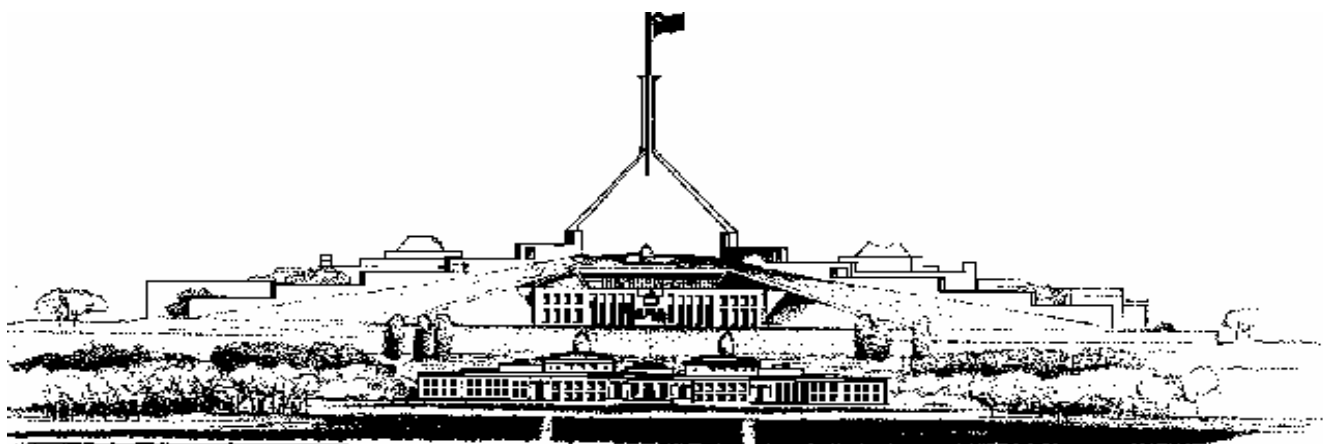




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



Senate

Official Hansard

No. 6, 2005

WEDNESDAY, 16 MARCH 2005

**FORTY-FIRST PARLIAMENT
FIRST SESSION—SECOND PERIOD**

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SITTING DAYS—2005

Month	Date
February	8, 9, 10
March	7, 8, 9, 10, 14, 15, 16, 17
May	10, 11, 12
June	14, 15, 16, 20, 21, 22, 23
August	9, 10, 11, 15, 16, 17, 18
September	5, 6, 7, 8, 12, 13, 14, 15
October	4, 5, 6, 10, 11, 12, 13
November	7, 8, 9, 10, 28, 29, 30
December	1, 5, 6, 7, 8

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**FORTY-FIRST PARLIAMENT
FIRST SESSION—SECOND PERIOD**

Governor-General

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

Senate Officeholders

President—Senator the Hon. Paul Henry Calvert

Deputy President and Chairman of Committees—Senator John Joseph Hogg

Temporary Chairmen of Committees—Senators the Hon. Nick Bolkus, George Henry Brandis, Hedley Grant Pearson Chapman, John Clifford Cherry, Patricia Margaret Crossin, Alan Baird Ferguson, Stephen Patrick Hutchins, Linda Jean Kirk, Susan Christine Knowles, Philip Ross Lightfoot, John Alexander Lindsay (Sandy) Macdonald, Gavin Mark Marshall, Claire Mary Moore and John Odin Wentworth Watson

Leader of the Government in the Senate—Senator the Hon. Robert Murray Hill

Deputy Leader of the Government in the Senate—Senator the Hon. Nicholas Hugh Minchin

Leader of the Opposition in the Senate—Senator Christopher Vaughan Evans

Deputy Leader of the Opposition in the Senate—Senator Stephen Michael Conroy

Manager of Government Business in the Senate—Senator the Hon. Christopher Martin Ellison

Manager of Opposition Business in the Senate—Senator Joseph William Ludwig

Senate Party Leaders and Whips

Leader of the Liberal Party of Australia—Senator the Hon. Robert Murray Hill

Deputy Leader of the Liberal Party of Australia—Senator the Hon. Nicholas Hugh Minchin

Leader of the National Party of Australia—Senator the Hon. Ronald Leslie Doyle Boswell

Deputy Leader of the National Party of Australia—Senator John Alexander Lindsay (Sandy) Macdonald

Leader of the Australian Labor Party—Senator Christopher Vaughan Evans

Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy

Leader of the Australian Democrats—Senator Lynette Fay Allison

Liberal Party of Australia Whips—Senators Jeannie Margaret Ferris and Alan Eggleston

National Party of Australia Whip—Senator Julian John James McGauran

Opposition Whips—Senators George Campbell and Geoffrey Frederick Buckland

Australian Democrats Whip—Senator Andrew John Julian Bartlett

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Members of the Senate

Senator	State or Territory	Term expires	Party
Abetz, Hon. Eric	Tas	30.6.2005	LP
Allison, Lynette Fay	Vic	30.6.2008	AD
Barnett, Guy ⁽⁵⁾	Tas	30.6.2005	LP
Bartlett, Andrew John Julian	Qld	30.6.2008	AD
Bishop, Thomas Mark	WA	30.6.2008	ALP
Bolkus, Hon. Nick	SA	30.6.2005	ALP
Boswell, Hon. Ronald Leslie Doyle	Qld	30.6.2008	NATS
Brandis, George Henry ⁽²⁾	Qld	30.6.2005	LP
Brown, Robert James	Tas	30.6.2008	AG
Buckland, Geoffrey Frederick ⁽⁴⁾	SA	30.6.2005	ALP
Calvert, Hon. Paul Henry	Tas	30.6.2008	LP
Campbell, George	NSW	30.6.2008	ALP
Campbell, Hon. Ian Gordon	WA	30.6.2005	LP
Carr, Kim John	Vic	30.6.2005	ALP
Chapman, Hedley Grant Pearson	SA	30.6.2008	LP
Cherry, John Clifford ⁽³⁾	Qld	30.6.2005	AD
Colbeck, Richard Mansell	Tas	30.6.2008	LP
Collins, Jacinta Mary Ann	Vic	30.6.2005	ALP
Conroy, Stephen Michael	Vic	30.6.2005	ALP
Cook, Hon. Peter Francis Salmon	WA	30.6.2005	ALP
Coonan, Hon. Helen Lloyd	NSW	30.6.2008	LP
Crossin, Patricia Margaret ⁽¹⁾	NT		ALP
Denman, Kay Janet	Tas	30.6.2005	ALP
Eggleston, Alan	WA	30.6.2008	LP
Ellison, Hon. Christopher Martin	WA	30.6.2005	LP
Evans, Christopher Vaughan	WA	30.6.2005	ALP
Faulkner, Hon. John Philip	NSW	30.6.2005	ALP
Ferguson, Alan Baird	SA	30.6.2005	LP
Ferris, Jeannie Margaret	SA	30.6.2008	LP
Fifield, Mitchell Peter ⁽⁷⁾	Vic	30.6.2008	LP
Forshaw, Michael George	NSW	30.6.2005	ALP
Greig, Brian Andrew	WA	30.6.2005	AD
Harradine, Brian	Tas	30.6.2005	Ind
Harris, Leonard William	QLD	30.6.2005	PHON
Heffernan, Hon. William Daniel	NSW	30.6.2005	LP
Hill, Hon. Robert Murray	SA	30.6.2008	LP
Hogg, John Joseph	QLD	30.6.2008	ALP
Humphries, Gary John Joseph ⁽¹⁾	ACT		LP
Hutchins, Stephen Patrick	NSW	30.6.2005	ALP
Johnston, David Albert Lloyd	WA	30.6.2008	LP
Kemp, Hon. Charles Roderick	VIC	30.6.2008	LP
Kirk, Linda Jean	SA	30.6.2008	ALP
Knowles, Susan Christine	WA	30.6.2005	LP
Lees, Meg Heather	SA	30.6.2005	APA
Lightfoot, Philip Ross	WA	30.6.2008	LP
Ludwig, Joseph William	QLD	30.6.2005	ALP
Lundy, Kate Alexandra ⁽¹⁾	ACT		ALP

Senator	State or Territory	Term expires	Party
Macdonald, Hon. Ian Douglas	QLD	30.6.2008	LP
Macdonald, John Alexander Lindsay (Sandy)	NSW	30.6.2008	NATS
McGauran, Julian John James	VIC	30.6.2005	NATS
Mackay, Susan Mary	TAS	30.6.2008	ALP
McLucas, Jan Elizabeth	QLD	30.6.2005	ALP
Marshall, Gavin Mark	VIC	30.6.2008	ALP
Mason, Brett John	QLD	30.6.2005	LP
Minchin, Hon. Nicholas Hugh	SA	30.6.2005	LP
Moore, Claire Mary	QLD	30.6.2008	ALP
Murphy, Shayne Michael	TAS	30.6.2005	Ind
Murray, Andrew James Marshall	WA	30.6.2008	AD
Nettle, Kerry Michelle	NSW	30.6.2008	AG
O'Brien, Kerry Williams Kelso	TAS	30.6.2005	ALP
Patterson, Hon. Kay Christine Lesley	VIC	30.6.2008	LP
Payne, Marise Ann	NSW	30.6.2008	LP
Ray, Hon. Robert Francis	VIC	30.6.2008	ALP
Ridgeway, Aden Derek	NSW	30.6.2005	AD
Santoro, Santo ⁽⁶⁾	QLD	30.6.2008	LP
Scullion, Nigel Gregory ⁽¹⁾	NT		CLP
Sherry, Hon. Nicholas John	TAS	30.6.2008	ALP
Stephens, Ursula Mary	NSW	30.6.2008	ALP
Stott Despoja, Natasha Jessica	SA	30.6.2008	AD
Tchen, Tsebin	VIC	30.6.2005	LP
Tierney, John William	NSW	30.6.2005	LP
Troeth, Hon. Judith Mary	VIC	30.6.2005	LP
Vanstone, Hon. Amanda Eloise	SA	30.6.2005	LP
Watson, John Odin Wentworth	TAS	30.6.2008	LP
Webber, Ruth Stephanie	WA	30.6.2008	ALP
Wong, Penelope Ying Yen	SA	30.6.2008	ALP

- (1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
- (2) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. Warwick Raymond Parer, resigned.
- (3) Chosen by the Parliament of Queensland to fill a casual vacancy vice John Woodley, resigned.
- (4) Chosen by the Parliament of South Australia to fill a casual vacancy vice John Andrew Quirke, resigned.
- (5) Appointed by the Governor of Tasmania to fill a casual vacancy vice Hon. Brian Francis Gibson AM, resigned.
- (6) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
- (7) Chosen by the Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.

PARTY ABBREVIATIONS

AD—Australian Democrats; AG—Australian Greens; ALP—Australian Labor Party; APA—Australian Progressive Alliance; CLP—Country Labor Party; Ind—Independent; LP—Liberal Party of Australia; NATS—The Nationals; PHON—Pauline Hanson's One Nation

Heads of Parliamentary Departments

Clerk of the Senate—H. Evans
Clerk of the House of Representatives—I.C. Harris
Secretary, Department of Parliamentary Services—H.R. Penfold QC

HOWARD MINISTRY

Prime Minister	The Hon. John Winston Howard MP
Minister for Transport and Regional Services and Deputy Prime Minister	The Hon. John Duncan Anderson MP
Treasurer	The Hon. Peter Howard Costello MP
Minister for Trade	The Hon. Mark Anthony James Vaile MP
Minister for Defence and Leader of the Government in the Senate	Senator the Hon. Robert Murray Hill
Minister for Foreign Affairs	The Hon. Alexander John Gosse Downer MP
Minister for Health and Ageing and Leader of the House	The Hon. Anthony John Abbott MP
Attorney-General	The Hon. Philip Maxwell Ruddock MP
Minister for Finance and Administration, Deputy Leader of the Government in the Senate and Vice-President of the Executive Council	Senator the Hon. Nicholas Hugh Minchin
Minister for Agriculture, Fisheries and Forestry	The Hon. Warren Errol Truss MP
Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs	Senator the Hon. Amanda Eloise Vanstone
Minister for Education, Science and Training	The Hon. Dr Brendan John Nelson MP
Minister for Family and Community Services and Minister Assisting the Prime Minister for Women's Issues	Senator the Hon. Kay Christine Lesley Patterson
Minister for Industry, Tourism and Resources	The Hon. Ian Elgin Macfarlane MP
Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service	The Hon. Kevin James Andrews MP
Minister for Communications, Information Technology and the Arts	Senator the Hon. Helen Lloyd Coonan
Minister for the Environment and Heritage	Senator the Hon. Ian Gordon Campbell

(The above ministers constitute the cabinet)

HOWARD MINISTRY—*continued*

Minister for Justice and Customs and Manager of Government Business in the Senate	Senator the Hon. Christopher Martin Ellison
Minister for Fisheries, Forestry and Conservation	Senator the Hon. Ian Douglas Macdonald
Minister for the Arts and Sport	Senator the Hon. Charles Roderick Kemp
Minister for Human Services	The Hon. Joseph Benedict Hockey MP
Minister for Citizenship and Multicultural Affairs and Deputy Leader of the House	The Hon. Peter John McGauran MP
Minister for Revenue and Assistant Treasurer	The Hon. Malcolm Thomas Brough MP
Special Minister of State	Senator the Hon. Eric Abetz
Minister for Vocational and Technical Education and Minister Assisting the Prime Minister	The Hon. Gary Douglas Hardgrave MP
Minister for Ageing	The Hon. Julie Isabel Bishop MP
Minister for Small Business and Tourism	The Hon. Frances Esther Bailey MP
Minister for Local Government, Territories and Roads	The Hon. James Eric Lloyd MP
Minister for Veterans' Affairs and Minister Assisting the Minister for Defence	The Hon. De-Anne Margaret Kelly MP
Minister for Workforce Participation	The Hon. Peter Craig Dutton MP
Parliamentary Secretary to the Minister for Finance and Administration	The Hon. Dr Sharman Nancy Stone MP
Parliamentary Secretary to the Minister for Industry, Tourism and Resources	The Hon. Warren George Entsch MP
Parliamentary Secretary to the Minister for Health and Ageing	The Hon. Christopher Maurice Pyne MP
Parliamentary Secretary to the Minister for Defence	The Hon. Teresa Gambaro MP
Parliamentary Secretary (Foreign Affairs and Trade)	The Hon. Bruce Fredrick Billson MP
Parliamentary Secretary to the Prime Minister	The Hon. Gary Roy Nairn MP
Parliamentary Secretary to the Treasurer	The Hon. Christopher John Pearce MP
Parliamentary Secretary to the Minister for Transport and Regional Services	The Hon. John Kenneth Cobb MP
Parliamentary Secretary to the Minister for the Environment and Heritage	The Hon. Gregory Andrew Hunt MP
Parliamentary Secretary (Children and Youth Affairs)	The Hon. Sussan Penelope Ley MP
Parliamentary Secretary to the Minister for Education, Science and Training	The Hon. Patrick Francis Farmer MP
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry	Senator the Hon. Richard Mansell Colbeck

SHADOW MINISTRY

Leader of the Opposition	The Hon. Kim Christian Beazley MP
Deputy Leader of the Opposition and Shadow Minister for Education, Training, Science and Research	Jennifer Louise Macklin MP
Leader of the Opposition in the Senate and Shadow Minister for Social Security	Senator Christopher Vaughan Evans
Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology	Senator Stephen Michael Conroy
Shadow Minister for Health and Manager of Opposition Business in the House	Julia Eileen Gillard MP
Shadow Treasurer	Wayne Maxwell Swan MP
Shadow Minister for Industry, Infrastructure and Industrial Relations	Stephen Francis Smith MP
Shadow Minister for Foreign Affairs and International Security	Kevin Michael Rudd MP
Shadow Minister for Defence and Homeland Security	Robert Bruce McClelland MP
Shadow Minister for Trade	The Hon. Simon Findlay Crean MP
Shadow Minister for Primary Industries, Resources and Tourism	Martin John Ferguson MP
Shadow Minister for Environment and Heritage and Deputy Manager of Opposition Business in the House	Anthony Norman Albanese MP
Shadow Minister for Public Administration and Open Government, Shadow Minister for Indigenous Affairs and Reconciliation and Shadow Minister for the Arts	Senator Kim John Carr
Shadow Minister for Regional Development and Roads and Shadow Minister for Housing and Urban Development	Kelvin John Thomson MP
Shadow Minister for Finance and Superannuation	Senator the Hon. Nicholas John Sherry
Shadow Minister for Work, Family and Community, Shadow Minister for Youth and Early Childhood Education and Shadow Minister Assisting the Leader on the Status of Women	Tanya Joan Plibersek MP
Shadow Minister for Employment and Workplace Participation and Shadow Minister for Corporate Governance and Responsibility	Senator Penelope Ying Yen Wong

(The above are shadow cabinet ministers)

SHADOW MINISTRY—*continued*

Shadow Minister for Immigration	Laurence Donald Thomas Ferguson MP
Shadow Minister for Agriculture and Fisheries	Gavan Michael O'Connor MP
Shadow Assistant Treasurer, Shadow Minister for Revenue and Shadow Minister for Banking and Financial Services	Joel Andrew Fitzgibbon MP
Shadow Attorney-General	Nicola Louise Roxon MP
Shadow Minister for Regional Services, Local Government and Territories	Senator Kerry Williams Kelso O'Brien
Shadow Minister for Manufacturing and Shadow Minister for Consumer Affairs	Senator Kate Alexandra Lundy
Shadow Minister for Defence Planning, Procurement and Personnel and Shadow Minister Assisting the Shadow Minister for Industrial Relations	The Hon. Archibald Ronald Bevis MP
Shadow Minister for Sport and Recreation	Alan Peter Griffin MP
Shadow Minister for Veterans' Affairs	Senator Thomas Mark Bishop
Shadow Minister for Small Business	Tony Burke MP
Shadow Minister for Ageing, Disabilities and Carers	Senator Jan Elizabeth McLucas
Shadow Minister for Justice and Customs, Shadow Minister for Citizenship and Multicultural Affairs and Manager of Opposition Business in the Senate	Senator Joseph William Ludwig
Shadow Minister for Pacific Islands	Robert Charles Grant Sercombe MP
Shadow Parliamentary Secretary to the Leader of the Opposition	John Paul Murphy MP
Shadow Parliamentary Secretary for Defence	The Hon. Graham John Edwards MP
Shadow Parliamentary Secretary for Education	Kirsten Fiona Livermore MP
Shadow Parliamentary Secretary for Environment and Heritage	Jennie George MP
Shadow Parliamentary Secretary for Infrastructure	Bernard Fernando Ripoll MP
Shadow Parliamentary Secretary for Health	Ann Kathleen Corcoran MP
Shadow Parliamentary Secretary for Regional Development (House)	Catherine Fiona King MP
Shadow Parliamentary Secretary for Regional Development (Senate)	Senator Ursula Mary Stephens
Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs	The Hon. Warren Edward Snowdon MP

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Wednesday, 16 March 2005

The **PRESIDENT (Senator the Hon. Paul Calvert)** took the chair at 9.30 a.m. and read prayers.

**CRIMES LEGISLATION AMENDMENT
(TELECOMMUNICATIONS
INTERCEPTION AND OTHER
MEASURES) BILL 2005**

FAMILY LAW AMENDMENT BILL 2005

STATUTE LAW REVISION BILL 2005

**ENVIRONMENT AND HERITAGE
LEGISLATION AMENDMENT BILL
2005**

**CONSULAR PRIVILEGES AND
IMMUNITIES AMENDMENT BILL 2005**

First Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 a.m.)—I move:

That the following bills be introduced:

A Bill for an Act to extend the circumstances in which communications can be intercepted without warrant, and for other purposes

A Bill for an Act to amend the *Family Law Act 1975* and the *Bankruptcy Act 1966*, and for related purposes

A Bill for an Act to make various amendments of the statute law of the Commonwealth, and for related purposes

A Bill for an Act to amend the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and to make changes relating to the Sydney Harbour Federation Trust, and for related purposes

A Bill for an Act to amend the *Consular Privileges and Immunities Act 1972*, and for related purposes

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 a.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.32 a.m.)—I table the explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

**CRIMES LEGISLATION AMENDMENT
(TELECOMMUNICATIONS INTERCEPTION
AND OTHER MEASURES) BILL 2005**

This bill amends the Telecommunications (Interception) Act 1979 and the Criminal Code Act 1995 to ensure that they operate in a manner that enhances rather than hinders the functioning of our law enforcement agencies.

The interception of telecommunications in Australia by law enforcement and national security agencies is regulated by the Telecommunications (Interception) Act.

That Act contains a general prohibition against the interception of communications passing over a telecommunications system without the knowledge of the person making the communication.

This general prohibition operates subject to limited exceptions, including an exception for interception carried out under a warrant to assist in the investigation of serious criminal activity.

It is proposed that this bill will modify the operation of one existing exception and introduce an exception for radiocommunication inspectors.

The Interception Act currently provides that listening to or recording a communication to certain prescribed emergency service numbers, such as '000', is not an interception for the purposes of the Act.

However, the structure of the provision presupposed that only a few numbers needed to be prescribed to monitor all calls to emergency centres.

In reality, the police, ambulance and fire services use hundreds, if not thousands, of numbers behind the scenes to provide the level of emergency services that all Australians enjoy.

The amendments proposed by the bill will mean that all calls made to or from an emergency call facility will be able to be recorded without infringing the Interception Act.

The new exception proposed by the bill will enable persons who are authorised inspectors under the Radiocommunications Act to intercept communications where that interception is incidental to the performance of a spectrum management function.

Inspectors are currently precluded from investigating radiocommunications interference to the extent that the interference emanates from a telecommunications service.

This amendment will ensure that radiocommunications inspectors are not hampered in undertaking their statutory function by the fact that some telecommunications services use radiocommunication.

I understand that interference from radiocommunications generated by telecommunications devices, such as portable phones, can affect the operation of essential services such as air traffic control towers and so the amendment has a significant safety aspect to it.

The bill will also allow telecommunications interception warrants to be obtained in connection with the investigation of the ancillary offence of accessory after the fact for a class 1 offence.

The absence of this power means that an important investigative tool is not available to law enforcement agencies who are investigating the activities of a person suspected of helping someone who has committed an extremely serious offence such as murder or a terrorism offence to evade justice or to dispose of the proceeds of their crimes.

The Interception Act contains a range of safeguards, record-keeping and reporting requirements to ensure that telecommunications inter-

ception is used sparingly and in appropriate cases, and that intercepting agencies adhere to strict standards of accountability.

To further enhance these oversight arrangements, the bill will implement two recommendations from the Report of the Review of Named Person Warrants and Other Matters completed by Mr Tom Sherman AO.

Those recommendations deal with statistical information for named-person warrants and additional information to be included in the Commonwealth Ombudsman's annual report.

To ensure that the way in which lawfully obtained information may be used keeps in line with changes to the law enforcement environment, the bill will allow intercepted information to be used in civil forfeiture regimes.

The amendment reflects the recent shift in most jurisdictions towards civil forfeiture regimes in addition to forfeiture following a criminal conviction.

The Government has, in consultation with many interested stakeholders, considered the remaining Recommendations from the Sherman Report and is pleased to note that of the remaining five recommendations, recommendations 1 and 2, which address the administrative processes and practices that the agencies adopt in relation to named-person warrants, are being addressed by the Interception Consultative Committee.

In addition, the Government will accept recommendation 3 and agencies will ensure that, wherever practicable, persons making applications for law enforcement warrants should include a lawyer and the deponent to the supporting affidavit.

The Government does not, however, accept Recommendation 5.

The need for ASIO to report publicly in relation to its use of telecommunications interception warrants was considered in detail by the Parliamentary Joint Committee on ASIO in 2000.

It was then, as it is now, ASIO's practice not to report publicly in relation to its use of telecommunications interception warrants and the Committee did not recommend any change to this practice.

ASIO discharges its accountability responsibilities by furnishing its classified annual report not only to the Government but also to the Opposition.

The Sherman Report did not raise new substantive arguments to justify revisiting this arrangement.

The Government also does not accept Recommendation 8.

In responding to this recommendation, it is necessary to balance privacy and accountability interests with the information management and administrative needs of intercepting agencies.

Moreover, recent developments in technology, particularly the advent of digital communications technology, mean that it may be impractical and inappropriate for the Interception Act to seek to regulate “original” records. While there are some issues as outlined in the report, it is undesirable to return to the situation prevailing prior to the 2000 amendments to the Act.

The Government thanks Mr Sherman for his thorough review of the named-person warrants provisions.

The bill also clarifies that the term “an employee of a carrier” should not be read as being limited to someone employed in a narrow legal sense.

Such an interpretation does not reflect the reality of the workplace or corporate structures where people are engaged as contractors as well as by subsidiary or related companies.

The explanation will apply to all references to an employee of a carrier in the Interception Act.

This provision does not seek to alter the definition of employee.

Rather it is designed to explain what has always been the case.

The amendment therefore takes effect from the date of the commencement of the Interception Act, that is, 1 June 1980. While this reaches back a considerable period of time, the amendment does not adversely impact on individuals or the community as a whole.

Finally, the bill amends the Criminal Code Act 1995 to extend the operation of certain defences available in relation to telecommunications offences in Part 10.6 of the Act. The amendment

will ensure that the existing defence, available to a range of law enforcement agencies, extends to all agencies that may intercept communications so that the defence is available when officers of those agencies engage in activities ancillary to telecommunications interception.

The amendments proposed by this bill represent a balanced response to the need for the legislation that regulates our law enforcement and security agencies to support the work of those agencies, without losing sight of privacy, transparency and accountability issues.

FAMILY LAW AMENDMENT BILL 2005

The Family Law Amendment Bill 2005 is a part of the Howard Government’s continuing reform of the family law system. The bill contains a range of amendments to the Family Law Act 1975, designed to improve the operation of the current family law system. Some of these relate to procedural matters, including appeal processes. The bill also contains technical amendments intended to improve the Act’s operation, particularly amendments to modernise the terminology used.

While the bill contains important amendments to the Family Law Act 1975, it does not represent the package of family law reforms that respond to the House of Representatives Standing Committee on Family and Community Affairs Every Picture Tells a Story Report. The amendments responding to the House Committee’s Report are being considered as part of budget process and I am confident that an announcement of the Government’s intentions will be made shortly.

The Family Law Amendment Bill 2004 was introduced in the House on 1 April last year. On 16 June 2004, the Senate referred that Bill to the Senate Legal and Constitutional Legislation Committee. The Committee’s report recommended that the bill should proceed, subject to a number of amendments.

The bill lapsed with the proroguing of Parliament before last year’s election and is now being reintroduced. The recommendations made by the Senate Committee have been taken on board and are incorporated in the bill before you.

The bill contains amendments to address the issue of parenting orders not working in practice. A number of parenting orders, particularly those made by consent, are found not to actually work. The bill contains amendments to provide a court with the power to vary, on its own motion, orders relating to children, at a hearing on a contravention application. The amendments also clarify the court's power to send parties in contravention proceedings to counselling and post-separation parenting programs.

Another important amendment in the bill provides a right for persons who are determined not to be a parent of a child, through DNA testing or by other means, to recover any monies paid or property transferred for the benefit of that child under maintenance orders.

A number of amendments in this bill clarify the Family Court's powers in a range of areas, including the Court's rule making powers to support the Family Law Rules 2004 which commenced on 29 March 2004, and in relation to the ability of the court to change venue of proceedings and to clarify the effect of offers of settlement.

The bill also clarifies a number of issues relating to the operation of appeals. One amendment removes the power of the Full Court to issue a certificate that no special leave to appeal is needed from the High Court to appeal to that Court where 'an important question of law or public interest' is involved. This amendment was made in response to a recommendation of the Australian Law Reform Commission which the High Court and the Family Court agreed with. The Government accepted the recommendation as it considers that the High Court, through the special leave to appeal process, should be in control of what matters are dealt with by that Court.

The bill provides for the transfer of family law proceedings from State courts of summary jurisdiction (magistrates and local courts) direct to the Federal Magistrates Court on the State courts' own initiative. Many proceedings instituted in State courts in relation to property with a value of over \$20,000 or in relation to contested parenting orders will be appropriate for determination by the Federal Magistrates Court.

Currently the Family Law Act provides for transfers in such matters from courts of summary ju-

isdiction on the court's own initiative to the Family Court but not to the Federal Magistrates Court. The Family Court then transfers appropriate matters on to the Federal Magistrates Court. This amendment will enable a matter to be transferred directly to the Federal Magistrates Court and reduce unnecessary delays.

The bill also widens the range of matters which can be the subject of private arbitration. Currently the matters that can be dealt with by a private arbitrator under the Family Law Act are limited to matters which relate to property, spousal maintenance and maintenance agreements. The bill expands the scope to include financial agreements and certain orders in relation to superannuation. Parties must consent before matters can be referred to private arbitration.

Also included in Part 16 of the bill is an amendment to the Bankruptcy Act 1966 to support reforms in the Bankruptcy and Family Law Legislation Amendment Bill 2005 that relate to bankruptcy and family law reform. This amendment will ensure that the Family Court of Western Australia, along with the Family Court of Australia, acquires all necessary bankruptcy jurisdiction in concurrent family law proceedings where a party is bankrupt.

The bill modernises the terminology of the Act to terms which are commonly used and widely recognised, thereby increasing the public's understanding of the Act and accessibility to family law. This should particularly aid self-represented litigants. It will no doubt surprise many that the term 'divorce' does not appear in the Act. The term 'dissolution of marriage' is simply replaced with 'divorce'.

There are a range of other minor amendments in this bill.

The Government is committed to enhancing and making more accessible and efficient the family law system and this bill is part of the Government's commitment to that goal.

Full details of the measures contained in this bill are contained in the Explanatory Memorandum to the bill.

I commend the bill.

STATUTE LAW REVISION BILL 2005

The Statute Law Revision Bill 2005 corrects minor errors in existing Acts including spelling, numbering, lettering and punctuation errors. It continues the important exercise of promptly repairing the statute books and improving the accuracy of Government and commercial consolidations of Acts.

Schedule 1 amends 24 principal Acts and Schedule 2 amends misdescriptions in 24 amending Acts. The kinds of errors being amended in Schedule 1 are minor clerical and drafting errors in various current Acts such as incorrect numbering of subsections and typographical errors. Mis-described errors are ones that either incorrectly describe the text to be amended or specify the wrong location for the insertion of new text. Mis-described errors are best corrected by amending the amending Act (rather than the Principal Act) and Schedule 2 sets out the amendments to the amending Acts. None of the amendments proposed by either Schedule will make any change to the substance of the law.

The bill also updates references to organisations. For example, reference to the Queensland Criminal Justice Commission and the Queensland Crime Commission which no longer exist, will be replaced with a reference to the Crime and Misconduct Commission of Queensland—the successor of these two bodies.

The effect of the commencement provisions in the bill is that the errors are taken to have been corrected immediately after the error was made.

The bill, while not making any substantive amendments to the law, does improve the quality and public accessibility of Commonwealth legislation.

**ENVIRONMENT AND HERITAGE
LEGISLATION AMENDMENT BILL 2005**

The purpose of the Environment and Heritage Legislation Amendment Bill 2005 is to make amendments to the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 and to the Sydney Harbour Federation Trust Act 2001. Australia's Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 has made

a significant contribution to the global effort to phase out ozone depleting substances, and is now also contributing to minimising Australia's avoidable emissions of synthetic greenhouse gases. Through cooperation between Government and industry, the legislation has reduced Australia's consumption of ozone depleting substances by 80% since 1989, resulting in estimated savings to the Australian economy of some \$6.4 billion by 2060.

This bill proposes to amend the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 to rectify a small number of operational anomalies and unintended consequences of drafting. The proposed amendments will ensure the consistent and effective operation of Australia's legislation for the management of ozone depleting substances and their synthetic greenhouse gas alternatives. These substances have very significant impacts on the global climate system and the ozone layer, and appropriate restrictions are essential to ensure that these substances are managed consistently and used sustainably within Australia.

Specifically, this bill will make two changes to the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989. Firstly, it will confirm that importers or exporters of recycled or used methyl bromide or hydrochlorofluorocarbons are only required to hold a Used Substances Licence. This approach is consistent with that taken for other ozone depleting substances (such as chlorofluorocarbons and halons) currently controlled under the Act.

Secondly, the bill will ensure that reporting obligations for synthetic greenhouse gases manufactured in Australia are the same as those for synthetic greenhouse gases imported into, or exported, from Australia.

The proposed amendments to the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 contained in this bill demonstrate the Government's determination to further advance its practical and effective approach to managing ozone depletion and climate change.

In relation to the amendments to the Sydney Harbour Federation Trust Act 2001, the Sydney Harbour Federation Trust is responsible for preparing and implementing a plan for the future uses of

former defence and other Commonwealth lands on or near the foreshores of Sydney Harbour. These are historic lands. They tell the story of European settlement in Sydney and trace the patterns of defence, industry and population growth in the fledgling colony of New South Wales.

The lands are Macquarie Lightstation on South Head; the former Artillery School at North Head; Woolwich Dock and Parklands; Cockatoo Island; Snapper Island; defence lands at Middle Head-Georges Heights-Chowder Bay; and the former Marine Biological Station at Watsons Bay.

The Sydney Harbour Federation Trust's comprehensive plan for these sites was approved by my predecessor, the Hon. Dr David Kemp, in September 2003. The plan was three years in preparation and involved wide community consultation. It is fair to say that consultation by the Sydney Harbour Federation Trust in the preparation of the plan was a hallmark of the planning process. A Community Advisory Committee, established under the Sydney Harbour Federation Trust's legislation, was instrumental in reflecting community interest in the sites and providing advice and recommendations on site outcomes.

The Sydney Harbour Federation Trust has begun the challenging task of implementing the comprehensive plan.

Former Defence lands at Middle Head-Georges Heights-Chowder Bay are being transformed into a Headland Park. The park will link all the elements of these disparate defence bases and bring them into accord with the great natural and cultural assets of the Middle Head plateau. A network of walking tracks, lookouts, revegetation and interpretive signage will underpin compatible uses of buildings and facilities and highlight the indigenous and military history of this beautiful headland.

The Sydney Harbour Federation Trust Act 2001 provides for the sale, subject to environmental and heritage considerations, of 19 residential lots listed in Schedule 2 to the Act. The residential lots are at Markham Close, Mosman. Other Trust lands are listed in Schedule 1 to the Act and are to remain in public ownership.

To date 12 residential lots at Markham Close have been sold by auction.

The effect of the proposed amendments contained within this bill will be to enable the Sydney Harbour Federation Trust to more effectively bring to the fore the natural ridgeline of Middle Head peninsula and add to the character of the Headland Park. This entails transferring 3 residential lots in Markham Close from Schedule 2 to Schedule 1, thus allowing them to be incorporated into the park and in exchange transferring the land on which a disused Scout Hall is located, currently included in Schedule 1, to Schedule 2 permitting its eventual sale.

This land swap is consistent with the Sydney Harbour Federation Trust's comprehensive plan and the fundamental objective of making its lands accessible to the public. The Scout Hall land does not have any significant environmental and heritage value and the Scouting Association has relinquished its lease on the land. The Scout Hall land, comprising around 2/10th of a hectare of Trust lands, would be sub-divided and sold for residential purposes.

The Sydney Harbour Federation Trust's preparation of the Management Plan for Markham Close included the proposal to swap land in the interests of highlighting the ridgeline of Middle Head peninsula and contributing to the creation of a spectacular Headland Park. The proposed land swap was overwhelmingly supported by the community during the exhibition of the draft Management Plan.

The proposed amendments contained in this bill will enable the Sydney Harbour Federation Trust to fulfil the objectives of the comprehensive plan and to open Middle Head peninsula for the benefit of the community.

CONSULAR PRIVILEGES AND IMMUNITIES AMENDMENT BILL 2005

This bill amends the Consular Privileges and Immunities Act 1972 to allow for additional privileges and immunities to be granted on a reciprocal basis to consular officers representing overseas countries in Australia. The Consular Privileges and Immunities Act incorporates specific Articles of the Vienna Convention on Consular Relations into Australian law. The Convention governs the conduct of consular relations between

nation States and establishes the privileges and immunities of consular posts and associated persons.

At the time the Convention was drafted in 1963, the drafters envisaged that the Convention might not cover all possible situations and circumstances affecting consular relations. Therefore, the Convention contemplates that states parties could extend additional privileges and immunities to other nation States through custom or agreement.

The changed overseas operating environment since the Convention was drafted in 1963 calls for reflection on whether the interests of Australia's consular officers serving overseas are, in all situations, offered the most appropriate protection available. This bill sets in place a framework within which Australia can negotiate, on a country by country basis, enhanced protections for persons performing consular duties on behalf of the Australian Government overseas. In response, Australia will offer reciprocal treatment to consular officials from overseas countries undertaking consular functions in Australia.

The main provision of this bill sets out the conditions under which Australia will grant additional privileges and immunities to an overseas country. The bill requires an agreement, arrangement or understanding—called a “reciprocal instrument” in the bill - to be entered into between Australia and an overseas country. This will grant reciprocal privileges or immunities, or both, which supplement, extend or amplify the provisions of the Vienna Convention on Consular Relations.

The amendment to the Act will not of itself grant additional privileges or immunities. In order for additional privileges or immunities to be granted, the Minister for Foreign Affairs must determine that the section will apply to a specific country and the reciprocal instrument must be in place. In line with growing international practice in this field, the granting of privileges or immunities will be negotiated bilaterally on a reciprocal basis. The bill also provides that any privileges or immunities shall be extended only for so long as the Minister's determination and the reciprocal instrument are in force.

The amendment facilitates the making of arrangements which will appropriately provide for

the changed operating environment of consular officials both in Australia and overseas.

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

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

PARLIAMENTARY ZONE

Approval of Works

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.33 a.m.)—I move:

That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the temporary location of a sculpture adjacent to Questacon.

The PRESIDENT—The question is that that motion be agreed to.

Senator O'BRIEN (Tasmania) (9.33 a.m.)—I had understood that this debate would be adjourned to a later hour. Let me explain the opposition's position as to why that is the case. When this matter was drawn to my attention yesterday, we had not been consulted about this particular proposition and I sought information regarding the proposal. That information arrived at my office this morning. I have taken steps to initiate the necessary consultation that I believe I should undertake prior to simply dealing with the matter as expeditiously as possible. I would request that the government adjourn this matter to a later hour of the day, which would allow me to complete that process. I do not believe on the face of it that this matter is controversial, but I believe that I deserve the opportunity to undertake the necessary inquiries to ascertain that that is indeed the case. I do not wish to obstruct the progress of this matter unnecessarily, but it

would be helpful if the debate on this proposal was adjourned.

Debate (on motion by **Senator Ellison**) adjourned.

**TAX LAWS AMENDMENT (2004
MEASURES No. 7) BILL 2005**

Second Reading

Debate resumed from 7 March, on motion by **Senator Hill**:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (9.34 a.m.)—The bill under consideration today is the Tax Laws Amendment (2004 Measures No. 7) Bill 2005. On the whole, Labor supports the measures in this bill but notes certain reservations which, in the case of schedule 1 of this bill, were sufficient to warrant further inquiry by a committee of the Senate. That committee has now reported, and I will address its findings shortly.

Schedule 1 creates the entrepreneurial tax concession announced in the election campaign by the Liberal government. Labor accepts the government can claim what is known as a mandate for the broad policy intent of the measure outlined in the election campaign. However, the announcement of an election commitment is not *carte blanche* to implement a bill that may have adverse and perhaps unintended consequences. Labor sees a potential threat to the tax base in this measure by unintentionally creating opportunities for tax avoidance.

Schedule 1 introduces a 25 per cent entrepreneurs tax offset on the income tax liability attributable to business income for small businesses in the simplified tax system that have an annual turnover of \$75,000 or less. Where the simplified tax system, or STS, turnover is greater than \$50,000, the offset will be phased out so that the offset ceases once the STS turnover reaches \$75,000. In relation to this measure, the explanatory

memorandum to the bill concedes that the taxpayer may be able to enjoy the concession more than once, as an individual or as a member of a partnership beneficiary to a trust or shareholder. The turnover threshold is low, at \$50,000 to \$75,000, apparently designed to restrict the concession to home based organisations. But the question can be asked whether a taxpayer might be able to split income in order to receive the concession on more than one occasion. Three hundred thousand persons are estimated to be affected, leading to an annual cost of some \$400 million. If compliance issues resulted in tax avoidance by further income splitting, this cost could expand significantly.

This measure has been put together in haste. It appeared in the last session. There is a case for questioning Treasury further as to what safeguards exist to ensure that this concession will be effectively targeted to genuine small-scale entrepreneurs and will not be used as a tax loophole for higher income households. The safety mechanism in the bill against this occurring is that which applies to the simplified tax system—namely, in order to be eligible for the offset, the grouped activities of associated entities are aggregated for the purposes of consideration of the turnover threshold. Those grouping rules for schedule 1 are those that apply to the simplified tax system. Such rules have been designed to apply to a turnover threshold of \$1 million. The question can be asked as to whether the same rules should also be applied to a much lower turnover threshold of income of \$50,000 to \$75,000—the government's own identified area—or whether stricter rules should apply. The Labor Party is not presenting amendments to the Senate in this regard, but it is an issue about which we forewarn the Senate and the government in terms of any future activity problems that may arise.

In the debate in the other place, my colleague the member for Hunter and shadow Assistant Treasurer, Mr Fitzgibbon, invited the minister to address the question about whether the phase-out of the turnover threshold between \$50,000 and \$75,000 would also create a modest increase in the effective marginal tax rates. I would be seeking an assurance that this phasing out of the measure will entail no significant disincentives. I put on notice that in the minister's reply to the second reading debate or in the committee stage we would like a response on that issue. The minister in the other place did not respond, in summing up, to the question posed by my colleague Mr Fitzgibbon. I would ask the minister to address this point.

The shadow Assistant Treasurer, Mr Fitzgibbon, also asked the minister to consider whether certain further measures might be warranted to ensure that this measure is better targeted at activities that represent genuine innovation or entrepreneurial activity. On the face of it, this is not really an entrepreneurial offset but an offset for a certain class of taxpayers who may or may not be engaging in entrepreneurial activity. This brings us to the complexity of the system, as it has been proposed, which is aimed fairly and squarely at what are sometimes referred to as microbusinesses. Many of these home based businesses are owned by people who do their own business activity statements and their own tax returns to try to avoid the expense of using an accountant, for example. We have to remember that the limits of \$50,000 at the beginning of the phase-out and \$75,000 at the end are not profit figures but turnover figures.

This presents a set of complexities, problems and subsequent amendments that this parliament had to deal with in respect of the BAS, the business activity statement. Do we really think that people who previously were not using an accountant are going to be able

to work their way through the formula proposed in this bill without having to seek formal professional advice? I would suggest that the chances of them needing to seek formal professional advice are much greater. Therefore, the costs to the entrepreneurial activity or business will be increased. How much net money will they receive, having consulted with an accountant? If they shift to an accountant for advice, how much of the end benefit will they receive in net terms? By and large, many of the businesses that are targeted by this measure could effectively miss out on the net benefit, or that benefit could be used to counterbalance accountants' fees. So to a large extent this could effectively be a subsidy for accountants.

Eligibility for this system is based on turnover, which means that home based businesses with high input costs are put at a huge disadvantage when compared with home based businesses that are delivering a service. For example, if you are a retired executive and are consulting from home, there will be very few input costs. There will be very little difference between your turnover figure and the profit figure on which your taxable income is based. That means that, with the same profit margin, some people are going to find themselves ineligible at a much earlier stage than people who have a service based home business. We fail to understand why the government has decided that, if you are a home based business with very few input costs, you will effectively be given a much better tax advantage than if you are a home based business with high input costs.

I would now like to put forward Labor's response to the Senate Economics Legislation Committee's report on the bill. Firstly, Labor thanks the officials from Treasury and the Australian Taxation Office, whose cooperation and assistance to the committee was prompt and extremely useful. We do not in any way criticise those officials for the ex-

planatory memorandum being removed from the web site before the committee hearing had begun. I find some of the abuses, frankly, that are being carried out by this government to reduce accountability quite extraordinary. We will see more of these after 1 July. Removing the explanatory memorandum makes it harder for members of the Labor opposition and presumably my colleague Senator Murray to effectively question and receive detailed, accountable responses. It is made much more difficult if the explanatory memorandum is taken out from under your nose and taken off the web site. We do not blame the public servants for that. The fault lies with the minister. This is just another example in a series of quite deliberate frustrations associated with Assistant Treasurer Brough's handling of recent taxation legislation.

The committee considered evidence from Treasury and the ATO in relation to the compliance concerns that Labor raised with regard to this measure. As I have indicated, Labor remains concerned about the capacity to use this offset as an income splitting device to avoid tax. The evidence presented to the committee by Treasury and the ATO was not completely consistent. Mr O'Connor, from the Department of the Treasury, indicated that Treasury 'does not anticipate this measure giving rise to people seeking to split businesses'. Mr O'Connor considered the STS grouping rules to be a robust and adequate defence against tax avoidance by income splitting. However, Mr Konza of the ATO—and I must say that the ATO are at the cutting edge of this sort of undesirable activity—indicated:

We also saw a risk that the same income might be split and people might try to claim the offset a couple of times.

Mr Konza noted that the ATO was developing computer testing software to identify such cases. So we had, on the one hand,

Treasury appearing to show no great concern about—perhaps no great understanding of—the level of abuse that could occur. On the other hand, the ATO, obviously having a greater understanding because it is at the cutting edge of taxation avoidance and minimisation schemes, takes the matter more seriously.

I was disturbed during Senate estimates to hear evidence, in a number of other areas, about significant problems the ATO had with their computer software in delivering surveillance of a number of different, mainly non-contentious, programs. I do hope that the ATO, if they are relying on computer testing software to be a line of defence against this undesirable activity, actually get it right and ensure that the problems that have been experienced in the ATO—admitted by Mr Carmody, the head of the ATO, who was obviously very concerned and agitated about it—are addressed and that the computer testing software is effective in minimising abuse in this area. The bottom line is that these STS grouping rules are relatively recent compliance measures and their effectiveness has not really been evaluated.

Labor believes that the government should consider a review of the measure's effectiveness after a two-year period. Again, I invite the minister to respond to this proposal. Labor agrees with the comments made by Democrat Senator Murray in the minority report of the legislation committee that an a priori case for a subsidy for entrepreneurs has not been made. Labor is concerned that this measure is not directed at effectively fostering entrepreneurial activity but is a tax cut promised in the heat of an election campaign for election purposes. However, Labor will not be seeking to amend the schedule, as I mentioned. A review of the effectiveness, or otherwise, of this legislation—and what it promises to deliver—is, Labor believes, an appropriate way to examine its long-term

effectiveness and any issues relating to tax minimisation/avoidance.

Schedule 2 of the bill extends the simplified tax system by removing the requirement that taxpayers must use the STS accounting method—generally referred to as a cash basis of accounting. This is meritorious in that it eliminates the need for an entity to maintain two sets of accounts under different bases—cash and accrual. Schedule 3 provides for rollover of income for shareholders in employee share schemes where there has been a merger or consolidation of a business entity. It allows taxpayers who have deferred income tax liability on a discount received on shares or rights acquired under an employee share scheme to roll over a taxing point that would otherwise occur because of a corporate restructure. This is a useful mechanism to improve labour market flexibility in the case of corporate mergers where such schemes exist.

Schedule 4 allows a fringe benefits tax exemption threshold for long service award benefits. It increases the fringe benefits tax, FBT, exemption thresholds for long service award benefits. This concession is an anomaly that exists from the introduction of the FBT regime. Schedule 5 provides for a tax concession for petroleum exploration. It allows the minister to allocate up to 20 per cent of the annual offshore petroleum acreage release areas as designated frontier areas. It also applies a 150 per cent uplift to certain exploration expenditure conducted in the first term of an exploration permit in a designated frontier area. I might add that there is an issue of disclosure in relation to the costing of this measure. The newly released tax expenditure statement indicated a cost profile of this measure over each relevant year of the forward estimates. However, in the explanatory memorandum of the bill an aggregate is provided only over the four years. I ask the minister to explain this apparent

oversight—or is the minister seeking to avoid disclosure of the cost of this measure in the explanatory memorandum?

Schedule 6 involves further finetuning of the consolidation regime. It ensures that certain liabilities taken into account when an entity leaves a consolidated group that correspond to liabilities brought into a consolidated group with a joining entity have the same value at the leaving time as at the joining time. Without this measure there would be potentially more than one basis for calculating liabilities. The schedule also ensures that there is no double reduction in cost base on consolidation, where an entity joins a consolidated group, by removing the requirement to reduce accrued undistributed profits to the extent that they have recouped particular sorts of losses. The schedule also ensures that the rollover relief available for partnerships under the standard capital depreciation allowances regime is available also to depreciating assets allocated to the simplified tax system.

Schedule 8 involves mere technical corrections and amendments. Schedule 9 involves a minor amendment to the refundable film tax offset to allow companies to apply for the tax offset where unused provisional certificates in respect of certain film projects remain in force. This allows companies who have applied for the special depreciation regime for domestic film production to apply for the foreign film tax offset. Although Labor understands that this measure is likely to apply to very few, if any, taxpayers, Labor does not oppose it. We would like responses to the three questions I have posed to the minister, either in the minister's summing up or in the committee stage. I understand there will be a committee stage, because Senator Murray has flagged some amendments. With those comments, I indicate that Labor will be supporting this bill.

Senator MURRAY (Western Australia) (9.53 a.m.)—The Tax Laws Amendment (2004 Measures No. 7) Bill 2005 is largely a technical bill. It contains, however, 11 distinct schedules and another 120 pages of taxation law, coupled with 201 pages of explanatory memorandum. So although it is technical, it is certainly not simple. It is about the same size as the Tax Laws Amendment (2004 Measures No. 6) Bill 2005 the Senate passed last week, adding to the piles of legislation in this field.

The Australian Democrats believe that the only really controversial schedules in this bill are schedules 1 and 5. These schedules were subject to the scrutiny of the Senate Economics Legislation Committee last month, which was very helpful. Before turning to those schedules and to prolong the suspense—as I am sure everybody is in suspense!—as to our position on these two schedules, I will briefly outline the merits of the other nine schedules.

Schedule 2 allows small business to use accrual accounting and the simplified tax system. The so-called ‘simplified tax system’ was introduced from 1 July 2001 as a measure to reduce compliance costs for small business. It allows application of a simplified depreciation system and simplified treatment of trading stock. Additionally, the simplified tax system required taxpayers to use the cash method of accounting. This schedule allows small business to use the accruals method if they consider it more appropriate for their business. The revenue cost of this proposal is estimated to be \$125 million for the 2006-07 financial year and \$130 million for the 2007-08 year, but obviously this is mostly a simple timing issue. Despite some reservations that this proposal overly complicates a supposedly simple regime, it will have Democrat support.

Schedule 3 to this bill amends the Income Tax Assessment Act 1936 in the event of a corporate restructure to allow taxpayers who have deferred the income tax liability on a discount received on shares acquired under an employee share scheme to postpone their taxing point. The revenue cost of this measure is considered unquantifiable but likely to be small.

Schedule 4 amends a fringe benefits tax exemption for long service leave awards. The current exemption is for \$500 for 15 years of service, and this amendment will double this to \$1,000. The Democrats support this measure. We should be encouraging employees to stay with employers who do the right thing and encourage commitment. We should not be taxing employers who generously reward their long-term staff.

Schedule 6 contains yet another consolidation measure. It clarifies some of the consolidation laws and ensures that the regime interacts with other aspects of the income tax law. Schedule 7 is another measure aimed at the simplified tax system. This schedule ensures that the rollover relief available for partnerships under the uniform capital allowances regime is also available in relation to depreciation assets allocated to simplified tax system pools. Again I draw attention to how complex this simplified tax system is becoming. This measure has a cost to revenue of around \$5 million a year.

Schedule 8 provides greater flexibility and reduces compliance costs and ongoing uncertainty surrounding family trust elections and interposed entity elections. This measure has no revenue impact. Schedule 9 corrects a minor technical defect in the treatment of non-commercial loans. Schedule 10 to this bill makes minor corrections and amendments to the taxation laws. The explanatory memorandum states:

These corrections and amendments are part of the Government's ongoing commitment to improve the quality of the taxation laws. They fix errors such as duplications of definitions, missing asterisks from defined terms, incorrect numbering and referencing and outdated guide material.

Those things are very helpful, but it is tempting to have some fun at their expense. There are pages of those sorts of amendments—maybe 20 pages—with some delightful components. For example, page 105 of the bill, at item 242, says:

Items 6 and 7 of Schedule 1

The items are taken never to have had effect.

You find items in the bill which say:

Omit “*company”, substitute “company”.

You find acres of statements about Australian residents which say:

Omit “not an Australian resident”, substitute “a foreign resident”.

This is the stuff of a technical draftsman's nightmares, to make sure that they have tidied up all the typos, mistakes, errors and contradictions that are in the law. But, I guess, behind making fun of that is the serious intent of pointing to the need to do the tidying up effort, and it has to be done.

Obviously, and I have long said so, the tax laws should be simplified. By broadening the base, by strengthening the anti-avoidance provisions and by reducing rates, you can achieve a greater simplification. But, unfortunately, simplification will require a complicated process. It is a disgrace that the income tax laws are still contained within two acts: the 1936 act and the 1997 act. These two acts overlap, interact and duplicate each other to determine a taxpayer's final tax position. This may be fantastic for the accounting and taxation advisory industry, who earn a fortune off the back of it, but it does not give ordinary Australians much confidence in the system or much confidence that they are correctly meeting their tax liabilities.

Schedule 11 makes a minor technical amendment to the refundable film tax offset. The Democrats obviously welcome any attempts by the government to promote and encourage the Australian Film Industry, but this measure does not have any revenue impact.

As I mentioned earlier, the controversial aspects of this bill are schedules 1 and 5. Both schedules were subject to Senate Economics Legislation Committee scrutiny, and the evidence indicates why the Australian Democrats have decided to oppose schedule 1. Schedule 1 contains the 25 per cent entrepreneurs tax offset. The evidence to the Senate committee showed that not only is the legislation overly complex and, in my opinion, somewhat badly drafted but most of all it is bad tax policy. There is no evidence whatsoever for its need. There is no evidence whatsoever that Australian micro and small business lack sufficient entrepreneur spirit or that their numbers have been held back by lack of entrepreneur spirit. In fact, the reverse is the case.

There is a shortage of workers in a number of trades—for example, plumbers, bricklayers, boilermakers and carpenters. No evidence was provided that the entrepreneurs tax offset would encourage workers into these areas, particularly due to the limitation of a \$75,000 turnover threshold. Of course, to obtain the full tax offset, a business must have a turnover of less than \$50,000. Evidence provided to the committee by the Australian Taxation Office indicated that less than a third of plumbers, bricklayers and carpenters would meet the \$75,000 turnover limitation anyway, so there is no entrepreneurial motivation, apparently, for the remaining two-thirds of those small businesses. This is an untargeted measure, generated in the heat of an election campaign, that will apply equally to all classes of micro and small business—some 300,000 apparently—

whether the goods and services they provide are in excess or in short supply.

As I asked in my Senate minority report: why is this incentive not just targeted at micro and small business areas that are in short supply? The answer is that this policy is not an incentive at all; it is a political gift. There is no evidence that schedule 1 will result in further entrepreneurial activity being encouraged, although, *prima facie*, it will make businesses that falls within the threshold more profitable. This measure creates yet another class of what Treasurer Costello calls rent seekers. The coalition's entire income tax strategy seems at present to consist of parcelling out income tax concessions to targeted constituencies in an apparent attempt to secure their vote. That may be in the coalition's political self-interest, but it is not in the national interest and it is certainly not in the interest of a simpler and more effective tax system.

