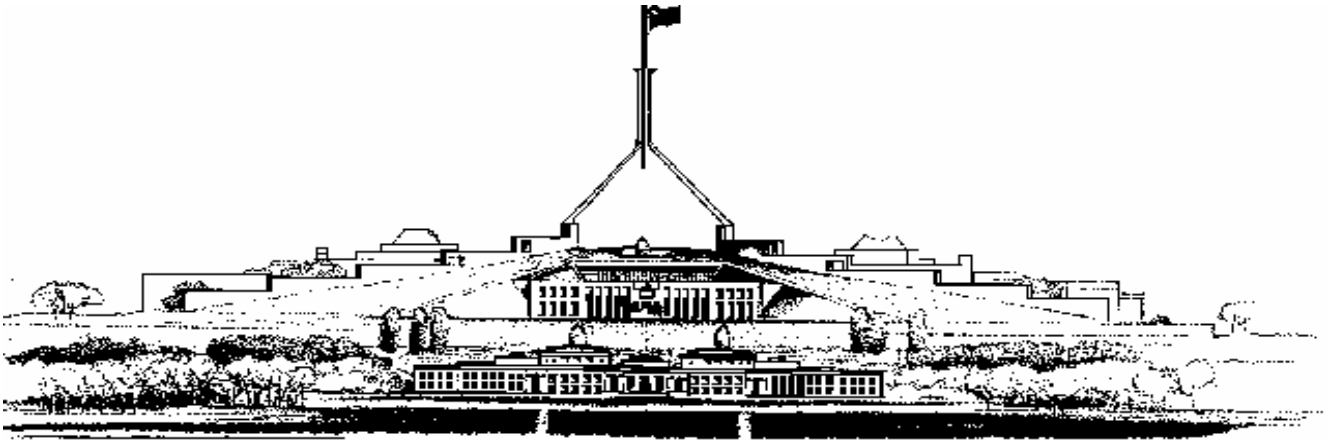




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



Senate

Official Hansard

No. 5, 2006

THURSDAY, 15 JUNE 2006

FORTY-FIRST PARLIAMENT
FIRST SESSION—SIXTH PERIOD

BY AUTHORITY OF THE SENATE

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SITTING DAYS—2006

Month	Date
February	7, 8, 9, 27, 28
March	1, 2, 27, 28, 29, 30
May	9, 10, 11
June	13, 14, 15, 16, 19, 20, 21, 22, 23
August	8, 9, 10, 14, 15, 16, 17
September	4, 5, 6, 7, 11, 12, 13, 14
October	9, 10, 11, 12, 16, 17, 18, 19
November	6, 7, 8, 9, 27, 28, 29, 30
December	4, 5, 6, 7

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**FORTY-FIRST PARLIAMENT
FIRST SESSION—SIXTH 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 Guy Barnett, George Henry Brandis, Hedley Grant Pearson Chapman, Patricia Margaret Crossin, Alan Baird Ferguson, Michael George Forshaw, Stephen Patrick Hutchins, Linda Jean Kirk, Philip Ross Lightfoot, Gavin Mark Marshall, Claire Mary Moore, Andrew James Marshall Murray, Hon. Judith Mary Troeth and John Odin Wentworth Watson

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

Deputy Leader of the Government in the Senate—Senator the Hon. Helen Lloyd Coonan

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. Nicholas Hugh Minchin

Deputy Leader of the Liberal Party of Australia—Senator the Hon. Helen Lloyd Coonan

Leader of The Nationals—Senator the Hon. Ronald Leslie Doyle Boswell

Deputy Leader of The Nationals—Senator the Hon. 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

Leader of the Australian Greens—Senator Robert James Brown

Leader of the Family First Party—Senator Steve Fielding

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

Nationals Whip—Senator Nigel Gregory Scullion

Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber

Australian Democrats Whip—Senator Andrew John Julian Bartlett

Australian Greens Whip—Senator Rachel Siewert

Printed by authority of the Senate

Members of the Senate

Senator	State or Territory	Term expires	Party
Abetz, Hon. Eric	TAS	30.6.2011	LP
Adams, Judith	WA	30.6.2011	LP
Allison, Lynette Fay	VIC	30.6.2008	AD
Barnett, Guy	TAS	30.6.2011	LP
Bartlett, Andrew John Julian	QLD	30.6.2008	AD
Bernardi, Cory ⁽⁵⁾	SA	30.6.2008	LP
Bishop, Thomas Mark	WA	30.6.2008	ALP
Boswell, Hon. Ronald Leslie Doyle	QLD	30.6.2008	NATS
Brandis, George Henry	QLD	30.6.2011	LP
Brown, Carol Louise ⁽⁴⁾	TAS	30.6.2008	ALP
Brown, Robert James	TAS	30.6.2008	AG
Calvert, Hon. Paul Henry	TAS	30.6.2008	LP
Campbell, George	NSW	30.6.2008	ALP
Campbell, Hon. Ian Gordon	WA	30.6.2011	LP
Carr, Kim John	VIC	30.6.2011	ALP
Chapman, Hedley Grant Pearson	SA	30.6.2008	LP
Colbeck, Hon. Richard Mansell	TAS	30.6.2008	LP
Conroy, Stephen Michael	VIC	30.6.2011	ALP
Coonan, Hon. Helen Lloyd	NSW	30.6.2008	LP
Crossin, Patricia Margaret ⁽³⁾	NT		ALP
Eggleston, Alan	WA	30.6.2008	LP
Ellison, Hon. Christopher Martin	WA	30.6.2011	LP
Evans, Christopher Vaughan	WA	30.6.2011	ALP
Faulkner, Hon. John Philip	NSW	30.6.2011	ALP
Ferguson, Alan Baird	SA	30.6.2011	LP
Ferris, Jeannie Margaret	SA	30.6.2008	LP
Fielding, Steve	VIC	30.6.2011	FF
Fierravanti-Wells, Concetta Anna	NSW	30.6.2011	LP
Fifield, Mitchell Peter ⁽²⁾	VIC	30.6.2008	LP
Forshaw, Michael George	NSW	30.6.2011	ALP
Heffernan, Hon. William Daniel	NSW	30.6.2011	LP
Hogg, John Joseph	QLD	30.6.2008	ALP
Humphries, Gary John Joseph ⁽³⁾	ACT		LP
Hurley, Annette	SA	30.6.2011	ALP
Hutchins, Stephen Patrick	NSW	30.6.2011	ALP
Johnston, David Albert Lloyd	WA	30.6.2008	LP
Joyce, Barnaby	QLD	30.6.2011	NATS
Kemp, Hon. Charles Roderick	VIC	30.6.2008	LP
Kirk, Linda Jean	SA	30.6.2008	ALP
Lightfoot, Philip Ross	WA	30.6.2008	LP
Ludwig, Joseph William	QLD	30.6.2011	ALP
Lundy, Kate Alexandra ⁽³⁾	ACT		ALP
Macdonald, Hon. Ian Douglas	QLD	30.6.2008	LP
Macdonald, John Alexander Lindsay (Sandy)	NSW	30.6.2008	NATS
McEwen, Anne	SA	30.6.2011	ALP
McGauran, Julian John James	VIC	30.6.2011	LP
McLucas, Jan Elizabeth	QLD	30.6.2011	ALP
Marshall, Gavin Mark	VIC	30.6.2008	ALP

Senator	State or Territory	Term expires	Party
Mason, Brett John	QLD	30.6.2011	LP
Milne, Christine	TAS	30.6.2011	AG
Minchin, Hon. Nicholas Hugh	SA	30.6.2011	LP
Moore, Claire Mary	QLD	30.6.2008	ALP
Murray, Andrew James Marshall	WA	30.6.2008	AD
Nash, Fiona	NSW	30.6.2011	NATS
Nettle, Kerry Michelle	NSW	30.6.2008	AG
O'Brien, Kerry Williams Kelso	TAS	30.6.2011	ALP
Parry, Stephen	TAS	30.6.2011	LP
Patterson, Hon. Kay Christine Lesley	VIC	30.6.2008	LP
Payne, Marise Ann	NSW	30.6.2008	LP
Polley, Helen	TAS	30.6.2011	ALP
Ray, Hon. Robert Francis	VIC	30.6.2008	ALP
Ronaldson, Hon. Michael	VIC	30.6.2011	LP
Santoro, Hon. Santo ⁽¹⁾	QLD	30.6.2008	LP
Scullion, Nigel Gregory ⁽³⁾	NT		CLP
Sherry, Hon. Nicholas John	TAS	30.6.2008	ALP
Siewert, Rachel	WA	30.6.2011	AG
Stephens, Ursula Mary	NSW	30.6.2008	ALP
Sterle, Glenn	WA	30.6.2011	ALP
Stott Despoja, Natasha Jessica	SA	30.6.2008	AD
Troeth, Hon. Judith Mary	VIC	30.6.2011	LP
Trood, Russell	QLD	30.6.2011	LP
Vanstone, Hon. Amanda Eloise	SA	30.6.2011	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
Wortley, Dana	SA	30.6.2011	ALP

- (1) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
(2) Chosen by the Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.
(3) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
(4) Chosen by the Parliament of Tasmania to fill a casual vacancy vice Susan Mary Mackay, resigned.
(5) Chosen by the Parliament of South Australia to fill a casual vacancy vice Hon. Robert Murray Hill, resigned.

PARTY ABBREVIATIONS

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

Heads of Parliamentary Departments

Clerk of the Senate—H Evans

Clerk of the House of Representatives—I C Harris

Secretary, Department of Parliamentary Services—H R Penfold QC

HOWARD MINISTRY

Prime Minister	The Hon. John Winston Howard MP
Minister for Trade and Deputy Prime Minister	The Hon. Mark Anthony James Vaile MP
Treasurer	The Hon. Peter Howard Costello MP
Minister for Transport and Regional Services	The Hon. Warren Errol Truss MP
Minister for Defence	The Hon. Dr Brendan John Nelson MP
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, 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 and Deputy Leader of the House	The Hon. Peter John McGauran MP
Minister for Immigration and Multicultural Affairs	Senator the Hon. Amanda Eloise Vanstone
Minister for Education, Science and Training and Minister Assisting the Prime Minister for Women's Issues	The Hon. Julie Isabel Bishop MP
Minister for Families, Community Services and Indigenous Affairs	The Hon. Malcolm Thomas Brough MP
Minister Assisting the Prime Minister for Indigenous Affairs	
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 and Deputy Leader of the Government in the Senate	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. Eric Abetz
Minister for the Arts and Sport	Senator the Hon. Charles Roderick Kemp
Minister for Human Services	The Hon. Joseph Benedict Hockey MP
Minister for Community Affairs	The Hon. John Kenneth Cobb MP
Minister for Revenue and Assistant Treasurer	The Hon. Peter Craig Dutton MP
Special Minister of State	The Hon. Gary Roy Nairn MP
Minister for Vocational and Technical Education and Minister Assisting the Prime Minister	The Hon. Gary Douglas Hardgrave MP
Minister for Ageing	Senator the Hon. Santo Santoro
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. Bruce Frederick Billson MP
Minister for Workforce Participation	The Hon. Dr Sharman Nancy Stone MP
Parliamentary Secretary to the Minister for Finance and Administration	Senator the Hon. Richard Mansell Colbeck
Parliamentary Secretary to the Minister for Industry, Tourism and Resources	The Hon. Robert Charles Baldwin MP
Parliamentary Secretary to the Minister for Health and Ageing	The Hon. Christopher Maurice Pyne MP
Parliamentary Secretary to the Minister for Defence	Senator the Hon. John Alexander Lindsay (Sandy) Macdonald
Parliamentary Secretary (Trade)	The Hon. De-Anne Margaret Kelly MP
Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs	The Hon. Andrew John Robb MP
Parliamentary Secretary to the Prime Minister	The Hon. Malcolm Bligh Turnbull MP
Parliamentary Secretary to the Treasurer	The Hon. Christopher John Pearce MP
Parliamentary Secretary to the Minister for the Environment and Heritage	The Hon. Gregory Andrew Hunt MP
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry	The Hon. Sussan Penelope Ley MP
Parliamentary Secretary to the Minister for Education, Science and Training	The Hon. Patrick Francis Farmer MP
Parliamentary Secretary (Foreign Affairs)	The Hon. Teresa Gambaro MP

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, Shadow Minister for Indigenous Affairs and Shadow Minister for Family and Community Services	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 Attorney-General	Nicola Louise Roxon MP
Shadow Minister for Industry, Infrastructure and Industrial Relations	Stephen Francis Smith MP
Shadow Minister for Foreign Affairs and Trade and Shadow Minister for International Security	Kevin Michael Rudd MP
Shadow Minister for Defence	Robert Bruce McClelland MP
Shadow Minister for Regional Development	The Hon. Simon Findlay Crean MP
Shadow Minister for Primary Industries, Resources, Forestry and Tourism	Martin John Ferguson MP
Shadow Minister for Environment and Heritage, Shadow Minister for Water and Deputy Manager of Opposition Business in the House	Anthony Norman Albanese MP
Shadow Minister for Housing, Shadow Minister for Urban Development and Shadow Minister for Local Government and Territories	Senator Kim John Carr
Shadow Minister for Public Accountability and Shadow Minister for Human Services	Kelvin John Thomson MP
Shadow Minister for Finance	Lindsay James Tanner MP
Shadow Minister for Superannuation and Intergenerational Finance and Shadow Minister for Banking and Financial Services	Senator the Hon. Nicholas John Sherry
Shadow Minister for Child Care, Shadow Minister for Youth and Shadow Minister for Women	Tanya Joan Plibersek MP
Shadow Minister for Employment and Workforce 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 Consumer Affairs and Shadow Minister for Population Health and Health Regulation	Laurie 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 Small Business and Competition	Joel Andrew Fitzgibbon MP
Shadow Minister for Transport	Senator Kerry Williams Kelso O'Brien
Shadow Minister for Sport and Recreation	Senator Kate Alexandra Lundy
Shadow Minister for Homeland Security and Shadow Minister for Aviation and Transport Security	The Hon. Archibald Ronald Bevis MP
Shadow Minister for Veterans' Affairs and Shadow Special Minister of State	Alan Peter Griffin MP
Shadow Minister for Defence Industry, Procurement and Personnel	Senator Thomas Mark Bishop
Shadow Minister for Immigration	Anthony Stephen Burke MP
Shadow Minister for Ageing, Disabilities and Carers	Senator Jan Elizabeth McLucas
Shadow Minister for Justice and Customs and Manager of Opposition Business in the Senate	Senator Joseph William Ludwig
Shadow Minister for Overseas Aid and Pacific Island Affairs	Robert Charles Grant Sercombe MP
Shadow Minister for Citizenship and Multicultural Affairs	Senator Annette Hurley
Shadow Parliamentary Secretary for Reconciliation and the Arts	Peter Robert Garrett MP
Shadow Parliamentary Secretary to the Leader of the Opposition	John Paul Murphy MP
Shadow Parliamentary Secretary for Defence and Veterans' Affairs	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 Industry, Infrastructure and Industrial Relations	Bernard Fernando Ripoll MP
Shadow Parliamentary Secretary for Immigration	Ann Kathleen Corcoran MP
Shadow Parliamentary Secretary for Treasury	Catherine Fiona King MP
Shadow Parliamentary Secretary for Science and Water	Senator Ursula Mary Stephens
Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs	The Hon. Warren Edward Snowdon MP

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Thursday, 15 June 2006

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

PETITIONS

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

Asylum Seekers

To the Honourable Members of the Senate,

The petition of the undersigned to the Honourable President and Members of the Senate in Parliament shows:

The petitioners believe in the rights of all children;

The petitioners call on you to reject the proposed new changes to Australia's refugee laws, and to ensure no child who comes to Australia seeking asylum is put into detention.

by **Senator Bob Brown** (from 32,112 citizens).

Health

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

This petition of certain citizens of Australia draws to the attention of the Senate, the crisis in the medical workforce due to the neglect of the Howard Government.

Your petitioners therefore ask the Senate to:

- Increase the number of undergraduate university places for medical students,
- Increase the number of medical training places, and
- Ensure Australia trains enough Australian doctors, nurses and other medical professionals to maintain the quality care provided by our hospitals and other health services in the future.

by **Senator Hogg** (from 1,237 citizens).

Workplace Relations

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

The petition of certain citizens of Australia draws the attention of the Senate to the fact that Australian employees will be worse off as a result of the Howard Government's proposed changes to the industrial relations system.

The petitioners call upon the Howard Government to adopt a plan to produce a fair industrial relations system based on fairness and the fundamental principles of minimum standards, wages and conditions; safety nets; an independent umpire; the right to associate; and the right to collectively bargain.

The Petitioners therefore ask the Senate to ensure that the Howard Government:

- (1) Guarantees that no individual Australia employee will be worse off under proposed changes to the industrial relation system.
- (2) Allows the National Minimum Wage to continue to be set annually by the independent umpire, the Australian Industrial Relations Commission.
- (3) Guarantees that unfair dismissal law changes will not enable employers to unfairly sack employees.
- (4) Ensures that workers have the right to reject individual contracts and bargain for decent wages and conditions collectively.
- (5) Keeps in place safety nets for minimum wages and conditions.
- (6) Adopt Federal Labor's principles to produce a fair system based on the fundamental principles on minimum standards, wages and conditions; safety nets; an independent umpire; the right to associate; and the right to collectively bargain.

by **Senator Moore** (from 73 citizens).

Petitions received.

NOTICES

Presentation

Senator Stott Despoja to move on the next day of sitting:

That the Senate—

- (a) notes:
 - (i) that 19 June 2006 is Daw Aung San Suu Kyi's 61st birthday,

- (ii) that Daw Aung San Suu Kyi has spent more than 10 years in detention and that on 27 May 2006 her house arrest was extended by the Burmese military junta for another year, and on her 61st birthday she is no closer to freedom,
 - (iii) the continued suffering of the Burmese people at the hands of the Burmese military regime, and
 - (iv) that so long as Daw Aung San Suu Kyi's house arrest continues, Burma's development toward democracy will remain critically constrained; and
- (b) urges the Government to maintain pressure on the regime.

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

That the following bill be introduced: A Bill for an Act to abolish the power of the Commonwealth executive government to disallow any Act of the Legislative Assembly of the Australian Capital Territory, and for related purposes. *Australian Capital Territory (Self-Government) Amendment (Disallowance Power of Governor-General) Bill 2006*.

Withdrawal

Senator BARTLETT (Queensland) (9.31 am)—At the request of Senator Allison, I withdraw business of the Senate notice of motion No. 1.

BUSINESS

Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.32 am)—I move:

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

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> No. 6 Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006 No. 7 Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2006 | <ul style="list-style-type: none"> No. 8 Tax Laws Amendment (2006 Measures No. 2) Bill 2006 No. 9 Export Market Development Grants Legislation Amendment Bill 2006 No. 10 Age Discrimination Amendment Bill 2006 No. 11 Plant Health Australia (Plant Industries) Funding Amendment Bill 2006 No. 12 Fisheries Legislation Amendment (Foreign Fishing Offences) Bill 2006 No. 13 Energy Legislation Amendment Bill 2006 No. 14 Australian Trade Commission Legislation Amendment Bill 2006 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Question agreed to.

LEAVE OF ABSENCE

Senator FERRIS (South Australia) (9.32 am)—by leave—I move:

That leave of absence be granted to: Senator Ian Campbell for the period 15 to 21 June 2006, on account of government business overseas; and Senator Ellison on 15 and 16 June 2006 on account of family reasons.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.33 am)—Of course, we will give leave. But I want to note here that both ministers, for whatever reason, are asking for leave from this place tomorrow. The government has insisted that we sit tomorrow, Friday, to truncate the normal sittings of the Senate. We are sitting here fewer days, if you discount election years, than any Senate since 1964. We are being forced into long sittings, and the guillotine and gag are being used. I note that it is a bit cute of the government to be asking the Senate to excuse ministers but forcing everybody else to sit Fridays because it does not like this place.

Question agreed to.

NOTICES**Postponement**

The following items of business were postponed:

Business of the Senate notice of motion no. 3 standing in the name of Senator Siewert for today, proposing the reference of a matter to the Community Affairs Legislation Committee, postponed till 20 June 2006.

General business notice of motion no. 440 standing in the name of Senator Bartlett for today, proposing the introduction of the Migration Legislation Amendment (Appropriate Access to Detention Centres) Bill 2006, postponed till 19 June 2006.

General business notice of motion no. 445 standing in the name of the Chair of the Employment, Workplace Relations and Education References Committee (Senator Marshall) for today, relating to relating to an extension of time for the committee to report, postponed till 20 June 2006.

General business notice of motion no. 450 standing in the name of the Chair of the Rural and Regional Affairs and Transport References Committee (Senator Siewert) for today, relating to an extension of time for the committee to report, postponed till 20 June 2006.

General business notice of motion no. 451 standing in the name of Senator Siewert for today, relating to high seas bottom trawling, postponed till 19 June 2006.

General business notice of motion no. 453 standing in the name of Senator Nettle for today, relating to West Papua, postponed till 19 June 2006.

PARLIAMENTARY ZONE

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.34 am)—At the request of the Parliamentary Secretary to the Minister for Defence, Senator Sandy Macdonald, I move:

That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposals by the National Capital Authority for capi-

tal works within the Parliamentary Zone, being the temporary installation of two sculptures at Questacon, Parkes Place, and improvements to the existing Lobby Cafe.

Question agreed to.

WORLD ELDER ABUSE AWARENESS DAY

Senator NETTLE (New South Wales) (9.35 am)—I ask that general business notice of motion No. 454, which relates to World Elder Abuse Awareness Day, be taken as a formal motion.

The PRESIDENT—Do you mean motion No. 454 or No. 453? In my notes, No. 454 relates to West Papua. I have just been advised it is a misprint. You are correct; my notes are wrong.

Senator Kemp—Can I just get a point of clarification? There is slight confusion over the motion which is being moved. Could Senator Nettle clarify that.

Senator NETTLE—Yes, I will clarify that. As we have just heard from the Clerk, motion No. 453, which relates to West Papua and the security treaty with Indonesia, has been postponed. What I am doing now is seeking leave to move motion No. 454, which relates to recognising that today is World Elder Abuse Awareness Day.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.36 am)—by leave—I would like to make a short statement before agreeing to take this as a formal motion. Like many senators in this place today and in the past, I am of the view that there is a range of business that should not be dealt with as formal business. Many complex propositions are put forward in this place and deserve to be debated. It is an abuse of the formal business process to put these complex propositions to a simple yes/no decision, without the opportunity to really debate them. Formal business is intended for simple process matters or matters where there is no

need for debate. Mr President, could you ask the Procedure Committee to again have a look at this matter. On a number of motions today that are not really substantive or where there is not really an opportunity to debate them, I will be abstaining.

The PRESIDENT—There is no objection to the motion being taken as formal, but I have noted what you have said. Of course, you can always deny formality, Senator Fielding, if that is your wish.

Senator NETTLE (New South Wales) (9.37 am)—by leave—One of the regular things that we do in the Senate is acknowledge particular days of national significance. This motion is about one of those days: World Elder Abuse Awareness Day. It is an issue we have spoken about in this chamber. I had the opportunity to speak with the office of the minister, who I understand is in agreement with recognising and acknowledging this day. One of the practices of this chamber is that when people want to discuss a particular motion that is being put forward the opportunity is there for them to do that, by giving notice the day before. That is the opportunity that the minister's office took up, to speak with me last night about this motion, and we were able to reach agreement and be happy to proceed with this motion. That is an opportunity that is open to all senators who seek to engage in the debate, and I encourage all senators, including Senator Fielding, to take that opportunity as other senators do.

The PRESIDENT—Senator Nettle, there is no objection to formality so I would ask you to move the motion.

Senator NETTLE (New South Wales) (9.38 am)—I move:

That the Senate—

(a) notes that:

- (i) Thursday, 15 June 2006 is World Elder Abuse Awareness Day aimed at pro-

moting a better understanding of abuse and neglect of older persons,

- (ii) the United Nations International Plan of Action on Ageing recognises the significance of elder abuse as a public health and human rights issue,
 - (iii) no community or country in the world, including Australia, is immune from this costly public health and human rights crisis, and
 - (iv) Australia's seniors are valued members of society and it is our collective responsibility to ensure they live safely and with dignity; and
- (b) calls on the Government to support initiatives that will ensure:
- (i) the safety of elder Australians in their homes, in aged care facilities, and in the wider community, and
 - (ii) that elder Australians have access to adequate food, housing standards and medical care.

Question agreed to.

**MIGRATION LEGISLATION
AMENDMENT (MIGRATION ZONE
EXCISION REPEAL)
(CONSEQUENTIAL PROVISIONS)
BILL 2006**

**MIGRATION LEGISLATION
AMENDMENT (MIGRATION ZONE
EXCISION REPEAL) BILL 2006**

First Reading

Senator BARTLETT (Queensland) (9.40 am)—I move:

That the following bills be introduced: A Bill for an Act to amend the *Migration Act 1958* to make consequential provisions for returning excised offshore places to Australia's migration zone, and for related purposes; and A Bill for an Act to amend the *Migration Act 1958* to return excised offshore places to Australia's migration zone, and for related purposes.

Question agreed to.

Senator BARTLETT (Queensland) (9.40 am)—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 BARTLETT (Queensland) (9.40 am)—I move:

That these bills 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—

These two Private Senators' Bills are part of a series of Migration Act Amendment Bills which I will seek to table in the course of this parliamentary year.

These two Bills seek to reverse one of the more unjust legislative initiatives of the current Coalition government. It is particularly appropriate at a time when the government is once again seeking to further injustice and prevent proper accountability in the Migration Act through the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, which in effect seeks to excise the whole of Australia from asylum seekers who arrive by boat and place them outside the reach of Australian law and public scrutiny.

The purpose of these Bills is to turn back the provisions introduced by the Migration Amendment (Excision from Migration Zone) Act 2001 which removed Australian territory from the migration zone and effectively was a mechanism to give the government and the Department of Immigration absolute power without any opportunity for oversight by an independent body.

The Migration Amendment (Excision from Migration Zone)(Consequential Provisions) Act 2001 also effectively created categories of second class and third class visas and created yet another class of refugees with reduced rights.

Both pieces of legislation were rammed through with Government and Labor support in 2001 in a

package of 7 Migration bills. Neither the Senate nor the public had adequate opportunity to examine their implications and the potential consequence for asylum seekers seeking protection from persecution.

The Democrats fought hard against the introduction of those pieces of legislation. While I was very frustrated by my inability to prevent passage of the legislation, it has been far more distressing to see the immense human damage which has occurred as a direct consequence—at enormous public expense.

The period in 2001 when these changes were being rammed through the Senate was one of upheaval, following on from the extraordinary Tampa crisis engineered by the Coalition government, and then the shock of the September 11 attacks in the USA. Five years later, many Australians are no longer taken in by the myths propagated by the Government that linked asylum seekers to terrorists and played on community fears and uncertainties.

The introduction of the Excision Acts in 2001 has created suffering and hardship for many refugees who were taken to places like Nauru, Christmas Island and Manus Island. I am the only Australian Parliamentarian who has three times visited the refugees on Nauru, as well as on Christmas Island, and I have seen first hand the despair in these camps and the misery that families, men, women and children have endured for years because of these laws.

Although unfortunately there has never been a comprehensive examination by a Parliamentary Committee of what occurred with asylum seekers on Nauru and Manus Island, some partial examination has now occurred as part of a number of wider Senate Committee inquiries. The Senate Reports of the Select Committee Inquiry into a Certain Maritime Incident (usually known as the Children Overboard Inquiry) in 2003, the Legal and Constitution References Committee inquiry into the administration of the Migration Act in 2006, and most recently the Legal and Constitution Legislation Committee inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 each contain evidence of the maladministration and injustice that has occurred.

The 2001 Excision Acts places refugees in a Guantanamo Bay situation, outside the reach of the rule of law, with no legal protection of their rights and no guarantee of proper scrutiny and accountability. This is an unacceptable law for a modern democracy to have in place.

These two Private Senators Bills will repeal and abolish these offensive provisions. I commend these bills to the Senate.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

SAME-SEX MARRIAGES BILL 2006

First Reading

Senator BARTLETT (Queensland) (9.42 am)—I, and also on behalf of Senator Stott Despoja, move:

That the following bill be introduced: A Bill for an Act to amend the *Marriage Act 1961* to provide for same-sex marriages, and for related purposes.

Question agreed to.

Senator BARTLETT (Queensland) (9.42 am)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator BARTLETT (Queensland) (9.42 am)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Same-Sex Marriages Bill 2006 aims to amend the Marriage Act 1961 to allow for same-sex unions in Australia.

The bill will allow for both same-sex marriages and same-sex civil unions. While the Democrats understand that many same-sex couples prefer civil unions to marriage, these can not be legis-

lated for at the Federal level without first removing the prohibition on same-sex marriage which was introduced in 2004.

Specifically, the bill reverses the Marriage Amendment Act 2004 by repealing the definition of marriage, which in 2004 changed the definition to that of a union between one man and one woman only; and repealing a section in the Act which prevents same-sex unions solemnised in a foreign country from being recognised in Australia.

