chamber and questioned the government about its intentions. I have sought assurances from the government that Guy Campos would not be allowed to leave this country until investigations into his alleged criminal activities during the occupation of East Timor by the Indonesian military were carried to fruition. But Mr Campos has been allowed, and I would say aided and abetted, to leave this country by the Rudd government. First of all, I draw attention to Dr Ben Saul, the head of the Sydney Centre for International and Global Law, who said this about Australia’s obligations:

As a party to the 1949 Geneva Conventions, Australia has a duty to search for, investigate, prosecute and extradite any suspected war criminal found in the jurisdiction…

Today the Rudd government has failed in that duty under the Geneva conventions, to which Australia is an original signatory. It is a shameful abrogation of duty by the Rudd government not just to the people of this country but to the people of the world. We have an obligation, and this government has failed to carry through that obligation.

I go back to the case of Mr Campos. He was a collaborator with the Indonesian intelligence operatives in Timor Leste during the dreadful years of occupation in which hundreds of thousands of people died. Amongst those hundreds of thousands of people were many thousands who were dobbied in by collaborators like Mr Campos. They were taken to torture chambers or they simply disappeared—that is, they were executed.

I remember the terrible process vividly because during those years before liberation I tried to hold a photographic exhibition here in this parliament of what was happening in those torture chambers. Under the Howard government, the Presiding Officers of the day refused to have those photographs shown. They then went to the ACT Legislative Assembly, where they were put on public display. There was a mindset against seeing what was happening in East Timor in those dreadful years and that mindset has not yet gone, as we can see from the government letting Mr Campos leave the country today.

I wrote repeatedly to the Attorney-General, Robert McClelland, to the minister for immigration and to the Australian Federal Police about the matter. Mr Campos came to see the Pope in July last year on a visa provided by the federal government. That was two years after his activities in Timor Leste had been notified to the Australian authori-
ties. He, nevertheless, got the visa. He came and no doubt saw the Pope. His presence in Sydney was brought to the attention of the authorities by the sister of Francisco Ximenes, the 11-year-old boy it is alleged Gui Campos bashed to death in 1979 because he wanted to get information out of him about the presence of the Fretilin, the then patriots, in the forests of East Timor. He was convicted of that killing, but that was overturned very rapidly by a higher court, as no doubt was the process of injustice by the Indonesian authorities occupying East Timor.

His sister brought the matter to the attention of the police because she ran into the man in the street in Sydney. In August last year it was drawn to the attention of the Australian Federal Police. An investigation was under way. Federal Police Assistant Commissioner Mandy Newton wrote to me in May:

On 5th May a brief of evidence was delivered to the Commonwealth Director of Public Prosecutions.

The AFP continues to work closely with other Commonwealth agencies, including the Commonwealth Director of Public Prosecutions, to progress this investigation.

Based on legal advice received by the AFP, there may be legal jurisdiction in Australia for the offences committed in the 1990s …

And that included the naming, framing and then arrest and torture of fellow citizens, including students from the Dili university, in the presence of this man in the Indonesian intelligence torture chambers in Dili.

Mr Belo, now a journalist in East Timor, said:

I was very badly tortured by Kopassus soldiers while Mr Gui Campos with two other Timorese was working as the Indonesian intelligence spics were present in the room.

He called for the arrest and prosecution of this man, and so have a number of others. I congratulate James Thomas of Today Tonight on Channel 7. He has run a campaign in the media to have this man brought to justice. I cannot imagine what he is feeling tonight at what the Australian government has done.

I called on the Attorney-General by mail a month ago to have a criminal justice stay visa given to Mr Campos so that he would remain in the country. Instead of that, the government allowed his current visa to expire so that he was forced to leave the country. There has been aiding and abetting of this man leaving this country. Why is that? One can only presume that is because the government was too gutless to take the action required under the Geneva convention. It wanted to avoid discomfort with the authorities in Jakarta. That is disgraceful behaviour by the Attorney-General, by the Prime Minister and by the other ministers involved.

This country has never brought to justice a war criminal on our shores. Today’s activity by this government has enhanced Australia’s sorry reputation—and I am ashamed of it—of never having prosecuted a war criminal and enhanced its reputation as a haven for people who have performed despicable acts against fellow citizens during wartime. It is an incredible lapse that is aided by deliberation by this government. I cannot express my dismay at the injustice that has been deliberated upon by this government. Just last week we had reason to think that a government had at last gained some gumption by deciding to proceed with an investigation about the death of the Balibo five, those innocent Australians who were gunned down at Balibo when the Indonesian army invaded Timor Leste back in 1975. The people the coroner named in Sydney are in Indonesia, outside the reach of the law in this country.

Here we have an alleged war criminal—and I believe Australian police officers have
been to Dili to talk with victims of this man—a police investigation under way and this government not only lets him go but lets his visa expire so he has to go out of the country. What despicable behaviour by this government. It is not just remiss; this is by deliberation. It is a shameful day for injustice coming from this Australian government. It should hang its head in shame.

**Climate Change**

Senator FURNER (Queensland) (10.00 pm)—I rise this evening to speak on the pivotal role that research in North Queensland is playing in facilitating the Australian government’s adaptation to the climate change agenda. In August this year I was invited to visit the Reef and Rainforest Research Centre, a North Queensland based consortium that represents 300 scientists, 15 research provider organisations and at least 38 end-user organisations. I acknowledge the attendance of some of those good people in the public gallery this evening. The centre delivers the $40 million Marine and Tropical Science Research Facility, MTSRF, which is part of the Australian government’s Commonwealth Environmental Research Facilities program.

With the concerns raised about the impacts of climate change on the Great Barrier Reef, our wet tropic rainforest and the Torres Strait, I was keen to hear about the science firsthand and to understand what actions could be taken to help sustain the reef and rainforest for generations to come, and the $6 billion industries that rely on the health of these natural wonders, in the face of climate change. The briefing I received in Cairns by Dr David Souter and the centre’s managing director, Sheriden Morris, highlighted the excellent and focused work undertaken through the MTSRF funding arrangements. I was delighted to hear that end users of the information participate directly in the design, implementation and delivery of the research and that the relevance of the research to end users was an important criterion in assessing the overall quality of the research.

The objectives of the MTSRF are to understand the threats to the environment in the north and to develop options to address those threats. These threats include climate change, declining water quality, loss of biodiversity and unsustainable use. As a Queensland senator, and a visitor on many occasions to the Great Barrier Reef, I fully understand that the responsibility of the future of this natural wonder is in our hands. I was informed how we do not have time to waste in addressing these issues and how the science community is working to provide practical solutions for the reef’s survival. I learnt that in any discussion of the science of reef health the concept of ecosystem resilience is fundamental. A healthy, resilient coral reef is one that can absorb shocks and recover from stress without loss of biodiversity or complexity.

As the changing climate causes global environmental stress levels to increase, only healthy, resilient reefs are likely to survive. Our challenge is to find ways to build and maintain reef resilience. Recent experimental work has shown that there is likely to be some natural capacity for corals to adapt to increasing sea temperatures. The MTSRF is funding a team of researchers from the Australian Institute of Marine Science, James Cook University and the University of Queensland, using a common coral species to investigate the genetic basis for the capacity of corals to cope with temperature increases. This work has identified coral genes associated with temperature tolerance and bleaching response. This team is now working to develop genetic marker methods that will permit mapping of areas of the GBR with genetic tolerance to temperature increases. These areas can then receive focused
management. It was stressed to me that the temperature increase must be contained within two to three degrees of current levels if the reef is to cope. Given that mid-range Intergovernmental Panel on Climate Change projections predict an increase in sea surface temperature for the reef of approximately three degrees by 2100, there is a strong case to act.

I also learnt that water quality is a serious issue because it directly affects reef health and resilience. Through analysing real data, and through predictive modelling, MTSRF-funded scientists from AIMS have shown that reefs with good water quality are two to four times less sensitive to coral bleaching from high temperature than reefs exposed to poor water quality. Water quality is a landscape scale issue. I am pleased to say that the Australian government is meeting this challenge through implementing the Reef Rescue Program, a $200 million five-year commitment to improve water quality entering the Great Barrier Reef. The program helps farmers in the reef catchments to change their practices to reduce the nutrients and chemicals in run-off from their farms. An effective monitoring program keeps a watchful eye on the condition of the reef and the impacts of water quality on the ongoing health of the inshore region. I was amazed to learn how changes in the type of agriculture conducted on the land could be detected out on the reef by measuring in the water different chemicals which are used by the different crops grown. The modelling predicts that significant reductions in water quality pollution will build reef resilience and help buy the reef time before there is catastrophic bleaching due to temperature increase.

Maintaining the biodiversity of the reef as the climate changes is being achieved through the outcomes of the 2004 Great Barrier Reef zoning process, which has resulted in 33 per cent of the marine park allocated as no-take zones. Work being conducted through the MTSRF using coral trout as an indicator species has shown that numbers have increased by 30 to 70 per cent on the majority of reefs that have been closed since 2004. This is an unequivocal demonstration of the effectiveness of marine protected areas in maintaining habitats and marine species, which is valuable information for managing Australia’s marine environment into the future.

Practical and focused research is also being conducted to address the potential increased prevalence of coral disease, which has devastated other reefs around the world. A sensible early warning system for coral disease outbreaks on the reef will help managers and industry respond quickly to contain the threat. This early warning approach has been successfully pioneered by the centre for the crown of thorns starfish plagues that can sweep through the reef, devouring the coral in their path.

With climate change comes changes in the distribution and abundance of food for seabirds, reducing their ability to find enough food to successfully raise their chicks. The future of many of these seabird species are in our hands. So too is the reproductive success of turtles in the reef and Torres Strait region. Close monitoring of the largest green turtle rookery in the world, at Raine Island in the northern Great Barrier Reef, has shown that numbers of nesting females have been declining over the past 30 years. Ongoing declines in reproductive success will result in declines in the future populations of the green turtle, particularly in the Torres Strait, where they are of enormous cultural importance.