Fortunately, some coalition backbenchers are starting to rebel against blatant political pork-barrelling and are focusing on the bigger policy issue. They include Mr Malcolm Turnbull, with his recent remarks, and what is becoming known as the ginger group—who I would hope recognise this legislation as bad law and bad policy. Unfortunately, I very much doubt that the Liberal backbench campaign for structural income tax reform would extend to crossing the floor on issues like these, and I also very much doubt that Labor will find the energy to really knock over bad policy like this.

Changes to the Income Tax Act such as this only serve to further complicate an already excessively complicated income tax system. This schedule may only be nine pages long, but it could only be followed by an accountant with a good understanding of taxation law and it is likely to result in additional compliance costs. No estimation has

been made of the compliance costs for taxpayers or for the Taxation Office. I do not want to fully explain how the offset works in this short address but I would like to quote from the speech made in the second reading debate in the House by Labor's Mr Tony Burke. I will just repeat a small portion of his explanation as to how the offset works:

You are then asked whether your STS group turnover equals \$50,000. If the answer is yes, you multiply A by the STS percentage; if the answer is no, you calculate the STS phase-out fraction by subtracting the STS group turnover from \$75,000 and then divide the result by \$25,000. Having done that, if you went through the first path, where it was equal to \$50,000—and you multiplied A by the STS percentage—then at that point you have the 'entrepreneurs' tax offset'. If you went through the other path, where you performed the fraction that divided by \$25,000, you then finally multiply A by the STS percentage and by the STS phase-out fraction to get the entrepreneurs' tax offset.

You can only think, 'Phew!' when you hear that. The House of Representatives *Hansard* records that at that point Mr Alan Cadman, the Liberal MP for Mitchell, interjected with the comment, 'Mind numbing.' I cannot help but concur with Mr Cadman's comment about his own government's legislation.

One journalist, Peter Switzer, reported on this bill in the *Australian* on 15 February 2005 under the heading 'Accountants the victors in tax offset'. He quotes a chartered accountant who thinks it will take one to two hours to sit with a new client to determine their eligibility for the tax offset. The estimated cost of around \$400 would be payable irrespective of whether the small business owner is actually eligible for the offset. All of this serves to again emphasise that what is needed in income tax reform is not these kinds of confusing and complex political gifts but major structural reform. Tinkering at the edges just will not do. The income tax system must be simplified and tax conces-

sions that feed rent seekers and create inequities must be done away with, because this creates yet another class of privileged taxpayers who do not deserve that particular privilege and political gift.

The Democrats strongly support the comments of people like Mr Malcolm Turnbull with respect to the need for tax reform. In fact I cannot help but feel that he and other Liberal backbenchers have been not only reading our tax policy but following the campaign that I have been running for the last few years. It is gratifying that this is now starting to get the sort of attention that, in our view, has been needed for a long time. Simplifying the system and broadening the income tax base would free up money for genuine tax cuts and greater equity. Certainty and equity in income taxation are vital. Certainty and equity should be delivered by a three-part plan phased in over a number of years in order to ensure affordability.

With these objectives in mind, my priorities would be a \$20,000 tax-free threshold, indexation to end bracket creep and possibly a \$120,000 top rate threshold—all of which should be aimed at over a number of years and as they become affordable, but in that order. At the very least the government needs to accept that it is entirely inappropriate to tax income below \$12,500, which is the estimated minimum subsistence income. In the meantime, the Democrats' priority is to keep addressing the needs of low-income workers, to try and get their disposable income increased and their living standards improved, to reduce their crippling high effective tax rates and to help poorer Australians move from welfare to work. We would hope that one day the government will adopt that simple kind of approach to restoring equity to our tax system.

We think the best single way to restore equity and to deliver structural reform is to

start by raising the tax-free threshold. This has a side benefit of flowing on to all Australian taxpayers, not just a favoured few, but it has the main benefit of having its principal effect on low-income and middle-income Australians. It is also a policy which is easily understood by taxpayers, which is a core need in any tax reform. I and others are well aware that there are alternative methods by which you can tackle tax reform, but we need to focus on the psychology of taxpayers, on their need for things that they can understand, that they understand to be fair, which are easily discussed and easily understood. Our income tax system is not easily understood. That is an important part of a tax system. If people think they are getting a fair go, if the psychology is attended to as well as the economics, then you are likely to have far less tax avoidance than we have at present and a far cleaner and easier to administer system.

The Democrats say that this bill's complicated, unnecessary and unfair tax cut for a selectively limited group should be shared by all taxpayers. The evidence presented to the committee demonstrated that the entrepreneurs' tax offset in schedule 1 is unduly complicated. Further, neither the Treasury nor Taxation Office representatives could demonstrate any measurable economic or social benefit from the proposal. Our preference is to redirect the \$400 million a year Treasury estimated cost of this proposal to increase the tax-free threshold from \$6,000 to \$6,260. At an estimated cost of \$398 million a year, this would provide Australia's nearly nine million taxpayers with a \$44.20 a year tax cut, or around 85c a week. The 2003 budget tax cuts were referred to as the sandwich and milkshake tax cuts. Our redirection of this unnecessary, ill-conceived and badly targeted proposal would provide all Australians with a Freddo Frog tax cut.

We are also concerned about the possible tax avoidance opportunities, as the legislation makes it clear that taxpayers may claim more than one tax offset. Arguably a relatively well-off taxpayer could restructure their affairs so that they run a diverse range of businesses, each with a turnover under \$75,000, and claim an entrepreneurs' tax offset on each. It has often been stated that the three elements of an ideal tax system are efficiency, simplicity and equity. In our opinion the entrepreneurs' tax offset meets none of these criteria and arguably makes all three worse. The Australian Democrats will be opposing schedule 1 and we will introduce an amendment, as I have outlined, to provide an income tax cut for all Australian taxpayers. The cost of both proposals is the same, so senators can choose between an ill-conceived, unnecessary and complex tax incentive for a small, exclusive group in the government proposal or the alternative, our proposal for a simple small tax cut for all Australian taxpayers. This would at least send a message as to the Senate's views on priorities for future tax cuts.

In respect of schedule 5, the petroleum exploration incentive, I will not deal with that at length. I was surprised that the estimated cost of \$17 million over three years would have any industry benefit. The evidence provided to the Senate was to the contrary. However, no consideration was made as to the degree to which Australia's long-term greenhouse mitigation costs may or may not increase as a result of this \$17 million additional investment in oil and gas exploration through the PRRT system, which, as we know, is offshore. The Australian Democrats have a history of supporting prospecting and research and development measures. We opposed the government's cost-cutting in this area, and later data has proved us right. We do not oppose schedule 5, which allows a 150 per cent uplift to certain explo-

ration expenditure conducted in the first term of an exploration permit in a designated frontier area. For my further views on that matter I refer the chamber to my minority report. Whilst I still have the time, I want to move my second reading amendment, which has been circulated in the chamber. I move:

At the end of the motion, add:

"but the Senate calls on the Government to commit to further incentives for the renewable energy industry, as an even-handed offset to match the benefit provided to fossil fuel industries through the frontier areas exploration tax benefits established by this legislation".

In conclusion, I return to schedule 5. I for one would like to see much more gas found, particularly as gas is a direct competitor to coal for electricity generation. (*Time expired*)

Senator WATSON (Tasmania) (10.13 a.m.)—Unfortunately, due to the whips' time constraints I will have to limit my comments to schedule 5 of the Tax Laws Amendment (2004 Measures No. 7) Bill 2005. In doing so I wish to speak very positively about this initiative, which affects the tax incentive for petroleum exploration in designated frontier areas. Exploration expenditure within certain limitations will be, under this bill, uplifted to 150 per cent from 100 per cent, with this amount being deductible for the purposes of the petroleum resource rent tax.

Australia, as we all know, has extensive offshore basins with petroleum production potential but most of these areas have not been explored because they are often in deep water and distant from existing infrastructure. This makes exploration in such areas relatively expensive and risky. The bill contains an incentive for companies to explore in designated parts of such areas, which are known as designated frontier areas. Underlying the incentive in the bill are the broader issues of declining self-sufficiency—that is, the ratio of crude oil and condensate, including liquefied petroleum gas, to consump-

tion—and concerns about the level of expenditure on exploration, especially offshore. With future indigenous crude oil and condensate production predicted to decline, the incentive is primarily aimed at boosting exploration, especially offshore.

The gap between imports and exports is expected to widen considerably in the next 15 years. Australia exports more refined petroleum products than it imports, but Australian refineries rely on imports for about 60 per cent of the crude oil they use. Increasing dependence on imported oil has the potential to place further pressure on Australia's trade balance.

Exploring for oil and gas is expensive. Australia is also considered a risky place to explore and success rates are low compared to other countries. Nonetheless, substantial sums of money are being spent on exploration for oil and gas in this country. However, the overall trend for the last two decades has been for levels of exploration to decline. I believe this bill will help turn this situation around.

It is important to stress that there was no evidence before the committee to suggest, nor is there any reason to believe, that the bill would have any impact on the Great Barrier Reef, which certain opponents of this bill conjured up, or have any other environmental impact. It seems that criticisms made by certain members of the environmental movement about this bill are just plain wrong.

It was interesting to note that Mr Barry Jones of APPEA has pointed out that in discussing fossil fuels there is a need to distinguish between coal, oil and gas. He says the distinction is critical in the context of greenhouse policy since gas generally has considerably less emissions than coal and oil and is seen by many as the fuel of transition to a post greenhouse emission world. If nuclear

energy is not an option, natural gas is the only low-emission supply option available for stationary energy uses. Government measures impacting on the fossil fuel sector differ significantly between petroleum and coal. For example, petroleum pays considerably more tax; diesel fuel rebates are generally not available to petroleum producers.

The taxation law allows exploration and prospecting expenditure as an immediate allowable deduction in the calculation of assessable income for company tax purposes. This reflects the nature of such activities as being a necessary pre-condition to future potential development and production related activities, which are generally not immediately deductible in other sections of the act. This type of activity, and therefore the cost, is largely unique to the resource sector and is treated in the appropriate manner. From a practical perspective, it would be difficult to contemplate any alternative method.

It is important to clarify some other aspects of the bill. Eighty per cent of marine pollution is land based. This figure is from the *State of the environment report*. For example, 80 per cent of oil in the ocean comes from onshore and most marine based oil pollution comes from shipping. The Sydney sewerage system discharges 16,000 tonnes of oil into the Sydney basin annually.

The committee concluded that the passage of the bill will not in any way heighten the risks to the environment and found that arguments to that effect were unsustainable. We noted that the measures in this bill are relatively modest but should not be viewed in isolation. It is actually part of a suite of initiatives, current and future, that are required to address the issue of Australia's energy supplies. In particular, the government's white paper, *Securing Australia's energy future*, provides a comprehensive overview of the government's initiatives in this area.

These include significant support for renewable energy programs. I support the bill.

Senator CHAPMAN (South Australia) (10.19 a.m.)—The Tax Laws Amendment (2004 Measures No. 7) Bill 2005 introduces some 11 different schedules amending the tax acts across a range of issues, all of which are very welcome initiatives of the Howard government. Some of them were commitments made in the last budget; others were commitments made during the election period. As I say, they are all very welcome, including the introduction of the 25 per cent entrepreneurs tax offset, the removal of the current requirement for small businesses to use the STS accounting method to enter the simplified tax system and, as Senator Watson has referred to in some detail, the incentive designed to encourage petroleum exploration in Australia's remote offshore areas in relation to concessions regarding the resource rent tax.

Another very welcome initiative is that contained in schedule 8 of the bill, which provides greater flexibility, reduced compliance costs and ongoing certainty surrounding family trust elections and interposed entity elections. This was an announcement made in the 2004-05 federal budget and will allow family trust elections and interposed entity elections to be made at any time in relation to an earlier year of income. These are elections that are made under the trust loss rules in schedule 2F of the Income Tax Assessment Act. Generally speaking, a trust that makes a family trust election needs to pass a reduced number of tests in order to carry forward and/or recoup losses under the trust loss rules. Furthermore, family trust elections allow tracing for the purposes of applying the continuity of ownership test for the purposes of recouping losses in companies, and also allow franking credits attached to dividends received by a trust to be passed through to beneficiaries of that trust. It will

allow entities that generally make interposed entity elections to receive distributions from trusts that have made family trust elections, also without the imposition of a penalty tax on such distributions.

The implementation of this very welcome initiative does give rise to the opportunity to address a number of other deficiencies and inappropriate income tax consequences that arise from the requirement for making family trust and interposed entity elections. They are unintended consequences, I believe, of a far too restrictive legislative framework. I have to say to the minister that I warned at the time that this legislation was being considered by the Senate Economics Legislation Committee, I think way back in 1997, that these unintended consequences would arise.

This legislation was drafted far more widely than was needed to deal with the issues that it sought, quite legitimately, to prevent, such as trading in trust losses and trading in franking credits. Indeed, this legislation was a sledgehammer to crack a nut. I fear this is the case with a lot of tax legislation that comes before us these days—it is drafted far more widely than is necessary to deal with the perceived problem. I notice a nod from Senator Murray agreeing with me. Another example of that was the legislation which came before the Senate Economics Legislation Committee last year dealing with the payment of defined benefit pensions by self-managed superannuation funds. That legislation is currently under review.

I have had drawn to my attention a submission from the Institute of Chartered Accountants which has gone to the Minister for Revenue and which seeks certain other changes to the family trust election requirements to overcome some of these unintended consequences. As I understand it, the institute sought for those changes also to be incorporated in this legislation. I think it is a

matter for regret that they have not been incorporated in this bill. I certainly hope they will receive positive and favourable consideration from the minister and be incorporated in future legislation.

One of the issues that that submission raises is the definition of a family group for the purposes of family trust election. Under the current legislation a family group includes any parent, grandparent, brother, sister, nephew, niece, child or grandchild of the so-called test individual; or the test individual's spouse or the spouse of any of those people. There does not seem to be any policy rationale for placing a generational limit on the definition of a family, especially given that the typical life of a trust—certainly of those trusts that were set up in the 1960s and 1970s—is 80 years. The life of trusts that have been established more recently, since the abolition of the perpetuity laws by states, is perhaps infinite. Those trusts commonly extend into the fourth generation and beyond. The consequence of this under the current legislation is that many family trusts will eventually have to distribute outside this narrowly defined family group and then be subject to a penalty tax, the family trust distribution tax.

This issue of family definition also raises a much larger issue in relation to family trusts—what I would call the *de facto* death duties that apply to them under current legislation. As I said a moment ago, many family trusts were established in the 1960s or the 1970s before the states, either legislatively or in practical effect, abolished the laws against perpetuity; hence, trusts typically had a vesting date of 70 or 80 years, after which the assets would be distributed to beneficiaries, typically individuals or another trust.

However, I am advised that, following the introduction of capital gains tax in 1984, the ATO regards the vesting of a trust as a capi-

tal gains tax event—in effect, a death duty: the imposition of a substantial tax on what is in effect an intergenerational transfer of assets, when no such tax applies to similar transfers between individuals since the very welcome abolition of death and estate duties following widespread community pressure to eliminate this unfair tax about 30 years ago. Hence a problem does exist currently, although I guess it something of a sleeper because in most instances it will probably be another 20 years or so before many trusts start to reach their vesting dates.

The introduction of the family trust election requirement has worsened this situation. By applying a penalty tax rate to trust distributions to generations beyond grandchildren of the test person, the legislation effectively shortens the life of family trusts in many instances to less than the defined vesting date. It is highly likely that grandchildren will expire before the defined vesting date—effectively shortening the life of the trust. As I mentioned earlier, for more recent trusts, which do not have a vesting date, this requirement has the practical effect of applying one.

I believe the government must eliminate this *de facto* death duty on family trusts. To achieve this, the legislation should be amended to allow the family group relating to a family trust election to include any lineal ancestor or descendant of the test person. If it is regarded as essential to limit the extent of distributions in any particular year, then this provision could be supplemented by a provision that distributions can be made to no more than five successive generations in any particular year—that is, the number of generations which currently make up the family group. If, in a subsequent year, it was desired that a distribution be made to, for example, great-grandchildren, then it would not be possible to make a distribution to grandparents and so on. The second change required

is that, for trusts that have not already taken advantage of the state's abolition of laws against perpetuity, legislation should be initiated to allow trust deeds to be amended to achieve this without it being defined as a capital gains tax event. Alternatively, the law should be amended to provide that the vesting of a trust is not a capital gains tax event.

Other issues which are raised in the submission by the Institute of Chartered Accountants include the difficulty in revoking a family trust election. In general, family trust elections are irrevocable, except in relation to certain fixed trusts; however, this power to revoke family trust elections is never exercised because there are simply no, or very few, trusts that fall within the definition of a fixed trust for the purpose of trust loss rules. The definition of a fixed trust in relation to trust loss rules is much narrower than the general commercial view of what constitutes a fixed trust. In that context it would be appropriate to review and modify the definition of a fixed trust.

There is also no discretion allowed for the Commissioner of Taxation to allow the revocation of a family trust election. The Institute of Chartered Accountants have highlighted numerous examples of errors that have been made by both taxpayers and tax practitioners in the preparation of family trust elections, including the specification of incorrect test individuals and the making of family trust elections that were not required.

These errors are largely attributable to the excessive complexity of the trust loss rules and the legislation. Therefore it would be appropriate to provide the commissioner with a discretion to allow certain terms of a family trust election to be changed in the event of an inadvertent error or where a family trust election was made where it clearly was not necessary. That situation also applies

with regard to the revocation of interposed entity elections.

The institute also suggests that a choice should be given to revoke elections after losses or debt deductions have been utilised. It was, as I understand it, the objective of the trust loss rules to ensure that only those who economically suffered a loss benefited from the eventual recoupment of that loss. If that is the case, then there is no need for the rules to continue to apply to trusts that have made family trust elections where the losses have already been fully recouped or that no longer have any debt reductions. Once there are no losses or debt reductions in a trust, there is no policy reason to continue to confine distributions to members of the test individual's family group. The taxpayers should have the choice to revoke a family trust election if a trust no longer has losses or debt reductions.

The institute has also identified problems that relate to the death of a test individual. It has also raised the issue of extending the advantages of making a family trust election to interposed entity elections. Currently, interposed entities that make interposed entity elections suffer the same restrictions as family trusts making a family trust election but they do not enjoy the advantages that a family trust election provides. There are a number of other issues raised by the Institute of Chartered Accountants in its submission to the Minister for Revenue that highlight the various ways in which the current legislation is commercially inhibiting, and they are areas that also require detailed examination and, I believe, a positive response.

As Senator Watson said, we do not want to delay this current legislation; however, I did want to raise those issues. I think they are issues on which the government should take the initiative and respond positively, particularly the issues highlighted in the submission from the Institute of Chartered

Accountants and the issue of what I believe is very much an unintended consequence of this legislation, which is the de facto capital gains tax or death duty that, in effect, currently applies to family trusts.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.32 a.m.)—I wish to speak about schedule 5 of the Tax Laws Amendment (2004 Measures No. 7) Bill 2005, the petroleum exploration incentive to allow a 150 per cent deduction for exploration expenditure in designated frontier areas. I have two concerns about this proposal. The first is the environmental implications and the second is that this constitutes yet another handout that shows that the government has not understood the need for shifting from the view that the future is with fossil fuels to a view of a future with more sustainable alternative fuels and renewable energy. On the first point, the frontier areas include areas just off the Great Barrier Reef. I note that the ALP still have not decided whether they will join the Democrats to renew our bill to prevent oil drilling and exploration in areas adjacent to the Great Barrier Reef. I hope that they do so and commit to their previous strong position on this matter and, in the meantime, oppose this incentive that may result in active explorative drilling off the reef.

While there is evidence to suggest that the incentive will benefit prospecting for gas as well as other fossil fuels—and we welcome that because gas is less damaging as an energy source—the Democrats still do not see the need for exponential expansion of prospecting in remote areas for oil. There would appear to be little need for further subsidy of what is an already highly lucrative oil industry, particularly as the price of a barrel of oil continues to rise and oil production, as was noted in the media this week, is likely to peak within the next 10 years. After that time, the price of oil will significantly in-

crease, which means that providing subsidies for exploration probably will not be necessary.

Given the minimal support that is provided to renewable energy in this country, it is worth making some comments about what this great benefit to the oil companies might have meant had it been extended to renewable energy. The government introduced the mandated renewable energy target some years ago, but we now know that 70 per cent of that target has already been taken up by hydro—by far the biggest contributor to the MRET scheme; that is existing hydro, not even new hydro—deemed solar hot water services and landfill gas. So two-thirds of the measure has been taken up, I think, by renewable energy, which was not anticipated to be the way that the mix, the diversity, of energy sources would turn out. It is 36 per cent hydro up to the present time—it might be higher than that this year. Because of the baseline, we are seeing a very lucrative awarding of renewable energy certificates to hydro. Whilst hydro, particularly in Tasmania, has put some of that money into wind farms—and that is a fine thing to do—and improved the efficiency of their hydro schemes, I am sure it was not what was anticipated in this place when the legislation was passed. So wind makes up only 11 per cent of the total.

The review panel, in looking at MRET, recommended that by 2020 wind should make up 41 per cent, but that is highly unlikely when very little assistance is given to the renewable energy sector. Imagine if there were a 150 per cent deduction for wind exploration—not that wind exploration is as difficult as oil exploration; I recognise that—and you extended it to developing proposals, searching out sites and so forth. This would be very helpful. Searching for geothermal opportunities is a very expensive process, which is similar to exploring for oil in that

you are looking underground for opportunities to tap into energy sources, but it is not addressed in this bill, which is a great pity.

Going back to the reef, we are firmly of the view that areas such as those adjacent to the reef are critically important for tourism income. They may be permanently and irreversibly damaged by large-scale petroleum exploration. The government, I think, just on that theme of not paying much attention to a sustainable energy future, has had a minimalist approach to encouraging renewable energy generally. Its energy white paper, which the Senate Environment, Communications, Information Technology and the Arts Committee will look at further on Friday, provides excise cuts worth an astonishing \$1.5 billion to diesel users. The greenhouse cost of this kind of policy, or lack of it with regard to renewable energy, is going to be paid for by our children and our grandchildren.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.38 a.m.)—It is now my pleasure to sum up the Tax Laws Amendment (2004 Measures No. 7) Bill 2005. Firstly, I would like to thank all senators for their contributions to this debate. I would also like to thank the opposition for their support of this bill. I appreciate that Senator Sherry has asked a number of questions, which I will come to at the end of my summing up remarks.

The bill recognises the importance of the small business sector by introducing a number of measures that will be of particular assistance to small business. The other parts of the bill benefit businesses across the board. Small business is set to benefit from the entrepreneur's discount. As has been discussed before, the discount amounts to 25 per cent of tax attributable to small business activities when annual turnover is up to \$50,000 and the business is in the simplified tax system. It

phases out when turnover is between \$50,000 and \$75,000.

I do note Senator Murray's comments on the discount in the minority report of the Economics Legislation Committee's review of this bill. The government, however, does not agree with those conclusions. There are a number of reasons for this, and I will mention them briefly. Firstly, the discount is aimed at fostering the entrepreneurial spirit in the smallest businesses—microbusinesses—and often those run from home. It is an incentive to small businesses either to get started or to keep going. If the discount does help fledgling businesses to grow and be successful, its value will be more than recouped in the future, not just in terms of economic growth but because a vibrant small business sector is an important part of a vibrant community.

A lot of people who use this provision will not be particularly well off. Many have bought themselves a job, in effect, but many people will be looking to build a successful business from the ground up and will benefit from a helping hand to get going. When I refer to a helping hand, I think I can characterise it as a hand up, not a handout. Many of the businesses which will qualify for the discount are run from home and of course many are run by women as being the most appropriate way to fit in with their work and family responsibilities.

On another point, it is not correct, in my view, to say that the provisions will be abused by rich taxpayers restructuring to bring themselves within the concessions. The antigrouping provisions will stop the kind of restructuring that I think Senator Murray has raised, and about which I know Senator Sherry has asked some questions, which I will deal with shortly.

Senator Murray also foreshadowed an amendment to cut income tax, and there are

some points I would like to make in that regard. Firstly, this government does have a strong record when it comes to cutting income tax. Since tax reform began, there have been three rounds of cuts to income tax. The tax cuts provided in the 2004-05 budget were the third stage of the government's reform to income tax, which commenced on 1 July 2000 and included a second instalment on 1 July 2003. The cumulative effect of these changes was to apply the 30 per cent tax rate over a broad range of income. The tax cuts announced in the 2004-05 budget mean that the 30 per cent rate will apply to incomes over the range \$21,600 to \$58,000 from 1 July 2004. This will be further extended from 1 July 2005 so that taxpayers will remain in the 30 per cent tax bracket for incomes up to \$63,000. More than 80 per cent of taxpayers will remain in or below the 30 per cent tax bracket over the forward estimates period—that is, the four-year period for which estimates are forecast in the budget. Looking at it perhaps another way, less than 20 per cent of taxpayers will be in the top tax bracket and less than 11 per cent of taxpayers will pay the top marginal tax rate.

At the same time, there has been a substantial expansion in the government's program of family benefits. Taken together—and I think this is a very interesting figure—total assistance to families has increased by more than \$6 billion since 1996. Secondly, I do question the wisdom of a tax cut which takes the form of an increase in the tax-free threshold. It is not the way to ensure that the benefit goes to those who need it most. An increase in the tax-free threshold applies, of course, across the board to all taxpayers whatever their incomes—not very well targeted, we think.

The other measures in the bill are all aimed at business. Several of them form part of the package of measures announced in last year's budget, which were aimed at reducing

compliance costs for small business and providing greater flexibility to taxpayers in managing their affairs. These include an extension of the simplified tax system to otherwise qualifying businesses using accruals accounting. The other change to the simplified tax system relates to the depreciation provisions governing the disposal of assets and will put people in the simplified tax system in the same position as other taxpayers when it comes to a change in the constitution of a partnership. As has been noted, the law is being amended to allow more flexibility as to when a family trust election or interposed entity election can be lodged. Lodgement will now be accepted at any time after the relevant return has been lodged.

Similarly, the changes to the non-commercial loans rules provide more flexibility for businesses, especially small ones. The changes will give companies more time in which to put a loan to a shareholder or beneficiary on a commercial footing or to repay it. Now companies will have up until when they lodge their income tax returns for the year, possibly December or even later.

Other measures in the bill concern employers and employees. There is a measure to improve the effectiveness of the employee share regime by ensuring that a company restructure is not necessarily enough to trigger the imposition of tax on the shares and double the fringe benefits tax exemptions for long service awards.

I also note the important measure aimed at encouraging explorations for new petroleum deposits that has been the subject of some of the contributions this morning. Australia has approximately 40 offshore basins that display signs of petroleum potential, but half remain unexplored due to the cost and high-risk nature of exploration in remote frontier areas.

Returning, for the purpose of these concluding remarks, to income tax, there is a further tranche of consolidation amendments, this time with the focus on corrections to the cost setting rules, bad debts and life insurance companies. The last main change removes an anomaly from the film tax offset rules. The law will now be changed so that the division 10BA certificate can be revoked and producers can have access to the new offset if they decide to seek foreign finance which is excluded from division 10BA.

Having made those comments by way of summing up, I turn now to some specific issues that were raised in the course of the second reading debate. Senator Sherry was at the Senate committee hearing where Treasury apparently maintained that the grouping rules were robust, while the Australian Taxation Office said that it would be developing compliance programs aimed at taxpayers attempting to split income to obtain the benefit of more than one offset. I have sought some advice in that respect and can say that the government is confident that the grouping rules address the splitting of income between entities to inappropriately claim more than one offset. It is appropriate for the ATO to develop compliance programs to detect taxpayers who may attempt to claim multiple offsets beyond their entitlement under the law. I am advised that both Treasury and the ATO will monitor the implementation of the offset to identify any unintended outcomes.

With respect to another issue raised by Senator Sherry relating to the effect of the entrepreneurs' tax offset on effective marginal tax rates, I am advised that eligibility for the entrepreneurs' tax offset phases out for every dollar of turnover between \$50,000 and \$75,000. It is a generous phase-out range which ensures that it will not have a significant impact on effective marginal tax rates. Further to that, basing eligibility for the offset on turnover and not profit will ensure that

the offset is appropriately targeted at genuinely very small, micro and home based businesses, as is the policy intent. Basing eligibility for the offset on profit would allow much larger businesses with up to a \$1 million annual turnover but with small profit margins to be eligible for the offset. Indeed, the calculation for the offset is certainly not complicated. While the ATO is still determining the information taxpayers will need to provide to claim the offset, it is likely that simple, small microbusinesses will only need to provide readily available business information that is already required for income tax purposes. It is certainly not the intention to make compliance difficult. Senator Sherry also asked for a year-by-year breakdown of the costing on petroleum resource rent tax. I am advised that the figures are as follows: firstly, nothing for 2004-05; \$2 million in 2005-06; \$6 million in 2006-07; and \$9 million in 2007-08, which is \$70 million over the forward estimates period.

Finally, in relation to Senator Allison's comments on the petroleum resource rent tax, I want to put on record a couple of comments about renewable energy and the government's action in that regard. The concession for the petroleum industry is worth \$17 million, as I have just indicated in response to Senator Sherry. This government has committed to expenditure of many times that amount in relation to renewable energy. However, in the energy white paper *Securing Australia's energy future*, the government committed to a range of measures, including \$75 million for solar city trials in urban areas, \$134 million to remove impediments to the commercial development of renewable technologies, \$20.4 million for the development of advanced storage systems for electricity from wind power and other intermittent generation systems and \$14 million to develop a wind forecasting system for Australian conditions. Furthermore, the govern-

ment will provide \$100 million over seven years to the renewable energy development initiative to support renewable energy initiatives with strong commercial and emissions reduction potential. I want to place that on record because there was an inference that the government had not otherwise addressed what of course is a very important matter—trying to look at making renewable energy sustainable. With those remarks, I trust I have dealt with the queries that were raised in debate. I apologise if I have missed any, but no doubt it will be brought up if I have. I commend the bill to the Senate.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (10.52 a.m.)—From the perspective of the chamber, I think I have given the motivation for our views on this very fully in my speech in the second reading debate. Unless Senator Sherry or the minister wish me to, I am not going to expand on those. I consider that by virtue of the kinds of amendments I have I will have to move them separately, but I will talk to both if that is in order.

Amendment (1) knocks out the offset. We disagree with the government on that policy and we choose to do that. Amendment R(2), even if the first is not knocked out, is really stating a point of principle which we feel quite strongly about. As both the coalition and the Labor Party are aware, the Democrats have for a number of years been campaigning to increase the tax-free threshold. We have unsuccessfully tried to raise it to \$10,000. In each case we have used the sum of money which the government said was available in a particular bill and converted it for another purpose, and that is exactly what

we have done here. The explanatory memorandum gave us a cost of \$400 million. It is our understanding that the cost of our proposal is about \$398 million, so it is pretty well revenue neutral if item 1 is opposed. Of course, if item 1 were not opposed then there would be an additional \$400 million on the bottom line. The Democrats oppose schedule 1 in the following terms, as set out on sheet 4540:

(1) Schedule 1, page 5 (line 2) to page 13 (line 27), **TO BE OPPOSED**.

As I said earlier, if Senator Sherry or the minister wish me to talk more to the amendments, I will.

Senator SHERRY (Tasmania) (10.54 a.m.)—The Labor Party will not be supporting this amendment, nor will it be supporting the linked second amendment which changes the tax-free threshold. Before dealing with that I will comment on a related matter. I know that, in general, with tax bills that are wide ranging in their nature and that contain a number of schedules and a number of matters, it is traditional to raise—although perhaps not strictly in accordance with standing orders—virtually anything to do with tax. I really was not sure whether Senator Chapman, on behalf of the government or a government backbench, was speaking in support of the bill. I thought it was more like an attempt to set up yet another Liberal government backbench ginger group, the Chapman ginger group, with his critique of alleged problems in respect of trust structures.

We have these fringe pressure groups springing up everywhere. We have the Chapman group now, its issues in direct contrast to the issues that the Turnbull ginger or pressure group was raising, and of course we have the Panopoulos-Fifield ginger group. We have all this jostling amongst these various ginger groups on the government backbench—(1) for attention and (2) for, at times,

quite contradictory approaches to tax reform in this country. I thought Senator Watson's comments on the bill itself were more to the point. I may not agree with everything Senator Watson said, but his comments were more to the point of the speech and contribution on the bill.

I thank the minister for her response. The point about the costings of the petroleum measure is that they should have been included in the EM. The figures she gave us were not included in the EM. I think that was as much our concern as the figures themselves. Labor believe the impact of the MTRs is a disincentive; as best as we can indicate, it is three to four per cent. In terms of the debate, that is more for noting as one of the consequences. Whilst I do understand these things are difficult to calculate, if the Labor opposition can come up with an approximation I am sure that Treasury and the tax office, with all their thousands of public servants with expertise in this area, can come up with at least an indicative figure; but they have not.

The minister's response in respect of the review of the STS grouping rules brings me to Senator Murray's attempt to effectively wipe out and scrap what is proposed in schedule 1. As I have indicated in my speech and as my colleague in the House of Representatives has indicated in his contribution in the other place, we do see some potential problems with the implementation of the measure the government is proposing. But Labor have taken the position of 'let's give it a go'. The government has announced a measure for fostering entrepreneurial home based economic activity; let's give it a go. There may be some unintended consequences—we have identified issues relating to costs and possible accounting work and fees, and we have drawn the attention of the government to some issues in terms of the potential for tax avoidance minimisation—

but the bottom line is: let's give the measure a go.

The Democrats are fundamentally opposing this measure. We do not just consider the fact that this was an election promise made by the government; obviously, we consider these matters in the totality of the case being advanced by the government. But Labor do not agree with the fundamental approach of the Democrats to scrap the measure and not support it. Labor will not do that, and if there are problems further down the track with the measure then, hopefully, corrective action will be taken. We are disappointed that the minister has stopped short of indicating a formal review and is instead relying on monitoring by the tax office and Treasury, but that in itself is not a reason to oppose this initiative and knock it over before it even starts. We do not agree with that approach.

Linked to knocking over the proposal which, as reflected in the amendment moved by Senator Murray, is opposed by the Democrats is a further amendment with regard to increasing the tax-free threshold. I am going to give Senator Murray and the Democrats a bit of a flick here. If they are so concerned about the tax-free threshold, where were they when they cut their deal to fundamentally reform the tax system and introduce the GST? The Democrats cut the deal with the government on the GST and tax reform some years ago to repair what was allegedly a broken tax system. If they are so concerned about this issue, why wasn't it part of the deal they cut with the Liberals on the implementation of the GST and all the other associated tax changes? It was not there. If Senator Murray believes so strongly that this is an issue—and it is certainly an issue—why didn't the Democrats deal with it then, when there was the supposedly fundamental overhaul of an allegedly ramshackle and broken tax system?

What we have here is nothing more than an attempt by the Democrats—the fading Democrats, I might say, largely as a consequence of the deal they signed up to on the GST—to get back in the tax debate. They have had their chance and, in my view, it has contributed to their demise. Now we have the struggling Democrats coming in here with ad hoc tax reform proposals. If there is going to be fundamental tax reform—in whatever shape it may take in the future—then knocking over and scrapping a government measure that is a positive attempt in a particular policy area before it has begun and substituting it in an ad hoc way with what may or may not be a useful measure is not the way to deal with issues. That is not the way tax reform should be approached. As I said, the Democrats had their chance. They signed up to the GST, they signed up to fundamental tax reform and now they are in here—and their numbers have been halved; there will only be four of them after 1 July—trying to get back in the tax debate game. Senator Murray, I am particularly harsh in my analysis of the attempts by your fading party to get back into this debate.

Senator McGauran—And cruel!

Senator SHERRY—I am only ever cruel to the National Party, Senator McGauran. I am always pleased when Senator McGauran comes into the chamber. I am looking forward to the Page think tank, as I believe it is called. The National Party have a think tank. That is a contradiction in terms! I am interested to see the release of the National Party's Page think tank policy on tax reform. I really look forward to that, Senator McGauran. We all know—and I am going to be cruel to Senator McGauran and the National Party—that they are the doormats of the coalition. They just sign up to anything the Liberal Party offers up. They fight, they struggle, they scream, they protest—but the bottom line is that the doormats of the gov-

ernment sign up. Senator McGauran reflects that in his policy contributions. At the end of the day, they roll over. They are not in a coalition; they just do what the Liberal Party, who are increasingly dominant in the coalition, want.

It is a sad reflection on a once great party. I can think back to the days of McEwen and others. The National Party's contribution in these vital areas of national interest, if there is any contribution, is squashed immediately by the Liberal Party. Senator McGauran himself should know that, every time a member of the National Party retires, they get replaced by a Liberal Party member in the House of Representatives, or a Labor Party member defeats a National Party sitting member.

Senator McGauran—Name one!

Senator SHERRY—Mr Anthony. I have named one, Senator McGauran. You cannot admit to yourself that you are a rapidly fading force caught in a vice with Labor on one side and the Liberal government on the other. This government is knocking over your members every time someone retires, and you make a few valiant policy proclamations from your fading seats in this and the other chamber. Get real! We look forward to a National Party tax policy. I would be surprised if we ever saw one. Senator McGauran has prompted me to be particularly cruel on the National Party, but I believe it is rightly deserved. The critique I have made of Senator Murray's attempts to get back into the tax debate via these two amendments is also rightly deserved, so we will not be supporting them.

Senator MURRAY (Western Australia) (11.05 a.m.)—Senator Coonan, I was happy for you to go first if you wished but you would probably like us to complete our skirmishing before you wrap up the response.

Senator Coonan—I always enjoy it.

Senator MURRAY—It is not possible in this debate to hear those sorts of remarks by Senator Sherry without them needing to be corrected. The first correction relates to the relationship of Labor and the Democrats and our present situation of relatively low regard in voter support. I am acquainted with the three-decade-old history of the Democrats and I am aware of how we have been the enemy of Labor all this time because they do not like the competition we introduced nor the values and views that we espouse.

I have not forgotten that even with regard to my election in my state Labor allied themselves with the Greens against me and they have done that to the Democrats consistently throughout Australia. Nor have I forgotten Labor's determination to contribute to political ill fortune for the Democrats by making sure they stole—let us not use the word 'seduced'—Senator Kernot from us to try to destroy us. There is a long history of Labor's aggressive desire to knock us off. They have that attitude towards minor parties. Indeed, they prefer a one-to-one contest with the Liberal Party, and everybody else can be pushed out the door. So I put forward those remarks in the perspective of a long-term attitude, to which I do not take personal offence. That is just the way it is.

Much more important though than the remarks about the Democrats are the remarks about the GST and the new tax system. Senator Sherry does himself a disservice. I know from long experience that he is far brighter than his remarks seem to indicate. He knows full well that the economic and fiscal circumstances six years ago were very different from those today. The amount of money available to complete the circle was limited. The new tax system changes were focused primarily on indirect tax system changes but were also accompanied by swingeing tax

cuts on the income tax side—\$13 billion worth. You will clearly recall, Senator Sherry, that the Democrats have been roundly criticised for paying for our changes to the new tax system by reducing tax cuts for higher income earners but you will recall that we retained the cuts for low-income earners. So our prejudice in favour of low-income earners was apparent then and is apparent now.

Like all political parties should—and perhaps the Labor Party will take note of this and lift their game because they have been severely criticised for varying between small-target and opportunistic attitudes with respect to tax policy—we have assessed the situation of our income tax system as reaching a crisis in confidence. It is not a crisis in terms of the ability to collect revenue or the ability of most Australians to comply with the primary requirements of our tax system but a belief that it is not as fair as it should be. We are saying that, if you are going to attend to the psychology—the perception people have about the tax system—you have to revise income tax in such a way that it is capable of being understood by the taxpayer as being fair. That is why we talk about certainty and equity, but it is also why we talk about the psychology of the matter and finding those tax reform statements and systems which press the perceptual, psychological and emotional buttons as well as the economic and accounting buttons, which is too often where tax bureaucrats and policy orientated politicians focus.

We have said that there are some fundamental things you need to pay attention to. We can afford to pay attention to them now. That is the point, Senator Sherry. Six years ago, in 1999, it was not possible to contemplate the kinds of structural reforms for income tax which it is now possible to contemplate. That is exactly why the backbench and indeed the frontbench of the coalition are

interested in the area of income tax reform. We might not always agree with each other, but they are discussing the matter. The problem for Labor is that they have failed to assess the matter in policy terms—to take a long-term view. If I have one criticism of Labor over the nine years that I have been in this place it is that, despite some very bright, capable, good and decent individuals, their political tactics and strategies have been almost invariably opportunistic and responsive to the moment. They have ditched principle in favour of politics. They have ditched policy in favour of an ephemeral attachment to the leader or spokesperson of the day.

It is no good taking on an easy target like the Democrats, with our seven—soon to be four—senators. That just shows weakness, frankly. You have to address the issues which confront you as an alternative government: in what respects are you failing to deliver for the hopes, aspirations and long-term goals of Australians? I would suggest to you that one of the long-term goals of Australians is to have a fair go in a taxation system, to have a fair go with regard to income tax, to know with some certainty that somebody down the road is not having a lend of them and to know that somebody down the road is not getting a benefit which they are not getting. If you look, for instance, at the tax-free threshold you will see that there are effectively many tax-free thresholds which exist as a result of the law. There is actually a circumstance in our law, passed by all parties, whereby certain retirees effectively operate on a \$20,000 tax-free threshold right now. Why would you accept that some people in the community who are poor, who are short of money or who merit it should have a high tax-free threshold and not other poor people or low-income people?

Why, when we are discussing an issue of fundamental importance, would you take the opportunity to be superficial and mocking

about it, when we are talking about trying to give more disposable income to people who would benefit most from it? You might disagree with the route we are taking, but why would you disagree with the motive? Why would you mock the motive? Why would you diminish the motive and say that we are just trying to put ourselves back into the tax debate, when I am expressing views that I have consistently expressed over a number of years? That is, we need to index tax rates because, if we do not index tax rates as inflation moves along, people on the margins, between tax rates, suffer a real loss in income. This is a very credible and reasonable policy proposition. You might disagree with it, but you cannot disagree with it being a serious proposition put by serious people.

If you already accept the principle of a tax-free threshold—which you did as a government and which we do within this chamber—why would you then insist that it should remain at the same level, regardless of the fact that every year its real value declines because of inflation, and regardless of the fact that people on incomes below the basic subsistence income of \$12,500 are paying income tax? Why would you think, when nearly two million people are earning less than \$20,000, that it is not a good idea for many of those people who are working part time—many of whom are women—to get more disposable income in their pockets and be able to raise their living standards? If there were two people, both of whom are cleaners earning \$20,000, why do you think that it would be a bad idea to put more money in their pockets?

We are essentially saying that structural reform of income tax is required now on the same basis that structural reform of indirect taxes was achieved. We are saying that the three components of that which would be most simply understood by taxpayers should be: raising the tax-free threshold, so every-

body would know that below a certain level you do not pay tax; indexing the rates; and, of course, raising the top threshold. We are not saying that that should be done tomorrow; we are saying that that should be done over a number of years as it is affordable. And how would it be paid for? Obviously through the use of surpluses that have been achieved but also through broadening the base. We know that works.

Why is it that the Democrats, who are interested in high revenue—we are not interested in high tax rates; we are interested in high revenue—would have supported lowering the company tax rate and broadening the base regime? We felt that it would contribute to a simpler system, it would represent structural reform and it would deliver more revenue. I do not mind if you disagree with our approach, Senator Sherry, and if you have alternative proposals, because it is a policy debate. What I do mind is that you mock and falsely allude to our motives. We have been doing this for years, regardless of the circumstances of our party. Our motive is not to get back into the tax debate. We are in the tax debate. I would suggest to you that I personally, over these nine years, have probably had more effect with the government on tax than the Labor Party has—and that is to your shame, not to my credit. I just think that you have got to keep your eye on the main ball. If you want to be the alternative government, come out strongly, use the very real talent and very fine brains that are within your party—

Senator McGauran—Name them!

Senator MURRAY—Senator McGauran, you are ungenerous, frankly. You are so used to the argy-bargy, you forget that there are fine people within your own party—

Senator Sherry—You could name them!

Senator MURRAY—and that is so within the opposition party. I am not going to name

them on either side, because it would only make the ones who are not named jealous. You understand the tenor of my remarks, Senator Sherry—and I recognise that there was a bit of impish humour within your remarks. But I have a serious point to make—that is, we think structural reform is necessary. Every time there is a tax bill we try to make a little contribution, where we can, to that view and that vision.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.20 a.m.)—I will be very brief, because the last couple of contributions have been very much targeted at exchanges between Labor and the Democrats. I have foreshadowed our opposition to the amendment to increase the income tax threshold. I welcome Senator Sherry's support, and I refer to my earlier comments, but I do think that everyone agrees that a tax debate is very important, no matter in what context it takes place. Sometimes it is inconvenient and messy, but debates about these issues are important and most people who participate do so genuinely. But, as Senator Murray would appreciate from what I said earlier, my firm view—having had this portfolio for some considerable time before I moved on—is that ad hoc proposals like this do not necessarily take it very far. We make the same arguments, and they are made very passionately and very pointedly when you have an opportunity to do so; and I appreciate that often it is not possible to have a debate, other than here, in the kind of constructive way that you would wish. But, for the reasons I have outlined, we will not be supporting the amendment.

With respect to the entrepreneurs discount, I have already said why the government cannot agree to this amendment. It is a very important part of a suite of measures which we have conscientiously tried to bring in to foster smaller business in Australia. It is de-

signed to take some of the burden off small business and to foster an entrepreneurial culture for people who may not have all that much in the way of alternatives available to them. I said a little earlier that it is the government's view that people working from home, people who are almost buying themselves a job, deserve some assistance in fostering their entrepreneurial spirit to get up and have a go. So for all of those reasons I propose not to delay the committee any further in relation to the amendments.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—The question is that schedule 1 stand as printed.

Question agreed to.

Senator MURRAY (Western Australia) (11.23 a.m.)—I move:

R(2) Page 13 (after line 27), after Schedule 1, insert:

Schedule 1A—General rates of tax
Income Tax Rates Act 1986

1 Clause 1 of Schedule 7 (table item 1 in paragraph (b))

Repeal the table item, substitute:

1	(a)	for the 2004-05 year of income—exceeds \$6,000 but does not exceed \$21,600;	17%
	(b)	for later years of income—exceeds \$6,260 but does not exceed \$21,600	

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.24 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY BILL 2004

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2004

TELECOMMUNICATIONS (CARRIER LICENCE CHARGES) AMENDMENT BILL 2004

TELECOMMUNICATIONS (NUMBERING CHARGES) AMENDMENT BILL 2004

TELEVISION LICENCE FEES AMENDMENT BILL 2004

DATACASTING CHARGE (IMPOSITION) AMENDMENT BILL 2004

RADIOCOMMUNICATIONS (RECEIVER LICENCE TAX) AMENDMENT BILL 2004

RADIOCOMMUNICATIONS (SPECTRUM LICENCE TAX) AMENDMENT BILL 2004

RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX) AMENDMENT BILL 2004

RADIO LICENCE FEES AMENDMENT BILL 2004

Second Reading

Debate resumed from 15 March, on motion by **Senator Hill**:

That these bills be now read a second time.

(Quorum formed)

Senator McLUCAS (Queensland) (11.27 a.m.)—I am pleased to be able to join the discussion about why we need to join together the Australian Broadcasting Authority and the Australian Communications Authority. I have over many years had an interest in the role of the Australian Broadcasting Au-

thority and their monitoring of regional television licences. As the Acting Deputy President would be aware, on behalf of the people of North Queensland I have, with others, advocated that there be a change to the licences provided to television broadcasters in regional Australia.

Through the advocacy of many of us in North Queensland we did get change to the licence provisions of regional television licensees. I think the jury is still out as to whether or not they have been successful in delivering greater local content in their news bulletins. Certainly from my perspective there have been some licensees who have gone along not only with the intent of the changed licence provisions but also with the spirit of those provisions. I commend those licensees for that action.

In estimates recently I spoke with ABA officials and asked them if they thought there was compliance with the new licence provisions. As I said, I think the jury is still out on that matter. I can assure you, Mr Acting Deputy President, that I will continue to monitor these changed licence provisions to ensure that the ABA—whether or not it is amalgamated with the ACA or in whatever form it may be—continues to do the job to make sure that regional Australians do get to see themselves on television and that they know what the weather is like in Cairns or western Queensland. I recall a constituent telling me that they were pretty well tired of knowing what the tide times were in Sydney Harbour when they lived in Hughenden. Let us hope that the work that we have done for the coastal communities can extend to those people in western Queensland. I thank the Senate for the opportunity to make those brief comments.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.30 a.m.)—I

thank Senator McLucas for that contribution. It was very much appreciated by the duty minister and also the minister responsible for this legislation and the former bill. I want to conclude the debate on the Australian Communications and Media Authority Bill 2004. The formation of ACMA will be an administrative merger of the Australian Communications Authority, the ACA, and the Australian Broadcasting Authority, the ABA. The ACMA will therefore be responsible for the combined functions of the ABA and the ACA.

The government considers the case for an administrative merger to be a sound one. In particular, a combined regulator will be better placed to make coordinated responses to convergence issues. It is important to note that convergence does not dispense with the distinct policy objectives the government has for the telecommunications and broadcasting sectors. The government therefore rejects the assertion that has been made that the formation of the ACMA is a wasted opportunity. The formation of the ACMA will see the creation of a combined regulator which is simply better placed to make coordinated responses to convergence issues. It is an important and, we believe, entirely appropriate step that has received wide support.

The foreshadowed amendments to the ACMA Bill go beyond the formation of the ACMA. They propose fundamental changes to regulation. They risk seriously delaying the passage of the ACMA legislation and the formation of the new regulator. Amongst the recommendations of the report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee is a recommendation that the ACMA be requested to conduct a comprehensive review of all communications regulation. I note that this is supported by both the opposition and the Democrats in the form of a proposed amendment to the ACMA Bill.

I wish to say that the government will continue to review the need for reform of the communications regulatory environment. As I have said in other contexts over the past few days, this kind of regulation is not the kind you can set and forget; it is something that needs to be kept under consideration. So the government will continue to review the need for reform of the communications regulatory environment. In fact, a number of reviews are currently being undertaken—for example, involving consideration of the future framework for digital broadcasting, the most appropriate media ownership rules and a range of matters relating to telecommunications. A major review is therefore unnecessary and potentially extremely disruptive to the processes that are already in place.

The Senate committee also recommended that consumer protection measures be added to the ACMA Bill. Senator Cherry has spoken further about this during the debate, as I understand it. The ACMA Bill establishes the ACMA, which will administer relevant acts which themselves contain consumer protection measures. If further consumer protection measures are considered desirable, it is a matter for the legislation administered by the ACMA and not the ACMA Bill. The government has already put in place a range of consumer protection safeguards across the sectors to be regulated by the ACMA, and these appear to be working well.

I think Senator Conroy has raised the issue of cost savings again as a result of the merger. As the government has said on a number of occasions, there will be no significant savings to government as a result of the merger because all of the regulatory and reporting functions of the ACMA will be the same as those that currently exist for the ACA and ABA respectively. There will be no cost to industry as a result of the merger since there will be no change to the regulatory frameworks or regulatory functions. On

that basis, the desire to generate savings from this move must be based on either job cuts or reductions in services by the merged regulator. It is difficult to see how you can have it both ways. Obviously, the government does not wish to see it go either way. It wants to make sure that the regulator is a merged regulator of the existing functions, and that will mean there will be no significant savings. This demonstrates, shall I say, the opposition's lack of understanding of the media sector and, dare I say it, an inability to come to grips with the appropriate policy frameworks—and it is complex—which will enable the sector to thrive and grow in the future.

In line with the administrative nature of this merger, the government has also retained the appointment process that is currently followed for the ABA and the ACA. Each member will therefore be appointed by the Governor-General on the recommendation of the government. Both the ACA and ABA have a number of acting appointments as a transitional arrangement prior to the establishment of the ACMA. On passage of the legislation, the ACMA members will be able to be reappointed. The establishment date for the ACMA is 1 July 2005 or an earlier date set by proclamation. Much work has already been done to enable this time frame to be met. The agencies are well advanced in planning for the merger. It is, in this context, important that the ACMA is formed by the planned date. I want to impress upon my Senate colleagues that the uncertainty generated by any delay will be disruptive to the regulators, the industry and the smooth functioning of the combined regulators. For all those reasons, I am very hopeful that the amendments that have been foreshadowed can be talked through in such a way that this bill will pass without amendments. I commend the bill, its purpose and policy objec-

tives, and the legislation that relates to it, to the Senate.

Question agreed to.

Bills read a second time.

In Committee

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY BILL 2004

Bill—by leave—taken as a whole.

Senator CHERRY (Queensland) (11.38 a.m.)—by leave—I move Democrat amendments (1) and (2) on sheet 4543:

- (1) Clause 8, page 7 (after line 10), after paragraph 1(b), insert:
 - (ba) to promote competition as a legitimate means to advance objectives of consumer protection;
- (2) Clause 8, page 7 (after line 10), after paragraph 1(b), insert:
 - (bb) to develop, promote and enforce adequate consumer protection;

These two amendments seek to include two new subclauses in clause 8 of the bill, which relates to ACMA's proposed telecommunications functions. Both of them are about making it abundantly clear from day one that ACMA has to be about the promotion of consumer protection. The minister commented in the second reading debate that these are unnecessary. I am very disappointed by that. I am disappointed because there is no express requirement to promote consumer protection in the Telecommunications Act, the Broadcasting Services Act or the ACMA Bill. The only mention of consumers in the ACMA Bill is in 8(1)(d), which requires ACMA to report to and advise the minister in relation to matters affecting consumers or proposed consumers of carriage services. This falls very much short of actually integrating the notion of consumer protection into all that ACMA does. It is only a very small aspect; it is simply telling the minister about it. To me that falls well short

of what you would expect from a modern new telecommunications authority.

These two amendments follow recommendation 16 of the Senate committee, which was endorsed in full by the Democrat and Labor members and also endorsed in principle by the government members of the committee. The reason for that was that it was quite clear from all of the consumer groups who came before our committee—the Australian Consumers Association, the Communications Law Centre and the Australian Telecommunications Users Group—that there was real concern that the ACA and the ABA were letting consumer issues fall off the edge of their workload. Indeed, the acting chair of the ACA, Dr Bob Horton, acknowledged that point and said, 'We probably left them off the table for the first five years of our work but we are sort of starting to address that now.'

I think the new authority has to be told from day one by this parliament that it is there for the interests of consumers. That is not there in any of the current legislation. That is why the ABA does not do anything about consumers; that is why the ACA has left consumer interests down at the bottom of its agenda for the vast bulk of its lifetime. That is why, even in setting up this authority, without changing the responsibilities, the powers, the duties or anything else, we should simply send a clear message from the parliament to ACMA from day one: 'You are there for the consumers.' I think that is a reasonable change. It is not a change which affects the fundamental structure of the minister's legislative proposal. It is not something that risks serious delay to the bill. It simply says to the new board: 'You are there to promote consumer outcomes.'