In addition to reversing these 2004 changes, the bill:

- includes a “to avoid doubt” clause, stating that nothing in the Act should be intended to prevent the union of two people of the same sex;
- uses gender neutral language to accommodate unions between both heterosexual and homosexual couples, including making some minor changes to the words to be used by celebrants in officiating at marriages; and,
- amends another reference to husbands and wives in the Marriage Act, to replace a provision relating to minors who were adopted by “a husband and wife jointly” with the gender neutral term “two people jointly”.

Since our inception in 1977, the Australian Democrats have strongly advocated to allow people in same-sex relationships equal status to those in heterosexual relationships.

The Same-Sex Marriages Bill 2006 seeks to remedy Australian legislation by ensuring that same-sex unions are given equal status to heterosexual marriage thus removing a form of discrimination that is currently accepted by some politicians and religious groups.

In May, the Australian Capital Territory became the first Australian jurisdiction in which same-sex couples are legally allowed to pledge their love and commitment to each other in the presence of family and friends at a civil union which will entitle them to be treated the same way as a married couple under ACT law.

Since 2003, a registration system for same-sex couples has operated in Tasmania, which gives those who register their relationships equal rights to married couples.

Many other Western countries, such as Canada, the United Kingdom and our neighbour New Zealand, have enacted laws to provide for same-sex civil unions.

Yet, while our Prime Minister has claimed that he is “strongly in favour ... of removing any property and other discrimination that exists against people who have same-sex relationships” he will not allow people of the same sex who are engaged in a loving and committed relationship, voluntarily entered into for life, to be afforded the same rights as married couples. In fact, the Government deliberately reinforced the inequity of same-sex relationships through its 2004 amendments to the Marriage Amendment Act 2004.

There were some justifications used for this, based on a narrow definition of what it means to be a family; that a family should consist of a dad, a mum, 3 kids, a dog and a station wagon. Senator Boswell said, “It is a union designed to provide a loving environment in which to create and nurture children... In order to protect our children, marriage undoubtedly provides the best environment for raising those children”. Former Senator Harradine agreed; “There is value in the current system of marriage... it provides a very stable environment in which to raise children”.

This argument fails to take into account the best interests of children who do live in a situation with two mums, or two dads. If a marriage is the best environment for children to be raised in, due to increased happiness, prolonged life expectancy and a lower rate of criminal involvement, then it is only fair that the children in a homosexual family should be privy to this as well.

In addition, heterosexual marriage is not necessarily always entered into for reproductive purposes. Those who are unable to or choose not to have children have the equal right to enter into marriage based on the fact that their relationship is between a man and a woman. The claim that marriage is primarily for reproductive purposes is clearly misleading.

We do not want to send the message that discrimination is acceptable in Australia to our children, or to other nations.

Those against same-sex unions argue that it would destroy the ‘sanctity’ of the institution. However, with the climbing divorce rate and decreasing rate of heterosexual marriage, an increase in its participation rates could possibly strengthen it. In countries which have recognised same-sex unions for a reasonable period of time, heterosexual marriage still exists and the institution has not fallen into disarray.

Marriage is not a fixed institution—it changes, evolves and becomes more progressive as times and social attitudes change. It was only three decades ago that we had the arguably flawed system of the ‘fault’ divorce; a system which was recognised to be unfair towards women and which brought into the court system matters that did not belong there. It is only natural that marriage and its governing laws evolve once again. In this decade, social attitudes have changed and same-sex relationships are an unavoidable, natural fact of life. It is unfair that this is not recognised by Australian laws, particularly because same-sex unions that have been legally performed overseas are not recognised here.

It is contradictory for politicians from both sides to claim they believe that the discrimination against gays and lesbians in Australian legislation should be amended, and that relationships should not face unfair barriers, when both major parties voted for the Marriage Amendment Act 2004 and have blocked many of the attempts by the Democrats over the years to remove discrimination against same-sex couples.

The Same-Sex Marriages Bill 2006 represents a significant step towards eradicating this discrimination at a Federal level. It will allow people in same-sex relationships to legalise their unions and gain the recognition, rights and status of people in heterosexual marriages.

I commend this bill to the Senate.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Meeting

Senator BARTLETT (Queensland) (9.42 am)—I move:

That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold a public meeting during the sitting of the Senate on Friday, 16 June 2006, from 9 am, to take evidence for the committee's inquiry into Australia's national parks.

Question agreed to.

SMARTCARD PROPOSAL

Senator BARTLETT (Queensland) (9.42 am)—At the request of Senator Stott Despoja, I move:

That there be laid on the table by the Minister Representing the Minister for Human Services (Senator Kemp), no later than the end of question time on 19 June 2006, the following documents:

- (a) the Government's Privacy Impact Statement on its smartcard proposal; and
- (b) all privacy advice relating to the smartcard proposal obtained by the Government from Mr Nigel Waters (Pacific Privacy Consulting).

Question negatived.

Senator Bob Brown—I ask that *Hansard* record the Greens' support for that motion.

The PRESIDENT—That is noted.

MR DAVID HICKS

Senator BARTLETT (Queensland) (9.43 am)—by leave—At the request of Senator Stott Despoja, I move the motion as amended:

That the Senate—

- (a) notes:
 - (i) the condemnation of the United States of America (US) military detention facility at Guantanamo Bay by British

Attorney-General Lord Goldsmith and his call for the facility to be closed,

- (ii) Lord Goldsmith's comments that the US military tribunal system does not offer 'sufficient guarantees of a fair trial in accordance with international standards',
 - (iii) that a number of world leaders, including German Chancellor Angela Merkel, British Prime Minister Tony Blair and Danish Prime Minister Anders Fogh Rasmussen, have also called for the facility to be closed,
 - (iv) that, in February 2006, a report by the United Nations (UN) condemned the operation of Guantanamo Bay as a military detention facility, and in May 2006 the UN Committee against Torture called for the facility to be closed as it breaches international law,
 - (v) human rights groups including Amnesty International have repeatedly called for the facility to be closed,
 - (vi) the recent suicide of three Guantanamo Bay inmates,
 - (vii) the long history of the US Central Intelligence Agency's use of invasive physiological and subtle psychological interrogation techniques against suspected national security threats as documented by American historian, Professor Alfred W McCoy, and
 - (viii) that South Australian David Hicks has now been held at Guantanamo Bay for more than 4 years and is awaiting trial under the commission process, pending a ruling on the legality of the process by the US Supreme Court; and
- (b) calls on the Government to:
- (i) acknowledge the criticism of Guantanamo Bay by international leaders and jurists,
 - (ii) join international calls for the Guantanamo Bay military facility to be closed, and
 - (iii) seek the repatriation of citizen David Hicks or take urgent action to ensure

that David Hicks receives a full and fair trial that meets international standards of human rights and justice.

Question negatived.

Senator Bob Brown—Once again, could I have the Greens' support for that motion noted.

The PRESIDENT—It is noted.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint

Meeting

Senator FERRIS (South Australia) (9.44 am)—At the request of the Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Senator Ferguson, I move:

That—

- (a) the Defence sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade be authorised to hold a public meeting during the sitting of the Senate on Friday, 16 June 2006, from 9.30 am to 11.15 am, to take evidence for the committee's inquiry into the review of the Defence annual report 2004-05; and
- (b) the Trade sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade be authorised to hold a public meeting during the sitting of the Senate on Friday, 16 June 2006, from 11.45 am to 4 pm, to take evidence for the committee's inquiry into the review of the Australia-New Zealand Closer Economic Relations Trade Agreement.

Question agreed to.

Public Accounts and Audit Committee

Meeting

Senator FERRIS (South Australia) (9.44 am)—At the request of Senator Watson, I move:

That the Joint Committee of Public Accounts and Audit be authorised to hold public meetings during the sitting of the Senate as follows:

- (a) on Friday, 16 June 2006, from 9.30 am to 3.30 pm, to take evidence for the committee's inquiry into certain taxation matters;
- (b) on Thursday, 22 June 2006, from 10 am to noon, to take evidence for the committee's inquiry into financial reporting and equipment acquisition at the Department of Defence and Defence Materiel Organisation; and
- (c) on Friday, 23 June 2006, from 10 am to 4 pm, to take evidence for the committee's review of Auditor-General's reports.

Question agreed to.

Foreign Affairs, Defence and Trade Legislation Committee

Meeting

Senator FERRIS (South Australia) (9.44 am)—At the request of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee, Senator Johnston, I move:

That the Foreign Affairs, Defence and Trade Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 19 June 2006, from 4.30 pm, to take evidence for the committee's inquiry into the implementation of recommendations on Australia's military justice system.

Question agreed to.

PETROLEUM RESOURCE RENT TAX ASSESSMENT AMENDMENT BILL 2006

PETROLEUM RESOURCE RENT TAX (INSTALMENT TRANSFER INTEREST CHARGE IMPOSITION) BILL 2006

AUSTRALIAN RESEARCH COUNCIL AMENDMENT BILL 2006

First Reading

Bills received from the House of Representatives.

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.46 am)—These bills are being introduced together. After debate on the motion for the second reading has been adjourned, I shall move a motion to

have one of the bills listed separately on the *Notice Paper*. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.46 am)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

PETROLEUM RESOURCE RENT TAX ASSESSMENT AMENDMENT BILL 2006

This bill principally amends the Petroleum Resource Rent Tax Assessment Act 1987, to implement a range of changes and improvements to Australia's primary offshore petroleum taxation system. The changes will take effect from 1 July 2006.

The petroleum resource rent tax, or PRRT, is a tax on net income derived from all petroleum projects in Commonwealth offshore areas excluding the North West Shelf project area. It is assessed on a project basis and the liability to pay PRRT is imposed on a taxpayer in relation to its interest in the project. This liability is based on the project receipts less project expenditures.

Undeducted exploration expenditure is allowed to be transferred from a non-paying PRRT project to a PRRT paying project, provided that continuity of ownership of both projects is maintained.

The amendments reduce compliance costs, improve administration and remove inconsistencies in the Petroleum Resource Rent Tax Assessment Act 1987.

Furthermore, the changes are consistent with the Government's overall approach to taxation reform directed at simplifying Australia's taxation system and making the Australian taxation system internationally competitive.

Schedule 1 of the bill requires taxpayers to transfer and deduct transferable exploration expenditure when calculating their PRRT quarterly tax instalment.

Currently, PRRT taxpayers can only transfer and deduct exploration expenditure at the end of the year of tax. Consequently, companies often 'overpay' PRRT in the first three instalment quarters, only to receive an adjustment for this overpayment in the fourth quarter. Taxpayers do not receive interest compensation on these 'overpayments', and as such forgo the time value of money.

An interest charge will be applied at the end of the year of tax if any unusable amounts of transferable exploration expenditure are claimed in the quarterly instalments. The interest charge is designed to recoup the time value of money associated with the delay in the payment of tax.

Schedule 2 of the bill allows internal corporate restructuring within company groups to occur without losing the ability to transfer exploration expenditure between the petroleum projects of group members.

This measure removes a taxation distortion in the PRRT which prevents a company group from adopting the most efficient corporate structure. This taxation distortion results in company groups maintaining inactive companies, merely to protect their future ability to transfer unused exploration expenditure. The amendments will only apply to internal corporate restructures that occur on or after 1 July 2006.

Allowing internal corporate restructuring to occur under the PRRT without incurring a tax penalty is consistent with the approach adopted for income tax purposes.

Schedule 3 of the bill allows the present value of expected future expenditures to close down an infrastructure facility associated with a particular petroleum project to be deductible against the PRRT receipts of this project. This change is made to the extent that these costs are currently not recognised for PRRT purposes.

This change removes a taxation impediment preventing existing project infrastructure to be used efficiently. The efficient use of existing infra-

structure will enable the optimal development of Australia's limited petroleum resources.

Schedule 4 of the bill introduces the self assessment regime for PRRT taxpayers as it generally applies under income tax. This change will result in PRRT taxpayers being able to fully self assess their PRRT liability.

Further, it enables PRRT taxpayers to obtain legally binding rulings from the Australian Taxation Office in relation to PRRT matters. At present they can only obtain administratively binding advice. This change provides greater certainty for PRRT taxpayers.

The Government has recently implemented a number of reforms to the income tax self assessment regime. These reforms arose from the Government's Review of Aspects of Income Tax Self Assessment. Schedule 4 of the bill introduces these changes, where applicable, into the PRRT regime.

Schedule 5 of the bill introduces several unrelated amendments to the PRRT. There are three primary amendments.

First, payments of fringe benefits tax will be a deductible expense for PRRT purposes, provided such payments are not indirect costs which are excluded expenditures for PRRT purposes. Deductibility of payments of fringe benefits tax for PRRT purposes is consistent with the income tax treatment of these payments. Second, vendors disposing of an interest in a petroleum project will be required to provide a transfer notice to the purchaser of this project, setting out relevant information such as the amount of undeducted expenditure available.

This measure is designed to overcome the information asymmetry that exists between parties to a PRRT transaction, and is expected to ease compliance costs for the purchaser. Finally, the lodgement period for PRRT annual returns will be extended from 42 days to 60 days. This measure will ease compliance costs for PRRT taxpayers.

Full details of the measures in the bill are contained in the explanatory memorandum.

PETROLEUM RESOURCE RENT TAX (INSTALMENT TRANSFER INTEREST CHARGE IMPOSITION) BILL 2006

This bill is a companion bill to the Petroleum Resource Rent Tax Assessment Amendment Bill 2006.

The purpose of this bill is to ensure constitutional validity of the 'instalment transfer interest charge'. This charge is designed to recoup the time value of money associated with transfer of exploration expenditure in working out a quarterly instalment of tax that is subsequently reversed. It relates to the measure contained in Schedule 1 to the Petroleum Resource Rent Tax Assessment Amendment Bill 2006.

Full details of the measure in this bill is contained in the explanatory memorandum already presented.

AUSTRALIAN RESEARCH COUNCIL AMENDMENT BILL 2006

The Australian Research Council Amendment Bill 2006 amends the Australian Research Council Act 2001 to implement changes to the governance arrangements of the Australian Research Council (ARC). These changes form part of the Government's response to the recommendations of the Review of the Corporate Governance of Statutory Authorities and Office Holders conducted by Mr John Uhrig.

The assessment of the ARC against the recommendations of the Uhrig Review found that the functions of the ARC are best suited to the executive management template. The bill will enhance the ARC's governance arrangements to make it fully consistent with this template. This includes retiring the ARC Board and transferring the majority of the Board's functions and responsibilities to the CEO of the ARC.

The retirement of the ARC Board will remove the potential for confusion between the responsibilities of the ARC Board and those of the CEO. It will allow the ARC to act quickly in identifying and funding high quality research. It will ensure that the chief executive has both full power to act and full responsibility for the activities and operations of the ARC.

The ARC will remain a prescribed agency under the Financial Management and Accountability Act (1997). In keeping with the Government's Knowledge and Innovation policy announcement of 2001, the ARC will remain a statutory agency separate from my department.

The ARC will retain the peer review arrangements of its College of Experts. The 75 members of the College of Experts, and the thousands of Australian and International readers who commit their time to peer review, perform a vital function. Their contribution to the national innovation system will continue.

These enhancements to the ARC's governance arrangements will be complemented by other changes. I will issue a statement of expectations to the ARC's chief executive officer to outline the Government's current objectives relevant to the authority, as well as any broad expectations that I have for the ARC. This will include the timeframe for announcing the outcomes of the grant processes for the ARC's two major programs (Discovery and Linkage). The ARC CEO will reply with a statement of intent, outlining how the ARC proposes to meet my expectations.

The ARC's statement of intent will not replace its strategic planning processes, which will continue to cover a rolling triennium. Rather, the statement of intent will allow the ARC to give me an indication of how it proposes to respond to my specific concerns. These documents will be made public.

The CEO will receive input on research matters directly from an Advisory Committee, which I will create under the new provisions of the Act. The Committee will have a broad membership and will focus on providing strategic advice about the ARC's operations. The Committee will not look at individual grant applications.

This will be the responsibility of the College of Experts, which will make recommendations directly to the ARC CEO, who will in turn provide the Minister with advice. This will expedite the ARC's funding processes, provide greater certainty to researchers about the future of their ARC funding and allow the ARC to respond quickly and flexibly to emerging priorities.

I commend the bill to the Senate.

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

Ordered that the Australian Research Council Amendment Bill 2006 be listed on the *Notice Paper* as a separate order of the day.

BUSINESS

Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (9.47 am)—I move:

That intervening business be postponed until after consideration of business of the Senate notice of motion No. 4.

Question agreed to.

AUSTRALIAN CAPITAL TERRITORY CIVIL UNIONS LEGISLATION

Senator NETTLE (New South Wales) (9.47 am)—I, and also on behalf of Senators Ludwig and Stott Despoja, move:

That the instrument made by the Governor-General on 13 June 2006 under subsection 35(2) of the *Australian Capital Territory (Self-Government) Act 1988*, disallowing the *Civil Unions Act 2006* (ACT), be disallowed.

I am pleased to be moving this motion to disallow the federal government's intervention in the ACT Civil Unions Act and to be doing so on behalf of all the opposition parties in the Senate. Unfortunately, there are not a large number of debates in the Senate in which parliamentarians have the opportunity to truly engage with an issue and argue from the bottom of their hearts about something that means something very significant to them. For me, this is one such debate, as it was last year when we debated in the parliament the ban on same-sex marriages.

One of the things that I think helps parliamentarians to be able to engage with these sorts of issues is when they know people who are directly impacted by the legislation. That was the case for me last year, and it is the case for me again today. I spoke last

night to a friend of mine, Hannah. She sent me a copy of an email that she had sent to a number of parliamentarians, and I will share that email with the Senate. She wrote:

My partner and I had been planning to celebrate our union with a civil union in Canberra in September this year. Unfortunately, all the plans are now on hold again.

This is something we and our families have been looking forward to since we announced our intentions at Christmas last year. My partner's children, who live with us and see their dad every weekend, have been especially excited and have been asking whether they are allowed to call my parents their "step-granddad" and "step-grandma" yet. For them, seeing their mum and I enter into a civil union in front of family and friends helps send the message that I am committed to being their stepmum, that we are family, and that we are together for the long haul. I want to do everything I can to provide a secure and nurturing home environment for my partner's children.

Whatever happens regarding the ACT Civil Unions Act, we are going to have a ceremony and celebration anyway, however, it is very hurtful that the Federal Government is now going out of its way to dismantle the closest thing we have to relationship equality in Australia. I don't want to have a big political debate, I just want to do the very best I can to be a good partner and a good stepparent, and for my stepdaughters to be able to say "that's my stepmum" at school without sparking a Daily Telegraph front page.

Hannah told me last night about how her partner's excited children had been planning what they were going to wear to the civil union ceremony. She told me about explaining to her partner's 12-year-old daughter that John Howard was going to try to stop them from being able to have their ceremony in Canberra. The 12-year-old said, 'It's none of his business and it is not up to him who can fall in love.' I reckon that 12-year-old has a better handle on what this debate is about than a lot of parliamentarians do. She understands that this debate is about love. It is about who can love each other and who can

have their relationships recognised. The Greens are proud to say that all love is equal and that every Australian has the right to have their relationship recognised before the law.

Yesterday morning, Senator Bob Brown and I were very briefly introduced to two young men from Canberra who want to have their civil union relationship recognised. They could not understand how their love for each other could possibly threaten the love that other Australians have for their partners all around Australia. And that was a sentiment expressed by a letter writer in the *Sydney Morning Herald* on Saturday. He wrote:

On Monday morning my partner and I went to work, then met some friends to see a movie, ate Thai takeaway while watching *Enough Rope*, then went to bed. On Tuesday we went to work, met some other friends for dinner, drank a bit too much red wine, then went to bed. On Wednesday morning, work again and tonight we'll probably just watch a bit of tele.

In those three days George Bush, John Howard, Philip Ruddock and the Vatican all announced that recognition of our relationship was a threat to heterosexual marriage and the family itself. And here we were thinking we were just living our lives.

Apologies to those whose marriages and families were destroyed as a result of our actions. We will try to be more careful in the future.

It is sad that we are having this debate here today and, as I say, it is the second time since I have been in parliament that we have seen the government go to extraordinary lengths to ensure that same-sex couples remain second-class citizens in their eyes. I hope that we do not have in the debate here in the Senate some of the same archaic attitudes that we heard during the debate on banning same-sex marriage last year.

Perhaps I should not have been quite so astounded to hear views in parliament that were so out of touch with sentiment in the

Australian community when we had that debate last year, but I was genuinely astounded at how out of touch some of the attitudes expressed in the debate last year were. I felt as though I had stepped back into the Dark Ages when I heard some of the arguments being put forward by parliamentarians.

Now we face the extraordinary spectacle of the Attorney-General scurrying off to Yarralumla to use the Commonwealth's power under the Australian Capital Territory (Self-Government) Act to quash the ACT Civil Unions Act 2006. We understand that he has done this before briefing his colleagues who had expressed concerns about this move. In effect, he delivered a *fait accompli* to his party room when he knew that a number of his colleagues and the voters of the ACT want this issue resolved differently.

What is all the fuss about? What has happened in the ACT that is so dangerous that the minister, at the behest of the Prime Minister no doubt, has bypassed parliament, bypassed his own party room and quashed the law passed by the duly elected ACT legislature? It is a law that was part of the ACT government's platform not once but during two elections. What is all the panic about? I do not know, and there is only the slightest of clues in the explanatory statement that accompanies the minister's disallowance. It says that his disallowance 'supports the fundamental institution of marriage' and that 'the unique status of marriage is undermined by any measure that elevates other relationships to the same or similar level of public recognition and legal status'. That is difficult to understand and make sense of when you note these comments made by Minister Ruddock on ABC radio in January this year:

... most of the coalition would say that if a person wished to enter into a civil union, as distinct from a marriage ... we have no problem.

He went on to say, 'It is a matter for the states and territories.' It appears that that view has changed because, after the Attorney-General said in January that he had no problem with civil unions, he went to visit the Governor-General and have this changed. The Prime Minister said last week:

The fundamental difficulty I have with the ACT legislation is a clause which says that a civil union is different from a marriage but it has the same entitlements, now that is the equivalent of saying to somebody who's passed the HSC and wants to get into a particular course, it's saying to them well you haven't got the requisite tertiary education score but we will let you go in the course anyway. I mean it's a little bit hypocritical ...

Putting aside the fact that this is exactly what this government's higher education policies do allow, the explanation is pathetic. It is hard to know what the Attorney-General and the Prime Minister are on about. How on earth does allowing same-sex couples to have civil unions undermine marriage? How does disallowing them from doing this support marriage? Is there anyone who genuinely believes that this is the case?

Same-sex couples have been having their relationships recognised by law in marriages or civil unions of some form in many countries for many years. In the United Kingdom, Canada, New Zealand, Belgium, the Netherlands, South Africa, Ireland and Scotland, same-sex couples can and do have civil unions. Many Australians, including friends of mine, have moved to those countries in order to have their relationships recognised and are no longer here, contributing to the Australian community, because they wanted to live in a society in which their relationship is recognised and where they could contribute to the country they live in.

Is the minister really asking the Senate and the people of the ACT to believe that the marriages of heterosexual couples in all

these countries where civil unions and gay marriage are now allowed have been undermined? When Prime Minister Blair was here earlier this year, did the Prime Minister inquire how his marriage was? Presumably his marriage, like all other marriages in Britain, has been undermined by the legal union of thousands of British same-sex couples! That is the Prime Minister's argument and presumably that is what he thinks. I ask this rhetorical question because it highlights the utterly ridiculous nature of the government's argument. The reality is that the consequences of these countries allowing same-sex unions is that thousands of loving couples have been able to enjoy the legal and emotional benefits of having their relationships recognised by the law. In short, all that has happened is that thousands of loving couples and their families and friends have been made happier—and no-one has been harmed. No marriages have failed as a result and nothing has been undermined.

The Prime Minister was a bit more forthright on this issue during the debate on the Marriage Act in 2004, in which he revealed that for him same-sex marriages would 'do nothing to support the survival of the species'. This outrageous remark by the Prime Minister is perhaps a clue to the real motivation behind his government's actions. It is a motivation based in prejudicial, homophobic views typical of the 1950s rather than the Australia of the 21st century. That the Prime Minister and his colleagues are increasingly out of step with the community on this matter is borne out by recent polling.

Last week the *Age* provided research extrapolated from the Australian Survey of Social Attitudes, a poll of more than 2,000 people conducted last year, which suggested support for civil unions in Australia is about 50 per cent. Moreover, about two-thirds of Australians say that they accept the idea of

gay and lesbian relationships. Sociologist Shaun Wilson commented:

It's improved markedly, with young people, in particular, overwhelmingly, supportive of both gay marriage and civil unions.

Perhaps we should not be surprised that those community attitudes are not reflected in here. When we look in particular at the parliamentarians on the government bench, we see that they are not representative of the community as a whole. They are older, more conservative and more religious than we see in the Australian community. What is very sad, though, is that the government is not in tune with the community's acceptance and celebration of love—because that is what this is all about. This is the message that I have received loud and clear from those who have been calling, faxing and emailing my office. And it is a message that I received when I attended the first illegal gay marriage in Sydney, held for two radio presenters from a commercial radio station.

I want to share with the Senate some of the views that have been expressed to me by people who have contacted my office. One email said:

I sit here and watch countries like the UK, Canada, New Zealand, Belgium, The Netherlands, South Africa, Ireland and Scotland, just to name a few, move forward in protecting same-gender couples and ensuring that they are afforded legal recognition within their relationships, but sadly in Australia we are regressing and I can't help but feel hopeless and disheartened when I watch gays and lesbians from other countries embrace their rights. Gays and Lesbians should not be unprotected in their relationships just because they are gay and lesbian, but that is what is happening in Australia.

I dream of the day that Australian gays and lesbians can formalize their relationships and be afforded the same civil rights that are afforded heterosexuals in relationships and marriage. This cannot happen when the leadership of the country does appear so homophobic that he and his gov-

ernment move to quash same-sex civil unions in the ACT, and then in the same breath declare the move to not be homophobic. I think their actions are contradicting their statements.

Another local resident wrote to me and said:

I write to you as a productively, contributing resident of the ACT in response to the ACT Civil Unions Act and its recent overruling, or attempted overruling, by the Federal Government. As a tax paying and voting citizen of this country, I believe that the rights of a group of people in this country (including myself) are being abused by the involvement of the Federal Government in this case. I am a gay man and I have lived in a continuing same-sex relationship with my partner for over 25 years. This is a greater length of time than many heterosexual marriages and indeed a period of time of which we are both proud. I find it totally abhorrent that the government in this so-called democratic country can interfere in my personal life in this manner by not permitting my partner and I (if we choose) to have our relationship formally recognised in the ACT under the Civil Unions Act.

I have received a number of emails from public servants in the ACT who have written about how much hard work they have put into supporting this government and how much they feel abandoned by this government.

I have received emails from people who recall the comments of the Prime Minister that he would govern for all Australians, and they point to this legislation as an example of the Howard government not governing for all Australians. I received an email from a 58-year-old man in Canberra, who wrote:

My partner and I still have our military service medals. Sometimes I wonder if we should send them back, since our contribution to the military service of this country is apparently not considered sufficiently worthy to accord us the entitlements that most people take for granted.

I received another email, which said:

I cannot express enough how much John Howard and Phillip Ruddock fall below my expectations

as leaders of this country. They are failing to represent the diversity of the Australian public and rather than leading the way forward appear to be overly eager to encourage a backwards movement in human rights and equality for all.

My relationship has the full support of my family and friends. They will all be attending the Civil Union between my partner and I and hopefully sharing the joys of our relationship as it unfolds over the years. I can only hope that the Australian federal Government will one day catch up to the contemporary Australia that we live in and realise that they are the ones who are being left in the closet.

It is these issues of human relationships, flesh and blood life, respect and acceptance that are important for the Greens.

Some other contributions on this debate that I have really enjoyed reading have been in the letters pages of the newspapers. One of them read that perhaps the ACT's proposed civil unions would not have attracted the ire of the federal government if instead they had been called 'individual relationship agreements'. Another one read:

Student unions, industrial unions, and now gay unions. I'd be worried if you play rugby.

But there are other issues at stake here, and there is also a democratic issue at stake here. The Attorney-General's action in disallowing the ACT's Civil Unions Act has been described by eminent constitutional law expert Professor George Williams of the University of New South Wales as heavy-handed and premature. He said:

It's very unusual—it's a major legal and political step to take to override what local people would say is their sovereign democratic legislature.

The Greens could not agree more. The people of the ACT have voted for a government that made civil unions part of their election platform for two elections. Support for the legislation in the ACT is not in question. The abuse of the democratic rights of the citizens

of the ACT is obvious—but the minister is shameless in taking them away.

I urge senators to support this disallowance motion, because it supports the rights of the people of the ACT and of all Australians—all those Australians that the Prime Minister said he was going to govern for—to have their loving and caring relationships recognised. It is an important choice for senators to be making here in this parliament. Senators have the opportunity to say what their view is on the very important issue of love. Do they want to stand up and acknowledge the beauty of love and what it brings to our society and to our community? Or do they want to be a part of the politics of hate that says that only some people's love should be recognised? Do they want to be part of the politics of hate that says that only some couples should be recognised in the community and that other couples should not have access to the same rights and entitlements, and that they should not be able to have their relationships recognised before their friends and their families?