Developing management regimes with the island communities to maintain the long-term survival of the turtle is an important outcome from this work. Interestingly, turtles...
are also extremely important to the tourism industry in the Great Barrier Reef. The presence of these and other wildlife underpin the marine tourism experience for visitors to the reef, with estimates that marine turtle sighting is worth up to $1,360 per visitor as part of their average regional expenditure. Sharks are worth slightly more. This information is helping the tourism industry quantify the value of these iconic species to their businesses.

The Great Barrier Reef experience is not readily forgotten. The colours are amazing and the corals and fish are fascinating. As I looked back to the mountains surrounding Cairns, I asked about the rainforest and how the forest copes with climate change. I was told that, just like with the reef, there is a significant amount of work being undertaken to understand the elements that build the rainforest’s resilience and to strengthen the ecosystem to withstand the impacts of climate change.

It occurred to me that the amount and complexity of the information managed through the Reef and Rainforest Research Centre was too much for any individual to grasp in one sitting and I questioned how the information was collected and made available to managers and interested members of the public. I was informed that one of the overarching objects of the centre is to draw together the science and to make the information available in a form that was valuable to managers, industry and the public. One of the important criteria is to make the information available in a timely manner and to not have public good research hidden for years before people can use it for decision making.

Along with AIMS, the centre has developed the e-Atlas. This is a very impressive integrated knowledge management system. The e-Atlas captures and presents the information from the MTSRF program through interactive Google maps that allow you to explore and view different data sets simultaneously. The e-Atlas is an online information store that will be publicly available and which you will be able to access from your home computer. Based entirely on open-source software, the e-Atlas currently holds a growing number of information pages and more than 600 maps. These maps illustrate numerous characteristics of the North Queensland ecosystem and particular patterns and hotspots of biodiversity and threats.

This program provides an excellent example of the cross-collaboration between the government, industry and research bodies and highlights how, with the use of good institutional structures and effective knowledge brokers, the Australian government objective of knowledge based decision making can be achieved.

I wish to commend the Australian government, in particular the Minister for the Environment, Heritage, and the Arts, the Hon. Peter Garrett, the Minister for Climate Change and Water, Senator the Hon. Penny Wong, and the Minister for Innovation, Industry, Science and Research, Senator the Hon. Kim Carr, for the foresight to support this initiative in North Queensland. The knowledge derived from these interlinked studies will provide greater understanding about how to help the reef survive climate change. (Time expired)

Aged Care

Senator WILLIAMS (New South Wales) (10.10 pm)—I rise tonight to talk about aged care—what we are actually doing about aged care and the problems which currently face us in Australia. When I presented my maiden speech to this parliament last September, I said:

… we have an obligation to look after our elderly in society, because it was they who handed us this wonderful country. … We must … ensure that our
aged-care facilities are properly funded, staffed and maintained.

During the winter break, I travelled extensively around the west of New South Wales, visiting places like the St Anne’s aged-care facility in Broken Hill. Broken Hill has seen many years of winding down of the mining operations and hence the younger members of the community moving off to other areas to seek employment. Thus, that district faces severe problems with those left behind who wish to remain in Broken Hill and the pressure that puts on our aged-care facilities. St Anne’s is a magnificent facility, but they are simply not making enough money to expand to cater for the problems they face there—to give our elderly the proper bedding, caring and nursing they require.

I would like to make a point about the stimulus package the government has introduced, some $60 billion in total, and how the $14.7 billion Building the Education Revolution is basically funding states to make up for many years of states not keeping up with their infrastructure replacement and improvement. Not one cent of this has gone into aged-care facilities and this is very concerning. It is the federal government’s responsibility to look after the elderly. Sure, the states work in conjunction by providing such services as HACC and the ACAT et cetera, but it is essentially the federal government which is responsible for looking after our facilities for the elderly and seeing that they can run at a profit and remain open.

I want to quote some figures from Catholic Health Australia. The heading on their media release states, ‘Outdated law keeps aged care from growing with ageing population’. The media release said:

New nursing home accommodation costs $40.32 per bed per day over 25 years to build and fit out … compared with a legislated cap on the per-bed payment of just $26.88 per day.

The $13.44 shortfall between the cap and the true cost of accommodation is preventing the aged care industry from building desperately-needed new nursing home places.

That is the situation throughout many areas of Australia. We in northern New South Wales have some serious problems. At Inverell, in the community where I live, we have a magnificent aged-care provider named HN McLean Retirement Village. They do a lot of work right throughout the New England area in the north of New South Wales. For years, McLean have had a queue of people waiting to get into their facility for aged care. That is not the situation now and we know why that is not the situation. It is because government policy is to keep our elderly at home longer, which is a good policy.

But what we are seeing now is the impact on some of those smaller facilities, such as the Grace Munro Centre at Bundarra—a small community of some 400 or 500 people—which is to close in three or four weeks time. They will lose their aged-care facility. It is only 10 beds but, when the 10 beds were full, it was run by HN McLean Retirement Village at Inverell. They could not make enough money. Now it has gone down to seven beds because people are staying at home longer. McLean are losing so much money each year that now they have to close the facility. It is good to keep people at home, and I certainly support that policy, but what is going to happen in five or six years time when those people being kept at home need a higher level of care and have to go into an aged-care facility? Those facilities will not be open.

People will be shipped out, and that is a sad situation when they come from a small community. I will give an example of an elderly couple. The husband has to be taken to an aged care nursing home 50, 80 or 100 kilometres away from his wife, and so she
has to travel that distance to visit him. That is sad in itself. The distance separates the two. That is why we need to keep aged care facilities open in all our communities, but we cannot keep them open when they are losing too much money. The McLean retirement village and the Grace Munro Centre at Bundarra cannot afford to lose too much money. If the McLean retirement village goes broke then we are in serious trouble.

I have found through some research that the last two aged care allocation rounds were undersubscribed. The Senate Standing Committee on Finance and Public Administration handed down its report entitled Residential and Community Aged Care in Australia on 29 April 2009. The committee received 124 submissions and made 31 recommendations. The Minister for Ageing has still not responded to those recommendations. The Labor-dominated committee was very critical of the department and said:

Senior officers also displayed a less than forthcoming attitude to the committee and as a consequence the committee required a further submission from the department and held a second hearing with officers on 21 April.

There are signs that prove that the industry is in trouble. In 2007-08 the annual government report on aged care revealed that 98 providers left the business last financial year compared with 53 who entered it. So more people are leaving the industry than are joining it. Catholic Health Australia, the largest aged care provider in the country, advised Minister Elliott that it would not be constructing any more high-care centres. In Queensland, the decision not to invest in high-care beds by the state’s largest private operator, TriCare, and the largest non-profit operator, Blue Care, which account for 8,005 of the state’s estimated 35,000 beds, will lead to a chronic shortage of high-care beds in that state.

Further, UnitingCare and Benetas in Victoria have confirmed that they will not expand to meet new demand next year as wafer-thin margins are forcing operators to defer new investment. A 34-bed aged care home on Tasmania’s north-west coast has shut down. The company is blaming the closure on financial losses. The Noosa Nursing Centre has reluctantly joined the chorus of aged care bodies across the state to rule out future constructions under the existing funding model. The Director of Nursing at Noosa Nursing Centre, Stephen Leggett, said that the existing funding model made it ‘impossible’ to justify adding more high-care places, despite anticipated future demand and that the cost of a high-care bed could spiral upwards to $200,000. He said, ‘We’re having problems with the funding of building ventures because banks have stipulated the return is not there.’ And there is more bad news: Whyalla Aged Care centre in South Australia has handed back 20 licences. I could say more but the point I make is this: it is up to the federal government to see that our aged care facilities are properly funded and properly staffed and that they can make a profit. What are we going to do in the future when more of the Australian population will need proper aged care in the twilight years of their life and we do not have the facilities?

Providers simply do not receive enough funding to keep them viable.

Last Friday, I went to Northern New South Wales and spoke to the aged care providers there. They told me that aged care packages by ACAT have been approved for 71 people in the community. But there are no extra packages to provide elderly people with home services. In the New England area, 34 people have been assessed as requiring the extended aged care home package, the EACH package, but there are no packages available. This is a real concern. When I look back and see what our elderly have
done for our country, the way they have worked, the wars they fought and how they have left this country for us—it is without question the best country in the world—I think we are letting them down.

I sincerely hope that the government addresses this issue. Certainly, the industry needs money. The government has decided to put a lot of money into state responsibilities such as building schools but although aged care is its responsibility—the federal government has a duty to look after it—aged care has not received any money from the stimulus packages. I urge the government to address this most important issue because surely our strongest and biggest obligation is to look after our elderly. I hope that the issue is addressed in the near future and that providers can make a profit and expand to provide the essential services that are so desperately in aged care facilities.

Boys' Town Engadine

Senator FORSHA W (New South Wales) (10.19 pm)—On Saturday, 22 August I was privileged to attend the 70th anniversary celebration of the establishment of Boys’ Town at Engadine in NSW. Engadine is in the Sutherland Shire, south of Sydney. People living in the shire and many others often refer to it as ‘God’s Own Country’.

When it comes to Boys’ Town that is true. Established in 1939 it was the second such project in the world, following the much publicised Boys Town in Nebraska USA. The original was established by Father Edward Flanagan in 1917 and immortalised in Spencer Tracy’s and Mickey Rooney’s classic movie.

In Australia in 1939, an Irish born priest at Sutherland, Father Thomas Dunlea, inspired by the Nebraska story, sought a solution to the plight of troubled and homeless boys. He established an Australian version of Boys Town. The location of Father Dunlea’s Boys’ Town was Engadine. At the time, it was a sparsely populated area beyond the southern fringe of metropolitan Sydney, largely bush, with few facilities and services. In 2006, the centenary of the Sutherland Shire, Father Dunlea was named one of the ‘100 Faces of The Shire’.