That would be a very positive thing, and I cannot see how the minister, given her activism in talking about telecommunications and

regulation, and the government can oppose such a principle. It is very hard to see how the government can oppose such a principle. I look forward to hearing what arguments are being put up. I presume they will be that it is already in the act, but I have read the three acts involved and it is not mentioned anywhere. That is why we are moving these amendments. That is why the consumer organisations have asked us to raise this issue, that is why Dr Horton acknowledged that consumers have been falling off the edge and that is why I think these amendments are necessary. They give a clear instruction from parliament to the new authority to do better than the previous two authorities on this core issue of promoting consumer protection. I commend the amendments to the chamber.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.42 a.m.)—The reason that the government has rejected the Democrats' amendments is that it is not necessary for clause 8 of the ACMA Bill to be amended to refer to the promotion of competition as a legitimate means of advancing objectives of consumer protection, for these reasons. First of all, promoting competition in telecommunications is a clear objective of government policy and it is regulated primarily through the provisions of the Trade Practices Act. It is a different structure to the situation in the United Kingdom. The committee's recommendation in this regard appears to be based—Senator Sherry has not said this but I assume it is the case—on section 3 of the United Kingdom Communications Act 2003, which requires the regulator, Ofcom, to 'further consumer interests in relevant markets, where appropriate by promoting competition'. I concede, no argument, that this is a legitimate role for Ofcom, which has competition functions, and clearly defined ones, but it is not legitimate for ACMA, which does not.

In any case, such an amendment is not needed given the existing provisions in legislation. It is not as if it is a vacuum, I might say, through you, Mr Temporary Chair, to Senator Cherry. In the context of telecommunications, the current objects clauses of the Telecommunications Act and part 11C of the Trade Practices Act adequately incorporate objects relating to the promotion of competition and the protection of consumer interests. For example, the main object of the Telecommunications Act is to promote the long-term interests of end users of carriage services and the efficiency and international competitiveness of the Australian telecommunications industry. The act also promotes the development of an Australian telecommunications industry which is efficient, competitive and responsive to the needs of the Australian community.

An object of the Trade Practices Act is to promote the long-term interests of end users of carriage services and of services that are supplied by means of carriage services. It is also unnecessary for clause 8 of the ACMA Bill to give ACMA the function of developing adequate consumer protection requirements. ACMA will have the functions currently conferred on the ACA and the ABA, including, for example, the consumer focused functions conferred on the ACA under the Telecommunications Act and the Telecommunications (Consumer Protection and Service Standards) Act. In any case, the development of adequate consumer protection standards should ultimately be a matter for government and parliament and certainly not the regulator.

There are some drafting difficulties with these amendments. In particular, it is not clear what the term 'legitimate' means, and the objectives to be advanced, of course, should be specified.

Senator CONROY (Victoria) (11.45 a.m.)—Labor is attracted to the Democrat amendments.

Question agreed to.

Senator CHERRY (Queensland) (11.46 a.m.)—by leave—I move amendment (3) on sheet 4543 and amendment (1) on sheet 4557:

- (3) Clause 10, page 10 (line 4), after “monitor”, insert “and enforce”.
- (1) Clause 10, page 10 (line 7), after “monitor”, insert “and enforce”.

These amendments deal with the issue of consumer standards and the question of what instructions parliament wants to provide to ACMA from day one in terms of consumer standards. They deal with the issue of the codes of practice and broadcasting standards in the Broadcasting Services Act. Fundamentally the problem is that the new ACMA Bill only requires ACMA to monitor compliance with codes of practice under clause 10(1)(j) and monitor compliance with broadcasting standards in clause 10(1)(l). It strikes us as passing strange that the word ‘enforcement’ is not in there.

Senator Conroy—What!

Senator CHERRY—Exactly. What happened to enforcement? I know in the David Flint time, enforcement was a thing which always fell off the back of the board table. This point was drawn to our attention by the Communications Law Centre. I quote from the evidence that Dr Derek Wilding provided to the Senate committee:

In the broadcasting sector ... there has been a question mark over the authority’s approach to using the enforcement mechanisms that are available to it, and we have seen that in relation to the commercial radio standards. Part of it is a degree of timidity in approaching regulatory moves that are other than self-regulatory in nature. For example we might see the length of time that it takes to address an issue such as local content on

regional television as something indicative of both underresourcing and a certain approach in using those enforcement mechanisms.

The committee report also cited comments from the Australian Consumers Association:

We would like to see the enforcement activities of the merged entity increased, so that non-compliance will be actively pursued, where necessary with enforcement action. We are not uncomfortable with an approach whereby action is usually based on a graduated use of regulatory measures using the minimum power or intervention necessary to achieve the desired result. However mild regulatory approaches without the certainty of persuasive sanctions should compliance be denied simply breed complacency and calls the regulator into poor repute. The message to ACMA must be that intervention is to be mounted with vigour consistent to the size, risk, and urgency of the non-compliance rather than pursuant to an ideology of minimal intervention or light touch at any cost.

That is why we think it is a drafting oversight not to actually say to ACMA from day one, ‘Don’t just monitor compliance; enforce compliance.’ It is a very poor message that parliament is sending to ACMA that we do not want them to place much emphasis on the issue of the enforcement of codes of practice or compliance with standards. Certainly, given recent experience with the ABA, we need to send a strong message that we do believe that enforcement of codes of practice and standards is very important and that it is fundamentally in the interests of consumers. It is a matter that has come out of the Senate inquiry. I would be disappointed if the government was non-responsive to the clear evidence coming out of the inquiry that there is a fundamental problem with culture in terms of the way the compliance with standards is currently being enforced.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.49 a.m.)—The purpose, as I understand it, of Senator

Cherry's amendments is to amend the bill to change the function of monitoring codes of practice to monitoring and enforcing codes of practice. With the greatest of respect, I can only assume that Senator Cherry may not have thought through what the current arrangements are and how the schemes for developing and enforcing codes of practice operate. The amendments are unnecessary as enforcement is already a function under clause 10(1)(c) of the ACMA Bill. It would also be inappropriate to include references to enforcing broadcasting codes of practice in clause 10(1)(k) of the bill. The reasons are that codes of practice established under the BSA are voluntary arrangements.

Like the ABA, the ACMA will have an important role in monitoring compliance with those codes and strong powers to impose mandatory licence conditions or industry standards—that is the next step—if it considers that the voluntary codes and compliance with those codes are not meeting community standards. It is a well-established scheme that well and truly reflects current community standards. It is a well-honed regime that industry understands well, that consumers understand well and that does provide a schema for enforcement in the way that I have outlined. To change the way voluntary codes of practice are dealt with would be going further than what was intended and certainly would not meet the current needs of the scheme.

Senator CONROY (Victoria) (11.51 a.m.)—I indicate that I am very attracted to Senator Cherry's amendments. I suspect I am not going to be as attracted to a couple of the others coming up, Senator Cherry, but you may be able to woo me.

Question agreed to.

Senator CHERRY (Queensland) (11.52 a.m.)—I move amendment (4) on sheet 4543:

(4) Clause 11, page 12 (after line 2), after paragraph 1(d), insert:

- (da) to provide reports to and advise the Minister on policy issues in relation to the communications industry, where ACMA are of the view that current policy is inadequate to meet current or future challenges.

This amendment is again trying to ensure that ACMA looks a little bit more like Ofcom in the UK. The reason is that it has become abundantly clear, over a long period of monitoring of the department, that it is not keeping up with what is happening in industry in terms of emerging issues and emerging policy needs. The Blair government recognised a similar problem in the UK and has given Ofcom a role of providing continuing policy advice to government on how to deal with emerging issues in communications and convergence and what regulatory matters will arise from that.

The government already receives advice from organisations such as the ACCC on competition issues. The ACCC provides regular advice to Senate committees as well as directly to the government on policy matters arising out of the implementation of competition issues. I think it would be reasonable to say to ACMA from day one, 'Your role is to regulate, but if your regulation results in policy issues being raised then your role extends also to providing advice on that.' I think that is entirely reasonable. It makes it quite clear that ACMA from day one is going to be working in a dynamic, changing environment, particularly to do with convergence; that policy will need to be constantly tweaked, changed and modified; and that advice to government on the basis of its experience should be publicly on the record and provided in a way that is actually useful.

This starts the process of making sure that this administrative merger becomes a bit

more interesting. Rather than taking two very inadequate regulators and putting them together to form a bigger inadequate regulator, we should start looking at what is happening in other countries, particularly the UK and the successes and synergies coming out of the Ofcom merger, and try to apply some of those messages here. It would be disappointing if Australia simply decided to pursue this issue in a way which ignored international developments and continuing developments in industry. I think allowing ACMA to provide advice to the minister on policy issues relevant to the communications industry would be of benefit to the government and to the Australian public.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.54 a.m.)—The purpose of the amendment, as I interpret Senator Cherry's comments, is to amend the bill to require ACMA to advise the minister where current policy settings are inadequate to meet current or future challenges. It continues the theme of the amendments so far, which is that they are basically redundant and unnecessary because they already exist, or at least their purposes are already accounted for in the way that I have earlier indicated.

This particular amendment is unnecessary as clauses 8(1)(k), 9(1)(i) and 10(1)(r) of the bill already require the ACMA to monitor and report on the operation of acts they administer. So the amendment proposed by Senator Cherry is entirely redundant and unnecessary. If pressed, I would say there are some drafting problems. The amendment should read 'the ACMA is,' rather than 'ACMA are'. It is also unclear what is meant by 'current policy' settings and 'inadequate'. In any event, there can always be some tidying up of drafting and some precision, and it would be much needed if it were to be pressed. I really do urge Senator Cherry to

look carefully at the whole suite of legislation that applies here and at the provisions that already do what he is seeking to do.

Senator CONROY (Victoria) (11.56 a.m.)—I indicate that Senator Cherry has persuaded me to his cause.

Question agreed to.

Senator CHERRY (Queensland) (11.56 a.m.)—by leave—I move amendments (5) and (7) on sheet 4543:

- (5) Clause 20, page 17 (after line 11), after subclause (1), insert:
- (1A) In making an appointment in accordance with subsection (1), the Governor-General is to have regard to the merit selection processes described in section 27A.
- (7) Page 22 (after line 22), at the end of Division 2, add:

27A Procedures for merit selection of ACMA members and associate members

- (1) The Minister must by writing determine a code of practice for selecting and appointing ACMA members and acting ACMA members which sets out general principles on which selection and appointment is to be made, including but not limited to:
- (a) merit, including but not limited to appropriate broadcasting and telecommunications industry knowledge;
 - (b) independent scrutiny of appointments;
 - (c) probity;
 - (d) openness and transparency.
- (2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.

Amendment (5) again follows the recommendations of the Senate report on this bill. It was endorsed, I might add, by all members of the committee—Labor, government and Democrat—and it is simply to make sure that

merit selection be used for the appointment of board members. That is something which we have pursued over a long period of time in this place and which I think is very important.

There was a lot of debate and concern in the committee about how to find board members who would cover all the skills which are necessary and needed for this authority to be effective. At some stage the government has to stop appointing its mates and start appointing people on the basis of proper criteria—on the basis of an advertised position and appropriate selection criteria. That is something which the government needs to look at. I commend these amendments to the Senate.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.58 a.m.)—Two amendments are being read together. One amends the ACMA Bill to require the minister to gazette a code of practice for selecting and appointing members of the ACMA. I will deal with that first. While the government agrees that the appointment of members to ACMA should be merit based—of course it should—a gazetted code is certainly not necessary to ensure this outcome. The government will be appointing the chair and the members based on their experience, expertise and qualifications and will be seeking to ensure that there is an appropriate mix of skills, given the areas the ACMA will regulate.

The government's first step in this appointment process was the selection of an executive search agency to prepare a short list of candidates for the position of chair. To assist the executive search agency in undertaking this task, the government has developed a set of selection criteria. As part of this process the position of chair has also been advertised in major Australian newspapers.

The government will use expressions of interest from these advertisements to inform its decisions about the appointment of other members of the ACMA. I am very confident that this process will enable recruitment from the widest possible talent pool. It is the Governor-General who will ultimately be appointing the ACMA members and it is a decision for the government of the day who will be recommended for appointment.

Once again, a bit of attention to drafting is needed if that amendment is to be pressed. In fact, the minister does not publish in the *Gazette*. He or she, whoever the minister is, causes to be published. With respect to amendment (5), which is to amend the bill to require the Governor-General to take into account the merit process, the Governor-General, as you would be aware, acts on advice from his ministers and is not in a position to consider the proposed merit selection procedure. It is therefore not appropriate that legislation impose such a requirement on the Governor-General.

Senator CONROY (Victoria) (12.00 p.m.)—Now that the chair-CEO position is advertised, Minister—I think I raised this issue with you at estimates, but it was too early—I am wondering if you could outline the basic salary package. You can just give me an indicative figure; I appreciate that it will be negotiable.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.00 p.m.)—I am not sure that I can at the moment. I will just seek advice as to whether that is something I can provide at this stage, but obviously it is something that is in the course of being thought about and developed.

Senator CONROY (Victoria) (12.00 p.m.)—I have had to speak many times when Senator Murray and Senator Cherry have raised these sorts of issues. This time I think

you have probably reached a little too far. I do not truly believe that you want the Governor-General independently having to appoint people or consider rolling recommendations from the government. We have had one small experience of that a few years ago, so it is a little hard to get the Labor Party to let the G-G off the leash. I would have to say that you have been unable to sway me to your cause in this particular instance.

Senator CHERRY (Queensland) (12.01 p.m.)—I shall be reporting Senator Conroy to Senator Murray. I would note that his argument was spurious in that it is well known that in law ‘the Governor-General’ refers to ‘the Governor in Council’, and that is certainly the basis upon which the appointment would be made.

Question negatived.

Senator CHERRY (Queensland) (12.01 p.m.)—I move amendment (6) on sheet 4543:

(6) Clause 20, page 17 (after line 21), at the end of the clause, add:

(6) At least one member must have a background in consumer advocacy and representation.

Again, this is an amendment endorsed by all members of the Senate Environment, Communications, Information Technology and the Arts References Committee. It is simply to require that at least one of the members of the ACMA has a background in consumer advocacy and representation. I believe this is very important, given the experience we have had with both the ABA and the ACA in terms of the organisation not giving sufficient priority to consumer issues. I think it is absolutely crucial that this issue should be addressed from day one.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.02 p.m.)—The purpose is to amend the bill to require at

least one member to have a background in consumer advocacy and representation. In line with the Senate committee’s own recommendations, appointments to ACMA will ultimately be based on merit. The amendment would require the appointment of a member with a specific background, regardless of the overall merit and balance of candidates and the mix of their talents and skills. Members of the ACMA will be appointed from diverse backgrounds to provide an appropriate spread of expertise across the authority’s regulatory responsibilities. Experience in consumer issues would be one aspect, no doubt, to be considered in this process.

Over the coming months, the government will be looking for the best people to be appointed to the authority and has therefore appointed an executive search agency to assist in identifying suitable candidates for the position of chair and other members. The government takes very seriously these appointments. It is a most important regulator and, clearly, when you are merging the two distinct areas of telecommunications and broadcasting, you do need a mix of skills and, obviously, the interests of consumers are one of the very important aspects to be taken into account in the process. While I am on my feet I will say, in response to Senator Conroy’s earlier question, that the Remuneration Tribunal will be setting the terms, salaries and conditions of the chair, but we do not yet have an outcome from that.

Senator CONROY (Victoria) (12.04 p.m.)—I am intrigued how you can advertise for a position without actually knowing what you are going to pay the person who is applying for it. Surely, any interested applicant would like to know what their salary—ballpark—would be. Is there any indication when the Remuneration Tribunal will make a decision?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.05 p.m.)—I am reminded by my adviser that the passage of the bill is the first stage before the Remuneration Tribunal can actually set the terms and conditions.

Senator CONROY (Victoria) (12.05 p.m.)—Then who put the ad in the paper on the weekend? Which of your advisers did that?

Senator Coonan—You can put an ad in the paper.

Senator CONROY—It just sounds a little strange, Minister.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.05 p.m.)—I was just checking that. No, there was not any indicative figure advertised, but clearly for the purpose of discussions the indicative figure—

Senator Conroy—I am thinking of applying, Minister. I am asking what you are going to pay me.

Senator COONAN—Senator Conroy, if I can just finish the sentence then I will deal with the fact that you have an interest in the job. The situation is that the actual advertisement does not put any kind of indicative range in but, for the purpose of discussions, clearly it is within the range of what the current acting chairs of the ABA and the ACA are paid. It is within that range that discussions can take place, but the purpose of my response to you, being particular about what I inform the Senate, is that I cannot say when the Remuneration Tribunal has not yet made the determination. I am sure it is going to be more than both you and I are paid.

Senator CONROY (Victoria) (12.06 p.m.)—I thank Senator Campbell for draw-

ing it to my attention: I am actually applying for your job rather than this particular one.

Senator Coonan—That's not vacant.

Senator CONROY—I am working on it. Could I indicate Labor's support for Senator Cherry's amendment. I think it would help if the minister gave us the government's thinking in terms of whether a background in consumer advocacy will be one of the key selection criteria that the government is seeking and whether she believes that, ultimately, that would lead to somebody with this sort of background getting there. That might help this particular debate because Labor does feel quite strongly about this amendment.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.07 p.m.)—I can understand that there is some very good purpose to raising this issue. The government is very clear that certainly having consumer skills is a very important aspect of how you would put together the mix of people to be able to deal with the suite of things that are going to be necessary in a merged regulator. It is a serious point that is made and the government is very firm in its view that obviously consumer expertise, skills and background will be some of the aspects in the mix.

Question agreed to.

Senator CONROY (Victoria) (12.08 p.m.)—by leave—I move amendments (1) and (2), which are designed to increase the transparency of ACMA:

- (1) Clause 30, page 24 (after line 18), at the end of the clause, add:
 - (5) Where an interest is disclosed in accordance with this section:
 - (a) the interest and the disclosure must be recorded in the minutes of the ACMA; and

- (b) any public notification of the decision must also notify the disclosure of interest; and
 - (c) the interest and the disclosure must be reported in the annual report.
- (2) Clause 57, page 41 (after line 33), after paragraph (2)(d), insert:
- (da) a report on:
 - (i) the number and type of complaints made to ACMA concerning alleged breaches of the *Broadcasting Service Act 1992* during the financial year; and
 - (ii) the number and type of complaints made to ACMA concerning any alleged breaches of codes of practice or standards; and
 - (iii) the investigations either initiated by ACMA or commenced in response to a complaint referred to in subparagraphs (i) or (ii) and conducted during the financial year; and
 - (iv) the results of those investigations and any enforcement action taken by ACMA as a result of those investigations; and

The first of these amendments addresses the process that ACMA must follow in dealing with a conflict of interest on the part of an ACMA board member. Under the ACMA Bill, a board member acting in relation to a certain issue may declare a conflict of interest with respect to that issue to the board. The board may, after consideration of this conflict, determine that the board member should still be permitted to continue to act in relation to the relevant matter. Labor's amendment would require such a decision to ignore a conflict of interest on the part of an ACMA board member to be publicly disclosed.

This amendment is intended to bring to light the existence of conflicts of interest such as that involving the former chair of the

ABA, Professor David Flint. The amendment is designed to ensure that, in situations like this, conflicts involving board members of ACMA are brought to light more quickly than has been the case in the past. The amendment does not impact on the flexibility of the ACMA board but simply requires that the board's actions are undertaken in a transparent manner. In our view, it is a minor amendment that would increase public confidence in the ACMA board.

The second of the two amendments increases the transparency of the operation of ACMA and requires ACMA to include in its annual report details of the number and types of complaints received by ACMA concerning alleged breaches of either the *Broadcasting Services Act* or related codes of practice. The ALP's final amendment is intended to bring ACMA's reporting obligations with respect to complaints from members of the public in relation to breaches of broadcasting regulations into line with its obligations in relation to breaches of telecommunications regulations. Again, this amendment is necessary as a result of the previous conduct of the ABA. The committee heard substantial evidence to the effect that the ABA was not adequately discharging its responsibility to take enforcement action with respect to breaches of the *Broadcasting Services Act* and associated codes of practice. The ALP does not accept that merely because broadcasters do not have the same privacy relationship with consumers that there is a lesser need for enforcement of the law. For too long the ABA has taken too lax an approach to the enforcement of broadcasting regulation. This amendment is designed to increase the transparency of ACMA's enforcement action with respect to broadcasting services and to increase the pressure on ACMA to take action against those who breach the law.

Senator COONAN (New South Wales—Minister for Communications, Information

Technology and the Arts) (12.11 p.m.)—The government does not support these amendments, and I think it is important to say why. The first seeks to amend the bill to require that, where the member has an obligation to disclose interests before deciding a particular matter, the interests and disclosure be recorded in the minutes of the ACMA and any public notification of the decision must also notify any disclosure of interest relating to the matter. The interest and disclosure must also be notified in the annual report.

Dealing firstly with amendment (1), the opposition's amendment is unnecessary and also raises a number of policy issues. With regard to proposed paragraph (5)(a) of the amendment, the ACMA is required to keep minutes and disclosures made at meetings of the ACMA would be included in the minutes as a matter of course. Where a disclosure is not made at a meeting of the ACMA, it would be unusual to then record that disclosure in the unrelated minutes of a meeting of the members. However, the formal records of disclosures would be a matter for the ACMA to determine.

Paragraphs (5)(b) and (c), however, raise policy matters. For instance, it is not clear—and Senator Conroy might be able to enlighten us—what is meant by public notification of the decision. This could include a requirement that a legal instrument resulting from a decision include a notification of a conflict, which is obviously not appropriate and I do not know whether that is what is intended. It could also have the effect that, for example, any comment by the minister or the chair on a matter decided by the ACMA must include a notification of a conflict, which is clearly not practicable. The requirement for public disclosure of all conflicts of interest is simply unsound in principle for this reason. It is certainly not normal practice for government bodies, or businesses for that matter, to disclose conflicts of

interest publicly. There may be privacy and other confidentiality issues involved. The current requirement of disclosure to the minister of the day, I believe, is certainly sufficient for accountability purposes.

With respect to the second amendment, the purpose, as I understand it, is to amend the bill to require the ACMA to report on the number and types of complaints concerning the alleged breaches of the Broadcasting Services Act 1992, alleged breaches of codes of practice or standards, as well as investigations and enforcement actions. It is very broad ranging. I am advised that there will be significant practical problems for the ABA if they are required to report on actions taken on complaints raised in response to codes of practice. For example, many of these complaints involve telephone calls or emails which are referred to broadcasters for resolution. The proposed requirements to report on investigations, the results of investigations and enforcement actions in proposed paragraphs 57(da)(iii) and (iv) are inconsistent with the current provisions in the Broadcasting Services Act 1992. Section 179 of the Broadcasting Services Act provides the ABA with discretion over the publication of a complaint. The ABA is not required to disclose the report of an investigation if the disclosure discloses a confidential matter or prejudices the fair trial of a person, which is yet another policy reason that we really should think very carefully about before we go down this path.

Section 180 of the Broadcasting Services Act also provides that a person who is adversely affected by a report must be given a reasonable opportunity to comment. So for all of those reasons, whilst I can appreciate the enthusiasm with which these two amendments have been pursued, they raise a significant number of matters that relate to the issues I have raised in these comments. There are some very sound policy reasons

why the amendments should not be supported and why they should be completely rethought.

Senator CHERRY (Queensland) (12.15 p.m.)—The Democrats will be supporting these amendments. It is important that we have appropriate arrangements to deal with conflicts of interest. While I note the arguments raised by the minister, this is a reasonable way of approaching this particular issue.

Question agreed to.

Senator CONROY (Victoria) (12.15 p.m.)—I move opposition and Democrats amendment (1) on sheet 4551:

- (1) Page 50, after line 28, at the end of the bill, add:

69 Review of operation of communications legislation

- (1) Before 31 December 2006, the Minister must cause to be conducted a review of the adequacy of Australian communications legislation and subordinate instruments in accommodating the changes resulting from the process of convergence while still achieving their regulatory objectives.
- (2) In conducting this review, consideration must be given to:
- (a) the question of whether any or all of the provisions of the legislation referred to in subsection (1) should be amended in accordance with the principle of technology neutrality in order to promote the achievement of their regulatory objectives; and
 - (b) the appropriateness of the objectives of the legislation referred to in subsection (1) in light of changes resulting from the process of convergence; and
 - (c) the question of whether the scope of the Telecommunications Industry Ombudsman regime should be expanded to encompass other communications services.

- (3) The Minister must cause to be prepared a report of the review.
- (4) The Minister must cause copies of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.
- (5) For the purposes of this section *communications legislation* includes the *Australian Broadcasting Corporation Act 1983*, the *Australian Communications and Media Authority Act 2005*, the *Broadcasting Services Act 1992*, the *Interactive Gambling Act 2001*, the *Radiocommunications Act 1992*, the *SPAM Act 2003*, the *Special Broadcasting Services Act 1992*, the *Telecommunications Act 1991*, the *Telecommunications (Interception) Act 1979*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Telstra Corporation Act 1991*, the *Trade Practices Act 1974*, and (any legislation under which ACMA exercises a statutory power).

This amendment is designed to address the concerns that I have already expressed regarding the government's failure to consider the need for reform of the underlying legislative regime. This amendment requires the minister to undertake a review of the adequacy of the underlying legislative framework and accommodate the challenges posed by convergence within 18 months of the formation of ACMA. This amendment obliges the minister to review both the objectives of the underlying legislation and the content and provisions of that legislation in the light of convergence. The amendment also requires the minister to consider whether the Telecommunications Industry Ombudsman regime should be expanded to a communications industry ombudsman regime including other services such as pay TV. The amendment largely reflects the new statutory review provided for in the United

Kingdom when it created its merged regulator Ofcom, something that I know the minister is very keen on. I can only look forward to her support, given that she has championed the Ofcom model in other debates. This amendment is not onerous. We consider it to be the bare minimum that the government should commit to in response to convergence.

Senator CHERRY (Queensland) (12.17 p.m.)—I am very pleased to jointly move this amendment with Senator Conroy. It was a very important issue that came out of the Senate committee inquiry. In fact, almost every witness from either the consumer or industry sectors expressed concern that ACMA was not being tasked with the role of doing a review or some sort of an inquiry into itself, its role in the world and the challenges posed by convergence and the merger. If we do not engage in a process like this, there really is no point in doing a merger. If we are going to get the synergies that can develop, close some of the problems and loopholes that develop in regulation and look at what the challenges are from convergence, then we really have to give the organisation the capacity to actually do that in a holistic and far-ranging way—and that is one of the most exciting things that Ofcom has been doing.

The result of Ofcom's strategic review—their issues paper was released in December—is extraordinarily exciting. The sorts of issues that they are dealing with and identifying are way beyond anything which any of the political parties or government departments in the UK have been prepared to deal with to date. We need that in Australia because there are significant holes in our regulatory regime and in our understanding of how industry operates. ACMA is probably the best-placed organisation to do that because they are the new kid on the block, trying to find out how they are going to operate

in this new environment. The issues in this amendment are the bare minimum that need to be addressed, as Senator Conroy said, and would ensure that we get something positive out of this bill, not just a reshuffling of fax letterheads in terms of who is doing the regulation.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.19 p.m.)—In saying that the government does not support this amendment, it is important that I develop the reasons why, at least in some small detail. It is very important to realise that, whilst Ofcom provides a good model in some respects, you cannot just assume that everything that Ofcom does applies in our setting. The proposed review is enormous in scope and includes all of the relevant subordinate instruments. It is simply impractical for such a review to be conducted within 18 months—it seriously could not be achieved. I also note that the proposed review goes beyond the scope of the committee's report, which recommended that ACMA conduct a review, not that the minister cause the review to be conducted.

The government is already conducting extensive reviews into broadcasting regulation, including through the series of digital television regulatory reviews currently under way. These reviews build on a number of independent inquiries over the past few years, including the ACCC's report titled *Emerging market structures in the communications sector* and the Productivity Commission's report titled *Broadcasting*. The government is also in the process of completing the implementation of a number of recommendations from the Productivity Commission's report titled *Radiocommunications review*. The government is also undertaking a range of activities and considerations in the first half of 2005 to progress telecommunications service and regulatory improvements. I refer,

for example, to the full implementation of the Estens recommendations; introducing legislation into parliament to require regular reviews of regional telecommunications; further consideration of the adequacy of consumer protection measures; establishment of a new retail price control regime for Telstra by 1 July 2005; a scoping study for the possible sale of the remainder of the government shareholdings in Telstra; and consideration of the appropriate policy and regulatory settings for next-generation networks and emerging voice services in a privatised environment. That represents quite a suite of reviews.

The government is also currently examining current telecommunications competition regulatory settings. The government will shortly commence an industry consultation process about whether it would be appropriate or desirable to make further changes to the telecommunications competition regime at the present time. So to initiate yet another series of reviews covering many of the same issues will create an unacceptable degree of uncertainty in the industry and for consumers.

ACMA may not always be the appropriate body to conduct regulatory reviews, especially when those reviews consider the operations of ACMA itself. ACMA would regularly review its own activities to ensure its efficiency and effective functioning as a matter of course.

With regard to complaints handling, which is proposed to be covered by the review, this responsibility is currently divided between a number of bodies in the communication sector. The Telecommunications Ombudsman handles complaints about telecommunications carriage services, while the Australian Broadcasting Authority, state and territory fair trading agencies and the Telephone Information Services Standards Council handle

various types of complaints about content services, such as pay TV content, internet content and content on premium rate telecommunications services. This reflects the fact that the type and nature of the complaints vary substantially across the different communication sectors. It is important that the complaints-handling mechanisms adequately address the different types of complaints.

The government does not consider that arguments for a one-stop shop for the handling of complaints in the telecommunications sector are supported or can be supported by the available evidence at this time. There is simply no evidence that existing arrangements are not operating effectively. It is not clear that a centralised organisation could retain the detailed expertise across the board or in the complex range of legal, technical and market issues that would be involved in addressing complaints across the different communications industries.

Finally, I should point out that this particular amendment is misconceived for two reasons. Firstly, the Telecommunications (Interception) Act 1979 is administered by the Attorney-General, therefore it is not appropriate for the Minister for Communications, Information Technology and the Arts to review it. There is simply no capacity to do so. Similarly, the minister only administers parts XIB and XIC of the Trade Practices Act and certainly not the whole act. For those reasons it is not appropriate for the review to be couched in the way it is. Not only would it be complex and difficult to implement, there is doubtful power as far as the injunctions to the minister are concerned.

Question agreed to.

Senator CHERRY (Queensland) (12.25 p.m.)—I move Democrats amendment (8) on sheet 4543:

(8) Page 50 (after line 28), at the end of the bill, add:

Schedule 1—Consequential amendments

Telecommunications Act 1997

1 Paragraphs 4(a) and (b)

Omit the paragraphs, substitute:

- (a) promotes the use of industry self-regulation where this will not impede the long term interests of end users; and
- (b) enables the objects mentioned in section 3 to be met in a way that does not impose unnecessary financial and administrative burdens on participants in the Australian telecommunications industry;

In my view, this amendment is probably the most important of the suite of consumer driven amendments I am moving today. It seeks to change the regulatory policy of the Telecommunications Act. It not only directly follows the recommendation of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee’s report but it also picks up wording directly from the report to the ACA, called *Consumer driven communication strategies for better representation*, or the CDC report. That was a report which the ACA commissioned from a panel of consumer experts. It recommends a range of changes, some of which are administrative—and so, obviously, are being dealt with by the ACA board—and some of which are legislative. Of the latter, this change is probably the most important.

I think it is appropriate that we consider the amendment in the context of the ACMA Bill. Essentially, what this amendment seeks to do is to modify the regulatory policy section of the Telecommunications Act, section 4, to downplay to a degree the extent to which self-regulation is the preferred means of regulation under the Telecommunications Act. The current regulatory policy provision provides:

The Parliament intends that telecommunications be regulated in a manner that ... promotes the greatest practicable use of industry self-regulation

...
... ..

but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3.

The consumer bodies have always had difficulty with the emphasis on self-regulation in the Telecommunications Act. True, on one level it works very well—for non-controversial, technical matters like standards of performance and so forth. But it does not work very well in respect of matters which are more controversial—the consumer service guarantee, consumer complaints, customer satisfaction, billing and a whole range of matters which the ACA obviously has a say in. In those areas self-regulation is in fact the worst way to utilise the regulatory means.

What the consumer panels have suggested is that the Telecommunications Act should be amended to make it clear that the promotion or use of industry self-regulation should occur where this will not impede the long-term interests of end users. So we are picking up some of the wording which is in section 3 of the act but making it quite clear that self-regulation is qualified in terms of the extent to which it is used. That does not necessarily in any dramatic sense change the balance in the Telecommunications Act, but it does make it abundantly clear in the regulatory policy under which ACMA will operate that it is the interests of end users which are absolutely dominant. The use of industry self-regulation should be promoted, true, but only where it does not impede the long-term interests of end users. Rather than a radical change of regulatory policy, it is a rebalancing of regulatory policy to make it clear to the ACMA that we are putting self-regulation, yes, first and foremost but also on

the same level as the fundamental importance of protecting the long-term interests of consumers.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.28 p.m.)—The government will not be supporting this amendment on the basis that there is simply no need for it. Under subsection 3(1) of the Telecommunications Act 1997, it says:

The main object of this Act ... is to provide a regulatory framework that promotes ... the long-term interests of end-users of carriage services ...

Section 4 of the act provides:

The Parliament intends that telecommunications be regulated in a manner that ... promotes the greatest practicable use of industry self-regulation ...

... ..

but does not compromise the effectiveness of regulation in achieving the objects mentioned in section 3.

Section 4 of the act does not specify a preference for regulation but indicates that the promotion of self-regulation in telecommunications is subject to the objective that regulation promotes the long-term interests of end users. Section 4 also states the intention that telecommunications be regulated in a manner that does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry. The government adheres to the view that self-regulation provides an efficient and effective means of achieving the objectives of communications legislation, not only in telecommunications but also in radio communications and broadcasting.

In a serious vein—I do not mean to be flippant—if this is passed and actually stands when it comes back to this place, it is not going to work because the amendments are drafted as a schedule and the ACMA Bill is a stand-alone bill which does not include

schedules or amendments to other acts. As the amendment proposes to amend the Telecommunications Act and not the ACMA Bill itself, it should be made to the Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004. I earnestly hope that, once we have a chance to reflect on all these points and consider just how out of sync the amendment is with the way in which the ACMA Bill is intended to work, we will no longer be concerned with this amendment.

Senator CHERRY (Queensland) (12.31 p.m.)—I think the last point made by the minister is a very valid one. I seek leave to withdraw amendment (8) on sheet 4543.

Leave granted.

Senator CHERRY—I indicate that I am also not intending to move amendment (9) at this stage. I will move it in relation to the next bill.

Bill, as amended, agreed to.

AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY (CONSEQUENTIAL
AND TRANSITIONAL PROVISIONS)
BILL 2004

Bill—by leave—taken as a whole.

Senator CHERRY (Queensland) (12.32 p.m.)—I move Democrat amendment (8), as amended, on sheet 4543:

(8) Schedule 1, page 21 (after line 24), before item 127, insert:

126A Paragraphs 4(a) and (b)

Repeal the paragraphs, substitute:

- (a) promotes the use of industry self-regulation where this will not impede the long term interests of end users; and
- (b) enables the objects mentioned in section 3 to be met in a way that does not impose unnecessary financial and administrative burdens on participants in the Australian telecommunications industry;

This provision seeks to omit paragraphs 4(a) and 4(b) of the Telecommunications Act, which are the regulatory policy provisions of the Telecommunications Act, and substitute two new paragraphs. I have spoken on it before. I think it is more appropriate to move it in relation to this bill.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.33 p.m.)—I am going to get some advice, but I think there may still be a problem in moving that amendment as a schedule. In any event, we will consider that and come back to Senator Cherry.

Senator CONROY (Victoria) (12.33 p.m.)—I indicate on behalf of Labor that, once again, Senator Cherry's powerful oratory performance has swayed me to his side.

Question agreed to.

Senator CHERRY (Queensland) (12.34 p.m.)—I move Democrat amendment (9), as amended, on sheet 4543:

(9) Schedule 1, page 5 (after line 21), before item 6, insert:

5A At the end of subsection 4(2)

Add:

; and (d) ensures fair and effective resolution of customer complaints.

This amends schedule 1 of the consequential and transitional provisions bill. This provision seeks to change the regulatory policy provision of the Broadcasting Services Act. Again, we seek to ensure that the fair and effective resolution of consumer complaints is part of the regulatory policy of the Broadcasting Services Act. It is interesting to see, when you look at the Broadcasting Services Act, that this matter is not dealt with anywhere. The objectives of the act seek to encourage the provision of means for addressing complaints about broadcasting services but do not seek to have them resolved. That

is a flaw in the objectives clause of that bill, which would be fixed to a large degree by making it clear in the regulatory policy that promoting fair and effective resolution of customer complaints is part of the regulatory policy of the ACMA.

This would ensure the ACMA starts from day one with a clear statement from parliament that consumers have to be first and foremost in its considerations. It moves the regulatory policy of the Broadcasting Services Act only a few millimetres—but it is a few important millimetres—towards the resolution of complaints. That is something I think is appropriate to do in an act which is enacting a new authority with a clean piece of paper like this one.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.37 p.m.)—I think that what has taken place in the chamber over the last 10 minutes or so shows just how poorly thought out these amendments really are and how easy it is to have unintended consequences that have implications well beyond those that might be thought of by senators who move amendments. They might look good on the surface but when you actually consider them a little more closely they are either unnecessary or really make the whole regime much more difficult to comply with. I make that comment because I decided it was appropriate to point out that the two amendments we have been considering would have been farcical if we had not drawn to the chamber's attention the fact that they could hardly work in their current form.

With respect to the substance of amendment (9), the proposed amendment to section 4 of the act is clearly unnecessary. Regulation of broadcasting already includes strong complaints based processes. Part 11 of the BSA provides that persons can make a complaint to the ABA that a service provider has

committed an offence through the breach of a licence condition or code of practice. The ABA must investigate the complaint and must notify the complainant of the results of its investigation. In dealing with consumer complaints under the Broadcasting Services Act, the ACMA would be required to act fairly, including complying with requirements of procedural fairness, otherwise the outcome of its investigations may be subject to legal challenge. It is important that an appropriate level of balance between consumer and other interests is adopted. Section 4 of the BSA already provides this. The ABA is required to regulate broadcasting services in a way which enables public interest considerations to be addressed without imposing unnecessary financial and administrative burdens on service providers. For those reasons, the government rejects the amendment.

Senator CHERRY (Queensland) (12.39 p.m.)—I do have to respond to those comments from Senator Coonan.

Senator Conroy—Defend your honour!

Senator CHERRY—I am going to defend my honour. It is quite clear that the amendments that I moved to the ACMA Bill could have stood in the ACMA Bill. The long title of that bill makes it quite clear that they could have stood in that particular bill. I thought it was more appropriate, when the minister raised the issue, that they be in the consequential amendments bill. I am prepared to accept that but they could have stood where they were. So, rather than being a farce, it was actually a matter of trying to clean it up in terms of which bills come back from the House. So I do not accept that. I also should note that the minister's office has had these amendments for several days and has been in consultation with my office and has never raised the issue of whether or not they were being included in the correct bill.

So it is a little rich for the minister to stand up and point this out as an example.

I do not accept the argument that these amendments are a farce. The amendment to the Telecommunications Act, as I said, has been before ACMA for months because it came out of the consumer driven strategies report that ACMA itself sanctioned. I presume it has been in the minister's office for months on that very basis. The Broadcasting Services Act amendment, which I have just spoken to, came out of the Senate committee report—the committee reported last week—and has been on the table for some days. From that point of view, it is not a farce. We have tried to make it a little bit more consistent to give the government a bit of appropriate latitude in terms of messages coming back from the House but I think the amendments as they stood in their first draft certainly would have stood from a legal point of view.

Senator CONROY (Victoria) (12.40 p.m.)—I tend to agree with Senator Cherry that perhaps the minister's language was a little harsh. These issues, as Senator Cherry has indicated, have been canvassed quite widely in the last few days if not weeks and months. But what does disturb me is something the minister said earlier in her summing up of the second reading debate—that is, she wanted this bill to go through unamended. I take it from that that even modest, sensible proposals will be rejected. It is disappointing that the minister takes the view that the font of all wisdom and knowledge is her office and her department and that even reasonable proposals will be treated with contempt and disdain. This is perhaps an indicator of the arrogance of the Howard government in the lead-up to its gaining control of this chamber, but I would hope that the minister has a more inclusive approach both before and after 1 July so that she does not take the approach that the font of all wis-

dom exists on her side of the chamber. That would be ultimately to the detriment of democracy in this country. I hope it does not reflect the approach the minister will take in the future.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.42 p.m.)—I want to very briefly respond to both Senator Cherry and Senator Conroy. The point that I was making about amendments (8) and (9) is that it is very easy in this place for us to agree to measures that have unintended consequences, without thinking them through. Then there has to be yet another round of things to fix them up. It behoves us all to try to approach these amendments in a constructive fashion. I am sure that that is what we do, at least in trying to be coherent about what we are trying to advocate in this place and what amendments we are seeking.

As to Senator Conroy's suggestion that I am not amenable to sensible suggestions in relation to this bill, nothing could be further from the truth. Apart from giving the Governor-General the capacity to select members of the board on merit, which even Senator Conroy could see some problems with, what has been presented here without really all that much debate—I have tried to put the government's perspective on record—is a suite of measures, an omnibus set of changes, that simply cannot be supported. Obviously we will see where we get to. I commend the bill to the chamber.

Question agreed to.

Bill, as amended, agreed to.

TELECOMMUNICATIONS (CARRIER LICENCE CHARGES) AMENDMENT BILL 2004
 TELECOMMUNICATIONS (NUMBERING CHARGES) AMENDMENT BILL 2004
 TELEVISION LICENCE FEES AMENDMENT BILL 2004
 DATACASTING CHARGE (IMPOSITION) AMENDMENT BILL 2004
 RADIOCOMMUNICATIONS (RECEIVER LICENCE TAX) AMENDMENT BILL 2004
 RADIOCOMMUNICATIONS (SPECTRUM LICENCE TAX) AMENDMENT BILL 2004
 RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX) AMENDMENT BILL 2004
 RADIO LICENCE FEES AMENDMENT BILL 2004

Bills—by leave—taken as a whole.

Bills agreed to.

Australian Communications and Media Authority Bill 2004 and Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004 reported with amendments; Telecommunications (Carrier Licence Charges) Amendment Bill 2004, Telecommunications (Numbering Charges) Amendment Bill 2004, Television Licence Fees Amendment Bill 2004, Datacasting Charge (Imposition) Amendment Bill 2004, Radiocommunications (Receiver Licence Tax) Amendment Bill 2004, Radiocommunications (Spectrum Licence Tax) Amendment Bill 2004, Radiocommunications (Transmitter Licence Tax) Amendment Bill 2004 and Radio Licence Fees Amendment Bill 2004 reported without amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.45 p.m.)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Cherry)—Order! It being after 12.45 p.m., I call on matters of public interest.

Foreign Affairs

Senator MASON (Queensland) (12.46 p.m.)—Talk is cheap, tears are not enough, and being sorry will get you nowhere. Compassion—unless expressed through real, practical and tangible action and assistance—is often useless. Worse than that, it might be self-indulgent and, quite often, harmful. Recently, writer and journalist Patrick West wrote a book titled *Conspicuous Compassion: Why sometimes it really is cruel to be kind*. West has identified a relatively new phenomenon in our Western culture: ostentatious displays of emotion substituting for sensible action. He calls the phenomenon ‘conspicuous compassion’. Conspicuous compassion elevates public statements, petitions, badges, protests and rallies above practical measures; that is, conspicuous compassion elevates feeling and saying above doing. This is not a harmless development. As West writes:

Such displays of empathy do not change the world for the better: they do not help the poor, diseased, dispossessed or bereaved. Our culture of ostentatious caring concerns, rather, projecting one’s ego, and informing others what a deeply caring individual you are. It is about feeling good, not doing good, and illustrates not how altruistic we have become, but how selfish.

Sadly, conspicuous compassion is ever-present—whether in the big questions of global affairs where the lives, health and wellbeing of hundreds of millions of people are at stake, or in the more mundane matters of domestic social policy. All too often, we

fiddle while cities burn, sometimes literally. But many of the challenges facing us, from genocide and global poverty to environmental problems, do have solutions. They are not the trendy and fashionable solutions we hear so much about, but they have one definite advantage: they work. Let us see how we can make a difference.

Faced with the horror of the Holocaust some 60 years ago, we distilled our revulsion into two words: Never again. Sadly, it has proved to be an empty slogan. It has been far easier, and morally far less expensive, to publicly proclaim to the world one’s compassion and sensitivity by denouncing the crimes of the past than to try to do something to stop the crimes of the present. We have recently witnessed 800,000 people slaughtered in Rwanda, while the world did nothing. In Sudan, two million people have died over the last two decades in the conflict between the north and the south—mostly out of the international spotlight. In the Democratic Republic of the Congo, up to three million people have died since 1998. That is 300 times more than the number of civilians who died in Iraq after the liberation—with 300 times less international indignation.

These numbers make the crisis in Darfur almost pale into insignificance with its 170,000 dead. Here once again, the international community struggles to come up with a magic formula that would end the crisis without the outside world having to dirty its hands with north African dust. As Mark Steyn, one of the shrewdest of commentators, wrote recently:

After months of expressing deep concern, grave concern, deep concern over the graves and deep grave concern over whether the graves were deep enough, Kofi Annan managed to persuade the UN to set up a committee to look into what’s going on in Darfur. They’ve just reported back that it’s not genocide.

That is great news, isn't it? For, as yet another Annan-appointed UN committee boldly declared in December: 'Genocide anywhere is a threat to the security of all and should never be tolerated.' So thank goodness this isn't genocide. Instead, it is just 70,000 corpses which happen to all be from the same ethnic group—which means the UN can go on tolerating it until everyone is dead.

Sadly, over the years, the standard response of the international community to genocide, mass violence and gross violations of human rights has been to substitute words for action. This seemingly endless talk, posturing, meetings, committees, commissions, resolutions and summits have all been well meaning and very sincere, but ignore the reality that words do not stop bullets; in most cases, good intentions are not enough to stop killing; and right must be backed with might if it wants to prevail.

The very brutal truth is that genocide is only ever stopped by the force of arms—or not at all. Of themselves, diplomacy, the United Nations and the very best of intentions are not enough. If moral outrage and concern were the only weapons in the arsenal of democracies those 60 years ago, there would be no Jews left alive today at all. The slaughter in Bangladesh was only stopped by India, the killing fields of Cambodia by a Vietnamese intervention and Idi Amin's reign of terror by Tanzanian troops. In the Balkans the killing was only stopped by an armed intervention, arguably a few years too late.

In *Hotel Rwanda*, which is screening in cinemas throughout Australia right now, the main character, a hotel owner in the capital, Kigali, assures his wife that everything is fine because 'they are preparing an intervention force'. 'They', meaning us, never did. There is evidence that even a small force of a few thousand soldiers, if inserted into Rwanda early enough in the conflict, could have stopped the genocide. Instead we have

Kofi Annan's mea culpa standing rather feebly against the backdrop of 800,000 white crosses and President Clinton's admission: 'Rwanda's tragedies became one of the greatest regrets of my presidency.' As Janet Albrechtsen notes, in his 957-page autobiography, Mr Clinton 'devoted just two paragraphs to that greatest of regrets'. Unless the international community is ready to fortify its concern with armed force, it would be far better for everyone to shut up and greet the dying with mournful silence instead of throwing them an illusory lifeline made up of empty words. Conspicuous compassion kills because it distracts us from the harsh realities of the world outside.

The response to mass violence throughout the developing world is, alas, no different to the response to all other challenges facing the developing world: talk rather than action. Also, if there is to be action, it too often takes the form of symbolic gestures as opposed to practical solutions—and the consequences can be just as dire. Debt forgiveness and foreign aid generally have been two international causes most prominently hijacked by the conspicuously compassionate crowd. The arguments about lending a helping hand to the developing world are fine and reasonable. In practice, however, all too often this results in throwing money at the problem. We can feel better about ourselves because we are so compassionate and so giving, but the problems we are trying to eliminate throughout the developing world show no sign of disappearing.

Poverty is a symptom of dysfunctional political, economic and social systems throughout the developing world. Simply giving more money—either indirectly, by forgiving debts, or directly, through foreign aid—might show others how compassionate and generous we are, but it will prove useless unless we can fix the systemic problems of the developing world. Corruption, lack of

transparency, cronyism, nepotism, stunted civil societies, closed socialist economies, overregulation and statism mean that, however much money we give, most of it is likely to end up misappropriated, stolen or wasted. The real solution is democratic reform, opening up the economy, freeing up trade and creating robust social institutions. As the Treasurer said last year:

It is not aid, but trade and economic reform that has delivered these millions out of poverty.

But pursuing that is very tough—it is difficult, it is not sexy and it requires a lot of work. The international community's approach to global environmental problems is no different from its approach to violence and poverty. All too often we misallocate our limited resources towards trying to tackle prominent and exciting problems such as global warming when the money would be far better and more effectively spent on eliminating problems that simply do not capture our imagination, are not trendy and are not fashionable. It has become a mission of Bjorn Lomborg, 'the sceptical environmentalist', and a group of experts known as the Copenhagen Consensus to suggest the best allocation of our resources. The results are quite startling. As Lomborg writes:

... we can do enormous good for the money we spend. The expert panel of economists found that HIV-AIDS, hunger, free trade and malaria should be the world's top priorities. More than 28 million cases of HIV-AIDS could be prevented by 2010. The cost would be \$US27 billion ... with benefits almost 40 times as high.

He goes on to say:

Providing micronutrients missing from more than half the world's diet would dramatically reduce diseases caused by iron, zinc, iodine and vitamin A deficiencies. This would have an exceptionally high ratio of benefits to cost. The expense of establishing free trade would be dwarfed by benefits of up to \$US2400 billion a year. Mosquito nets and effective medication could halve the

incidence of malaria and would cost \$US13 billion, with benefits at least five times the outlay.

Not trendy, not fashionable, but practical. By contrast, under the current popular proposal to solve problems such as global warming, the enormous costs are likely to far exceed the benefits. Unfortunately, the international community will keep on pursuing initiatives like the Kyoto protocol, while for a fraction of the cost we could go a very long way towards improving the lives of billions of people around the world. Battling against the apocalyptic scenarios of *The Day After Tomorrow*, however, seems far more exciting, fashionable and interesting than fixing sewerage somewhere in Botswana or providing mosquito nets in Sri Lanka. Plus, in the good conspicuous compassion tradition, you can agitate for the Kyoto protocol from the comfort of the armchair in your living room without having to dirty your hands with actual hard work.

Australian society, sadly, is not free of tokenism, symbolism and conspicuous compassion. There are sections of our society which hold a belief that a UN resolution will depose a tyrant or restore peace, that aid and debt forgiveness will transform the developing world or that saying sorry will increase the life expectancy of Australian Aboriginals and stop domestic violence. They are wrong. The Howard government has been consistently resistant to this sort of make-believe social, economic and foreign policy, which is why it has championed initiatives and philosophies such as mutual obligation, practical reconciliation and tied aid.

There is always scope for more. Our approach to tackling international and domestic problems should be simple: think before you speak, prefer actions to words, spend wisely. Further, if it has not worked in the past, it is not likely to work in the future and if it sounds like magic, it probably is. My mother used to always say, 'If you don't have any-

thing nice to say, don't say anything.' I would extend this principle even further: even if you have something nice to say, do not say anything unless you are also prepared to do something.

Iraq

Senator FAULKNER (New South Wales) (1.01 p.m.)—Today I wish to place on record some facts about the civilian casualties of the Iraq war. I cannot place on record any certain statement of how many civilian casualties there have been. No-one knows. I do not mean that the census of the dead is incomplete, inaccurate or fragmentary; I mean it has not been carried out at all. None of the coalition of the willing keep, or admit to keeping, a count of Iraqi deaths.

This is in striking contrast to the anxiety that there be a scrupulous accounting of deaths attributable to Saddam Hussein. It is not in question that in the 1980s and early 1990s Saddam Hussein carried out horrific purges of his real and imagined enemies. More than 50,000 Kurds were shot, bombed or gassed in the late 1980s. After the first Gulf War, when sections of the Shiite and Kurdish populations rose up in rebellion, Saddam Hussein ordered the deaths of at least 100,000 and possibly as many as 200,000 men, women and children. The toll of these massacres a decade or more later is told and retold by the members of the coalition of the willing. Howard government ministers join their American and British counterparts in using these numbers to legitimise in retrospect an invasion carried out under false pretences.

But here is a number you will not hear from this government: 16,389. That is the number of verifiable civilian deaths reported by at least two independent news sources and recorded in the Iraq Body Count project, a volunteer, not-for-profit effort to record civilian casualties. That is the number today.

Those 16,389 include Bahaar Ali Kadem, two years old, killed on 20 March 2003 by a missile in Helaa Al-Kefell. They include Ali Shaker Abed Al-Hassan, aged four, killed two days later also by a missile in Al-Bassra. These are two among the thousands of children killed. Those 16,389 include Zahara Khalid, aged 60, killed by a mortar in Baghdad on 19 April 2004, and 59-year-old Muhammad Kahdum al-Jurani, killed on 24 October 2003 when his family car was struck head on by a US armoured personnel carrier on the highway west of Baghdad. The site is at www.iraqbodycount.net. If Senator Hill has any interest at all in the number of Iraqi civilian casualties he might get one of his staff to check it out.

Those are verifiable civilian deaths. The number does not include people whose fate is never recorded by Western media because they live in an area too remote or too dangerous for journalists, because their bodies are buried in the rubble of a bombed building or because deaths due to the breakdown of law and order and human services are not a news story. When it comes to counting civilian deaths caused by the invasion, the US and Australia are part of the coalition of the unwilling.

But, while the occupying forces are unwilling to count the civilian dead, others have tried. Volunteers, doctors, public health researchers and journalists have in some cases risked their own lives to count lives lost. In 2004, the Associated Press surveyed a number of morgues in different regions of Iraq. They found the breakdown of law and order in occupied Iraq had a daily deadly price. The AP survey contains some more numbers you will not hear from Mr Howard or Senator Hill. Karbala has seen an increase from one homicide per month in 2002 to 55 per month in 2004. There were no homicides in Tikrit in 2002 but in 2004 there were an average of 17 per month. In Kirkuk, murders

rose from three per month in 2002 to 34 per month in 2004. In Baghdad, the rate rose from three per 100,000 people in 2002 to 76 per 100,000 in 2004.

You will not hear the Howard government talk of the *New England Journal of Medicine* study that surveyed soldiers returning from Iraq. Assured of anonymity, 14 per cent of army soldiers and 28 per cent of marines in the study said that they believed they had been responsible for the death of one or more civilians. Of course, this might include overcounting if several soldiers believed they had been responsible for the death of the same civilian, but it also might very well include undercounting if one soldier believed they had been responsible for several deaths. If these results were typical, that would translate into 41,000 American troops by the end of 2003 believing that they had killed one or more civilians. This does not count civilian deaths caused by navy or air force personnel, such as those killed by bombing, and it does not count all those killed in the 14 months since the end of 2003.