This is an important issue that has an impact on all members of our community. The people who have been lobbying and campaigning on this issue are from a diverse range of backgrounds. They are people who care about families. They are people who want families to be kept together. They want children to have two parents that are legally recognised as their parents. They want those children to be protected and they want their families to be recognised. This proposal is saying that only some families and only some love should be recognised. The Greens reject that wholeheartedly. We want to see all parliamentarians joining with us to say: love is important and the recognition by the community of love and of the relationships that it holds together is also important. That is what the ACT are trying to do through their Civil Unions Act. We in this parliament

should not be trying to stop them from recognising the validity of loving relationships. *(Time expired)*

Senator MINCHIN (South Australia—Minister for Finance and Administration) (10.08 am)—On behalf of the government, I advise that the government will be opposing the motion to disallow the instrument made by the Governor-General in relation to the ACTU Civil Unions Act 2006. I would like to outline the reasons why. Of course, the starting point is that, under the Australian Constitution, the Commonwealth parliament has an unambiguous responsibility for legislation in this country on matters pertaining to marriage. That is clear in section 51, *placitum* (xxi), of the Constitution—

Senator Bob Brown—On a point of order: Senator Minchin said it was the 'ACTU' Civil Unions Act. I think he meant the 'ACT'. I just want to be clear that he knows which unions he is talking about here.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—I am sure that that was simply a slip of the tongue from the Leader of the Government in the Senate. There is no point of order.

Senator MINCHIN—I thought I said 'ACT', but, if someone heard me say 'ACTU', let me make it clear that I am talking about the Australian Capital Territory, not the Australian Council of Trade Unions. As I was saying, the Constitution gives an unambiguous authority to the Commonwealth parliament in relation to matters pertaining to marriage and, of course, the Constitution, in section 122, also gives a very clear authority to the Commonwealth in relation to the territories. The territories are in a different legal position to the states.

Regarding the power granted to the Commonwealth in relation to marriage, the Commonwealth Marriage Act sets out the position in relation to marriage and, as is

well known, that Marriage Act now makes it clear that marriage is the union of a man and a woman to the exclusion of all others. That definition, which I think quite properly reflects both the traditional and modern understanding and acceptance of marriage—one of our most important civil institutions—was passed by this parliament with bipartisan support in 2004. I acknowledge the role of Senator Guy Barnett and others, on both sides, in that important legislative clarification of what had always been understood and is clearly understood to be the nature of marriage.

Turning to the ACT's Civil Unions Act, the difficulty from our point of view is that, whatever might be said, it is clear that the intent and purpose of that act is to equate a civil union with a marriage. In that sense we regarded it as repugnant. We have had a dialogue with the ACT over this matter which spelled out our objections to the proposed legislation in a series of correspondence and, at the end of the day, we were not satisfied with the response of the ACT. The ACT government made certain amendments to its legislation in response to the objections raised by the Attorney-General, Mr Ruddock, but, regrettably, the changes did not alter the substance of the ACT law, which effectively makes it clear that same-sex civil unions are to be equated with marriage.

Our government—and, indeed, I acknowledge the role of the opposition in this—is about preserving the proper and well-understood definition of marriage. That is why that amendment was bipartisan. Frankly, I am surprised that the opposition is supporting this motion of disallowance. Earlier this year, the Commonwealth was in a dialogue on points of detail to try to resolve the differences. We have gone out of our way to try to help the ACT to construct an act which would not contravene the clear position in relation to marriage—for which we have

authority under the Constitution and which the Marriage Act now makes clear. The guts of the problem in the ACT law is in section 5(2), which, despite our ongoing dialogue with the ACT on this, says:

A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage.

The ACT have really adopted quite a hollow position. They are clearly setting out a legislative position determined to ensure that, for all intents and purposes, a civil union under their new law is to be treated as a marriage. In our clear view, what the ACT had done in other respects in the bill did not alter the substance of its legislation, which effectively amounts to a contravention of the definition of marriage in the Commonwealth Marriage Act, for which we have sole authority.

The ACT really acted quite unilaterally in ending the dialogue and proceeding to enact this legislation with that most particularly offensive clause in it. We are somewhat doubtful about the motivations of the ACT government in the way in which it has proceeded and the way in which, at the end of the day, it has forgone the opportunity to find a resolution to this matter which would ensure that, from the Commonwealth government's point of view, we could not have an objection to this legislation. We note that this legislation was put through the ACT assembly coincidental with an absolutely horrendous budget from the local territory government, which leads one to feel some cynicism about the real motivation of the ACT government. It looks like it is setting up an alternative issue to distract attention away from the horror budget which it has just been responsible for.

In the event, the cabinet, having considered the ACT's position on this and its refusal to meet our objections in full, decided that as a government we would move to ad-

wise the Governor-General to disallow the ACT Civil Unions Act 2006. That instrument was enacted on advice by the Governor-General on Tuesday, and it had the effect of invalidating the ACT act from midnight of that night. We regret that it has got to this, but we think that the ACT government is engaged in a political circus in relation to this issue. I think that is quite unfair, especially given that they could have found a solution which might have met some of the desirable objectives that Senator Nettle points out without resulting in the situation where we have no alternative but to oppose this disallowance motion.

Mr Stanhope, the Chief Minister, refers to having a mandate on this matter. If he has a mandate, he has had a year and a half to meet our concerns. He has failed to do that, and he has brought in this act right at the time of his very unpopular and irresponsible 2006 budget. Mr Stanhope protests that the disallowing instrument enacted by the Governor-General was a shock to him. We have consistently said to him that we would indeed reserve our right to act on this matter if the ACT act, once enacted, continued to contravene, in our view, the clearly stated position in relation to marriage as defined by the Commonwealth Marriage Act 1961.

We have real doubts about Mr Stanhope's motivations in this matter, when clearly we were constructively engaged in a dialogue with the ACT government in order to seek to find a way in which their legislation, which sought to recognise same-sex unions, could do so in a way that did not offend our general understanding—and, indeed, the Commonwealth act's—in relation to marriage. We believe he and his government have been given every opportunity to fix his act in a way that would not be offensive.

We find the remarks being made now by the ACT government quite offensive. We are

being accused of being homophobic and all the rest of it—the normal retorts of those who do not like what the Commonwealth has done in protecting the institution of marriage. We reject that accusation out of hand, but we are very firm in our position that we will not stand by idly and allow the territory government, for which we have ultimate responsibility, to so flagrantly contravene the definition of marriage as set out in the Commonwealth Marriage Act 1961, for which we also have ultimate responsibility. The ACT cannot play games on this.

I refer you to the definition that is in the ACT act—that for all intents and purposes under territory law a civil union is to be treated in the same way as a marriage. It is quite clear that it is almost deliberately designed to provoke the response that we have made. But we have made it against the background of very deliberate and considered efforts to try to find a middle ground with the ACT. We are extremely disappointed that they have sought to confront us in this way. For those reasons, we believe that, in taking the position we have, we reflect the mainstream values of this country and a mainstream view of marriage. We are not opposed to same-sex unions as such, but to seek to equate a same-sex union with marriage is objectionable, and we will not accept that.

My good friend and colleague Senator Gary Humphries, a territory senator, has publicly expressed his concerns about our government's position. His position is an honourable one. It is that the ACT is an autonomous parliament. I am probably one of the real champions of federalism in our government. I have a very high regard for our federation and for the role of the states in that federation. But the constitutional fact is that the territories are not states and that the territories are subject to the Commonwealth's authority, as set out clearly in section 122 of the Constitution. Our government has exer-

cised its authority in relation to the territories in other respects.

We seek to grant a degree of autonomy to the territories but, at the end of the day, to the extent that territories, which are ultimately answerable to this Commonwealth, contravene positions of the Commonwealth then we have the obvious authority—and indeed in this case, in our strong view, the responsibility—to act. We use that authority very sparingly, and only after deep consideration of the matter, because we respect the prerogative of the states and obviously the territories. But, where a territory has sought to act in such an obvious way to contravene the definition of marriage as passed by this parliament—the common and general understanding of marriage as a union between a man and a woman to the exclusion of all others—then we are left with no alternative but to advise the Governor-General to disallow that act.

Obviously, by virtue of the nature of that instrument, it is one that is open to the Senate to move to disallow. The government's very clear position is that we will not be supporting that motion for disallowance, for the reasons I have set out. We think that, while we should on a case-by-case basis seek to ensure the elimination of discrimination against same-sex couples, when it comes to marriage, that is and has always been—and I hope will always be—an institution that is preserved for the union of a man and a woman to the exclusion of all others. That is the government's clear position, and one which we believe is strongly supported by the Australian community. I conclude my remarks by noting and reinforcing the government's very clear position: we will be opposing this motion.

Senator LUDWIG (Queensland) (10.22 am)—The Howard government has this week taken a step that no government before

it has taken. For the first time in the ACT's history, a federal government has used section 35 of the Australian Capital Territory (Self-Government) Act to go directly to the Governor-General to disallow an act passed by the ACT Legislative Assembly. On Tuesday this week that order was made by the Governor-General, disallowing the ACT Civil Unions Act 2006. The order of the Governor-General is itself disallowable and Labor, along with the minor parties, is moving to stop the Howard government from interfering in the ACT legislation on this matter.

Labor are moving to disallow this instrument because we do not believe that Mr Howard should override the ACT laws on this matter. Let me explain why. Labor acknowledge that it is this parliament—only the Commonwealth parliament—that can make laws about marriage. In fact, in 2004 we did pass a law confirming that marriage was between a man and woman. Labor supported that view then and are committed to maintaining marriage as a separate and special institution between a man and a woman. The ACT Civil Unions Act does not deal with marriage. It does not compromise, contradict or impinge on that principle. It does not and could not create same-sex marriages. In fact, in section 5 of the act, it says expressly that a civil union 'is different to a marriage'.

Given our view that this law does not deal with marriage, Labor support the states and territories recognising same-sex relationships in the way they see fit for the purposes of the application of laws in their state or territory. The creation of civil unions for same-sex couples, which this law did, is clearly a matter for the territory. The Howard government has ignored these facts. Instead of focusing on the second part of the same provision I referred to above, which says that a civil union 'is to be treated for all purposes under

territory law in the same way as a marriage', the government misconstrues this as saying that this means that civil unions are equal to marriage. That is simply not true. To say that something is to be treated under a law in the same way—and this government understands this—is a shorthand way to ensure nondiscrimination. It does not imply sameness. That is all the ACT act is really about—nondiscrimination.

The fact is that, like almost all states and territories, *de facto* couples, same-sex or heterosexual, are already treated the same way under ACT law. Those reforms were passed some time ago. The key practical effect of a civil union system is that it would stand as evidence in itself of a relationship. It is a way to have a relationship recognised and to declare ongoing commitment. In contrast, *de factos* have to prove that they are in a domestic partnership whenever a legal issue arises. The value of civil unions or a registration system is not in mimicking marriage but in making it easier for couples to prove they are in a relationship. Otherwise, these couples have to prove their relationship every time they want a stamp duty exemption or every time they have an inheritance, property or medical consent issue to confront.

If the clear words that a civil union is 'different to a marriage' are not enough to convince the government then they should look more closely at the detail. Civil unions under the ACT act have some key differences to marriage. For example, it is easier to enter into a civil union than to get married. It simply involves giving five days notice and making a declaration before a celebrant and one other witness. Compare this to marriage, which requires one month's notice, at least two witnesses, an expression of prescribed words by both parties and a celebrant in a wedding ceremony. Another crucial difference is that, unlike marriage, civil unions

have no religious aspect and cannot be conducted by clergy.

Even clearer differences between marriage and civil unions emerge when you consider how they are terminated. Unlike marriage, which can only be dissolved through a court order, civil unions can be terminated by giving 12 months notice to the ACT Registrar-General. This applies even if the civil union is terminated by only one of the parties. Further still, a civil union is automatically terminated if one of the parties subsequently marries.

It is also important to understand that the ACT Civil Unions Act has no effect outside the ACT. Unlike marriage, which is a national institution recognised in all states and territories, civil unions will have an effect only under ACT law. There is no way this action of the ACT can force other jurisdictions to take note of their form of relationship recognition, just like Tasmanians cannot with theirs. We as the federal parliament will need to deal with which relationships we recognise for the purposes of Commonwealth law, but that is an issue for us. I will speak about that later.

Because this issue affects only the territory, it should be left to territorians to decide. If self-government in the ACT is to have any meaning at all, it must mean that the ACT legislature can determine policy of this sort. It has no bearing on what happens outside the ACT and it has no bearing on the ACT's special role as the seat of the Commonwealth government. It will only affect the way certain relationships are treated within the Canberra community and under territory law. It has no further effect than that.

The Howard government is intervening here simply because it can. No-one is asking the Prime Minister to agree with civil unions or with the details of the ACT legislation. He is simply asked to leave the issue to Canber-

rans and their democratically elected parliament. After 10 long years in government, the Prime Minister is too out of touch and out of control to accept that the ACT parliament is allowed to disagree with him. The residents of the ACT and, for that matter, the Northern Territory should be very alarmed by the government's actions. It has exposed both territories to the limits of self-government without the constitutional protections enjoyed by the states. This episode has shown that the Howard government will pay no respect to the principle of self-government when the territory parliaments do something that the Prime Minister just does not like.

Quite apart from the territory issue, it is clear that our laws should be able to appropriately recognise and acknowledge same-sex relationships. In fact, in almost all the states and territories they already do. All have made or are considering laws to ensure that same-sex relationships are treated the same as heterosexual ones for the purposes of property arrangements, wills, medical consent and many other financial, medical and personal matters. Tasmania has gone a step further, providing a system where same-sex couples can register their relationship. Most recently the ACT took a different approach by introducing civil unions—registered relationships created through a ceremony. This is the law we are debating today.

The jurisdiction that sticks out like a sore thumb is the Commonwealth. Federal law still actively discriminates against gay and lesbian couples in areas like superannuation, health and welfare benefits, insurance, veterans affairs, family law and taxation. Labor has long highlighted this injustice and will continue to argue for the removal of all of these forms of discrimination so that same-sex de facto couples and heterosexual de facto couples are treated the same when it comes to laws and benefits.

Recently, federal Labor have also been undertaking consultation on whether we need a national system for recognising same-sex couples, and what form it should take. Of course, the steps states and territories take down the path of registration or civil union will be a key factor in any approach we adopt in the future, but one thing we cannot tolerate is a federal government that have ignored these practical injustices in their own arena telling the ACT that its measures will be overridden. We do not support the Howard government's action to override territory law on this matter and will vote to disallow the Governor-General's instrument. With those words, I will conclude.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.32 am)—The Greens have brought forward this disallowance motion simply because it is discriminatory. It discriminates against 500,000 people of the ACT and it discriminates against same-sex couples across the country. It effectively legislates for discrimination because of the attitude of the Prime Minister and the Attorney-General. I would like to move that the debate be adjourned until 17 August because I believe this matter can be fixed properly by such an adjournment. Let me say why. I spoke with Chief Minister Stanhope last night. He informed me that the section 5 problem—

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! Senator Brown, as you understand, I have just assumed the chair and I have just caught up with the progress of the debate in here. I understand that you have already spoken to the motion. It is not open for you to move the adjournment of the matter.

Senator BOB BROWN—I seek leave of the Senate to move that the debate be adjourned.

Leave not granted.

Senator BOB BROWN—I hope the government knows what it is doing by refusing such leave. I got called out of turn, let me explain here, Mr Acting Deputy President. You have just assumed the chair—

The ACTING DEPUTY PRESIDENT—Senator Brown, you were not called out of turn. You rose to your feet and sought the call. I may have a running sheet in front of me but you were the one who rose to your feet and sought the call. I did not see the next speaker in the chamber at the time you rose.

Senator BOB BROWN—Okay. One of my colleagues will move that the debate be adjourned. Let me explain why they will do that, because of this farce of procedure by the government. I note Senator Scullion's refusal of leave to do that, which would have been sensible at this stage. I will explain why we will be moving to adjourn this debate. I spoke with Chief Minister Stanhope last night because it appeared to me that the federal government override—and it is a government override; it is not a parliamentary override that we are talking about—was high-handed and had come without the possibility of looking at what alternatives the ACT legislature could take.

Mr Stanhope made it clear to me that the ACT government would remove section 5 on the next sitting day, which is in August. Otherwise, as he clearly explained—and it is commonsense—the ACT goes back to having nothing and having to start again. My colleague will move for the adjournment of this debate so that it can be resumed on 17 August, which will give the ACT legislature time to sensibly continue the debate with the federal government so that the problem Senator Minchin has with it can be fixed by negotiation so that the ACT law stands, with the Attorney-General having explained just what it is that needs to be altered. Is it not sensible that, in an important matter like this,

a process of negotiation takes place over the next eight weeks so that there is a reasoned outcome? We do not have to use the sledgehammer on the ACT. It is a sign of statesmanship from the Prime Minister if we hold this over for eight weeks and have the ACT and the Commonwealth come to an accommodation. We are dealing with real people, real relationships and real legislation.

I say to the government: accept a procedural change here which allows common-sense to come back into this stand-off where the bigger party wants to sledgehammer the smaller party against the interests of the ACT voters who, after all, voted for the legislation which the Stanhope government has since passed. That is sensible. I ask the other members of the chamber to consider an adjournment of this debate until 17 August—the ACT Assembly sits on the 15th—which can see a proper negotiated outcome in that time. To not do so would be a failure of proper process and a failure of the federal government to reasonably come to an accommodation with the ACT. That is what we should be having here.

Having said that, let me ask this: what is it that is so offensive to the Prime Minister or to Attorney-General Philip Ruddock about civil unions of same-sex couples? What is it that offends these gentlemen so much that they have used the executive power they have, not the parliament, which is the proper place? The parliament is considering this because of Senator Nettle's motion, but they have used their executive power to override the populace of the ACT on this matter. Let them spell it out. And let me say here, with the greatest forethought, I recognise and honour John and Janette Howard's relationship. I recognise and honour Philip and Heather Ruddock's relationship. What is it about these gentlemen that they cannot recognise and honour my relationship with my partner, Paul? What is it about these gentle-

men that they cannot recognise thousands of Australia's loving relationships in a society where love and caring for each other ought to be at a premium in this troubled world of ours?

It is a mixture, I think, of ancient dogma, which we should have long gone past, and a tendency to discrimination which should have been left in the middle of the last century at the latest. I say to the Prime Minister and the Attorney-General that they ought to catch up and recognise that in giving and honouring same-sex couples without discriminating against their relationship and their ability to publicly express that relationship they make our society more secure. They increase the aliquot of happiness in life where everybody has the right to pursue happiness and they raise the dignity of a society where indifference, discrimination and hate of other people on the basis of lifestyle should have no place. It is my belief and the policy of the Greens that there should be no discrimination on the basis of sexual preference under the law. If Canada, Catholic Belgium and Catholic Spain can recognise marriage for committed couples, whoever they might be, why cannot Australia?

This will pass and all these things will be changed. That is the tide of the evolution of human society. It may be that this government is stuck in the middle of the last century—in fact, it is—but to override the ACT legislature where the government was elected on the basis of this very legislation is deplorable. The people gave the government of the ACT a mandate for this legislation. This government has no mandate and did not go to an election on the basis of this legislation.

The ACT is a territory. Under the Constitution the Australian parliament—let me remind the Prime Minister of this—not the executive, is charged with the responsibility

for the good maintenance of the territories. The Howard government abused its executive power to move against the ACT legislature. The Howard government should have brought legislation into this place. It did not. It used an executive instrument in the night to override the democratic right of the people of the Australian Capital Territory to pass their law on civil unions. It did not breach any Commonwealth law but it was a law that the people of the ACT had voted for. Whatever else, one would have thought that Prime Minister Howard would have stood by democratic principle and the right of Australians to vote and have that vote respected.

We are dealing here with a line of thinking which should long ago have passed. I had a delegation of Exclusive Brethren elders come to see me in my rooms on Monday a week ago, I think it was. In the course of a discussion there about a motion which I have for a Senate inquiry into the Exclusive Brethren, it was stated clearly that I would be subject to eternal damnation and the flames of hell for supporting same-sex marriages. I told them about my partnership and it was very clear that that is their prescription for my future.

I woke up this morning and heard Abu Bakar Bashir—this man with criminal connections who has just come out of jail for being involved in the mass death of people, including Australians, in Bali—saying that the Prime Minister of Australia faces the same outcome. What an appalling creature Abu Bakar Bashir is. Surely all of us discount this threat of hellfire, damnation and lakes of fire by some religious bigot wanting to declaim against a person on the basis that they are leader of the Australian nation. But one cannot help but think that in this disavowal of the right of loving people of the same sex to have that relationship registered there is an old chord going back to pillars of salt, hellfire and damnation. Surely we are

past that in the 21st century, and surely we should move on to greater enlightenment than that in our legislative processes.

Senator Minchin, who a number of times confused the ACT with the ACTU—and, I think, just which unions he was talking about—said that Mr Ruddock was not satisfied with changes made by the ACT and the ‘particularly offensive clause’ in section 5(2). That clause establishes the core elements of a civil union, consistent with the Human Rights Act 2004—that any two people may enter into a civil union, regardless of their sex. It states:

A civil union ... is to be treated for all purposes under territory law in the same way as a marriage.

The government finds that particularly offensive. I find it particularly offensive that the government finds that particularly offensive.

Senator Minchin said that what the ACT did alter did not alter the substance of the bill. What does that mean? That the bill should be gutted? He also said that cabinet met and ‘the ACT refused to meet our objections in full’. As I understand it, what really happened here was that Attorney-General Corbell and the ACT government sought to know exactly what it was that the executive of the Howard government wanted changed—what the exact changes would be which would allow the ACT legislation to be acceptable. There is still no answer to that. Do you know why there is no answer to that, Mr Acting Deputy President? It is because the executive of this government does not want to reveal its bigotry—its 21st century wowsersism—by being explicit in the expression of its discrimination against same-sex couples. That is the problem.

We have not heard from the Prime Minister what he would accept. He is clear in saying, ‘Same-sex couples shouldn’t be allowed to marry.’ The ACT legislation does not allow same-sex couples to marry. So what is

wrong with the Civil Unions Act that the ACT legislation has passed, Prime Minister Howard or Attorney-General Ruddock? They will not say because it would reveal the bigotry of the argument that they have silently used, which is written there between the lines, which is that they abhor the idea of same-sex couples being given parity—loving couples, and the children within so many of these relationships, being given parity.

To repeat what I said last week, it is interesting that the Prime Minister went to the White House to consult George Bush and came home convinced that same-sex unions are dangerous and nuclear reactors are safe. It is muddled; it is incomprehensible—and the Prime Minister will not spell out why. Since then, of course, George Bush has been to the congress to try and do in the United States effectively what the Prime Minister is doing here—ban same-sex marriages—and has been rebuffed. One of the reasons for that is that the people of the United States and their representatives have moved on. A sea change has removed discrimination in their minds and in our minds—we were all brought up to it—like that sea change that happened 40 or 50 years ago in Alabama and Little Rock, Arkansas, against people who had a different skin colour and like the sea change that happened half a century before that against women. For goodness sake, how could you have women having the vote and have the economy survive? The bigots said that, often quoting St Paul, on their way to the legislature just 100 years ago. We are in that same situation now. The one thing we can know about this with confidence is that all this charade, this discrimination, this executive abuse of power to override the ACT will be changed. Even the Labor Party—*(Time expired)*

Senator BARTLETT (Queensland) (10.52 am)—I suppose I have an interest in this debate. Like many people in this cham-

ber, I am married. Amazingly enough, I do not feel like my marriage is being threatened or diminished in any way by the ACT enabling people who have same-sex partners to register their relationship under the Civil Unions Act. I ask any member of this chamber who also happens to be married: can they seriously say that their marriage will be devalued one single iota by enabling people whose partner happens to be of the same gender to have their relationship recognised under civil law? There is absolutely no way that anybody, I believe, can sensibly say that their own relationship is devalued because of what some other couple wants to do with regard to recognising their relationship. If they do believe that then I suggest there is something wrong with their own relationship.

What is this all about? I suggest that, first and foremost, from the Prime Minister's point of view in particular, it is about political point scoring opportunities once again. I believe there is no doubt that the Prime Minister is not genuine on this issue. I do not make categorical statements like that unthinkingly. This Prime Minister has repeatedly said in recent times—and only in the last year or so, I might say; it is an interesting shift in his rhetoric—that he opposes discrimination against people who have same-sex relationships. He specifically said at the end of last year that he was in favour of removing any property discrimination and other discrimination against people who have same-sex relationships whilst nonetheless maintaining his opposition to gay marriage or gay adoption. But what has he done about it? He has done nothing. He has made the nice-sounding statement saying, 'We are against discrimination on the grounds of property et cetera,' but he has done nothing.

I wrote a letter to him after he made that statement, in January—as I was acting leader at the time, while my leader, Senator Allison,

was on leave—congratulating him on his statements that he was in favour of removing property discrimination and other discrimination against people in same-sex relationships. He is so genuine about it that he has never even acknowledged the letter, let alone responded meaningfully. That is how shallow this Prime Minister's commitment is to that issue.

I recall that, when I was leader of the Democrats, the party had to hold up the superannuation choice legislation for years before the government would agree to, very begrudgingly, allow some degree of equality on the basis of interdependency for people with regard to some of their superannuation entitlements. It was a significant reform. Seeing that Senator Coonan is in the chamber, I acknowledge her contribution in enabling that to happen. That was a significant achievement of the Democrats which, I might say in passing, is rarely acknowledged by many of those who continually call for the removal of discrimination against people in same-sex relationships. They seem quite happy to ignore the Democrats' achievements, persistence and actual gains in this area. Of course, the Democrats have had legislation before this chamber since 1995 that would have the effect of removing property discrimination and other discrimination against people on the basis of their sexuality, their gender status or the gender of their exclusive partner.

We have had no indications of genuine support from the government—or, until recent times, from the Labor Party, I might say—with regard to that area. It is nice to have the Prime Minister making this statement, but forgive me if I believe that he does not believe it. If he believed it he would act on it. He has made the statement repeatedly now for many months. He has not acted on it. I acknowledge the efforts in recent times of Mr Entsch, the member for Leichhardt, in

seeking to address this issue, but there has been no movement from the government.

We have seen continual inaction. There has been the occasional nice-sounding statement saying that the government believe that there should be a removal of discrimination and that we might need to have a look to see what is around. They know what discrimination there is. Democrats legislation on this issue has been before this place since 1995. A comprehensive Senate inquiry that tabled its report back in 1997 detailed all the discrimination that exists. We have had small gains in removing some of that discrimination in the area of superannuation and in some aspects of the Defence Force, but it is not complete even in those areas. We know where discrimination exists. There is now a human rights commission inquiry into it as well, which I also welcome, which will provide more detail about it and reaffirm the need to act. But the excuses about why we cannot move are continual.

We had excuse after excuse with regard to the superannuation legislation about why they could not move in that area. It was only because we refused to proceed on superannuation choice for years that they eventually agreed. The government were so determined not to move even in a small area of removing discrimination that they held up a major policy reform with regard to superannuation choice. Regardless of whether or not people agree with super choice, it was a major policy reform of the government that they were strongly pushing. They were willing to have that sit and not move for years purely because they would not make any concession on removing discrimination. It was only because of the Democrats' insistence on also not moving that we finally did get some gains there.

The evidence is quite clear that the Prime Minister is not genuine. This debate we are

having today is another example. Whilst we have had years and years of dragging the chain, of continual excuses for inaction, as soon as the ACT moved there was instantaneous action from this government to jump in and try to overturn the ACT Legislative Assembly's legislation. There was no pausing to look at reasons why it might not be a good idea. There were no delays or consultation. It was straight in, running the gay marriage fear campaign, running the political wedge and pushing the political point scoring buttons. They immediately initiated this divisive, destructive and personally hurtful and harmful debate to many Australians. The Prime Minister is not genuine or sincere. He is quite willing to deliberately cause not only anguish and hurt but actual harm to many Australians purely for political point scoring opportunities. His complete lack of interest in even acknowledging correspondence from people who offer to work with him in removing discrimination in areas that he says that he supports shows how insincere he is.

Obviously points have been raised by Senator Brown and others about how it is inappropriate to overturn a decision of the territory legislative assembly and the territory legislative assembly should be able to make their own laws. I understand that argument, but it is not one that I am prepared to use because, if you going to take that approach, you have to be 100 per cent consistent on it. You cannot only use that argument when you like the laws that you are trying to defend; you have to use that argument when it applies to laws you do not like. Whilst I like this law in the ACT—I am quite open about that—the Democrats in the past have introduced legislation, which also had Senator Brown's and the Labor Party's name on it, seeking to overturn the mandatory sentencing laws in the Northern Territory. They were laws that I very strongly disliked—laws that I am glad are no longer there, as I under-

stand it. Personally, if I believe it is an important enough case—and I do not suggest that the federal parliament should willy-nilly overturn any law that it is vaguely dissatisfied with—and the power is there, whether it is the law of a territory or a state, I have to say that, to be consistent, I would be willing to overturn it.