In the intervening 70 years, Boys’ Town has become synonymous with youth care and with offering a second chance and many times the last chance for young people and their families. It is fair to say the local community regard Boys’ Town Engadine with great pride. It is part of our community and part of our history. Living in the shire all my life, and in the Engadine area for over 30 years, I have witnessed firsthand the activities of Boys’ Town. I know the esteem in which it is held in the wider community.

Over the decades Boys’ Town has relied on the support of the local and broader community to maintain its very existence. Countless individuals and organisations have generously donated their time and talents to assist in fundraising projects for Boys’ Town. Finance has always been a challenge for Boys’ Town, but over the decades major Boys’ Town fundraising ventures have attracted the support of a wide range of generous people to both organise and contribute, ensuring its survival and continuing services. Prominent public figures, media, entertainment and sporting identities have generously come to the fore when Boys’ Town has sought support. Those fundraising events have ranged from the fetes with the humble chocolate wheel and lucky dips to the black tie dinners.

The highest admiration however is for all those who have worked in Boys’ Town over its 70 years. Many have been volunteers ranging from lay helpers to the religious priests and brothers, who have dedicated their entire lives to working for the better-
ment and care of young people. It takes special people with great patience, determination and compassion to spend their lives working in this difficult area and in particular facing some of the very difficult challenges faced by the young boys and now young girls at Boys’ Town. Their reward has been to see the success of their work in the young men who have left Boys’ Town to take their place in the world.

After its establishment in 1939, the De La Salle order of teaching brothers operated Boys’ Town with Father Dunlea. They worked in incredibly difficult conditions to provide an education for the boys in an area which had few of the mod cons of living. With generous support from the community and sheer hard work they built dormitories, classrooms, a kitchen, a butchery, a bakery and playing fields. Those buildings still stand there today.

In 1951 the operation of Boys’ Town was taken over by the Salesians of Don Bosco. The Salesians are a religious order of Catholic priests and brothers founded in 1859 by Don Bosco. Don Bosco was an Italian priest who worked to assist the disadvantaged youth of Turin in Italy. He named his congregation the Salesians, after St Francis De Sales. Don Bosco’s work with the disadvantaged and impoverished youth of Turin was the inspiration in the establishment of both the Nebraska and Engadine boys’ towns.

The philosophy of Boys’ Town is based on the belief that every person is unique and on the view of its founder Father Dunlea that there is worth in every individual regardless of their race, creed or social economic status. Father Dunlea and all his supporters, like Father Flanagan, followed the simple motto, ‘There is no such thing as a bad boy.’

In the last 70 years, over 5,000 young men have been part of the Boys’ Town community. Many have gone on to be prominent in the community. One famous ex-student is the late Ben Lexcen, the designer of the yacht *Australia II*, which famously won the America’s Cup in 1983. But the Boys’ Town of 2009 is very different from the Boys’ Town of past decades and in this way it reflects the changing needs of youth in our society. It is no longer an institution where large numbers of young people come to live for long periods. Rather today it provides a comprehensive service to adolescents and their families who are at risk of family breakdown but who want to restore their relationship.

Boys’ Town is also an accredited Year 10 school providing a nurturing educational program to re-engage difficult children with a history of problems at school and home. The program includes life skills experiences such as camping, sporting activities, communication, anger management, cooking, cleaning and personal hygiene. As well as a residential program, Boys’ Town also conducts a day program for both boys and girls who are struggling to cope in a mainstream school environment. About 80 per cent of the young people who attend Boys’ Town return to full time school, TAFE or work in the long term. This is an impressive achievement when you consider that 100 per cent of the young people who begin their program at Boys’ Town are in crisis.

Boys’ Town is also an out-of-home care service with live-in arrangements from Monday to Friday, which allows a family some respite to bring about necessary changes in behaviour and the rebuilding of family relationships. The administration of Boys’ Town is now vastly different. There are no longer Salesian priests or brothers working full time on the staff. The board is now chaired by Mr Michael McDonald and the executive director is Mr Jim Doyle—both lay people who, with their board members and staff, do a wonderful job continuing this great tradition.
The Salesians are still actively involved through the resident chaplain, Father Frank Bertagnolli, a man who has given and continues to give a lifetime of service to ensuring the survival of Boys’ Town. It is said that on at least three occasions Father Frank has ensured the survival of Boys’ Town when they faced severe financial difficulties.

Seventy years on Boys’ Town faces new tasks and new challenges in a very different society to the late 1930’s. Some of these include dramatic changes in family life with increasing tensions and failures; new challenges facing young people; calls for increased skills and accountability in caring; the need for even more financial support for improvement in facilities and services for young people—and they expressed gratitude for the recent financial support for the Building the Education Revolution; and finally, the need to care for both boys and girls.

A large crowd was in attendance at the 70th anniversary to witness the reconsecration of the grave of founder Father Thomas Dunlea. A museum of Boys’ Town, located on the site, was opened by New South Wales Minister for Community Services, the Hon. Linda Burney. The museum pays tribute to all those of who have been part of Boys’ Town and is a wonderful museum with both physical and photographic exhibits.

Whilst the Boys’ Town board has to face the new challenges of the 21st century, they continue to be inspired by the wonderful words from the Gospel of Matthew:

Whenever you did this to one of the least of these brothers of mine, you did it to me.

I congratulate Boys’ Town on 70 years of service. I trust the community and all levels of government will continue to generously support their work.

Senate adjourned at 10.29 pm

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]


Civil Aviation Act—

Civil Aviation Regulations—Instrument No. CASA 387/09—Permission and direction – helicopter special operations [F2009L03330]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part—

105—

AD/AB139/7 Amdt 1—Tail Boom Assembly [F2009L03491]*.

AD/AUS/13—Wing Root Fairing Band [F2009L03403]*.

AD/B747/395—Fuselage Stringer 11 Longeron Between Station 2598 to 2607 [F2009L03393]*.

AD/B747/396—In-Flight Entertainment Systems [F2009L03451]*.

AD/B767/252—Auxiliary Fuel Tank Pump Automotive Shut Off Installation [F2009L03450]*.

AD/BEECH 1900/1—Stabiliser and Fin Moisture Sealing [F2009L03392]*.

AD/CESSNA 310/41—Exhaust Tailpipe Support Kit – Installation [F2009L03449]*.

AD/CESSNA 310/51 Amdt 1—Powerplant Fire Detection System – Installation [F2009L03448]*.

AD/CESSNA 320/24—Exhaust Tailpipe Support Kit – Installation [F2009L03447]*.
AD/CESSNA 340/4 Amdt 3—
Lower Wing Skin Rivets [F2009L03371]*.
AD/CESSNA 400/39 Amdt 3—
Lower Wing Skin Rivets [F2009L03370]*.
AD/ERJ-170/24—Wing Stub Rear Box Vapour Barrier Assembly [F2009L03368]*.
AD/ERJ-190/22—Wing Stub Rear Box Vapour Barrier Assembly [F2009L03367]*.
AD/F27/160—MLG Sliding Member End-Stop [F2009L03366]*.
AD/TBM 700/53—R700 and R701 Shunts – Power Lead Bolts [F2009L03431]*.
106—
AD/ARTOUSTE/3—Combustion Chamber Inner Shell – Inspection [F2009L03452]*.
AD/T53/23—Combustion Chamber Housings [F2009L03432]*.
AD/TPE 331/21—Fuel Pump Spline Wear Inspection and/or Replacement [F2009L03418]*.
Select Legislative Instrument 2009 No. 232—Civil Aviation Safety Amendment Regulations 2009 (No. 2) [F2009L03481]*.
Commonwealth Authorities and Companies Act—Select Legislative Instrument 2009 No. 224—Commonwealth Authorities and Companies Amendment Regulations 2009 (No. 4) [F2009L03465]*.
Customs Act—Select Legislative Instrument 2009 No. 216—Customs Amendment Regulations 2009 (No. 4) [F2009L03385]*.
Disability Discrimination Act—Select Legislative Instrument 2009 No. 217—Disability Discrimination Amendment Regulations 2009 (No. 1) [F2009L03401]*.
2009/29—Services for Other Entities and Trust Moneys – Office of the Director of Public Prosecutions Special Account Establishment 2009 [F2009L03504]*.
Health Insurance Act—Select Legislative Instruments 2009 Nos—
225—Health Insurance Amendment Regulations 2009 (No. 2) [F2009L02262]*.
226—Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2009 (No. 3) [F2009L02934]*.
227—Health Insurance (Pathology Services Table) Amendment Regulations 2009 (No. 3) [F2009L02680]*.
Legislative Instruments Act—Select Legislative Instrument 2009 No. 218—Legislative Instruments Amendment Regulations 2009 (No. 1) [F2009L03404]*.
Migration Act—Select Legislative Instrument 2009 No. 229—Migration Amendment Regulations 2009 (No. 10) [F2009L03359]*.
National Residue Survey (Customs) Levy Act and National Residue Survey (Excise) Levy Act—Select Legislative Instrument 2009 No. 211—Primary Industries Levies and Charges (National Residue Survey Levies) Amendment Regulations 2009 (No. 2) [F2009L03335]*.
Parliamentary Entitlements Act—
Parliamentary Entitlements Regulations—Advice of decision to pay assistance under Part 3, 20 August 2009.
Select Legislative Instrument 2009 No. 219—Parliamentary Entitlements Amendment Regulations 2009 (No. 1) [F2009L03463]*.

CHAMBER
Primary Industries (Customs) Charges Act—Select Legislative Instrument 2009 No. 209—Primary Industries (Customs) Charges Amendment Regulations 2009 (No. 2) [F2009L03245]*.