In 2004 volunteers and public health workers risked their lives to gather data for the study now usually referred to as the *Lancet* study and published as 'Mortality before and after the 2003 invasion of Iraq: cluster sample survey'. This survey uncovered some more numbers you will not hear from this government. The survey results suggest that, even excluding Fallujah, 98,000 more Iraqis died as a result of the invasion of Iraq than would have died had the invasion not taken place. The major causes of death before the invasion were heart attacks and strokes. After the invasion violence was the main cause of death. The study found that violent deaths were widespread and mainly attributed to coalition forces. Most individuals reported killed by coalition forces were women and children, and the risk of death from violence

was 58 times higher after the invasion than before it.

These are staggering figures, and they are figures that ought not be excluded from the debate. If Mr Howard and Senator Hill had their way, these figures would be excluded. They would never have been collected. We owe a debt of gratitude to the many volunteers, doctors, journalists and researchers around the world working to record the Iraqi dead. They are undertaking what is more properly the responsibility of the invading and occupying powers—a responsibility these governments have shirked. You might expect President Bush, Mr Blair or Mr Howard to be ashamed of their failure to offer their citizens a complete accounting of the acts committed in their names. Instead, they ridicule the efforts of others as partial and incomplete. It is true that, as long as the occupying forces leave collecting information about civilian deaths to volunteers and journalists, these surveys can only be indicative. But they are indicative that the years since the invasion have seen a horrendous rise in violent deaths and a horrendous toll of civilian dead.

We cannot know the precise number of dead. We can be certain that it is high, and we can be certain that the reason we do not know how high it is is that our government, the American government and the British government have been very careful to avoid finding out. We in the coalition of the willing name and count every one of our dead—soldiers, journalists, aid workers and civilian victims—but we neither name nor number those we kill, and that difference says more about this war on terror than any grandiose rhetoric about democracy and freedom. That difference explains why our government is so confident we can afford the invasion of Iraq—because the cost is calculated in the currency of Iraqi lives. That is a price the coalition of the willing is too willing to pay.

Is the removal of Saddam Hussein worth 1,000 lives? Is it worth 10,000, 20,000, 30,000 or 100,000 lives? Who could solve such a ghastly algorithm? It is the duty of the Australian government, the US government and the British government to try. It is their responsibility to take account of the dead—of their names, their ages, their families and the ways and reasons they died. It is their duty to take account of numbers like 98,000 or 41,000 or 55 murders a month or 16,389 deaths reported in the Western press alone. The point is that we should know the price.

I do not expect the armed forces of any country to be able to invade and occupy another without killing civilians, damaging hospitals and water treatment plants or disrupting food shipments. That is an unrealistic expectation. Wars are bloody and horrific. A lot of people die, and they die hard. Most of them have no connection with the abstract causes being fought for or interest in the politics that brewed the battle. Every one of those deaths leaves a lasting wound in the lives of those who loved them and, knowing that, we should be very careful about when and why we go to war. It is inexcusable to pretend we can wage a war without cost, as the Howard government is trying to do, and it is inexcusable to take our nation to war based on a lie, as the Howard government did. It is inexcusable to take our nation to war based on a lie. The Howard government did not have the strength to say no to the United States or the integrity to tell Australians why we were going to war. They ought to have the courage to count the dead.

Judge Robert Bellear

Senator RIDGEWAY (New South Wales) (1.15 p.m.)—I rise this afternoon to speak on the life of a great Aboriginal man. Over the course of the last six years in this chamber, I have made it a point to record details of the lives of those significant Australians and,

more particularly, those people that I regard as not only my role models but also, most of all, trailblazers. In this particular case I want to speak on the life of a great man, Judge Robert Bellear, who passed away in Sydney yesterday afternoon after a long illness—a long battle with cancer. I first want to offer my sympathies to his family, who have been through a very distressing time. While we mourn his passing, we know he is now released from his suffering.

Bob was of Noonuccal/Bunjalong decent. He was a saltwater man from the south-east Queensland/northern New South Wales region. Like the majority of Aboriginal people, he came from a background of poverty. He worked against the odds to become in 1996 Australia's first Aboriginal man to be appointed as a judge. I think in that respect it is very important that *Hansard* becomes a record of the history of those sorts of achievements. He was born in Murwillumbah 60 years ago as the eldest of nine children. Bob Bellear left school early to help support his family, first working as a fitter and turner and eventually putting himself through university because he believed that was the only way forward for him and his family. It says a lot in that the integrity and capacity of this man has demonstrated many of the things that we require in contemporary times.

Bob was at the forefront of the Aboriginal struggle all his life, leaving historical markers as he moved on. Way back in 1971, along with the now magistrate Pat O'Shane, he was one of the first two Aboriginal students to be taken into the University of New South Wales law faculty. Yesterday, after hearing of his death, I marvelled at a photograph taken back in 1972 of a young Bob Bellear, standing with Bobby McLeod and Tiga Bayles, in the thick of the action at the Aboriginal Tent Embassy just down the road. Last week in this place, I spoke of the struggle to retain Aboriginal housing in Redfern and outlined

the history of activism that resulted in the Block becoming Aboriginal property. Bob Bellear was there as well; he was one of the main instigators that led the charge that brought that about. In January 1973 he led a group of Aboriginal men back to squat in the derelict houses in Louis Street in Redfern, from which they had been evicted, to claim them as Aboriginal houses. A committee was then formed to approach the Whitlam government for funds to buy housing, and the rest is history. He went on to cofound the Aboriginal Housing Company in Redfern and worked as director of the Redfern Aboriginal Medical Service, Aboriginal Legal Service and Aboriginal Children's Service.

Bob graduated from the law school of the University of New South Wales and was admitted to the New South Wales Bar in 1979. Following that, on behalf of the Northern Land Council, he undertook a number of land rights cases for traditional owners. From 1979 to 1983 he was a member of the New South Wales Corrective Services Advisory Committee and in 1987 was appointed Counsel Assisting the Royal Commission into Aboriginal Deaths in Custody. He was the first chairman of the New South Wales Aboriginal Justice Advisory Council, which was the first committee of its type to be set up in the nation as a result of one of the key recommendations of the royal commission addressing deaths in custody. He was also a member of the Juvenile Justice Advisory Council of New South Wales.

When he was sworn in as a judge on 17 May 1996, he said that racism was endemic in Australia and that many Aborigines received inferior legal representation once they were charged with criminal offences. He stressed that all Australians had a right to competent legal counsel and that this right should not be dependent on one's race or the contents of one's bank account. This is a pertinent statement, given some of the recent

decisions by government to look at tendering out legal services being provided to Indigenous communities. The then New South Wales Attorney-General, Mr Shaw, said that Judge Bellear was 'an accomplished trial lawyer with a proven forensic mind'. As most Aboriginal people who work in the mainstream do, Bob also spent much time educating his fellow judges in Indigenous issues. When in 1993 he received his honorary doctorate of laws from Macquarie University in recognition of his personal and professional commitment to the advancement of Aboriginal people, he stressed the importance of this type of education and communication, saying that 'both Aborigines and non-Aborigines have got to strive to educate each other in their respective cultures'.

Barrister, judge and respected community member that he was, he was also a much-loved husband, father and grandfather and an uncle to us all within our communities. His wife, Kaye Bellear, told the *Sydney Morning Herald* in 1990 of the racism that the couple encountered after they married way back in 1966. She said:

I can remember the stares we got walking down the street. The view was: 'Fancy a mother letting her daughter run off with one of them!'

She also said:

I can clearly recall in the Redfern police station in the late 1960s police officers ripping off my wedding ring and shouting at me: 'What's the matter, Kaye, is there something wrong with you?'

In 1988—the year that we all remembered Australia's black history—two of his children, then aged 15 and 13, handed back their bicentennial medals, saying that they 'could not accept a medal that celebrates what has happened to our families'. They continued:

They were tortured, massacred and herded like animals on to reserves, denied the right to live by their laws, speak their language or practise their religion.

As the only two Aboriginal students at Vaucluse High School, the young Bellears told the 800 or so assembled students on that particular day that they would place a box in the school's main foyer and students who supported the Aboriginal attitude to the bicentenary could put their medals in it. I think that really typifies the role of leadership undertaken by Bob himself. The medals were to be sent back to the Prime Minister of the day with a letter. The end result was that the box contained more than 160 medals. I congratulate all those students who recognised there was something untoward that needed to be addressed in looking at the question of what we were celebrating. Unfortunately Malu, one of those brave children, has since passed away.

I offer my sympathies to Kaye and to Kali and Jo and their children. We want to share in their sadness at this time. However, as Bob Bellear knew and as any high-achieving Aboriginal person knows, it sometimes does not matter how many suits you wear, how well off you are or what kind of outstanding contributions you have made for the betterment of society; many people still cannot see past the fact that you are Aboriginal.

It was with some disgust that I read in a news clipping from 2001—not that long ago, in the lifetime of the previous parliament—that Bob, not only a judge but also a local resident, could not get a taxi in his home town of Sydney. Thankfully on that occasion a non-Aboriginal man, a white man, hailed a taxi for him and he was allowed to jump into it. We have seen our distinguished elders treated with such disrespect since 1788, and the treatment goes on until this very day. We like to pretend that these things are not present. People still insist that there is no racism and that the problem is purely an Aboriginal one. I spoke of that last week when I referred to an example of the re-enactment of the Freedom Ride and what happened to a young

Aboriginal man with a CountryLink ticket who was not allowed to get on a bus.

It was the type of attitude that Bob Bellear fought against through his work and his life every day. It is one which we have to acknowledge and one on which we must remain ever vigilant. As I said during the debate that was looking at the fate of ATSIC and Indigenous people, when we look up to Lady Justice, we see that she has a blindfold on. It is there for a particular reason: she is not meant to look down and see the colour of a person's skin. It is no wonder that Bob thought that, by joining the legal profession and becoming a judge, he would be part of a system that works for all in the same manner.

Bob made his mark in Moree as a judge in 2000. For the first time this northern New South Wales town, so long troubled by racial tension and high crime, found itself receiving justice for the first time from a judge who just happened to be an Aboriginal man. It says a lot about the whole notion of being judged by your peers. We remember him today not only as a modern day fighter for Aboriginal rights but also as a community member and a family man with tattooed forearms and a gold ear stud. He was a blackfella like me, a blackfella with family like the rest of us across the country and a blackfella like every other Indigenous person listening out there today.

I want to give credit to the Carr government in New South Wales, because they have recognised his contribution to the state of New South Wales and, indeed, to the entire country. Judge Bob Bellear will be given a state funeral next week in Sydney, and instead of flowers the family have said that, if people wish to kindly respond, donations will be accepted for a diabetes clinic being set up in his name as part of the Aboriginal Medical Service in Redfern. I would like to

finish with some of his words when he received his honorary doctorate back in 1993:

While, slowly, there have been gains, Aborigines are still behind in education, health and housing to name just a few.

Things are a lot better than they were 10 years ago, and multiculturalism has gone a long way towards bringing about equality.

But I hasten to add there's still a long way to go.

He echoes the words of what we now call unfinished business. It is not about politics or the convenient way of drawing lines that divide us and create the 'us and them' mentality. First and foremost, we have to acknowledge the courage of people like Bob Bellear. They have paved the way. They have become trailblazers. I hope that all the young Indigenous people now attending universities across the country, perhaps contemplating work in law or other professions, will be able to walk down these paths and that we will see more Indigenous people joining those professions. Bob is someone whom I regard personally as an uncle, and that is a statement of respect for Aboriginal people. I want to acknowledge his contribution as a role model, an advocate, an activist and a fighter for Aboriginal people right across the country. I am sure those words are echoed right across the chamber, especially by those who have had the opportunity to meet Judge Bob Bellear. He was a well-respected and dignified man. He was principled and believed in what he fought for. He believed that right through to the end and that legacy will continue to live on.

Royal Visit

Senator BARNETT (Tasmania) (1.27 p.m.)—I rise today on the matters of public interest debate with regard to the promotion of the trade and cultural possibilities and opportunities presented to us through the royal marriage of Tasmanian Mary Donaldson to Crown Prince Frederik of

Denmark. Like the rest of us, I was enthralled by the Danish royal visit last week to Australia and my home state of Tasmania in particular. Quite clearly, Australians could not get enough of the royal couple, and obviously the population of Denmark is equally fascinated and charmed by the homeland of their new fairytale princess.

I have nothing but admiration for the way that Mary Donaldson has so far distinguished herself appropriately as a Danish princess and, in reality, as an esteemed roving ambassador and symbol of Australia and her home state of Tasmania. It is as if she were born for this role rather than being the wedded commoner, if I can respectfully put it that way. She is such a natural; she is genuine. She electrifies and energises people in a way that has me casting my mind back to the charisma of the late Princess Diana.

I had the privilege last year of securing the Australian flag flown in the Australian parliament on the day of the royal couple's wedding, and I have forwarded that flag to their royal highnesses through the good help and assistance of the Danish Consul-General, Jorgen Mollegaard. I have enjoyed getting to know Mr Mollegaard over the past six months, and I have appreciated his assistance and support in that regard. The royal couple acknowledged this special gift when I spoke to them briefly at an official reception in Canberra and again in Hobart last week.

I mention this fascination with the Danish royals not as a postscript of adulation because Mary is one of us but as a precursor to my point here today—that is, the country and, indeed, my home state of Tasmania must seize the economic, trade, social and cultural opportunities arising out of the magic of Mary. Here is a right royal opportunity to strengthen our ties with Denmark, with which we already enjoy some trade links, and certainly to strengthen our ties

with the European Union, of which Denmark is a member state.

I was recently elected chair of the new bipartisan Denmark federal parliamentary friendship group, with a brief to forge new cultural and trade ties and to build the relationship with this EU member country. This small group on its own may not achieve a great deal but, together with other measures and innovations, I believe it will play its part. I recognise the appointment of my colleague Labor Senator Linda Kirk as deputy chair and my Liberal colleague Senator Santo Santoro as secretary of the group, and I look forward to working with them both. Last year when I reviewed the Australian parliamentary friendship groups, I noticed that there was none with Denmark. I recommended that we establish such a group and, with over a dozen others, it has now been so established.

In May last year I urged the Hobart City Council and the Tasmanian government to explore sister city status with the authorities in Copenhagen in light of the natural development of the close relationship born out of the royal Danish wedding. I am sure a sister city relationship with Tasmanian cities and Copenhagen or other appropriate Danish cities would be a natural product of the marriage. There is also no reason why this international relationship cannot be extended to other major centres, such as Launceston, Devonport and Burnie in my home state, with regional centres in Denmark.

It is all about converting those television images that many of us saw both last year during the royal wedding in Denmark, with the Danish and Australian flags being flown by so many thousands of people, and then again during their royal highnesses' visit last week to Australia. Australian and Danish flags were flown across this country, particularly in my home state of Tasmania. It is

about converting those images into something far more substantial and long lasting. I believe a sister city relationship is a natural product of the royal relationship. Our two countries share similar values and democratic principles, and we are similar in economic terms, with low inflation of around two per cent and a similar projection of annual GDP growth for Denmark of just over two per cent. With a total mass of 43,094 square kilometres, Denmark has a similar temperate climate to Tasmania and our south-eastern mainland region. It has a population of 5.4 million and shares its border with Germany.

We should grasp with both hands this rare opportunity to further cement our emotional, historic and economic ties with Denmark as a key member country of the European Union. There are countless ways to do this, limited only by our imagination. Already tourism and trade figures between Australia and Denmark have surged as a result of last year's royal wedding in Copenhagen. There are reports that the tourism flow between the two countries jumped by up to 80 per cent last year, while Danish exports to Australia jumped by up to 40 per cent. In 2003-04 total Australian exports to Denmark grew by 34 per cent over the previous year to \$166.7 million, while total imports from Denmark had grown by 11.3 per cent to \$856.6 million.

In a news report last year AAP reporter Paul Mulvey quoted our trade commissioner in Denmark, Flemming Larsen, as predicting an increase of \$50 million in Australian exports by the end of this year and a further increase of \$50 million next year. In 2003-04 Tasmania imported goods worth \$69 million from Denmark, which was obviously good news—but there is room for improvement. In his AAP report Mulvey went on to say that trade between the two countries was booming because of the marriage, with a higher

profile in Denmark of Australian and Tasmanian boutique products such as wine and arts and craft. Mr Mulvey quoted Trade Commissioner Flemming Larsen on the prospect of further growth in trade. Here is what Mr Larsen told that reporter:

In the last three years, exports from Australia to Denmark have gone from \$105 million to \$160 million ...

Previously we only pushed small- to medium-sized imports, no real big ones who push through serious sizes. That's all going to change now.

Mary's wedding has been a bit of a rocket boost to our trade.

I wouldn't be surprised if we see another \$50 million in growth in the next year and the total jump to \$250 million in a couple of years.

She's not just a one-off thing, she's going to be here the rest of her life.

That is so true. Mr Mulvey went on to report that:

A dramatically improved profile of Australia in Denmark thanks to the princess brings with it a much greater awareness of Australian products.

Mr Larsen was quoted as saying that wine was one of the best examples, with Tasmanian wine going from sales of 1,000 to 12,000 cases a year in Denmark. The AAP report went on to say:

There were also hefty sales from simple products such as Tim Tams, Cherry Ripes, Vegemite and Driza-Bone.

Australian arts and craft, homeware and fashion labels such as Fink, Dinosaur and Ultra Funky were booming in Denmark.

In the weeks leading up to the wedding, Larsen took advantage of Denmark's focus on Australia and turned Copenhagen into a mini Australian trade fair.

Congratulations, Mr Larsen, for your initiative and your efforts. Keep it up.

This is the type of innovation I am alluding to, and I again congratulate our trade commissioner for seizing those opportuni-

ties. However, while he is obviously well placed to achieve much, he cannot do it all on his own. There are numerous possibilities. For instance, Australian wine exports to Denmark increased from \$11 million in 1999-2000 to \$38 million in 2003-04. Here is an already growing industry set to blossom with the royal marriage and the Danish royal family's penchant for and links to the wine industry. Seafood exports, albeit from a low base, have grown by more than 1,000 per cent over this period to \$860,000—another potential growth area, particularly for my home state of Tasmania. In 2003-04 Denmark was ranked as our 31st trading partner, up from 33 in the previous financial year. I believe the 2004-05 figures will surely show exceptional growth and enormous potential for far higher levels of growth into the future.

The relationship between our countries, bound by the royal marriage and the subsequent economic impact, is a centuries old phenomenon, although thankfully in modern times the royals actually have a say in their nuptials and their future. Nevertheless, the economic flow-on effect can be just as exciting as it would have been centuries ago. Our new emotional and cultural ties with Denmark can extensively improve our trade imbalance, boosting Tasmanian and Australian exports and opening up another avenue into the EU market. The significance of these ties cannot be overstated, so I urge local authorities to develop sister city and other trade and cultural ties.

Certainly our education authorities, at least in my home state of Tasmania, ought to be planning a student exchange program with Denmark. I have no doubt that, once up and running, an exchange program would soon be fully subscribed in both countries. There are people who may dismiss this as making too much of the royal marriage, but I submit that we can make as much of it as we

like if we are enthusiastic, able and willing. I wish to know, for instance, whether the government in my state or various local government instrumentalities have pursued the possibilities of sister city relationships or other forms of cultural and community exchange programs, such as student exchange programs.

I was heartened to read in the *Launceston Examiner* last Friday a report that the state education department had launched a 'Denmark Friendship Schools Program', enabling students to establish penpal contacts with students in Danish schools. They called it 'Mouse Pals', as in a computer mouse. The school in question in South Launceston was Kings Meadows High School, and I understand another school in Hobart is also supporting the program. I applaud this development, but there is much more that we can do. I strongly urge the Tasmanian Department of Education to explore the possibilities of student exchange programs and the like if they have not already done so. Tarooma Primary School and Tarooma High School—the home schools of Crown Princess Mary—are doing so already and work has already begun. Congratulations! Those ideas could also be extended to aspiring young business executives in the private sector and public servants in the public sector of both countries. Business and trade missions between our two countries are recommended. The opportunities are there and available to grasp.

There is much violence, hate and division across international borders in the world today, so it would be a brilliant gesture if our Mary's wedding were to forge a new and fruitful relationship between the peoples of Denmark and Tasmania, and indeed Australia. I believe it is within our power to create a new era of trade and cultural harmony with Denmark, and hopefully other European countries. Let it be a beacon for the rest of the world to see what can be achieved. At the

same time I am perplexed by the naive and ideological nonsense trotted out by the ACT Chief Minister, Jon Stanhope, who was reported in today's *Canberra Times* as saying:

I see something of a cultural cringe in some of the lavish praise that I don't quite understand that has been laid at the feet of Princess Mary.

Only a mean-spirited character, suffering from and confused by his own cultural cringe and insular-laden mentality, could make such a comment. Apart from an apparent vacuous disposition against the normal leadership qualities of diplomacy and courtesy regarding VIP visits such as those by foreign heads of state, I submit that Mr Stanhope clearly has no concept or indeed grasp of the nuances and inherent potential for trade and other economic connotations surrounding such royal visits. I fear for the prospects of economic development in the ACT if this is the attitude of its leader.

On a brighter note I conclude by complimenting both Crown Princess Mary and Crown Prince Frederik for the very friendly, generous and statesmanlike way they conducted their visit. As I have said, our world history so often symbolises all the wrong traits of mankind, such as conflict, wars, racial and ethnic discord and of course terrorism. The Danish royal couple are a fresh and most welcome contradiction of the norm. I bid them a fruitful and long-lasting life. I also implore our community and leading authorities to seriously contemplate the economic, cultural and other potentials for developing and building strong and vibrant ties out of this wonderful relationship.

Goulburn War Memorial and Museum

Senator STEPHENS (New South Wales) (1.42 p.m.)—A prominent landmark in Goulburn is a 20 metre tower on top of the city's highest peak: the Goulburn War Memorial and Museum. The tower is floodlit at night by a rotating beacon and can be seen

by people approaching the town from any direction, as many people in this chamber will know from their trips to and from Sydney. The war memorial was built by public subscription and officially opened in 1925 as a lasting tribute to the men and women of Goulburn and district who served in World War I. It includes the tower itself; the original caretaker's cottage, which houses the museum; and a cottage garden which has been redesigned with areas for contemplation, memorials, sculptures and plaques. The permanent display includes a tablet, inscribed with the names of those who enlisted from the Goulburn district, and a collection of artefacts allocated to the city of Goulburn after World War I.

During the war, official historian Charles Bean collected hundreds of objects. Most of them are now held by the Australian War Memorial. However, in the 1920s, some were distributed to large country towns, including Goulburn, and there is good reason to believe that that is the only town where the objects sent out in the 1920s are still intact and on display. Many of the artefacts are German, captured by the advancing allies during the last months of the war, and others were donated to Bean's collection posts. Thanks to the combined work of the council, museum officers and curators, researchers and volunteers, these items have been carefully preserved and displayed.

A facility such as Goulburn's War Memorial and Museum plays an important role in bringing together a rural community of all ages. Last year, thanks to a \$3,000 grant from the federal government, seating and handrails were installed on the steep trail leading up to the war memorial to improve the access for senior citizens, especially veterans. But I have observed that those facilities are also being used by the young. It is great to see parents bringing their children to the museum and knowing that our history is

being kept alive and that the sacrifices made in the past are not being forgotten.

Last year, as part of the ANZAC celebrations, the Goulburn Mulwaree Council received a gift of a Turkish private soldier's uniform from the Turkish Ambassador, Mr Tansu Okandan. This uniform is now on display in the museum. It is part of an attempt to create a full picture of the First World War experience, alongside stories such as the famous 'Men from Snowy River' recruitment march in 1916.

This march was initiated by a young Adaminaby man, Private William Baragry, who asked others to join him to 'fill the gaps made in Gallipoli'. The march began at Delegate on 6 January and reached Goulburn on 28 January 1916. By the time they reached Goulburn, 141 men had joined the march. William Baragry died of pneumonia at Goulburn while he was waiting to embark overseas. His brother Edmund, who had joined the march with William, was killed in 1917 and is commemorated on the memorial in the Villers-Bretonneux military cemetery in France, along with over 10,000 Australian soldiers who fell in the surrounding battlefields and who have no known graves.

Another story captured at the museum is that of William Punch, who also died in 1917. William Punch was reared by the Siggs family. He probably came from Bland in the Wagga Wagga region, where John Siggs and others commonly went droving cattle. His entire family was killed in a raid, and the story goes that young Siggs came upon the scene, found the baby still alive, picked him up and rode home with him to Goulburn. Although Indigenous Australians were initially banned from enlisting in combatant roles in the AIF during World War I, it is known that Aboriginal soldiers have served in every military conflict Australia has been involved in since Federation.

Enlistments from the City of Goulburn in World War I totalled 851, and from the surrounding districts the total was 3,117, including 29 nursing sisters. The departing contingents were entertained and farewelled lavishly. More than 90 per cent of the boys who had passed through Goulburn's Kings College in the previous 20 years enlisted, mostly with the Light Horse Regiment. Few people outside the town would know that from 1903 Goulburn was headquarters of the 7th Regiment, claimed to be the oldest Light Horse Regiment in the Commonwealth. Young men from Yass, Mittagong, Braidwood, Young, Canberra and Cooma as well as Goulburn joined this regiment and 4,000 officers and men saw war service in Egypt, Gallipoli, Sinai and Palestine. Very few of them returned. When the federal government believed its conscription proposals would be carried, a special camp was started in Goulburn for those compulsorily called up. While the AIF drilled in blue dungarees, the conscript 'Hughesiliers' wore yellow. When the conscription referendum was defeated, a few of the Hughesiliers enlisted, but most of them returned to civilian life and the camp was disbanded at the end of 1916.

In Goulburn our sense of history is strong, but nowhere is this more evident than in the work of the volunteer group, the friends of the museum, which was formed in late 2000 to coincide with the official 75th anniversary celebrations and the opening of the relocated Goulburn War Memorial and Museum. Through the dedication of Tim Guyer and Peter Mowle, Bob Saunders and Gillian Webber, amongst others, the friends have made a significant contribution and deserve much more recognition than they would ever seek. Judy and Philip Fowler have been inspirational in their work with both the museum and Landcare projects around Rocky Hill. The friends of the museum maintain and clean the artefacts, the building and the

grounds. They undertake research and field trips. They raise money and tirelessly promote the museum. They have been reframing a collection of 80-year-old black-and-white photos from WWI and restoring two pen-and-wash drawings from the Sudan campaign of 1885.

The museum has an interesting link with Belgium through William Leggett, the first Australian to die at the Western Front, who fell in Gheluwe in 1914. A monument depicting Leggett falling from his horse was constructed from a large piece of steel, which left a 'negative' or reverse memorial. Now, school children in Gheluwe and Menen have decorated this reverse with bronze war memorabilia to create a separate monument. The two towns have arranged with the Friends of the Goulburn War Memorial and Museum to ship this monument, free of charge, to Australia. It is to be unveiled in the war memorial gardens in Goulburn on Armistice Day.

Recently, I was invited to attend the opening of an exhibition, which is to happen next month, of artefacts from the infamous Changi prison, used by the Japanese to hold allied troops upon the fall of Singapore. I will be very proud to attend that opening, as this exhibition is the result of a truly extraordinary cooperative effort. The story of the Changi artefacts began with the news in October 2003 of the imminent demolition of the Changi prison on Singapore Island. Concern about this decision was expressed by many sections of the population, including, of course, the RSL. Many Australians regard Changi prison as one of our country's darkest wartime memories. Some 15,000 Australian soldiers were incarcerated there. Of these, 33 were from Goulburn, so local interest in the closure of the prison was high, and the idea emerged to obtain some relics for display in the local museum.

The Minister for Foreign Affairs, Mr Downer, was keen to preserve parts of Changi prison that were of special interest to Australians. He appointed a staff member to liaise with the Singapore Department of Prisons and other authorities to enable some artefacts to be earmarked for Goulburn. As Bob Saunders, the curator at the Goulburn war memorial, has observed, 'There is no doubt that without this support the artefacts would not be here today.' Nothing is ever easy, though, and the museum then had to find a way of transporting the artefacts. So they approached the Navy, and Rear Admiral Moffitt at Maritime Command agreed to send the artefacts to Australia on HMAS *Success*. After a brief period in quarantine, the items were collected from Garden Island and delivered to Goulburn. Among the larger artefacts are: a cell door from the prison, complete with its lock; a one-metre square section of concrete boundary wall; and a metal grill which once fitted above a cell door. Small items include two 'anti-climb' hooks and two cell door brass number plates.

I cannot stress too strongly how fortunate Goulburn is to have these artefacts. Apart from the Australian War Memorial in Canberra and the British Imperial War Museum in London, Goulburn's museum is believed to be the only other one to receive such artefacts. So it is with pride that I put on the public record the commitment and dedication of the friends of the museum: those I have already mentioned and also Ray and Edna Waters, Ray and Lesley Cumberland, Ken and Carol Olsen, Kevin and Ann Sasse, Annette Murphy, Jan Solomon and Rod MacLean. The Changi artefacts will be used to form part of a symbolic representation of the former World War II prisoner of war camp. The concrete wall section will be placed in a memorial garden and feature a plaque commemorating all of the 15,000 Australian soldiers incarcerated at the prison. As I men-

tioned, some 33 of those prisoners came from Goulburn and each will be named on the plaque.

This important project could not have come to fruition without the cooperation of a number of individuals and organisations, and I want to express my appreciation today for the tireless effort put in by the Goulburn Mulwaree Council, the museum's executive and friends, the local returned service personnel, the Navy, DFAT and the Singapore Embassy in Canberra. It is a truism that unity is strength, but this is genuinely a cooperative achievement and a reminder of how much we can actually do when we pool our resources—and Goulburn is very good at doing that.

At least three Changi survivors are known to live in Goulburn: Frank Chattaway, Les Martin and David Thompson. A fourth, Dr Alan Hazelton, who served with Weary Dunlop, lived in Goulburn for many years until he retired to Canberra last year. Dr Hazelton has been invited by the foreign minister to the official opening in April, and I hope his health will allow him to attend. Like so many old diggers, Dr Hazelton was always reluctant to speak of his wartime experiences, but the persistent curiosity of his much-loved eldest grandchild eventually prompted him to revisit old memories. The result is a document entitled *Correspondence with my grand-daughter concerning my experiences in World War II*—a piece of personal history that is moving and inspirational, both in the stories it tells and in the dignity and honesty of the telling.

The Changi exhibition will be open to the public from 9 April, the beginning of the school holidays, and I commend it to anyone committed to the preservation of our history. I again commend the friends of the Goulburn War Memorial and Museum for their tireless

efforts in ensuring that these memories are kept intact.

Senator Mackay—Madam Acting Deputy President, I would like to raise a point of order in relation to some comments made—at the end of what I thought was a very good speech—by Senator Barnett with respect to Mr Stanhope and the ACT legislative assembly. I wish to draw your attention to standing order 193(3), and I ask that the *Hansard* be reviewed with respect to that standing order to see whether Senator Barnett was in fact in order. I think he was out of order but I did not want to interrupt the speech at the time.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Thank you, Senator Mackay. I will refer the matter to the President.

Illegal Fishing

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (1.55 p.m.)—There are five minutes left in this matter of public interest debate and I want to touch again on the international action against illegal fishing around the world. As I indicated to the Senate yesterday, I have just returned from conferences of the High Seas Task Force and the Food and Agriculture Organisation. They were two separate meetings, at the latter of which I had, on behalf of Australia, the great honour of chairing the ministerial meeting of over 50 ministers from across the globe.

I think there is at last a real recognition that illegal fishing, particularly on the high seas, is causing real problems with the fish stock and imposing on the economic activity of legitimate high seas fleets. Senators will recall that just a couple of weeks ago the Australian patrol vessel the *Oceanic Viking* was patrolling between Australia's EEZ near the Heard and McDonald islands and in the EEZ around the Australian mainland. It was travelling in the high seas but in waters con-

trolled by the Commission for the Conservation of Antarctic Marine Living Resources. In the course of that patrol it came across six vessels that were flagged to flags of convenience nations—three to the nation of Togo and three to the nation of Georgia. They were fishing when the fishery had been closed by CCAMLR, as it had been on 14 February.

Had these vessels been flagged to a member state of CCAMLR, the Australian patrol vessel could have boarded those vessels and brought them to an Australian port. However, because these vessels were flagged to two states that are not members of CCAMLR, the Australian patrol vessel was powerless to do anything about it. We did seek the permission of the Togolese government to board the vessel. They gave in-principle support but said that it needed to be signed off by their president, and their president had died three or four weeks earlier and they were in the middle of a military revolt. So quite obviously they were not too concerned about incidents happening in the Southern Ocean, literally thousands of miles away.

We also sought permission to board from the nation of Georgia but, as of today, I do not think we have had any response from them. What this demonstrates is that these flags of convenience vessels really should be barred from fishing on the high seas of the world. As a result of the high seas ministerial task force and the FAO meeting in Rome, action is being taken by the international community to attempt to bring flag states into line in abiding by their responsibilities. Under international law there does have to be a genuine link between the vessel itself and the flag state. In the case of these incidents in the high seas in CCAMLR waters a couple of weeks ago, there was quite clearly no genuine link between the flag state and the fishing vessel itself, because they could exercise no control whatsoever. As a result of

these international meetings, there will be an assessment done of all flag states and indeed of port states, and then they will be benchmarked in priority. We certainly hope that in this way we will be able to take very firm action in protecting our high seas from irresponsible, unregulated and unreported fishing.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from Finland led by the Speaker of the Parliament, Mr Paavo Lipponen. On behalf of all senators, I wish to warmly welcome you to Australia and, in particular, to the Senate. With the concurrence of honourable senators, I propose to invite Mr Lipponen to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

Mr Lipponen was seated accordingly.

QUESTIONS WITHOUT NOTICE

Skills Shortage

Senator MARSHALL (2.00 p.m.)—My question is to Senator Abetz, the Minister representing the Minister for Small Business and Tourism and the Minister for Workforce Participation. Is the minister aware that the Westpac industrial trends survey for the March quarter showed a 19 per cent jump in the number of businesses finding it more difficult to hire skilled workers? Is the minister further aware that the Australian Chamber of Commerce and Industry survey for the March quarter showed skill shortages were the biggest barrier to new investment by small and medium sized businesses? In light of these survey results from Westpac and ACCI, what has the Howard government got to say to small business owners who want to grow their businesses but cannot because they cannot find skilled workers?

Senator ABETZ—I thank Senator Marshall for a question which in fact covers two portfolio areas. I am more than willing to take the question under either of the portfolios that I represent. The government, of course, are aware of the skills shortage that is facing this country. That is why we have put in place a number of policy initiatives. Unlike those opposite, we have actually worked on this problem. We have got a wonderful scheme of setting up technical colleges right around Australia to assist in that area. Unfortunately, state Labor governments have not done that which they should have done in this important area.

Senator George Campbell interjecting—

Senator Forshaw interjecting—

The PRESIDENT—Order! Senator George Campbell and Senator Forshaw, this is an early warning.

Senator ABETZ—Indeed, the Minister for Vocational and Technical Education issued a media release recently, which just shows how importantly the government is treating this issue. There are currently almost 394,000 people undertaking a new apprenticeship, an increase of almost 200,000 since 1998. With the opening of technical colleges across the country, this number will only get higher. Wouldn't it be nice, Mr President, to have an opposition who actually contributed to the issues rather than carping from the sidelines? As the Prime Minister so eloquently noted, these shortages are 'a problem of success'.

The Howard government are focused on tackling the shortage of skilled workers across the country. We are providing solutions and options. The Labor Party provide the carping from the sidelines without an alternative. Our responsibility is to find ways of increasing participation in the work force. The government are currently looking at ways to encourage parents and people on

disability support pensions back into the work force by providing relevant assistance and work experience opportunities. Another initiative is the new pilot encouraging parents to volunteer to participate in Work for the Dole to update their skills and gain valuable experience that may lead to work or contribute to building the self-confidence needed to apply for jobs.

We need to look at ways of increasing participation if we are to address our labour shortages. Assisting people on benefits back into work is not a cost-cutting exercise; it is giving people an opportunity to demonstrate their capacity, support their families and contribute to the community. We are about assisting those in most need and providing opportunities for those who can work. The Leader of the Opposition has acknowledged the need for reform in these areas, but all he does is criticise our proposals without coming forward with concrete proposals of his own. We as a government have a good record on increasing employment in this country. We have a burgeoning economy, and when that happens there will, from time to time, be skill shortages. We as a government are addressing this in a way that will assist the economy—with good policies, starting with increasing training and looking at a whole host of other areas—whereas all Labor can do is carp from the sidelines. I must say that they do it very well, but it is of no assistance.

Senator MARSHALL—Mr President, I ask a supplementary question. Is the minister aware of the Prime Minister's comments that skills shortages are a consequence of low unemployment? Is the minister further aware that ABS data released over the last week shows that there are two million Australians who either are unemployed or want more work? Minister, isn't the Howard government's quick fix of more skilled migrants an admission of its failure to invest in these two

million Australians so they get the skills they need to fill Australian jobs?

Senator ABETZ—I do understand that the Prime Minister has said that—and I think, in general terms, quite rightly so. The success of the economy has driven this skills shortage. I do have a bit of doubt about one area of the Prime Minister's assertion: I do not think you can suggest that success has been the driver of the skills shortage in the Australian Labor Party. That is my only reservation about the Prime Minister's comment. As to the economy generally, yes, the success has led to this skills shortage. That is something that we are working on and that we will address. The Australian economy and job opportunities will grow as a result.

Workplace Relations: Union Movement

Senator TIERNEY (2.07 p.m.)—My final question is also to the Special Minister of State, Senator Eric Abetz, representing the Minister for Employment and Workplace Relations. Minister, does the Howard government support compulsory membership of industrial organisations? Does the government maintain its commitment to freedom of association and freedom of choice and is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Dr Tierney for his question and recognise his longstanding pursuit of the principle of freedom of association—a pursuit which I note undergraduate John Tierney took to heart when he was a university student organising demonstrations against the then Labor government in New South Wales I think way back in 1965, some 40 years ago. So Senator Tierney has a longstanding record on that very important principle.

I can confirm to the Senate that the government does not support compulsory membership of industrial organisations.

Opposition senators interjecting—

The PRESIDENT—Order! Shouting across the chamber is disorderly.

Senator ABETZ—This is because, as Senator Tierney has suggested, the Howard government is committed unequivocally to the principles of freedom of association and freedom of choice—principles which equally allow the people of Australia to either join an industrial organisation or not if they so choose.

It is based on those principles of freedom of association and freedom of choice that the government does not support compulsory membership of student unions at Australia's universities. Unions at our university campuses are no different to those in our workplaces, as the student union leaders themselves proudly proclaim. When given the choice, 83 per cent of Australia's private sector work force has chosen not to join a union. I am extremely proud that the government this morning introduced a bill into the other place to allow for voluntary student unionism. I know that my pride in this decision is mirrored by many of my Senate colleagues, not only Senator Tierney but also Senators Ellison, McGauran, Fifield, Ian Campbell, Barnett, Mason, Brandis and Johnston, and the list goes on. We are all longstanding passionate supporters, as is Senator Santoro from Queensland. As you know, Mr President, I was a strong and active critic of compulsory membership of student unions when I was at university and I still am. Financially struggling students should not be forced to cough up hundreds of dollars a year to fund the dubious political activities of student union leaders. Might I add that these are the only up-front fees students have to pay.

It is simple: if the students are intelligent enough to choose their university, if they are intelligent enough to choose their course and intelligent enough to choose the subjects they are going to take in that course, why on

earth do those opposite think that the students are not intelligent enough to make a choice whether they think it is value for money to join or not to join a student union? That is all we as a government seek to do. As Senator Chris Ellison can attest, when voluntary student unionism was introduced in Western Australia the campus flourished, real activities for students were delivered and there was no detriment; in fact, there were very real positives delivered to the students at the time. We as a government are committed to choice, to giving the workers and students of this country freedom of choice as to whether or not they wish to join a union. I say to Senator Tierney that he has had a very proud record in this place as a senator in fighting for freedom of association and I salute his contribution. (*Time expired*)

The PRESIDENT—Before I call Senator Ludwig, I draw the attention of all senators to the excessive noise in the chamber today. I do not know whether it is because we have visitors from Finland or not, but I ask senators to come to order and conduct themselves in the appropriate manner.

Immigration: Children

Senator LUDWIG (2.12 p.m.)—My question is to Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. Can the minister confirm that officers of the compliance section of the Department of Immigration and Multicultural and Indigenous Affairs are currently conducting raids to pick up the children of suspected overstayers from their schoolyards? Can the minister also confirm that schoolchildren as young as six are being grabbed from schoolyards in front of friends and teachers and are being immediately transferred to Villawood Detention Centre? Is the minister herself completely satisfied with the manner in which her department is conducting these schoolyard raids?

Senator VANSTONE—I thank the senator for his question. I have seen some reports in the paper about a number of alleged raids that have taken place. My advice is that the number is not correct. My advice is that over the last couple of weeks there have been two instances in New South Wales schools. I was advised verbally that there is normally an arrangement that the union is notified. I am not at all sure why the union think they should be but nonetheless that is normally complied with, and was not, I am told, at least in one instance. Nonetheless, the proposition put to me that children were taken from a schoolyard in front of other children is not correct. In relation to one child, the child was detained after school hours. In relation to another, the normal procedure was followed for schools—which is not to say the other was not, because it did not relate to a school; it was out of a school—whereby the principal was contacted. It happened to be an acting principal at the time and then the principal came. People from the school asked for the children to be brought out of a class. If you wish to create the impression that there are immigration officers running around snatching children from schools, good luck to you, because sooner or later—and I hope it is a lot later, Senator—your party will be in government and you will have to work with the people that you so malign at this point. I hope it is a very long time. In fact, I hope the people you are maligning at this point are not there.

Opposition senators interjecting—

The PRESIDENT—Order! We would like to hear the answer.

Senator Chris Evans—You're responsible here.

Senator VANSTONE—You've figured that out, have you? Good.

The PRESIDENT—Minister, ignore the interjections. Senators will come to order.

Senator VANSTONE—As to the question of children at other times, I ask you to consider the proposition that there are occasions when parents are separately taken into detention during school hours. If you want to put the proposition that we should let children go home to an empty home or leave them without anyone in the home so that, if something happens when they are catching the bus home, there is nobody home, and we know that and we do not do anything about it, then you market that proposition. But it is not my view. There was one circumstance where some children were taken to Villawood and the mother indicated that alternative arrangements would be made and were made. Am I happy with those alternative arrangements at the mother's request? No.

Senator LUDWIG—Mr President, I ask a supplementary question. Minister, given your answer, have you or your department given any consideration whatsoever to the immediate and longer term effects of the circumstances that you have outlined where children are picked up after school—whether with a guardian or not when the immigration department decides to effect the grab by the compliance officer? Are any psychological or emotional effects that the children might suffer from these types of compliance systems taken into consideration? Are the teachers or whoever might witness these incidents made aware of the situation so that they do not suffer any psychological or emotional damage as well?

Senator VANSTONE—As I indicated, the normal process is to at least go through the school. They do not just roll up at a school and select children that we believe need to be reunited with their parents. That is what is happening here—they are being reunited with their parents. We work with the school authority to do that. There are some circumstances that might present themselves that could be potentially very difficult. One

would be where a parent was unlawful but the child was not. That does happen. It has happened before, and the parents have chosen to have the children with them in detention. That is the parents' choice; they are free to do that. Where they do not choose that, I am advised that in most cases they make satisfactory arrangements that suit them. In most cases, I would say, the department of immigration should accept what arrangements parents want to make. (*Time expired*)

Uranium Mining

Senator FERGUSON (2.17 p.m.)—My question is to the Minister representing the Minister for Industry, Tourism and Resources, Senator Minchin. Will the minister advise the Senate how government support for uranium mining is benefiting the Australian economy? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Ferguson for that very good question. As the Senate knows, and as our friends from Finland would know, Australia is blessed with enormous natural resources, and the development of these resources has been a key to our economic growth and development for most of our history. As Senator Ferguson alluded to, our uranium industry is a very good example of the economic benefit that we get from the development of our resources sector. Our uranium industry generates over \$360 million per annum in export earnings—that is \$1 million every single day—and it directly employs some 743 people, just about all of them in regional Australia. We are a world leader in the production of uranium. We produce some 21 per cent of world production—second only to Canada—and it provides a vital source of power to many countries around the world.

The proposed expansion of the Olympic Dam uranium mine in Senator Ferguson's and my home state of South Australia has the

potential to create around 8,400 permanent jobs, direct and indirect, and contribute an extra \$1.4 billion per annum to our state's economy. In that vein I welcome BHP's comments reported yesterday that the expansion potential of the mine was a key element in their decision to bid for Western Mining Corporation. I urge BHP to support this project in its entirety if their bid is successful.

Australia contains about 40 per cent of the world's known uranium deposits but they are of course of no value whatsoever if they are left in the ground. Given the opposition's new-found interest in economic issues, one would expect that the opposition would support the expansion of uranium production to boost Australia's exports. Instead, of course, we are confronted with a Labor Party hostage to one of the most idiotic and indefensible policies we have ever seen from a major party. The Leader of the Opposition, Mr Beazley, confirmed on the weekend that the Labor opposition will retain its extraordinarily archaic three-mines uranium policy. This is a policy which says that three mines are good but four are very bad.

Under this ludicrous policy of the Labor Party, the proposed Honeymoon uranium development, also in South Australia, would not be able to proceed simply because it does not fit within this arbitrary three-mines policy—the three mines we have are good but Honeymoon would be very bad because it would be number four. Mr Beazley still has learnt nothing. He still will not stand up to the left of his Labor Party and dump what is an extraordinarily outdated and antidevelopment, anti-export policy. He has the hide to lecture us about exports but refuses to overturn his own anti-export policy. Even worse, the Labor governments of Queensland and Western Australia are totally opposed to any uranium mining in their states at all. I am pleased to see that, as usual, there is dissent in Labor's ranks. On Saturday we

saw South Australian Labor Premier, Mike Rann, reported as saying that there was absolutely no doubt that the three-mines policy needed to be reviewed at the next conference. South Australian Treasurer, Kevin Foley, said, 'I for one in the Labor Party would like nothing more than for the three-mines policy to be scrapped.'

Uranium mining is just one policy area where the Labor Party is stuck in an extraordinary time warp. They have not moved a single inch in nine years in opposition on this, on Telstra, on industrial relations reform and on economic reform. They are stuck with out-of-date policies and led by an out-of-date leader.

Skills Shortage

Senator BOLKUS (2.22 p.m.)—My question without notice is to the minister representing the Minister for Education, Science and Training, Senator Vanstone. Is the minister aware that the Regency TAFE in northern Adelaide has attempted to do its part to address the skills shortage in the electrical trades by taking on some 30 to 35 extra electrical trades apprentices? Is the minister also aware that Regency TAFE is now short-staffed and struggling to deliver this program because the Howard government offers no additional support to TAFEs which target skills shortages? What does the minister have to say to the apprentices and the many small businesses who stand to lose because of the government's failure to support innovative organisations like Regency TAFE and why is the government failing to ensure that apprenticeships are targeted to developing skills in areas of shortage such as northern Adelaide?

Senator VANSTONE—I will not take up the time of the Senate in repeating the figures that I have already repeated on two occasions.

Senator Bolkus—Try and answer the question instead.

Senator VANSTONE—Senator, if you know the answer, I am happy to just reply by post.

Senator Bolkus interjecting—

The PRESIDENT—Senator Bolkus, you have asked your question. Interjections are disorderly. I ask the minister to return to the question.

Senator VANSTONE—I was saying that I would not take up the time of the Senate in repeating what I have said in this place on a number of occasions in relation to the offer made by the Commonwealth to the states in relation to training—which the states had refused—and the comments that I have made with respect to the rollover funding that was made available to go up until the end of June this year. All senators in this place, including you, Senator Bolkus—unless I have mistakenly thought that you were here in the last couple of weeks and you were not—would remember that the consequences of rejecting that meant thousands of training places would not be put in place.

It is one thing to say the Commonwealth should take on all the problems of states who do not do their job. That seems to be the current attraction at this point. It is another thing to criticise the Commonwealth government when in fact the Australian government has made a very substantial offer, which, as I said, in the first instance was rejected. My advice at this point is that the states rejected that offer and they are now on rollover funding until, I presume, further details can be worked out. As to a specific technical college, the Regency TAFE you referred to, Senator, I do not have advice on that but I will get it for you.

Senator BOLKUS—Mr President, I ask a supplementary question. On a more general question—referring to the minister's emu-like, head-in-the-sand approach—Minister, how can it be that the Prime Minister only

identified the skills shortage problem some months ago, when groups like the Australian Industry Group, Access Economics and industry in northern Adelaide have been shouting warnings for quite some time, even as far back as 1999 and 2000? Minister, isn't it the case that chronic skills shortages have been developing throughout the life of the Howard government?

Senator VANSTONE—Senator, as you would well understand, when you have a well-run economy and there is continual growth, you need a continual increase in skills to meet industry's demands to keep growing. You will also understand, from numerous questions that have been answered in this place, that this government has very substantially increased its funding for training purposes. You will also understand, given you were once the immigration minister, that this country has for a long time had an increasing immigration program. Under your stewardship it was more family based and regional based. Some people in your party have some views about why it was based that way and not based, as this government has made it, on skills that Australia needs. You need look no further than the difference between the stewardship under the Labor government and the stewardship under this government for a better immigration program. *(Time expired)*

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the Republic of Cyprus, led by the President of the House of Representatives, His Excellency Mr Demetris Christofias. On behalf of all senators, I wish you a warm welcome to Australia and in particular to the Senate. With the concurrence of honourable senators, I propose to invite Presi-

dent Christofias to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

Mr Christofias was seated accordingly.

QUESTIONS WITHOUT NOTICE

Parliamentary Library

Senator ALLISON (Victoria—Leader of the Australian Democrats) (2.27 p.m.)—Mr President, my question is to you. In February estimates you advised that 'the Library Committee will ensure that we have the independence of the Parliamentary Library'. Can you advise the Senate what you understand an independent Parliamentary Library to be? What sort of independent research assistance and support is to be provided to minor parties, Independents and the opposition more generally? How will you ensure the independence of the Parliamentary Library is protected?

The PRESIDENT (2.27 p.m.)—Thank you, Senator. As is the normal practice, I will take the question on notice because I do not wish to delay question time. I will get an answer for you later today.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (2.27 p.m.)—I do not think it would have delayed us unduly. However, could you also take this on board. As we understand it, the new terms of reference will be discussed at the Library Committee tomorrow. Can you inform the Senate what advice is sought in developing the terms of reference, whether you believe it appropriate for the committee to determine its own terms of reference and whether the Senate will be provided with an opportunity to consider those terms of reference?

The PRESIDENT (2.28 p.m.)—Once again, I thank you for the question and I will ensure that all those questions are answered as soon as humanly possible.

Business: Executive Remuneration

Senator WONG (2.28 p.m.)—My question is to Senator Coonan, representing the Assistant Treasurer. Is the minister aware that the Prime Minister recently warned company executives to show restraint and curb their pay? Is the minister also aware that the Howard government recently rejected a recommendation supported by members of their own backbench that company executives should not be able to set their own pay? How can the minister justify the Howard government's view that executives should be able to set their own pay as outlined in the government's response to the corporations committee report on the corporate law reform program known as CLERP 9? Doesn't this show that the Prime Minister does not mean what he says and actually supports executives setting their own remuneration, even if there are no reasonable grounds to do so?

Senator COONAN—Thank you to Senator Wong for the question. I think by now we have had in this chamber something like an exhaustive debate that has ranged over months, relating to issues to do with corporate governance and the setting of executive remuneration, the amendments to CLERP 9 and the amendments to the various accounting rules that arose out of Sarbanes-Oxley. There have been Senate reports in relation to it, and I do not seriously think that I can add very much more to the fact that the government has moved the amendments that we thought were appropriate through the CLERP 9 process. That has addressed the governance arrangements that have been recommended in relation to the CLERP 9 response. I think it has well and truly taken up the recommendations that Senator Wong has referred to.

Clearly, the matter of executive pay is a matter for relevant boards to determine. As

we have said, whilst it might have some appeal to those opposite to try to prescribe and sit in on boards and decide the rate of executive pay, that is not the way the market works. It is appropriate that there be some safeguards. We have all, I think, on this side of the chamber—certainly the Prime Minister, certainly the Treasurer—made comments where there have been some concerns at what appear to be a very large executive payouts and executive remuneration, particularly when it may not necessarily have been related to the good performance of a corporation. In all of the circumstances, I think that the governance arrangements that have been put in place adequately address the issues that have been agitated very extensively in public, in here and in various committees over the past months, and it is certainly not something that the government would be intending to revisit. We think that the rules are appropriate for the setting of executive remuneration, the disclosure of executive remuneration and the payment of people when they leave the employ of a corporation.

Senator WONG—Mr President, I ask a supplementary question. Perhaps the minister could advise the Senate which other employees in Australia can set their own pay? Is the minister also aware that the government rejected a recommendation to require companies to clearly state executive performance requirements in their remuneration reports? Given that executives can set their own pay and not report what that pay is based on, isn't it the case that the Howard government is simply supporting corporate executive greed?

Senator COONAN—Thank you for the supplementary, Senator Wong, but it is based on a completely false premise. The Howard government does not support people setting their own pay, as it is put; what the government supports is that executive pay be determined by boards and that pay reflects the

governance conditions and arrangements that were agreed to, debated and in fact passed through the House and are now the law in this country. That is what the Howard government supports, and it is an entirely appropriate response to the issues that were identified and taken up in the CLERP 9 report and the very exhaustive process of amending the Corporations Law.

Tasmanian Symphony Orchestra

Senator MURPHY (2.33 p.m.)—My question is to the Minister for the Arts and Sport, Senator Kemp. Last week I asked the minister a question about the Tasmanian Symphony Orchestra and the Strong report recommendation to shrink it. The minister has since been reported as saying that the state will need to contribute more if the TSO is to be maintained at its current size. I ask the minister: what level of funding does he propose the state government contribute; what is the basis for proposing such an increase; and what does it mean for future funding arrangements?

Senator KEMP—Thank you to Senator Murphy for his continuing interest in this issue along with my many colleagues on this side of the chamber, including you, Mr President, who are a very strong supporter of the TSO. I spoke yesterday in the Senate, Senator Murphy, and I hope you have read my remarks in the Senate yesterday. You would have noted that I drew attention to the very large numbers of my colleagues—I did not mention you, but perhaps that was a little ungracious of me; I am happy to mention you today. I have not mentioned any Labor senators, you will note, because I do not think any have directly approached me on this matter, which is a little bit of a surprise. Let me go to the substance of it.

Honourable senators interjecting—

The PRESIDENT—Order! You have the call, Senator Carr—Senator Kemp.

Senator KEMP—Thank you, Mr President. I thought that was a terrible mistake you had made. I am very glad that you corrected that so promptly. What I pointed out is that many of my colleagues are strongly supportive of the TSO remaining at its current size. I indicated that I have very strong sympathy with this view and I said that, in order to ensure that it does remain at the current size, clearly there are going to be additional commitments required from the two major stakeholders, one of which is the Commonwealth government and the other is the state government.

What I would like to hear now is whether the state government is prepared to make a similar commitment. I think Lara Giddings is their state minister, who, I might say, is someone who is very rapid to go on the press. What I would like to hear from Lara Giddings is that it is quite clear that the commitment that will be made to maintain the TSO at its current size will require additional commitments, I believe, from the Commonwealth government. The Commonwealth government, of course, is the major stakeholder and it will pay a major share, but the state government will also have to pay some share.