So I am not using that argument in this case; I am using the argument that the law in the ACT should be upheld because it is a good law. It is obviously also a law that the people of the ACT supported. I think the mandate theory of politics is grossly over-used. But, inasmuch as it can be used, the ACT Labor Party did run with this as a policy. It was not only voted in but voted in in its own right. That was not something that I was overly happy about, in broader terms, but nonetheless there was a mandate, as far as it goes. But I am not willing to use that argument because I do not think you can apply it, unless you are going to apply it consistently and most tellingly to those areas or laws that you do not support.

Senator Nettle spoke about the power of love and the importance of equal recognition of love. It was quite touching really; it was almost poetic. Obviously love has a lot to do with marriage and the recognition of relationships. I should say that not all marriages are about love; some marriages are not really about love at all. I think there is often more to it than love but, ideally, particularly in our society and with the values we hold in Australia, we believe that any exclusive relationship is far preferable if it is based around love. We could all now have a debate about what love actually is, if you particularly want this debate to go for another 10 weeks and to have all our different definitions of love.

Clearly, love is an important aspect of relationships, and it is an important part of why actions such as this federal government is

taking are so harmful. Categorically and indisputably this action does say that people whose love is towards someone of the same gender are of less value or less worth than people whose love is with somebody of the opposite gender. That is not only discriminatory but immensely harmful for some people. I ask people to consider that this message coming from the leaders of the country, as well as, of course, leaders of churches—and I will get on to some of them in a moment—that is believed to be so important that it is reflected in decisions of the national parliament and the law of the land says that their love does not merit the same recognition as somebody else's.

I ask people to think about how that can affect individual people, particularly if they are people who, because of the social discrimination and social antagonism towards gay and lesbian people, are struggling—and some are, as we all know—with their sexuality. If people who are vulnerable because they are struggling with their sexuality are having a message reinforced in law that their intrinsic emotional beliefs and their intrinsic emotional bond with another person is less valuable, that is immensely harmful. I am not overstating the case when I say that that is one of the key reasons why there is a higher incidence of suicide, self-harm, depression and related issues among people who are gay, lesbian or bisexual. They are continually bombarded with messages saying that their emotions, their intrinsic way of relating to people, is less valuable or somehow disordered. It is immensely harmful. That is why I oppose so strongly actions like this. It is also why I am doubly offended and angry because I know, as I said at the start, that the Prime Minister is not genuine in his statements in this area.

This also gives extra coverage, extra legs, to people such as Piers Ackerman, who many of us would have seen on the *Insiders* pro-

gram on the weekend. In relating to and commenting on this issue that we are debating now, he said that you cannot call a relationship between a man and a man, a woman and a woman, or a man and his dog, his cat or his goat a marriage. That is the sort of contemptible depth that some senior political commentators in this country have been willing to sink. A major media commentator is willing to use the opportunity of debates like this to run such disgusting and destructive messages to millions of people throughout the nation. Thankfully, there are not that many people who, like Piers Ackerman, are willing to be so offensive and so deliberately abusive towards their fellow Australians. But there are others.

Also mentioned on that program was the spokesperson for the Australian Family Association, who reportedly stated that removing barriers to recognition of gay and lesbian relationships will mean that people will be more likely to start having sex with animals. That is the sort of contemptible statement that gets made and is given reinforcement. I am not suggesting that government members support that statement, but I am saying that by cynically putting forward debates like these they are giving succour to those sorts of statements. Most of us can dismiss them as the rantings of people who are being deliberately antagonistic, but for people who are vulnerable and who are already feeling under attack they have extra bite.

I would also like to emphasise that, despite all the talk about love—and that is important—marriage is not just an expression of love. Marriage, particularly in the legislative context in which we are debating it here, is actually a legal contract. You can take all the love out of it entirely and just say it is a legal contract, and so is the civil recognition of same-sex relationships. It is purely a legal process. It is a legal process that, among other things and in some ways most signifi-

cantly, much more effectively enables the legal recognition of property and other entitlements—the very thing that the Prime Minister has said he is in favour of removing discrimination against. The ACT has taken a move that makes it more likely that people in same-sex relationships will have the same access to property entitlements and all those other obligations that apply to people in de facto, opposite-sex relationships. This is an action that goes in the direction the Prime Minister has said he is in favour of, but he leaps in straightaway and seeks to overturn it.

I also want to say, because I believe it needs to be placed in the context of this debate, that there are statements not just by fringe nutters from the Australian Family Association—what a misnomer that is—but also by leaders of mainstream churches. I am not in the business of attacking the churches in general or the Pope in particular, because I believe that in general they perform a positive role in society. If people who are Catholics do not like what the Pope says then it is their choice whether they stay in the church. I am not into arguing about what the church does and does not do; people who are in the church can fight that battle. I am not in that church, so I do not debate that. However, one of the earliest statements by the new Pope was that ‘deep-seated homosexual tendencies’, to use his terminology, gravely obstruct a right way of relating with men and women. People who are Catholic can choose whether or not to believe that, but statements like these are not just made for Catholics to believe; they are made and specifically stated as being made for society as a whole to follow.

I say that because those things are used to reinforce debates like this, and if statements are made saying people in same-sex relationships cannot relate fully or properly to other men and women purely because of their sex-

ual orientation, in the context of saying that marriage is a special thing that must apply only to men and women, then it sends very destructive, harmful and divisive messages to our society. So I and the Democrats very strongly support this motion and we very strongly support the ACT government's legislation. I hope there is still some way through to get a resolution on this issue, not just because I support the legislation but—much more importantly, I believe—because we cannot continue to keep passing things in this place that reinforce messages that are so destructive to people. (*Time expired*)

Senator CARR (Victoria) (11.12 am)—I am speaking in support of this disallowance motion, and I will be opposing any adjournment proposition that is advanced later in this discussion. It is important that we discuss this matter today because there is an opportunity here for us to at least draw the public's attention to the enormous danger of governments seeking to improperly use wedge politics and sectarian hate politics when playing with human rights. This is a clear case where that has occurred. Since the federal government has not actually done the Australian Capital Territory government the courtesy of formally writing to it and explaining why the federal government has sought to unilaterally, by way of executive fiat, intervene and overturn the decisions of the Australian Capital Territory Legislative Assembly on the Civil Unions Act 2006, it is important that we heard from the leader of the government in the chamber today what the government's reasons were.

To date, what have we got? We have got a few comments on the radio, designed to colour and to seek to attract a particular segment of the electorate. Of course, there is the explanatory statement that has been made by authority of the Attorney-General and the Minister for Local Government, Territories and Roads in regard to the instrument of dis-

allowance, which is made up of six short paragraphs and which has now been published. This says that the government has acted because there was an ambiguity in the Australian Capital Territory legislation and that the Australian self-government act specifies that there are no conditions for which the Commonwealth government can intervene to override the Australian Capital Territory, and does not have to satisfy itself in any public way as to the reasons to do so but is able to act in such a way as to disallow any instrument of the Australian Capital Territory.

That is all spelt out in the explanatory memorandum. This instrument has the same effect as a repeal of the Civil Unions Act 2006, we are told. But there is no explanation as to why the government should have acted in such a way—none whatsoever. And what do we hear today? We hear from the Leader of the Government in the Senate that there are a number of reasons that the government has acted. All I can say in response to the claims he made today is that either the minister is very badly advised or there has been a deliberate strategy to seek to present information which is inconsistent with the facts—that is disingenuous or, at worst, deceptive. We were told that the Howard government has gone out of its way to help the Australian Capital Territory draw up a piece of legislation which the Commonwealth government would be happy with. We were told that the Constitution allows for the Parliament of Australia to pass laws that override those of the Australian Capital Territory. We were told that the Marriage Act is clearly a Commonwealth act.

Let me go through those claims. First of all, there is the claim about the Commonwealth government going out of its way to help the Australian Capital Territory. What do we have to that effect? A couple of letters were sent to the Chief Minister, who was also the ACT Attorney-General, and to Min-

ister Corbell, the current responsible minister. I understand that a couple of letters were written, on 29 March and 4 May. There has been no explanation as to why the government has acted in this way since the decisions were taken this week. We have been given no formal advice. We can say that no-one is disputing that the Commonwealth has the power to make laws in regard to marriage; no-one is even claiming that that is an issue. And no-one is claiming that the Commonwealth does not have the power to override states and territories on these matters. In fact, as I read the Constitution, there are a great many issues on which Commonwealth law is supreme where it comes into conflict with a state law. No-one is arguing that is not the case. No-one anywhere has argued that proposition. In fact, it might be well argued that if, as it is claimed, the legislation of the Australian Capital Territory was inconsistent with the Marriage Act then a High Court decision would demonstrate that that was the case and it would automatically be ruled out. No-one is disputing that possibility either.

But when it comes to the claim that the government has acted in a manner that is trying to help the Australian Capital Territory, I dispute it strongly. I particularly dispute the claim made by the minister today that the government of the Australian Capital Territory has sought deliberately to run this legislation through under the cloak of a tough budget. That was the claim made here today. The truth of the matter is that the legislation was passed in the Australian Capital Territory on 11 May. It was the decision of the Commonwealth to intervene on budget day—on 6 June. So, in terms of the timing of the intervention, it was the actions of the Commonwealth, not the actions of the Australian Capital Territory, that are relevant. The minister, quite clearly, was being disingenuous when he put that case.

It is further put that no action has been taken by the Australian Capital Territory government to change its position in response to concerns expressed by the Commonwealth. It is said that some 18 months have passed since the election, and the Stanhope government has sought, as I said, to run the civil union legislation through the smokescreen of a tough budget. First of all, let us be clear: in terms of the electoral cycle, there was a clear statement presented in the election and a mandate was established. An extensive process of consultation was undertaken by the Australian Capital Territory. A proposition was clearly advanced and a number of public processes undertaken by the ACT Human Rights Office, the Good Process lobby group and the Australian Christian Lobby—processes which attracted 425 written submissions. I think it is a reasonable proposition that it takes a little while for legislation to go through a consultation process and be enacted by the legislative assembly of the Australian Capital Territory. That is within its powers to do, and it did so on 11 May. I seek leave to table two letters from Minister Corbell to Minister Ruddock, which cover these very issues, to demonstrate the points which I am making.

Leave granted.

Senator CARR—The letters from Minister Corbell point out:

The Australian Capital Territory is a self-governing territory and the Australian Capital Territory Legislative Assembly is the democratically elected body with the power to make laws for the peace, order and good government of the territory. The Civil Unions Bill affects only Australian Capital Territory law and is entirely and appropriately a matter for the Australian Capital Territory Legislative Assembly to decide.

I understand from your comments in an interview on ABC radio earlier this year and from recent correspondence that you also agree that the power to make laws about civil unions belongs to states

and territories while the Commonwealth has power to make laws about marriage. You further indicate in that interview that your government would be happy to leave the states and territories to decide whether or not the legislation for civil unions.

The Australian Capital Territory has introduced legislation that provides not only for a system for recording civil unions but also for the way in which they will be recognised and dealt with under Australian Capital Territory law. It does not affect the status of marriage and, in fact, subclause 9(2)(a)(ii) and subclause 12(1)(b) ensure that a civil union will always give way to marriage. As such, I believe that this is a matter for the Australian Capital Territory.

Notwithstanding all of that, Minister Corbell goes on to say, 'We are prepared to amend the act further still to satisfy the concerns of the Howard government.' He went on to say that various uses of the terms 'marriage', 'spouse' and 'married' appear in the legislation, which is aimed at ensuring that there is a non-discriminatory approach taken to basic human rights such as the right to own property. You would think a government such as this one, which is so committed to capitalist values, would ensure that those principles would be upheld in Australian law. On the contrary, we are seeing acts of discrimination being perpetrated in a bid for partisan political advantage in a very narrow range of electorates in this country.

We are not seeing any serious discussion of amendments, because the truth of the matter is that, in response to Commonwealth request, this legislation was amended 63 times by the government of the Australian Capital Territory. So, when the minister comes into this chamber and says that there has been no attempt to deal with the concerns being expressed, he is clearly wrong—just plain wrong.

Furthermore, legislation that has been carried by the legislative assembly in the territory is further open to amendment, and this

has been indicated by the responsible ministers in the Stanhope government. If this government were genuine about seeking to reconcile these issues, it would have used the relevant clauses of the Australian Capital Territory (Self-Government) Act that define the Governor-General's power to intervene at the request of the executive council to seek further amendments. There are other courses available to this government to seek those amendments. As I say, no formal request was made to do any of those things.

One is left with the conclusion that this government is disingenuous on this issue. This action has been taken for partisan political advantage, as it sees it, for ideological and base political motives. We are not facing a situation where there has been any human rights abuse. There is no claim being made that the government of the Australian Capital Territory has acted in a manner that would require interventions—and, believe me, I acknowledge the right of this parliament to intervene. I take a different view from many; I do not believe that, where state rights come into conflict with human rights, state rights should be upheld. I take the view that all citizens in this country should be treated equally and have equal rights no matter where they live in the Commonwealth.

There is no case whatsoever being made that the people of the Australian Capital Territory are not capable of electing a government that is capable of acting to ensure a non-discriminatory approach on these questions. No human rights abuse has been alleged. No corruption has been alleged. No abuse of constitutional process has been alleged. There has been no claim that would justify an intervention of this type.

I take the view that what we have here is purely and simply a political act, not a constitutional dispute about the Marriage Act, because that is not in question. The legisla-

tion that has been carried by the Australian Capital Territory makes it clear in at least three separate places that that is not in question. I am left with the conclusion that we are talking here about politics. It is politics, pure and simple. The real irony is that, if you look at the opinion polls on these questions, public opinion has moved substantially. This is not even about what the majority of Australians think, because the majority of Australians take the view that if people want to have a civil union of this type then so be it. Do not think that people get hot under the collar about it.

It is clear that in some strategically placed electorates there is a minority view that may well be decisive in a tight election. It strikes me that we are talking here not about constitutional questions but about base political stratagems by a government that is seeking to appeal to a very tiny minority opinion in a number of key electorates. It is not about giving people a fair go and it is not about ensuring the protection of human rights. On the contrary, it is about playing with human rights in a manner that is clearly aimed at discriminating against a minority of Australians.

If it is so wrong that people have equality of rights in terms of their property, would the government please explain to us why that is the case? Why is it the case in terms of superannuation, people's ability to own or transfer the ownership of a house, social security benefits or any of the other basic rights we have as citizens that there should be one rule for some Australians and another rule for others? This is a clear case where the government has not sought to engage in a process to ensure that its concerns are addressed. There is a simple explanation for this: the government does not want to engage in such a process.

For this stratagem to work—and I think it is grossly misplaced in many respects—the government needs to have a confrontation. That has been demonstrated very clearly because Minister Corbell approached Minister Ruddock about these matters. In the letters I have tabled today this is quite clearly identified. He asked a direct question: 'What action can we take to satisfy the Australian cabinet?' The answer, of course, is: 'Well, we have made no decisions about what action you could be taking. We don't have an answer for you.' Quite frankly, I do not think Minister Ruddock is such a bigoted person as to not have an answer to that question. I have no doubt that the man has quite a detailed understanding of what is required to satisfy the demands of the Commonwealth—he would if he were genuine. I think he probably would understand the needs. The reason he cannot answer the direct question from Minister Corbell is that it does not suit the political stratagems of the Prime Minister.

When Minister Minchin comes in here today and gives us his half-baked explanation for it, it is quite transparent that the government does not have a case. It does not have a legitimate, logical explanation for its high-handed intervention—

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! Senator Carr, you made a reflection on a member of the other house, Mr Ruddock, when you called him a bigoted person. Could you withdraw that?

Senator CARR—On the contrary; I think I said that Mr Ruddock would know damn well what was required. What I am saying is that the Prime Minister has acted in such a way as to prevent Mr Ruddock from giving an answer to that straightforward question from Minister Corbell.

The ACTING DEPUTY PRESIDENT—So you deny the words where you referred to Mr Ruddock as a ‘bigoted person’?

Senator CARR—It is quite the contrary, as I think you will find if you check the *Hansard*.

The ACTING DEPUTY PRESIDENT—Okay, thank you.

Senator CARR—What I am arguing here is that there is a level of bigotry in this government—pure and simple. But Minister Ruddock is a much more sophisticated politician than that. He has answers to these questions, but he is prevented from giving them because it does not suit the stratagem of this government to proceed in that way.

What we have here is clearly a case where the Australian Capital Territory does have the power to make laws such as it has made. These laws do not breach the criteria that I mentioned: they are not there to protect corruption; they are not there to defend discrimination; and they are not there to prevent people from enjoying equal rights. We have a situation here where the citizens of the Australian Capital Territory ought to be able to exercise their rights to make a judgment as to the adequacies of the Stanhope government with regard to its implementation of the proposition which it took to the last election, which it has sought to refine through a consultation process with the citizens of the Australian Capital Territory, and which it has now enacted by way of legislation. And, as I say, that bill was amended 63 times in an attempt to respond to the Commonwealth.

The people of the Australian Capital Territory are the ones who ought to judge this question. They are the ones whose rights are being denied in this regard—as well, of course, as those who are directly affected by the instrument that the government has used via its executive fiat to repeal the Australian Capital Territory Civil Unions Act 2006.

There is a clear and simple message here. There is an enormous danger in this parliament allowing this government to act in such a conceited way to undermine these basic human rights. What we have here is a clear device that this government is proceeding with in an attempt to pursue a policy that will apply to a very small number of people. It is aimed at a strategic political advantage and not at advancing the protection of its constitutional responsibilities—because they are not in question. (*Time expired*)

Senator HUMPHRIES (Australian Capital Territory) (11.33 am)—One thing that I assume unites all of the members of this Senate and indeed this parliament is that we all believe in the democratic process. We are practitioners of it and we believe in it. It is our credo. Of course, democracy is not perfect. I think it was Winston Churchill who described democracy as being the ‘worst system of government except for all the others’. As practitioners of democracy, I think we know very well the kinds of constraints and shortcomings that democracy has.

There are certain rules that apply in Australian democracy. Those rules include that elections need to be held regularly, that ballots in elections need to be conducted in secret, that electoral systems need to produce parliaments that at least approximately reflect the voting intention of their communities and so on. There are many such conventions. There is another convention, and that is that, where parliaments have legislative power over matters affecting their community, and legislate in those areas, majorities must prevail. To that convention I think we could add another—not always honoured, I have to say, but one to which many Australians pay lip-service—and that is that, where governments outline their program before an election, they have a right, where the numbers are furnished by the electorate, to see that promise become law.

I fought hard to stop Jon Stanhope from obtaining a second term of government in the Australian Capital Territory. I believe his government has made serious mistakes—as last week’s scorched-earth budget pretty clearly demonstrates. Having said that, I also have to acknowledge that Jon Stanhope won a clear majority in the 2004 election and became only the second government in the 17 years of self-government in the Australian Capital Territory to have such a majority in the Legislative Assembly. I also note that the ACT has the fairest electorate system in the country—with Tasmania. I also acknowledge that Jon Stanhope went to the 2004 election with an explicit promise to legislate to recognise in law relationships between people of the same sex and to remove legal discrimination against gay and lesbian territorians.

And here the democratic process—which of course was conferred on the ACT 17 years ago by this parliament—provides a clear formula for what happens next: the ACT government is entitled to pass laws, in an area of its legislative competence, to effect an explicit promise made to the ACT community. I am familiar—we all are—with that formula. It was the same formula that allowed me to present and pass many bills as a minister in the ACT Legislative Assembly over many years. It was the same formula that allowed me and many of my colleagues to rise in this place and to speak and to vote for the Work Choices legislation and for many other reforms that the government had promised at the 2004 federal election—promises that we claimed, quite rightly, gave us a mandate from the Australian people. It is a fair process. It is well understood by the community and it reflects a long tradition in Australian public life. I believe it is a process which the government’s decision to revoke the ACT Civil Unions Act repudiates.

In short, we may not agree with the ACT’s legislative choices, but we have an obligation to respect them where they are democratically made. Of course, there are constraints on the ACT’s legislative power and those constraints are greater than those that apply to a state. It has been stated in this instance that the Civil Unions Act trespasses onto the Commonwealth’s prerogative over marriage. Section 51, placitum (xxi), of the Australian Constitution gives the federal parliament power to make laws over marriage. The powers in section 51 are not exclusive powers to the Commonwealth, as those in section 52 are. In other words, states may make laws in the area of power outlined in section 51 unless and until the Commonwealth passes laws inconsistent with those of a state or passes laws to comprehensively cover the subject matter of the particular head of power.

A couple of years ago, the federal parliament passed legislation explicitly stating that marriage is a union between a man and a woman exclusively. I support that statement in the law and on moral grounds. Marriage is an important institution in Australian society and it is worthy of being defended. Marriage is a union between a man and a woman, and there are good reasons, relating particularly to the welfare of children, why that should be so. I recently appeared on SBS’s *Insight* program to publicly defend the government’s views on this matter.

Despite my opposition to the position that the government has taken on this matter, I recognise that there are flaws in the ACT’s legislation. On balance, I believe the Civil Unions Act may well in places cross the line into the domain that the Commonwealth parliament has marked out for its exclusive treatment. Having said that, however, this too must be said: the Civil Unions Act is not fundamentally a law about marriage; it is primarily a law that removes discrimination

against people in same-sex relationships. To revoke the entire act when, arguably, only a small part of it is unconstitutional is a bridge too far.

The power of the federal executive to disallow a territory law is undisputed, if unprecedented in practice. But, given that democratic government is well developed and well understood in the ACT community, that power should be exercised only in the most exceptional circumstances and only when dialogue and persuasion have failed. I am not convinced that there was no alternative to disallowance. The ACT government expressed its desire, perhaps a little ungraciously, to accept the right of the Commonwealth to dislodge provisions that went too far and intruded into its exclusive preserve of marriage. It corresponded with the federal Attorney-General on this subject. In turn, it made 62—I heard Senator Carr say 63—amendments to its legislation to attempt to bring it within its own area of power. It apparently failed, but in circumstances in which I believe it has made the best attempt to preserve its power to legislate for relationships other than marriage. The power to legislate over the head of the ACT and to disallow a law of the ACT must be a last resort.

I do not believe that the record of this government on matters to do with the treatment of gay and lesbian Australians in homosexual relationships is a bad record. Over the 10 years in which we have been in government, we can clearly point to a number of measures designed to remove discrimination against people in those positions. Only recently, Senator Vanstone took the step of legislating to remove the barrier to people in same-sex relationships from applying for visas under the skilled migration program, and the government has taken other measures to effect those reforms. The government has promised to undertake further reforms of that kind, and I welcome that announcement.

However, we should not pretend that the work of removing discrimination of that kind is a matter only for the federal parliament; it is a matter also for state and territory parliaments. I believe that we must not prevent territory and state parliaments from exercising that power where they have a right to do so.

My position on this matter does not reflect any disrespect to the Governor-General or to his actions. His Excellency has acted in accordance with well established constitutional conventions and he has taken the advice of his ministers. My beef is that I do not believe that he should have been given that advice in the first place. It is a very difficult decision for a person who has been a representative of the Liberal Party in two parliaments over 17 years to say that he cannot, for the first time, agree with his colleagues on a matter of this nature, but I feel that today is a day when I must say just that. I indicate that there are many duties that a member of parliament has to perform and there are many loyalties that he or she owes, but mine must primarily be to the people who elect me: the people of the Australian Capital Territory. I recognise that they have, in effect, through the democratic process, made a decision, and I believe that we need to respect and honour that decision.

Senator WONG (South Australia) (11.44 am)—I want to commence my contribution to this debate by quoting a politician who is known to everybody in this chamber. This politician stated:

I don't think we should deny people rights to a civil union, a legal arrangement, if that's what a state chooses to do so.

He went on to say:

I view the definition of marriage different from legal arrangements that enable people to have rights. And I strongly believe that marriage ought to be defined as between a union between a man and a woman. Now, having said that, states ought

to be able to have the right to pass laws that enable people to be able to have rights like others.

The politician was George W. Bush, the President of the United States. I repeat that he stated:

I don't think we should deny people rights to a civil union ...

So we are in the extraordinary situation where the Howard government's position is in fact more extreme and more conservative than that of President Bush, who, as most people in this chamber would know, is regarded as one of the more conservative presidents in recent history in the United States.

It is unfortunate in this debate that the reality of the legal situation before this chamber—the legislation passed by the ACT—has not actually been the subject of the debate. This debate has been mired much more in the rhetoric and, from the government's perspective, it has stayed there. The legal reality appears to be virtually irrelevant to the position that the government is espousing. The Howard government effectively seeks to disregard what it knows to be the legal and practical reality of the ACT legislation because, and only because, it discerns some political advantage in denying some legal recognition to same-sex relationships. It ignores these realities because it seeks to exploit the prejudices of some in our community. It appears not to be interested in the legal effect of the legislation and it appears not to be interested in working constructively with the ACT government to resolve this issue—my colleague Senator Carr has outlined that. It is not interested in engaging constructively because it wants the fight. It wants this legislation to be used as a political football.

So let us look at the actual legal effect of the ACT act. I agree with Senator Humphries: under our Constitution, marriage

is exclusively for this Commonwealth parliament to define and to regulate. States and territories cannot legislate as to marriage. The Marriage Act 1961 has within it, as a result of the actions of this parliament, a definition that confirms that marriage can be entered into only by a man and a woman, and nothing any state or any territory can do can change that. All the states and territories can do, if they so choose, is to legislate for the recognition of and therefore consequent rights for same-sex relationships. They can never make these marriages.

The ACT government has chosen to do this. It is a proposition even President Bush is on the record as countenancing, and the logic really is difficult to fault. If you deny access to one institution—that is, marriage—is it appropriate that you also deny any alternative form of recognition to such relationships via state and territory laws? The only reason you would deny alternative recognition is because your position is in fact that you do not want any recognition for those relationships and therefore no consequent rights. Yet this is precisely what the Howard government seeks to do in relation to the ACT.

This is exemplified by the government's refusal to engage with the ACT to find a constructive solution to this. They have not engaged because they do not want a resolution. They say it is too like a marriage. I will pose some questions to the government, but I doubt I will get an answer. Which rights do you say ought to be removed in order for this bill to become acceptable? Which rights would you delete in order for it to be acceptable for a same-sex relationship to have recognition? Which rights would you remove in order for this to be okay? Would it be medical consent? Would it be the fact that you have to pay stamp duty? Would it be the disposition of property? Would it be the rights if someone dies intestate? Which of these

rights, which are conferred through the ACT legislation, so offend this government that they have to strike this law down?

If it is one particular right, such as the stamp duty issue, perhaps you should put it back to the ACT government that you would like that taken out. Which rights do you want removed? The fact is, you will not engage in that discussion because ultimately you do not want recognition of those relationships. I doubt that the government will answer me when I ask them which rights should be removed to make this legislation acceptable.

It is instructive to have a look at some of what our Prime Minister has said to get some indication of his motivation in this regard. Earlier this month—about a week ago—he gave an interview. He was asked specifically about the ACT legislation. He said:

The fundamental difficulty I have with the ACT legislation is a clause which says that a civil union is different from a marriage but it has the same entitlements.

He went on to say:

That is the equivalent of saying to somebody who's passed the HSC and wants to get into a particular course, it's saying to them well you haven't got the requisite tertiary score but we will let you go in the course anyway.

It appears that what he is saying—quite clearly—is that gay and lesbian Australians do not make the grade. We are akin to students who are not smart enough; we do not have the marks; we are not qualified to have our relationships recognised. As we know, the content of a relationship has nothing to do with whether the people are smart enough. The fact is, what the Prime Minister is saying to these people is, 'You don't make the grade because you're gay.' I do not know how it is that people in this place and in other contexts can dissemble and suggest that the government's position is

not about prejudice and is not about discrimination.

But this is nothing new from our Prime Minister. The trademark of his leadership of this country has been the way he has tried to marshal prejudice in this country to perceived political ends. There is a long history of the Howard government doing this and of this Prime Minister doing this. Even as Leader of the Opposition, when he raised the issue of Asian immigration in 1988, that was what he was trying to do. When he defended Hanson's right to speak rather than defending the experience and rights of Indigenous and Asian Australians, that was what he was trying to do. When he talked about security concerns around the *Tampa*, despite the fact that all of the *Tampa* people actually were eventually admitted to this country, that is what he was trying to do. When he talks about mushy multiculturalism, that is what he is trying to do. He is trying to do it again now with this legislation.

It has been suggested that civil unions will undermine marriage. I ask this question: how will the recognition of some same-sex relationships in the ACT undermine marriage? Do people really believe it will make marriage less secure? Do they believe it will make marriage less long-lasting? Do they believe it will make marriage less popular? I ask: why is it that this government is so antagonistic to the prospect of other people's relationships getting some recognition?