Primary Industries (Excise) Levies Act—Select Legislative Instrument 2009 No. 210—Primary Industries (Excise) Levies Amendment Regulations 2009 (No. 3) [F2009L03243]*.


Schools Assistance Act—Select Legislative Instrument 2009 No. 223—Schools Assistance Amendment Regulations 2009 (No. 1) [F2009L03331]*.

Social Security Act—
Social Security (Waiver of Debts – Self Managed Superannuation Funds) (DEEWR) Specification 2009 (No. 1) [F2009L03509]*.

Social Security (Waiver of Debts – Self Managed Superannuation Funds) (FaHCSIA) Specification 2009 [F2009L03492]*.

Social Security (Administration) Act—
Social Security (Administration) (Declared relevant Northern Territory area – Iwupataka) Determination 2009 [F2009L03490]*.

Social Security (Administration) (Declared relevant Northern Territory areas – Various) Determination 2009 (No. 9) [F2009L03489]*.

Therapeutic Goods Act—Select Legislative Instrument 2009 No. 228—Therapeutic Goods Amendment Regulations 2009 (No. 5) [F2009L02935]*.

Governor-General’s Proclamation—
Commencement of provisions of an Act

International Monetary Agreements Amendment Act (No. 1) 2001—Schedule 1—9 September 2009 [F2009L03357]*.

* Explanatory statement tabled with legislative instrument.

Departmental and Agency Contracts

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—
Department of Foreign Affairs and Trade.
Infrastructure, Transport, Regional Development and Local Government portfolio agencies.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Treasury: Program Funding
(Question Nos 1614, 1634, 1635 and 1642)

Senator Abetz asked the Minister representing the Treasurer, upon notice, on 29 May 2009:

(1) Can a list be provided, by agency, of all infrastructure and/or capital works projects that fall under the responsibility of an agency within the Minister’s portfolio.

(2) For each of the projects in (1) above:
   (a) when was it first announced, by whom, and by what method;
   (b) if applicable, what program is it funded through;
   (c) what is its total expected cost;
   (d) what was its original budget;
   (e) what is its current budget;
   (f) what is the total Federal Government contribution to its cost;
   (g) what is the total state government contribution to its cost;
   (h) if applicable, what other funding sources are involved and what is their contribution to the project cost;
   (i) what was the expected start date of construction;
   (j) what is the expected completion date;
   (k) (i) who is responsible for delivering the project, and (ii) if a state government is responsible for delivering the project, when will the funding be released to the relevant state government;
   (l) is the project to be completed in stages/phases; if so, what is the timing and cost of each stage/phase;
   (m) why was the project funded; and
   (n) what cost benefit or other modelling was done before the project was approved

Senator Sherry—The Treasurer has provided the following answer to the honourable senator’s question:

Australian Bureau of Statistics
The Australian Bureau of Statistics is not responsible for any capital works projects at this time.

Australian Competition and Consumer Commission
The ACCC does not manage infrastructure projects funded through administered funds or in association with state governments. The only capital projects undertaken by the ACCC relate to accommodation where required for staff, and IT developments.

Australian Office of Financial Management
The Australian Office of Financial Management is not responsible for any infrastructure and/or capital works projects.

Australian Prudential Regulation Authority
(1) and (2) No projects of this nature are proposed.
Australian Securities and Investment Commission
ASIC has no infrastructure/construction type capital works projects.

Australian Taxation Office
(1) VIC - Casselden Place office refurbishment
   VIC - Box Hill minor office refurbishment
   NSW - Newcastle office refurbishment
   QLD - Townsville office refurbishment
   QLD - 140 Elizabeth Street office fit-out
   QLD – Upper Mount Gravatt computer room
   QLD – Terrica Place computer room

(2) Casselden Place refurbishment
   (a) April 2008 to the ATO Executive, by the Assistant Commissioner Property and Security Services via internal communication.
   (b) Funded through the 2008-09 ATO Capital Works programme.
   (c) $5,300,000.00
   (d) $5,100,000.00
   (e) $5,300,000.00
   (f) $5,300,000.00
   (g) Nil.
   (h) Nil.
   (i) 09 February 2009.
   (j) 20 September 2009.
   (k) (i) the ATO Assistant Commissioner Property and Security Services, (ii) not the responsibility of a state government.
   (l) The project was undertaken as one stage/phase on a floor by floor basis. The timing was approximately 3-4 weeks per floor.
   (m) To undertake a refurbishment of the workspace the ATO leases in the Casselden Place site.
   (n) A refurbishment of the site was undertaken to ensure the ATO meets current occupational health and safety guidelines, improve current information technologies, introduce an improved work point model type, and improve staff amenities.

Box Hill minor refurbishment
   (a) April 2008 to the ATO Executive, by the Assistant Commissioner Property and Security Services via internal communication.
   (b) Funded through the 2009-10 ATO Capital Works programme.
   (c) $1,000,000.00
   (d) $1,000,000.00
   (e) $1,000,000.00
   (f) $1,000,000.00
   (g) Nil.
   (h) Nil.
   (i) TBA.

QUESTIONS ON NOTICE
(j) May 2010.
(k) (i) the ATO Assistant Commissioner Property and Security Services, (ii) not the responsibility of a state government.
(l) The project will be delivered in one stage.
(m) To undertake a minor refurbishment of the Box Hill ATO site.
(n) A refurbishment was decided upon at the site to improve the fit-out type, egress and entry points of the ground floor area and to improve space utilisation.

Newcastle refurbishment
(a) May 2009 to the ATO Executive, by the Assistant Commissioner Property and Security Services via internal communication.
(b) Funded through the 2009-10 ATO Capital Works programme.
(c) $5,000,000.00
(d) $5,000,000.00
(e) $5,000,000.00
(f) $5,000,000.00
(g) Nil.
(h) Nil.
(i) TBA.
(j) 30 June 2010.
(k) (i) the ATO Assistant Commissioner Property and Security Services, (ii) not the responsibility of a state government.
(l) The project will be undertaken on a floor by floor basis. Each floor will take approximately 4-5 weeks to complete.
(m) To undertake a refurbishment of the Newcastle ATO site.
(n) A refurbishment of the site was undertaken to ensure the ATO meets current occupational health and safety guidelines, improve current information technologies, introduce an improved work point model type and improve staff amenities.

Townsville refurbishment
(a) May 2009 to the ATO Executive, by the Assistant Commissioner Property and Security Services via internal communication.
(b) Funded through the 2009-2010 ATO Capital Works programme.
(c) $5,500,000.00
(d) $5,500,000.00
(e) $5,500,000.00
(f) $5,500,000.00
(g) Nil.
(h) Nil.
(i) June 2009.
(j) 30 April 2010.
(k) (i) the ATO Assistant Commissioner Property and Security Services, (ii) not the responsibility of a state government.
(l) The project will be undertaken on a floor by floor basis. Each floor will take approximately 4-5 weeks to complete.

(m) To undertake a refurbishment of the Townsville ATO site.

(n) A refurbishment of the site was undertaken to ensure the ATO meets current occupational health and safety guidelines, improve current information technologies, introduce an improved work point model type and improve staff amenities.

140 Elizabeth Street fit-out

(a) May 2008 to the ATO Executive, by the Assistant Commissioner Property and Security Services via internal communication.

(b) Funded through the 2008-09 and 2009-10 ATO Capital Works programme.

(c) $14,600,00.00

(d) $14,600,000.00

(e) $14,600,000.00

(f) $14,600,000.00

(g) Nil.

(h) Nil.

(i) August 2009.

(j) 19 December 2009.

(k) (i) the ATO Assistant Commissioner Property and Security Services, (ii) not the responsibility of a state government.

(l) The project will be undertaken on a floor by floor basis. Each floor taking approximately 3-4 weeks to complete.

(m) To undertake a full office fit-out of the new 140 Elisabeth Street site in the Brisbane CBD.

(n) The ATO decided on new premises to ensure a longer term accommodation strategy in the Brisbane CBD, meet current staffing requirements and produce a longer term cost benefit through the reduction of several smaller tenancies.

Upper Mount Gravatt Computer room

(a) May 2009 to the ATO Executive, by the Assistant Commissioner Property and Security Services via internal communication.

(b) Funded through the 2009-10 ATO Capital Works programme.

(c) $820,000.00

(d) $820,000.00

(e) $820,000.00

(f) $820,000.00

(g) Nil.

(h) Nil.

(i) August 2009.

(j) 13 December 2009.

(k) (i) the ATO Assistant Commissioner Property and Security Services, (ii) not the responsibility of a state government.

(l) The project will be one stage.

QUESTIONS ON NOTICE
(m) To provide the ATO with a security room 1 rating computer room to meet current security and technology requirements.

(n) The ATO chose to undertake the works to ensure the integrity of the information technology platform by providing a new computer room incorporating latest technology and security componentry, as opposed to attempting to retrofit the existing computer room.

**Terraica Place computer room**

(a) May 2009 to the ATO Executive, by the Assistant Commissioner Property and Security services via internal communication.

(b) Funded through the 2009-2010 ATO Capital Works programme.

(c) $820,000.00

(d) $820,000.00

(e) $820,000.00

(f) $820,000.00

(g) Nil.

(h) Nil.

(i) February 2010.

(j) April 2010.

(k) (i) the ATO Assistant Commissioner Property and Security Services, (ii) not the responsibility of a state government.

(l) The project will be one stage.

(m) To provide the ATO with a security room 1 rating computer room to meet current security and technology requirements.

(n) The ATO chose to undertake the works to ensure the integrity of the information technology platform by providing a new computer room incorporating latest technology and security componentry, as opposed to attempting to retrofit the existing computer room.

**Corporations and Markets Advisory Board**

Nil.

**Inspector-General of Taxation**

No infrastructure and/or capital works are under the responsibility of the Inspector-General of Taxation.

**National Competition Council**

The National Competition Council is not responsible for any infrastructure and/or capital works projects.