Equally, I mentioned that we need to have a very satisfactory response from the state government to the recommendations of the Strong report, which deal with a very wide range of issues. What I would like, and which has seemed to be impossible to date, is to have sensible discussions with the Tasmanian government. Unlike other state governments who, I believe, are dealing with a very difficult issue in a sensible fashion, the Tasmanian government under Minister Lara Giddings is not dealing with it in a way which, I think, will lead to a sensible outcome. I have made my commitment very clear. I have made my beliefs very clear about the need to maintain the TSO at its

current size. But it is conditional on the state government making a similar commitment to the additional funds which will be needed, and we need to see a very satisfactory response to the other proposals in the Strong report.

Senator MURPHY—I ask a supplementary question, Mr President. I am not sure whether I should take from that that the government has actually determined a level of additional funding that will be required from the state government or whether it is just waiting for the state government to come along and say, 'We'll provide some additional funding.' It seems a rather ad hoc way to deal with an institution that is very important to the state. I would have thought that the minister would have been able to give a much clearer answer in respect of where this whole thing is heading. If the Commonwealth is committed to the maintenance of the TSO, then it ought to stand up and say so, instead of this argy-bargy that seems to be coming from the minister at the moment. Again, I ask the minister: if he has an expectation that the state contribute additional funds, why can't he inform the Senate what that expectation is? I at least hope that they have informed the state government of what the expectation is. It would be useful if the debate was progressed in a much more, if you like, sympathetic way, given the importance of the Tasmanian Symphony Orchestra.

Senator KEMP—If I receive a response from the Tasmanian government that Senator Murphy is their agent on the negotiations on this matter, I will be happy to have discussions with him. There are a range of issues which will need to be discussed. I look forward to very constructive discussions with the Tasmanian government, and I look forward to the outcome of those discussions being that the Tasmanian Symphony Orchestra will remain at its current size.

Sydney Dance Company

Senator CARR (2.39 p.m.)—My question without notice is to Senator Kemp, the Minister for the Arts and Sport. Does the minister recall his advice to the Senate yesterday that he hoped that the problems of the Sydney Dance Company:

... can be worked through in the discussions with the Australia Council.

Is the minister now aware that the Australia Council has already advised the company that it can provide no additional funding from its budget and that the company will need to make a special approach to the government for relief? Is the minister now aware that the Sydney Dance Company is scheduled to meet with the Minister for Communications, Information Technology and the Arts, Senator Coonan, this Friday in a final attempt to gain the funding necessary to avoid insolvency? Was the minister aware at question time yesterday of the meeting or was he left out of the loop by his senior minister?

Senator KEMP—I have to say it is not a very distinguished start for the shadow arts minister. As I mentioned yesterday, he is the seventh—or is he the eighth?—shadow arts minister for the Labor Party in nine years. Let me also make the point that Senator Coonan, to her undying credit, is a great supporter of the arts. It is always a great pleasure to work with Senator Coonan on the arts. We are a government that takes the arts very seriously. It is a pity for the Sydney Dance Company to say, 'Who do I come to? I have to come to see Senator Kim Carr.' It is a bit of a downer, I would have thought. Of course, some would say it is slightly better than saying, 'Gosh, who do I go? Do I go to see Senator Kate Lundy?' There may be some marginal improvement there but not much.

This government is very supportive of the arts. This government is supportive of the Sydney Dance Company. This government is a great admirer of Graeme Murphy. I am delighted that Graeme Murphy is seeing Senator Coonan and I am sure that Senator Coonan will again make the point about how supportive we are of the Sydney Dance Company. Negotiations are under way, I believe, between the Australia Council and the Sydney Dance Company. I would like those negotiations to continue. I would like to see that people come to the table with an open mind to see how we can work through the serious issues that are facing the Sydney Dance Company. One way to ensure that happens is by making sure that constructive discussions occur rather than attempting to politicise every issue. I might say that, when Senator Lundy was in the portfolio, she made that mistake and she did not last too long, let me tell you. I think we should see what can be achieved in the discussions between the Sydney Dance Company and the Australia Council. I and, I am sure, Senator Coonan will be taking a great interest in those discussions.

Senator CARR—I ask a supplementary question, Mr President. Can we now presume that, since the Australia Council has already told the Sydney Dance Company that they can no longer help the company, the minister actually misleading us yesterday? Further, does the minister recall that the Australia Council executives confirmed at the Senate estimates hearing last month that five or six major arts organisations are also facing financial difficulties? Can the minister confirm that in addition to the three state orchestras and the Sydney Theatre Company, the State Theatre Company of South Australia and Opera Queensland are also facing financial difficulties? Can the minister confirm whether these companies have also approached the Australia Council or the Australia

lian government for a financial bailout or other changes to their funding models, including the removal of the efficiency dividend?

Senator KEMP—If Senator Carr and the Labor Party were so worried about these organisations, why did they want to cut funding to the Australia Council in the last election? Why did they produce a policy which would have the effect of cutting funding to the Australia Council? If Senator Carr is so concerned about the efficiency dividend, why wasn't the removal of the efficiency dividend part of the Labor Party's arts policy in the last election? Senator, you are again, I regret to say, just speaking with a forked tongue, the way the Labor Party often does. You are misleading. When you were asked to put some money on the table, you did not do it. You treated the arts in the last election with complete contempt. This government, let me assure you, is strongly committed to the arts and to ensuring a vibrant and robust arts sector. This government will continue to work very closely with arts companies and the Australia Council.

Community Services

Senator HEFFERNAN (2.45 p.m.)—My question is to the Minister for Family and Community Services, Senator the Hon. Kay Patterson. Will the minister inform the Senate of negotiations with the state and territory governments on community services?

Senator PATTERSON—I thank Senator Heffernan for the question. It is a very good question because in the three areas of community service that I have responsibility for the states are dragging the chain, falling well short of the mark or just plain stonewalling. Last Friday I went along to a meeting of relevant ministers for the Supported Accommodation Assistance Program, at their invitation, thinking that they would have some money to put on the table. But I was

sadly disappointed that they did not have any money to put on the table. The Australian government is maintaining its funding for the Supported Accommodation Assistance Program over the next five years. In fact, we are increasing it by \$175 million. We are offering a total of \$931 million for the SAAP V program.

Last Friday the state and territory ministers failed to accept my requests that they provide half of the funding that the Commonwealth is offering—matching us dollar for dollar. Not one minister came with one dollar extra. When I was in the meeting with the ministers, I agreed that I would look at increasing the base funding if they would match my offer dollar for dollar. I indicated that I would allow them to match the amount, aligning it over the five-year period—I thought that was reasonable—but still there were no dollars on the table. For far too long the states have shirked their responsibility, paying only 40 per cent across the country. We put in 60 per cent of the SAAP funding over the last four agreements, I think. The states are in a position to shoulder their responsibilities. They have had a windfall in GST—more than they were expecting—a windfall in stamp duty and a windfall in revenue from gambling. As we know, problem gambling is one of the factors involved in homelessness.

We will be giving the states \$200 million for crisis accommodation, for bricks and mortar. That is not matched by the states. We also provide \$2 billion a year in rent assistance. That is not matched by the states. I expect that most Australians would see it as only fair that the states match us dollar for dollar in the Supported Accommodation Assistance Program to provide crisis accommodation for people.

But this is not the only area where the states are falling down. In the last budget, I

announced \$72.5 million to provide four weeks respite care for older carers who care for their adult sons and daughters and for respite for those carers who are between 65 and 69 who may require hospitalisation for a period of two weeks. This is an area where the states should be doing something. They were not doing enough about it under the Commonwealth State Disability Agreement. I believed that providing some more money might have given them an incentive to do something. These people have spent their lives selflessly—many of them for 30, 40 and sometimes 50 years or more—looking after profoundly disabled sons and daughters, some of them looking after two children with a disability. The funding offer was subject to the states matching it. I would have thought that the states would have been lining up at the barrier to help older carers and give them some respite; but they have not. It is primarily a state responsibility, but no state has signed up.

I have to admit that there are some states that are in discussions with my officials and I hope that we sign them up soon. But New South Wales, Queensland and the ACT do not even appear to be playing ball. I feel very concerned for older carers in those states. The states do not consider that their plight is sufficient to go to their treasurers and address this issue. These are people who have cared for their sons and daughters year in and year out, many of them with very profound disabilities. The states have also failed to come up to the plate on concessions for self-funded retirees. The offer has been on the table since 2001, yet the states have failed to come to the party. (*Time expired*)

Senator HEFFERNAN—I ask a supplementary question. Would there be further information available from the minister on this question?

Senator PATTERSON—I thank Senator Heffernan. Obviously he wants to know about what his state is doing. The offer to the states was to give concessions to older people who—

Senator Chris Evans interjecting—

The PRESIDENT—Was that a reflection on the chair? If it was, I ask you to withdraw it.

Senator Chris Evans—If you took it to be a reflection—

The PRESIDENT—I did.

Senator Chris Evans—I was making the point that the standards required of questions seemed to be dropping.

The PRESIDENT—I thought you were referring to the fact that I allowed it.

Senator Chris Evans—I was, Mr President. I did not think it was a valid question.

The PRESIDENT—I believed it was a reflection on the chair. I ask you to withdraw the reflection on the chair.

Senator Chris Evans—If there is a reflection, I withdraw it.

Senator PATTERSON—It is quite obvious that the Labor Party does not want to hear how their counterparts in the states are doing. They are failing to help older carers with sons and daughters with a disability. They have failed to assist self-funded retirees who, if they had not provided for themselves, would be on a pension and getting assistance with their utilities, car registration et cetera. They have failed to come to the party on assisting homelessness. In three different areas—self-funded retirees, older carers with children with a disability and homeless people—the Labor states have failed. (*Time expired*)

Community Care Programs

Senator McLUCAS (2.51 p.m.)—My question is to Senator Patterson, the Minister

representing the Minister for Ageing. Is the minister aware that the Department of Health and Ageing is currently running a nationwide competitive tender process for community care services for people with a disability, for elderly Australians and for their carers? Why has the Howard government allocated less than three weeks, which include the Easter holidays, for this tender process? Does the minister understand that this short time frame, along with the extremely complex 100-page tender document, may well jeopardise the continuity of services like respite, telephone information services, continence advice and carer support services across the country? Minister, will the government guarantee that no person with a disability or an older Australian will lose their community care service as a result of this ideologically driven and thoughtless tender process? Will the minister intervene to ensure a fair and proper tender process?

Senator PATTERSON—Let me just say that Ms Bishop, I am sure, is very aware of the tender process and very aware of the time frame. What we are about is actually delivering services, not delaying the delivery of services. Senator McLucas, I do not have the details of the tender process. I will pass your comments on to Ms Bishop, but I am sure she is aware of the tender process. But, if you look at the situation in which Labor left the area of aged care and community services, you see that we were short about 10,000 aged care beds. I will not go through the list of appalling conditions in aged care then. Labor has no record on which to stand in this area. I will pass on Senator McLucas's comments, but I would have every confidence and would not take at first glance what Senator McLucas has said is an issue.

I will pass on the comments to Ms Bishop. I am sure she is aware of the tender process and wants it to go ahead as fast as possible to ensure that we can roll out services to older

people—unlike the states, who, with \$72½ million for older carers, are dillydallying, and every day that they dillydally older carers with sons and daughters with a disability are waiting for respite. That is the record of Labor: dillydally, don't make decisions, don't come up to the plate when they are offered \$72½ million to give to older carers who have cared for their sons and daughters year in and year out. Yet Senator McLucas gets up and criticises Ms Bishop because she has a tender process that is looking at speeding up the delivery of services to older people. The state ministers could take a leaf out of Ms Bishop's book and actually do something about some of the areas that I mentioned when I was answering a question from Senator Heffernan.

Senator McLUCAS—Mr President, I ask a supplementary question. I remind the minister that these are currently operating services—that the minister is requiring them to tender for services that they are currently providing. These are services that are out there now. Can the minister confirm that this tender process relates to community care services which will operate from 1 July this year? Will the minister guarantee that, if an existing provider is unsuccessful with their tender, a transition period will be in place so that staff of these essential services who lose their jobs are given sufficient time to find alternative employment? Can the minister also guarantee the continuity of these essential community care services to disabled and elderly Australians during any transition period of providers?

Senator PATTERSON—What I want to say is that I do not want Senator McLucas to go out and scaremonger, as she did in estimates, about disabled services and home and community care for children.

Senator Chris Evans—Mr President, I rise on a point of order. The minister admit-

ted on the primary question that she did not know anything about it. She then had a three-minute rave and made no attempt to answer the question. She is now starting to have another rave without any attempt to answer the question. Question time, surely, is about ministers responding to the questions, Mr President. I ask you to draw her to order and ask her to answer the question.

The PRESIDENT—Senator, I repeatedly inform the Senate that I cannot direct a minister how to answer a question, but I can remind the minister of the question—and remind you also, Minister, that there are 47 seconds left to complete your answer.

Senator PATTERSON—They do not like to hear what one of their colleagues has done—using vulnerable, disabled children. Obviously, there will be a scaremongering campaign. Ms Bishop is rolling out services to ensure continuity of services, ensuring that we do not have a record like Labor's, which was absolutely atrocious in the area of home and community care and aged care. What we are seeing—

Senator George Campbell—At least we didn't have kerosene baths!

Senator PATTERSON—I heard a comment over there. Former Senator Bishop closed down over 200 appalling nursing homes; Labor did not close them down. There were places that we went into where I was ashamed. So we stand by our record on getting rid of aged care that was not appropriate. (*Time expired*)

Live Sheep Exports

Senator BARTLETT (2.57 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry. I refer to the reported facts that the government was aware of the underreporting of sheep deaths on live export vessels but did nothing about it, despite being warned by AQIS that routine underreporting of mortality

ties presented a high risk to the live animal export trade to Saudi Arabia. How can the government continue to pretend that this deceit had nothing to do with the rejection of the *Cormo Express* shipment and the enormous amount of animal suffering that followed? How can the government be trying to restart the live sheep trade to Saudi Arabia when they can give no credible assurances that the underreporting of and secrecy surrounding death and disease amongst the animals will not recur, with the same likelihood of more rejected shipments and more animal suffering?

Senator IAN MACDONALD—As Senator Bartlett would know—indeed, if he does not, Senator Cherry, who I read in the paper is taking on the role of CEO of the Queensland Farmers Federation, will wise him up—the live export trade is very important to Queensland's primary producers and to all Australian primary producers. Perhaps more significantly, it is very important to country communities right around Australia, Senator Bartlett, because it does support very buoyant agricultural industries and it does create opportunities. It creates jobs and wealth for country Australia. The Howard government has been quite notable for its real support for those Australians who live outside the capital cities. I am delighted to see that Senator Cherry is taking on a role which will enable him to continue with some of his interests here in rural matters, to help rural communities and to help the industries that do support rural communities.

Senator Bartlett, you asked about the live sheep trade and some media reports. Those reports were not terribly accurate. Somewhere I have the accurate information. I cannot put my finger on it at the moment, but I will make sure that the real facts are made known to you. Any suggestion that either Mr Truss or I gave false information at the time these questions were being asked in the Sen-

ate some time ago is rejected. As I recall, this issue was gone through in the Senate estimates committee at some great length a little while ago. Senator, if you have a real interest in those, if you have a look at the Senate estimates committee *Hansard*, you will get all of the information that you desire.

There have been new export MOUs with Kuwait in relation to this. We are very keen as a government to ensure that this trade does continue. The standards for the export of livestock have increased since the days of the *Cormo Express*. We have been working on a very tight time frame to put the livestock export industry onto a more sustainable footing, following the decisions of the Keniry livestock export review in 2003.

The government and the industry itself are very conscious of the need to be humane in the treatment of animals. An advisory committee similar to the Livestock Export Standards Advisory Committee will be commissioned in the near future to regularly review and monitor the standards in the light of further research and development and experience and will continue to provide advice to the minister and the department. As Australian government legislation, it does not override state and territory animal welfare legislation. It is quite important that all jurisdictions do commit to the implementation of standards that are being assessed and that will be implemented by the state and the Commonwealth. I am confident that the rigorous processes used to formulate Australia's approach to the export of livestock will provide a very sound underpinning to Australia's livestock export trade in the future.

Senator BARTLETT—Mr President, I ask a supplementary question. If the minister is so concerned about employment and economic opportunities in rural and regional Australia, why is the government so eagerly pursuing a live export trade that costs Austra-

lian jobs in the meat-processing sector in Australia? How can the minister continue to assure the Senate that the government was not aware of underreporting when Senate estimates in November 2003 and the Keniry inquiry itself were told that it was standard practice to underreport to the Saudis the number of deaths on board? Mr Daws, one of the directors of LiveCorp, was quoted in a newspaper as saying that this was done on the advice of the importer, supposedly on animal welfare grounds. Given all those facts, how can we now believe the government when it says that it will be honest in reporting the number of deaths and disease on board and that these issues are fixed? *(Time expired)*

Senator IAN MACDONALD—The figures are required to be supplied by exporters to the government. They are audited. We have no reason to doubt that the industry is correct in the information it gives to us. There has been a substantial fall in the number of animal fatalities in recent times since the new initiatives have been put in place. The government certainly intends to continue to support industry in this very worthwhile and very profitable trade for Australia's primary producers. The debate about the issue of processing of stock in Australia happened a long time ago. The outcomes of that are quite clear. There is opportunity for both options within Australia, and the export of live animals is certainly a very big boost to countries like Australia. *(Time expired)*

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

SENATE: PUBLIC GALLERY

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.04 p.m.)—by leave—Mr President, I

ask you to make inquiries about the airflow in the public galleries. I notice not only some of our older citizens but also some others having to fan themselves. I am tempted to say that we are to blame because of hot air, but I suspect the airflows up there are not any good. It will look terrible if people fall asleep.

The PRESIDENT (3.05 p.m.)—I will make some inquiries about that particular matter.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Skills Shortages

Senator MARK BISHOP (Western Australia) (3.05 p.m.)—I move:

That the Senate take note of the answers given by the Special Minister of State (Senator Abetz) and the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to questions without notice asked by Senators Marshall and Bolkus today relating to skills shortages.

I make the obvious point at the outset that the economy of my home state of Western Australia is built on the bedrock of resources and, to some extent, on value-adding to those resources within that state. Indeed, if one asks the basic question 'Why does the city of Perth exist?' one will find that the answer is simple: it exists as a service industry city based on mining, extractive, oil and gas industries. Whilst it is not the sole source of wealth in that city and that state, the resources industry is certainly a major contributor to employment, to growth, to wealth creation and to continuing rising standards of living both in Perth and in Western Australia.

What are the elements that are so critical to that ongoing wealth creation and growth? There are three: resources, infrastructure and a skilled work force. With all these in place, Western Australia and the city of Perth stand on the cusp of a resources boom which not

only will benefit that state but also will bring immense wealth and progress to the entire Australian economy. Unfortunately, due to the continuing and now longstanding inaction of the Howard government, that boom stands to be doomed before it starts.

Recently in the media it was revealed that plans to reopen Western Australia's Bronzewing goldmine, one of the largest in Australia, have been abandoned, for one simple reason: ongoing acute skills shortages in Western Australia. The mine, north of Kalgoorlie, I am advised, would have produced up to 140,000 ounces of gold a year and generated annual revenue of almost \$80 million. But the chief executive officer of the mine's owner, View Resources, recently told the *Australian* that his company for some time had been unable to hire and retain skilled workers—fitters, electricians, mechanics and plant operators—and was even unable to attract and retain relatively less skilled workers like truck drivers. According to a reputable employer organisation in Western Australia, the Chamber of Minerals and Energy, up to 29,000 extra skilled workers will be needed for the construction phase alone of additional mining projects on the plans and committed to in the state of Western Australia.

These skills shortages can be sheeted home to one reason, and one reason only: the results of the Howard government's policy complacency in the area of skills and training over the last five years. Despite years and years of repeated warnings, the Howard government continues to allow a skills shortage to develop. This skills shortage is threatening over \$10 billion worth of Australian resource projects, and at least \$6 billion of those resource projects are located in the state of Western Australia. Worse still, the flow-on effect is that those labour shortages are now causing additional and consequential labour shortages and disruptions throughout the

entire Western Australian economy. For example, farmhands are reportedly leaving the land for higher paying jobs in mining. Of course, that then leaves an employment vacuum in their remote areas.

Why is this? The government's own report, *Skills for work*, which was released last week, helps provide the answer. That report by the Department of Education, Science and Training shows that the number of people starting a trade apprenticeship actually declined—you cannot believe it in this day and age—by 2,300 persons between the years 2000 and 2003. That is an average decline per year of 700 jobs that are not filled by apprenticeships in critical trades in critical states. Now the Howard government are running scared and making policies whilst they are at it. (*Time expired*)

Senator ABETZ (Tasmania—Special Minister of State) (3.10 p.m.)—We have just witnessed five minutes of negativity from the Australian Labor Party. Not a single solution was offered. In fact, during question time today, I asked the Australian Labor Party what their alternative policy might be. They sit on the sidelines and carp and criticise, but what is their alternative? There was not a single mention of an alternative in that five-minute speech from Senator Bishop. Indeed, if I can borrow a phrase from my friend and colleague the Treasurer, if we were to start listening to Labor on employment policy we might start listening to Elizabeth Taylor about marriage guidance counselling as well, because there would be no less qualified group of individuals to try to hector and lecture this government about employment policy than the Labor Party.

Let us just have a look at some of the good news that Labor refuse to acknowledge. Australia's unemployment rate is now 5.1 per cent—the equal lowest level since November 1976. Today there are over

9,889,700 Australians in employment—the highest number on record. There are now over seven million people in full-time employment. The unemployment rate is less than six per cent in every state. Since we have come to government, over 1½ million jobs have been created and 814,300 of those have been full time. Unemployment has fallen by 207,200. The employment rate—that is, the proportion of Australians of working age in employment—has increased by 3.9 percentage points to 71.8 per cent.

Contrast that with Labor's record when they were at the levers of the Australian economy for 13 years. The recession of the early 1990s resulted in the loss of 313,500 jobs between July 1990 and February 1993 and a 61.6 per cent increase in the number of unemployed people. The total number of unemployed people increased by 455,000 between October 1989 and July 1992.

We as a government have worked hard to reform the Australian economy, be it through tax reform, industrial reform or welfare reform. Whenever the Australian Labor Party were in government and sought to undertake important structural reforms, their job was made so much easier because we as an opposition always put the national interest first, unlike the group opposite today. When we tried tax reform they opposed it, saying it was going to mug the economy and drive up unemployment. When we wanted industrial reform, there was exactly the same condemnation from the Labor Party. They were the prophets of doom, the Jeremiahs of the Australian economy.

But what have we actually seen? Despite their opposition, we were able to undertake some of those reforms. Today, we see the lowest rate of unemployment in a generation, a real increase in wages and the lowest rate of industrial disputation since records were first kept in 1910. They are some of the

wonderful employment statistics that we have. Having driven the economy, as we have been able to with the assistance of the private sector and especially small business, we are now in a situation where there is a skills shortage. We as a government have sought to overcome that skills shortage by some imaginative policies, such as federally funded technical and further education colleges right around Australia. I would like to pay tribute to the good work of people like Michael Ferguson, the member for Bass, and Mark Baker, the member for Braddon, in my home state of Tasmania, who have done a wonderful job in promoting that possibility in their part of Tasmania, which will really assist in getting rid of the skills shortage.

We are looking at other ways of achieving outcomes to reduce the skills shortage, but this skills shortage is a result of the Australian economy humming along. The only area where success cannot be used as an explanation for the skills shortage is, of course, in the Australian Labor Party, who suffer a lack of success because of their lack of skills. (*Time expired*)

Senator MARSHALL (Victoria) (3.15 p.m.)—In answering my question today with respect to the skills shortage crisis that we are facing in this country, Senator Abetz put to me a very simple proposition, and he has just repeated it in his contribution. He put to us that the skills shortage is a direct result of the success of the Australian economy. If we want to accept that proposition, we have to accept that the success of the Australian economy is purely accidental, because the fundamental principles underlying any successful economy are all the other things that go to sustaining that successful economy—things such as forward planning for the skills to underpin future growth and forward planning to enable the economy to continue to grow and be sustainable.

If the government are saying that the skills shortage that we are now facing took us by surprise, that we are victims of our economic success, we can only conclude that they had no idea where the economy was going because they were not planning for any growth. They were not putting the necessary instruments, policies, procedures and money into the training that was needed in order to build the skills base of this country so we could maintain economic growth and continue to move forward. The other proposition the government want us to accept is that, all of a sudden, this is a surprise to them: they have only just realised it and they have been putting money into training—albeit in the wrong areas—over a long period of time.

These shortages have been well known for a long time. All the government had to do was to pick up some very well respected reports that they have relied on for other things in the past. For instance, they could have picked up a report put out in July 2003 by the Australian Expert Group in Industry Studies from the University of Western Australia. The government would not have had to read the whole report; they could have referred to the 1½ page conclusion. If they had picked this up back in 2003, maybe we would not be in the crisis we are in now. The report says:

Declining training rates have also reduced a source of full time job opportunities offering good career paths for young people. Had the training rate not declined nearly 19,000 additional job opportunities for young people aged 15-24 would be available.

This government, through their absolute inactivity in this area and their failure to see the signs or to put in place the proper planning to underpin constant economic growth in this country, have denied 19,000 young Australians a good career path—a high skilled, high paying career path. They ought to stand condemned for ignoring the signs

and ignoring what all the experts were saying about skills shortages.

It was not only academics who were saying there were going to be skills shortages. The industry training boards, which are set up in every state and are nationally coordinated, have been saying this for many years. Back in the late 1990s they were saying that we were going to run into skills shortages in the second half of this decade. But was the government listening? Absolutely not. People were not just standing around doing nothing like the government was. Unions, for instance, could see the signs. They were reading the reports and listening to what the industry training boards were saying. They were setting up skills training centres and group apprenticeship training schemes, and they were driving skilled apprenticeship training across the country. But the government was doing nothing.

I want to give an example which I know a lot about, and that is the area of electrotechnology. In the year 2000, the Electrical Trades Union in Victoria negotiated with employers in the contracting industry a binding ratio in the certified agreements of one apprentice to be employed for every four tradespeople. They knew what was happening in terms of the skills shortage; but the government's response was to make those clauses unallowable in certified agreements, so they could not be implemented. So it is not only through the government's inactivity that we have a skills shortage; they actually impeded those who were trying to do something about it back in 2000. The government wanted to ignore it, they have ignored it, and now the economy is suffering. The brakes have been put on the economy because we do not have the skills capacity for it to continue to grow. This government ought to take complete responsibility for it.

Senator McGAURAN (Victoria) (3.20 p.m.)—That speech by Senator Marshall was straight out of the union handbook. It is to be dismissed out of hand. What is more, Senator Abetz has begged him on several occasions to come into this chamber and give us the Labor Party's policy and solution. We do not hear it from the other side. It is quite pitiful. We have had all week to hear what their policy might be. They have at least kept a focus on this issue all week. For once, they have kept a focus on an issue all week. They have had all week to tell us what their alternative is. What an embarrassment! We have been in government more than nine years now. Are we going to wait right up until the next election to hear what their solution is going to be? They have had all week to tell us, and we have not heard it.

The truth of the matter, as Senator Abetz put to the chamber, is that the government acknowledge the skills problem that the nation has. I can tell Senator Marshall that we acknowledged this back in 1996 when we upped the policy of the former government with the New Apprenticeships scheme. We poured more money into that, and we utterly acknowledged that this was a growing concern. We introduced the New Apprenticeships scheme, which has been highly successful—and I will come back to that later. The point is that the skills shortage is a product of the employment rate. It is something to be proud of. As others have said in the chamber, we have not only a skills shortage but also an unskills shortage. We have an employment problem across the board.

Do not just go and ask the trades about the problems in the skills area but go and ask the fruit-pickers up in Shepparton or Mildura and go and ask the citrus growers. They have an unskilled problem too. The fact is we have an unskilled problem; we have a problem with regard to employment. We ought to be proud of the employment rate in this

country that means that everyone, if they want to, can get a job. We have an unemployment rate of around 5.2 per cent, the lowest in 30 years. The male and female full employment rates are at record highs, the number of teenagers unemployed and looking for full-time work is lower than it has been for 30 years, and there are over seven million people in full-time employment, so naturally you are going to have a squeeze on the pool of skilled labour in this country.

It is a good time to be a plumber; it is a good time to be an electrician. And good luck to them. What Senator Marshall did not acknowledge when he gave his union speech in this chamber was that many of those that he claimed the union were trying to sign up have left the union to be self-employed skilled labourers such as carpenters, electricians and plumbers. They are all out of the union; they want nothing to do with union agreements or with being stitched up by the union. They are all self-employed skilled labourers now. There is a whole market out there avoiding the union movement. So it is foolish of you to come in here and suggest that the union could bridge the gap.

What will bridge the gap are the long-term policies of this government and, of course, the marketplace itself. In the time I have left to speak I would like to address the long-term, the medium-term and the short-term policies that this government has in place. But let us make no mistake: the marketplace itself will adjust to the skills shortage we have. So I reject Senator Bishop's statement that a whole mining company shut down on the basis that they could not get skilled labour. It is utter rubbish. The minerals and energy sector has boom times ahead of it. I would like to look a little deeper into Senator Bishop's assertion today—go further than what he presented to this chamber.

As I said, in 1996 the government introduced the New Apprenticeships scheme, and we have seen the number of apprenticeships jump, both in trades and out of trades. But more can be done, and we seek to do more. One of the big long-term policies that you ought to look out for on the other side of the chamber, one that you have dismissed and refuse to engage in, concerns the technical schools that this government will be establishing. It is an exciting new policy. We are going back to the old tech schools that were abolished in the seventies and eighties.

Senator Ferris—Run properly.

Senator McGAURAN—They will be run properly and specifically focused. There are 24 of them, and they will be run as trade training schools. To me that is the best solution. (*Time expired*)

Question agreed to.

**Tasmanian Symphony Orchestra
Sydney Dance Company**

Senator CARR (Victoria) (3.26 p.m.)—I move:

That the Senate take note of the answers given by the Minister for the Arts and Sport (Senator Kemp) to questions without notice asked by Senators Murphy and Carr today relating to the funding of the Tasmanian Symphony Orchestra and the Sydney Dance Company.

The answers to the questions relating to the arts by the Minister for the Arts and Sport today highlight just how grossly incompetent this minister is. We now have a situation where it has been acknowledged that at least five major arts companies are in financial deficit, and there may well be others to come. We know now that the orchestras in Adelaide, Tasmania and Queensland, the Sydney Dance Company, the State Theatre Company of South Australia and Opera Queensland are all facing deficits.

We also know that the Australian Opera and Ballet Orchestra has reported an operating deficit for a number of years. The operating deficit for 2003 reached a figure of \$650,000 and is projected to reach \$1 million in 2004, with further increases expected. The orchestra's accumulated deficit at the end of 2004 is estimated to be some \$2.7 million, or 45 per cent of its total annual revenue. Quite clearly this is a totally unsustainable position. The orchestra's operating deficits have to now be carried by Opera Australia's balance sheet, and we have seen that the Australian Ballet has now made cash injections since 2003. The growing operating deficit that is incurred by the orchestras is now placing increasing pressures on the finances of both the user companies, which, as I say, is a totally unsustainable position. This reflects the general problem of arts funding in this country, a point that has now been made by the Australia Council itself.

The senior executive officer of the Australia Council has made it abundantly clear that the position of the government's funding is unsustainable. The Australia Council is now also seriously considering having to back down on its other somewhat bungled attempt to abolish the community cultural development programs. And all of this is done in the face of quite evident ministerial indifference. We have a situation in which the minister does not even know that important cultural institutions are off seeing his senior minister—they actually have to go to someone else to find out what is happening and to restore their balance sheets or have some attempt to restore their balance sheets. Belated efforts are being made by coalition backbenchers to raise these issues, but there is no comment from the minister until such time as he is brought under pressure through parliamentary processes. The cultural, artistic and educational values of these orchestras and arts organisations are far too valuable to

tamper with, yet that is exactly the position that the government has been advancing. We have a basic problem here in that the government is pursuing an economic rationalist position with regard to arts funding. Senator Brandis commented in this chamber just the other day:

To ask whether an orchestra is sustainable and then to conclude that, if it is not, it should be cut back is to ask the wrong question.

Well, that is precisely the position that the government is adopting time and time again. It is the government that needs to look at the way in which its fundamental funding mechanisms are now operating. We have a situation where business plans are being evaluated on the basis of performance criteria signed off by the Australia Council. They are not spending extravagantly. The minister has before him the McRae report, which he has failed to report. I call upon him now to put that on the table, because he knows what is happening with regard to the Sydney Dance Company—I can only presume that is the case. He has known for some time.

I am very concerned that the government may well be pursuing a broader agenda with the Sydney Dance Company. This is a world-leading company. Its key players are internationally renowned. We have to ask why it is that the government is persisting with such an unsustainable position. Why is it adopting this Pontius Pilate attitude? Is it the case that the government is in fact seeking to drive out of this country Graeme Murphy and people of his calibre? Is it the case that the government, through its parsimonious attitude, will produce a situation where performers and choreographers of his calibre are driven overseas? The government's claim that the states should bear the responsibility is in sharp contrast with the facts. The states have increased their contribution to the arts companies from 18 per cent to 22 per cent. Their

contribution has risen from \$8.9 million to \$12.1 million. (*Time expired*)

Question agreed to.

Immigration: Children

Live Sheep Exports

Senator BARTLETT (Queensland) (3.31 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) and the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) to questions without notice asked by Senator Ludwig and Senator Bartlett today relating to children in detention centres and to live sheep exports.

Firstly, Senator Ludwig's question related to children who had been taken from schoolyards or after school to be locked up in detention centres and concerns about the trauma for the children involved and indeed for those others who had to witness them being taken from the schoolyard to be detained. The key aspect in this is the ongoing reality of children being put in detention. Without commenting on the specifics of the cases that were the subject of questions today, it is fairly unlikely that these were children of asylum seekers, although I do not know that for a fact. Many of the children in detention centres, certainly in Sydney, are those of visa overstayers. The fact remains that they are children, they are still in detention and often they are there for quite a long time.

The same question of the suffering of the children arises whether their parents are in there as a result of not being successful, as yet, with a claim for refugee status or whether they are in there for some other immigration related matter. The impact on the children is still there, particularly for long-term detention. There was a case last year of children being taken away with no notice from Launceston. They were children who

were part of the community and they had been going to school there. Basically, as far as their schoolmates were concerned, they just disappeared. They were locked up in Baxter, from memory.

The other fact needing to be emphasised in relation to the minister's answer is that this is a government that tried to create the fiction that there were no children left in detention. Using the sorts of slippery words that we have come to expect from some in the government, we had statements suggesting that there were no children of long-term asylum seekers who arrived by boat left in detention on the mainland. That of course translated, in shorthand, to people assuming that there were no kids still locked up. The fact is that, from the latest figures from 9 March, which I have just received, there are 93 children in detention. There are 45 in Villawood, in Sydney; seven in Maribyrnong, in Melbourne—predominantly Pacific Islanders: Tongan and Fijian—and 12 in Port Augusta at Baxter detention centre, and they are mainly Chinese. There are also 10 children of Vietnamese descent on Christmas Island who should not be forgotten. This is part of the sophistry: because they are not on the mainland, people can say, 'There are none locked up on the mainland and these don't count.' There are six Afghani children on Nauru. The detainees on Nauru, all of them asylum seekers, have been there for close to 3½ years now. There are also children in hotel and house detention.

Sorry, there is a correction—there are two children in Baxter and the other 12 in Port Augusta are in the community housing project there. I should clarify and correct the record on that. But that is still a detention environment, as I have said in this place before. The fact is that the children in harbour detention—those detained on their boat; presumably children involved in illegal fishing—foster care and hotel detention are all in

a detention environment. For many of those—not all—it is for a fairly long term. That reality should be acknowledged.

In relation to Senator Ian Macdonald's answer dealing with the live export trade, the government continues to ignore, firstly, that there is a genuine loss of jobs in the meat-processing and meatworks sector as a result of livestock going overseas. In my own state of Queensland, the meatworks near Rockhampton closed down. It was not able to re-open specifically because there was not enough livestock available as it was being shipped overseas.

Despite what the minister said, the other issue is the fact that, as estimates committee information showed, the government was aware there was repeated underreporting of deaths on board vessels going to Saudi Arabia. That almost certainly is the real reason why the *Cormo Express* was knocked back. The government today, in signing an MOU opening up live exports to Kuwait, said that sheep mortalities have declined to just over one per cent. There is no way you can trust those figures because there is no way of knowing whether the underreporting from the vessels is still continuing. As the minister said, that is where the figures come from. That one per cent still represents a very significant number of sheep deaths and there is still the reality of the enormous suffering involved. A few cosmetic changes are not going to hide that fact. (*Time expired*)

Question agreed to.

VALEDICTORY

Senator FERRIS (South Australia) (3.37 p.m.)—Last night Senator Tierney made a valedictory speech in the chamber and was unable to complete the speech as he intended. We made an informal arrangement to have the remainder of his speech incorporated. I now seek leave, by agreement, to

incorporate the remainder of that speech at the appropriate place in the *Hansard*.

Leave granted.

PARLIAMENTARY LIBRARY

The PRESIDENT (3.37 p.m.)—During question time Senator Allison asked me some questions about the Parliamentary Library, including my understanding of its independence. I remind the Senate that it was due to my own motion in the Appropriations and Staffing Committee, later adopted by the Senate, that the recommendation in Mr Podger's report on parliamentary administration relating to the Parliamentary Librarian was in fact strengthened so that this position will be a statutory position.

I also note that the Parliamentary Service Amendment Bill, which received bipartisan support in the Senate, explicitly provides for the functions of the Parliamentary Librarian—namely, to provide high quality information, analysis and advice to senators and members of the House of Representatives in support of their parliamentary and representational roles—and that this must be done (a) in a timely, impartial and confidential manner; (b) maintaining the highest standards of scholarship and integrity; (c) on the basis of equality of access for all senators, members of the House of Representatives, parliamentary committees and staff acting on behalf of senators, members or parliamentary committees; and (d) having regard to the independence of parliament from the executive government of the Commonwealth. Senator Allison will note that the bill takes the approach that all senators and members, regardless of their political allegiance, must be treated by the Parliamentary Library equally. This has been the credo of the Parliamentary Library since its establishment and is now rightly to be set out in law. I do not believe it would be appropriate to single out any group or groups

of parliamentarians for greater or lesser support from the Library.

The continued independence of the function of the Parliamentary Library will be protected by these provisions. It will also be protected by the statutory position of the Parliamentary Librarian, who will be appointed for a five-year term and can only be dismissed after the Presiding Officers have received a report from the Parliamentary Service Commissioner. The Parliamentary Library will be further protected by the requirement of a resource agreement with the secretary of the department, which must be approved by the Presiding Officers after receiving advice from the Library Committee. As well, the enhanced role of the Library Committee and the requirement and ability for the Parliamentary Librarian to independently report to the parliament will protect the Library's independence.

Senator Allison also asked me a supplementary question about new terms of reference for the proposed Joint Standing Committee on the Parliamentary Library. A discussion paper has been circulated to the current Library Committee members for their consideration. It includes a possible draft resolution. I make clear to the Senate that it will be the Senate and the House of Representatives which determine the role and functions of this committee, just as they do for all other committees. The current Library Committee is not being asked to determine its own terms of reference; it is being asked to comment on a possible resolution for later consideration by all honourable senators and members. I also make the point that the draft resolution provides for representation on the proposed new committee by Independent and minor party senators and members.

Senator Faulkner—I raise a point of order, Mr President. I am sorry that I missed the commencement of your statement but I

did notice that it was described as a statement on the televisions in the building. Would you mind indicating whether that was a formal statement to the Senate or a response, as I assumed it was in listening to the content of your statement, to the question and supplementary question asked by Senator Allison in question time today?

The PRESIDENT—It was a response to the question asked by Senator Allison. I notified her of making the answer and she was going to observe the answer from her office, I believe.

PETITIONS

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

East Timor: Oil and Gas Fields

To the Honourable The President and Members of the Senate assembled in Parliament:

We the undersigned appeal to the Australian Government regarding its conduct of negotiations with the Government of Timor Leste on the maritime boundary between the two countries and sharing of the Timor Sea oil and gas revenue.

We pray the Senate ensures the Australian Government:

1. negotiates a fair and equitable maritime boundary with Timor Leste according to current international law and the provisions of the UN Convention on the Law of the Sea (UNCLOS),
2. responds to Timor Leste's request for more regular meetings to settle the maritime boundary dispute between the two countries within a more reasonable timeframe,
3. returns Australia to the jurisdiction of the International Court of Justice and UNCLOS for the adjudication, of maritime boundary,
4. commits to hold in trust (escrow) revenues received from the disputed areas immediately outside the Joint Petroleum Development Area (RDA) of the 20 May 2002 Timor Sea Treaty for further apportionment between Australia and Timor Leste after the

maritime boundary dispute between the two countries has been settled.

by **The President** (from three citizens).

Information Technology: Internet Content

To the Honourable the President and Members of the Senate in Parliament assembled

We, the undersigned citizens of Australia draw to the attention of the Senate the common incidence of children being exposed to Internet websites portraying explicit sexual images. These images may involve children/teens, sexual violence, bestiality, and other disturbing material. Many such websites use aggressive, deceptive or intrusive techniques to induce viewing. We submit to the Senate that:

- Exposure to pornography is a form of sexual assault against children and should be considered, like all sexual abuse of children, as a serious matter causing lasting harm.
- It is not adequate to charge individual parents with the chief responsibility for protecting their children from Internet pornographers determined to promote their product, OR to expect parents to teach children to cope with the damaging effects of pornographic images AFTER exposure.
- It is the primary duty of community and Government to prevent children being exposed to pornography in the first place by placing restrictions on pornographers and those businesses distributing such material.
- Internet Service Providers (ISPs), should accept responsibility for protecting children from Internet pornography, including liability for harm caused to children by inadequate efforts to protect minors from exposure.

Your petitioners therefore, pray that the Senate take legislative action to restrict children's exposure to Internet pornography. We support the introduction of mandatory filtering of pornographic content by ISPs and age verification technology to restrict minor's access.

by **The President** (from one citizen).

Immigration: Detention Centres

To the Honourable Members of the Senate in the Parliament Assembled.

The Petition of the undersigned draws attention to the damaging long-term effects to children of prolonged detention in Immigration Detention Centres.

Your petitioners ask the Senate, in Parliament to call on the Federal Government to release all children from immigration detention centre into the community, and to provide them with psychological counselling, education and medical services

by **Senator Bartlett** (from 20 citizens).

Indigenous Affairs: Government Policy

To the Honourable President and members of the Senate in parliament assembled.

The petition of the undersigned shows:

That the current intention of the Government to abolish the rights of Aboriginal and Torres Strait Islander people to exercise their right of self-determination and self-management, will severely disadvantage Aboriginal and Torres Strait Islander people.

Your petitioners request that the Senate:

1. oppose any legislation for the abolition of ATSIC unless and until an alternative elected representative structure, developed and approved by Aboriginal and Torres Strait Islander peoples is put in place and which would, at the same time assume the function of ATSIC.
2. oppose any move to appoint an advisory committee as contrary to the rights of Aboriginal and Torres Strait Islander people to elect their own representatives.
3. oppose any move to diminish, dismantle, destroy and/or erode the principles of self-determination and self-management since any such action would turn back the clock on hard won rights of Aboriginal and Torres Strait Islander people.
4. strongly defend these rights of self-determination and self-management of Aboriginal and Torres Strait Islander people previously supported by the Australian Parliament.
5. oppose any move to main-stream services for Aboriginal and Torres Strait Islander people

as this too would severely disadvantage Aboriginal and Torres Strait Islander people.

by **Senator Ludwig** (from 24 citizens).

Trade: Iraq

To the President of the Senate and Senators in the parliament assembled:

The undersigned petitioners respectfully request that the Senate recognises that the Howard Government's decision to write off Iraqi debts to Australian wheat growers will impose a serious financial burden on a group that is already suffering the effects of a prolonged drought.

The petitioners therefore call upon the Senate to act to ensure that affected wheat growers are fully compensated.

by **Senator Webber** (from two citizens).

Petitions received.

NOTICES

Presentation

Senator Murray to move on the next day of sitting:

That the Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004 be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report as part of the committee's current inquiry into unfair dismissal laws.

Senator Bartlett to move on the next day of sitting:

That the Senate—

- (a) notes the precarious state of the world's great ape populations, including estimates that the only great ape in our region, the orang-utan, faces extinction within a decade;
- (b) recalls its resolution of 21 October 1999 which noted that:
 - (i) 'the number of great apes has declined dramatically due to measures such as deforestation, commercial bush-meat trade, live trade, and civil conflicts, with all non-human great ape species being listed as threatened', and

- (ii) 'scientific evidence that great apes share not only human genes but also basic human mental traits, such as self-awareness, intelligence and other forms of mental insight, complex communications and social systems'; and
- (c) calls on the Government to give consideration to:
 - (i) increasing funding for its Regional Natural Heritage program, which currently provides \$10 million over 3 years to projects towards the conservation of biodiversity in our region, so that Australia can play a more significant role in securing the future of great ape populations,
 - (ii) committing to working with relevant governments and local communities to develop significant post-tsunami conservation measures in biodiversity hot-spot areas,
 - (iii) focusing its efforts on in situ conservation efforts, instead of providing resources towards captive populations of threatened animals in zoos in Australia or elsewhere, and
 - (iv) providing direct financial assistance to the United Nations' Great Ape Survival Project.

Senator Santoro to move on the next day of sitting:

That the Parliamentary Joint Committee on the Australian Crime Commission be authorised to hold a public meeting during the sitting of the Senate on Thursday, 17 March 2005, from 6 pm, to take evidence for the committee's examination of the Australian Crime Commission annual report 2003-04.

Senator Heffernan to move on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 17 March 2005, from 4 pm to 6.30 pm, to take evidence for the committee's inquiry into the provisions of the Border Protec-

tion Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005.

Senator Ellison to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend legislation about fisheries, and for related purposes. *Fisheries Legislation Amendment (International Obligations and Other Matters) Bill 2005*.

Senator Ludwig to move on the next day of sitting:

That the Senate—

- (a) notes that 17 March 2005 marks the celebration of St Patrick's Day;
- (b) recognises the past and present contribution of Irish migrants in building Australian society and to Australia's cultural life; and
- (c) recognises the contribution of 1.9 million Australians of Irish descent to our nation.

Senator Ludwig to move on the next day of sitting:

That the Senate—

- (a) notes that 21 March 2005 is Harmony Day;
- (b) recognises the importance of community harmony in Australia, in particular the social and economic benefits of a stable, multicultural society;
- (c) notes that 21 March is also United Nations International Day for the Elimination of Racial Discrimination; and
- (d) condemns racism and the practice of racial discrimination.

Senator George Campbell to move on the next day of sitting:

That the Senate notes that:

- (a) the Howard Government's training policies since 1996 have contributed to Australia's current skills shortages in the traditional trades; and
- (b) the Government's inaction in addressing this national skills crisis is hurting Australia.

lian businesses, families, young people and the economy.

Senator Carr to move on the next day of sitting:

That there be laid on the table by the Minister representing the Minister for Education, Science and Training, no later than 3.30 pm on Thursday, 17 March 2005, the following documents:

- (a) the 'Survey of New Apprenticeship outcomes [2003-04]' prepared by the Social Research Centre Pty Ltd (SRC), Department of Education, Science and Training (DEST) contract number 2789; and
- (b) the 'Survey of long-term New Apprenticeship outcomes [2004]' prepared by SRC, DEST contract number 75104.

Senator Carr to move on the next day of sitting:

That there be laid on the table by the Minister representing the Minister for Education, Science and Training, no later than 3.30 pm on Thursday, 17 March 2005, the letter from the Department of Education, Science and Training, on behalf of the Minister for Education, Science and Training (Dr Nelson), to the Australian Council of Deans of Education advising how the National Priority Funding for Teacher Education of \$110 million would be disbursed to universities.

Senator Allison to move on the next day of sitting:

That the Senate—

- (a) notes the death on 25 February 2005 of Peter Benenson, founder of the worldwide human rights organisation, Amnesty International;
- (b) extends its condolences to Mr Benenson's family following their loss; and
- (c) recognises the vital role that Amnesty International plays as the world's largest independent human rights organisation and commends it for its outstanding efforts to increase awareness of human rights issues, promote respect for fundamental rights and liberties and combat violations of human rights.

Senator Greig to move on the next day of sitting:

That the Senate—

- (a) commends the Government's support for the United Nations Commission on Human Rights (UNCHR) resolution on 'Sexual orientation and human rights' (the Brazil Resolution), introduced at the commission's meetings in 2003 and 2004; and
- (b) urges the Government to take a leadership role in the elimination of discrimination against persons on the grounds of sexuality and gender identity by:
 - (i) continuing its support for the Brazil Resolution when it is debated at the forthcoming session of the UNCHR in March and April 2005, and
 - (ii) actively encouraging other member countries to support the resolution.

Senator Brown to move on the next day of sitting:

That the Senate—

- (a) notes:
 - (i) claims on the SBS *Dateline* program that international aid money earmarked for humanitarian and development purposes in West Papua has been siphoned to the Indonesian military, and
 - (ii) reports of destruction of highland villages by the Indonesian military causing thousands of West Papuans to flee; and
- (b) calls on the Minister for Foreign Affairs (Mr Downer) to investigate the claims and report back to the Senate as a matter of urgency.

Senator Brown to move on the next day of sitting:

That the following matter be referred to the Community Affairs References Committee for inquiry and report by 16 June 2005:

'Bird flu', including virus strain H5N1, its derivation, its evolution, its present status and

future potential threat to Australians, with particular reference to:

- (a) the potential for a pandemic;
- (b) preparations by all sectors of the Australian community to prevent or offset a pandemic in our country;
- (c) Australia's role in preventing or offsetting the impact of a pandemic globally; and
- (d) potential impacts on agriculture and wildlife.

COMMITTEES

Selection of Bills Committee

Report

Senator FERRIS (South Australia) (3.44 p.m.)—I present the third report for 2005 of the Selection of Bills Committee.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 3 OF 2005

1. The committee met in private session from 4.20 pm.
2. The committee resolved to recommend—That—
 - (a) the *provisions* of the Building and Construction Industry Improvement Bill 2005 and the Building and Construction Industry Improvement (Consequential and Transitional) Bill 2005 to be *referred immediately* to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 10 May 2005 (see appendix 1 for statement of reasons for referral);
 - (b) the *provisions* of the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005 to be *referred immediately* to the Legal and Constitutional Legislation Committee for inquiry and report by 10 May 2005 (see appen-

dix 2 for statement of reasons for referral);

- (c) the *provisions* of the Migration Litigation Reform Bill 2005 to be *referred immediately* to the Legal and Constitutional Legislation Committee for inquiry and report by 11 May 2005 (see appendix 3 for statement of reasons for referral);
 - (d) the *provisions* of the National Security Information Legislation Amendment Bill 2005 to be *referred immediately* to the Legal and Constitutional Legislation Committee for inquiry and report by 11 May 2005 (see appendix 4 for statement of reasons for referral);
 - (e) the *provisions* of the Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill 2005 to be *referred immediately* to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 10 May 2005 (see appendix 5 for statement of reasons for referral); and
 - (f) the *provisions* of the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005 to be *referred immediately* to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 11 May 2005 (see appendix 6 for statement of reasons for referral).
3. The committee resolved to recommend—That the following bills *not* be referred to committees:
 - Customs Tariff Amendment Bill (No. 1) 2005
 - Higher Education Legislation Amendment (2005 Measures No. 2) Bill 2005
 - Payment Systems (Regulation) Amendment Bill 2005
 - Primary Industries (Excise) Levies Amendment (Rice) Bill 2005

- Workplace Relations Amendment (Better Bargaining) Bill 2005.

The committee recommends accordingly.

4. The committee *deferred* consideration of the following bill to the next meeting:

Bill deferred from meeting of 8 February 2005

- Trade Practices Amendment (Personal Injuries and Death) Bill 2004.

(Jeannie Ferris)

Chair

16 March 2005

Appendix 1

Proposal to refer a bill to a committee

Name of bill(s):

Building and Construction Industry Improvement Bill 2005 and the Building and Construction Industry Improvement (Consequential and Transitional) Bill 2005

Reasons for referral/principal issues for consideration

The bill introduces retrospective penalties for unions and employees. To investigate any adverse consequences.

Possible submissions or evidence from:

Employer organisations, unions, state/territory governments

Committee to which bill is referred:

Environment, Communications Information Technology and the Arts Legislation Committee

Possible hearing date: April/May 2005

Possible reporting date(s): 10 May 2005

Appendix 2

Proposal to refer a bill to a committee

Name of bill(s):

Criminal Code Amendment (Suicide Related Material Offences) Bill 2005

Reasons for referral/principal issues for consideration

Referred 5 August 2004. Dissolved on prorogation of 40th Parliament

The bill will insert new offences into the Criminal Code dealing with the use of a carriage service, including the internet, to access, transmit or otherwise make available suicide related material, and possession, production, supplying or obtaining suicide related material for use through a carriage service

Possible submissions or evidence from:

Various interested parties.

Committee to which bill is referred:

Legal and Constitutional Legislation Committee

Possible hearing date:

Possible reporting date(s): May 2005

Appendix 3

Proposal to refer a bill to a committee

Name of bill(s):

Migration Litigation Reform Bill 2005

Reasons for referral/principal issues for consideration

Costs against lawyers and voluntary organisations, summary decisions, constitutionality of privative clauses and time limits.

Possible submissions or evidence from:

Lawyers, refugee groups.

Committee to which bill is referred:

Legal and Constitutional Legislation Committee

Possible hearing date:

Possible reporting date(s): 11 May 2005

Appendix 4

Proposal to refer a bill to a committee

Name of bill(s):

National Security Information Legislation Amendment Bill 2005

Reasons for referral/principal issues for consideration

Unresolved issues as to the stay provisions in the bill and how these would work in civil proceedings.

To examine the mechanisms available in civil proceedings to ensure that the parties to the pro-

ceedings receive a fair hearing in circumstances in which national security information is being considered.

Possible submissions or evidence from:

Lawyer groups

Committee to which bill is referred:

Legal and Constitutional Legislation Committee

Possible hearing date:

Possible reporting date(s): 11 May 2005

Appendix 5

Proposal to refer a bill to a committee

Name of bill(s):

Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill 2005

Reasons for referral/principal issues for consideration

The bill overturns the ability of state and territory governments to legislate in the OH&S of workplaces and to consider the implications.

Possible submissions or evidence from:

State and territory governments, employer and employee groups

Committee to which bill is referred:

Employment, Workplace Relations, and Education Legislation Committee

Possible hearing date: April/May 2005

Possible reporting date(s): 10 May 2005

Appendix 6

Proposal to refer a bill to a committee

Name of bill(s):

Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005

Reasons for referral/principal issues for consideration

To explore the adequacy of the bills so called "future proofing" proposals.

To determine whether they are consistent with the recommendations of the Estens Inquiry

Possible submissions or evidence from:

National Farmers Federation, Telstra, Australian Communications Authority

Committee to which bill is referred:

Environment, Communications, Information Technology and the Arts Legislation Committee

Possible hearing date:

Possible reporting date(s): 11 May 2005

NOTICES

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Greig for today, relating to the proposed accreditation of the Southern Bluefin Tuna Fisheries Management Plan, postponed till 11 May 2005.