I want to make some comments about the tone and content of this discussion in the public arena. We have a privileged position as members and senators in this place. We all know that politicians have power, some more than others. Political leaders particularly have power. When we say things, it has an effect. We should exercise this power with restraint and we should ensure that we do not use it to foster prejudice or to marginalise

people. Yet the tone and content of this debate—an example being the Prime Minister's comments—has often been to pathologise and implicitly or explicitly criticise gay and lesbian Australians and their relationships. I ask people to consider how that feels for gay and lesbian Australians, their children, their families and their friends. Is it any wonder that people feel angry? Is it any wonder that they feel hurt? Is it any wonder that there are people who lobby very hard for these changes and become quite passionate about them? They are consistently and regularly being pathologised by the comments of this government and, more particularly, by the comments of the Prime Minister.

There are those in this discussion who appear to think that there is something to fear from people in same-sex relationships and that there is something to fear from people who are gay having children. I want to make the point, because the issue of children has been raised on a number of occasions, and I want to make the point very clearly: civil unions legislation will not increase or decrease the number of people in Australia who are gay and have children. It is entirely irrelevant to it. People in same-sex relationships probably aspire to and struggle with similar things to people in heterosexual relationships. They struggle with things and they aspire to something similar—perhaps stability, security, nurture and love. I say to people who are so fearful of these sorts of relationships: they may be beyond your experience and your understanding, but they ought not to be something that you fear so much.

I would like to make some comments about the Labor Party's position on this, which has been articulated by Senator Ludwig and Senator Carr. I want to put on the record that I am both proud and appreciative that the Labor caucus has taken the decision it has. I want to put on the record that I acknowledge that this is a difficult decision

for some in our caucus. For some it is difficult because of perceived electoral disadvantage. For some it is because they have deeply held personal views on these issues, and I do respect that. However, I want to say that I believe this decision is consistent with the best of Labor traditions. We are a party founded on an ideal of fairness. We were founded on the principle of fairness for working people—a fight that, over 100 years later, we are still taking up to the government in the face of their extreme industrial relations laws. Over the years, the Labor Party has come to understand and enact in government the principle of fairness insofar as it applies to women and also to people of different races. We have come to recognise that fairness is not simply a commodity for some but is inherently a principle for all. We cannot endorse continued unfair treatment of certain citizens in this country simply because of their sexuality.

I hope there will come a time when this country can look back and wonder why some in this place and some in this government were so frightened of and antagonistic to certain types of relationships. I look to a day, to paraphrase a great man, when we not only judge people by the content of their character but also where we judge their relationships by markers such as respect, commitment, love and security and not by the gender of their partners. I look to a day when government policy and articulation is not so mired in prejudice. I look to a day when we have a government that is not so mired in prejudice that it can address these issues fairly. One thing I do know is that that will only come under a Labor government.

Senator FIELDING (Victoria—Leader of the Family First Party) (11.57 am)—Family First strongly opposes the ACT Civil Unions Act 2006. For this reason we strongly oppose the disallowance of the instrument disallowing the Civil Unions Act 2006. The

issue before us is a simple one. The Civil Unions Act wants to make civil unions between same-sex couples the same as marriage. The definition of marriage in the Marriage Act states that marriage is 'the union of a man and a woman to the exclusion of all others, voluntarily entered into for life'. But the ACT legislation states that a civil union is to be treated for all purposes 'in the same way as a marriage'. Quite clearly the ACT legislation seeks to establish a new kind of marriage—a marriage between people of the same sex, just under another name. Family First says this is not on. This undermines the status of marriage, and that is something the Australian community does not support. Marriages bloom between a bride and a groom. Family First represents ordinary Australian families and mainstream values. For this reason, we believe it is vital to defend marriage.

But that is not enough. What Family First believes we should be doing as a community and in this parliament is putting the case for marriage—promoting marriage, strengthening marriage and improving marriage. That is what the Australian community wants. Let us look at the case for marriage. Marriage is one of our most important cultural institutions. It was created and maintained over thousands of years and has stood the test of time. Marriage is the foundation for family life and offers the best environment in which to bring up children. Family First believes that too often in these debates children get ignored. The interests of children must always come first, and it is in the child's best interest to be raised where possible by a mother and a father who have made a life-long commitment to each other through marriage.

As I said earlier, marriages bloom between a bride and a groom. Men and woman have different but complementary contributions to make as father and mother, and a

child needs both—a male parent and a female parent. It is stating the obvious, but it is important to state that the major difference between marriages and same-sex relationships is that marriages can produce children. If we allow gay marriage, what comes next? Will we have laws banning the words 'mum' and 'dad' from school textbooks? Will the words 'mother' and 'father' be banished from our TV screens and movies? As far-fetched as it sounds, this is already, sadly, happening. Just recently we learned that Victorian schools are being advised to dump the words 'mother' and 'father' in a campaign to promote same-sex parents. The new teachers manual also says pupils as young as five should act out plays where they have two mothers.

There is no doubt that marriage is under attack, which is why it is not enough simply to defend marriage, but to promote, strengthen and improve it. Other arguments in favour of marriage include that studies show that people who are married are healthier and happier and they feel a greater sense of worth, security and stability. Studies also reveal that the overwhelming majority of Australians aspire to marriage and what it usually leads to, that is, family life.

Of course it is true that many marriages break up, despite the best efforts of husband and wife, and that is a tragedy because of the devastation it causes to all parties, particularly children. But that is no reason to weaken or undermine marriage, which is what the ACT legislation would do. Marriage is the ideal—it is the best form of relationship society can aspire to—and Family First is passionate about protecting marriage, strengthening marriage and promoting marriage. The more we can do to protect, strengthen and promote marriage, the better Australian society will be.

It is interesting that the ACT Civil Unions Act focuses on people of the same gender. Why just them? What about any two people who live in a codependent relationship and want it socially and legally recognised? For example, Family First knows of two sisters who live together and care for one another on a permanent basis. Why should they not also be included? The reason is because the ACT Civil Unions Act is not merely about recognising interdependency and commitment. It was specifically created for same-sex couples so as to legitimise and endorse their sexual relationships.

As I mentioned earlier, marriages can produce children; same-sex relationships cannot. Therefore, a sexual relationship between a man and a woman has much greater responsibilities, which is why we recognise those relationships differently. The federal government made its objections clear to the ACT government about how its Civil Unions Act was simply marriage by another name. The ACT government rejected the federal government's arguments—and, frankly, I think they were being mischievous—which is why we are here now.

There is widespread community support for overturning this legislation. I was particularly interested to read that the Muslim leader Sheikh Fehmi Naji el-Imam has spoken strongly in support of the federal government's position. The federal government has the legal power to overturn legislation passed by the territories. The ACT is not a state and we should not pretend it is. So it is quite in order for the Commonwealth to overturn legislation which undermines one of our most important institutions—marriage. Family First strongly opposes this motion.

Senator MILNE (Tasmania) (12.05 pm)—I rise today—

Senator McGauran—Just table it.

Senator MILNE—because I know that Senator Abetz is desperate to hear what I have to say, and his suggestion that I table my remarks—

Senator Abetz—Point of order! You are misleading the Senate.

Senator MILNE—For Senator Abetz's edification, I feel that I must speak at length. I question the motivation of the federal government's opposition to this disallowance. I cannot help but feel that the motivation is precisely the same as that of Prime Minister Howard's good friend George Bush: it was very clear that his recent attempt to support a constitutional amendment in the United States to legally define marriage as being between a man and a woman was more about helping George Bush keep the White House than it was about the actual context of the debate. What we are seeing in Australia at the moment is Prime Minister Howard sending a strong signal, ahead of the federal election next year, as a rallying call to social conservatives to continue to support the coalition. That is precisely what is happening here.

This has much wider connotations than it may at first appear. This debate is essentially about values and the way that the two sides of politics see the world. It has been helpfully described by George Lakoff, who does a great deal of work around values. He has outlined what is essentially true: that conservative and progressive politics are organised around two very different models of family life and that those two different models translate into every way political action is taken.

One of the models of married life is the 'strict father family'. The other model is a 'nurturing parent family'. Let us start with the strict father family, the model that was just outlined by Senator Fielding from Family First. The strict father is the moral author-

ity and master of the household, dominating both the mother and children and imposing needed discipline. Contemporary conservative politics turns these family values into political values and they are: hierarchical authority, individual discipline and military might. Marriage in the strict father family must be heterosexual marriage. The father is manly, strong, decisive, dominating, a role model for sons, and for daughters a model of a man to look up to. That is essentially the model of conservative politics.

If you translate that model into conservative politics, it says that the citizens are children of two kinds. You have the mature, successfully disciplined and self-reliant ones, and for that you read wealthy businesses and individuals whom the government should not meddle with—that is, small government. Or you have the whining, undisciplined, dependent ones who must never be coddled, and, as in the family, the government must be an instrument of moral authority, upholding and extending policies that express moral strength. So we have the role of government as protecting the government and its interests in a dangerous world by maximising military and political strength. We have the promotion of unimpeded competitive economic activity so that both the disciplined moral people and the undisciplined immoral ones are able to receive what they each deserve based on their own choices. Finally, the government must maintain order and discipline, through severe enforcement of the rules if necessary. Hence, we have the overriding of the ACT in this particular case.

The other value system, from the progressive side of politics, would have the nurturing parent model, where you have two equal parents whose job is to nurture their children and teach their children to nurture others. Nurturing has two dimensions: empathy and responsibility for one's self and others. Responsibility requires strength and compe-

tence. The strong nurturing parent is protective and caring, builds trust and connection, promotes family happiness and fulfilment, fairness, freedom, openness, cooperation and community development. These are the values of strong progressive politics. And though again the stereotype is heterosexual, if you want to look at that, there is nothing in the nurturing family model to rule out same-sex relationships and marriage. It is a vastly different view of the world.

As it is translated into politics, a progressive government has to be strong enough to carry out progressive goals. It promotes safety and protection for life, health, the environment and human dignity, translating into support for the social safety net, health care, environmental protection laws, protection offered by the police and military, governmental laws and policies to ensure protection from unscrupulous business, pollution, unsafe products in the home, unsafe working conditions and so on. It is also expressed in fulfilment of life in many ways—through satisfying and profitable work, lifelong education and learning, and appreciation of the arts, music and culture. That translates into support for schools and universities, for fairness and freedom in terms of civil liberties, offering equal protection under the law and equal rights for all citizens. So it is a vastly different model.

I would argue here that the subtext of this piece of legislation is a signal to the electorate that the Howard coalition government—that is, the Liberal Party, the National Party and Family First—are sending a strong signal that if you support them you support the values of the strict father family, and those values mean that you do not support equality before the law and you do not support the absolute basis of freedom, fairness and human dignity. That is the question that I put to the other side of politics today. Do you believe in equal rights? It is simple and

straightforward. If you do believe in equal rights, if you do believe in equality before the law, if you do believe in tolerance and fairness, if you do believe in love and commitment, then denying lovers the right to a civil union is a violation of human dignity. It is discriminatory and it basically says that you do not believe in equal rights. That is the crux of this particular debate.

In the Tasmanian parliament I had a long experience of this, since the issue of gay law reform was long argued in Tasmania. It was introduced first by my colleague Senator Bob Brown and eventually it was my bill that secured gay law reform in Tasmania. It will shock people to know that up until 1997, when my bill was ultimately successful, you could be jailed for 21 years in Tasmania for being a practising homosexual. That was the case until 1997. When I moved to change that, to eliminate that discrimination against gay people in Tasmania, there were people who predicted that the sky would fall in, that the moral fabric of our society would be destroyed and that marriage would be destroyed. We heard all of the same arguments we have heard here, and nothing could be further from the truth. I have never experienced such intolerance, such hatred, such meanness, such vindictiveness, as I got in that debate from people who called themselves Christians. From people who called themselves Christians I got a level of vindictiveness and hatred that I never experienced in any other debate in politics in Tasmania. I was shocked by that, and I constantly said to people that they should do unto others as they would have them do unto them.

This is the point that I am making here: we are talking about equality, we are talking about antidiscrimination. And I would argue that that bill ending that discrimination against gay people was one of the most progressive and society-changing pieces of legislation in Tasmania in the nineties because it

brought with it, to my great pleasure and surprise, a whole change in the way that people related to one another. It was as if the doors and windows had been opened. There was a happiness, a level of tolerance and a general spirit of wellbeing that had not been there as long as the small-mindedness had existed.

It is about discrimination. I draw to your attention what happened in South Africa. I think this is really interesting. After the years of fighting against apartheid in South Africa, they got a new constitution which expressed a commitment in that country to the elimination of discrimination not only on the grounds of race and skin colour but also on the grounds of gender and sexual orientation. In their Freedom Charter, the ANC said that they were very firmly committed to removing all forms of discrimination and oppression in a liberated South Africa, and that commitment must surely extend to the protection of gay rights. One of the noted freedom fighters in South Africa said at that time:

What has happened to lesbian and gay people is the essence of apartheid—it tried to tell people who they were, how they should behave, what their rights were. The essence of democracy is that people should be free to be what they are. We want people to be and to feel free.

In a speech commenting on what had happened in South Africa, Justice Kirby said:

Perhaps those who have felt the pain of discrimination on the basis of their race and skin colour (which they cannot change) understand more readily than many Australians the pain and wrong-headedness of criminalising people on the grounds of their sexual orientation (which likewise they cannot change).

In this case it is not about criminalising. In this case it is about ending discrimination. It is about recognising love and commitment—and surely isn't that the very definition of the marital ideal, of what marriage, of what civil

union is fundamentally about: love and commitment? Don't we need more love and commitment in this world? Isn't that what we would all be aiming for? Why do we want to spend time in this parliament denying people the right to civil union and telling people that we have a right to violate their human dignity and we have a right to tell them that they are not equal before the law?

It is time that Australians saw this particular debate for what it is. It is an attempt to shore up the coalition by sending the worst possible signal to social conservatives around the country that, if they want to advantage big business and the rich in Australia, who, to the detriment of the poor, want small government and, as I said, the removal of a whole lot of the community safety nets that we have had for a long time, then the way to do that is to reinforce the strict father model of Australian politics, vote for the coalition and not go with a more open, generous and fair society. So this is a values debate. Let us get that firmly on the agenda. It is about values.

Senator McGauran—And you are anti father.

Senator MILNE—I hear an interjection that tells me that I am anti father. Quite to the contrary, my model of politics is of progressive politics. And I repeat: my model of family is the nurturing parent family—the one that supports empathy and responsibility, where both parents have a major role to play in a society which also respects sustainability. And sustainability means looking not only at the social fabric but also at the environmental fabric and making sure that neither is pursued to the detriment of the other—and that is where I think we would have a vastly different view of the world from that of Senator Abetz.

In terms of my view of the world, healthy communities are needed for healthy indi-

viduals. Policies that support healthy communities do include well-trained and equipped people working in hospitals, clinics and institutions that care for the community. It would mean access to fair lending laws, adhering to environmental standards, cooperating, meeting shared goals and open communication requiring trust. In foreign policy terms, my model would have cooperation and multilateralism, not the moral right to go in and bomb where you see fit to do so in association with another strict father figure—that is, President George Bush in the United States. So it is a vastly different view of the world as expressed here. But let me tell you that progressive politics is reclaiming the values debate in Australia. Progressive politics is out there saying, 'We stand for freedom, fairness, antidiscrimination and equal rights under the law.'

Senator McGauran—And that is why we have the majority.

Senator MILNE—Yes, you do have a Senate majority at the moment, but let me tell you that, after next year's federal election, that Senate majority will be gone, because the Australian people are desperate to rescue the Senate from the intolerance and heavy-handedness that we are seeing from this government. People do not like the abandonment of multilateralism. Don't you think Australians are humiliated today that on the London Tube people can pick up a free newspaper and see that Prime Minister John Howard has moved to overrule the civil union legislation in the ACT? The whole of London can pick that up today and see where Australia is going as the deputy sheriff to the United States—abandoning multilateralism and now abandoning even the principle of fairness and equal treatment under the law.

Senator Abetz—What's that got to do with the price of fish?

Senator MILNE—Senator Abetz might be very proud to have London reading the story about this today. I am not, because I respect the Australian Constitution. I respect the ACT parliament and its right to make laws for its people. But, fundamentally, this debate is about much more than that. I am a proud Australian, just as you are, but the values that I want to put out there for my country are freedom, cooperation, respect and human dignity. Every time that you stand up for Guantanamo Bay and you are proud of the fact that you are keeping David Hicks incarcerated there, every time that you stand up and overrule issues like this, Senator Abetz, you are sending a message to the rest of the world about what this country stands for. When you stand in front of that flag and invoke Gallipoli and the spirit of the Anzacs, let me tell you that you do not stand for the values of the majority of Australian people, who believe that the soldiers who went to Anzac Cove went to fight for freedom, democracy, tolerance, the rule of law and anti-discrimination. They did not go and stand for violating human rights. They absolutely did not go for that reason. Those soldiers would turn in their graves if they knew what has happened with regard to the Geneva convention against torture. Let me tell you that.

So let us hear it: what is your fundamental value system? How does that value system correlate with keeping David Hicks in Guantanamo Bay? How does your value system stand with violating UN sanctions and going into Iraq? How does your value system sit with not even being prepared to keep a list, a count, of civilian deaths in Iraq because of your government's attitudes? Tell me that in the broad context of a values debate. I will tell you that the Australian people want fairness, tolerance and decency. They do not want to see an absolute violation of human rights and a refusal to treat people as equal under the law, which is what the Common-

wealth is trying to do in overriding the ACT's legislation. I hope that there will be sufficient numbers of people who respect the long history of liberalism, before the whole neoliberal debate came on. People who are true liberals in this parliament will cross the floor and vote for equal treatment under the law. They will vote for love and commitment, not intolerance and discrimination, in relation to this legislation.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (12.25 pm)—That was a very enlightening speech that went across a number of subjects, ranging from wealth to values and so forth. The National Party has values—very strong values. One of those values is that the family is the basic unit of society, and that is founded on marriage. As someone who has enjoyed over 40 years of marriage, I stand very firmly against this motion moved by the Labor Party and the Democrats. I enthusiastically support the leadership decision to oppose this motion.

The ACT Civil Unions Act would have enabled same-sex couples to have a legally recognised civil union very similar to the marriage of heterosexual couples. The arrangements under the act bore marked similarity to those contained in the Marriage Act. Effectively, the Stanhope government was seeking to create an alternative system of marriage like relationships in the ACT in order to circumvent the definition of marriage in the Commonwealth Marriage Act.

We are strong defenders of traditional family values. There is no partnership, alliance or relationship that can be equated with the marriage of a man and a woman. This is an entity that cannot be replicated in any other form. The cynical motivation of the ACT government was demonstrated when it fast-tracked the commencement of its legislation in a bid to create civil unions which it

knew would be invalidated by the Commonwealth. The ACT does not have the constitutional power to legislate like this for marriage. If it wants the constitutional power it should go to the people of the ACT and say, 'We don't want to be a territory anymore; we want to be a state.' If they want the full right to statehood, they should go and take it up with the people.

The ACT government has shown it is willing to cynically use homosexuality as a political football against the Commonwealth. The Australian government was not prepared to countenance this political stunt. An instrument to disallow the ACT Civil Unions Act was made in the Executive Council on Tuesday. The instrument had the effect of invalidating the ACT Civil Unions Act from midnight that night. Therefore, there is no legal basis for the formation of civil unions.

While the government generally considers that issues concerning same-sex relationships are matters for the states and territories, The Nationals are strongly opposed to any action that would reduce the status of marriage to that of other relationships or which would create confusion over the distinction between marriage and other relationships. The government wrote to Mr Stanhope, expressing a range of concerns about the legislation and the extent to which it served to confuse civil unions with the institution of marriage.

The ACT government did make some amendments to the bill before the debate on it and its passage through the ACT Legislative Assembly, but they did not deal adequately with the fundamental concerns of the federal government. As one example, the legislation still states in section 5(2):

A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage.

It is a marriage when you do not have a marriage.

Senator Joyce—It's a Clayton's marriage.

Senator BOSWELL—It is a Clayton's marriage. In the government's view, the amendments did not alter the substance of the ACT law. The legislation clearly undermined the institution of marriage and was an attempt to circumvent the definition of marriage contained in the Commonwealth Marriage Act. In 2004, the Labor Party, the National Party and the Liberal Party clarified the understanding that marriage is a union of a man and a woman to the exclusion of all others. This was supported by both sides of parliament. A civil union of two people of the same gender cannot therefore be equated with a marriage.

So even though the federal government advised them of their lack of standing with the Civil Unions Act, the ACT proceeded regardless, for a political stunt. The ACT deliberately set out to equate civil unions with marriage, which is a contravention of the definition of the Marriage Act, for which the Commonwealth has sole authority. They knew that; they were advised of alternatives; and yet they continued to proceed down the original path. There was a way through that did not offend the Commonwealth act, but the ACT government did not choose to go down that path. Perhaps the ACT should pay more attention to keeping their schools open and their budgets in balance than playing diversionary politics.

The Nationals believe strongly in the fundamental institution of marriage, as defined by this parliament as recently as 2004. We will take the necessary steps to defend marriage and do whatever it takes. In the end, it is the ACT and its citizens who are diminished by their government's rank amateur behaviour.

Senator WEBBER (Western Australia) (12.31 pm)—I would like to commence my remarks by quoting a well-known politi-

cian—a person well known to this chamber. In December 1998, when speaking on the Universal Declaration of Human Rights, he said:

Since 1948, Australia has given strong bipartisan support to the declaration and the principle that human rights are both universal and indivisible. At home, Australia has built a society which places the utmost importance on the values of decency, fairness and tolerance.

When discussing the need for a Constitutional preamble, in August 1999 he said:

It is also important that the preamble express those great principles of liberal democracy to which all of us subscribe: freedom, tolerance, individual dignity and the rule of law. The great strength of the Australian nation is built upon those inherited values that we have. It is not built upon a formal bill of rights; rather it is built upon the instinctive values of the Australian community and those institutions, including this parliament, the federal system and the democratic character of our nation that provide the underpinning of the free society in which we live.

In both cases, I am of course quoting our current Prime Minister, John Howard.

We have had much discussion in this debate about the values that individuals bring to this place and that different political parties hold. One of the values the Australian Labor Party holds that I am most proud of is our commitment to the fundamental principle that all people should be equal before the law. That formal equality or equal treatment is an intrinsic concept that underpins our international and Anglo-Australian legal culture. An important right that citizenship confers upon citizens is equal treatment before our law. Formal equality guarantees that the law is administered in a fair, just and impartial manner in the interests of the individual. Equality before the law is undermined when the law distinguishes between people because of their sexual orientation.

Like the Stanhope Labor government, before the 2001 state election the Western Australian branch of the Labor Party made a clear commitment to amend Western Australian laws to recognise that lesbians, gay men and bisexuals have the same rights as other citizens in Western Australia and therefore should be equal before the law. The rights of territories and states have been canvassed here most recently by Senator Humphries and by others. Territories and states of various political persuasions have often passed legislation that I have personally disagreed with. I can think of numerous examples passed by the Court government, including extinguishing the rights of workers, and I am sure I could think of examples passed by the previous Northern Territory government and by the government that, indeed, Senator Humphries was a member of. But I will always—although I regard myself as probably more of a centralist—defend the rights of those democracies to pass the legislation that they are elected to proclaim.

In my view it is incumbent upon all of us, when considering issues like this, to balance competing rights and values. It is a measure of our maturity as a democratic society that we are able to debate matters where divergent views are held and to create solutions that balance the right to hold personal views in the private sphere with the right to exist without harm and discrimination in the public sphere. In my view, the acts of the current government fly in the face of this very important principle. I would also like to place on record my appreciation of the tolerance and understanding that has been shown by members of my own party who do not necessarily hold the same personal view that I do on this issue. This debate within the Labor Party, if not within this chamber, has been handled in a very sensitive and democratic way.

I would like to conclude by pointing out that in 1861 John Stuart Mill argued that society should offer equal opportunities for all its members. Mill argued for 'a principle of perfect equality, admitting no power or privilege on the one side nor disability on the other side'.

Senator SIEWERT (Western Australia) (12.36 pm)—I rise to support this motion for the disallowance of an instrument made by the Governor-General disallowing the ACT's Civil Unions Act, and to appeal to senators on both sides of the House to simply accede to commonsense. My colleagues have very clearly outlined our position on this motion. However, I felt compelled also to make a brief statement so that I could look into the eyes of the thousands of Australians who are being affected by the government's action. I did it particularly so that I could look into the eyes of my friends and loved ones who could be affected by this government, so that I can say I did everything I could to uphold the meaning and value of the long-term, committed relationships that they have been in and are in. We value those relationships.

Whether the Prime Minister likes it or not, as of 2004 there were at least 20,000 couples, 40,000 people—these figures come from the Australian Bureau of Statistics—who want to be married, are living as married couples and are not heterosexual. These people confirmed it through the census process. They are part of the lesbian, gay and transgender community, and more importantly they are part of the Australian community.

Once again Australia has been dragged along behind George W Bush. President Bush introduces a constitutional amendment banning same-sex marriages; John Howard decides he wants a crackdown here too. There is no contentious point of constitutional law here. Let us call this what it is; it

is simply homophobia dressed up in a bogus argument about the rights of states and territories to govern themselves, and in other spurious arguments. You have to accept that these 40,000 Australians are equal citizens in law. What we are talking about is making them unequal in law. Having specifically excluded their rights to marry under Commonwealth law in 2004, the Prime Minister is now pursuing them via this shambolic and heavy-handed process of overturning an act that passed lawfully through the ACT Legislative Assembly.

The Commonwealth government has provided no coherent rationale for whose interests it is protecting in this attack on the rights of same-sex couples to be treated equally by the law. We have not been told whose interests are being harmed by what the ACT Legislative Assembly has done. In fact, what it has done is to make these people equal before the law. The Prime Minister and Attorney-General have fallen back on vague, unsupported claims that the institution of marriage has been undermined. I would like the government to show me how this institution has been undermined in any of the states around the world where commonsense has won over prejudice and discrimination. Can the government show that the institution has been undermined in Canada, the Netherlands or Spain? Of course it cannot.

I want to remind the Prime Minister and those who follow his lead that real people in committed relationships are harmed by intolerance. I want to quote from a letter that I received this morning from friends of mine in Western Australia who had to travel to Canada to have their marriage recognised in law. This is from Graham and Damian Douglas-Meyer:

Even though we were covered in WA by some of the best de facto laws in the country, we wanted to demonstrate our commitment to each other, in

the same way our siblings have demonstrated their commitment to their respective partners.

The symbolic and ceremonial aspects of our siblings marriages were important to our families and we felt strongly that we wanted the same.

We held a commitment ceremony in Perth in May 2004 with all of our family and friends and had our union blessed by an Anglican priest. Even though this had no legal standing, it was to us, and to our families, our wedding ceremony.

However, we also wanted to gain the recognition from the wider community.

Our siblings were all married and had a state-sanctioned contract to that effect. We could not do the same in Australia. However Canada had recently changed its laws to allow same sex couples to marry and non-residents were welcome to access those laws.

So after our wedding, we flew to Toronto and were married, legally under Canadian law, on March 26, 2004 in Toronto City Hall. Our marriage is registered with the Registrar General of the province of Ontario in the exact same way as any heterosexual couple. There is no difference.

Returning to Australia, of course, our marriage wasn't recognised, but we are still married. Under the Hague Convention for the celebration and recognition of foreign marriages, it should be recognised, but the passing of the amendments to the Marriage Act on Black Friday, August 13 2004 put paid to that.

However, to us we are married. In Canada we are married. In Belgium, the Netherlands, Spain and the US state of Massachusetts we are married as those jurisdictions all recognise foreign same-sex marriages.

In New Zealand our marriage is a civil union; In the UK it is a civil partnership; both automatically. In Tasmania, it is automatically equivalent to a registered domestic partnership.

And in the ACT it was to have been recognised as a civil union, and we hope that, from today, it will be again when the Senate re-instates the ACT Civil Unions Act.

However, in the eyes of our family and friends, and most importantly in our hearts we are married; we are husband and husband.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (12.43 pm)—I rise to speak briefly on this motion for the disallowance of an instrument made by the Governor-General disallowing the ACT's Civil Unions Act. I support it, as all my Democrats colleagues do. We are amazed at the hypocrisy that has been shown over the last couple of days on this issue. It was only a couple of weeks ago that the Prime Minister came out and said he was prepared to remove the discrimination against same-sex couples. The next thing we hear is that removal of the discrimination against same-sex couples which exists in terms of the recognition of their relationships was not going to be possible. The government would trample on the ACT government's rights to legislate on this issue and to produce the choice for same-sex couples to have those relationships recognised. It would wipe that out.

We still, of course, have not seen those major areas of discrimination tackled. The Democrats have put up amendments time and time again—for superannuation in the Public Service, for instance, which still discriminates heavily against same-sex couples. We put up amendments for Medicare every time there was a debate about safety nets or other real ways in which discrimination is absolute and in your face, as it were, and social security generally.

But, to some people's minds, those things are not as important as the ability to have a union recognised as such, which is a deep-seated need in people's lives. That is why people get married: they want others to know that they are in a permanent relationship with the person of their choice. For them it is a fundamental right. But it is denied to same-sex couples. In countries where it has been made available, as has already been mentioned in this debate, the institution of marriage between couples of opposite sex is not somehow suddenly diminished.