**Productivity Commission**

The Productivity Commission is not responsible for any infrastructure and/or capital works projects.

**Royal Australian Mint**

(1) Royal Australian Mint Building Refurbishment Project.

(2) For the Royal Australian Mint Building Refurbishment Project:

(a) Announced by the Commonwealth Government in the 2005-06 budget and approved by the Public Works Committee in October 2005.

(b) Capital Works Program

(c) $33,031,000 is appropriated to the Royal Australian Mint for fitout costs.
NB. $33,782,000 is appropriated to the Department of Finance and Deregulation, Property Branch, for base building costs bringing the total refurbishment project cost to $66,813,000.

(d) $16,100,000 was originally appropriated to the Royal Australian Mint for fitout costs.

NB. $25,102,000 was originally appropriated to the Department of Finance and Deregulation, Property Branch, for base building costs bringing the total original refurbishment project cost to $41,202,000.

(e) $33,031,000 is appropriated to the Royal Australian Mint for fitout costs.

NB. $33,782,000 is appropriated to the Department of Finance and Deregulation, Property Branch, for base building costs bringing the total refurbishment project cost to $66,813,000.

(f) Total project funding is $66,813,000. $33,782,000 is appropriated to the Department of Finance and Deregulation Property Branch for base building costs and $33,031,000 is appropriated to the Royal Australian Mint for fitout costs.

(g) Nil.

(h) Nil.


(j) Construction for the whole project is due to be completed in December 2009.

(k) (i) the Department of Finance and Deregulation Major Projects Branch is responsible for delivering the project for the Department of Finance and Deregulation Property Branch and the Royal Australian Mint; (ii) Nil

(l) The project is being delivered in 6 stages of which only stage 6 remains to be delivered. The Royal Australian Mint’s component, stages 1 – 5, costing $33,031,000, has been delivered except for a small component of landscaping.

(m) The proposal to refurbish the Royal Australian Mint (comprising building owner base building and tenant fitout works) is part of the overall capital works programme of the Commonwealth; to bring the Royal Australian Mint buildings up to current building code and safety standards, to increase the useful life of the buildings by 25 years, and to provide workplace accommodation meeting current government standards.

The rationalisation of space following the building refurbishment and the subleasing of vacant space (on a commercial basis), will optimise space utilisation of the Government’s building stock and maximise the return on investment to Government.

(n) A comparison of the costs of refurbishment and the costs of constructing a new building was undertaken and refurbishing the existing buildings was determined to be appropriate; assessed on the basis of cost, the highly specialised nature of the Mint’s operation, the significant heritage aspects and public usage.

The Treasury

Nil.

Veterans’ Affairs: Program Funding

(Question No. 1636)

Senator Abetz asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 29 May 2009:

(1) Can a list be provided, by agency, of all infrastructure and/or capital works projects that fall under the responsibility of an agency within the Minister’s portfolio.

(2) For each of the projects in (1) above:
(a) when was it first announced, by whom, and by what method;
(b) if applicable, what program is it funded through;
(c) what is its total expected cost;
(d) what was its original budget;
(e) what is its current budget;
(f) what is the total Federal Government contribution to its cost;
(g) what is the total state government contribution to its cost;
(h) if applicable, what other funding sources are involved and what is their contribution to the project cost;
(i) what was the expected start date of construction;
(j) what is the expected completion date;
(k) (i) who is responsible for delivering the project, and
(ii) if a state government is responsible for delivering the project, when will the funding be released to the relevant state government;
(l) is the project to be completed in stages/phases; if so, what is the timing and cost of each stage/phase;
(m) why was the project funded; and
(n) what cost benefit or other modelling was done before the project was approved.

Senator Faulkner—The Minister for Veterans’ Affairs has provided the following answer to the honourable senator’s question:

The Office of Australian War Graves

(1) As part of its day to day operations, the Office of Australian War Graves (OAWG) has multiple contracts for the maintenance of graves and cemeteries throughout Australia.

(2) (a) No announcements were made;
(b) Department of Veterans Affairs’, Outcome 3.2 Office of Australian War Graves Appropriation Act (No.1) 2008-2009 No. 55, 2008 (Administered);
(c) to (e) Provision of commemorations and maintenance is part of day to day operational activity;
(f) 100%;
(g) Nil;
(h) N/A;
(i) Ongoing;
(j) Ongoing;
(k) The Director of the Office of Australian War Graves
(l) N/A;
(m) Part of Australia’s ongoing commitment to maintain commemorations in perpetuity; and
(n) Standard procurement processes applied.

(1) Construction of official graves in civil cemeteries within Australia (16 graves – as of May 2009).

(2) (a) No announcements were made;
(b) Department of Veterans Affairs’, Outcome 3.2 Office of Australian War Graves Appropriation Act (No.1) 2008-2009 No. 55, 2008 (Administered);
(c) to (e) Provision of commemorations and maintenance is part of day to day operational activity;
(f) 100%;
(g) Nil;
(h) N/A;
(i) Ongoing;
(j) Ongoing;
(k) The Director of the Office of Australian War Graves;
(l) N/A;
(m) Part of Australia’s ongoing commitment to maintain commemorations in perpetuity; and
(n) Standard procurement processes applied.

(1) Repairs to the water feature at the Brisbane Garden of Remembrance.
(2) (a) No announcements were made;
(b) Department of Veterans Affairs’, Outcome 3.2 Office of Australian War Graves Appropriation Act (No.1) 2008-2009 No. 55, 2008 (Administered);
(c) $71,000;
(d) $70,703;
(e) $70,703;
(f) 100%;
(g) Nil;
(h) N/A;
(i) April 2009;
(j) May 2009;
(k) The Director of the Office of Australian War Graves;
(l) N/A;
(m) Repairs required; and
(n) Standard procurement processes applied.

(1) Repairs to a brick wall at Victorian Garden of Remembrance, Springvale.
(2) (a) No announcements were made;
(b) Department of Veterans Affairs’, Outcome 3.2 Office of Australian War Graves Appropriation Act (No.1) 2008-2009 No. 55, 2008 (Administered);
(c) $75,000;
(d) $71,925;
(e) $82,884;
(f) 100%;
(g) Nil;
(h) N/A;
(i) April 2009;
(j) June 2009;
(k) The Director of the Office of Australian War Graves;
(l) N/A;
(m) Repairs required; and
QUESTIONS ON NOTICE

(n) Standard procurement processes applied.

(1) Construction of a multipurpose shed at the Sandakan Memorial Park, Sabah.

(2) (a) No announcements were made;

(b) Department of Veterans Affairs’, Outcome 3.2 Office of Australian War Graves Appropriation Act (No.1) 2008-2009 No. 55, 2008 (Administered);

(c) $16,000;

(d) $15,600;

(e) $15,600;

(f) 100%;

(g) Nil;

(h) N/A;

(i) May 2009;

(j) June 2009;

(k) The Director of the Office of Australian War Graves;

(l) N/A;

(m) Storage required; and

(n) Standard procurement processes applied.

The Australian War Memorial

(1) East Precinct redevelopment.

(2) (a) This was first announced in the 2007-08 budget.

(b) Funded through Appropriation Act (No.2) 2007-2008 No. 96, 2007 (no specific program);

(c) $18,000,000 + $500,000 National Service memorial;

(d) $18,000,000 + $500,000 National Service memorial;

(e) $18,000,000 + $500,000 National Service memorial;

(f) $12,500,000 (over 3 years);

(i) 2007-08 $1,500,000;

(ii) 2008-09 $9,300,000; and

(iii) 2009-10 $1,700,000.

(g) Nil;

(h) $6,000,000;

(i) AWM accumulated depreciation funding $4,000,000;

(ii) AWM accumulated building works funds $750,000;

(iii) AWM accumulated FUND revenue $750,000;

(iv) National Servicemen’s Association of Australia Inc. $500,000;

(i) 29 April 2009;

(j) April 2010;

(k) The Director of the Memorial;

(l) N/A;
(m) The project was funded because the current amenity and condition of the Eastern Precinct is not in keeping with the high quality of the rest of the site and, more importantly, the project will address safety issues with the current facilities. The project:

- Addresses visitor safety by removing the existing mix of coach parking, school’s entry, accessible parking and general visitor arrival and building entry;
- Provides improved coach parking (relocated to the north east and rear of the site) and a drop-off point which also greatly enhances access and safety for school children;
- Helps to alleviate overflow parking in the Campbell area for visitors participating in events such as ANZAC Day, Remembrance Day and Memorial Open Days;
- Allows the removal of the sub-standard temporary car park and the restoration of the site to native plantings; and
- Allows the current sub-standard coach parking area to be re-developed as a Memorial Courtyard to incorporate the National Service memorial; and

(n) Standard procurement processes applied.

**Housing and the Status of Women: Advertising**

*Question No. 1675 and 1676*

Senator Minchin asked the Minister representing the Minister for Housing and the Minister for the Status of Women, upon notice, on 3 June 2009:

Since 1 January 2008, has the department or any of its agencies expended any funds on advertising or sponsored links on a search engine such as www.google.com for any government websites administered within the Minister’s portfolio (i.e. websites with ‘.gov.au’ domain names); if so:

(a) which websites have been or are being advertised/sponsored on each search engine;
(b) what was the cost of establishing the advertisement/sponsorship;
(c) what was/is the daily cost of sponsorship;
(d) what was/is the fee that is charged each time an advertised/sponsored site is selected through the search engine;
(e) which words or phrases have been included in the advertisement/sponsorship (i.e. ‘digital television’);
(f) which additional, subcategories or combinations of words have also been included in the advertisement/sponsorship;
(g) how many variables or combinations were entered into the purchase equation;
(h) for how long has the advertisement/sponsorship been running or is intended to run; and
(i) what is the total cost to the department (or the costs to date if the expense is ongoing) of each website advertisement and/or sponsored link.