Business of the Senate notice of motion no. 2 standing in the name of Senator Murray for today, proposing an amendment to the terms of reference for the Legal and Constitutional References Committee inquiry into the effectiveness and appropriateness of the *Privacy Act 1988*, postponed till 11 May 2005.

Business of the Senate notice of motion no. 4 standing in the name of Senator Cherry for today, proposing the reference of matters to the Environment, Communications, Information Technology and the Arts References Committee, postponed till 17 March 2005.

General business notice of motion no. 107 standing in the name of Senator Nettle for today, relating to Iraq and Australian defence personnel, postponed till 17 March 2005.

COMMITTEES

Employment, Workplace Relations and Education Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.45 p.m.)—by leave—At the request of the Chair of the Employment, Workplace Relations and Education Legislation Committee, Senator Tierney, I move:

That the time for the presentation of the report of the Employment, Workplace Relations and Education Legislation Committee on the provisions of the Higher Education Legislation Amendment (2005 Measures No. 1) Bill 2005 be extended to 10 May 2005.

Question agreed to.

LAOS: NAM THEUN 2 DAM

Senator NETTLE (New South Wales) (3.45 p.m.)—by leave—I move the motion as amended:

That the Senate—

(a) notes:

- (i) the potentially significant negative economic, social and environmental impacts of the proposed Nam Theun 2 Dam project in Laos,
- (ii) the inadequacy of consultation with communities affected by the dam,
- (iii) that the dam will flood approximately 40 per cent of the Nakai Plateau, home to hundreds of bird species and the Asian elephant,
- (iv) that as many as 150 000 people whose livelihood relies on the Xe Bang Fai river may be affected, and
- (v) that the World Bank Board of Executive Directors is currently deciding whether to support the dam; and

(b) calls on the Government to urge the World Bank to closely scrutinise the proposed mitigation and compensation programs and take into account the potentially significant negative economic, social and environmental impacts of the Nam Theun 2 Dam before deciding on whether it merits support.

Question agreed to.

COMMITTEES

Privileges Committee

Reference

Senator FAULKNER (New South Wales) (3.47 p.m.)—I ask that general business notice of motion No. 5 standing in my

name, which proposes a reference of a matter to the Privileges Committee, be taken as a formal motion.

The DEPUTY PRESIDENT—Is there any objection to this motion being taken as formal?

Senator Bartlett—Yes.

The DEPUTY PRESIDENT—There is an objection.

Finance and Public Administration Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.47 p.m.)—At the request of Senator Mason, I move:

That the time for the presentation of the report of the Finance and Public Administration Legislation Committee on annual reports tabled by 31 October 2004 be extended to 10 May 2005.

Question agreed to.

SYMPHONY ORCHESTRAS

Senator BROWN (Tasmania) (3.47 p.m.)—by leave—I, and also on behalf of Senator Carr, move the motion as amended:

That the Senate—

- (a) notes that the Federal Government is considering a report which recommends axing the Tasmanian, Adelaide and Queensland symphony orchestras; and
- (b) calls on the Federal Government to:
 - (i) rule out any job losses at these orchestras, and
 - (ii) abandon its unsustainable funding model for major arts organisations and replace it with a model incorporating adequate indexation arrangements.

Question agreed to.

GENETICALLY ENGINEERED PRODUCTS

Senator BARTLETT (Queensland) (3.48 p.m.)—I move:

That there be laid on the table, no later than the conclusion of question time on Wednesday, 11 May 2005, the following documents:

- (a) any reports or similar materials from Australian Pesticides and Veterinary Medicines Authority relating to glyphosate, herbicide-tolerant genetically-engineered plants and Fusarium; and
- (b) all agronomic data from the Office of the Gene Technology Regulator-approved Bayer or Monsanto genetically-engineered canola trials conducted in Australia.

Question agreed to.

URANIUM MINING

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.49 p.m.)—by leave—I move the motion as amended:

That the Senate—

- (a) recognises:
 - (i) the inherent dangers of nuclear proliferation and the role uranium plays in the development of weapons of mass destruction,
 - (ii) the poor historical record of safety breaches in Australia's existing uranium mines and the need for mining companies to be vigilant about health, safety and environmental matters, and
 - (iii) the international history of widespread and long-lasting damage to communities and the environment as a result of accidents involving nuclear power generation; and
- (b) calls on the Government to rule out the development of any new uranium mines.

Question put.

The Senate divided. [3.54 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	32
Noes.....	<u>32</u>
Majority.....	0

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Bolkus, N.
Brown, B.J.	Buckland, G.
Campbell, G. *	Carr, K.J.
Cherry, J.C.	Collins, J.M.A.
Conroy, S.M.	Cook, P.F.S.
Crossin, P.M.	Denman, K.J.
Faulkner, J.P.	Forshaw, M.G.
Greig, B.	Hogg, J.J.
Kirk, L.	Ludwig, J.W.
Mackay, S.M.	Marshall, G.
McLucas, J.E.	Moore, C.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Ridgeway, A.D.
Stephens, U.	Stott Despoja, N.
Webber, R.	Wong, P.

NOES

Abetz, E.	Barnett, G.
Brandis, G.H.	Calvert, P.H.
Chapman, H.G.P.	Colbeck, R.
Eggleston, A.	Ellison, C.M.
Ferguson, A.B.	Ferris, J.M. *
Fifield, M.P.	Harris, L.
Heffernan, W.	Humphries, G.
Johnston, D.	Kemp, C.R.
Knowles, S.C.	Lightfoot, P.R.
Macdonald, I.	Macdonald, J.A.L.
Mason, B.J.	McGauran, J.J.J.
Minchin, N.H.	Murphy, S.M.
Patterson, K.C.	Payne, M.A.
Santoro, S.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.

PAIRS

Evans, C.V.	Hill, R.M.
Hutchins, S.P.	Campbell, I.G.
Lundy, K.A.	Scullion, N.G.
Ray, R.F.	Coonan, H.L.
Sherry, N.J.	Boswell, R.L.D.

* denotes teller

Question negatived.

HUMAN RIGHTS: FALUN GONG

Senator STOTT DESPOJA (South Australia) (3.57 p.m.)—I move:

That the Senate—

- (a) notes that 16 March 2005 is the third anniversary of the date on which the Minis-

ter for Foreign Affairs (Mr Downer) issued the first certificate pursuant to subregulation 5A of the Diplomatic Privileges and Immunities Regulations to prevent Falun Gong practitioners from holding peaceful demonstrations in front of the Chinese Embassy, and that the Minister has issued consecutive certificates since that time;

- (b) acknowledges wide-ranging evidence indicating that Falun Gong practitioners continue to be subjected to persecution, detention and torture in China;
- (c) expresses concern that preventing Falun Gong practitioners from holding peaceful demonstrations in front of the Chinese Embassy may compromise the practitioners' freedom of political communication under the Australian Constitution;
- (d) notes that Falun Gong practitioners have been free to demonstrate in front of Australian Government institutions, including Parliament House, without any concern for the dignity of those institutions;
- (e) expresses the view that it is inconsistent to enforce a more restrictive standard in relation to peaceful demonstrations in front of the Chinese Embassy than that which applies to demonstrations in front of Australian Government buildings;
- (f) recalls its resolution agreed to on 1 December 2003 to reaffirm its commitment to freedom of belief within Australia and recognise the freedom of Australians to practise Falun Gong without fear of harassment; and
- (g) calls on the Minister for Foreign Affairs to refrain from issuing further certificates which would prevent Falun Gong practitioners from demonstrating in front of the Chinese Embassy in the future.

Question negatived.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Reference

Senator BARTLETT (Queensland) (3.58 p.m.)—At the request of Senator Ridgeway, I move:

That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by the last sitting day in March 2006:

The operation of the wine-making industry, with particular reference to the supply and purchase of grapes.

Question agreed to.

MATTERS OF PUBLIC IMPORTANCE

Ms Schapelle Corby

The DEPUTY PRESIDENT—I inform the Senate that Senator Greig has withdrawn the matter of public importance which he had indicated he had intended to propose today.

COMMITTEES

Scrutiny of Bills Committee

Report

Senator GEORGE CAMPBELL (New South Wales) (3.59 p.m.)—On behalf of the Chair of the Senate Standing Committee for the Scrutiny of Bills, I present the third report for 2005 of the committee. I also lay on the table Bills *Alert Digest* No. 3 of 2005, dated 16 March 2005.

Ordered that the report be printed.

Economics Legislation Committee

Additional Information

Senator McGAURAN (Victoria) (3.59 p.m.)—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present additional information received by the committee on its inquiry into the provisions of the Tax Laws Amendment (2004 Measures No. 7) Bill 2005.

**Employment, Workplace Relations and
Education References Committee
Report**

Senator CROSSIN (Northern Territory) (3.59 p.m.)—I present an interim report of the Senate Employment, Workplace Relations and Education References Committee on Indigenous education funding.

Ordered that the report be printed.

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

Leave granted.

Senator CROSSIN—I move:

That the Senate take note of the report.

It is not a usual situation in this place for a Senate committee in the middle of an inquiry to deem a matter as needing such urgent attention as to warrant the tabling of an interim report. But following the receipt of submissions and after spending four days on the road hearing from up to 80 witnesses on the changes to Indigenous education funding it became quite apparent to the members of the Senate Employment, Workplace Relations and Education References Committee in dealing with this inquiry that this government's new changes were such a monumental mess that something urgent needed to be said about the situation. The way we have chosen to do that is by tabling an interim report.

We had hoped that the government would have agreed to a majority report in this case. We had hoped that we would be able to convince the government that what they are undertaking is so monumentally destructive to the involvement of Indigenous parents in schools and the educational outcomes of Indigenous students that they ought to take stock and look at what is happening. They ought to say to themselves: 'This is so important that the Senate committee has de-

ecided to table an interim report. Let's have a serious look at the concerns they are raising.'

Our report does not criticise the policy; our report does not make comments about the level of funding and whether it is adequate or inadequate. We will do that as we get around the country and take further submissions. What our report says to the government is that what they are trying to achieve in schools in relation to Indigenous students is not working. It is a bureaucratic nightmare. It is failing to engage Indigenous parents. It is failing to deliver funds on the ground. What we think they ought to do is stop what they are doing here and now, put in place the funding arrangements that they had last year and take this year as a transitional year to get it right. It is not right and if the government and the bureaucrats in DEST were honest with themselves they would acknowledge that what is happening out there is a monumental mess. It is a bureaucratic nightmare.

Let us never forget that Aboriginal parent committees were established under the first goal of the National Aboriginal Education Policy 15 years ago. That goal was to try and encourage more Indigenous parents to get involved in their kids' education. One of the sound concrete building blocks of a child's education is to get them involved in the school. They should be encouraged to go to school. One of the weak links 15 years ago was that Indigenous parents needed to be more involved in schools and needed to be encouraged to be more involved in schools. What this government is implementing in 2005 absolutely and categorically destroys that.

I take offence at the government senators' report where it talks about perspectives on this issue being based on the exaggerated claims of senators on the committee. They are not exaggerated claims. We had nearly

four days of hearings in the Territory. Those claims are not exaggerated; they are the reality. Aboriginal parents are being disempowered and are disengaging from their kids' education. This is because accessing funds that they were automatically given in previous years has become a bureaucratic nightmare. I take offence at suggestions that these funds are in some way an emotional entitlement of previous years. They say that what we are seeking to do is to hang onto programs that we have emotional attachment to. Those programs were successful.

We had a spurious consultation process. We have 3,800 Aboriginal parent committees operating in this country. Of that number, 400 were randomly selected. Ten of those replied to the consultation process, along with 62 other providers—I assume education providers or state and territory governments. People believed that the consultation processes they were involved in were about possible ideas. People do not believe that these changes have come about after a genuine consultation process. The government senators' report seems to try to validate the consultation process and the changes.

What disappoints me about this is that this was a genuine effort by the committee to get this government to seriously look at the impact of the changes on Indigenous schools. We heard at Galiwinku that Aboriginal parents who want to access what was ASSPA funding for their kids now have to put in a concept plan. When that concept plan is approved, they can then apply for the funding. It is now a two-stage process; it is not an automatic payment. Some little committee in DEST—who are micromanaging this new process to the smallest possible degree—look at these concept plans and give them the tick or the flick. This is a couple of officers in DEST and someone attached to the state or territory government. I am assuming that not all of them have educational qualifica-

tions. The people on Elcho Island, who on the day we were there had had only two of their five concept plans accepted, said to us, 'Who does this mob think they are, sitting over in an office somewhere in Gove, Darwin or'—what's worse—'Canberra, deciding what is best for our school and deciding what we ought to spend these funds on in relation to our school?'

I have not come across any instance where ASSPA funds were not used to benefit the educational outcomes of students, even if it were for registering a team to go on a sporting trip. There were question marks about that. I do not have any questions about that whatsoever. If you can encourage a kid to come to school because he is going to be in a basketball team which, at the end of the day, takes him to another town or city where he learns to socially interact with other kids, that is a fantastic educational outcome. Nor do I have any questions about the educational outcomes of things such as breakfast or lunch programs. You try teaching a kid who has an empty tummy and see how long they will sit still and concentrate. If that child is too poor to have money in their hand at school to buy their lunch, then they will not come to school because they will be ashamed and embarrassed about that. If you are going to provide funds to provide breakfast or nutrition programs to get kids coming to school, what is the problem with that? There is absolutely an educational outcome in that circumstance.

The bottom line of all of this is that we have seen some amazing statements in the government senators' report. In my 25 years in Indigenous education I have never seen comments on Indigenous education from a Commonwealth government like these. I believe the government senators' report today is a turning point in Indigenous education. The government is saying to us that it is not bound to continue funding programs

such as ASSPA if it considers that other initiatives are overdue and in need of more seed funding. The government is implying that it wants to back away from funding Indigenous education and ensure that the states pick it up. That is what it is saying. What it is really saying is that it wants to make sure that where the outcomes are successful those programs can be mainstreamed. This is what it says:

National priorities change: new needs emerge, and when achievement is apparent, success can be 'mainstreamed'.

That is a monumental shift in the government's attitude towards Indigenous education funding. What they are saying is: 'Once Indigenous kids become successful and are just like non-Indigenous kids, we are going to ensure the funding is mainstreamed.' Indigenous funding programs will disappear. Either the government will choose to not fund them or they will pass the buck to the state and territory governments. It is disappointing that the government have not listened to this committee. We have tried to say to the government: 'Read the transcript. Take stock of what you are doing. There are times when governments get it wrong. The objective in the funding policy is not being achieved here. Aboriginal parents are walking away from schools. Funds are not getting to kids on the ground, and their education is suffering.' But what the government have said in their dissenting report is monumental. This is a significant shift in the mindset of the government in funding Aboriginal education in this country. (*Time expired*)

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.10 p.m.)—I rise to speak about the interim report on Indigenous education funding. The committee made the unusual decision to table an interim report rather than continue with our inquiry, which is due to hold hearings in Western Australia and Northern Queensland. The rea-

son we decided to prepare an interim report was that we were persuaded about the urgency of the matter. We are convinced that the government could not possibly have intended the sort of chaos which has ensued as a result of implementing, or not implementing, these changes. It was with the best will in the world that the committee decided that it should inform the minister as soon as possible of the impact of these changes and what they were doing, particularly to the more remote schools, so it is disappointing that the government members' contribution to this interim report is so negative. I understand the chair, Senator Crossin, also wrote to the minister last week to outline to him some of the problems associated with the changes made by the Indigenous Education (Targeted Assistance) Amendment Bill, which we dealt with in this place in December.

When we travelled around to schools we found that the problem was that this was a hugely bureaucratic answer to problems that might have been tweaked somewhat in schools, that might have been changed had the government listened to school communities about how they use that money. The schools told us that the federal funding, through various programs, was the only discretionary funding which was available in the Northern Territory—and I am sure this is also the case in Western Australia and elsewhere—and that it was critically important to those schools which were desperately trying to make a difference to student outcomes for Indigenous people. The Aboriginal Student Support and Parent Awareness program, which was under way and had committees in these Indigenous schools, exists on very little funding—I forget the exact figure, but it is not much more than \$100 per Aboriginal student in those schools. It is not true to say that it is a huge success in every school. We certainly found examples where it was quite difficult to engage parents in this process, but

there were other outstanding schools where this worked absolutely brilliantly.

One of those schools was Shepherdson College on Elcho Island. We had a very moving hearing, sitting with parents, grandparents and people from the Indigenous community who came together to tell us of their bewilderment about what the government was doing and to talk about the importance of those programs. For instance, at that school they spent some of that money on providing breakfast programs. I asked the principal why this was necessary in this school, and he explained that in most of the households on the island 30 people lived in one place, and these are not houses where you have a normal mum, dad and three kids and where breakfast is made in the morning. These are not places where fresh food is readily or cheaply available. So the breakfast program and the fruit program at midmorning were done for educational reasons. In other words, children who are hungry are not going to be able to focus their attention on their schooling.

I was absolutely astounded that these children were so healthy, and it was because the parent committee had made decisions based on their own circumstances and their understanding of the reasons for the barriers to education that exist for their children. For instance, a high priority was to provide a toothbrush and some toothpaste to every child in the school; now the sorts of dental problems that had caused other health problems have been pretty much obliterated. These programs in a whole range of ways directly met the needs of those students, and this school could prove they worked, because over the previous couple of years student attendance at school had increased by a massive 130—and I take my hat off to the principal there, who drove most of this.

We also heard how ludicrous it was to shift from the Indigenous Tutorial Assistance Scheme, which is available to schools to spend as they see fit. In other words, they can spend that money for tutoring of students in preschool, grade 1 or year 11; wherever they see there would be usefulness in providing tutoring, they can do it. But, because of this government's ridiculous obsession with benchmarking and testing, that tutorial assistance now can only be provided to students who fail the benchmark tests. Those tests occur in years 3, 5 and 7. Some of these kids will not even be in the school when the test is on; they may be in other schools or even out of school. As we know, with Indigenous education there is a very large problem with attendance. What happens to a student who probably needs the tutorial assistance when they do not sit the test? What happens if a student does sit the test and then moves to another school or is absent? Do they take their entitlement with them? Presumably. These are the sorts of things that have not been understood and worked through as to how they fit with remote and Aboriginal communities.

We put this interim report together in good faith and on the understanding that something should be done quickly. It was not reasonable for us to continue this inquiry, knowing what we knew and needing to alert the government to the problems associated with it. I hope the minister's response is not typical of what we have here from the government members of that committee. I sincerely hope that the minister will listen. Not only have all these very silly mistakes been made in how to deliver programs to schools but also six weeks into the term, when we were there, these schools had no money at all for these programs. They were still halfway through concept plans or the concept plans had gone in and lines had been put through all sorts of things. They had been told that

money for literacy programs was not available because that was a state government responsibility or, in this case, a territory government responsibility. So there was enormous confusion about what should be in the concept plan and what the follow-up proposal would be when they got it back. There were ridiculous time frames, such as three days in which to turn an agreed concept plan into a proposal. Many of these communities had no idea how to do that. When it came to approaching these funding proposals, we found that schools were in a terrible mess.

Already teachers, tutors and people who over the years had been upskilled and were performing very good work in these schools have been laid off. They were let go as there was no money to pay them. Presumably, they have wandered off to do something else if they can. It is unreasonable for the Commonwealth to leave such a bureaucratic mess behind and to see these communities and schools without funding for such a long time. And presumably this is still not resolved. I would not imagine that overnight, after our visit, it has all been sorted out.

It is an indictment of the government if it chooses not to act and do what the committee suggests—that is, call this a transition year and continue the funding and those programs. The programs that the schools are used to and can accommodate would not take much, I would have thought, by way of effort on the part of the government. We ask the government to continue these programs for 12 months, to consult properly with people in remote communities in particular so that there is a better understanding of what these programs mean to them and then, in the next year, introduce whatever changes it wants to make. I would be of the view that there is no need to make these changes at all, but at least let us have some further debate about them. Let us talk with schools and territory and state governments and try and get it right.

At the end of the day, the students who are the most disadvantaged in this country are those who come to school with English as a second language. They are the ones who, as a result of that disadvantage, are less likely to pick up skills within their school and are more likely to leave school early. They are the ones that this is affecting. We are talking here about an amount of money that would not matter one way or the other to a wealthy school in the middle of Brisbane, Melbourne or even Darwin, where it would not make the slightest difference; we are talking here about schools for which this small amount of money makes an enormous difference.

Senator CARR (Victoria) (4.20 p.m.)—The Employment, Workplace Relations and Education References Committee's interim report on Indigenous education funding, presented to the Senate this afternoon, is an appeal—an appeal by the committee to the government to reconsider what is plainly and simply a bureaucratic bungle. This is not a document that seeks to re-evaluate the fundamentals of the program; that will presumably be done in the final report. This is an appeal to the government to consider the consequences for thousands and thousands of Aboriginal students in this country who are missing out because of the incompetence of this government. We have a situation in the Northern Territory about which, as a result of the Senate committee's visit, we have been able to gather information first hand highlighting that the administrative arrangements embarked upon by the government are seriously hurting thousands of citizens of this country. What is the government's response? It is to try to dismiss it by blaming the Territory government and by trying to pretend it is not happening. There can be no excuse whatsoever for this.

There are thousands and thousands of citizens in this country who are being seriously disadvantaged because this government and the Commonwealth Public Service cannot get their act together. We are now eight weeks into a school year and basic services have not been provided. It is not a result of the funding failure of this parliament or the government's failure to get legislation through; it is a direct result of a program wholly administered by the Commonwealth not being able to deliver support to parent committees. That is a pretty basic problem particularly at a time when the government says that its entire Indigenous affairs program is being redirected to provide new channels of communication with Aboriginal communities and that it wants to go directly to communities. The government wants to bypass representative structures and the arrangements that have been in place for some time and talk directly to family groups and communities. But the very instrument in education that allows that to happen—parent committees—is being removed. That is the first fundamental problem.

The second problem arises as a result of the failure of this government to make sure that money goes from Canberra to school communities in remote parts of this continent. Basic equipment, food, transport and dental care programs are not being provided because of the failure of the Australian Public Service to get the money from here to the backblocks of the Northern Territory. These are basic matters which the minister ought to directly intervene in. There is no excuse for this—none whatsoever.

The government says that it is down to the Territory bureaucrats, but the Commonwealth did not seek to seriously engage those bureaucrats until the last week of January this year—that was the first time there was a bilateral meeting in Queensland with the officers. If it were fair dinkum about making

sure these programs actually worked, it would have set this up last year. The announcement of the policy was in the middle of last year, but the government does not seek to implement that policy until January this year. As a former schoolteacher I can tell you that it takes a bit to organise a school year and you do not try to get things going when the teachers are on the doorstep and the kids are lined up. If you do that you will certainly find that eight weeks into the school term basic facilities are not being provided.

I ask you: in what other community or school in the Commonwealth would this be tolerated? Where else would it happen? I can tell you that it would not be in the middle of Melbourne or Sydney. This would be totally unacceptable. It would be on the front page of every newspaper. But in the Northern Territory it gets dismissed. The *Northern Territory News* does not seem to be much interested. I can understand that, perhaps, given the nature of the *Northern Territory News*. I am told that a big problem in the Northern Territory is that it is too hot for fires, so the paper is absolutely useless for anything, not even for lighting fires!

We managed to get a bit of the message across the radio and the TV. But what do we get from the government? We get a response that says, 'This is really someone else's problem.' Senator Tierney—and this is probably his last effort here and the last time he will have to carry the can for the government—puts in a report that says that the real gain here is to mainstream these programs. What are we told about the ATSIC programs? We are told that there will be protection for specific programs. We are told that there will be a guarantee that Indigenous programs will continue, but that is not what the government say in this report. The government say that, if they are successful, they will mainstream them. If ever there was a

case for special programs, it is in education. But that is not what this government now say. They say, 'If you're successful, we'll mainstream the program. We'll cater for failure.' Can you just imagine running our Olympics program that way? Can you imagine any sports program anywhere saying, 'We'll only provide money to people who don't measure up'? That is what the government are saying in education.

We all know the statistics. We know that, since the government changed the scheme within higher education, the number of Indigenous people starting university has continued to decline. It has not recovered since then. We know the score with regard to schools. The situation is very clear: 33 per cent of Indigenous students were not meeting the reading benchmarks and 37 per cent of Indigenous students were not meeting the numeracy benchmarks. This compares with 10 per cent for the rest of the population. We know that, with regard to retention rates at secondary school, 38 per cent of Indigenous students who commence secondary school complete year 12; whereas for the rest of the country it is 76 per cent—despite the activities of the current Prime Minister, trying to get people out of school early. There is a fundamental inequality. There is a huge equity gap in this country. And what is the government's response? It is to ensure that there are changes in Indigenous education programs which will let that gap grow still further. That is totally unacceptable.

If we say that in this country the best way to learn is to go to school—and we say that that is the fundamental principle—then all the programs that are aimed at encouraging and providing incentives for people to go to school ought to be protected and advanced. If you are providing assistance with transport, parent involvement, food, dental and nursing programs, and all these other things, these are incentives for people to go to

school. You should not be taking them away, and that is precisely what is happening at the moment.

We have a basic problem. Schools at Moulden Park—which I visited with Senator Crossin and others—Millingimbi and Elcho Island are highly successful and are doing a hell of a good job, despite extraordinary adversity. They are having the ground cut out from underneath them by the policies of this government. It seems to me that not even this minister would want to deliberately see that sort of resource taken away, and that is why we are making this appeal. There ought to be an intervention. There ought to be a mechanism to ensure that funding is made available directly to children, to make sure they get the benefits that money can bring.

The government say, 'We don't run schools,' but they are only too happy to intervene with flagpoles and with literacy and numeracy programs and to tell the states that they are now going to set national curricula. They are also only too happy to tell the states about values education. Well, a fundamental values education of a democracy is that everyone gets a fair go—but they are not prepared to intervene on that score. What we have here is a clear situation where, because of bureaucratic bungling, thousands and thousands of citizens in this country are missing out.

The basic statistics are very clear. With regard to the in-class tuition program for the Northern Territory, the Commonwealth is reducing funding from \$5 million to \$3.71 million. It is reducing the number of students it is servicing from 3,800 to 1,666. That is a program that is administered through the states. The Commonwealth is taking the view that this program is supplementary and it does not need to intervene. That is wrong. That position is just wrong. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Public Works Committee

Reports

Senator McGAURAN (Victoria) (4.31 p.m.)—On behalf of the Parliamentary Standing Committee on Public Works, I present the following reports: 68th annual report; and first report of 2005 relating to the fit-out of new leased premises for the Department of Industry, Tourism and Resources. I move:

That the Senate take note of the reports.

I seek leave to incorporate a tabling statement in *Hansard*.

Leave granted.

The statement read as follows—

In accordance with Section 16 of the Public Works Committee Act 1969, I present the Sixty-eighth Annual Report of the Joint Standing Committee on Public Works. This Report gives an overview of the work undertaken by the Committee during the 2004 calendar year.

In addition to its Sixty-seventh Annual Report, the Committee tabled nine reports on public works, with a total estimated value of \$540 million. Works reported on by the Committee in 2004 were:

- Site remediation and construction of infrastructure for the Defence site at Randwick Barracks, Sydney—interim works;
- Proposed fit-out of new leased premises for the Department of Health and Ageing at Scarborough House, Woden Town Centre, ACT;
- Mid-life upgrade of the existing chancery building for the Australian High Commission at Wellington, New Zealand;
- Provision of facilities for Headquarters Joint Operations Command near Queanbeyan, NSW;
- Proposed development of land at Lee Point in Darwin for Defence and private housing;

- Fit-out of new leased premises for the Department of Prime Minister and Cabinet at 1 National Circuit, Barton, ACT;
- Fit-out of new leased premises for the Attorney-General's Department at 3 - 5 National Circuit, Barton, ACT;
- Construction of the new East Building for the Australian War Memorial; and
- Development of a new collection storage facility for the National Library of Australia at Hume; ACT.

Committee members also participated in a Public Works Committee Training Day organised by the Defence Infrastructure Asset Development Branch, and in the Annual Conference of Parliamentary Public Works and Environment Committees, held in Melbourne and Lorne.

Issues of note arising from the Committee's deliberations in 2004 included:

- concurrent documentation;
- demountable buildings;
- private sector financing;
- exemption of works for Defence purposes; and
- monitoring of remediation works.

Concurrent documentation is the preparation of contract documentation before the Committee has completed its inquiry and reported on a work. In extraordinary circumstances, the Committee will permit agencies to commence some elements of project documentation if deadlines cannot be met by any other means. In 2004 the Committee received requests for concurrent documentation in respect of six of the nine works brought before it. The Committee believes that concurrent documentation unnecessarily pre-empts the outcome of parliamentary investigation and seeks to remind agencies that sufficient time should be included in works schedules to allow for thorough scrutiny.

In 2004 the Parliamentary Secretary to the Minister for Finance and Administration gazetted a regulation to the Public Works Committee Act providing that projects making extensive use of demountable buildings should be referred to the Committee. The Committee welcomed this deci-

sion as, in the past, some agencies have excluded demountable buildings from works budgets with the result that sizeable projects have escaped appropriate scrutiny.

The Committee was also advised by the Parliamentary Secretary that where a Commonwealth agency arranges for the provision and subsequent leasing of purpose-built infrastructure through a private company, such projects should also be subject to Committee scrutiny. This information was considered by the Committee to be particularly timely, given the increasing trend for agencies to acquire property and infrastructure through private financing and joint venture arrangements.

The Committee also raised concerns with respective Ministers in relation to the exemption of works for Defence purposes and the appropriate monitoring of contamination remediation works.

I would like to extend my thanks to all of the members of the Committee for their continued hard work and support throughout the year. I would also like to express my gratitude to the secretariat and other parliamentary staff, and to those officers in the Department of Finance and Administration who play an integral role in facilitating references and expediency motions.

The Committee's first report of 2005 addresses the proposed fit-out of new leased premises for the Department of Industry, Tourism and Resources in Civic, ACT, at an estimated cost of \$19.4 million.

The need for the proposed work was driven by the Department's objective of collocating its four existing Canberra offices at a single purpose-built building. The Department submitted that its current premises do not provide an adequate standard of accommodation, are inefficient and difficult to secure. Further, all current leases expire in 2006.

The Department expects rationalisation and consolidation of its accommodation to result in a number of benefits, including enhanced operational cohesion and efficiency, reduced environmental impacts, increased amenity to staff and visitors, and better security.

The works required to meet Customs' objectives comprise:

- integration of electrical, ventilation, security, communications, fire and hydraulic services into base-building works;
- office accommodation, including meeting and training rooms, IT and communications rooms, storage, workstations and loose furniture; and
- staff amenities, such as parenting rooms, career's room, first-aid facilities, break-out areas and a prayer room.

In examining the work, the Committee noted that the proposed new building will provide less floor space than the Department's current leases and sought to ensure that this would not impact upon amenity for occupants. The Department explained that each of its current premises has its own entry, storage and reception facilities, and that collocation will remove this requirement, creating more space in the new building. Moreover, it is proposed that individual workstation space will be increased.

The Department's submission on the fit-out proposal outlined a range of measures intended to minimise energy use and operating costs in its new premises. The new building will achieve four-and-a-half stars under the Australian Building Greenhouse Rating scheme and will be audited annually to ensure that the energy rating remains at that level. At the public hearing, the Department added that its new lease will include a Green Lease Schedule, which will require the developer to install energy-saving equipment and to ensure that the energy efficiency of the building is maintained for the life of the lease. The Committee welcomed the energy conservation initiatives taken by the Department.

In closing, I wish to thank my Committee colleagues for their support throughout this inquiry and also the staff of the secretariat.

I commend the Report to the House.

Question agreed to.

**NATIONAL SECURITY
INFORMATION LEGISLATION
AMENDMENT BILL 2005**

First Reading

Bill received from the House of Representatives.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.32 p.m.)—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 VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.33 p.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

**NATIONAL SECURITY INFORMATION
LEGISLATION AMENDMENT BILL 2005**

As part of its fundamental role to protect Australia's national security, the Government has sought to strengthen the protections for security sensitive information.

These protections were significantly enhanced earlier this year with the commencement of the National Security Information (Criminal Proceedings) Act 2004.

This Act applies to federal criminal proceedings to protect information that relates to, or whose disclosure may affect, national security.

The aim of the Act is to facilitate the prosecution of an offence without prejudicing national security and the rights of the defendant to a fair trial.

This bill extends these protections to include certain civil proceedings.

It has become apparent that security sensitive information may, and in fact does, arise in civil proceedings, including, in particular, accident compensation and family law proceedings.

As with prosecutions for criminal offences, it is essential that parties can use security sensitive information in these cases without jeopardising Australia's national security.

The bill introduces a number of measures to strengthen the protections in civil proceedings for information that is likely to prejudice our national security.

It broadly adopts the same procedure that applies to federal criminal proceedings under the principal Act, but with some necessary departures to account for the distinctive features of a civil proceeding.

As with criminal proceedings, the bill will only apply when notice is given to parties to a proceeding.

Once it applies, the bill enables information to be disclosed during a civil proceeding in an edited or summarised form.

It also provides for closed hearings to consider the disclosure of information that may prejudice national security.

Only parties and their legal representatives who possess security clearances to an appropriate level may attend these closed hearings.

This raises a significant point of difference with the principal Act.

The bill departs from the procedure for criminal proceedings by enabling that the parties, not just their legal representatives, to obtain security clearances to an appropriate level.

Unlike in criminal proceedings, parties to civil proceedings come from all walks of life and many may qualify for, or already have, security clearances.

In addition, many parties will represent themselves in civil proceedings.

In recognition of the additional financial burden involved in engaging a security-cleared legal representative to attend a closed hearing, the Government has agreed that a self-represented litigant involved in a civil matter under Commonwealth law who is refused a security clearance at the appropriate level would be eligible to apply for financial assistance under the non-statutory Special Circumstances Scheme.

If approved, this would provide financial assistance for the legal costs and related expenses associated with engaging a legal representative to attend the closed hearing.

Whilst the bill changes the way that information that may affect our national security is used in civil proceedings, it also seeks to uphold the interests of the parties to the proceeding.

The bill makes it clear that courts, in making an order in relation to the disclosure of information or a witness, must consider whether the exclusion of information or a witness would have a substantial adverse effect on the substantive hearing in the proceeding.

It also ensures that a court can stay a proceeding where it would have such an effect, even if the court had previously found otherwise.

The bill requires the court to give reasons to the parties and their legal representatives for a decision to make an order to admit, exclude or redact information, or to exclude a witness.

The court must also make a record of the closed hearing and provide this record to security-cleared parties.

These measures demonstrate that the Government has yet again struck the right balance between protecting national security and protecting the rights of parties.

For this reason, I commend this bill.

Debate (on motion by **Senator Vanstone**) adjourned.

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 2005

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Aboriginal and Torres Strait Islander Commission Amendment Bill 2005, informing the Senate that the House has agreed to the bill with amendments and requesting the concurrence of the Senate in the amendments made by the House.

House of Representatives message—

- (1) Clause 2, page 2 (table items 3, 3A and 3B), omit the table items, substitute:

3. Schedule 3	The later of:
	(a) 1 July 2005; and
	(b) the day immediately following the day Schedules 1 and 2 to this Act commence.

- (2) Schedule 1, item 112, page 16 (lines 6 to 8), omit subsection (1A).
- (3) Schedule 1, item 118A, page 17 (line 21) to page 18 (line 22), omit the item.
- (4) Schedule 3A, page 81 (lines 1 to 16), omit the Schedule.
- (5) Schedule 4, item 23, page 85 (lines 4 to 30), omit the item, substitute:

23 Subsection 74(1A)

Repeal the subsection.

Ordered that the message be considered in Committee of the Whole immediately.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.34 p.m.)—I move:

That the committee agrees to the amendments made by the House of Representatives.

Senator CARR (Victoria) (4.34 p.m.)—Before I make a few comments on these

amendments, I would like to acknowledge the significant number of Indigenous people in the Gallery who have come here to watch these proceedings. It is somewhat ironic that a matter of this importance has to be observed in this way. No, I suppose it is not ironic; it is symbolic. It is symbolic of the circumstances surrounding consideration of this legislation, where it is the Indigenous people who must sit as silent witnesses to the destruction of ATSIC. The policy position that the government has taken is very much in that line, whereby people sit silently trying to make sense of what the government is unilaterally doing and has unilaterally undertaken.

It is a profound disappointment to me that members of the government have pursued the policy position that they have and that the government has reinforced its renegeing on the arrangements it made with regard to the commitments for the extension of regional councils. It is also of profound disappointment to me that the Prime Minister's overriding of the Minister for Immigration and Multicultural and Indigenous Affairs on this matter has been upheld by the House of Representatives and that the government has chosen to oppose Labor's very sensible amendments to extend the life of regional councils by six months. Labor's reasoning on this matter remains. As I have stated before, it is sound and it is moderate. It reflects the agreement that we had reached with the government on these issues. It is practical and it provides the right of Indigenous peoples to genuine representation and genuine determination, at least in the transitional period. It may well be that that in itself was grossly inadequately, but at least there was a provision to allow for some transitional arrangements to be made.

The success of the government's so-called shared responsibility approach depends entirely on the capacity to which they are able

to develop genuine partnerships and genuine agreements and of course the extent to which they have genuine credibility amongst Indigenous people. It is my view that regional councils in so many areas are precisely the bodies that have enabled that credibility to be developed. Much of what the government say they are doing is founded upon the principles that ATSIC itself developed in regard to its regional service agreements. Of course, the government have distorted them and taken an ideological twitch to them in such a way as to reinforce their obsession with changing the power balance that occurs between the Commonwealth and Indigenous people. The government are aiming to secure some 50 SRAs by the end of June and they are seeking some 80 SRAs by the end of 2005. I look with interest to the development of those and the extent to which people on the ground have genuinely been able to make informed decisions and are genuinely able to participate in the process of negotiation rather than being required to sign up to these propositions.

The Select Committee on the Administration of Indigenous Affairs found that the pressure of bureaucrats in the ICCs to negotiate SRAs meant that regional agreements will necessarily have to take a back seat. That was evidence given to the committee, and it has become increasingly clear what that means. The committee expressed concern in its report that the process is running in the wrong order, and that is a view I strongly endorse. The process should have been around the other way; there should have been an emphasis on developing regional agreements to allow people to participate to provide the framework in which people could understand the directions that governments were actually taking. The committee report states:

In prior reports such as the ATSIC Review, it was concluded that to gain maximum effectiveness

from government spending, individual programs need to be set within a structure of integrated regional planning. Thus, the RPAs should be established first to enable prioritising of regional needs and advise the Ministerial Taskforce on regional funding requirements. Only then should the SRAs be negotiated with communities and families.

We heard many times evidence presented to the select committee inquiry highlighting the confusion and indeed the serious concerns in Indigenous communities about how these new arrangements are going to work, simply because there are not the necessary legal administrative arrangements in place around the regional representative structures. The Murdi Paaki Regional Council is one of the most successful regional councils and it was one that pressed us, through the Senate committee, to ensure that its work was able to be completed. It drew to the Senate's attention the need for the ongoing framework. Sam Jefferies from the Murdi Paaki Regional Council expressed serious concern based on his own direct experiences of the processes so far. He said:

The Murdi Paaki experience demonstrates that the best way to connect government service delivery for Aboriginal and Torres Strait Islander people is through institutions of Indigenous representation, advocacy and participation which have legislative endorsement and accountability. Regional and community governance are the leadership tools that return responsibility to us, lift us out of the poverty trap and break the generational cycle that has handed down a legacy of social dysfunction.

It is in that light that the government's approach of waiting for new structures to somehow or other organically 'emerge'—and I understand that is the term they are now using—is a matter of very deep concern, because this provides the fig leaf for the real policy intent that the government are now pursuing, and that is to pick and choose who they wish to deal with, to actually redis-

tribute the power in the already dominant relationship. The Commonwealth already have enormous power and now Indigenous people will lose the capacity to argue their case on a fair and equal basis.

The government's assurances about pouring resources into communities to support the development of new representative and consultative processes are yet to be demonstrated in practice. That is why we say that the amendments that we moved are so important. That is why we say that the government's recalcitrance on this issue demonstrates their lack of good faith in policy terms. They have a fundamental commitment to redistributing the power to make an already unequal situation even more unfair. The new arrangements in Indigenous communities will see that there is very little real support being provided to adjust to the new environment.

The government has failed to provide any evidence that the mainstreaming of policy programs in terms of service delivery for Indigenous communities will lead to better outcomes. All the evidence points in the opposite direction. We have just seen this with the education debate in the Northern Territory. When 40 per cent of the Northern Territory's student population is Indigenous, what is the government doing? It is withdrawing support. It is withdrawing specific Indigenous programs to the point where it is actually mainstreaming those. That is the mechanism by which problems will be swept under the carpet. That is the mechanism by which questions of inequality won't be faced up to by the Commonwealth. It is a mechanism by which inequality will in fact be exacerbated.

Dr Shergold told us in his evidence to the select committee that the new mainstreaming arrangements would overcome problems that have been highlighted in the mainstreaming of the past. Unfortunately, no evidence has

ever been presented to justify the government's optimism in this regard. There is no evidence to support the assessment that the new way of doing business represents a major cultural adjustment within the Commonwealth Public Service. For instance, the employment practices within the Australian Commonwealth Public Service are actually going backwards when it comes to Indigenous employment. Some departments have only two people from an Indigenous background working in them.

It is quite apparent that the stories we have been hearing from people on the ground indicate that the new arrangements so far are not working well at all. It appears to be little short of a bureaucratic nightmare. It is quite apparent to me that regional councils are an appropriate mechanism to provide people with real capacity to engage the Commonwealth on a realistic basis, but this government seems totally uninterested in undertaking such a provision as that.

The government has made very clear what its attitude is in regard to Indigenous affairs. It will talk big; it will use lots of flourishing rhetoric. It will do very little when it comes to genuinely engaging Indigenous people. I am very concerned about the direction that this government's policies are taking. I am very concerned that the capacity of this parliament to undertake its effective function in monitoring the implementation of government policies will be seriously handicapped. It is only a matter of time before the latest fashion—the fad—that the government is pursuing will move on. We will see Indigenous programs swept through the bureaucracy in such a way that will see the old problems reinforced. That is why we recommended that there be a serious committee structure to actually try to deal with the problem of improving the capacity of this parliament to monitor the actions of the Public Service. I trust the government takes those

recommendations seriously and does engage at least with the parliament, if not with Indigenous people, about the directions that will be taken in that regard.

The real issue here, though, is whether or not Indigenous people are able to get a better deal under the new arrangements. I have seen no evidence to support that contention. I have seen, however, what I think is a genuine commitment by some ministers to actually try to improve the circumstances. The fact remains, though, that the dominant sentiment within the government is one of pursuing a policy aimed at the humiliation of Indigenous people. It is a policy of humiliation—it is a policy which will see Indigenous people's power in this country diminished. It will see their capacity to engage in society diminished and their capacity to engage in the economy diminished.

It is very clear where we are going now. The new policy direction will not only see a diminution of the capacity for Indigenous people to participate but also see a move by the government on land rights—they will take away those fundamental commitments. The new Senate structure will provide an extraordinary opportunity for some of the darkest and ugliest political sentiments within conservative politics in this country to emerge. It is only a question of time before the fundamental land rights gains made in recent years and the legislative changes that have been made will be undermined by this new direction within the government. They may not be able to overturn High Court decisions but they will be able to move on the legislative structures. I look forward with some trepidation to that prospect.

What we can assure the government of is that we will fight that tooth and nail throughout the country. In my opinion, there will be an overwhelming rejection of the government's position by Australians at large

because they will not want to see a return to the 1960s. They will not want to see a return to the dismal policy positions that have been so characteristic of conservative thinking on these issues throughout recent times and of course throughout the period prior to the fundamental shift in attitudes that occurred from the 1970s onwards.

It is with some regret that I say that the government's position is such that we are not able to press these issues, and we will not be insisting on our amendments. The government is the loser in that—the government might well have had a situation where it could have actually had a much better way of involving Indigenous people and provided an opportunity for Indigenous people to have a real say about the future directions of government policy. I have no doubt that these questions will be taken up, but they will be taken up on the street. They will be taken up in a whole range of areas in which the government has yet to begin, because there is only one option when people are cast out of the political system, and that is to establish their own political system and their own appeals directly to the Australian people.

Senator RIDGEWAY (New South Wales) (4.48 p.m.)—I also want to speak on the message from the House and the position that has been arrived at by the government in rejecting the amendments put forward by the Democrats and by the ALP. I am not surprised on this occasion that this is the point at which we have arrived. Most of all, I would have to describe it as being both indecent and immoral. There has been a lot of truth missing in relation to the picture that has been painted about whether ATSIC has been a failure or a success. Given the debate that we had earlier this week and have had over the course of the last two weeks on Indigenous affairs more broadly, there are going to be some tough times ahead in terms of expecting that the right sort of truth and in-

formation is going to be put out there to deal with what is a blind spot in the Australian psyche: issues concerning Indigenous affairs. We all know that they do not garner broad community support, and so it is easy for anyone in a position of leadership to, if you like, stroke a prejudice that exists as opposed to standing up for what is morally correct.

I want to take issue with some of the deliberately misleading statements that are being made by the government to the Australian public about the interest or otherwise of Indigenous people in this particular debate. The fact that there are Indigenous people here sitting in the public gallery is testament to that fact. But, most of all, it is not good enough for the government to keep saying that Indigenous people are not interested or that they are complaining about ATSIC or the like. The reality is that if you speak to people in communities and ask them a question about whether they are happy with the local land council or the local housing company or any local organisation you will invariably get a complaint—most of that in relation to dissatisfaction with services. That does not mean that we decide to get out the bulldozer or the broom and sweep it completely clean. It comes back to the reality that people are saying that they are putting up a challenge to make sure that services are delivered better.

I want to acknowledge particular people in the public gallery today, because they have demonstrated their commitment to and passion for being heard in Canberra. The consequence of this bill disappearing on this day and the position that is being taken by the opposition in supporting the government is that there is no effective national voice for Indigenous people to have their say. I want to acknowledge Commissioner Cliff Foley, the commissioner for the Sydney region. He has come here at his expense, most of all because of the passion that he feels for this particular issue. Another person who it is important to

point out is someone the government engaged to give them advice about what the future ought to be for ATSIC—Ms Jackie Huggins. She was part of the review panel with Mr Hannaford and Mr Collins. We spent \$1.4 million of taxpayers' money to come up with recommendations that have, by and large, been ignored by this government. Of course, there is also Pastor Geoffrey Stokes and the mob that has come across from Kalgoorlie—if there is no passion there then why jump on a bus and drive all the way from Kalgoorlie? That has got to demonstrate something. Why go down to the park and camp there? That has got to demonstrate something about their commitment to being heard.

I think it is a shame that we have arrived at this point and I am sure that the Minister for Immigration and Multicultural and Indigenous Affairs will have a very different view, as she always does on this particular issue. But I think that what we keep forgetting in this whole process are three fundamental principles. The first principle is about truth—about truth being put forward in such a way as to provide the basis on which change ought to occur in the first instance.

The second principle is about universality—making sure that Indigenous people in this country are treated no differently from anyone else. I put a challenge out on this occasion, since we are coming up to the May budget: we live in a country where we still have Third World and Fourth World health conditions within Indigenous communities, where many communities are still not even connected to the electricity grid and where water quality is so low. But we do not hear anything coming from the government, who keep talking about surplus amounts of money. It would take a measly \$450 million—even half of that would make a big difference—just to bring us up to par with the rest of the nation. So it is no longer sus-

tainable to keep peddling this rhetoric and saying that all of a sudden we can ignore it and that we might put in an additional \$10 million and that will be fine.

The third principle is about basic citizenship rights. In the last two weeks I have spoken about many of those. This morning I spoke about the passing of the late Judge Bob Bellar, who could not even get a taxi in his home town of Sydney. That is about citizenship rights. It is about anyone walking out on the street being able to hail a taxi. It is about a bus driver letting you on the bus if you have a ticket. It is about going into a real estate agent and being treated the same as any other person—the books are open and you can access housing accommodation. That is why problems are so bad within this country: because the government has this blind spot in its thinking. The government is perpetuating the blind spot style of thinking right across the Australian psyche and no-one is prepared to stand up and do something about it.

I heard the minister on the radio this morning talking again about why ATSIC was such a failure. Two reasons came up. The first was the fact that only 20 per cent of people voted in ATSIC elections in 2002. I have read the same reports from the Australian National University that talk about what has happened over the years since ATSIC has been in place. I think that it is a misrepresentation of the situation entirely—again, truth gone missing. The turnout of 21.6 per cent in 2002 was in fact an increase from 1999, despite the fact that there are other shock jocks and pundits out there who will say again that this is a complete failure—a failure and an experiment of some mythical separation that has occurred in this country. This indicates to me that some things take time and that eventually you do get there, but I think what we forgot to mention is that, in other countries where non-compulsory voting exists, you get

similar results. It is a very significant point that the minister has neglected to mention this fact when peddling the message that ATSIC has failed because only 20 per cent of Indigenous people voted.

In addition to that, there are many other factors which should be taken into account when we comment on how representative an elected body is. I would advise the minister to perhaps go back and have a look at the ANU report and see more broadly the other things that are determining factors, if you like, in relation to why people participate or not. But one of the key things to point out in this report is that 30 per cent of the elected members of regional councils across the country—they are the ones that are being kicked in this particular case—are women. I do not see that same sort of representation in the national parliament or in the state or territory parliaments. Yet we have got one success there that says that women are getting a chance to have a voice in a formal way on behalf of their communities in regional councils. It seems to me that when you look at it as being better than the representation of women in the Australian parliament, that says a lot. I would have thought that the government would have come on board and supported that right from the very start.

Regarding the statement that regional councils are non-Indigenous structures—the other message that is being put out there—the minister is also being very disingenuous when she pretends that regional councils should go because they do not represent traditional Indigenous structures. This is something that she has latched onto in an attempt to portray the government as supportive of Indigenous self-determination as the alternative. You have got to ask the question: where is self-determination in the decision that is about to be taken by the government? Where is self-determination in what is happening out there on the ground, where shared re-

sponsibility agreements arise largely because of an unequal power relationship between those that negotiate and the government? They do not get a choice. It is not a real choice if there is no alternative but to take the money and run.

Mulan is the classic example of that. And yet we do not deal with the broader issues of trachoma or about fixing up the roads, housing and the circumstances of water quality within communities—let alone whether water is available. We all know, and the government have stated many times, that they are opposed to Indigenous self-determination, and I think the government should stop curtailing genuine debate by pretending otherwise. If there were real care about Indigenous people being represented, the first thing they would have done would be to sit down and look at the ATSIC review report and at least make an attempt to adhere to some of the recommendations that have been put forward.

The review report outlined a system by which Indigenous people would have the flexibility to design more traditionally representative structures if they desire and would have a capacity to do so. Yet we are being told on this day, when we come to the final vote on whether ATSIC remains or not, that somehow the government have achieved this revelation, that they have now just discovered traditional structures for governance of Indigenous communities. That is what Indigenous people said as a result of the review that took place across the country. They said that over two years ago, but there has been no response to that particular fact or acknowledgment that it even occurred.

We recognise as well that the ATSIC act and the way that it works does have problems. Indeed, the ATSIC review report did consult widely and address this very issue back in 2003. In the Senate committee we

heard discussion about the varying community opinions on preferred representative structures, which are more reflective of traditional representative structures. That is what regional councils like Murdi Paaki in my home state of New South Wales were saying to us and that is what is happening in other parts of the country.

It must be emphasised that, before the ATSIC elections, there were years of consultation on how it should work. Many options were presented to Indigenous people. This government has done no consultation at all in putting forward its alternative policy and vision for dealing with Indigenous affairs in this country. It is not enough to create the National Indigenous Council, as much as I respect the people who have been chosen to sit on that. Every one of those people is credible and respected for the work they do out there in the communities. But they know, like I do, that there is a limit to what can be achieved if you have no authority and lack the legitimacy of being there representing your community, whether that is regionally or locally. It is simply not there. There is no guarantee that the government is even going to listen to them in any instance.

We should also remember in these debates that the regional councils as a whole have been extremely effective. They have delivered services of quality and they have done that with limited resources over the past 15 years. I want to remind the Senate that the problem of different traditional representative structures is not a new one that has been recently discovered. This was realised and grappled with when ATSIC was being established. It is something that the communities have spoken about over many years. The election system, of course, is based on a Western understanding but it is also well accepted in many areas, not just in relation to ATSIC. Let us not forget that.

What will the government do when it comes to community councils that exist out there in communities and function like local government bodies? What will the government do to the various community organisations that have been established under laws akin to the Corporations Law in this country which are not traditional but based on a Western system? How will they respond to that? Will they abolish all of these organisations such as legal services, land councils and housing companies and so on? There are organisations out there doing a pretty damned good job and they need to be supported. That message is not coming from this parliament.

I am going to ask the minister some questions to get a better explanation, at least in *Hansard* and certainly to the Indigenous people here, about why the government does not agree with the amendments that have been put forward by the Democrats and the ALP. I want to put it on the record because there has been so much confusion, chaos and mixed information coming from government, even through the Senate select committee process, about whether the government has a clue about what it is doing in Indigenous affairs. What I do say about the changes in this country is that Indigenous people have to be responsible for their ideas and the things that happen within their communities. What we have is the government telling them from the top down that it will be in charge of deciding what is good and how that is going to occur within a community. That is not good enough. The government and especially the minister ought to explain the rationale behind and reasons for the decisions that are being put forward, why the government has taken the path that it has and why it has ignored the review committee. (*Time expired*)

Senator NETTLE (New South Wales) (5.03 p.m.)—I want to acknowledge the Indigenous voices in this debate. Unfortu-

nately, only one of them is able to speak in the chamber, but there are many people in the public gallery who are all voices in and part of this debate even though they do not have the opportunity to speak in this chamber.

It is sad that, in what we are doing, the amendments for the extension of the regional councils are not being supported. What is far sadder is that there is going to be a vote in this chamber and both of the major parties will vote together to abolish ATSIC. That is sad, but not because everything about ATSIC is great. Others have talked about the ATSIC review, in which a whole range of proposals for improving the structure of ATSIC were put forward. Indeed, four different options were put forward. None of those involved the abolition of ATSIC. ATSIC has done many great things in its time. It has stood up against the government when it has been arguing on Indigenous issues. It has run great programs such as CDEP and CHIP.

What makes it so sad that ATSIC will be abolished as a result of the vote that we are going to see here today is that that is an indication of the view of the government and the opposition about self-determination. For all of its flaws, ATSIC was set up as a mechanism by which Indigenous people could have control of Indigenous affairs. That is at the heart of the concept of self-determination. How many more reports do people need to see from overseas about the better practical outcomes that occur for Indigenous people when they are in control of their own affairs? Research has been carried out recently comparing the diversity and indigenous policy outcomes from four different nations—Australia, Canada, New Zealand and the United States. The report states:

With regard to income, education, health and life expectancy, Indigenous people in Australia are worse off than other people in Australia, and worse off than Canadian, New Zealand, and

American Indigenous peoples with respect to key indicators ...