It is clear to me that people who write to me on this issue urging me to oppose same-sex unions are confusing the outcome of this. We are talking about a recognition of a relationship which exists; it is not one that might exist if it were possible through legislation. It is as if, by doing this, we are somehow encouraging people to go off and find relationships with people of the same sex. That argument is so banal and ridiculous as to hardly even be worth responding to, but that is the basis of the opposition that we are hearing in this place and outside it. That argument is discriminatory in this day and age. It offends against so much of what we say about ourselves as being tolerant people who seek to remove discrimination at every level in society. That is what we are on about in this place, and yet all it does is entrench discrimination and intolerance and encourage the message to be sent to people who are in same-sex relationships or same-sex attracted that they are somehow less worthy than others.

That is a really damaging message to send people. It is little wonder that there are higher rates of suicide amongst people who identify with that group or that there is such a high level of dissatisfaction with, in some cases, the way in which society sees them. If we want to be an inclusive society then we need to include all people, no matter what their race, sexual identity and sexual preferences are. We have to be serious about taking that diversity on board across society because it benefits the health of the whole nation.

It was with profound distress that most of us greeted the news that the government would stomp on the ACT. I think the ACT has done the right thing. It not only did the right thing but also went out before the last election and said that it would do the right thing. The good folk of the Australian Capital Territory have supported a government

which has said it would remove this discrimination and the Howard government has come in over the top and said: 'No, you won't. We like this discrimination being in place. We have some rather strange ideas about what sort of threat civil unions entail for the rest of us and we are suddenly frightened of the prospect. We think that by legalising civil unions there is in some way a broader threat to society.' I think that we in this place are adult enough to know that that is not the case. It is a nonsense, and a further slight on people who are in same-sex relationships.

I certainly hope that to some extent there is a conscience vote on this issue. I know there is not going to be a conscience vote as such, but I hope that enough members of the Liberal Party recognise that often many of their constituents are and will be in same-sex relationships and care about what happens to this bill in a big way. Even those who do not necessarily want to have a same-sex marriage or civil union recognised care, because they know the effect that it has on people. The message that this sends is: you are less worthy than we. That is not tolerable in this day and age, and that is the reason the Democrats will be voting with this disallowance. As I said, we are extremely disappointed that the Howard government has come down to doing what it has.

Senator NETTLE (New South Wales) (12.49 pm)—I will sum up the debate on the motion before us, which I am proud to be moving, by reading a letter that I have received from a man living in Canberra. He writes:

I am a 58 year old gay man who has been living in Canberra with my partner (of similar age) for the past 14 years.

We are both ex-servicemen. His was a long career in the army, mine a short one as a National Serviceman in 1969-1971.

We have both worked extensively in the Australian Public Service; in my case, in Social Security, Health, and Veterans Affairs portfolios for many years.

Each of us has at various times held Top Secret security clearances either in the military or in sensitive public service portfolios.

Both of us have lived the majority of our lives in situations where our relationship was considered to be criminal, in one state or another.

Throughout my partner's military career he kept his sexuality utterly secret, since the alternative (till the early 1990s) would have been summary discharge from the Services. I was more fortunate in that the public service reformed its attitude a little earlier.

Governments were happy to accept our contribution to the national good, but for many years they did so on the condition that we lied about our personal lives and pretended to be something we were not. As for entitlements, we were expected to be grateful for not being arrested.

Those days of hypocrisy and persecution are largely past. But whilst all Australian states and territories have now decriminalised same-sex relationships, we are not accorded recognition by social security, superannuation, health, and taxation systems controlled by the federal government. Though we pay for our share, we don't receive our share. And our schools are still reluctant to teach kids that gay sexuality is ok, and many teachers turn a blind eye to victimisation and bashing.

I have once experienced being the target of gay-hate violence. Half a dozen thugs with baseball bats attacked me just a few years ago here in Canberra. If I weren't both lucky and prepared to stand up for myself, I would have died that night. Some of my friends have been less fortunate.

The continued existence of this sort of anti-gay violence is due in great measure to those who seek to impose on the entire community their narrow view of what is "moral", and who seek to use gays as scapegoats to blame for society's ills. I recall all too well the attempt by some religious groups in the 1980s to blame gay men for HIV/AIDS and to cynically use HIV as a weapon

to try to drive society back into the sectarianism and hypocrisy that characterised the 1950s.

Certain religious groups still have no hesitation in promoting the most appalling and dishonest anti-gay propaganda in the name of "family values". But as I recall, the Nazis also claimed to be committed to family values, and were equally intolerant of freedom of choice. Tens of thousands of homosexual men were interned by the Nazis, and many of them perished in concentration camps. It was not the first time we had been used as scapegoats by political or religious fanatics, nor was it the last time.

I consider myself to be a highly moral and principled person, a quality I attribute to the nurture of my late parents. My family has always been absolutely supportive of me and my partner, and my siblings often travel to stay with us at Christmas or new year.

I have made (and am continuing to make) a significant contribution to the society in which I live. Those with whom I have worked have always respected my contribution, and have had no difficulty with the fact that I am an openly gay man. Likewise, those with whom I am involved in amateur sport at ACT and national levels respect me for my contribution and my honesty, not because I am or am not gay.

I am proud to be an Australian, and thankful that over the past 30-40 years our country has gradually become a fairly tolerant and welcoming place for most people.

But every step of the way over the past thirty-four years, attempts to remove the punitive and discriminatory laws that made me and my partner second-class citizens have been met by ideological bigots claiming that to remove such discrimination would somehow damage the rights of those who suffered no such ill-treatment. What poppycock.

I'm truly sick of the whingeing and whining that comes from the religious conservatives every time someone obstructs a little of their pathological crusade against gay men.

The proposed ACT legislation does not equate civil unions with marriage. To complain, as the Attorney General has done, that it "implies" equality shows just how much influence religious

bigots have over a supposedly secular federal government.

Living in Canberra I am also sick of the disadvantage every ACT resident endures. Namely, having substantially less representation in federal parliament than Tasmania which has hardly more population than we do, and having our legislation and planning decisions threatened or overturned by federal government bully-boys.

Whether on this issue or any other, it is intolerable that Australian citizens in the two territories do not have true self-determination in the manner that people in the states do. Those of you who come from states might care to think how you would feel if the federal parliament could override your state's laws.

My partner and I still have our military service medals. Sometimes I wonder if we should send them back, since our contribution to the military service of this country is apparently not considered sufficiently worthy to accord us the entitlements that most people take for granted.

If the federal government decides to go out on the limb of extremist intervention, I will protest in every way I can. But whether or not protests succeed, the fact is that the proposed meddling in ACT legislation is driven by conservative religious ideology dressed up in the false guise of "family values". To support such intervention would be a dishonest and obscene attack on the secular constitution our nation adopted in 1901.

I hope that you and most other members of the federal parliaments will reject any attempt to interfere with the ACT Government's legislation on same-sex unions, whether directly or indirectly.

I know that this issue is not simply a party matter. There is a range of views in political parties. My experience suggests that most people with a negative attitude to gay issues have not met and dealt with openly gay men or women. It's easier to demonise something that you've always avoided.

It's high time the federal parliament stopped avoiding the issue of its discriminatory laws. We are all citizens and there should not be one law for my brother and a different law for me.

I am happy to take unpaid leave from my job to come and see any MPs or Senators at Parliament House, so that they can meet in person one of the

many people who has had to fight tooth-and-nail all his life to get some measure of fairness from governments. Someone who for most of his life was arbitrarily classified as a criminal, denied the protection of the law, and refused the entitlements that my siblings are given automatically.

... ..

I sincerely wish you and your family the same peace and security that I seek to have accorded to myself and my partner.

They are the words of a gentleman in the ACT who is calling on senators here today to vote to remove discrimination. We heard—from the government minister who spoke on this legislation, the Leader of the Government in the Senate—that the government wants to remove discrimination. Today is the opportunity for the federal government to vote to remove discrimination and allow couples—like this man and the many other people from whom I and, I am sure, other members of parliament have received letters—to have their relationships openly recognised in the parliament and before the law.

This is about allowing people to have their relationships recognised in all aspects of life. There was a letter to a newspaper last week about a man who had taken his partner with him when he went to hospital for surgery that he needed, but the hospital did not recognise him as the next of kin. The surgeons refused to carry out the operation and they had to wait there until they were able to get the man's estranged elderly father to give permission before the operation could go ahead.

Today is the opportunity for people to vote to remove that form of discrimination. I have attended weddings—gay, illegal weddings—that have been beautiful and loving ceremonies of the commitment between two people. We have the opportunity to have those relationships recognised before the law. It is an opportunity to say to the children of gay and lesbian parents that you see their family as a genuine family. I was walking down Oxford

Street in Sydney as part of a rally on this issue with a group of children, some of whom are the children of my friends in same-sex relationships. There were hundreds of people marching down the street and, as we were walking along, everyone was singing the song: ‘Going to the chapel and we’re gonna get married.’ That was what they wanted because they wanted their parents to be able to do that so that they could be recognised as a genuine family.

By not recognising the rights of those children to be part of a genuine family where both of their parents are recognised as legitimate parents before the law we are discriminating against those children, and we should not do so. We should allow these families to unite themselves before the law and to be recognised before the law, whether it is at hospital or filling in forms at the department of housing or the Department of Veterans’ Affairs. We need to allow this discrimination to be removed, and today is the opportunity for us to do that.

Today is also the opportunity to remove the discrimination for people who live in the ACT or in the Northern Territory who do not have their rights heard in the same way as other Australian citizens in the states. That is the opportunity that we have here today, and I commend this disallowance motion to the Senate. I appeal to all senators to vote today to remove discrimination; to vote today for the rights of territorians; and to vote today for all Australians to have their relationships recognised before the law.

Question put:

That the motion (by Senators Ludwig, Stott Despoja and Nettle) be agreed to.

The Senate divided. [1.06 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	30
Noes.....	<u>32</u>
Majority.....	2

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Campbell, G. *
Carr, K.J.	Conroy, S.M.
Crossin, P.M.	Evans, C.V.
Faulkner, J.P.	Humphries, G.
Hurley, A.	Hutchins, S.P.
Kirk, L.	Ludwig, J.W.
Marshall, G.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	Murray, A.J.M.
Nettle, K.	O’Brien, K.W.K.
Ray, R.F.	Siewert, R.
Sterle, G.	Webber, R.
Wong, P.	Wortley, D.

NOES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Calvert, P.H.
Chapman, H.G.P.	Colbeck, R.
Coonan, H.L.	Eggleston, A.
Ferguson, A.B.	Ferris, J.M. *
Fielding, S.	Fierravanti-Wells, C.
Fifield, M.P.	Johnston, D.
Joyce, B.	Kemp, C.R.
Lightfoot, P.R.	Macdonald, I.
Macdonald, J.A.L.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Parry, S.	Patterson, K.C.
Ronaldson, M.	Scullion, N.G.
Troeth, J.M.	Trood, R.
Vanstone, A.E.	Watson, J.O.W.

PAIRS

Forshaw, M.G.	Nash, F.
Hogg, J.J.	Campbell, I.G.
Lundy, K.A.	Santoro, S.
Polley, H.	Heffernan, W.
Sherry, N.J.	Ellison, C.M.
Stephens, U.	Payne, M.A.
Stott Despoja, N.	Brandis, G.H.

* denotes teller

Question negated.

**PETROLEUM RETAIL MARKETING
SITES AMENDMENT REGULATIONS
2006 (NO. 1)**

Motion for Disallowance

Senator JOYCE (Queensland) (1.10 pm)—I move:

That the Petroleum Retail Marketing Sites Amendment Regulations 2006 (No. 1), as contained in Select Legislative Instrument 2006 No. 73 and made under the *Petroleum Retail Marketing Sites Act 1980*, be disallowed.

I have moved this motion for the disallowance of the Petroleum Retail Marketing Sites Amendment Regulations 2006 (No. 1) because they completely disavow the principle set down by the Petroleum Retail Marketing Franchise Act 1980 and the Petroleum Retail Marketing Sites Act 1980—acts that still stand. Furthermore, the primary legislation is currently being considered, so these regulations bring in the intent of the legislation before its proper debate and passage. If you believe in small business operators, you have to allow a place for them to operate. It is no good saying that you must leave it up to the goodwill and trust of the independents' competition, the major oil companies, to protect the commercial rights of independents, branded operators and franchisees.

These regulations, removing the restrictions on the number of sites the major oil companies can operate from, do not do anything to address the issue that Coles and Woolworths have, in their association with Caltex and Shell, circumvented the intent of the 1980 sites and franchise acts. In fact, the regulations exacerbate the pressure on the independents, branded operators and franchisees by allowing the major oil companies to actively campaign for the soft centre of the market currently protected by the sites and franchise acts. These regulations will allow total vertical integration, and this is never a reason to reduce prices in a marketplace. The

fact that this market regulation has been removed is also a major impediment to getting biorenewable fuels onto the market. Independents are by far the most aggressive in this market. This town is a very good example of that. Of the four stations in Canberra that sell biorenewable fuel, E10, three of them are independents.

The change in the regulations will lead to a similar situation to what happened in the United Kingdom, where the independent fuel stations and other small operators were overtaken by the majors, leading to the loss of mum-and-dad operators, who had been beneficiaries of the profit generated from the fuel retailing trade. The closure of regional fuel stations, as happened in the UK, is another consequence of such regulations and one that should be a major concern for those who represent regional areas. The report by the All-Party Parliamentary Small Shops Group in the UK, *High Street Britain: 2015*, concluded that independent petrol stations were 'very unlikely to survive' in this market.

The argument will be put by some that none of the majors wishes to take over the independent, branded operator and franchisee share, but that is a counterintuitive argument to why they are busting their boilers to get these regulations through. The majors have offered no alternative plan as to how they will protect the independent, branded operator or franchisee sector of the market, which will be vulnerable to the regulatory change. We do not have the power under other mechanisms, such as section 46 of the Trade Practices Act, to protect them. If we let this regulatory instrument stand, we will be saying that the purity of a half-regulated market, which it is, is more important than participation by a wide cross-section of retailers. We will look rather hypocritical if we later endorse strict restrictions on who operates where and why in the cross-media ownerships laws.

I suppose it is who has the greater push in Canberra, and it is not the mum and dad operations when up against the might of motor oil companies. I understand that the conservative parties have a reason to say they promote the objectives of big business. I look forward to observing how this chamber will deal with the opportunity that has arisen to protect small family operations from the larger major oil companies. Maybe I am disconnected from this issue in Canberra, but that hardly explains those who have come to my office and lobbied absolutely vehemently to have these protections in place. These people are from organisations such as the NRMA, the Victorian Automobile Chamber of Commerce, the Motor Trades Association of Queensland, the Motor Trades Association of Australia, the Service Station Association, Renewable Fuels of Australia and myriad smaller organisations and operators.

So I am of the strong belief that I am representing key small business organisations that The Nationals in Queensland said we would represent at the election when we gave the promise that we would stand against the overcentralisation of the retail market. What this regulation does is bring about the oligopoly of retailing, which will be held by four oil majors in conjunction with Coles and Woolworths. They have an obligation to extract the best return for their shareholders, so relying on their good will in respect of the rights of independent, branded and franchisee sites to participate in the fuel market is against both their corporate responsibility and their optimum specific return on capital.

If the major oil companies get total control of a retail market, they have a corporate responsibility to exploit it so as to get the best return for their shareholders. If I were a shareholder of theirs I would expect absolutely nothing less. This was understood clearly in 1980 when the coalition government brought about the sites and franchise

acts. It has always been the intent of the conservative side of politics to protect small business operators. The issue remains the same, but we are now changing. We are moving that which the coalition government set out to protect in 1980.

Since the repeal of this legislation allows the major oil companies the keys to complete control of the retail sector—and experience elsewhere, such as in the UK, says that this is what they will achieve—then naturally enough you are giving the oil majors the chance to put their margins up and maintain them there in the long term. In the current fuel price environment, I do not know whether that is what the public wants or will find palatable, that we are passing a piece of legislation that will give complete vertical integration and market control to the major oil companies, which are already exploiting their position in the market in such a way to extract a return that has brought about an up to 300 per cent increase in their parent company's share price in the United States. I refer there to Chevron.

The 130,000 retail outlets represented by the Motor Trades Association of Australia have unanimously supported my position. That accounts for \$113 billion in turnover annually. Ninety-five per cent of these outlets have less than five employees, which means they are the quintessential small business, non-unionised workforce and, as displayed by this regulatory change, they are not represented or supported by the major oil companies and those who have the major oil companies' ear. A couple of nights ago on *The 7.30 report* was a Mr Jim Lamb, who represents only a handful of stations. He is the sole independent I have found who is on the side of this regulation change. I understand what he and all independents fear about the security of price and supply. They live by what the major oil companies supply them. Unfortunately, you do not have to

worry about supply if you do not have a site to operate from.

Now, with your supplier also becoming your major competitor in the retail market, all I can say to you is good luck in the long term, especially if your site comes up for renewal. You have to remember that a lot of these sites are on three- by three- by three-year leases. At the end of these three-year leases, the oil companies have the ability to walk in and say: 'We're not renewing any more. It is not an obligation. The sites and franchise acts are finished. We're going to take it over.' They will know where the volume of fuel is going and they will know the margin they can extract. It will be an absolute fait accompli that they will go through their business plan to find those sites that are currently under lease. People say that there is a greater strengthening in the lease conditions, but there is only a strengthening in the lease conditions if they choose to renew your lease. If they do not renew your lease, they kick you out.

There is nothing in this that guarantees the price for those independents left in the market—which they are buying out—to allow them to compete with the major retailers of fuel. The major retailers of fuel will become the major oil companies. The major oil companies are not going to be selling a product to their competitors at a price that makes them uncompetitive. They will have a competitive advantage because they will be both the supplier and the retailer. There is nothing in this oil code that talks about any protections—no ombudsman or ACCC oversight—in how those oil companies will deal with their independent, branded and franchisee operations. Some will pose the position that the ACCC has an oversight; it has no oversight. The ACCC cannot go on a fishing expedition to find problems, nor can they demand information and, even if they do, they cannot come to a binding resolution.

The restriction on the number of sites that the major oil companies could operate from made it essential in the past to supply independent, branded and franchisee sites. Without these sites, their refineries could not operate at optimum capacity. Now, in the long term—not tomorrow, but in the long term—the major oil companies will be able to meet their optimum capacity without utilising independent, branded or franchisee sites. There is no intention to build new refineries, so there is a limited amount of fuel for the market, and you cannot supply fuel you do not have.

So when the major oil companies tell you that they will be supplying all their sites first and that if there is something left over you can have it at their price—their price they decide to sell to you, which will not be the price they are supplying themselves—they will be telling you the truth. There is nothing in this legislation that can stop that from happening. You may have an instance where they say, 'There is no fuel for you.' They will say, 'If we had it, we would give it to you, but it's all gone.' They will be telling you the truth. You as an independent, branded or franchisee site will have a major supply crisis because you will not be able to obtain your fuel at a price that will keep you in the market.

Furthermore, certain independent branded or franchisee sites will be an inconvenience, so they will not attain the discounts on terminal gate price that the company owned sites can avail themselves of. This legislation talks about terminal gate price. Terminal gate price is very handy, but very few fuel stations buy it at terminal gate price. Everybody receives it at a discount and a variant amount of discount to the terminal gate price, and the discounts are not disclosed. If I want to put you out of business, I will sell it to you at the terminal gate price, because you will probably be the only one in the market buying it at

that price. It will become inconvenient to supply these sites out in regional areas and, when they do supply them, they will supply them at a price that will mean it is unviable for them to stay open. They will not get the travelling trade. When they do not get the travelling trade and therefore close down, that becomes yet another service that is removed from small regional towns to add to the banks, railway stations and post offices that have been removed. In these small regional towns, you will get nothing for your house or very little for your house, so you cannot move unless you want to walk away with little or nothing. Now you have a real impediment on your freedom of movement if you choose to stay or have to stay, as opposed to the impediments that are currently on you in leaving.

What I am saying would be grandstanding and emotive if it was not for the findings of the All-Party Parliamentary Small Shops Group inquiry report entitled *High street Britain: 2015* that was carried out in the UK. I would like to comment on some of this inquiry's findings. Amongst its many observations on the disappearance of the traditional local small shops and independent convenience stores, it also reported on the use of discounts by petrol forecourts and argued that this could be considered to be predatory pricing. The report stated that it believed that the big four, which would be the same big four as here, sell fuel below cost until local competition can no longer sustain the loss margins. This is followed by a sharp rise in price at the multiple retailers' forecourts. 'Forecourt' is their word for petrol station.

This is exactly what I predict will happen in Australia. We are talking about the same companies, the same environment. In fact, it will be exacerbated in Australia because of the distances. The Association of Convenience Stores contends that even superficial research into local markets illustrates that

price flexing by a major retailer in towns in close proximity to each other exists. Between 1991 and 2004 in the UK, 8,380 forecourts, or service stations, have gone out of business, with hypermarkets—that is, major supermarkets—now selling over 30 per cent of the fuel sold in the UK despite only operating from 10 per cent of the sites. In Australia, the major supermarkets sell well in excess of 50 per cent of the fuel, so our position is worse than that of the UK's before we exacerbate it further by this regulatory change.

The report stated that the cessation of trading by small retailers close to national multiples seems inevitable. An example of this is found in Cupar, a town in Scotland which, prior to Tesco—a large multiple retailer—had four petrol stations. Now they only have one. We already have issues in regional areas of Queensland relating to the closure or intended closure of fuel retailing outlets. That is a huge inconvenience for the people who live in those towns, because it is a fundamental of life. How are you going to fuel your car when there is not a petrol station in your town? To people who say that is not going to happen, where is the protection in this regulation? There is no protection. There is no intention to give protection, so we have to accept the consequences that are going to flow from this. Every time you go to a regional area and the people say: 'We had a town. We had a fuel station. Now we just have houses and a pub,'—the pub will probably survive—that is a consequence of this change that we are about to bring about. It is a consequence for which the conservative government in 1980 realised they had to put in a protection mechanism against.

The evidence in this report is a recent and concrete example of the impact of small business operators being pushed out of the market, which in turn affects competition and, as a result in the case of the UK, led to a rise in the price of fuel for consumers. Under

the reform processes that are being put forward, starting with the changes in these regulations, Australia runs the very real risk of mirroring what has occurred in the UK. The short-term benefits shall last till independents disappear. Then the long-term malady will be incurable. You will not be able to get independents back into the market once they are gone, nor will there be the political will to do so. The capacity that we need now to get biorenewable fuels into the market will be gone. Why would the major oil companies want to sell a competing product in ethanol? What would possess them to sell their competing product? What would possess them to supply their competition with fuel?

Whether you are considering the future of small businesses—and I made a clear statement in Queensland that I was going to Canberra to represent the interests of small businesses—or the future of services in small towns, I ask this chamber to strongly consider the implications of this regulation in the way you are about to vote. The consequences of this will be that we will have exacerbated the problems that are currently being experienced in regional areas and, in the long term, we will be leading to an oligopoly in how fuel is marketed. If we had changes to section 46 or something so that we could go out there with some form of protection, we could do it, but we do not have those section 46 changes. We have no mechanism for protecting them, so I will not support this regulatory change.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (1.28 pm)—With great respect to my friend and coalition colleague Senator Joyce, I regret to inform him that the government opposes his motion for disallowance, while respecting his right to move this motion—one of the great things about our side of politics. On 30 March this year, the minister whom I represent in this chamber, Ian

Macfarlane, the Minister for Industry, Tourism and Resources, announced in his second reading of the Petroleum Retail Legislation Repeal Bill 2006 that he would be amending the Petroleum Marketing Retail Sites Regulations 1981, consistent with the government's downstream petroleum reform package. That package provides a uniform regulatory environment for industry participants through the introduction of the oil code, which has been worked up in full consultation with the industry, under section 51AE of the Trade Practices Act 1974 and, at the same time, repealing the old Petroleum Retail Marketing Franchise Act and the sites act. I remind the Senate that this package has been government policy for quite some years. In fact, I spent three years as industry minister seeking to have this package adopted—regrettably, to no avail—and it is well beyond time that it was implemented. I think it is an essential reform.

The aim of the oil code that we have developed is to provide industry participants with a national approach to terminal gate pricing, fairer contractual arrangements and access to a downstream petroleum dispute resolution scheme. Development of the code, as I said before, does follow very extensive consultation with industry, industry associations, consumer groups, state and territory agencies and relevant Australian government agencies.

Senator Joyce's disallowance motion seeks remove the oil majors as prescribed corporations and suspends the oil majors reporting and compliance obligations under the existing sites act. The amendment to the regulations prevents market uncertainty and breaches of the act, while the repeal bill is under the consideration of the parliament—in other words, this amendment is an essential mechanism to ensuring proper consideration of this repeal bill without undue intervention, interference or uncertainty for the

industry itself. Under the existing legislative framework, the oil majors may temporarily operate a retail site for a period of up to eight months while they determine the best business structure for the site. Under the existing sites act, to temporarily operate a site the franchisor must have a good faith intention to either dispose of or franchise a site at the end of this temporary eight-month operation period.

The introduction of the government's bill to repeal the sites and franchise acts has the effect of reducing the ability of the oil majors to meet that intent in good faith. It actually prevents them from making use of these temporary operation provisions because they could not, knowing our repeal bill is there, meet that good faith requirement. Had the government not made an amendment to these regulations, for which there is a motion seeking its disallowance, the oil majors would have had to re-enter nine-year franchise agreements, close retail sites or enter into arrangements with third parties, even if a different business structure would clearly be more appropriate and knowing, of course, the government's intent to repeal the whole structure.

We are committed, as I said before, to repealing the sites and franchise acts and to the introduction of the oil code, and I think we have gone now to at least three elections with that as our clear policy. The regulation that has been promulgated is entirely consistent with this aim of the government to introduce a more effective regulatory regime, to allow all industry participants to respond and adapt to changes in the retail petroleum marketing industry without distorting or reducing levels of competition. It is our strong view that the proposed reforms to Australia's petrol retail sector will increase competition, not reduce it. I remind senators that many in this place and in the other place have publicly supported the repeal of the sites act,

including, I understand, the Leader of the Opposition.

The sites and franchise acts are consistently acknowledged by industry and, indeed, the opposition as being outdated and redundant. Under the current restrictive regime, approximately one-third of the nation's service stations have closed. The ample supply of petrol that fuelled the rise of the independents no longer exists. Greater demand for fuel in the Asian region and cleaner Australian fuel standards have had the effect of changing the market quite significantly. Shell and Caltex have divested much of their direct retailing to Coles and Woolworths. The reality under the existing arrangements with the sites and franchise acts is that Coles and Woolworths now have around 50 per cent of the petrol retail market. Really the sites act has effectively been rendered redundant. The government, quite clearly and simply, want to achieve a level playing field for all petrol retailers to ensure that we do have a competitive market. We are very committed to having a competitive market. That is what we believe our package is all about given the current realities of petrol retailing.

In terms of the independent sector, the government's proposed oil code, which, as I say, has taken an enormous amount of time, effort and consultation to develop, will strengthen the position of independent retailers through better representation and access to a fairer dispute resolution process. It will be backed by changes to the Trade Practices Act. Maximum competition remains the greatest guarantee of the lowest priced petrol and that means ensuring that oil companies and the independent sector can compete on level terms with the supermarket chains.

In relation to Senator Joyce's proposed disallowance, existing franchisees are unaffected by the change coming about as a result of the regulation that we have intro-

duced. Current franchise agreements continue to be covered by the franchise act, including all terms, conditions and renewals. If franchise agreements have ended and the parties negotiate and enter into new franchise agreements, they will need to comply with the existing franchise act. For other market participants such as commission agents, their agreements will be covered by the oil code once it comes into effect, if indeed this parliament so deems, including preservation of tenure for agreements entered into before the commencement of the oil code. Disallowance of this regulation in our view will serve no purpose. It will not result in any changes to the government's downstream petroleum reform package, which we remain committed to, and it will only cause further uncertainty for the oil majors and their franchisees, who are small businesses in many cases. It will reimpose compliance costs on the oil majors that may well end up being reflected at the pump.

Should the disallowance motion itself be successful, it is our estimation that BP will be the major most immediately affected. Rather than signing nine-year franchise agreements, which may prove to be an uneconomic business model, it may well have to choose to close sites or enter into third-party arrangements outside of the constraints of the sites act. BP does want to run more of the sites it already owns, yet it is restricted by the current law to operating just 87 petrol stations around Australia. It is our view that that restriction does not augur well for BP's clear, articulated and welcome strategy to offer consumers greater access to biofuels. While we understand and respect Senator Joyce's very strong commitment to small business in this country, we do not think disallowance will do anything to assist small business operators in this industry. The government's position on balance is very much, regrettably, in the circumstances, that we

oppose the disallowance motion moved by Senator Joyce.

Senator MURRAY (Western Australia) (1.38 pm)—Senator Joyce has moved a motion to disallow the Petroleum Retail Marketing Sites Amendment Regulations 2006 (No. 1) made under the Petroleum Retail Marketing Sites Act 1980. This motion is directly related to the government's proposal to repeal the Petroleum Retail Marketing Franchise Act 1980 and Petroleum Retail Marketing Sites Act 1980 and replace them with a mandatory oil code under the Trade Practices Act.