**Senator Wong**—The Minister for Housing and the Minister for the Status of Women has provided the following answer to the honourable senator’s question:

The Department has expended funds on advertising and sponsored links on search engines as part of the First Home Owners Boost communication campaign which is associated with the Minister for Housing’s responsibilities. These expenses are outlined in the response to Question on Notice S1659 of 3/06/2009.
Asylum Seekers

(Question No. 1778)

Senator Bob Brown asked the Minister for Immigration and Citizenship, upon notice, on 12 June 2009:

With reference to Chinese dissidents, including all those who risk arrest through advocating a multi-party democracy in China:

(1) How many have been accepted in Australia as refugees in each year for the past 10 years.

(2) How many have applied for, but not been granted, asylum or refugee status.

(3) Have any Charter 08 signatories sought asylum in Australia.

Senator Chris Evans—The answer to the honourable senator’s question is as follows:

(1) Initial Protection visa grants to Chinese nationals over the past ten program years are as follows:

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<td>48</td>
<td>75</td>
<td>115</td>
<td>188</td>
<td>415</td>
<td>415</td>
<td>405</td>
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Information about particular claims is placed on client files and is not readily available in consolidated form. It would be a major task to collect and assemble it.

(2) Refusals of initial Protection visa applications to Chinese nationals over the past 10 program years are as follows:

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<td>776</td>
<td>910</td>
<td>966</td>
<td>927</td>
<td>998</td>
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All claims are considered in reaching a decision whether to grant a Protection visa. For the reasons given in (1) a breakdown of outcomes by the types of claims made by refused applicants is therefore not available for any country of origin.

(3) DIAC is aware of a very small number of cases mentioning claims around Charter 08 activities.

Families, Housing, Community Services and Indigenous Affairs: Hospitality

(Question No. 1794)

Senator Abetz asked the Minister representing the Minister for Families, Housing, Community Services and Indigenous Affairs, upon notice, on 16 June 2009:

(1) (a) Can an itemised list be provided of how much the department has spent on hospitality since 24 November 2007; and (b) of this, how much was spent on alcohol.

(2) For each Minister and any associated parliamentary secretary: (a) can an itemised list be provided of how much each office has spent on hospitality since 24 November 2007; and (b) of this, how much was spent on alcohol.

Senator Chris Evans—The Minister for Families, Housing, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:

(1) (a) The department’s financial system is not configured to provide this level of detail without significant resourcing implications. (b) Expenditure on alcohol is only able to be approved by Senior Executive Staff of the department on some occasions for official hospitality purposes. The cost of expenditure on alcohol is not recorded separately within the department’s finance system and could not be provided without significant resourcing implications.

(2) This question should be referred to the Department of Finance and Deregulation. The Ministers’ and Parliamentary Secretaries’ offices have no hospitality budget funded by FaHCSIA.
Treasury: Consultants
(Question Nos 1877, 1896, 1092 and 1904)

Senator Barnett asked the Minister representing the Treasurer, 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 the duration, (iv) what will it cost, and (v) what is the method of procurement (i.e. open tender, direct source etc)

(2) Can copies be provided of all 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 Sherry—The Treasurer has provided the following answer to the honourable senator’s question:

Australian Bureau of Statistics

(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 consultancies valued at $10,000 or more will therefore be available on the AusTender website (www.tenders.gov.au), noting that departments have six weeks to report procurement contracts on AusTender.

Further to this, ABS Annual Reports also report details of consultancies over $10,000.

(2) Details of consultancies over the value of $10,000 can be obtained from the AusTender website.

(3) (a) (i) and (ii) Four consultancies have been planned or budgeted for the 2009-10 financial year.

(b) Details of these consultancies have not been included on the ABS’s Annual Procurement Plan for 2009-10 as these contracts were already in place from the previous financial year.

(c) (i) to (v) Refer to table below

<table>
<thead>
<tr>
<th>Table 1 - Planned, or budgeted for, consultancies for 2009-10 (above $10,000)</th>
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<tbody>
<tr>
<td>3(c)(i) Subject matter</td>
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<tr>
<td>Review of technological applications processes 2009 vulnerability assessment services</td>
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<tr>
<td>Review of TM1 usage</td>
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<tr>
<td>Altiris packaging review</td>
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</table>
Australian Competition and Consumer Commission

(1) Details of ACCC consultancies are published on the ACCC website. This information is mirrored on the AusTender website and appears each year in the ACCC Annual Report.

(2) Details of consultancies over the value of $10,000 can be obtained from the AusTender website. The ACCC’s consultancy requirements are primarily driven by regulatory and enforcement activities that arise on an ongoing basis and as such the ACCC is unable to define an exact number of planned consultancies for the 2009 and 2010 period. Accordingly it is not possible to ensure all consultancies are published on the Annual Procurement Plan at the commencement of each financial year.

Australian Office of Financial Management

(1) (a) (i) Twelve, (ii) Two.

Two consultancies were ongoing as at 30 June 2009, details of which follow:

(i) PricewaterhouseCoopers and Mercer Human Resource Consulting.

(ii) PricewaterhouseCoopers has been engaged to provide audit and assurance services. Mercer Human Resource Consulting has been engaged to provide independent remuneration advice.

The terms of reference for each consultancy are contained in contractual documentation executed with each party.


(iv) The total estimated cost over their respective terms is as follows:

PricewaterhouseCoopers $698,442
Mercer Human Resource Consulting $56,634

(v) The PricewaterhouseCoopers consultancy was sourced by open tender, whilst the Mercer Human Resource Consultancy was sourced directly.

(2) Requests for specific material will be considered subject to confidentiality restrictions.

(3) (a) Four.  (b) One on the Annual Procurement Plan. Two are not included because they are ongoing and one is not required to be included because of its small size.

(c)

<table>
<thead>
<tr>
<th></th>
<th>Internal audit</th>
<th>Internal audit</th>
<th>Remuneration advice</th>
<th>Business systems</th>
</tr>
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<tbody>
<tr>
<td>i</td>
<td>Internal audit</td>
<td>Internal audit</td>
<td>Remuneration advice</td>
<td>Business systems</td>
</tr>
<tr>
<td>ii</td>
<td>Until June 2010</td>
<td>3-5 years from July 2010</td>
<td>Ongoing</td>
<td>A few months</td>
</tr>
<tr>
<td>iii</td>
<td>See 1(b)(iv) above</td>
<td>Unknown</td>
<td>See 1(b)(iv) above</td>
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</tr>
<tr>
<td>iv</td>
<td>Open tender</td>
<td>Open tender</td>
<td>Direct sourcing</td>
<td>Direct sourcing</td>
</tr>
<tr>
<td>v</td>
<td>PricewaterhouseCoopers</td>
<td>Not known</td>
<td>Mercer Human Resource Consulting</td>
<td>Infact Consulting</td>
</tr>
</tbody>
</table>

Australian Prudential Regulation Authority

(1) For the period 1 November 2007 to 28 August 2009:

(a) (i) 69, (ii) 14

(b) (i) to (v) refer to Attachment B

(2) Details of consultancies over the value of $10,000 can be obtained from the AusTender website.

(3) (a) (i) and (ii) for the consultancies planned in 2009/10
 QUESTIONS ON NOTICE

(a) (i) The Tax Office has completed 179 consultancies and
(a) (ii) The Tax Office has 26 ongoing consultancies
(b) (i) Refer to attachment A – Column A titled Consultant Name
(b) (ii) Refer to attachment A – Column B titled Description of services
(b) (ii) Refer to attachment A – Column B titled Description of services
(b) (iii) Refer to attachment A – Columns E and F titled Agreement Start Date and Agreement End Date Current respectively
(b) (iv) Refer to attachment A –Column C titled Contract Value $. This is the commitment value at the outset of the contract. Expenditure against the contract is dependant on the services delivered.
(b) (v) Refer to attachment A –Column D titled Selection Process

(2) Details of consultancy arrangements entered into for $10,000 or more are published on the AusTender website at www.tenders.gov.au The Tax Office also publishes this information in its Annual Report.

Copies of consultancy contracts can be provided in line with usual confidentiality provisions. Should large volumes of contracts be requested at one time, this would require a diversion of resources for the Tax Office.

(3) (a) and (b) The Tax Office has published a list of known consultancies for the 2009-10 financial year in its Annual Procurement Plan, available on the AusTender website. The Tax Office has published one consultancy in the Annual Procurement Plan for the 2009-10 financial year.

(i) The consultancy is for knowledge management consultancy services

Australian Securities and Investment Commission

(1) Details of consultancies valued at over $10,000 engaged by the Australian Securities and Investment Commission (ASIC) since November 2007 are published on the AusTender website (www.tenders.gov.au) noting that departments have six weeks to report the procurement contracts on AusTender. The information provided on AusTender includes the supplier name, a description of the consultancy, the start date, the end date and the method of procurement.

Further information relating to consultancies can be found in the ASIC annual reports for 2007-2008 and 2008-2009 (when published).

(2) Details of consultancies over the value of $10,000 can be obtained from the AusTender website.

(3) Details of ASIC’s planned strategic and major procurements including consultancies for the 2009/2010 financial year are published in the Annual Procurement Plan on the AusTender website.

Australian Taxation Office

(1) (a) (i) The Tax Office has completed 179 consultancies and
(a) (ii) The Tax Office has 26 ongoing consultancies
(b) (i) Refer to attachment A – Column A titled Consultant Name
(b) (ii) Refer to attachment A – Column B titled Description of services
(b) (ii) Refer to attachment A – Column B titled Description of services
(b) (iii) Refer to attachment A – Columns E and F titled Agreement Start Date and Agreement End Date Current respectively
(b) (iv) Refer to attachment A –Column C titled Contract Value $. This is the commitment value at the outset of the contract. Expenditure against the contract is dependant on the services delivered.
(b) (v) Refer to attachment A –Column D titled Selection Process

(2) Details of consultancy arrangements entered into for $10,000 or more are published on the AusTender website at www.tenders.gov.au The Tax Office also publishes this information in its Annual Report.