The report points out things like the rate of Indigenous overrepresentation in our prison system. The Indigenous rate of incarceration is 1.4 times that of the non-indigenous population in America. It is six times that of non-indigenous incarceration in Canada. It is eight times that rate in New Zealand and 14 times that rate in Australia. North American indigenous people live about six years less than the national average of the population. In New Zealand there is a nine-year gap and in Australia there is a 20-year gap between the average life expectancy of Indigenous people and the national average life expectancy. The report goes into this issue in a bit more detail. It states:

Australian Indigenous people are at great risk from 35 to 54 years of age. Three quarters of deaths are due to circulatory diseases, injury, cancer, respiratory and endocrine diseases, just as for other Australians, but among Indigenous Australians, deaths occur at three to five times the rate. Australian Indigenous death rates for men and women are higher than Maori death rates, and much higher than Native American death rates.

... ..

The total life expectancy of Australian Aborigines is similar to life expectancy in third world countries. Unlike these countries, low Aboriginal life expectancy in Australia in the main is caused by high early adult mortality. Patterns of mortality among Indigenous Australians are markedly different to those of most other populations ... In Australia low life expectancy is caused by low employment, high tobacco and alcohol consumption, poor nutrition, stress, shortcomings in the available health care and educational systems ...

New Zealand shows that much can be achieved over a nine-year period with twin policies of education and economic development. North America shows that treaty rights linked with negotiated employment rights and educational investment produce positive outcomes, and broadly-understood diversity policies have assisted many Indigenous people achieve their potential. During

the past ten years, Native American infant mortality and heavy drinking rates have continued to decrease. Their employment in large firms has grown.

Canadian policies have assisted Aboriginal Canadians extend their life-spans since 1991, and New Zealand Maori people, assisted by enlightened national policies, have made very strong educational, employment and economic progress since 1991.

The Greens come from a place where we stand up for self-determination because we stand up for Indigenous rights. If you come at this argument seeking practical, measurable outcomes for the benefit of not just Indigenous Australians but the whole of the community you find that there is research after research from so many different countries that take a different approach in the way which they deal with Indigenous people. It shows that, for all those people who commit to a genuine process of self-determination, the practical outcomes are better. How much more simply do we need to put these arguments? How much more overseas research needs to be carried out for the government to accept that, for the practical outcomes that it talks about, the path it needs to take is self-determination. Others of us have a different reason for putting up arguments to support self-determination, but even within the government's framework for practical outcomes, how many more reports do you need?

Part of the abolition of ATSIC is about a removal of the recognised voice of Indigenous Australians in an international arena. Throughout the committee process that I have been part of, suggestions have been made that national Indigenous bodies can represent themselves in international fora. They can apply to the United Nations for NGO status in order to speak at a range of different international fora but they will not have the same legitimacy as a body like ATSIC, which the government recognises as

the national voice for Indigenous people in those international fora. I cannot remember the terminology that Senator Carr used to describe the way in which the government thought other representative bodies would be brought to bear. Was it 'organically arise'?

Senator Carr—It was 'organically emerge'.

Senator NETTLE—The government thinks there will be organically emerging representative bodies for Indigenous Australians. There are many Indigenous representative organisations that are organically arising or that have organically arisen for a long time, but what is needed and what the government has not committed to is the support and funding for such national representative Indigenous organisations to exist. This occurs in the places overseas that I have talked about, like Canada. I believe it is appropriate for Indigenous people to determine the structures that they want. Many Indigenous people all across this country are doing exactly that. They are working out what structures they want, what form of representation they want from traditional owners and elders and what form of election they want. Everyone has a different model. The government has acknowledged that, but what the government has not acknowledged is that it needs to support and financially support those representative structures to bring them to bear.

This is so that Indigenous people can have a voice that is supported by the government at national, community and local levels. The government is dismantling the one that exists. It is saying: 'Great! You can have your voice over there, but we're not going to support you. We're not going to help you to be a voice for Indigenous Australians in putting arguments to the federal government, in stating views in an international arena.' The government has no intention, as far as we are aware, of providing the support and re-

sources for those national bodies to exist. That is the great shame today. The great shame today is a vote against self-determination. I will say it again: how many more bits of overseas research do we need to tell us that when Indigenous people have control over Indigenous affairs the best outcomes are achieved?

Senator RIDGEWAY (New South Wales) (5.13 p.m.)—I flagged that I wanted to ask a number of questions of the minister to get some explanation of what the government is proposing. In particular, I asked the minister for an answer on what is going on with the replacements for regional councils—where that process is up to. I asked for one particular reason. The minister would be aware that she described arrangements for new regional structures as ‘a blank page’ in a meeting with Western Australian regional councillors. She has repeatedly said that the government is consulting regional councils for plans on replacement bodies. I am told that, at least in Western Australia, none of the regional councils have been spoken to. I am further informed that there has been no consultation—not just with the regional councillors but with the people themselves.

Indigenous people in that part of the country are saying that they have not been part of the process. Frankly, when you consider that Indigenous people are the ones who have been working themselves into the ground to have structures ready to propose on 1 July this year, the government do not appear to be doing anything to assist or, if they are, that has not been proclaimed anywhere that I know of. I would be interested in what the government have put on this blank page or what has emerged from consultations that are supposedly occurring. I am told that there are no consultations.

We cannot get the amendments up. As an alternative, what the government are putting

up should have some explanation, particularly as state governments are now supposedly committing themselves to supporting new structures. How is that happening? Where is that happening in the country? I am not familiar with that and whether or not any Commonwealth government resources have been put into the representative structures. How is all this—this organic emergence, I think it was described as—going to occur? It sounds to me a little bit like tofu from the health food shop. The reality is that I would be interested to hear from the government about what they are proposing to do, what answers they have on the replacements for regional councils and where that process is up to.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (5.16 p.m.)—I will come to Senator Ridgeway’s questions, but first I will make the contribution I was going to make before he put his question and I will respond to the preliminary remarks made in the committee stage. I have to say that I am somewhat disappointed and disillusioned with the debate we have had to this point today. I often make the joke about this house not being called the upper house without good reason or, put another way, that the lower house is not called the lower house without good reason. I usually follow that up, if someone does not understand what that means, by saying that, while all of us who get elected have a portion of parliamentarian and a portion of politician in us, I think the parliamentarian portion in senators is usually higher. Yet I have sat through a debate today on an issue that is important to many people, and one person from the party that proposed the abolition of ATSIC came in and professed to regret its passing.

Forgive me but I am confused about how someone from the Labor Party, who sought to make an issue of it first up and said they wanted to get rid of ATSIC, could come in here—and I do not suggest simply because we have some First Australians in the gallery—and put forward that proposition. It is a profound disappointment. It is not only that aspect of Senator Carr's speech that I find profoundly disappointing, because I had thought—and I still do think, except for a couple of the contributions here today—that there is a tremendous amount of goodwill around Australia, at all levels of government and across political lines, to make more successful improvements than we have made to the lives of Indigenous Australians.

I mistakenly thought that goodwill was represented here and that we could have a civilised debate about differences of opinion on how to get to a particular place. Yet I find that Senator Carr feels free to come in here and allege that it is Australian government policy to humiliate Indigenous Australians. He feels happy in making that statement. I know that is not the case. I know that thousands of Indigenous Australians know that is not the case. What is worse, I think Senator Carr knows that is not the case. Yes, there is a difference of opinion between Senator Carr and me, but at the moment it seems to be limited to whether regional councils should stay, in this aspect at least, for a further six months. I do not allege bad faith on Senator Carr's behalf because he has a different view; nor do I do that to you, Senator Ridgeway, because you have a different view. Nonetheless, let me continue with my response to these contributions.

As I said, around Australia I sense a willingness, which I have never seen in any other portfolio, to put day-to-day politics aside and get on with the job of working together, and we are doing that effectively with state and territory Labor governments. There is no

better example of why we need to put that aside and work together, irrespective of our political persuasion, than the Lockhart River example that I have used before. The Lockhart River has 51 contracts with 17 different government agencies across the Australian government and the Queensland government—that is, 51 sets of guidelines, 51 applications, 51 contracts and 51 acquittals—in what is still a small community, relatively speaking.

Thankfully we have made an agreement with the Queensland government that we will sit down, make a better agreement with Lockhart River and bring it down to one contract. But we will do more than that: we will make sure that Lockhart River is a part of that. We can have a three-way partnership and listen to those people directly on the ground. In fact, I recently had a video conference with the people of Lockhart. They already have one form of agreement, but they still have the 51 complicated agreements to reduce. Unless state and federal people and Liberal and Labor are prepared to put those differences aside, make that change and make that contribution, we will continue to have the higgledy-piggledy mess that has inhibited better developments for Indigenous Australians.

I turn to the suggestion put by Senator Ridgeway. With respect, Senator Ridgeway, you came in here and said that three things have been forgotten, and one of them was the truth. The statement that you are wanting to make, but for one reason or another are not prepared to make it directly and front up to it, is that you think that the government is lying, that you think I have been lying and that other ministers have been lying. I disagree with you but I do not call you a liar. I ask you to reflect on your remarks in that respect. The second point you raised is one of universality: that we all should have the same opportunities. I agree with that; I do

not know anyone who does not. But by raising it and saying that it has been forgotten, you want to imply that others do not agree with you. You want to say it without really saying it, which is not, with respect, the most courageous contribution you could have made.

The TEMPORARY CHAIRMAN (Senator Bolkus)—Order! Senator Vanstone, could you address your remarks through the chair, please?

Senator VANSTONE—Yes, Mr Temporary Chairman, I certainly can. It is not the most courageous contribution that Senator Ridgeway could have made.

The TEMPORARY CHAIRMAN—We heard it the first time.

Senator VANSTONE—Thank you, Mr Temporary Chairman, for your assistance in this respect. Senator Ridgeway then went to the question of basic citizenship. I am sorry to interrupt your photo session, Mr Temporary Chairman.

The TEMPORARY CHAIRMAN—You do not know what it is.

Senator VANSTONE—It is obviously very good if you cannot be distracted from looking at photographs when an important debate is going on. Nonetheless, I am happy to talk through you while you look at photographs.

The TEMPORARY CHAIRMAN—Senator Vanstone I am tuned in to you very well. Please address the issue before the chair.

Senator VANSTONE—The other issue is basic citizenship. I remember the story that Senator Ridgeway told the other day. I did not hear the one he referred to this morning but it obviously related to someone being unable to hail a taxi. The contribution he made the other day was with respect to someone not being able to get on a bus. He

raises the issues of real estate agents, taxis and buses. Senator Ridgeway, nobody disagrees with you. I say again that you sought to say that these three issues have been forgotten, as if it were only you who somehow thought that these things were special. With respect, that is a terribly egocentric contribution to make.

Nonetheless, senators have also referred to the good job being done by a number of regional councils. I am pleased that people referred in particular to Murdi Paaki, because I think they have done a great job. In particular, I single out Sam Jeffries for whom I have great respect, as do other members of the government. Murdi Paaki might be a bit sick of being cited as the regional council that is doing so well. It is my view that if you speak to Sam Jeffries he will acknowledge to you, as he has to me in my office, that there are regional councils that are not doing a good job and that all the Murdi Paaki people want to do is just get on with it and get better outcomes. I think that it is important to put that on the record as well.

I go back to where I perhaps should have started. Even with my glasses on, I cannot recognise everybody in the gallery; perhaps I have not met everyone in the gallery. I recognise Jackie Huggins, ATSI Commission Commissioner Clifford Foley, Pastor Stokes and some of the people from Kalgoorlie whom I met the other day and who came over on the bus. I have heard various statements by various people about the government's unwillingness to meet these guys and listen to them. I think: 'Where do people get that from? Why do they say that?' I had what I thought was a very friendly and useful meeting with those people on a range of issues which I have agreed to follow up. I just say that for the record in case other people did not realise what the situation was.

I go back to Senator Ridgeway, who raised the health issue. Senator Ridgeway might have substantially added to the breadth of his contribution if he had mentioned in passing that this government that Senator Carr says is so determined to humiliate Indigenous Australians has in fact doubled health funding since 1996 in real terms. It is an odd thing to do, if you want to humiliate people, isn't it, to double the funding in real terms? It just seems inexplicable to me. Be that as it may. Incidentally, I do not mean that I think the health situation is anywhere near what it should be. But I think it is worth just making the point.

Senator Nettle went on to make the point about self-determination—controlling people's own affairs—to which I say to Senator Nettle that the government seeks to deal directly with individual Indigenous communities and let the people in those communities have a real say about the choices for their future. If self-determination means anything, it means individual people, Indigenous or non-Indigenous, having the chance to have a say about the future of their individual lives in their individual communities. I reject the proposition completely—lock, stock and barrel—that having a structure called ATSIC somehow gave people in individual communities a voice, because I do not believe that it did. So if you want to talk about self-determination, go to the individual and ask them if they have a chance to have a say about how their life is run, because that is what this government is determined to achieve by going directly to individual communities. But the senator raised Canada, New Zealand and the United States and suggested that if we followed their management of indigenous affairs we would be better off. That was the assumption that was put

I remind Senator Nettle that Canada, New Zealand and the United States have nothing like ATSIC—that is, a structure set up by the

government. People should be aware that Australia was—I think it is about to be the case—the international exception in legislating to establish its peak Indigenous advocacy organisation. The affairs of the Assembly of First Nations in Canada or the National Congress of American Indians, for example, are not regulated and governed by the parliament in Ottawa or the congress in Washington. The governments of most other countries, unlike Australia, do not supervise elections for their indigenous elders and leaders, nor do they exercise the power to suspend the chairpersons or members of such organisations. I think that is worth mentioning, Senator.

There are some other points that I want to make and I will progressively go about making them since I feel strongly about the contributions that you have made. The point has been made that somehow we cannot trust mainstream agencies. The point has not been made by Labor or Democrat spokespeople that that is what most of the states do. That point has not been made, because the states are of a Labor persuasion. What does that tell you? The complaint about mainstreaming made against the federal government by senators opposite and down that end is a political one; otherwise, it would have been made against their own governments for what they are doing in the states and the territories.

But it might be of interest to know the advice I have on some of the achievements we have made—which, while not limited to mainstream departments, are substantially contributed to by them. One example is death rates. These are still nowhere near good enough. My advice is these figures are collected in the states that do appropriate health collection vis-a-vis Indigenous affairs. I will start with respiratory illness. Between 1992 and 1994, the death rate from respiratory illness was seven to eight times the non-

Indigenous average. In 2002, it was down to four times. Is this an accident? Was the Commonwealth government not involved here? (*Time expired*)

Senator CARR (Victoria) (5.31 p.m.)—Quite clearly, the minister is intent on making sure these proceedings are drawn out.

Senator Vanstone—I have made one contribution.

Senator CARR—It was the manner in which you made the contribution. The minister seeks to attribute motive to the opposition. In what you said, you have attributed motive to other senators here. You start with a proposition that we are disingenuous in our concerns for the abolition of ATSIC. What we have said from day one is that the government's actions were an administrative fait accompli. I have made that point numerous times. At no point, though, has anyone in the opposition said that we would not be seeking to essentially re-establish a national Indigenous body at the first opportunity we had. In fact, the position that was put forward at the Adelaide meeting of national Indigenous leaders just a few months ago was the position that we share. Professor Mick Dobson, when speaking about that meeting, told a Senate inquiry:

... the most significant point of agreement—overwhelming agreement; there was not one dissenter—was the need to maintain a national representative Indigenous voice. Participants at the meeting stressed that they—we, if you like; Indigenous Australians—should elect for themselves who would represent them at a national level.

We take that view very seriously—to the point where no member of the opposition has expressed a different view. We have all said that there needs to be a replacement for ATSIC. We will discuss with Indigenous people what that replacement will be. We will not be imposing a position; we will be taking our soundings from Indigenous people

about the representative structures that they want to deal with a Commonwealth Labor government—which will occur after the next election. Indigenous people will not have to wait that long to overturn the position that this government is pursuing. We will establish a new structure to ensure that Indigenous people are genuinely represented at a national level and do have a voice at the table. We will restore self-determination so that the voices of the First Australians can be heard in Canberra. They will have a public voice to ensure that the Australian people know what the attitudes of Indigenous people are.

The government say that they are not in the business of making party political points about these questions. That is exactly what they have done throughout the time Senator Vanstone has been minister. They have made party political points to try to legitimise the actions that they have taken. They have sought to demonise Indigenous leaders. They have run their forensic audits; they have spent nearly \$1 million pursuing individuals in a personal vendetta. And not one conviction has resulted from that. They have sought to denigrate individuals whenever there was bad news on the horizon. The public servants here know that. They have tried to cover up the fundamental mistakes of the government by going after individuals.

We have had members of this parliament convicted and jailed. Was that ever an excuse to close down the parliament of the Commonwealth of Australia? No, never. But that is not the position that this government takes. It seeks to individualise this; to personalise it. It seeks to find fault for the structural problems in individuals rather than in the policies of this government. The policy position of this government is at fault here. This ought to be understood in those terms.

The government say that people have not voted in the numbers that they would like.

There are local governments, community organisations and voluntary associations all over this country that have small turnouts. That is not an excuse to close them down, yet that is the argument the government pursue. They say that people do not behave the way they want them to, so they are going to close them down. Essentially, that is the argument the government wants to pursue in terms of their new policy directions. They want to deal with the people who they choose to deal with on terms that they choose to deal with them on. They do not like the idea of people being a bit aggressive, they do not like people being a bit boisterous, they do not like the people coming forward being a bit angry. For Christ's sake, if there is anything to be angry about it is the way in which Indigenous people are being treated in this country. The government do not like that. They want to pick and choose who they will deal with. That is their notion of determination: they will determine who they deal with. I say this sincerely and genuinely: your policies will lead to the humiliation of Indigenous people in this country. That will be a direct result—

The TEMPORARY CHAIRMAN (Senator Bolkus)—Senator Carr, could you please speak through the chair.

Senator CARR—That is the policy position that this government has adopted, and that is the outcome that will result. It is not about giving people a fair go. It will not produce the outcome which actually narrows the gap in inequality in this country. So I say: if the minister were serious about these matters, the government would not be pointing the finger over here and saying that there is some bad motive. We are putting a position which I think will be borne out—and it certainly has been borne out in the history of this Commonwealth. I can see no evidence to the contrary that the government has presented to date. All I have seen so far are my

grave concerns being borne out that this government is repeating the mistakes of the past—the historic mistakes in this country—and going backwards to the assimilationist policy which produced the huge inequalities that this country now faces.

Senator RIDGEWAY (New South Wales) (5.38 p.m.)—I want to respond to some of the comments made by the minister. Frankly, I am astonished and find it remarkable that they were ever said in the first place. With respect, Minister, you should not attribute motive or some malice in relation to what is being said here or even suggest that it is all based on some egocentric need to respond, as if there were a collective ownership on Indigenous morality in this country. If the minister judges Indigenous health in this country by saying, 'In the time that we have been in government we have doubled the amount of funding, and that amounts to success,' that is ridiculous. It is ridiculous for one simple reason: because people are still sick and dying in communities. Call that egocentric or a personal motive if you want. I do not mind having it attributed to me, because the reality is that I have raised this on many occasions over the last six years—even before the minister became the minister for Indigenous affairs—with little result.

Thankfully, there was \$10 million given in last year's budget, but it hardly even touches the ground when things are so dry. Yet the minister seems to suggest that somehow there is ill will being created, because she thinks that other people cannot have different views and have those viewed expressed unless they are a personal attack on her. I take the view that they are not an attack upon the person. She is a minister in a government, the government have put forward policies and those policies are being criticised—rightly so. It is not unreasonable to come into this place and put forward alternative views, especially views about real issues that are

happening with things out there on the ground. I do not know what the minister is talking about when she says that it is all about some alternative or different view being put forward, given the way the government have dealt with Indigenous affairs.

Perhaps the minister might have some collective caveat on this particular issue, but the first decision that her government took was to cut more than \$400 million from the ATSI budget. It was under fairly difficult circumstances at the time, when they wanted to respond to and deal with issues of domestic violence. I seem to recall that I asked a question in this place—and the minister may then have been the minister dealing with family and community services—about why \$8 million went back into consolidated revenue in the heat of a public debate in this country about violence against Indigenous women. It seemed to me to be a lot more sensible to respond by giving the money to the communities where it was most needed, and there was certainly a cry for that to occur.

I seem to remember in 1997 the Prime Minister was on TV, holding up a map of Australia with 70 per cent of it blacked out and saying that that was what Mabo was going to result in. I hope the minister is going to become a champion of Indigenous affairs in this place come 1 July and will stand up for these issues. I also seem to recall that the Native Title Act was amended in such a way as to abolish the legitimate property rights of Indigenous people in this country. I hope that the minister is going to put some native policy in place to roll back native title and give it a fair go. I ask the minister—and it is on a similar matter—why is the government not jumping up and down when she complains about the state ALP government in relation to Redfern? Why is it okay to be able to geographically zone off an area, held under private title mind you, with a caveat from the

Commonwealth government? Why are no words being spoken about protecting private property rights? Become a champion—or is that egocentric?

I ask the minister for some explanation on those things, not because of any bad intent or malice but because there are real things happening in Australia, there are real things happening in government and there are real policies being put forward. I think Senator Carr is right when he talks about the demonising of the leadership in this country. I saw a raid on a national Indigenous newspaper. I did not see a response from the government saying that it ought not to have happened and that there are many other newspapers or print outlets in this country that have received exactly the same sort of briefings, leaked or otherwise. No-one got out there and proclaimed that one group was being dealt with differently from another, because that is normal business in relation to Indigenous affairs in this country. I saw a government that engaged some firm to drive up in white vans and walk into 28 regional and state ATSI offices across the country and take the paintings off the walls. If you want to talk about a decent way of doing business—a proper way—why not just walk through the front door and talk to the people and say, ‘This is what we are proposing to do’? I still do not have an answer about how much that cost or how much it cost to put the advertisements in the papers this week to tell people that there is some legal uncertainty.

I do not see the government standing up and defending the Racial Discrimination Act in this country, whether or not shared responsibility agreements are in breach, as the social justice commissioner said during the Senate select committee process. I do not see the government standing up and defending the Racial Discrimination Act when it comes to dealing with what is happening to property rights in places like Redfern. So I think it is a

little disingenuous for the minister to attribute personal motive or malice to me. What I see here is standing up for people who are without a voice. When this legislation goes through, there will be no formal way for these people to have their views heard. You talk about the organic emergence of different structures coming into place. I hope that is the result but, quite frankly, it does require support to make sure that that occurs.

But I have to say that it is absurd for the minister to come in here and suggest that somehow egocentric views are being put forward. I do not mind having motives attributed to me and I can say right from the start that I am not suggesting in any way that the minister or the government are lying. I am saying that much of this information should be out there already—information from the review report and the Senate select committee report and information that has come from the various Senate committees of inquiry. The evidence is already there and it speaks loud and clear for itself. I am echoing what is already in those reports; I am not making it up. I am not doing it for any personal reasons; I am doing it because I believe an injustice is about to happen.

I do not expect that in this particular case the minister will stand up and champion the cause of ATSIC or even, at the very least, that of regional councils for the next six months. I hope that from 1 July, as the minister, you are able to become the champion out there—because there certainly will not be any way for Indigenous people to have their views heard then. I would hope we can work with each other on those issues but, given today's debate, I doubt whether that will be possible. However, I will certainly be talking to Sam Jeffries because I know he does a hell of a good job out there.

The government needs to be reminded of what actions it has taken and not come in

here and put on the pretence that nothing has happened in the last six years or in the time since the government came to office. The reality is that things have gone backwards so fast that there is utter chaos and confusion. The government is not responding, even when asked things about the blank piece of paper and what is on it. I will be interested to hear the minister's explanation about that, because that is what Indigenous people are waiting for. But it is not unreasonable to come in here and ask for an explanation and to put views forward. No personal motive should be attributed, because that certainly is not what is intended. It is about policy debate, and that is what is being dealt with.

Senator NETTLE (New South Wales) (5.47 p.m.)—I want to point out that the peak national Indigenous body in Canada is funded by the Canadian federal government and that I believe mainstreaming of Indigenous services is not self-determination. I know that the minister in her answer will point to shared responsibility agreements as being part of what she sees as self-determination. I do not believe that the negotiation of agreements by local communities, families and individuals with the whole of the Commonwealth government represents an equal partnership or equal relationship that equates to Indigenous control of Indigenous affairs.

I am pleased that the minister has raised the example of the Lockhart River community and the 51 different agreements. During the public hearings of the Senate select committee, I asked a government official about the number of shared responsibility agreements that they anticipated would be coming into effect. The answer they gave related to the Mulan community in Western Australia. They said for that community they had different individual agreements for different issues that the community wanted to raise—and one example of that is the petrol

browsers for the washing of faces. But in answer to my question that government official said, 'These are all the different shared responsibility agreements that the Mulan community has,' and he went through them.

To me, that is very similar to the situation that the minister describes for the Lockhart River community, for which there are 51 agreements on particular issues with state and Commonwealth governments. So maybe the minister could throw more light on how many shared responsibility agreements the government anticipates there will be for each community, given that the government official answering that question said there would be one for each different issue that the community wants to raise.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (5.49 p.m.)—I will address some responses. Senator Ridgeway, I notice that you again I think implied that, because I had remarked there had been an increase in funding—about a doubling of funding in real terms—somehow I was saying therefore things were okay in health. In fact, the *Hansard* will show that I made it very clear at the time that an increase in funding has not resulted in all the achievements we think ought to be made. With respect to your remarks on what I said on that, both specifically and generally, the *Hansard* will show what I said—and the *Hansard* will certainly show what you said in your earlier contribution. You can describe that now, not wanting to say what I believe it says. That is fair enough; others will judge that. It applies equally to Senator Carr. I do not believe that he can take out of the *Hansard* his assertion that this government is set and hell bent on the humiliation of Indigenous Australians. I do not believe *Hansard* will do that. I know they have taken things out for the Labor

Party before, but I do not think they will take that one out.

I come back to the point about the achievements that have been made. I will say again, Senator, that I do not think we are anywhere near where we need to be. But let us not pretend that mainstreaming, in part, has not been successful in some areas. It is important to mention that we are not simply mainstreaming in the way I think the state and territory governments have mainstreamed and which are now seeing what we are doing and starting to change.

Yes, programs that were not already with mainstream departments have gone to them and they have been quarantined as Indigenous programs; they are not being just slipped into mainstream money. But that on its own is not good enough. I accept that; that is obvious. It has been tried before and it did not work. What is important is to have coordination across the departments. This time I will take to the Expenditure Review Committee, for the first time in Commonwealth history, an Indigenous affairs cabinet submission where all the relevant ministers have been consulted, where there is agreement across departments and where we have taken the time to try and do a better job—to get our priorities right and coordinate our spending—instead of individual departments doing their separate thing, ATSIC doing its separate thing and everybody sort of hoping that it all comes together.

We are doing a better job than that. We are determined to do a better job than that. We are going to make sure that all the departments speak to each other and that we speak to Indigenous communities directly, with one voice. So we will not have one department flying in one month, another department flying in the next month and a state government flying in the next. People in communities must be so sick of aeroplanes and people

with clipboards. As I said, there is agreement across politics and between levels of government that we have to put the politics aside and just sit down and work together on the day-to-day issues to try to do a better job.

Let me turn to some of the improvements. As I mentioned earlier, death rates from respiratory illnesses from 1992 to 1994 were seven to eight times that of the non-Indigenous average. It was a disgrace. In 2002 that had shifted to being four times that of the non-Indigenous average, halving the previous rate. I regard that as a success. It is not good enough but it is heading in the right direction—from seven to eight times down to four times that of the non-Indigenous average. It was 15 to 18 times more likely that an Indigenous person would die from an infectious or parasitic disease than a non-Indigenous person; now it is down to five times. It is down to a third of what it was before. It is still not good enough, nowhere near good enough, that Indigenous Australians are five times more likely to die of an infectious or parasitic disease, but it is much better than being 15 times more likely.

Year 5 writing benchmarks from 1999 to 2001—quite a short period of time—went up by five per cent. It was similar with the reading benchmark. Secondary school attendance went from 66 per cent of the rate of non-Indigenous students in 1996 to 73 per cent in 2001. In other words, a higher percentage of Indigenous kids now go to secondary school; it is getting closer to the non-Indigenous percentage. It is the same for year 12 retention rates. In 1996 it was 40 per cent of the rate of non-Indigenous students; now it is 51 per cent. It is getting better. In 1996 the rate of Indigenous students studying at a TAFE college was 67 per cent of that of non-Indigenous students; now it is 51 per cent. That is an improvement in anyone's language.

Yes, we have to do more. We have to keep finding a better way to make more improvements more rapidly. These are not the actions of a government that wants to humiliate Indigenous Australians, Senator Carr. From 1996 to 2003 the rate of Indigenous students doing bachelor or higher level degree courses increased by 36 per cent to almost 6,000. So Indigenous students doing bachelor and higher level degree courses between 1996 and 2003—the years of this government—increased by 36 per cent.

Senator Carr—What about the rest of the population?

Senator VANSTONE—Senator Carr, I am glad that you asked that question because non-Indigenous students increased by 11 per cent. So we had a real success there because in that time period Indigenous students increased by 36 per cent.

We are doing something right and we are making gains, but the gains are nowhere near good enough. Indigenous people aged from 15 to 24 attending any form of education was 58 per cent in 1996 and went up to 61 per cent—only a very small gain. Indigenous students in VET were 2.4 per cent of all students in 1996; now they are 3.4 per cent. We can do better, but we have been getting something right. The rate of Indigenous VET graduates in employment in 1999 was 78 per cent of the rate of non-Indigenous students, in 2001 it was up to 95 per cent.

Indigenous employment grew by 22 per cent between 1996 and 2001, and almost 70 per cent of that was in non-CDEP employment. Non-Indigenous employment grew by about nine per cent. So, Indigenous employment grew by 22 per cent; that is giving people a job and a chance to be independent. It is giving them that chance to spend their own money and to have the pride that comes from spending money that they have earned. It is giving them a real chance. They are the

things that make a difference, not whether some limited number of people in Canberra, elected by a portion of your community, have a job and can speak on your behalf. The real way for you personally, as an individual, to have independence is to have a real chance for an education, a real chance to make choices about how you live your life and a real chance to have a say about what should happen in your community. That is what this government is determined to achieve.

Senator Ridgeway referred to a meeting that I apparently had with Western Australian ATSIC regional councillors. I am not aware of any such meeting. Senator Ridgeway, I simply do not know what you are talking about. There may have been some Western Australians at another meeting; I do not know. My advisers do not recall such a meeting either, so I am unaware of what you were raising in that context. But it is true to say that we want to work with the state and territory governments. My advice is that government—that is, the bureaucracy—are consulting with regional councils and a range of Indigenous organisations and communities about alternative regional representation arrangements. It may result in quite different arrangements from one state to another. We simply do not believe that extending the life of regional councils by six months does anything more than that. We gave another 12 months because we thought that was appropriate, and that time is now up. We do not think that, because the bill has been delayed, there is any reason for a further extension in that area.

Senator Ridgeway, you raised the issue in relation to the general directions to the IBA. As I made clear to you the other day, the government believe that, because at the moment we have a general directions power with ATSIC generally, it is not unreasonable to have a general directions power with IBA,

given its expanded functions, and we have not changed our mind on that matter. That is one issue that you raised and that is why I raise it now. In relation to your suggestion that there be an appeal to the AAT where the IBA refuses business loans, my view has not changed and neither has that of my colleagues. These are commercial decisions. They are not in the nature of administrative decisions. It is very much a commercial issue, and we simply do not agree with that suggestion.

As I feel strongly about environmental issues, particularly because of the importance of land and the environment to Indigenous communities, I would like to specifically address that issue. When the environment minister has to decide whether a proposal is going to have a significant impact on the environment and therefore has an assessment done, the environment minister has to invite comment from relevant ministers and from the public. The environment minister has to invite that comment—from other relevant ministers and the public. That means that whoever is the Indigenous affairs minister would be consulted—has to be; there is not a choice about it—and it also means that the public would be consulted. That means that not just a couple of people whom you choose to nominate but also any Indigenous people or organisations who want to put a view would be welcome to do so.

As you know, it is the usual practice that, when the government or a minister is required to consult, advertisements be put in the paper or that particular groups are contacted. It has often been the case in my time in government that there has been questioning as to how people knew what was happening and who you consulted. Governments have to be answerable to living up to that commitment. So I believe that it is appropriate. There was, I think, a requirement in relation to ATSIC, which is a statutory authority,

and I do not think replacing that with individual people or committees is quite the same. Where you have a statutory authority, that is one thing, but individual people and committees, way beyond those that you seek to ensure have a say, are entitled to have a say. That is why I do not agree with your amendment. It is not that I do not agree with the sentiment; I just do not think it is at all necessary. I hope I have answered your questions.

Senator Nettle—I was just wondering whether the minister might be able to address the question I asked about the number of shared responsibility agreements.

Senator VANSTONE—Yes, I am sorry—I can answer that question. We will make, in the shorter term, shared responsibility agreements with communities to attend to a matter, whatever it may be, where they have a specific need they want addressed and they want additional funding over and above the things that we are all entitled to. It will be different from community to community. We do not want to say, ‘You’ve asked for one thing and we have done that with you and we’re not coming back.’ If there are other things that need to be addressed we might, or in the short term will, need to make separate agreements.

But these are agreements quite unlike the ones I refer to in Lockhart. They are simple agreements for things to be done: ‘If you do this, we will do this and the Territory government or the state government’—whatever it might be—‘will do this,’ to address a particular issue. Everyone will sit down and work out what they are going to do, what each of their contributions is and what each is going to get out of it—if that is the way you look at it—to get that problem on the way to being fixed. The agreements I refer to in Lockhart have application processes and guidelines being set in Canberra by people

who do not necessarily go to all these communities. They have a separate application process where, in addressing the application, you have to meet the guidelines. There is then a process for deciding who under grant funding gets the money for this or that and then there is an acquittal process. The agreements that we are talking about in the shorter term do not have that. We do intend to bring those sorts of agreements into a much simpler structure, but that does not rule out a community coming back and looking for a quicker and simpler agreement for something to be done in a particular area.

I had a meeting with a Western Australian community the other day. They say that the kids are bored. That is a common problem in remote communities. There is not enough for the kids to do. They want to talk to us about a basketball court. And I want to talk to the Western Australian government, because there is a basketball court there—it is in the school. They are not allowed to use it outside school hours and, if they were to be allowed to use it outside school hours, kids who do not go to school—that is, non-school users—cannot use it. The reason that I want to talk to the Western Australian government is that, if we were prepared to put a basketball court in this community, would it not be better if we could get the Western Australian government to find a way to put lights on the basketball court they already have so the kids can play at night—that is what they are looking for—and to allow people in the community, other than the school goes, to use the basketball court? I know why this does not work in a metropolitan area, but I cannot see why it will not work in a remote community. Then perhaps the money that we would have available for a court could be put into something else. Wouldn’t that be better for the community? That is an example of why federal and state governments need to sit down and work together, so that the money that we

all have—from whatever appropriation systems we have—is spent in a sensible way for the communities. Is that not a better way to go? That is what we intend doing.

Senator NETTLE (New South Wales) (6.06 p.m.)—Just on the issue of shared responsibility agreements, I am wondering whether the minister could explain what, in evaluating the success of an agreement, she anticipates will be the penalties if either party to that agreement does not meet the requirements. Not necessarily penalties, but what do you think is the next step?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (6.06 p.m.)—Senator Nettle, I am glad you asked that question and I am glad you chose other words than ‘penalties’. We do not think of it in that sense. We do want to make agreements. Where, for example, you make an agreement with a community for a pool, we think no pool, no school works very well. It is an idea that Indigenous Australia came up with, and it works very well in the communities where there is a commitment to it. It will be different from community to community. Some communities will be closer to regional areas where there might be a private sector firm that is happy to service the pool. Some communities will be more remote and will not have that capacity, so they might want to make an agreement about keeping enough people trained to keep the pool in good order, keeping enough people trained to be lifeguards at the pool so that the kids are safe, and organising swimming competitions or other physical activities using the pool so that there is a greater sense of community—that is, that the asset is really used and maintained—and in some cases they might want to make an agreement about kids who do not go to school not using the

pool. In some cases we would be very happy with just that.

You are asking what happens if they do not do it. I will tell you what happens. If the pool is not maintained, the water is dirty and the kids are not safe—that is a disaster. If that community then came back and said, ‘Now we would like you to do something else,’ you can understand that our approach would be, ‘Hold on, we have an agreement with you about the pool. Let’s work on that agreement about the pool. Let’s get both sides of the bargain going there.’ So we have a very open and flexible approach working with community by community.

I do not have the expectation that an individual community will say, ‘We have got the pool; now we can sit down and do nothing.’ They want the pool to be clean and they want the kids to be safe and they want the kids to go to school. Ngukurr in Arnhem Land was the first community where I came across this approach. The community thought of it. They told me that everyone in that community had money taken out of their CDEP for three years, and they did this by themselves. They went to the local government—the federal government was not involved in this—and said, ‘We have this much money. Will you help us with the rest? This is what we want: we want a better future for our kids, we want them to go to school and we want them to be healthy.’ We will help them maintain the pool, keep lifeguards there and keep the kids active. If you get the opportunity you should go to Ngukurr and have a look, because they do a damned good job. So I do not approach these agreements on the basis of what I will do if Indigenous Australia do not live up to their word; I approach these agreements on the basis that Indigenous Australia will live up to their word.

Senator NETTLE (New South Wales) (6.10 p.m.)—I was approaching the question

from the possibility that the federal government may not live up to its word, which is another side of responsibility. I am pleased the Minister for Immigration and Multicultural and Indigenous Affairs raised the issue of no school, no pool because this is something that we talked about within the Select Committee on the Administration of Indigenous Affairs with, for example, the AMA. The AMA talked about the health benefits provided by having a pool in each community. We also talked with the AMA about the idea that it is not always as simple as no school, no pool. There may be other reasons why children are not going to school. For example, there may be difficulties in their housing situation, domestic violence or a whole lot of other reasons why children are not accessing the school, but that does not mean that there are not health benefits available for those individual children in being able to access a swimming pool.

Question agreed to.

Resolution reported; report adopted.

(Quorum formed)

COMMITTEES

Privileges Committee

Reference

Senator FAULKNER (New South Wales) (6.14 p.m.)—I move:

That the following matter be referred to the Standing Committee of Privileges for inquiry and report by 15 June 2005:

Whether, and if so what, acts of unauthorised disclosure of parliamentary committee proceedings, evidence or draft reports should continue to be included among prohibited acts which may be treated by the Senate as contempt.

The Privileges Committee has had concerns for some time about the leaking of draft reports and private deliberations of committees. These matters have in fact become core business for the Privileges Committee. But

the Privileges Committee is not a star chamber and it certainly does not want to become a star chamber.

To those senators who are interested in the history of unauthorised disclosure, I would commend an examination of the 74th report of the Standing Committee of Privileges, which documents the first such case since the formation of the Privileges Committee—in other words, the first such case on which the Privileges Committee reported, which occurred in 1971. The second case occurred in 1984. I can say to the Senate that there have been 22 cases of unauthorised disclosure involving 18 reports since the establishment of the Committee of Privileges, including the first report in 1971. Four reports on three cases were made to the Senate before the passage of the Parliamentary Privileges Act and resolutions in 1987-88.

These matters are being referred more and more to the Privileges Committee. It is true that a few maverick senators have lied in their responses to the Privileges Committee about the leaking of committee deliberations and reports. I thought that it would be valuable—I do not doubt that you would agree with this, Senator Ferguson—to share with the Senate the wise words of one committee chair. You would find these wise words at paragraph 45 of the 99th report of the Senate Committee of Privileges. I am pleased that Senator Ferguson is in the chamber, because he is the wise senator whose words ought to be remembered. Paragraph 45 of the report states:

The committee shares the views of an equally frustrated chair of a parliamentary committee, Senator Ferguson, who as Chairman of the Joint Foreign Affairs, Defence and Trade Committee stated in the Senate recently:

The only people with any motive to leak information about private committee meetings or the work of any ... committee are those who have a political motive. In fact, those who have a po-

litical motive are generally the members of parliament who actually work on those committees.

I quote those words because they are fair and accurate. Senator Ferguson was right about that, and the committee was right to highlight those comments that were made at that time. We could, of course, address ourselves to the issue of journalists, because we ought to acknowledge in this chamber that journalists do not disclose their sources. We ought to acknowledge here that there is a clash of principles: the journalist's ethic of not revealing sources versus the Senate's right to protect the integrity of its committee processes. That is another problem that the Privileges Committee in the Senate has had to grapple with.

We also, of course, have the vexed question of what activity does actually substantially interfere with a committee's work. There are any number of examples of different members of a committee holding different views about the impact of leaks on the same committee's operations. One thing which ought to be made clear in moving this motion on behalf of the Privileges Committee relates to in camera evidence. The previous chairman of the committee, Senator Ray, and I both strongly believe that the disclosure of in camera evidence should be an automatic contempt of the Senate—equivalent, if you like, to the breach of a court order. I do not think that is a statement that would be controversial amongst members of the Committee of Privileges.

We also ought to say that it has been 17 years since the Parliamentary Privileges Act and privileges resolutions were agreed to by the Senate. It is now time to examine this particular element of their operation. We should acknowledge that unenforceable rules or provisions will eventually demean the Senate. So in these circumstances the Privileges Committee recommends to the Senate that we examine these issues to establish if

standard leaks should continue to be an offence. The committee believes that it is appropriate that we examine this issue without the limitation that is imposed by involving such an examination with another case—that is, without the limitations imposed by any individual case.

I would say to the Senate that the process that the Privileges Committee recommends here is a good one. It proposes a reference to the Privileges Committee in the terms of the motion before the chair. It gives the Senate an opportunity to determine whether unauthorised disclosure of committee deliberations and draft reports should be regarded as constituting a substantial interference with the operations of a committee, thus constituting contempt of the Senate. In the first instance, the Privileges Committee, which of course has expressed concerns about these issues for some time now, will be able to fully and thoroughly examine this important issue. The Senate can then consider the committee's report. All senators are going to have an opportunity to consider these matters fully in the period ahead. I commend this approach and this motion to the Senate.

Senator BARTLETT (Queensland) (6.23 p.m.)—I support this motion. I refused it formally earlier not because I do not support it but because I strongly support it and I believe it is a sufficiently important matter that it should be spoken about. The reasoning behind the motion and the committee's request, in effect, for this to be referred to it should be put clearly on the record. Also, contributions such as the one Senator Faulkner has made should be on the record, because the value of people with experience in the operations of the Senate and its history—such as Senator Faulkner, Senator Ray and Senator Knowles, who is also on the committee—is often not recognised.

I also want to put a few things on the record because of the specific position of crossbench senators. As I have mentioned a few times in this place, the crossbenchers—minor parties and Independents—do not have representation on the Privileges Committee. I am not sure if they ever have. I noticed on the quite interesting chronology that Senator Faulkner referred to or incorporated—actually I am not sure if he did incorporate it—

Senator Faulkner—I was intending to do that in my reply.

Senator BARTLETT—Okay. One of the early matters that was fairly significant involved a motion moved by former senator Janine Haines nearly 20 years ago in April 1985. I do not know if she was on the Privileges Committee at that time, but obviously she was interested in the relevant matter of an improper disclosure and misrepresentation by a departmental officer of an amendment prepared for moving in the Senate. That was covered in Privileges Committee report No. 9 back in 1985. Certainly these issues affect all senators. In that sense, while I make the point that crossbench senators are not represented on the Privileges Committee, I should also make the point that it is not a partisan committee. It has, I gather, always made unanimous reports, with one exception. So I do not make a partisan point in saying that crossbenchers do not have representation; the point is more that we have a different set of circumstances—a different way of operating, perhaps, or a different situation in terms of resourcing—which may be relevant to the considerations of the committee members with regard to the matter that will be before them.

I say that not knowing fully how senators from major parties operate in terms of their staffing and support or about the cross-consultation that they have when they are

involved in committee inquiries. I will read the conclusion of the report that generated this motion—the 121st report, which Senator Faulkner tabled earlier this week—because I think it is important. It flows on from the latest series of unauthorised disclosures and it seems to be hinting at significant views in the minds of the current committee members. The relevant paragraph states:

The committee as at present constituted is of a mind to make a radical recommendation in respect of improper unauthorised disclosure of parliamentary committee reports and proceedings but wishes to discuss the matter in greater detail once the full membership of the committee is available to do so.

Clearly, some members of the committee think we need to make a radical shift here, and that may well be quite true. The current approach of dealing with unauthorised disclosure of reports is clearly becoming a joke, and because of that it is not being treated with the seriousness it deserves and is not able to be addressed in any meaningful way. I presume the phrase ‘once the full membership of the committee is available to do so’ is there because a couple of the members of the committee were not able to participate in this report because they were members of the committee where the unauthorised disclosure happened—the Senate Community Affairs Committee, from memory.

So I would simply say that the full membership of the committee would still not involve crossbench senators, even when the full committee is considering it. Again, that is not a partisan point of view; it is just an attempt to bring a different perspective to the way we engage with committee processes. I also note and very much endorse Senator Faulkner’s comments about the seriousness of the disclosure of in camera evidence. There is no doubt that if people cannot be certain that in camera evidence they give to a committee—whether it is via a submission or

via a face-to-face hearing—is kept confidential they are not likely to do it. That is just commonsense. We clearly need to be able to show that we take those sorts of actions very seriously.

I have recently been encouraging people to put submissions in to the Senate select committee that has been set up to look into mental health. That could well involve people wanting to put in confidential submissions. Staff in certain establishments who want to give information about what they have seen but do not want to run the risk of damage to their careers, lives and families as a result of doing so need to be confident that, if they put in a confidential submission, it will remain confidential and that the Senate and senators as a whole will treat that very seriously. For that reason as well I think that a reference with the intent behind it that I believe this one has is actually very important.

Certainly, from the brief historical chronology that Senator Faulkner has provided and will seek to incorporate, it looks as though, in the early days when these sorts of things were first considered, there was an attitude that disclosures should require some form of penalty. There were recommendations about reprimanding editors and publishers of newspapers which suggested that any future breach might be met by a much higher penalty and there were suggestions in a later report that consideration might be given to an appropriate penalty for offences. I think in those early days people thought it was a rare occurrence and that perhaps it would be appropriate to have specific penalties applied, whether that was a fine or something else. It clearly seems to have been part of the mind-set.

Certainly, that is highly unlikely to be acceptable these days for a general, run-of-the-mill, so-called leak. There is a difference

between a disclosure that clearly harms the effective operation of or substantially interferes with the work of a committee and disclosures in other circumstances. I might point to the recent case of the free trade agreement committee. That disclosure might have actually made things work a bit more effectively than they otherwise would have. I do not know because I was not part of it, but it seemed as though that committee had problems being overly functional by the time it got to the end. Just getting the findings out may have made things clearer.

All of those different issues need to be considered. At the heart of it all is how we can repair the credibility of the concept of contempt of the Senate so that things that are sufficiently serious are able to be reconsidered and treated in a way where it is more feasible to have some form of penalty or punishment if they happen. Whether or not it is unfortunate, things that are seen more as just part and parcel of political rough-and-tumble and political operations should be treated as such and they should not just all be put into the same basket. That is a pretty difficult dividing line to draw, but I think it is one that does generally need consideration. I welcome the indication from the committee that it wants to turn its mind to this. I would simply signal that certainly I, and I imagine at least some of my crossbench colleagues, would be interested in some mechanism for having input into that or at least providing our ideas about that to the committee. I, for one, would certainly welcome it.

It is perhaps more important than ever at this stage, with the government about to get the numbers in the Senate for the first time since 1981, that some of those basic shared standards of the Senate are recognised, re-confirmed and strengthened before there is the risk of a government majority weakening them even subconsciously. Looking at Senator Faulkner's chronology again, apart from

the very first matter, these issues have evolved in an era when the Senate has not been controlled by any one party. We are now moving back into an era—and hopefully, from my point of view, a short one—where there will be a Senate controlled by one party or at least by a coalition. It is more important than ever to get those shared values of the Senate reaffirmed. I am sure that the Senate Standing Committee of Privileges, with its proud history of being non-partisan and unanimous, is in a good position to do that.

I would also say that committees will probably become more important than ever in this upcoming era when the government will have control of the Senate. Regardless of what the numbers may be on committees that are established down the track, generally speaking there has been more scope for the sharing of ideas and a willingness to find unanimous positions through the committee processes. That happens far from always, but reasonably often committee processes have operated in a way that has enabled some degree of unanimity or at least there has been an attempt to find it. There is no doubt that unauthorised disclosures cut right across and very much impede that. If we can find a way to reinforce the seriousness of such actions then it should help the committee process to work more effectively. I think that will assist more than ever in the coming era when the government will have control of the Senate.

I feel that it is important to put comments such as these on the record to reinforce not just my support for the motion but also the importance of the issue that the Privileges Committee is going to consider by virtue of this motion. Whilst this is not going to be headline news stuff—and I think the idea is that we do not have these things being headline news—the Privileges Committee is actually undertaking an incredibly important task in that it is trying to ensure that the Sen-

ate continues to be as effective as possible at its task all the way into the future. I support the motion and will certainly look for a way to ensure that our views can be thrown into the mix so that the wise members of the committee can consider the radical ideas that we have in our heads.

Senator ROBERT RAY (Victoria) (6.36 p.m.)—I have just a few brief words to say on this motion. I should really acknowledge the presence in the chamber today of three former members of the Privileges Committee that have all gone onwards and upwards. Senator Eggleston is now Government Deputy Whip, Senator Ellison is now the very distinguished Minister for Justice and Customs, and Senator Chris Evans is of course now the Leader of the Opposition in the Senate. It occurs to me that it is also a two-way street. There are two has-beens here, going the other way, who are currently on the committee.

Senator Faulkner—How sad of you to mention that. I was hoping you would miss that out.

Senator ROBERT RAY—Might I say, through you, Acting Deputy President, to Senator Bartlett: we would most welcome a Democrats submission to the committee on this matter. If you would like to appear before the committee, we promise you an inquisitorial rather than adversarial discussion on these issues. Senator Bartlett often muses about the fact that the cross party are not on the Privileges Committee. It is a bit like The Nationals, who want to capitalise their profits and socialise their losses. You are disproportionately on a lot of other committees. We set up a select committee of five and guess what? You get one out of five when the ratio should only be about one out of 12. So there are other occasions where the Democrats are overrepresented rather than underrepresented. I suspect the reason for you not being

on the committee is the fact that we set up a unique position in 1994, and that was to give the government a four to three majority on the committee but to have it chaired by an opposition member. That very much contributes to the bipartisan nature of the way in which the committee operates.

It is time that we tried to cut the Gordian knot. Unenforceable rules are bad rules. There are only so many times that the Privileges Committee can come back and say it does not have the capacity to determine those who have participated in contempts of the Senate. We are not a star chamber, as Senator Faulkner has said. We are not a body that can necessarily find out any more information about leaking than the committees that are leaked against. There is no question—and I have never hidden it—that virtually every leak out of every Senate committee or joint committee comes from a member of parliament. It never comes from the secretariat. It does not come by accident. It comes because senators have gone out and given the information to journalists. What is their motive? Half the time it is to get political advantage for their side of politics. That is pretty grubby, but at least I can see the logic of it. The other half of the time it is simply so that the senator concerned can chalk up some brownie points with journalists. It is a pretty pathetic existence if that is what you have to do, but that is what we are left with.

I think we can tackle this. Whilst not necessarily anticipating the results of the inquiry, because we will keep an open mind, I am of a mind at the moment to say that any leak from a committee—a normal leak, if you like—should be dealt with by the committee itself. At the moment, if there is a leak from a committee, that is a breach of privilege. But for it to become a contempt of the Senate you have to show that it unduly interfered or had a tendency to interfere with the operations of the committee—something

very, very difficult to prove. What I would like to make an automatic offence is the leaking of in camera evidence—sensitive stuff on law enforcement, security and the protection of witnesses—so that you do not have to prove that it unduly interfered with the work of a committee; it becomes an automatic offence. All the rest no longer become offences.

I would still regard it as unethical to prematurely disclose a committee report, but at least everyone will be on a level playing field. Maybe some of them will be bound by the honour and the traditions of this institution and will not prematurely disclose the discussions or the findings of a report. It would be nice to think so, but I would not automatically assume it. Anyway, let us have a public inquiry into this. Let us hear from the journalists' association. Let us hear from the Clerk of the Senate, who has a tremendous knowledge of these areas. Let us put it all together. I do stress, as Senator Faulkner does, that it is not a decision of the Privileges Committee. All we can do is come back with a recommendation to this chamber, and this chamber itself will decide.

Senator FAULKNER (New South Wales) (6.41 p.m.)—Senator Bartlett kindly mentioned a document that I had circulated to interested senators in the chamber which deals with the record of unauthorised disclosure reports from the Senate Standing Committee of Privileges from 1966 to March 2005. I thank the committee's hardworking staff for the preparation of that document. I notice that Senator Bartlett gave me full credit. On this occasion it was not deserved. I thank the secretary and staff of the committee for preparing this. I think it is a very useful document. I seek leave for the document to be incorporated in *Hansard*.

Leave granted.