In our view, there are two issues before us. One is the question of whether these regulations effectively put the cart before the horse, in that they have been put into law prior to the passage of the bills which would make them valid and reasonable. The second issue is whether this is an incomplete package, in that it is not accompanied by appropriate underpinnings, an appropriate safety net and appropriate protections for small businesses, who will be more disadvantaged than they are at present.

In that regard, I note the remarks made by the opposition revenue spokesperson, Mr Fitzgibbon, as reported by AAP on Wednesday, 14 June 2006:

The Regulation has the effect of repealing the Sites Act before the Parliament considers the merits of the repeal bill. This is an unacceptable abuse of power and an attack on parliamentary democracy.

The government is proposing to repeal the sites act, thereby allowing the oil majors to directly operate all retail sites owned by them. As an interim measure, the government has sought to remove the oil majors from the operation of the sites act through these regulations. By seeking to relieve the oil majors of their obligations under the sites act, the government is pre-empting the par-

liamentary debate regarding whether or not the sites act itself should be repealed and whether the repeal proposal is complete and adequate in its form. These regulations should therefore be opposed as they are contrary to the parliamentary intention behind the existing law and they represent a blatant attempt to pre-empt parliament's decision as to whether or not to repeal the sites act, as proposed by the government.

The reason the government are taking this route is that it is an extraparliamentary way of getting around the parliament in a circumstance where they fear that those coalition members who feel strongly about small business might torpedo their proposed legislation. That is not the way to conduct a parliamentary democracy. Coalition members do not seek to oppose or irritate the government on a whim; they seek to do so because they recognise that they have a concern with respect to their constituency. It is a valid concern, and they have the courage therefore to address that concern. Whether I or anyone else happen to agree fully or not with the particular issue at hand, it is a mistake for Liberal and National members, both front-bench and backbench, to allow this kind of practice or procedure to be accepted or entrenched. The proper way for these things to be resolved is, firstly, for them to be raised within the party room of the parties concerned and, secondly, for them to be brought before the parliament for final resolution.

I and many others object to this regulation coming up prior to the enabling legislation, because it is a profound, regrettable, undemocratic and nasty abuse of process. It is nasty because it will not recognise the validity of opinions held very strongly by literally thousands of small business owners and employees and by those parliamentarians who seek to represent them. My party and I strongly object to this on the basis of an abuse of process.

The second issue is whether there is sufficient underpinning for small business in this package. In his remarks, Senator Joyce specifically referred to the section 46 amendments, which small business at large, many academics, many professionals, many businesspeople and many parliamentarians have been urging on the Treasurer and the government. There is a remarkable thing about this. The Senate Economics References Committee in March 2004 conducted an inquiry into the effectiveness of the Trade Practices Act 1974 in protecting small business. That inquiry was chaired by a senator who is present in the chamber today, Senator Stephens, who I thought did a very creditable job in conducting that inquiry and was very ably assisted by all the members of the committee, of whom I numbered one.

That committee produced 17 recommendations. Although there was a minority report which dissented from a number of the recommendations in the majority report—and which was principally authored by someone who deserves to be regarded as expert in this field; namely, Senator George Brandis from Queensland—the Liberal Party members of that committee supported a series of recommendations in the majority report. The government, subsequently, accepted those recommendations in the Australian government response to the Senate inquiry.

That response indicates that the government accept that there are a number of areas that deserve to be amended to assist small business in competing more fairly and more ably in the marketplace. So the recommendations were considered by a Senate committee, a number of them were accepted by the government experts on that committee and they were then accepted by the government. That was two years ago, and they are still not part of a package available to the parliament to underpin a change in law which manifestly will enable big business operators to

compete in this industry in a more effective manner but does not provide any assistance at all for small competitors, small individuals and small business people who are faced with this changed environment.

It should be noted—and the minister mentioned it briefly—that major corporations like BP, Caltex and others support those proposed bills and they oppose this disallowance motion. They have a legitimate case to make. In contrast, the Motor Trades Association and small business owners oppose the bill in its current form and support the disallowance motion. So you have a clear cleavage in the market. My question to the government is: instead of saying you will fall only on the side of the one party, which is all you are doing, and instead of being the big business lapdogs that you appear to be, why don't you match your proposals with those which you have already accepted in the government response and provide some leverage for small business in these circumstances? That is the problem with what you are putting forward. Both the reality and the perception are that this is biased, one-sided and just not fair.

The central issue is not whether the franchise and sites acts should remain but, rather, that the post-repeal environment allows sufficient opportunity for small business and independent fuel operators to remain competitive and not be driven out by the oil majors and the supermarket chains. That requires: firstly, the strongest possible oil code, to ensure that small business and independent fuel operators have continued access to suppliers of fuel products—at prices and under terms and conditions that enable them to compete in the market; and, secondly, that an effective Trade Practices Act ensures that small business and independent fuel operators cannot be driven out by anticompetitive practices by the oil majors or supermarkets.

It is not my view that it is anticompetitive that those practices are possible. It is the view of a Senate committee which has majority support for all of its recommendations and unanimous support for a number of its recommendations, which the government have accepted. Those potential anticompetitive practices should be addressed. For an effective Trade Practices Act, one of the most important things a government could do would be to implement the recommendations from the Senate inquiry. In my view it would be preferable to implement all 17 of them, but at least they should implement those that they have accepted. Two years later, they will not do it. Why won't they do it? It is not because they do not agree with them, but because big business pressure is telling them not to. That is just not acceptable for a government which claim to govern for all Australians and for all businesses.

Those recommendations would assist the Australian Competition and Consumer Commission in more effectively dealing with potential abuses of market power and unconscionable conduct by the oil majors and the supermarkets. Under the Petroleum Retail Marketing Sites Act 1980, oil majors have been restricted to operating only five per cent of service stations. The original policy objective was to prevent the vertical integration of oil companies all the way through to the final consumer. By restricting the number of service stations that the oil majors operated, smaller business operators were to be given the opportunity to participate in the retail fuel market. That would have led to greater price competition to the benefit of consumers as the oil majors could not—because of section 48 of the Trade Practices Act, which prohibits resale price maintenance—directly set the retail price at sites operated by these small businesses.

The Democrats recognise that the market has moved on. We understand that. We un-

derstand that it is necessary to reform and change the legislation governing this industry. So we are in a situation which, as I read it, is exactly that of the Labor Party opposition: if the government showed some good faith and moved towards recommendations and the simultaneous implementation of changes to the Trade Practices Act, we could consider this legislation favourably. The ALP minority report of the recent Senate Economics Legislation Committee inquiry into the Petroleum Retail Legislation Repeal Bill 2006 stated:

Ideally, the Government should commit to immediately legislating the following recommendations of the Senate Committee in relation to s46 of the TPA:

I note that Mr Fitzgibbon listed those recommendations in his earlier remarks.

The issue is that you cannot have one set of changes which are not simultaneous, contiguous or coincident with changes which would assist small business in general through general competitions law. For decades, the Australian Democrats have argued that a strong small business sector is essential to the economic and social health of Australia—that small business has a value of itself. That is a very important statement. We do not see small business just as an economic mechanism. We see it as a fundamental part of our social fabric. That needs to be understood by the coalition. You cannot regard these matters purely in economic rationalist terms or purely under economic criteria. You have to recognise that there is a value to this country in keeping small business in business.

I do not want to see a service station market reduced further with respect to its independent participation than it is at present. If my memory is correct, we have come down from something like 30-odd thousand independent service station operators to around 8,000 now. That is a market rationalisation of

huge scope and nature. In many respects, it is inevitable. It is the nature of the modern world that there is an increasing concentration of market power in fewer hands. It is the nature of our changing world environment. But it should not mean the total destruction of the small competitors, and, if we can do anything to retain small business as a viable, effective and meaningful contributor to our economic and social health, we should do so. That is why I consistently say that small business has a value of itself.

Our views on the Petroleum Retail Legislation Repeal Bill are necessarily coloured by that perspective. We, the Democrats, strongly support the workings of a free and fair market, as evidenced by our work on corporations, trade practices and tax law. But we have long been concerned that a weak Trade Practices Act does not deliver sufficiently fair competition for small business with sufficiently adequate protections from predatory pricing and the abuse of market power. We need to understand in this country that we have a weak Trade Practices Act compared with international trends in legislation.

In that respect we set great store on recommendations in the majority report, which we support, of the Senate Economics References Committee of March 2004, titled *The effectiveness of the Trade Practices Act 1974 in protecting small business*. If those 17 recommendations were implemented—that cover the misuse of market power, unconscionable conduct, collective bargaining, creeping acquisitions, divestiture and the power and resources of the Australian Competition and Consumer Commission—then free and fair competition would be greatly strengthened in Australia. Further, there would then be less of a case—and that is an important point—for industry specific regulation in any industry if the general law was so strengthened.

The Democrats opposed the earlier version of this bill, arguing that stronger trade practices powers were first required to address the abuse of market power and to introduce the threat of divestiture on overmighty corporations. We said then that Trade Practices Act reform was a precondition to considering whether this industry regulation could be lifted or modified. That is still our position, but at least offer us those things that the government have said they would accept with respect to changes to the Trade Practices Act following that Senate committee in 2004—two years ago. This is a government that can produce terror legislation in 24 hours but takes over two years to even drag themselves into the parliament to discuss Trade Practices Act reform. What is the matter with them? Does it not matter to them that the small business community feels strongly about this?

I have argued again and again—and I will repeat some of my remarks that I have made before—that the thing that is missing in our laws is the flip side of the merger and acquisition power. Workplace, tax, corporations, finance and trade practices laws are the main laws affecting the functioning of the market and the regulation of the behaviour of corporations. In matters of competition and consumer interest, all over the world the law restrains great commercial power because of the known abuse of power that often accompanies it. When it comes to the size and behaviour of corporations, the Trade Practices Act 1974 is Australia's prime protective device, yet the act is weaker and more deficient in its protective capabilities in comparison with legislation in countries like the United Kingdom and the United States.

I have said before that big business roars approval at the dynamism of the American market but fiercely condemns a major contributor to that dynamism—and that is the effects of antitrust or divestiture laws. We

need those regulatory tools in Australia. Balanced divestiture laws are the corollary of balanced merger laws. We do not have effective divestiture laws, and it is to me a strange and illogical policy that can prevent mergers to maintain effective competition but cannot require divestiture also to maintain effective competition.

As in Australia, many markets are experiencing oligopolisation, which is a concentration of power in the hands of a small number of competitors, this is partly a natural result of economies of scale—the big get bigger and as they do they develop the ability to operate more cheaply and efficiently. Over time the smaller players are forced out of the market. That is the way of the market and it is valuable while it promotes efficiency, innovation and competition—but only up to a point. Eventually the destruction of competitors results in the destruction of competition, or the predatory intimidation of competitors reduces effective competition. Where that has occurred or will occur the state must intervene to save the market from eating itself.

By its very nature, power to order divestiture should be regarded as largely a reserve power as international precedents indicate it would be seldom employed. It should be used rarely and used responsibly. Its great virtue is as a cautionary power making oligopolies careful of abusing their market power. It will be used only when necessary to maintain or restore competition.

I am repeating remarks I have made again and again simply because they are remarks that need to be made again and again—until the government of the day eventually gets the point that its Trade Practices Act must be strengthened so that the economic health of Australia is assured and recognised in an appropriate manner. The Australian Democrats do accept that there is a need to update the regulation governing the petroleum sec-

tor but we are not content that the package of measures that accompanies it has yet been put before the parliament.

The ACTING DEPUTY PRESIDENT (Senator Watson)—As there is only slightly over a minute to go I will not call the next speaker, Senator Stephens, at her request so she can have a complete speech after the Senate resumes. The Senate will pause for two minutes. Thank you.

Debate interrupted.

MINISTERIAL ARRANGEMENTS

Senator MINCHIN (South Australia—Leader of the Government in the Senate) (2.00 pm)—by leave—I inform the Senate that Senator Ian Campbell will be absent from question time today and Monday, 19 June to Wednesday, 21 June next week. Senator Campbell will be absent due to his attendance, on behalf of the Australian government, at the 58th annual meeting of the International Whaling Commission. I will not say where it is meeting. During Senator Campbell's absence, Senator Eric Abetz, the very capable Minister for Fisheries, Forestry and Conservation, has agreed to take questions relating to the portfolios of Defence; Veterans' Affairs; Transport and Regional Services; Local Government, Territories and Roads; and Environment and Heritage. Thank you, Senator Abetz.

In addition, Senator Chris Ellison will be absent from question time today for significant personal family reasons. During his absence, Senator Vanstone, the Minister for Immigration and Multicultural Affairs, has agreed to take questions relating to justice and customs on behalf of the Attorney-General.

QUESTIONS WITHOUT NOTICE

Migration

Senator CHRIS EVANS (2.01 pm)—My question is actually directed to Senator

Vanstone, the Minister for Immigration and Multicultural Affairs, on the basis that she is one of the few ministers left. Can the minister finally advise the Senate which of the public pronouncements by the Prime Minister and herself on the rationale for the new migration laws is the current government position? Does the Prime Minister's statement of 2001—'We will decide who comes to this country and the circumstances in which they come'—still apply, or does the minister's announcement this morning on radio that Indonesia is a very important partner in decisions about Australia's border protection policy supersede the PM's stance? Can the minister explain why we have gone from a position of the Australian government determining who comes to this country to a position of now accepting Indonesia as a partner in these decisions?

Senator VANSTONE—The answer to your first question—'Do both of these statements stand?'—is yes, they do. The Prime Minister quite clearly said, 'We will decide who comes here and the circumstances under which they come.' The government has made a decision about amendments it seeks to make to its migration legislation—and it is the government making that decision. It is making that decision on the basis of its concern to remain strong on border protection and to keep good and friendly relationships with our neighbours—who are indeed, in the region, partners with us in border protection and the detection of people-smuggling. There are two aspects to that. There is simply no inconsistency and no conflict.

We had a significant boatload of asylum seekers arriving onshore, and we obviously regard that as a serious challenge to our border control. It is the first time that we have had a boat of large numbers for a long time. Of course we would process them according to our international commitments but, as a consequence of that arrival, we had a look to

see what we could do to further strengthen our border protection.

It is simply not a case of appeasing a foreign government. I make the point I made in here recently when Senator Brown was here when I pointed to the granting of 42 visas to Indonesian West Papuans when we knew very well that the Indonesian government were not going to be happy with it. That had been made very clear. The President of Indonesia had in fact rung up and sought, through the Prime Minister, a commitment that we would not give those visas—and we did. Why did we do that? Because we will live up to our international obligations under the convention. But we are not precluded from then saying, ‘A large boat arrival; we had better look at what other changes we could make.’

Senator Chris Evans interjecting—

Senator VANSTONE—Just as a matter of interest, since the senator opposite, Senator Evans, is so surprised at the concept of working with Indonesia, I will take him back to comments made in 2001 by his now leader. Mr Beazley said then:

Australia can only stop the flood of boats by fixing our relationship with Indonesia. A real solution must be found in Jakarta.

Clearly, at the time, Mr Beazley understood that border protection and people-smuggling issues require serious cooperation. In fact, earlier on the same day, the leader apparently went into a radio station and said:

In the end, the only solution to the problem we now confront resides around the relationship that we have with Indonesia and the attitudes that develop in this region to illegal people-smuggling.

And he went on to say:

What we need to do is exercise a bit of leadership, because we want circumstances where people who come here illegally go back to the point they came from and get processed there.

Senator Wong interjecting—

Senator VANSTONE—That is what Mr Beazley said. He also said:

That is the true disincentive for people coming down in the way in which they have been doing. Everything else has been tried. Let’s try that.

There might be some points of difference about some issues associated with this matter, but there is no point of difference on this: that Mr Beazley clearly understood in 2001—or said he understood—that our relationship with Indonesia was important. He now seeks to say that he would be a good alternative Prime Minister but he will take no notice of what Indonesia says. You cannot have it both ways. *(Time expired)*

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I note that the contradictions highlighted did not seem to get explained by that answer. But the key question, Minister, is: what decisions are going to be made as a result of discussions with your backbench, who seem to be in open revolt? Will you then have to take whatever position they force upon you back to the Indonesian government before you can come into this parliament and introduce amended laws?

Senator VANSTONE—I thank the senator for his question—coming from a party that does not allow freedom of opinion and freedom of discussion. I can understand the concept of members being able to disagree amongst themselves and thrash it out openly—

Senator Chris Evans—You’re thrashing! Calm down.

The PRESIDENT—Senator Evans, order!

Senator VANSTONE—without getting beaten up in the suburbs of Sydney, so badly that you have to be put into hospital, which

is what happened under the previous Labor union movement.

Senator Chris Evans—Minchin has been beating you up for years.

The PRESIDENT—Order, Senator Evans!

Senator VANSTONE—That is what happens. They get beaten up and put into hospital.

Senator Chris Evans—Nick Minchin has been beating you up for years—successfully.

The PRESIDENT—Order! Senator Evans, three times I have asked you to come to order. I will not ask you again. And I remind both ministers and honourable senators that ministers, when answering questions, should address their answers through the chair and senators, when asking questions, should address their questions through the chair.

Senator VANSTONE—I am pleased to be a member of a party that does not have factional people being beaten up in the suburbs of Sydney so badly that they have to be put into hospital.

Honourable senators interjecting—

The PRESIDENT—Senators, come to order!

Senator George Campbell interjecting—

The PRESIDENT—Senator George Campbell! Senator Vanstone, you have 15 seconds left.

Senator VANSTONE—I will have the discussions with my colleagues and I will keep those discussions between myself, the Prime Minister and them. And, when we come to the end of those discussions, no doubt they will be made public.

High-Speed Internet Networks

Senator ADAMS (2.08 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister inform the

Senate of steps the Howard government is taking to drive the roll-out of high-speed internet networks throughout Australia? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Adams for her continued interest in this very important matter, coming as she does from regional Australia. As senators on this side of the chamber would be aware, the Howard government is making great strides in the roll-out of broadband across Australia. We have already invested more than a billion dollars in rural and regional telecommunications services and we have committed to investing \$1.1 billion more. More importantly, we have invested \$2 billion in a communications fund to ensure that money is set aside for future investment in telecommunications.

More than 110,000 customers have been connected to either a HiBIS or a broadband connect service and more than 700,000 additional premises have gained access to terrestrial broadband. However, we do need to build on our decade of investment and reform. Last week, I called for expressions of interest from industry for larger-scale infrastructure projects under the \$878 million Broadband Connect program. There is a unique opportunity to use a substantial proportion of these funds to encourage private investment in Australia's regional broadband networks. The EOI process will allow interested parties to put forward other ideas, plans and possible project proposals to help inform the final design of any funding approach. The process is being designed to maximise the roll-out of high-speed internet and to make the most of taxpayer funded investment in this important technology.

Senator Adams asked me if I am aware of any alternative policies. I am aware of one proposal from the ALP, but it would be generous to label it a policy. I think we all heard

Mr Beazley's pronouncements on broadband in reply to the budget, when he promised to plunder all the money the coalition has set aside to future-proof the bush to fund a one-off election commitment. We are also aware that it took less than a week after the Labor broadband proposal was launched for the opposition's spokesman to admit that he did not know the total cost of their proposed new network and that he would have to sit down and work it out. It really begs the question: how can Labor make plans for the next seven years when their policies do not even hang together for seven days?

On top of all that, I have recently discovered that Labor's plan to extend fibre to the node to 98 per cent of Australia is not what it seems. Labor have mysteriously and quite inappropriately failed to mention that much of the proposed network will not be fibre to the node at all; it will be the existing copper network. So Labor's proposal to spend the Communications Fund, to leave not one red cent for future investment in future upgrades and to fund a fibre network that will really be largely based on legacy copper, is hardly what you would call an alternative plan; it is just a cheap, knee-jerk reaction, trying to catch up. Telecommunications is yet another serial policy failure on the part of the ALP, while this government continues to deliver for rural and regional Australia.

Migration

Senator LUDWIG (2.12 pm)—My question is to the Minister for Immigration and Multicultural Affairs, Senator Vanstone. Can the minister confirm that the solution under the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 for refugee status determination in Nauru will rely on a country other than Australia accepting those people who are determined to be genuine refugees? Can the minister confirm how many and which countries have agreed to

take those refugees who are determined to be refugees under the refugee determination process in Nauru? What will happen to those people if, as seems likely, no-one will agree to meet the transfer of Australia's obligations to them?

Senator VANSTONE—I thank the senator for the question. It is a three-part question. The answer to the first part is yes. The answer to the second part is that we will not be approaching other countries until we, in fact, have the problem. It is not a practical outcome to have our Minister for Foreign Affairs travelling around to a number of countries and saying: 'I know you're busy, but we might have a problem in the future. We hope we don't. We think this law will be effective. But, if we do have a problem, have you got a few hours to talk to me about it? And will you make an agreement in the hypothetical?' That is for Geoffrey Robertson; not for the real stuff of governments. So, in fact we have—

Senator Chris Evans—Why do we need the bill then?

The PRESIDENT—Order!

Senator Chris Evans—It's a hypothetical.

Senator VANSTONE—So, in fact we do have unauthorised boat arrivals—

Senator Conroy—If.

Senator VANSTONE—Yes. If we do, then we will deal with the matter at the time by approaching appropriate countries and having negotiations with them. But going to those countries and asking them to make firm commitments now when we do not know if we are going to get anybody, we do not know how many and we do not know where from would be in fact a completely impractical and frankly laughable proposition.

The third part of the question was what would happen if—and the senator interpolated with ‘as seems likely’—no-one will have them. With respect, Senator, you need to wait until some boats arrive and we go to other countries and we get a no. Then you are entitled to say that it is likely that we will get noes. But you cannot assume that at this point. There is no possible way you can assume that at this point.

There was a further question by way of interjection during my attempt to give this answer without interference from the other side. I do not know what is getting to them—maybe they are a bit excited because it is the end of the session. The question was: why do we need the bill? Because we are expecting the bill to work, that is why. Offshore processing has been the most successful border protection policy that has ever been introduced. Members opposite do not like it, but they supported it in 2001; they tried to get out of it later. It is the most successful border protection policy Australia has ever had, and this is simply an extension of that policy.

Senator LUDWIG—Mr President, I ask a supplementary question. Minister, how much will you spend—and will that be real taxpayer’s money or hypothetical taxpayer’s money—in keeping Nauru open for your offshore processing? Isn’t it the case that either these people will be left to rot in Nauru or you will have to let them back into Australia, as has been the case for some 60 per cent of those who have been processed offshore already?

Senator VANSTONE—The senator asks: ‘Is this real or hypothetical money?’ I think we were meant to fall about splitting our sides laughing at that point. It is real money. We are investing real money in border protection. We think border protection is very important. You invest real money in a fire brigade at an airport. You hope that you will

not have to ever use the fire brigade, but you invest real money in case it happens. The senator asserts that people will be left there to rot. That is your assertion. It is not the government’s.

Senator Ludwig—Two are still there.

Senator VANSTONE—That is right. There are two people still there. They have adverse security assessments. If Labor wants to announce that they will without question bring to Australia those people with an adverse ASIO security assessment, make my day.

Honourable senators interjecting—

The PRESIDENT—Order! I remind all senators that continual interjections across the chamber are grossly disorderly and those senators who wish to defy the chair will suffer the consequences.

Senator Conroy—What about her?

The PRESIDENT—Order, Senator Conroy! Do you want to be first cab off the rank? I ask you to keep quiet.

Workplace Relations

Senator PARRY (2.17 pm)—My question is directed to the Minister representing the Minister for Employment and Workplace Relations, Senator Abetz. Will the minister please update the Senate on new evidence and support for a flexible and deregulated job market in this country? Further, is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Parry for his excellent and incisive question and I acknowledge his concern for a better and more flexible employment market. There was an overwhelming need to reform our old industrial relations system. Diverse sources—such as Paul Keating, Bill Shorten, the OECD and a former New South Wales Labor Premier—have all acknowledged that need in the past. Now cheap politics unfortunately stops some of those Labor luminaries

from acknowledging this need. But just recently the respected International Monetary Fund has accepted the need for reform and flexibility. The head of the IMF said yesterday—and I invite those opposite to listen: ‘Flexibility is needed in the world and the labour market is no exception. The labour laws, not only of the 1970s but even of the 1990s, are probably not the ones we need in the 21st century.’ Sage, sensible advice.

And yet what does the Leader of the Opposition want to do? As the *Australian* has so accurately described today, he wants to do a Latham. He wants to take us back to the outdated labour laws of the 1970s, 1980s and 1990s when the unions ran our employment market and those opposite were trade union officials, and over one million of our fellow Australians were unemployed. As Mr Beazley was told yesterday, your announcement to abolish AWAs puts the ALP at odds with nearly every credible commentator on the importance to Australia’s overall economic performance of continuing and not reversing the direction of workplace reform.

The irony of Mr Beazley’s attack on Australian workplace agreements is that what we have introduced is not new. In 2005—just last year—Mr Beazley acknowledged that individual contracts have always been with us. He then said that you cannot go around ripping up individual contracts. But now all of a sudden we can, because Mr Beazley is concerned about one individual contract, and that is his own—the leadership of the Australian Labor Party.

Flexibility may well mean negotiating away penalty rates in exchange for higher wages, something the union movement has done for a long time. The ACTU secretary, Mr Combet, admitted that he has done it and, as long ago as 15 years, the shop assistants union in South Australia negotiated an agreement to get rid of all penalty rates, in-

cluding late night penalty rates and the 50 per cent Saturday afternoon rate, in exchange for an increase in wages. Get this: according to the person involved in negotiating this, some casual employees lost more money in penalty rates than they gained in base salary. That was a union sanctioned agreement. Five years before the Howard government came to power, the unions saw the sense in trading away penalty rates and were even willing to countenance some workers, like casual workers, being worse off. That was 15 years ago. (*Time expired*)

Migration

Senator CONROY (2.22 pm)—My question is to the Minister representing the Minister for Foreign Affairs, Senator Coonan. Can the minister outline what discussions were held with Indonesia prior to the decision to change Australia’s immigration policy through the Migration Amendment (Designated Unauthorised Arrivals) Bill? Does the minister accept the advice of the Senate Legal and Constitutional Legislation Committee that the bill is ‘an inappropriate response to what is essentially a foreign policy issue’? Isn’t this legislation really just an act of appeasement to Indonesia in the wake of the decision to grant temporary protection visas to 42 Papuans earlier this year?

Senator COONAN—No, of course it is not an act of appeasement. It is partly an acknowledgment of the fact that Indonesia does play a significant role in relation to our border protection policy. It is entirely appropriate that the government takes into account some views of Indonesia in relation to how they would propose to go about assisting us to implement an absolutely core policy of ours.

The legislation design is a border security issue. It is aimed squarely at strengthening border control measures in relation to unauthorised boat arrivals. The changes will ap-

ply to unauthorised boat arrivals regardless of their nationality. The legislation is consistent with the government's strong ongoing commitment to upholding Australia's international protection obligations, including the refugee convention. The UNHCR has not been entirely happy with the proposed legislation, nor was the Senate report. We acknowledge that. But certainly those criticisms have not specifically proven or concluded that the amendments would be in breach of the refugee convention. That is Australia's obligation.

We have a long and distinguished record—and I think it is important to point this out in this debate—of responding to refugee needs. The government has a strong commitment to upholding our obligations under the refugee convention. This will continue to be the case under the strengthened border control measures. Any claims to refugee status by unauthorised boat arrivals will continue to be properly assessed in accordance with Australia's international obligations. Refugee applicants will be provided with proper care during the assessment process—

Senator Conroy interjecting—

The PRESIDENT—Order! Senator Conroy.

Senator COONAN—and will be protected against return to their homeland while their claims are assessed. A person found not to be a refugee will be able to obtain a fresh merits review of their case. Resettlement to a third country will be arranged for persons found to be refugees. The premise of Senator Conroy's question is simply not made out. Australia's obligations are well and truly understood. The arrangements in relation to these amendments are core to this government's policy on border protection.

Senator Ludwig interjecting—

The PRESIDENT—Order! Senator Ludwig.

Senator COONAN—I can appreciate that feelings run high in this debate, but the constant shouting and screaming at me as I am trying to answer this question hardly enlightens the debate.

Senator CONROY—Mr President, I ask a supplementary question. I would point out that the minister totally avoided the first part of the question. I repeat the question: can the minister outline what discussions were held with the Indonesian government prior to the decision to change the policy? Will the government be consulting the Indonesian government over the backbench amendments that you are going to agree to? Can the minister explain why the government is more interested in appeasing Indonesian politicians than listening to its own backbench? Does this mean that Indonesia now decides who comes to this country and the circumstances in which they come?

Senator COONAN—Out of those six questions I am not sure, in one minute, which one I am expected to elect to answer. What I will say is that this government will maintain its policy on border protection. These arrangements are core to maintaining this government's policy on border protection. We will not be dictated to or shouted at by the opposition.

Family Policies

Senator RONALDSON (2.27 pm)—My question is to the Minister representing the Minister for Families, Community Services and Indigenous Affairs, Senator Kemp. Will the minister outline to the Senate the measures that the Howard government is introducing to improve the economic wellbeing of Australian families?