Copies of consultancy contracts can be provided in line with usual confidentiality provisions. Should large volumes of contracts be requested at one time, this would require a diversion of resources for the Tax Office.

(3) (a) and (b) The Tax Office has published a list of known consultancies for the 2009-10 financial year in its Annual Procurement Plan, available on the AusTender website. The Tax Office has published one consultancy in the Annual Procurement Plan for the 2009-10 financial year.

(i) The consultancy is for knowledge management consultancy services
(ii)-(v) It is expected that an open approach to market will occur in October 2009. Details of the duration, cost and name of consultant is not known at this stage

Corporations and Markets Advisory Committee
(1) Nil
(2) Not applicable
(3) Not applicable

Inspector-General of Taxation
(1) (a) (i) one (ii) none
(b) (i) Colmar Brunton Pty Ltd (ii) Perception on the likelihood to lodge a tax return. (iii) To conduct a survey that will provide the community with an independent and objective viewpoint of the non-lodgement situation in Australia (iv) 8 months (v) $93,851 (vi) select tender
(2) yes.
(3) (a) (i) one (ii) one
(b) (i) at initial planning stage
(c) (i) at initial planning stage (ii) at initial planning stage, (iii) at initial planning stage (iv) at initial planning stage, (v) at initial planning stage

National Competition Council
(1) As an agency subject to the Financial Management and Accountability Act 1997 the National Competition Council reports all procurement contracts awarded where the contract value is $10,000 or more on AusTender. 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 in relation to consultancies valued at $10,000 or more will therefore be available on the AusTender website (www.tenders.gov.au), within six weeks of the date of procurement.

Information on new contracts for consultancy services valued at over $10,000 let in 2007-08 (including the name of the consultant, the subject matter, the cost and the method of procurement is available in table 3.8 of the National Competition Council’s 2007-08 Annual Report. The National Competition Council let 7 new consultancy contracts valued at over $10,000. Similar information on new contracts valued at over $10,000 let in 2008-09 will be available in the National Competition Council’s 2008-09 Annual Report following the release of the report.

In 2007-08, the National Competition Council let 2 new contracts for consultancy services valued at less than $10,000. These were for the provision of ICT services (Ben Bailey) and staff recruitment services (Alliance Recruitment). In 2008-09 the National Competition Council let 1 new contract valued at less than $10,000 for staff recruitment services (Temporarily Yours). In each case these contracts were let through direct sourcing. In addition to these 2 new contracts, since November 2007 the National Competition Council has had an ongoing contract for the provision of communications advisory services (Royce) and an ongoing contract for the provision of ICT support services (Kiandra System Solutions).

(2) The consultancy contracts completed since November 2007 have resulted in the implementation of two new websites and the provision of legal advice, specialist economic advice and legal and temporary staff recruitment services.

(3) The National Competition Council does not propose to enter any new consultancy contracts in 2009-10. The National Competition Council’s Annual Procurement for 2009-10 is available on the AusTender site.
Productivity Commission

(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 consultancies valued at $10,000 or more will therefore be available on the AusTender website (www.tenders.gov.au), noting that departments and agencies have six weeks to report procurement contracts on AusTender.

Further to this, the Productivity Commission’s Annual Reports (when published) also report details of consultancies over $10,000.

While AusTender and annual reports contain details of contracts valued at $10,000 or more, it is considered that it may be an unreasonable diversion of resources for the Productivity Commission 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.

Royal Australian Mint

(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 consultancies valued at $10,000 or more will therefore be available on the AusTender website (www.tenders.gov.au), noting that departments and agencies have six weeks to report procurement contracts on AusTender. A complete list of all consultancies can be found in our Annual Reports (when published) with details of all consultancies over $10,000.

(2) Details of consultancies over the value of $10,000 can be obtained from the AusTender website.

(a) 9 for the 2009-10 financial year.

(b) The 2009-10 planned consultancies will be published in the September 2009 Annual Procurement Plan on the AusTender website.

(c) —

<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Duration (ii)</th>
<th>Estimated Cost (iii)</th>
<th>Method of Procurement (iv)</th>
<th>Name of Consultant (v)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone System Support</td>
<td>1 Year</td>
<td>$28,000</td>
<td>Direct Source/Quotations</td>
<td>Unknown</td>
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<tr>
<td>Routers and Firewall Support</td>
<td>1 Year</td>
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<td>Direct Source/Quotations</td>
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<td>Brand Management and Licensing</td>
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<td>$10,000</td>
<td>Direct Source/Quotations</td>
<td>Unknown</td>
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<tr>
<td>Online Consumer Survey</td>
<td>1 Year</td>
<td>$10,000</td>
<td>Direct Source/Quotations</td>
<td>Unknown</td>
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<tr>
<td>Communications Strategy</td>
<td>1 year</td>
<td>$15,000</td>
<td>Direct Source/Quotations</td>
<td>Unknown</td>
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</table>

QUESTIONS ON NOTICE
The Treasury

(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 consultancies valued at $10,000 or more will therefore be available on the AusTender website (www.tenders.gov.au), noting that departments have six weeks to report procurement contracts on AusTender.

Details of consultancies over $10,000 are also included in the Department’s Annual Reports. Reports for the period to 30 June 2008 have already been published and are available on the Treasury’s website (www.treasury.gov.au). Details of consultancies for the period 1 July 2008 to 30 June 2009 will be included in the Department’s 2008-09 Annual Report which will be tabled in October.

While AusTender and annual reports contain details of contracts valued at $10,000 or more, it is considered that it may 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 (www.tenders.gov.au).

(3) Details of consultancies planned for the 2009-10 financial year are available in Treasury’s Annual Procurement Plan which is available on the Austender website (www.tenders.gov.au).

Attachment A

ATO - COMPLETED

<table>
<thead>
<tr>
<th>Consultant name</th>
<th>Description of services</th>
<th>Contract value $</th>
<th>Selection Process</th>
<th>Agreement StartDate</th>
<th>Agreement EndDate</th>
<th>Current</th>
</tr>
</thead>
<tbody>
<tr>
<td>2ND Road</td>
<td>Design and strategy services on ATO products including main website</td>
<td>$72,475.00</td>
<td>Open</td>
<td>1/05/2009</td>
<td>15/06/2009</td>
<td>Current</td>
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<tr>
<td>Allens Arthur Robinson</td>
<td>Provision of advice for Tax Technical Advice Panel</td>
<td>$60,000.00</td>
<td>Direct</td>
<td>12/08/2008</td>
<td>30/06/2009</td>
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</tr>
<tr>
<td>Consultant name</td>
<td>Description of services</td>
<td>Contract value $</td>
<td>Selection Process</td>
<td>Agreement StartDate</td>
<td>Agreement EndDate</td>
<td>Current</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>------------------</td>
<td>-------------------</td>
<td>--------------------</td>
<td>-------------------</td>
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</tr>
<tr>
<td>AMP Services Ltd</td>
<td>Provision of advice for Tax Technical Advice Panel</td>
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<td>21/07/2008</td>
<td>30/06/2009</td>
<td>Current</td>
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<tr>
<td>Antonio Pane</td>
<td>Provision of advice for Tax Technical Advice Panel</td>
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<td>Direct</td>
<td>12/08/2008</td>
<td>30/06/2009</td>
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<tr>
<td>Applied Financial Diagnostics Pty Ltd</td>
<td>Independent Financial Advisory Services Vision and strategy for merging subplans</td>
<td>$75,600.00</td>
<td>Direct</td>
<td>23/06/2008</td>
<td>30/06/2010</td>
<td>Current</td>
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<td>Aquitaine Consulting Pty Ltd</td>
<td>Provision of advice on ICT structure and Change Program benefits</td>
<td>$160,930.00</td>
<td>Direct</td>
<td>1/02/2009</td>
<td>30/05/2009</td>
<td>Current</td>
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<td>Independent assurance services for the Change Program</td>
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<td>Direct</td>
<td>6/02/2009</td>
<td>30/05/2009</td>
<td>Current</td>
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<tr>
<td>Australian Government Actuary Services</td>
<td>Provision of independent &amp; objective advice on the Tax Technical Advice Panels</td>
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<td>2/03/2009</td>
<td>30/06/2009</td>
<td>Current</td>
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<td>Australian Government Solicitor</td>
<td>Actuarial review services</td>
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<td>17/02/2009</td>
<td>31/03/2009</td>
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<td>Provision of independent &amp; objective advice on Tax Technical Advice Panel</td>
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<td>31/07/2008</td>
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<td>30/06/2009</td>
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<td>31/07/2008</td>
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<tr>
<td>Blue Moon Research &amp; Planning Pty Ltd</td>
<td>Research - preventative, facilitative &amp; punitive payment measures</td>
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<td>8/11/2008</td>
<td>31/05/2009</td>
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<td>Blue Moon Research &amp; Planning Pty Ltd</td>
<td>Market research - E-Tax CD Mailer Pilot Evaluation</td>
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<td>Booz &amp; Company (Aust) Pty Ltd</td>
<td>Provide advice on the financial sustainability of ICT/Change Program</td>
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<td>10/06/2008</td>
<td>10/07/2008</td>
<td>Current</td>
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<td>Booz &amp; Company (Australia) Pty Ltd</td>
<td>Review performance reporting across the ATO - Phase 1 Solution validation</td>
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<td>Contract value $</td>
<td>Selection Process</td>
<td>Agreement StartDate</td>
<td>Agreement EndDate</td>
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<td>Booz &amp; Company (Australia) Pty Ltd</td>
<td>Procurement Best Practice Review, Stage 2 – Implementation Planning</td>
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<td>ELM Project Phase 1 &amp; 2- Breakdown of phases: 1) $1,750m 2) $4,124m</td>
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<td>Boucher, Dale R t/a Dale Boucher Solicitor &amp; Consultant</td>
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<td>Mr Steven Whybrow</td>
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QUESTIONs ON NOTICE
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QUESTIONS ON NOTICE
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### Attachment B