The document read as follows—

COMMITTEE OF PRIVILEGES
UNAUTHORISED DISCLOSURE REPORTS
1966-2005 (as at March 2005)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Unauthorised Publication of Draft Committee Report (No. 1) PP No. 163/1971	4/5/71 (J.555)	Senate*: Motion moved by Chairman of Select Committee on Drug Trafficking and Drug Abuse (Senator Marriott) and agreed to 4/5/71	13/5/71 (J.605)	Findings the publication prior to presentation to the Senate of contents of report constituted a breach of the privileges of the Senate the editor and publisher of the relevant newspapers were the responsible and culpable persons the Senate has the power to commit to prison, to fine, to reprimand or admonish, or to otherwise withdraw facilities held, by courtesy of the Senate, in and around its precincts Recommendations that the editor and publisher be reprimanded that any such breach in future be met by a much heavier penalty	Report adopted 13/5/71 (J.606); persons attended and reprimanded 14/5/71 (J.612)
Unauthorised Publication of Committee Evidence taken <i>in camera</i> (No. 7) PP No. 298/1984	14/6/84 (J.992), 22/8/84 (J.1029)	Senate: Motion moved by Chairman of Select Committee on the Conduct of a Judge (Senator Tate) and agreed to 14/6/84 Motion moved by Chairman of Committee of Privileges (Senator Childs) and agreed to 27/8/84	17/10/84 (J.1243)	Findings publication constituted serious contempt of Senate editor and publisher of relevant newspaper should be held responsible and culpable for the publication author of articles culpable for the contempt	Report adopted 24/10/84 (J.1295)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
				publications were based on unauthorised disclosure by unknown person(s), and that such disclosure, if wilfully and knowingly made, constitutes serious contempt of Senate that committee would report on the question of penalty after persons affected place submissions before committee	
Question of Appropriate Penalties Arising from the 7th Report of the Committee (No. 8) PP No. 239/1985	27/2/85 (J.64)	Senate: Motion moved by Chairman of Standing Committee of Privileges (Senator Childs) and agreed to 27/2/85	23/5/85 (J.317)	Recommendations that no penalty be imposed at that time but that if further offence committed within the remainder of the session of Parliament consideration be given to imposing an appropriate penalty for present offence that legislation be introduced to put the power of the Houses of Parliament to fine beyond doubt	—
The Improper Disclosure and Misrepresentation by a Departmental Officer of an Amendment Prepared for Moving in the Senate (No. 9) PP No. 506/1985	23/4/85 (J.193)	Senate: Motion moved by Senator Haines and agreed to 23/4/85	16/9/85 (J.454)	Recommendation that matter be not further pursued	Report adopted 18/9/85 (J.470)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible Unauthorised Disclosure of Senate Committee Report (No. 20) PP No. 461/1989	18/8/89 (J.1961)	Senate: President determined precedence to notice of motion 17/8/89, motion moved by Senator Hamer, at the request of Senator Teague, and agreed to 18/8/89	21/12/89 (J.2445)	Findings that a finding of contempt should not be made in light of all circumstances that no further action should be taken Recommendations that the President draw paragraph 6(16) of the Privilege Resolutions and standing order 37 to the attention of Senators that a proposal for the early tabling of committee reports when the Senate meets in the mornings be referred to the Procedure Committee for consideration	Findings endorsed and recommendations adopted 16/5/90 (J.96-7)
Possible Unauthorised Disclosure of Senate Committee Submission (No. 22) PP No. 45/1990	6/12/89 (J.2321)	Senate: President determined precedence to notice of motion 5/12/89, motion moved by Chairman of Select Committee on Health Legislation and Health Insurance (Senator Crowley) and agreed to 6/12/89	9/5/90 (J.41)	Finding that in the light of circumstances no finding of contempt should be made Recommendations that an appropriate warning about conditions of disclosure be given in public advertisements calling for submissions, in notes to witnesses, and in letter acknowledging receipt of submissions that persons making submissions be notified when submissions are publicly released by a committee	Finding endorsed and recommendations adopted 23/5/90 (J.130)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible Improper Disclosure of Document or Proceedings of Migration Committee (No. 48) PP No. 113/1994	25/11/93 (J.901)	Senate: President determined precedence to motion 25/11/93, motion moved by Chair of Migration Committee (Senator McKiernan) and agreed to 25/11/93	8/6/94 (J.1778)	Finding committee did not find that contempt committed Recommendation that question of journalistic ethics be referred to Legal and Constitutional Affairs Committee	Finding endorsed, recommendation adopted 30/6/94 (J.1999)
Possible Unauthorised disclosure of a submission to the Joint Committee on the National Crime Authority (No. 54) PP No. 133/1995	3/3/94 (J.1359)	Senate: President determined precedence 2/3/94. Motion moved by Deputy Chairman of Joint Committee on the National Crime Authority (Senator Amanda Vanstone) and agreed to 3/3/94	30/6/95 (J.3602)	Findings that a submission and letter from a WA Police Superintendent received in camera by the Joint Committee on the National Crime Authority was improperly disclosed and that such disclosure constituted a serious contempt the committee was unable to establish the source of the improper disclosure, owing to the constraints on its capacity to examine members of the SA legislature responsible for publishing and referring to the two documents in each house Recommendation if the source of the improper disclosure is subsequently revealed, that the matter again be referred to the committee, with a view to a possible prosecution for an offence under s.13 of the <i>Parliamentary Privileges Act 1987</i>	Findings endorsed and recommendation adopted 24/8/95 (J.3694)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible unauthorised disclosure of documents or private deliberations of the Select Committee on the Dangers of Radioactive Waste (No. 60) PP No. 9/1996	30/6/95 (J.3600)	Senate: President determined precedence 29/6/95 Motion moved by Chair of Select Committee on the Dangers of Radioactive Waste (Senator Chapman) and agreed to 30/6/95	30/4/96 (J.31)	Finding no question of contempt involved Recommendation that a resolution be adopted for committee proceedings following unauthorised disclosure of proceedings	Finding endorsed and recommendation adopted 20/6/96 (J.361)
Possible Unauthorised Disclosure of Parliamentary Committee Proceedings (No. 74) PP No. 180/1998		Advisory Report (incorporating reports on six contempt matters referred to the Committee—see below)	9/12/98 (J.360)	General Recommendation that the question of publication of committee deliberations be referred to Procedure Committee	Notice of motion given for next day of sitting not less than 7 days after the day on which notice given—that Senate endorse findings and adopt recommendations 9/12/98 (J.360) Findings endorsed and recommendations adopted 15/2/99 (J.428)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible unauthorised disclosure of documents of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund	27/10/97 (J.2717)	Senate: President determined precedence 23/10/97 Motion moved by Senator Evans, at the request of Senator Bolkus, and agreed to 27/10/97	9/12/98 (J.360)	Finding no contempt has been committed	Finding endorsed 15/2/99 (J.428)
Possible unauthorised disclosures of a report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund	29/10/97 (J.2759)	Senate: President determined precedence 28/10/97 Motion moved by Senator Abetz (also on behalf of Senator Ferris) and agreed to 29/10/97	9/12/98 (J.360)	Finding contempt of the Senate has been committed Recommendation that no penalty be imposed	Finding endorsed and recommenda- tion adopted 15/2/99 (J.428)
Possible unauthorised disclosure of a document of the Parliamentary Joint Committee on the National Crime Authority	26/11/97 (J.2991)	Senate: President determined precedence 19/11/97 Motion moved by Senator McGauran and agreed to 26/11/97	9/12/98 (J.360)	Finding The circumstances do not warrant a finding that a contempt has been committed	Finding endorsed 15/2/99 (J.428)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible unauthorised disclosure of a report of the Environment, Recreation, Communications and the Arts Legislation Committee	26/11/97 (J.2991)	Senate: President determined precedence 25/11/97 Motion moved by Senator Evans, at the request of Senator Schacht, and agreed to 26/11/97	9/12/98 (J.360)	Finding that no contempt has been committed by certain persons but that a contempt has been committed by an unidentified officer, or officers, of a public service department Recommendation that no penalty be imposed	Finding endorsed and recommendation adopted 15/2/99 (J.428)
Possible unauthorised disclosure of a draft report of the Economics References Committee	12/3/98 (J.3379)	Senate: President determined precedence 11/3/98 Motion moved by Chair of Economics References Committee (Senator Jacinta Collins) and agreed to 12/3/98	9/12/98 (J.360)	Finding a contempt of the Senate has been committed by a person or persons who disclosed a draft report of the Economics References Committee, but the Committee is unable to discover the source of the improper disclosure	Finding endorsed 15/2/99 (J.428)
Possible unauthorised disclosure of the report of the Parliamentary Joint Committee on the National Crime Authority on the Committee's third evaluation of the National Crime Authority	2/7/98 (J.4162)	Senate: President determined precedence 30/6/98 Motion moved by Senator McGauran and agreed to 2/7/98	9/12/98 (J.360)	Finding it is likely that a contempt of the Senate has been committed, but the Committee has determined not to take matter further	Finding endorsed 15/2/99 (J.428)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible unauthorised disclosure of draft parliamentary committee report (No. 84) PP. No. 35/2000	2/9/99 (J.1636)	Senate: President determined precedence 1/9/99 Motion moved by Senator O'Brien, at the request of Chair of Employment, Workplace Relations, Small Business and Education References Committee (Senator Collins), and agreed to 2/9/99	7/3/2000 (J.2374)	Findings that persons disclosed without authority draft report of a committee that persons to whom the report was disclosed should have been aware, and probably were aware, of the status of the document that departmental training was inadequate that the handling of the draft report constituted culpable negligence and therefore a contempt was committed Recommendations: that arrangements be made for ministerial and shadow ministerial staff to attend seminar on parliamentary procedure that committees mark and transmit draft reports appropriately that no penalty be imposed	Notice of motion given for next day of sitting not less than 7 days after the day on which notice given ☞ that Senate endorse findings and adopt recommendations 7/3/2000 (J.2374) Findings endorsed and recommendations adopted 15/3/2000 (J.2447)
Possible unauthorised disclosure of in camera proceedings of the Economics References Committee (No. 93) PP No. 179/2000	11/5/2000 (J.2704-5)	Senate: President determined precedence 11/5/2000 Motion moved by Senator Calvert, at the request of Senator Gibson, and agreed to 11/5/2000	28/8/2000 (J.3126)	Finding the circumstances do not warrant a finding that a contempt has been committed	Finding endorsed 31/8/2000 (J.3181)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible unauthorised disclosure of a submission to the Parliamentary Joint Committee on Corporations and Securities (No. 99) PP No. 177/2001	27/6/2000 (J.2908)	Senate: President determined precedence 26/6/2000 Motion moved by Chair of Corporations and Securities Committee (Senator Chapman) and agreed to 27/6/2000	30/8/2001 (J.4834)	Findings that person(s) who disclosed in camera evidence to a journalist, and Nationwide News Pty Ltd, as the organisation responsible for the actions of the journalist, have committed contempt Penalty if person(s) discovered – possible fine or prosecution under the <i>Parliamentary Privileges Act 1987</i> ; Nationwide News Pty Ltd – that Senate administer a serious reprimand	Findings endorsed and penalty imposed 18/9/2001 (J.4866)
Possible unauthorised disclosure of draft report of Legal and Constitutional Legislation Committee (No. 100) PP No. 195/2001	26/6/2001 (J.4405)	Senate: President determined precedence 25/6/2001 Motion moved by Senator Calvert, at the request of Chair of Legal and Constitutional Legislation Committee (Senator Payne), and agreed to 26/6/2001	19/9/2001 (J.4882)	Findings that person(s) who disclosed a draft report to a journalist, and Nationwide News Pty Ltd, as the organisation responsible for the actions of the journalist, have committed contempt Penalty no penalty should be imposed	Findings endorsed 26/9/2001 (J.4974)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible unauthorised disclosure of draft report of Environment, Communications, Information Technology and the Arts Legislation Committee (No. 112) PP No. 11/2003	27/6/2002 (J.524)	Senate: President determined precedence 27/6/2002 Motion moved by Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee (Senator Eggleston) and agreed to 27/6/2002	6/2/2003 (J.1475)	Findings that there was a deliberate and unauthorised disclosure and publication of recommendations in a draft report that the discloser of the proceedings is prima facie in contempt of the Senate but that no contempt can be found against The Age publisher, editor and journalist	Findings endorsed 6/2/2003 (J.1475)
Australian Press Council and Committee of Privileges Exchange of Correspondence (No. 113) PP No. 135/2003		Advisory report	25/6/2003 (J.1983)	Chair's statement on motion to take note of report, Hansard, 25/6/2003 (pp 12529-12531)	Report noted 25/6/2003 (J.1983)
Possible unauthorised disclosure of the private deliberations or draft report of the Select Committee on the Free Trade Agreement between Australia and the United States of America (No. 120) PP No. 52/2005	5/8/2004 (J.3829)	Senate: President determined precedence 4/8/2004 Motion moved by Senator Ridgeway, and agreed to 5/8/2004	8/3/2005 (J.432)	Finding no contempt should be found	Finding endorsed (J.477)

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Possible unauthorised disclosure of draft reports of Community Affairs References Committee (No. 121) PP No.	12/5/2004 (J.3403) 24/6/2004 (J.3699-3700)	Senate: President determined precedence 11 May 2004 Motion moved by Senator Ferris, at the request of Senators Knowles and Humphries, and agreed to 12/5/2004 Senate: President determined precedence 24/6/2004 Motion moved by Chair of the Community Affairs References Committee (Senator McLucas) and agreed to 24/6/2004	15/3/2005 (J.507)	Finding that while it would have been open to the committee to find contempt, it declined to do so	

*Before passage of Privilege Resolutions on 25 February 1988 all matters were referred to the Committee of Privileges by the Senate

In the spirit of the way the committee has operated now for very many years, I note that there is broad agreement and acceptance in the chamber about this motion. I commend the approach to the Senate and thank those senators who have contributed to the debate. I look forward to this Senate considering the report of the Privileges Committee after we have undertaken the public hearings that Senator Ray has just spoken about.

Question agreed to.

BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.43 p.m.)—by leave—I move:

That consideration of government documents be not proceeded with today and that consideration of government business continue until 7.20 p.m.

Briefly, that relates to the strict time frame that we have. We have a lengthy list of speakers in the second reading debate on the appropriations bill.

Question agreed to.

COMMITTEES

Legislation Committees

Reports

Senator EGGLESTON (Western Australia) (6.44 p.m.)—Pursuant to order and at the request of the chairs of the respective legislation committees, I present reports from various legislation committees on the examination of annual reports tabled by 31 October 2004.

Ordered that the reports be printed.

TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2005

Report of Economics Legislation Committee

Senator EGGLESTON (Western Australia) (6.45 p.m.)—On behalf of the Chair of

the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Trade Practices Legislation Amendment Bill (No. 1) 2005, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

BUDGET

Consideration by Legislation Committees Report

Senator EGGLESTON (Western Australia) (6.46 p.m.)—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the 2004-05 additional estimates, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

PARLIAMENTARY ZONE

Approval of Works

Debate resumed.

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (6.46 p.m.)—In response to Senator O'Brien asking for further information, I have a statement which I seek to table. I believe it answers the questions that have been posed by Senator O'Brien. I have not shown this to the opposition. I have not sought to incorporate it, because we have not followed the usual procedure, so I will seek to table the statement and that will conclude my remarks. I will provide a copy of the statement to Senator O'Brien. If there were anything further, he could speak tomorrow. I table the statement.

Debate (on motion by **Senator Ellison**) adjourned.

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 2) 2004-2005**APPROPRIATION BILL (No. 3)
2004-2005****APPROPRIATION BILL (No. 4)
2004-2005****Second Reading**

Debate resumed from 10 March, on motion by **Senator Coonan**:

That these bills be now read a second time.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (6.48 p.m.)—I take the opportunity to make some remarks on Appropriation (Parliamentary Departments) Bill (No. 2) 2004-2005 and related bills. I would like to concentrate on issues regarding the transfer of various service delivery agencies to the Finance and Administration portfolio and the creation therein of the new Department of Human Services. These changes were announced by the Prime Minister following the last election as part of the new administrative arrangements.

Labor has very serious concerns about the delivery of services to Australians under these new arrangements. The creation of what we see as an artificial barrier between policy departments and service delivery agencies by the placement of the delivery agencies in the Finance portfolio we think is a fundamental error in good public policy. In my view, public administration ought to be fully focused on maximising the connection between policy development and service delivery for the benefit of the Australian community. Whenever there is a disconnect between the policy and the service delivery, customers are always the ones to suffer. That is clearly, I believe, what is happening with the new human services arrangements put in place by the government.

Let us be clear: this is a deliberate disconnect between social policy and the delivery of the social services. The Howard government has consciously ripped service delivery away from the policy departments and lumped it in with the bean counters at the Department of Finance and Administration. The result of this flawed political decision will be the deterioration of service to customers—that is, Australian citizens. In my remarks today I would like to discuss the reasons for the government's placement of these agencies under the Finance umbrella; the reasons why the new arrangements will, I think, result in a further deterioration of service delivery; and the ways in which the problems created by the government are currently manifesting themselves.

Social policy has never been this government's strong suit. There has been embarrassment after embarrassment in the Health portfolio and in Family and Community Services, and the ministers have been turned over regularly. The political hardheads in cabinet, like the Prime Minister and Senator Minchin, know that social policy is not their gig, and they have struggled to find ways to neutralise the political damage done to the government through its failure to manage social policy properly. The best example is, of course, the Prime Minister talking about work and family being the barbecue stopper. Well, certainly the barbecue has gone out and there is no sign of the Prime Minister. This failure saw, among other things, Senator Patterson removed from Health and the job given to Mr Abbott.

Family and Community Services continues to be a problem. The flawed family payment system is a catalogue of failure, with hundreds of thousands of families saddled with debts and bungled indexation arrangements. The government's solution was to write \$600 cheques regularly to paper over the cracks in the system. Centrelink raised

over 1½ million new debts in 2003-04 worth \$940 million, and that is without the family tax benefit debts. In the same year they recovered more than \$1.2 billion worth of outstanding debts from previous years. This seems to me to highlight the fact that Centrelink's payment systems have major problems.

Poor delivery of payments and services has seen the government attempt to spend their way out of trouble rather than fix the policy contradictions that lie at the core of the problem. Systems policy problems have also compromised the delivery of the government's mutual obligation regime. Through flawed breaching and job-matching processes, innocent people were penalised for noncompliance only to have their breaches overturned on appeal, if they knew how to pursue their rights. Customers have suffered the consequences of a culmination of poor policy and flawed delivery systems.

The offices of MPs on both sides of the chamber and community legal centres around the country are inundated with complaints about Centrelink and the Child Support Agency. Centrelink itself has been squeezed by staff cuts and efficiency dividends. Projections are that average staffing levels by 2006-07 will be cut from 24,100 in 2003-04 to 21,800. At the same time, staff in the agencies have been put under increasing pressure to take on more work, with fewer resources and without enough information and training. They were even asked to help with the tsunami crisis—there is nothing that Centrelink will not be asked to do! I do not at all criticise the work they did, but this is a sign of the extra pressure that is being put on them all the time.

Animosity between customers and staff is the norm, as staff on the front line attempt to deliver poorly thought out policies, with contradictory regimes, to customers who feel

increasingly alienated from the system that is supposed to be there to help them. Prior to the last election the Minister for Family and Community Services, Senator Patterson, and her predecessors were incapable of getting on top of these problems. In fact, after the election the Prime Minister himself acknowledged that failure and that of his government. He was reported in the *Courier-Mail* on 23 October 2004 as saying:

I've seen too many examples over the last eight and a half years of a good policy being compromised by somewhat inferior service delivery.

I think that analysis was only half right. Not only was the delivery inferior but the policy was flawed too. Over the last two years the Family and Community Services portfolio has been gutted. In that time, all the serious policy work has been done by the quaintly named task forces run out of the Department of the Prime Minister and Cabinet. Both FaCS and Defence seem to have their work done mainly out of that department these days. But it is all done under the direct control of the Prime Minister, John Howard.

The Prime Minister's increasing frustration saw him after the last election take 60 per cent of Family and Community Services staff and move them to 'more politically compliant' departments, such as Human Services in the Finance portfolio and the Department of Employment and Workplace Relations—departments with ministers more in tune with his highly conservative social views. This was further acknowledgment of the abject failure of social policy under the Howard government and, I suspect, part of a broader agenda to privatise the delivery of core government services. We see yet again the question of Medibank being privatised, and there have been ongoing rumours about the future role of Centrelink.

The fundamental policy problem in the transfer of social policy agencies to Finance

is the imposition of an artificial barrier between the policy department and the agency that delivers those services. The Department of Family and Community Services and the Department of Health and Ageing allegedly craft the policy and the Department of Finance and Administration—a completely foreign department—delivers the programs. A good social policy should drive its delivery, whilst delivery should inform policy. The government has broken this link. The greater distance imposed between the policy and its delivery will make it more difficult for the government to iron out the problems that plague its major social programs.

In a very practical sense the government has imposed additional chains of reporting and more obstacles to accountability between the policy agency and the delivery agency. Without a single minister responsible for both the policy and its delivery, there is no clear authority and no clear accountability when problems arise. There will be no coherent social policy under this government and under these administrative arrangements we will have only more selections to the shopping lists offered to the Prime Minister when he needs to spend his way out of a political problem.

Another point I make on the fundamental flaw in the placement of the social policy agencies in Finance is that from now on social policy in this country will be judged through the finance department prism, with its emphasis almost solely on the bottom line. While affordability of social policies is obviously a key factor in their development, it should not be the sole driver. Good social policy must be about outcomes for the Australian people, not just about dollars and cents. I do not know of anywhere else in the world where the finance department is responsible for the government's social policy.

How is the problem manifesting itself? Just five months after the transfer of the agencies to the new Department of Human Services under the Finance umbrella, we are already seeing the negative effects of the fundamental administrative errors I have just outlined. It is clear that the government did not think through the practical issues surrounding the new arrangements. They were supposed to be new, seamless arrangements, and there was a lot of rhetoric around the new arrangements that referred to delivering better services. We already know that departments and agencies are already uncertain about their responsibilities and accountabilities.

We saw this at estimates hearings last month, when officials from the Child Support Agency were unable to tell the Senate Finance and Public Administration Committee who was responsible for replying to criticisms of the agency, particularly to those made by the member for Hume. He made some virulent criticisms of the agency and the rules under which it operates, yet those criticisms remain unanswered. No-one from government defended their system.

Similarly, last week, we had a damning report from the Auditor-General on the dismal state of the feedback and review processes at Centrelink. The report showed that customers were too afraid to make complaints for fear of retribution by staff and that the agency is not even certain of the number of complaints it receives. Such fundamental systemic problems go to the heart of the rationale behind the establishment of Centrelink—the alleged improvement in service delivery. Again, confusion over accountability means that neither the Minister for Family and Community Services nor the Minister for Human Services have taken any responsibility for the issues raised by the Auditor-General. Neither of them could manage to issue a press release. No-one has responded

on behalf of the government. What we do know is that they are fighting over whose job it is.

Another implication of the government's policy mistake was also clear at estimates hearings: the transfer of the agencies has serious implications for departmental accountability to this parliament. The Senate Finance and Public Administration Committee estimates report raises very serious issues arising out of the placement of the Department of Human Services within the Finance portfolio—and I might say that that was a bipartisan report.

During the short time available, the committee had to examine estimates from agencies including the Department of the Prime Minister and Cabinet, the Department of Finance and Administration, Centrelink and the Health Insurance Commission. These are some of the largest, most complex and highest spending federal agencies, and there was simply not the time to look at them in sufficient detail. The committee had barely 70 minutes to raise issues with Centrelink and the HIC.

Another point made in the Senate Finance and Public Administration Legislation Committee report is that the nature of the work of the human services agencies means that they are better dealt with by the Senate Community Affairs Legislation Committee. The estimates committee examining FaCS also had the major problem that the policy departments appeared but not at the same time as the agencies that deliver the policies. It was frustrating for the committee to be unable to hold the government to account and pursue issues. Previously, you would have been able to have the department responsible for the policy and the service delivery agency there together so one could pursue problems that constituents raise with you.

What we had instead was the handball situation where the agency said, 'Senator, that's probably a policy question. You'd have to ask someone else,' or the policy department said, 'That's a question of the delivery of the program, Senator. You'd have to ask the delivery agency.' That is a totally unacceptable situation. It frustrates accountability of the parliament and it frustrates our ability to represent constituents—members of the Australian public—with serious concerns about the way the system is operating. It is just not good enough. The movement of human services agencies from the community affairs committee to the finance and public administration committee undermines the system that has been built up to scrutinise the executive and hold it accountable.

In addition to these problems, we are now seeing a political turf war between Ministers Patterson and Hockey. While he made the new Department of Human Services to stand alone outside of FaCS, the PM could not bring himself to put Mr Hockey into cabinet. Obviously, a political fix was put in place. But there are serious implications for the administrative arrangements. In the *Australian Financial Review* on 23 October 2004 there was a report on the creation of the new department. In it, both Senator Patterson and Mr Hockey talked about how well they would work together. In the same article, the Prime Minister talked up the efficiency of the new departmental arrangements. He said:

The new department will ensure that the development and delivery of government services is placed under strong ministerial control with clear lines of responsibility through the secretary.

I do not know whether that was a shot at Senator Patterson, but what we do know is that is not being delivered. An article in Monday's edition of the *Australian* shows how much the situation has degenerated in just five months. It says that Senator Patterson is refusing to cede control of the service

agencies to Mr Hockey and that she is digging her heels in to try and defend the turf she thinks is hers. She is desperately trying to hang on to the last remnants of her ministerial responsibility. Quite frankly, if she does not win that battle there is not a lot left in her portfolio: child care is about it.

But if you read the administrative orders it is clear the PM's intention was to cede most of that authority to Mr Hockey. What we hear now is that Mr Hockey is getting legal advice on his powers; he has actually gone to the lawyers to see if they can support him in his fight with Senator Patterson. He is also, we hear, threatening to hold back cash from the agencies: 'Do as I say or I won't give you the money to do the job serving Australians that you're empowered to do.' Clearly, these are not ministers who are devoting their attention to services to customers. They are having a major bureaucratic war at the expense of Australians.

To sum up, the transfer of the service delivery agencies to the finance portfolio was a major error in public policy. The decision was made for expedient political reasons and was poorly thought through. It was an attempt to neutralise the political impact of a range of problems in policy and service delivery which have been a political headache through the life of this government. It was also a move to give the Prime Minister and his key supporters more control. As a public policy move it is deeply flawed. It broke what should be the fundamental link between policy and delivery. This will make it more difficult to find solutions to problems in both areas. It has obscured and complicated accountability and responsibility relationships. It focuses the government's attention entirely on service delivery problems at the expense of policy and it places service delivery agencies under a finance regime which is inappropriate to their primary role.

The flaws in the new arrangements are already apparent. Agencies and departments are unclear about their responsibilities and have shown themselves unable to respond to criticisms and last week's Auditor General's report. They are not able to meet the demands placed on them for public accountability. We saw at estimates that the new arrangements have diminished parliamentary scrutiny of government activity. We had bipartisan reports concerned at the limitations this places on the ability of the Senate to hold the executive accountable and to pursue the interests of Australian constituents. Finally, the political fix has resulted in a ministerial turf war. All this demonstrates that the government has failed to manage social policy. It means services to customers will continue to deteriorate and the government's problems in these areas will increase. The bottom line is that all families, kids, seniors and people in need will be the big losers because of the failure of this government to get it right.

Senator BUCKLAND (South Australia) (7.05 p.m.)—The appropriation bills contain the new spending the government committed to: the \$66 million pork-barrel bonanza designed to win the last election. That is all they did: create something that would get them back into office. It is the pork-barrel to match their mistruths regarding interest rates. The government made a commitment to the Australian people to ensure interest rates would stay low, and yet within five months of the election interest rates are on their way up and may continue to rise. The indicators are that they will continue to rise. The government went to the people promising good economic management, and yet economic growth figures over the last two quarters were 0.2 per cent and 0.1 per cent. The current account deficit is running at nearly \$16 billion a quarter, more than seven per cent of GDP. Net foreign debt is now \$421.9 billion.

That is basically \$21,000 for every single Australian. We are all in debt for \$21,000.

What is causing this blow-out? It is the chronic failure of the government to invest in skills and infrastructure and the chronic failure of export policy. Under the Hawke and Keating governments, exports grew at an average annual rate of 8.1 per cent. Under Prime Minister Howard, that has more than halved to 3.4 per cent. We are not making gains in this country, even at a time when our resource exports are selling for the highest prices in 30 years. Household savings are negative for the first time since statistics started being collected, and they have been since the September quarter of 2002. Since that quarter, households have saved at a rate of minus 2.9 per cent on average. That is earning \$100 and spending \$103.

What caused the latest interest rate rise that threatens families with higher mortgage repayments? It is the \$66 billion of pork barrelling over the forward estimates period—anything to win a vote. That is the philosophy of this government. In order to pump out the pork, the government has punched mortgage holders fair in the stomach. The government says: 'Don't worry about them. Just worry about the vote they'll give us. Forget about them after that.' The government has been very successful in driving up interest rates. How do we know that wild spending, massive current account deficits and net foreign debt create interest rate rises? It is because Peter Costello, the Treasurer, told us. What did he say on foreign debt? On 26 September 1995, he told the House of Representatives:

Australia today is staggering under the load of foreign debt. What concerns us is that we wake up a miscreant Prime Minister to the load he has inflicted upon the Australian economy and a country that is staggering under the load of foreign debt which threatens to break that country and impose on ordinary Australians some of the

pressures that this government has allowed to build up. We are concerned that that message is brought home to them before in fact the full amplitude of its effects are known.

We want to break down the financial pressures which have been building up on families who have to pay higher interest rates in relation to their businesses and their mortgages as a consequence of the reckless financial mismanagement of this government.

What did the government do when they got into office? They doubled foreign debt, trebled the current account deficit and halved export growth. They are very impressed with themselves on the issues of economic management. Peter Costello likes to think of himself as an economic giant. The fact is that Wayne Swan was right in the other place when he said that Peter Costello is like the Wizard of Oz—a midget with a really big microphone. He is not an economic giant at all. The government can tell themselves over and over, 'We're so wonderful, we're so great,' but the truth is that they are driving our economy into the ground through reckless spending and complete apathy on things that matter. As I was not intending to speak tonight, I will leave it there, as I see my good colleague Senator Hogg champing at the bit to say something on this issue.

Senator HOGG (Queensland) (7.12 p.m.)—In rising to speak on the Appropriation (Parliamentary Departments) Bill (No. 2) 2004-2005 and related bills, I want to take the opportunity to add my thoughts to the rising chorus calling for major tax reform. Over its term in office, the Howard government has placed the biggest ever tax burden on Australian families, reaping more than \$100 billion extra a year in taxes than when it was first elected in 1996. Crippling effective marginal tax rates are destroying the incentive to work harder and are a barrier to a more productive economy. On average, this year every Australian household will pay a

staggering \$11,000 more in tax than they did in 1996.

It seems that with each passing day there is another comment or report that confirms that this government's high taxing ways are not welcome. Last week we had the OECD report *Taxing wages*. The Howard government has clearly been stung by this report, which exposed its failure to ensure that the tax system offered the incentive for people to participate fully in the work force. The report shows in black and white the punishing disincentives faced by many families. Key findings outlined were that our marginal tax rates cut in at some of the lowest levels among OECD countries and that Australian low-income earners were particularly bad off when the effective tax rates and the withdrawal of social security benefits combined to produce exceptionally high effective marginal tax rates, resulting in a net loss of disposable income. These people are the most vulnerable in our community and should be getting preferential treatment that allows them to live with dignity in our society. Of course, the *Taxing wages* report confirms earlier criticisms by the Reserve Bank governor and previous OECD reports that significant reform of the taxation and social security arrangements is required to fix disincentives to participation and productivity in the work force.

This week we have had one of the government's own members, the member for Wentworth, Mr Malcolm Turnbull, publicly declaring the disaster that is the Howard government's taxation system. Mr Turnbull is reported by AAP as saying:

... current marginal tax rates were too high and only encouraged the wealthy to engage in complex tax avoidance schemes.

... ..

... reform of the tax system had to be explored to reduce the incentive for people to engage in tax avoidance.

... ..

"You've got to focus on tax reforms that are fair right across the economy, right across the population, so that all taxpayers benefit from it."

I for one think this comment is totally true, as most members of the Australian community can readily associate those views with their thoughts on tax. They know that, for fairness and equity to prevail in a tax system, the burden of tax must be levied in proportion to one's capacity to pay. Those with the greatest financial or economic capacity to pay should pay the most compared with those with the least capacity to pay. To many people, that seems to be a fairly fundamental and reasonable proposition. All reasonable people concede that they should pay tax but that it should not be disproportionate to that paid by others. That is why those high-wealth individuals who use their wealth to minimise their contribution to the tax pool are viewed so cynically.

On Monday this week, we saw the House of Representatives Standing Committee on Employment, Workplace Relations and Workforce Participation table its report *Working for Australia's future: increasing participation in the workforce*. The report makes a total of 23 recommendations, but of particular significance to the tax debate is recommendation 4 at paragraph 4.79:

The Committee recommends that the Australian Government review the tax free threshold, taper rates, effective marginal tax rates and income test stacking to maximise incentives to move from income support payments to increased participation in paid work.

Here again we have a clear and unequivocal call for serious reform of the current tax system and for serious reform of income support arrangements under our social security system, particularly where they intersect with

the taxation system. It is worth noting that the committee that made this recommendation is dominated by government backbenchers. While I am talking about this report, I should say that, unlike recommendation 4, which I have spoken about here, not all recommendations were unanimously supported by the committee. In fact, the deputy chair, Mr Brendan O'Connor, and the Labor members of the committee produced a dissenting report. Mr Brendan O'Connor, in a media release announcing the dissenting report, said:

Government Members on the House of Representatives Standing Committee on Employment, Workplace Relations and Work Force Participation recommended industrial relations changes that did not correspond with the evidence.

Having read the evidence and listened to witnesses, dissenting members do not consider there was a causal link between low participation and award reform.

Apart from those significant areas of disagreement the Committee sought to find common ground and develop ways to assist and enable more in the community to enter the paid work force.

He also went on to note in that release that the committee members all agreed, however, that 'there is a need to remove unnecessary disincentives built into the tax and welfare system and the urgent need to attend to the nation's skill shortage crisis'. I want to quote briefly from the dissenting report because one of the recommendations was disagreed to.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Order! It being almost 7.20 p.m., I propose the question:

That the Senate do now adjourn.

Indian Ocean Tsunami

Senator PAYNE (New South Wales) (7.19 p.m.)—I want to make some observations this evening about this morning's meeting of the Australian parliament's Parliamentary Association for UNICEF. It is interesting to note that the Australian parliament was the first parliament in the world to have a parliamentary association in support of UNICEF. The model has been replicated internationally, to the great credit of the parliament here. I have the great honour and privilege of chairing that organisation. It operates in a cross-party manner. Its deputy is Ms Kelly Hoare, the Labor member for Charlton in New South Wales; its other office bearers are Senator Lyn Allison, the Leader of the Australian Democrats, and Mr Luke Hartsuyker, the National Party member for Cowper in New South Wales.

One of the matters we explored this morning was the work of UNICEF in getting children back to school after the recent tsunami and earthquake in Aceh. I want to thank Carolyn Hardy, Chief Executive of the Australian Committee for UNICEF, and Sarah Lendon, her project officer, who both spoke at the committee meeting this morning. Sarah Lendon's enthusiasm really bears no mere verbal description; you have to see it to believe it. She has been back in Australia for just two days since her time in Aceh and, before that, Sri Lanka. So she really has a very on the ground feel for what has been going on. She is the project officer who managed the post-tsunami back-to-school program in the past two months in Aceh. She was able to illustrate very graphically for us what are the real issues and the real challenges facing the people of that community in getting back to some semblance of normality.

It does not take a genius to determine that, for children, it is going to be so much more

difficult. There is an education system which has been devastated in a province that really was already devastated by decades of conflict. Sarah's estimate given to us today is that there have been 400,000 people displaced in total, with unknown numbers of dead children. As well, 2,499 teachers died and 3,000 lost their homes; 10 per cent of the broad education staff in the province died as well.

That is notable, considered as a statistical point in isolation. But beyond that those teachers who have survived—those who are still there whom the community expect to look after their children—are teachers who will have lost their own children, their own homes, their clothes, their teaching uniforms and all the things that go to make their lives bearable and sustainable. While we are hoping that they are able to contribute to looking after the children of the province, they themselves are still struggling with those difficulties.

In Aceh 1,582 schools were destroyed, and the functioning schools are struggling with very little support. The majority of teachers report that students do have enormous emotional and psychological problems due to the tsunami and, of course, the teachers are suffering. The story Sarah told about the occurrence of regular earth tremors since the tsunami and the earthquake, and the impact they have on the children sitting in the classrooms and on how far their parents are prepared to let them out of their sight on a daily basis, was very powerful. In circumstances like this there is also quite poor coordination between Jakarta and Aceh.

In one town in particular which UNICEF told us about today the challenges include not just the natural disaster but conflict and long-term poverty. Ten primary schools in Banda Aceh and Aceh Besar are functioning out of tents. Students from other areas have

been relocated to this area, if their schools have been destroyed. In this particular community 4,542 primary school students have lost one or both parents. They are not described in normal parlance as orphans. In the tradition of the community, they live in an extended family—cousins, aunts, uncles and grandparents—and that becomes their new world, but that does not make it any easier.

Three schools lost 13 teachers at each school—that is, one-third of their teaching staff. The impact is phenomenal. Half of the schools report that children are not attending and, again, that is an aspect of parents wanting to keep children close for fear of the events occurring again. And at the moment the children, perhaps not unreasonably, have lost some motivation and determination to continue with their education in these most extraordinary circumstances. The schools are in urgent need of cleaning, and some classrooms remain unsafe due to earthquake damage. Seventy-four primary schools have no toilet facilities for students or teachers and 144 schools have no water source altogether.

In terms of UNICEF's actions in the area, I am pleased to say that UNICEF reported to us today that they have distributed over 5,000 Schools in a Box. Many colleagues will know about Schools in a Box because many of them responded positively to my suggestion that, as members of parliament and within our constituencies, we might contribute to the UNICEF Schools in a Box program. I am very pleased to say that the Parliamentary Association will contribute over \$4,000 as a result of that fundraising effort for Schools in a Box. The boxes support, in two shifts, 80 children going to school every day, and recreational kits which support 200 children have also been distributed to a number of communities. To see the look on the faces of the people in the photographs in the presentation today when they see their new soccer balls and other bits and pieces for

sporting and recreational activities makes it worth every effort that goes into it.

The government's policy in the area at the moment is to integrate the displaced children into existing schools, but where no schools are available tents are provided. As I said, there are 10 of those operating in the area. There is a major campaign of school cleaning and an engineering assessment of damaged schools under way and an effort to rehabilitate the water and sanitation defects to which I referred before. There is also a great need for psychosocial training for the teachers which UNICEF is particularly cognisant of and working on. These teachers are expected not just to do their own job, not just to cope with their own trauma, but to teach highly traumatised children. There is a campaign for the registration and tracing of children who have lost their parents. UNICEF is the lead agency in Aceh for the supporting of government coordination and priority setting. There obviously needs to be a plan for the major reconstruction of schools, and that planning is under way.

In relation to the impact of the effort that has been required, 400,000 students have had to be provided with learning materials. There have been 1,000 primary schoolteachers recruited for whom training is under way, and there has to be a full assessment of the education situation in Aceh. There is construction of temporary classrooms and rehabilitation of primary schools, but the recovery of education in Aceh will really only come through the continuous support and capacity building of the local education and religious affairs departments. That is the most important impact on the community that we could possibly have—to build in that capacity for the education system in Aceh to take itself forward in this process, but the isolation, the enormity of the task, just beggar the imagination. In the visual material that UNICEF showed us today, the description, 'As far as

the eye can see there is nothing but destruction,' is not an exaggeration.

The job ahead, for the short term at least, includes replacing tent schools with temporary classrooms and more effective coordination of communication both within the national and local governments and between international agencies. When they are considering planning for the reconstruction of primary schools, there will be an opportunity to look at things like child friendly standards, which perhaps were not considered in the past. So, out of this adversity, out of this challenge, some opportunities may come to assist the children in a tangible and an important way. Safety for the children is very important. We cannot contemplate them having to learn and play, which is also very important, in unsafe areas, so structural assessments and cleaning are ongoing, as I said. In some districts, though, the situation is still unknown, and another enormous challenge is reaching these areas and finding people, without having any idea what has been going on there.

I have been talking mainly about primary schools but the challenges exist for kindergartens and secondary schools as well. Psychosocial support for both students and teachers will at least go some way to providing the sort of strength that perhaps they need to move forward. The work that UNICEF have done in Aceh in this period is absolutely commendable. As a nation we should be very proud of what UNICEF Australia have achieved, and I commend them heartily for their efforts and for the capacity of their staff and advisers.

Anzac Cove

Senator MARK BISHOP (Western Australia) (7.29 p.m.)—Tonight I would like to resume my remarks of last evening concerning the government's botched roadworks at Gallipoli. The Senate will be aware that, in

response to a return to order motion from me yesterday, a briefing was offered. That return to order sought production by the government of a letter from the former Minister for Veterans' Affairs to the Turkish government encouraging roadworks at Gallipoli. The Minister for Justice and Customs, in refusing to provide the letter, instead offered a briefing. That briefing was given to me today by Senator Robert Hill, the Minister for Defence, and I thank the minister for that opportunity.

I do not want to breach any sense of confidentiality on a letter between governments, but I can confirm the government's own admission that the minister did indeed seek new roadworks to ease the congestion on Anzac Day. I will not go beyond that, except to say that the letter in general discussed a number of matters concerning the adequacy of existing facilities. The main motive was to prepare better for the anticipated growth in attendance on Anzac Day and the capacity of the current Peace Park. Beyond that, detailed discussion and consultations with Turkey were left to the Director of the Office of Australian War Graves.

It is now clear that the Director, Air Vice Marshal Beck, has taken to this with great gusto, travelling to Turkey several times since then. It is understood that Air Vice Marshal Beck has dutifully reported back to the Minister for Veterans' Affairs with very detailed briefs. There cannot be any doubt that those briefs contain full details of options for the roadworks. What is not clear, however, is what safeguards were sought. Clearly, the minister sought none, apart from a general desire to have the intrinsic values of Gallipoli preserved. Any roadworks at Gallipoli at the site of the Australian memorial are problematic.

Some of course see that as Gallipoli's greatest protection, but the road is now a fait

accompli. The sea is close by and has been eroding the beach for many years. Work to widen the road to cater for many hundreds of buses at one time would be unavoidably destructive. Regrettably, this has come to pass. What is not clear, however, is what options were considered. From the media photographs it is clear that the cliff face has been dramatically bulldozed. The pristine nature of this very important battle site has been scarred beyond recognition. There is no point asking whether that was the minister's intention. That is what has been delivered, based on full advice and therefore with tacit or explicit approval.

The questions therefore remain the same. What less obtrusive options were explored? Was it once intended only as a minor upgrade to allow buses to drop off and collect later? Or was it planned to provide much more by way of parking and two-way traffic? We have the latter. By inference the minister approves, and it is hard to imagine the Turkish authorities acting without that approval, but much more needs to be known. In Australia such work would have been the subject of very intense scrutiny. In fact, much of the coastline accessed by Australians is now protected extensively from human degradation. An environmental impact statement would have been mandatory. No doubt, too, we would have required a full impact study of tourism on such a site, with forward plans and limitations on access. We accept that Turkey's own processes may not be that sophisticated as yet, but that does not excuse the Australian blind eye.

More to the point for veterans, there is growing scepticism here about the government's motives. It is a curiosity that the Office of Australian War Graves is the principal agency. It is their job to care for and preserve burial sites, not put them at risk. The very real question therefore is: how did they honour their charter? Has Air Vice Marshal Beck

in fact been the ringmaster for the government's commemorative program? If only he were so diligent in commemorating the other grave sites, such as at Fromelles in France. It is undeniable now that Air Vice Marshal Beck has just about completed the task set him by his minister. Traffic congestion at Gallipoli this year will not be an issue—unless the work suddenly stops. That is reportedly the guarantee if bones are revealed.

This brings me to other assurances we have been given quite glibly. The Commonwealth War Graves Commission, of which Australia is a member, has assured us that it is highly unlikely that missing Australians would be present at this site. That, by the way, is a standard assurance given on all concerns about undiscovered remains. It is also the phraseology of the Australian bureaucracy. It is based on the assumption that postwar burial parties found all that was to be found. We know that is a flawed assumption from the recent revelations at Fromelles. There, 160 of the 163 never found have now been confirmed as having been buried by the Germans. At Gallipoli that process did not begin for four years. We also know that, despite Prime Minister Billy Hughes' assertions that the search for the missing would never be abandoned, it was.

The only policy government has at present is that investigations will be made only when bones are found; hence the funeral tomorrow in northern France for two of four World War I missing, uncovered recently at the village of Merris—all done respectfully of course, with family in attendance, as it should be. Contrast that with the attitude shown by the Office of Australian War Graves to the missing at Fromelles. People who produce evidence of likely burial locations are treated as cranks. The guidelines used by Defence require the production of bones—but you are not allowed to look for them.

With respect to the 4,000 missing at Gallipoli, one can only be suspicious with respect to the thoroughness of any archaeological research conducted. It is said that the exposure of bones is commonplace after rain; hence my question on the *Notice Paper* tomorrow, testing that assertion and the response made on each occasion. We need greater assurances than those that have been given to date that there is no risk of Australians being uncovered at Gallipoli. In the event they are, there need to be contingency plans of the kind we see in operation at Merris, France. I would have thought that, in public relations terms, that would have been the first thing done.

The construction of this road at Gallipoli has implications across the board for the management of the Veterans' Affairs portfolio. Australian veterans regard commemorative activities as overdue respect for their commitment and sacrifice. To them Gallipoli is their shrine, as it is ours. It is symbolic of every military engagement since. They are, therefore, understandably appalled at what is going on. The sharp focus of the media is no mere coincidence. The recent demolition of Changi prison in Singapore provoked a similar response, but it was better handled.

We should also recall the belated flurry of activity in 2003 when the French government floated plans to build an airport over Australian graves. The Howard government then became the crusader, defending our hallowed sites. So we can only wonder at the limp-wristed effort at Gallipoli. It has been treated far too casually. The government sought the work and is now stunned at the outrage. The evidence is that Australian officials have been involved up to their eyeballs and that the minister has endorsed the plans one way or another.

Taxation: Charitable Institutions

Senator CHERRY (Queensland) (7.38 p.m.)—I rise tonight to speak on the allocation of tax concessions to charities and in particular the government's continuing efforts to restrict access to tax concessions for charities to those organisations which fit within its broad category of non-political organisations. I refer to a letter that the Minister for the Environment and Heritage, Senator the Hon. Ian Campbell, sent out this month to environment organisations across Australia. He warned every environment organisation:

Foremost, each organisation's principal purpose must be the protection and enhancement of the natural environment (or a significant aspect of it); or the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of it. It is mandatory that any tax-deductible donations be spent only in support of this purpose. That is, the funds should only be expended on the conservation of the natural environment and not for any other purpose, such as political activity.

This is a view which the Treasurer has put on many occasions—and I have crossed swords with him on many occasions—but it is one which increasingly is out of step with the understanding in the law, the community and the rest of the world as to what is a charity and what is legitimate political and non-political activity. The June 2001 report of the charities definition inquiry, established by the Treasurer at the request of the Democrats, recommended that there be a broader approach taken to what sort of advocacy is regarded as charitable and what is not. The report noted:

... advocating on behalf of those the charity seeks to assist, or lobbying for changes in law or policy that have direct effects on the charity's dominant purpose, are consistent with furthering a charity's dominant purpose. We therefore recommend that such purposes should not deny charitable status

provided they do not promote a political party or a candidate for political office.

It is noteworthy that the UK report into charities and the not-for-profit sector in 2002 notes that the restrictions on the advocacy activities or role of charities are 'anomalous' and that in many European countries, for example, France, Netherlands and Sweden, there are no comparable restrictions on not-for-profit organisations. Moreover, charities speak for large sections of the community and often for those who do not have a voice of their own. Charities also provide an important counterweight to government and business interests.

The report gave three key reasons why advocacy and campaigning should be encouraged and not restricted. It pointed to the strong links in local communities which mean that charities are particularly well placed to monitor, evaluate and comment on policies as they are implemented, the fact that charities still enjoy higher levels of public trust and confidence than politicians or established political institutions and are therefore well placed to offer alternative ways of engaging with the public policy debate and the processes of democracy, and the diversity of the causes represented by charities mean that they are able to give voice to a far wider range of political perspectives, including those of minority groups or interests, than might otherwise be heard by government.

All of this continues to be ignored by the Howard government in terms of trying to muzzle charities and ensure that organisations, whether they be environment organisations or other organisations, are restricted to a 16th or 17th century view of what a charity is as defined by the Statute of Elizabeth. Of course, the courts are increasingly reluctant to go down this line. I note in particular, given that the letter from Senator Ian Campbell was in relation to environment organisa-

tions, that the Victorian Civil and Administrative Tribunal in 2002 specifically considered whether the Australian Conservation Foundation's advocacy activities subordinated its charitable purposes and it held that they did not. In so holding, the tribunal observed:

... people engaged in conservation may be said to be engaged in something that is in some sense political ... it [is] obvious that some parts of the national heritage can only be conserved with the active help of the executive and the Parliament.

It went on to say:

... for a variety of reasons many charities nowadays will not be able to avoid conduct that may be said to be political.

There is no question of that. Churches, welfare organisations, environment organisations and organisations campaigning for improved health funding all need to engage in advocacy. This false dichotomy that the government is now establishing is making it harder and harder for them to do their job. It is noteworthy that Lord Wilberforce in the 1981 English case of *McGovern v Attorney-General* noted:

... the mere fact that trustees may be at liberty to employ political means in furthering the non-political purposes of a trust does not necessarily render it non-charitable.

He noted—and it is noted in the courts in many places—that there was this continuing change in the role of charities. I note also that the New South Wales Supreme Court in 1997 in *Public Trustee v Attorney General* said:

The cases on charities also involve some confusion between means and ends when it comes to their persuasive activities. There is a range of activity from direct lobbying of the government to education of the public on particular issues, in the interests of contributing to a climate conducive to political change. The line between an object directed at legitimate educative activity compared to illegitimate political agitation is a blurred

one, involving at the margin matters of tone and style.

In that case the court went on to say that ultimately you have to have regard to the principal purpose of the organisation.

That was the approach recommended by the charities definition inquiry in 2001. I believe that if it were to come before the Federal Court, even at this point in time, that would be the approach adopted by the court today because that is the approach emerging in the Victorian courts and the New South Wales courts and in the courts overseas. That is why I find it disturbing and concerning that the minister for the environment would write such a letter to environment organisations—one which goes much further than the requirements of the law in terms of stating what they can and cannot spend their money on. It is as if the government is determined to say to environment organisations, 'You must self-censor; you must totally get out of the mind-set of trying to change policy, because changing policy is somehow not charitable.' Yet it is quite clear when you look at the history of the evolution of charitable organisations—particularly in the past 20 years to 30 years—and the developments in Europe, the US and the UK and the developments in the courts here that it is increasingly recognised that charities can and should advocate on behalf of their constituent members for policy change which furthers their charitable purpose. That must be the test: does it further their charitable purpose? If it does it is a valid activity. If it does not, then it is not a valid activity.

Fundamentally, the committee of inquiry on the definition of charities recognised that the endorsement of political candidates certainly falls short of the test of a charitable purpose. I support that view because it is important that if we are going to provide tax concessions to charities we do ensure that they do not allow their name to be sullied. I

have noted the comments by some senators—Senator Mason in particular in this place—about certain environment organisations which have appeared to have crossed that line. But whether or not that money is coming out of their charitable fundraising or whether or it is coming out of their other moneys is something which has not entirely been addressed.

Fundamentally, though, that is not an excuse for sending out to environment organisations a letter which in my view misrepresents the law—a letter which actually tries to constrain their activities and say, ‘You cannot advocate. You can do research and you can go out and save forests but you cannot advocate for changes of policy which will achieve that outcome.’ That is an approach which the Democrats reject. It is an approach out of keeping with modern thinking on charities law and it is an approach which I do hope the government will desist from in terms of trying to bully organisations into self-censoring and muzzling their advocacy activities.

Senate adjourned at 7.48 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Australian Political Exchange Council—Report for 2003-04.

Department of Communications, Information Technology and the Arts—Report—Review of Australian and New Zealand content on subscription television broadcasting services (*Broadcasting Services Act 1992*, section 103ZJ), February 2005.

Landcare Australia Limited—Report for 2003-04.

Tobacco Advertising Prohibition Act 1992—Report for 2004 pursuant to section 34A of the Act.

Treaties—List of multilateral treaty actions under negotiation, consideration or review

by the Australian Government as at March 2005.

Tabling

The following documents were tabled by the Clerk:

Made following the commencement of the Legislative Instruments Act 2003 on 1 January 2005 [Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]:

Christmas Island Act—List of applied Western Australian Acts for the period 17 September 2004 to 17 February 2005.

Civil Aviation Act—

Civil Aviation Regulations—Instrument No. CASA 88/05 [F2005L00692]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part—

105—

AD/A320/167—Airborne Ground Check Module [F2005L00567]*.

AD/A320/169—Fuel Tank Electrical Bonding [F2005L00570]*.

AD/A320/170—Fire Protection—Cargo Compartment Water Drain Valves [F2005L00571]*.

AD/A330/30 Amdt 2—Argo-Tech/Intertechnique Vent Float Valves [F2005L00572]*.

AD/A330/47—Fuel—THS Fuel Tanks [F2005L00573]*.

AD/B737/125 Amdt 3—Centre Wing Fuel Tank Float Switch Wiring [F2005L00581]*.

AD/BAe 146/105 Amdt 1—APU—Air Inlet Duct—Modification [F2005L00585]*.

AD/BEECH 99/8—Aircraft Flight Manual—Flight Into Icing Conditions [F2005L00588]*.

AD/BEECH 1900/46—Aircraft Flight Manual—Flight Into Icing Conditions [F2005L00586]*.

AD/F50/85 Amdt 1—Feathering Pump Gasket [F2005L00624]*.

AD/HS 125/174—Installing insulating blankets [F2005L00602]*.

AD/S-62/1—Primary and Auxiliary Servo Shut-off System [F2005L00608]*.

AD/S-62/8—Main Rotor Anti-flapping Restrainer [F2005L00617]*.

AD/S-62/10 Amdt 1—Main Gearbox Input Shaft and Gear Assembly [F2005L00619]*.

AD/TBM 700/39—Elevator Trim Actuator [F2005L00622]*.

106—

AD/CF34/8 Amdt 1—B Sump Screen [F2005L00590]*.

AD/CON/83—TCM Engines Last Overhauled by Provence Aero Maintenance France [F2005L00593]*.

AD/LYC/111—Lycoming Engines Last Overhauled by Provence Aero Maintenance France [F2005L00603]*.

AD/RB211/14 Amdt 1—Thrust Reverser Resolver [F2005L00607]*.

AD/RB211/25 Amdt 1—Cold Stream Nozzle [F2005L00623]*.

107—

AD/AIRCON/12 Amdt 3—Kelly Aerospace Power Systems—Cabin Combustion Heaters [F2005L00578]*.

AD/AIRCON/13 Amdt 2—Kelly Aerospace Fuel Regulator Shutoff Valves & Cabin Heaters [F2005L00579]*.

AD/FSM/29 Amdt 3—Precision Airmotive Corporation Carburetors [F2005L00598]*.

AD/RAD/81 Amdt 1—Garmin Mode S Transponders [F2005L00694]*.

Cocos (Keeling) Islands Act—List of applied Western Australian Acts for the period 17 September 2004 to 17 February 2005.

* Explanatory statement tabled with legislative instrument.

Indexed Lists of Files

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 July to 31 December 2004—Statements of compliance—

Australian Public Service Commission.

Australian Taxation Office.

Health and Ageing portfolio agencies.

Industry, Tourism and Resources portfolio agencies.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Veterans' Affairs: Advertising Campaign
(Question No. 140)**

Senator Faulkner asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 19 November 2004:

- (1) Not including any advertising campaigns contained in questions on notice nos 105 to 121 from the 40th Parliament, for each of the financial years, 2003-04 and 2004-05 to date: (a) what is the cost of any current or proposed advertising campaign in the department; (b) what are the details of the campaign, including: (a) creative agency or agencies engaged; (b) research agency or agencies engaged; (c) the cost of television advertising; (d) the cost and nature of any mail out; and (e) the full cost of advertising placement.
- (2) When will the campaign begin, and when is it planned to end.
- (3) (a) What appropriations will the department use to authorise any of the payments either committed to be made or proposed to be made as part of this advertising campaign; (b) will those appropriations be made in the 2003-04 or 2004-05 financial year; (c) will the appropriations relate to a departmental or administered item or the Advance to the Minister for Finance and Administration; and (d) if an appropriation relates to a departmental or administered item, what is the relevant line item in the relevant Portfolio Budget Statement for that item.
- (4) Has a request been made of the Minister for Finance and Administration to issue a drawing right to pay out moneys for any part of the advertising campaign; if so: (a) what are the details of that request; and (b) against which particular appropriation is it requested that the money be paid.
- (5) Has the Minister for Finance and Administration issued a drawing right as referred to in paragraph (4) above; if so, what are the details of that drawing right.
- (6) Has an official or minister made a payment of public money or debited an amount against an appropriation in accordance with a drawing right issued by the Minister for Finance and Administration for any part of the advertising campaign.

Senator Hill—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

- (1) The Department of Veterans' Affairs has undertaken no advertising campaigns during the years specified and no advertising campaigns are currently planned.
- (2) Not applicable.
- (3) Not applicable.
- (4) Not applicable.
- (5) Not applicable.
- (6) Not applicable.