**APPRA Attachment**

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QUESTIONS ON NOTICE
### QUESTIONS ON NOTICE

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<td>CONSULTING SERVICES</td>
<td>Information technology consultation services</td>
<td>01-Jul-09</td>
<td>31-Mar-10</td>
<td>$242,000</td>
<td>Open</td>
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<tr>
<td>APRA AUDIT COMMITTEE FEES</td>
<td>Business and corporate management consultation services</td>
<td>01-Sep-08</td>
<td>31-Aug-10</td>
<td>$88,000</td>
<td>Direct</td>
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<tr>
<td>DESIGN, DEVELOPMENT AND DELIVERY OF FINANCIAL ANALYSIS TRAINING PROGRAMS</td>
<td>Human resources services</td>
<td>20-Apr-09</td>
<td>20-Apr-12</td>
<td>$337,700</td>
<td>Open</td>
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<tr>
<td>PROVISION OF RECORDKEEPING E-LEARNING SERVICES</td>
<td>Information technology consultation services</td>
<td>12-Jun-09</td>
<td>11-Jun-12</td>
<td>$29,282</td>
<td>Direct</td>
</tr>
<tr>
<td>ARC LINKAGE GRANT AGREEMENT (LP0883398)</td>
<td>Engineering and Research and Technology Based Services</td>
<td>29-May-09</td>
<td>28-May-13</td>
<td>$220,000</td>
<td>Direct</td>
</tr>
<tr>
<td>MS ENTERPRISE AGREEMENT &amp; LICENCES</td>
<td>Software or hardware engineering</td>
<td>27-Apr-09</td>
<td>30-Jun-13</td>
<td>$358,773</td>
<td>Direct</td>
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<tr>
<td>EXTERNAL MEMBER CONSULTANT FOR RMAC</td>
<td>Management advisory services</td>
<td>01-Sep-08</td>
<td>31-Aug-13</td>
<td>$100,000</td>
<td>Direct</td>
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**Immigration and Citizenship: Water (Question No. 1962)**

Senator Abetz asked the Minister for Immigration and Citizenship, upon notice, on 21 July 2009:

For the department, each agency of the department and the offices of each Minister/Parliamentary Secretary, in the 2008-09 financial year, how much was spent on:(a) bottled water; (b) bulk water; (c) cooler rental; (d) cooler hire; and (e) water delivery

Senator Chris Evans—The answer to the honourable senator’s question is as follows:

For the 2008-09 financial year, the office of the Minister for Immigration and Citizenship has recorded expenditure of:

(a) Nil on bottled water;
(b) $2,189.10 on bulk water (i.e. water for the cooler);
(c) $338.00 on cooler rental;
(d) Nil on cooler hire; and
(e) Nil on water delivery.
For the 2008-09 financial year, the office of the Parliamentary Secretary for Multicultural Affairs and Settlement Services has recorded expenditure of:

(a) Nil on bottled water;
(b) $456.15 on bulk water (i.e. water for the cooler);
(c) $180.00 on cooler rental;
(d) Nil on cooler hire; and
(e) Nil on water delivery.

The Department of Immigration and Citizenship (the Department) does not separate cost codes for the items in question. However, a review of significant transactions for the 2008-09 financial year has revealed the following:

(i) The Department has recorded expenditure of some $45,038 on drinking water (including bottled water, bulk water, cooler rental, cooler hire and water delivery), including $23,068 at overseas posts; and
(ii) It should be noted that the Department has extensive off-shore operations in some countries where water quality is not the same as in Australia. There may be additional purchases which are not reflected in the above figures and are not separately disclosed in the Department’s ledger.

**Innovation, Industry, Science and Research: Water**

*(Question No. 1971)*

**Senator Abetz** asked the Minister for Innovation, Industry, Science and Research, upon notice, on 21 July 2009:

For the department, each agency of the department and the offices of each Minister/Parliamentary Secretary, in the 2008-09 financial year, how much was spent on: (a) bottled water; (b) bulk water; (c) cooler rental; (d) cooler hire; and (e) water delivery.

**Senator Carr**—The answer to the honourable senator’s question is as follows:

For the Department and Agencies spend on Water Cooler costs for 2008-09 please refer to the answers provided in part (6) of question no. 1924.

Water Cooler costs for the Minister for Innovation, Industry Science and Research for the 2008-09 financial year was $1,280.55 (GST exclusive). This equates to approximately $12.30 per week for each of the Minister’s two offices.

Water Cooler costs for the Parliamentary Secretary for Innovation and Industry for the 2008-09 financial year was nil.

**Climate Change and Water: Water**

*(Question No. 1972)*

**Senator Abetz** asked the Minister for Climate Change and Water, upon notice, on 21 July 2009:

For the department, each agency of the department and the offices of each Minister/Parliamentary Secretary, in the 2008-09 financial year, how much was spent on: (a) bottled water; (b) bulk water; (c) cooler rental; (d) cooler hire; and (e) water delivery.

**Senator Wong**—The answer to the honourable senator’s question is as follows:

In the 2008-09 financial year the Department of Climate Change and Minister/Parliamentary Secretary offices spent the following:
(a) $659.00
(b) Nil
(c) $620.00
(d) Nil
(e) Nil

Water
In relation to my ministerial responsibilities for water, the Department of the Environment, Water, Heritage and the Arts has provided the requested information in its response to Question on Notice No 1973 (Minister for the Environment, Heritage and the Arts).

There was no expenditure by the National Water Commission on these items during the 2008-09 financial year.

The Murray Darling Basin Authority has not expended any funds on bottled water, bulk water, cooler rental or hire or water delivery in the course of normal business. Any use of bottled water or cooler hire for community and governmental meetings is not separately identified.

Information relating to the expenditure of the Office of Hon Dr Mike Kelly AM MP is included in the Department of Defence’s response to Question on Notice No 1963.

Assistant Treasurer: Media Training
(Question No. 2025)

Senator Abetz asked the Assistant Treasurer, 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 Sherry—The answer to the honourable senator’s question is as follows:

The Treasury nor the Department of Finance and Deregulation have not provided any media training or funded any such activities for the Minister or his staff employed under the Members of Parliament (Staff) Act 1984 since 24 November 2007.

National Innovation System
(Question No. 2032)

Senator Abetz asked the Minister for Innovation, Industry, Science and Research, upon notice, on 21 July 2009:

(1) For each of the final reports of the reviews of the national innovation system [Venturous Australia: building strength in innovation], Australia’s automotive industry [Review of Australia’s automotive industry; Final report: 22 July 2008] and the Australian textile, clothing and footwear industries [Building innovative capability: Review of the Australian textile, clothing and footwear industries], what were the: (a) design and pre-press costs; (b) printing costs; (c) total number of reports printed; and (d) total number of reports distributed.

(2) For each of the Government’s white paper responses to the reports in (1) above, what were the: (a) design and pre-press costs; (b) printing costs; (c) total number of white papers printed; and (d) total number of white papers distributed.
Senator Carr—The answer to the honourable senator’s question is as follows:

(1) **Venturous Australia**
   (a) $33,111.32 (GST inclusive)
   (b) $37,400.00 (GST inclusive)
   (c) 1820
   (d) 1305

**Review of Australia’s Automotive Industry Final Report**
   (a) $66,279.79 (GST Inclusive) – this figure also includes editing costs
   (b) $20,036.60 (GST Inclusive)
   (c) 850
   (d) 612

**Building Innovative Capability: Review of the Australian Textile, Clothing and Footwear industries [Volume 1 and 2]**
   (a) $18,208.98 (GST Inclusive) – this figure also includes editing costs
   (b) $10,967.00 (GST Inclusive)
   (c) 425
   (d) 425

(2) **Powering Ideas (the Government’s ten year innovation reform agenda)**
   (a) Nil – in-house design and editing
   (b) $41,371 (GST Inclusive)
   (c) 2000
   (d) 1883

**A New Car Plan for a Greener Future**
   (a) Nil – in-house design and editing
   (b) $10,180.65 (GST Inclusive)
   (c) 1350
   (d) 1317

The Government’s response to the TCF review was included in the TCF 2009-10 Budget ‘Fact Sheet’ produced by the Department. There was no white paper produced.

**Defence: Appointments**
 *(Question Nos 2089 and 2090)*

Senator Johnston asked the Minister for Defence, upon notice, on 13 August 2009:

For each agency within the responsibility of the Minister/Parliamentary Secretary, what appointments to boards or committees were made for the period 1 January to 30 June 2009.

Senator Faulkner—The answer to the honourable senator’s question is as follows:

I refer the honourable senator to Defence’s responses to the Senate Order on Grants and Government Appointments that were tabled on 3 February 2009 and 15 June 2009.

The next response to the Senate Order will be tabled prior to the Supplementary Budget Estimates in mid October 2009.
Defence: Program Funding
(Question Nos 2093 and 2094)

Senator Johnston asked the Minister for Defence, upon notice, on 13 August 2009:

(1) For the period 1 January to 30 June 2009, for each agency within the responsibility of the Minister/Parliamentary Secretary, how many programs were underspent.

(2) (a) What specific requests were made to roll-over underspends to the 2008-09 financial year; and (b) which of these requests were successful.

Senator Faulkner—The answer to the honourable senator’s question is as follows:

(1) For the end of financial year 2008-09, details of Defence’s output and project spending can be found in the Defence Annual Report 2008-09, due to be tabled by 31 October 2009.

(2) Details of roll-over to 2009-10 can be found in the Defence Portfolio Additional Estimates 2008-09 and the Defence Portfolio Budget Statements 2009-10.