Senator KEMP—I thank my colleague Senator Ronaldson for that very important question. Senator Ronaldson has always been very interested in family policies. This is a government that listens to families and

does not take its orders from trade union bosses.

Senator Carr—No, they come from Jakarta!

The PRESIDENT—Senator Carr, I warned you yesterday. Come to order!

Senator KEMP—Thank you, Mr President. Helping families, of course, is one of the highest priorities of this government. Senators will know that this year's budget continues to deliver on the unprecedented levels of support that this government has provided to Australian families over the last 10 years. Our very responsible management of the Australian economy has enabled us to deliver practical benefits to Australian families. Senators will recall that Labor left the Howard government with \$96 billion of debt. As a result of our paying back this debt, we are now saving in the order of \$8 billion a year. This has enabled us to provide further benefits to Australian taxpayers and Australian families.

This side of the chamber is committed to helping families find the balance between work and family responsibilities. Australian families will benefit from these budget measures, which come into effect between now and 1 July this year, building on the family friendly policies of budgets before. Since 1996, this government has doubled assistance to families through the family tax benefit system. The measures in this budget will provide additional assistance to Australian families at a cost of almost \$1 billion over four years. The government will also expand the eligibility for the large family supplement to include families with three children. This payment of an extra \$248 per year is very good news to nearly 350,000 Australian families.

The coalition government continues to provide certainty and security for older Australians. In 2005, as senators should recall,

the government introduced a utilities allowance for age pensioners and a seniors concession allowance for certain self-funded retirees who do not get pensioner concessions. This year the government will provide an additional one-off payment of just over \$102 to each household with a person of age pension or service pension age eligible for that allowance. The same payment will also be provided to each self-funded retiree who is eligible for a seniors concession allowance. Senators will recall that further help was provided to carers and that has been widely welcomed in that community.

It should be recalled that the Labor Party has fought tooth and nail against many of the very important measures that this government has brought in to help families. We recall the famous comment by the member for Lilley, who said that the \$600 payment to families was not real. As you will recall, that became a significant election issue. Australian families will also remember the ALP policy to scrap the family tax benefit part B. That caused great consternation in the community. Even worse, if that is possible, the Australian Labor Party over the years has often opposed the tax cuts that this government has put before this chamber. This government has a very proud record of helping Australian families. That is because we listen to Australian families and we do not listen to union bosses who propose policies which can, of course, in the end often harm Australian families.

Internet Safety

Senator FIELDING (2.32 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. I draw the minister's attention to reports last year which revealed that all of Sweden's 11 top telecommunications providers have agreed to block internet child pornography. If Sweden's top telecommuni-

cations providers can block pornography, why can't Australia's tier 1 ISPs do the same?

Senator COONAN—I thank Senator Fielding for the question and for his interest in what is a significant issue for all parents in the community, indeed all families and the community more broadly. I am not sure that Senator Fielding's information is correct but if ISP providers wish to provide filters at server level that is entirely a matter for them. What is the case, and I think I can say this without contradiction, is that there is simply no government in the developed world that has mandated, insisted on or endorsed server-level filtering. I think I am correct in saying that. If Senator Fielding can provide other information, I am very interested to hear it.

As I have said, the difficulties with server-level filtering are quite significant. This government has looked at it on three separate occasions: in 1999 in a CSIRO technical trial; in 2003-04 as part of the review of the online content scheme; and in late 2005 in a trial conducted by NetAlert that involved the RMIT and ACMA, the regulator. Indeed, there is another trial going on in Launceston and I will look very critically at that. Each report has found very significant problems with content filter products operating at that level, such that they tend to overblock all forms of content, including quite innocent content that needs to be accessed for quite legitimate purposes. They have been unable to effectively scale up to a larger network. These systems have been known to have problems on a smaller network in a very controlled environment, and the ability to scale up to a large network is very difficult to achieve.

They have been unable to analyse and block websites based on more sophisticated techniques such as skin tones. Many have

provided no protection at all for children using chat rooms. Children are totally vulnerable under this arrangement to predators approaching them on chat rooms through peer to peer, through file downloading or through email traffic. None of the ISP filters that have been tested will block that kind of trash that affects our kids. Many do not allow the ability to customise filtering levels so that parents can do something to control the level of content that they get so that different members of the family can have different access arrangements. They do not allow parents to log children's activities so there cannot be any parental monitoring. We think the drawbacks are significant and that PC based filters, if properly understood and installed, provide the best opportunity to effectively address this very pernicious pornography and to enable parents to take control and to make the right decisions on behalf of their children.

Senator Conroy interjecting—

Senator COONAN—Senator Conroy does not care about it, Senator Fielding, and thinks that it is a huge joke. This government regards it as an incredibly important policy initiative and I am looking forward to shortly announcing an enhanced arrangement to stop this pernicious traffic on the net.

Senator FIELDING—Mr President, I ask a supplementary question. I note the minister's answer, and I look forward to bringing the minister up to date with what is happening in Sweden. Minister, given the federal government is still the majority shareholder in Telstra, if the government is serious about protecting Australian children from pornography, why does it not require Telstra to participate in the internet filtering trial in Tasmania?

Senator COONAN—What I will be looking forward to is Senator Fielding telling me what country in the world mandates ISP-

level filtering. I will be very interested if Senator Fielding wants to bring me up to date on that information, because I think he is dead wrong. However, what is important is that this government will continue to take the most effective action that we possibly can to deal with this issue on the net. Because technology changes, we will not rule out looking ultimately at ISP filtering but we are certainly not going to interfere in the commercial arrangements of providers and we will continue to do the very best we can with PC based filters.

Senator Fielding—I would remind the minister about the question that I asked requiring Telstra to participate in the internet filtering trial in Tasmania. That is what the supplementary question was about.

Senator Faulkner—She never answers questions!

The PRESIDENT—I think the minister has completed her answer.

Economy: Performance

Senator FIERRAVANTI-WELLS (2.38 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. Can the minister inform the Senate of the importance of the federal government maintaining a budget surplus and contributing to national savings? Is the minister aware of alternative approaches to fiscal policy?

Senator MINCHIN—I thank Senator Fierravanti-Wells for that very good and pertinent question. Senator Fierravanti-Wells is quite right in that when governments run surpluses and reduce debt the most important and significant effect of that is to take the pressure off interest rates and contributing to national savings.

Opposition senators interjecting—

The PRESIDENT—Order! Senator Conroy and Senator Carr!

Senator MINCHIN—Given that the household sector in Australia is a net borrower and the business sector is roughly in balance, then the government should contribute to national savings by running surpluses. Our government is on track to run a surplus of 1½ per cent of GDP in the current financial year and one per cent in the next financial year. The problem is that in Australia at the very time that we as a federal government are running strong surpluses and contributing to national savings, the state and territory governments—all held by Labor and responsible for 40 per cent of total government spending in this country—are actively undermining that contribution by running substantial deficits.

On the latest figures the states and territories are on track to record combined deficits of 0.5 per cent of GDP this financial year and 0.6 per cent next financial year. In terms of how that came about, the biggest contributing factor is of course Senator Fierravanti-Wells's state of New South Wales where the Labor government are targeting a deficit of \$2.4 billion next financial year. They are now borrowing heavily, having relied on their stamp duty from the property boom to fund generous Public Service pay deals. The Beattie government in Queensland, despite the huge commodity boom, is forecasting a deficit of \$1.6 billion next financial year. And, on the Beattie government's own figures, the Queensland public sector will lose its debt-free status in the next four years, squandering the debt-free position built up under years of strong conservative rule in Queensland.

The Victorian Labor government will run a deficit of \$580 million in 2006-07 and is forecasting an increase in net debt from \$1.9 billion today to no less than \$7.1 billion in just four years time. The ACT Labor government, the worst offender, is proposing an incredible deficit in their terms of \$230 mil-

lion, around 10 per cent of their revenue, which is equivalent in federal terms to us running a \$20 billion deficit. So while we are running a surplus of \$10 billion, all the eastern Labor states are running deficits of more than \$4.8 billion.

The extent of that borrowing by these governments is now so substantial that *Australian Business* had an article titled 'States revive the debt market'. Unbelievable! As the IPA recently indicated, all these quite irresponsible deficits are despite 14 consecutive years of economic growth, massive GST and stamp duty windfall revenue gains—all squandered on extra bureaucrats and the generous pay deals with their public sector union mates. This is a very stark illustration of the difference between 10 years of strong federal coalition government and 10 years of Labor government in New South Wales, eight years of Labor in Queensland, and seven in Victoria. After a decade of sound management the federal coalition government is running surpluses, eliminating debt and cutting taxes. What do we get from the state Labor governments? Deficits, increasing debt and increasing taxes—and this is exactly what would happen if, God forbid, we ever returned to a federal Labor government.

Skilled Migration

Senator GEORGE CAMPBELL (2.42 pm)—My question is to Senator Vanstone, Minister for Immigration and Multicultural Affairs. Does the minister recall her comments yesterday about the minimum salary of \$41,850 for temporary foreign skilled workers? She said:

... if someone were working exorbitant hours to earn that—and, as I said before, it is a fair day's work for a fair day's pay—the immigration department would regard that as a breach of the conditions.

Is the minister aware that foreign temporary skilled workers being paid the minimum wage would have to work over 63 hours a week in order to reach the minimum salary of \$41,850 specified in the regulations? Does the minister think it is exorbitant that foreign workers can be forced to work up to 63 hours a week in order to earn \$41 850?

Senator VANSTONE—I thank the senator for the question. I do not dispute the words. I have not checked exactly but Senator Campbell is not one known for misquoting so I do not put the usual rider on it—

Honourable senators interjecting—

Senator VANSTONE—Perhaps I am wrong. Perhaps he is known for that—sorry, trying to be nice. But Senator Campbell forgets to add what else I said yesterday, and that was that if Senator Sterle had any knowledge or facts to indicate that anybody was being misused—as the government thinks they would be—under this visa and treated improperly he should give us the information. In fact I went further and said that I would wait for his call after question time. It was a lonely wait by the phone.

I repeat what I said yesterday: the immigration department does believe that the combination of setting the salary, which is gazetted, the agreement that a sponsor has to enter into and the application of Australian industrial law, which has as a normal working week 38 hours, means that what I said yesterday is right. It is a combination of laws and the agreement that come to that conclusion. But, in order to ensure that that is beyond doubt, the regulations, which went to Executive Council yesterday—

Senator Chris Evans—Interesting.

Senator VANSTONE—'Interesting,' says Senator Evans. The regulations, which went to the Executive Council yesterday morning and were signed off some considerable time before that, will in fact not only specify the

\$41,850 but go further and put it into the gazette. So someone who is incapable of putting the industrial relations law, the gazette and the agreement together or who thinks that with those three things they could try and worm their way through will not be able to, because it will be spelt out in the gazette, which was signed off by Dr Marie Bashir yesterday.

Senator GEORGE CAMPBELL—Mr President, I ask a supplementary question. I thank the minister for her kind words.

Opposition senators interjecting—

Senator GEORGE CAMPBELL—Well, it is not often you get them from that side of the chamber! Is the minister aware of Korean workers engaged by KSN Engineering Ltd being paid \$15 an hour to work for various construction and fabrication companies in Western Australia? Isn't it a fact that to reach the minimum salary of \$41,850 specified in the regulations, these workers would have to work at least 53 hours a week? Does the minister believe that these workers should be paid at least the hourly rate under the relevant award and appropriate overtime payments for any extra hours worked over the standard 38-hour week?

Senator VANSTONE—In relation to the latter part of the senator's question, clearly yes. That is the basis of the answer that I gave yesterday and that is the basis of amending the gazette, which, as I said, was signed off yesterday morning by the Acting Governor-General. It is to make sure that anybody who looked at the gazette and then did not want to go to the normal industrial relations law and the agreement—the combination of which would give you a 'yes' to that—can understand that. That is why we have changed the gazette—to make sure that is the case. Am I aware of the company KSN Engineering and the particular hourly rates that you have mentioned? No.

Senator George Campbell—I have just made you aware of it.

Senator VANSTONE—Thanks for reminding yourself, Senator. I can assure the senator that now that he has raised this matter in public, the matter will be investigated, and if the company is doing the wrong thing they will be dealt with, because this is a very valuable visa to Australian business. It allows them to take the opportunities that economic growth presents them with—opportunities they did not have under the Labor government. (*Time expired*)

Nuclear Energy

Senator MILNE (2.47 pm)—My question is to Senator Minchin, representing the Prime Minister. Given that the leak at Lucas Heights nuclear reactor demonstrated that even countries like Australia cannot prevent dangerous radioactive leaks and accidents occurring in nuclear facilities, given that the UK Sustainable Development Commission and the Union of Concerned Scientists in the US recognise nuclear reactors as terrorist targets—with the latter saying that the Indian Point reactor poses a severe threat to the entire New York metropolitan area—given that the government has just spent \$10.6 million on a new security entrance at Lucas Heights in spite of the government's view that a nuclear power plant is not more of a target than the electricity grid or a railway network, and given your own view, Senator, that nuclear power would not be economic in Australia for 100 years, what is the real reason that the Prime Minister has instigated an inquiry into the nuclear industry and power generation in Australia when renewable and solar thermal technology can safely, cost effectively and quickly produce all of Australia's electricity requirements?

The PRESIDENT—I remind senators about the length of questions. That was a very long question.

Senator MINCHIN—You are right, Mr President. That was a very long question. Indeed, it was several questions. I should first address the issue that Senator Milne has raised regarding the Lucas Heights research reactor. I note that it is a research reactor, not a power reactor. We are advised that the rupture of a pipe inside a radiopharmaceutical production hot cell at that facility resulted in no harm to workers at the site or to the community. The gases released were chemically inert, and very small amounts of such gases are routinely released in the course of manufacturing nuclear medicine. The dose to any resident in the surrounding area would have been equivalent to about one minute of natural background radiation—far less than one would get from catching a plane between Sydney and Canberra or working in Parliament House. That is why we are all glowing today, I suppose! Although the incident was below the regulatory reporting threshold it was treated seriously and reported promptly to ARPANSA, the relevant regulatory authority, and I do note and confirm that the Lucas Heights facility does operate according to international best practice.

In relation to the second part of the question, which I suppose is asking why we are persisting with an inquiry, the Prime Minister has articulated that case clearly and profoundly over the course of the last week or so. We do think that it is sensible in debating any issue to have the facts on the table. We understand why the Greens would not have anything to do with it, but we would have thought that the Labor Party would have been interested in knowing what the facts in relation to nuclear power production are, including both the economics and the safety issues.

Senator Milne quite rightly says that safety is an issue. Of course it is. Safety is a very significant part of this inquiry to see what circumstances and what regulatory ar-

rangements would be required if a nuclear power industry were to be established in this country. If we are to have a sensible debate about the long-term energy needs of this country, it is important that we assemble an independent expert panel to advise both the government and the population at large what the facts are in relation to this matter. I find it extraordinary that one could object entirely to having any such inquiry. The ostrich-like behaviour of the Leader of the Opposition in just saying, 'We don't believe in the inquiry, and we don't believe in nuclear power at all,' really is just cynical populism.

As Senator Milne noted, I have said that, from my time as Minister for Industry, Science and Resources and speaking as an economic rationalist, I doubt that nuclear power is likely to be viable in this country for a very long time. I think I was quoted as saying 100 years. It is my view that nuclear power could only really be viable if you so taxed the coal and gas industries as to make them unviable. So assuming that this country is not so silly as to price out a business, one of the factors which makes it internationally competitive—that is, its abundant access to coal and gas—then it is my view that nuclear power is unlikely to be viable. But that is one of the things that we will discover from this inquiry. That is why I welcome this inquiry. We will get to the facts on that matter to see whether it can be viable and, if it is economically viable, what is the safety regime that should be in place. But it is quite misleading to draw any bow from what just occurred at Lucas Heights to the whole issue of whether or not there should be a nuclear power production industry in this country.

Senator MILNE—Mr President, I ask a supplementary question. I thank the minister for his answer. I note his brief on Lucas Heights. The point there, Minister, simply related to the fact that accidents like that can occur in Australia. Given the minister's

statement about the economics of nuclear power and given that it is too slow, too expensive and too dangerous to address climate change, can he confirm what the purpose of this inquiry really is? Can he tell Australians whether it is really about enrichment, the leasing of nuclear fuel and nuclear waste dumps in Australia, and not about energy generation?

Senator MINCHIN—It sounded to me as though Senator Milne was answering her own question. She seems to have a view in her own mind as to what this inquiry is about. I think I explained what the inquiry is about. It is to look at the long-term energy needs of this country and to see whether nuclear power may or may not have any place in that future. We live in a world where countries like France obtain 70 per cent of their electricity from nuclear power. Nuclear power is a reality and has been operating in this world for a very long time.

Senator Bob Brown—Mr President, I rise on a point of order. The question was clearly about whether the inquiry is about enrichment—not about nuclear power plants—and that is the point that the minister should get to in the 30 seconds he has left.

Senator MINCHIN—I thank Senator Brown for that assistance. He is quite right: parts of the terms of this inquiry are to look at the question of the further expansion of Australia's uranium mining industry and at whether or not it would be feasible and sensible for Australia to develop a uranium enrichment industry. It seems quite sensible for that to be looked at. We have not committed to that. I am not aware of any proposal to have a uranium enrichment industry, in fact, but I think it quite sensible for the government, responsibly, to see under what circumstances such a development might be possible, feasible or sensible.

Child Care

Senator HURLEY (2.55 pm)—My question is to Senator Kemp, the Minister representing the Minister for Families, Community Services and Indigenous Affairs. Can the minister confirm that the Howard government is intending to slash funding to child-care service providers in Western Australia who offer support to families and children from culturally and linguistically diverse backgrounds? Is the senator aware that one such centre, in Mount Hawthorn, may have its budget slashed from \$340,000 to \$190,000 a year, which is a massive 30 per cent reduction in available salaries for child-care workers? Why is the Howard government being so callous towards migrant families, or is this just another example of the Howard government making it even harder for time-pressed Australian families to access child care?

Senator KEMP—What an astonishing question! The Howard government have more than doubled places for child care since we came to government. I am absolutely astonished that you would believe that there is a policy to deny Australian families child care when there is a fundamental policy to provide additional services for child care for Australian families. Indeed, the child-care announcements in the last budget were widely welcomed.

You raise a specific issue. I have looked very carefully at the extensive brief I have received from Mr Brough in relation to child care. Given the time available, I have not been able to detect a brief on the specific matters that you have raised. But because I am a helpful senator and because I like to make sure that the Senate is well informed, I will make inquiries of the minister to see whether he is able to provide any additional information on the matters you have raised.

If he is, I will get back to you as promptly as possible.

Senator Conroy interjecting—

Senator HURLEY—Mr President, I ask a supplementary question. The senator should know that 2,200 people have signed a petition against this cut, so I am surprised that the minister is not aware of it. Considering that the centre in question recruits, trains and supports 120 child-care workers, the government should guarantee that there will be no capacity loss in this sector. How are parents from culturally and linguistically diverse backgrounds expected to find the time to work, learn English or seek employment when they are unable to access suitable child care? Does this once again show that under the Howard government there is no real choice in child care?

Senator KEMP—All I can say is that in the brief time you have been in the Senate you have not listened to all the extensive debates that we have had on child care.

Senator Conroy interjecting—

Senator KEMP—You would have noticed that if there is one very high priority in this government it is to improve the services for child care and to improve access. Senator, I am astonished, given your own party's policy and given your own party's atrocious failure in this area of child care, that that has not filtered through to you. I am a helpful senator. I am one who will always seek to inform those on the other side who are not prepared to do the work, do their own research and get their own information.

Senator Conroy interjecting—

The PRESIDENT—Senator Conroy, I warn you!

Senator KEMP—I will raise this matter with Mr Brough and I will get back to you.

Skilled Migration

Senator McGAURAN (2.58 pm)—My question is to the Minister for Immigration and Multicultural Affairs, Senator Vanstone. Will the minister inform the Senate about the important contribution being made by skilled migrants to Australia's economic growth? Is the minister aware of any alternative policies?

Senator VANSTONE—I thank the senator for his question. I am sure that, coming from Victoria, a state that is very interested in skilled migration and, in particular, the use of 457s—the skilled temporary migration visas—he is very interested in this matter. It is a delight to Australians that we are experiencing 10 years of economic growth, a long-term economic growth that we have not experienced in a long time. It has led to lower inflation and, importantly for Australian families, low interest rates. No government, by any means, can put in people's pockets as much money as will be put in their pockets by interest rates staying low and their mortgage payments therefore being down.

That good news of course does have a slight difficulty—that is, it can lead to a skills shortage, especially when you come into government after the previous government has cut funding for apprenticeships and trainees to get the opportunity to gain a qualification and when you come into government after the previous government has given Australia a recession that the Prime Minister said that we apparently had to have. Nonetheless, what Labor would do with this good news and the skills shortage is in fact run us into the ground, as they have in the past. Almost every time we have had a boom in the past, Labor have said, 'Let's really exploit this for us; let's not worry about the long-term interests of Australia,' and have brought it to an end. That was the fabulous—you might remember them—five minutes of

economic sunshine that we had under the Labor government.

Long-stay business visas—that is, 457s—allow Australian business to get the skills they need to make the most of those economic conditions. As we are growing, a company has a chance to grow and to employ more people. It needs more skills, but if it cannot get the skills it cannot grow, and Labor's policy is to say, 'Let's put a stop to all of this and remain stagnant,' which would, of course, be a disaster.

Mr Beazley has been showing time and time again that he is now and would be, were he ever elected to government—heaven forbid—under the thumb of the Australian unions. He needs to get out and talk to Australian companies about their needs and the skills they want so that they can take bigger and better contracts for export and employ more overseas people and more Australians at the same time. He would not understand how business works. He is stuck at the moment in a knee-jerk, xenophobic rut, claiming that skilled migrants take Australian jobs. These are the skilled migrants who built the Snowy. Skilled migrants have always helped build Australia and somehow now they put Australian jobs at risk. It is completely crazy.

Mr Beazley is clearly in conflict with his state Labor colleagues, who are actively involved in working with the immigration department on getting the businesses in their states the skills that they need. They are coming to us and saying: 'Can we work with you? We want more of these people.' Who are those people who are working with us? The New South Wales department of health, as I keep repeating, is the biggest user of this program. I do not think anyone accuses the New South Wales department of health—a state government department in a Labor run government—of undermining Australian workers. That would be a surprise.

Mr Beazley's race-baiting rhetoric is simply there to support the militant unions like the CFMEU. We have all seen what damage the CFMEU can do to the Australian economy. In fact, I think they were people who damaged the Australian Parliament House, weren't they? They might be one and the same. The bottom line is that these visas are extremely important and used by lots of people. (*Time expired*)

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

PARLIAMENTARY LANGUAGE

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.03 pm)—Mr President, I ask you to look at the contribution from the minister in answering the previous question, particularly the use of the words 'xenophobic' and 'race based', and see whether they were in order.

The PRESIDENT (3.03 pm)—I will look at that.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Migration

Senator HURLEY (South Australia) (3.03 pm)—I move:

That the Senate take note of answers given by the Minister for Immigration and Multicultural Affairs (Senator Vanstone) to questions without notice asked today relating to skills shortages and to detention practices.

Today we heard a lot more about the migration bill. I want to address the article by Greg Sheridan in the *Australian* today, which is titled 'PM bungles response to Papuan asylum-seekers'. I most certainly agree with that headline but do not agree with too much else that follows. He correctly points out that the Labor Party instituted mandatory detention in remote camps for all asylum seekers, and

the Labor Party, indeed, continues to support mandatory detention.

Mr Sheridan then goes on to support the Pacific solution by the Howard government and said that the Pacific solution did stop the flow of boats. What he does do, quite erroneously, is equate the Pacific solution with mandatory detention, when in fact sending the asylum seekers offshore was an expensive, difficult and, ultimately, unsuccessful way to deal with asylum seekers. What was successful—and the minister referred to it today in relation to Mr Beazley's comments—was talking to governments in the region, such as the Indonesian government, and cooperating to get illegal immigration and people-smuggling stopped. That is what stopped the boats coming to Australia. That is what was responsible for stopping those boats and for stopping illegal immigration.

Mr Sheridan does not distinguish the fact that those initial asylum seekers had stopped in a first country and were then coming to Australia as a second country of asylum. He goes on to talk about the West Papuans as though Australia is not the first country of asylum. He talks about setting up a path of easy illegal immigration for those Papuans and refuses to recognise that, if they were illegal, they would have been returned. In fact, Australia found that 42 of them were genuine refugees. They remained in Australia because they came to Australia as their first country of refuge. If there is persecution in any country and people make it to Australia, why would we not consider taking them, instead of sending them offshore to an island and insisting they be sent to a third country?

Here again Mr Sheridan's comments are not accurate. He is saying that if they are found to be refugees they will be taken into Australia or anywhere else. But the minister has made it quite clear that she will be seeking a third country, and the likelihood is that

those genuine refugees will be held on Nauru indefinitely while there is a vain search for a third country. Why indeed, seeing Australia as the wealthy nation that it is, seeking immigrants, would any third country take West Papuan refugees instead of letting Australia take refugees? For Mr Sheridan to go on and talk about the Labor Party being xenophobic on this issue is quite wrong. As the minister rightly pointed out, Mr Beazley talked about cooperating with the Indonesian government to deal with illegal asylum seekers. Now he is saying that in this case we should not dance to the tune of the Indonesian government. I do not see why that is a xenophobic response. It is a recognition of the true difference between the original asylum seekers and refugees who are coming in from West Papua.

The government is trying, as Mr Sheridan suggests, to say that this is part of its normal border protection policy. It is not an extension of the border protection policy; it is excising our whole country in order to keep out possibly genuine refugees who have managed to make it to Australia. Mr Sheridan talks about walking over the border to Papua New Guinea; that is just a nonsense, and he should know that. (*Time expired*)

Senator BERNARDI (South Australia) (3.09 pm)—I also rise to speak on the answers provided by Minister Vanstone. Firstly I would like to clarify a couple of points for the honourable senator on the other side of the chamber. People arriving by sea in Australia under this proposed legislation will still be eligible to make visa applications, but they will be processed offshore. The intention of this legislation is very clear. People found to be refugees will remain offshore while their resettlement is arranged. Under the existing provisions, the minister has a non-compellable power to allow a person to make a valid visa application in Australia. Senator Hurley has talked extensively about

an article by Mr Greg Sheridan; I am not aware that he is a member of this government, but he is certainly welcome to put forward his beliefs about this law. We will continue to meet our international obligations under the refugee policy, and any claims to refugee status will be properly assessed at an offshore location, as I have mentioned, in accordance with the refugees convention.

The minister touched on the hypotheticals, and a number of them were raised in the question. If third party countries are needed to be contacted we will deal with that when the situation arises. I think this is an extension of the most successful border protection policy that has ever been introduced in Australia. The Australian government has taken several opportunities to brief the United Nations Human Rights Commission on the operation of the proposed new arrangements and will continue to do this as the proposals are further articulated.

The minister talked extensively about our relationship to the international community, and as Australians we have a right to determine on our terms who is an eligible refugee in this country and who is authorised to stay here. The appropriate solution clarifies the situation so that people do not take unnecessary risks attempting to reach the mainland of Australia with a view to getting treatment that is perceived to be more favourable. This is a simple, consistent exercise that the government is proposing in the interests of a fair and balanced process, ensuring that all refugee applications and asylum seekers are treated equally, irrespective of where they land. It is consistent with what is good for our nation and our region, and it fosters international goodwill amongst our very near neighbours. In concluding, I would like to say that the people who arrive here in Australia and seek asylum will be processed in accordance with our international commitments. Those people who are found to be

genuine asylum seekers will be processed according to our laws.

Senator KIRK (South Australia) (3.12 pm)—I rise this afternoon to take note of answers given by Senator Vanstone today in question time. What emerged today in question time, from the questions that were asked by my colleagues, was that the Prime Minister and Minister Vanstone seem to have quite different views about the cause of this legislation that is before us, namely the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. Yesterday Mr Howard was asked in question time by my colleague Mr Burke why it is that he will not listen to Australian parliamentarians as much as he listened to Indonesian parliamentarians when he initiated this bill. Mr Howard's response was:

These policies have nothing to do with listening to Indonesian politicians.

It seems that Senator Vanstone has a different view on this. She was asked last night by Kerry O'Brien on *The 7.30 Report*:

... it's also absolutely true and irrefutable that this bill has only been written as a result of Indonesia's outcry at Australia's acceptance of 42 Papuan refugees. Is that not the fact?

To that the minister, Senator Vanstone, replied:

Well, I think, as you say, it is indisputable we've taken into account the concerns of Indonesia.

So there seems to be a difference of opinion going on here between the Prime Minister and Minister Vanstone as to the influence of the Indonesian government in proposing that the law that we have before us be introduced into this parliament. I think it is becoming more and more evident that it was in fact only as a consequence of the Indonesian protests that this law was introduced into the parliament. During an interview yesterday, in which he talked about what kind of signal

this sends out into the international community, my colleague Mr Burke said:

The only signal it will send to the region is kick up a big enough fuss and you'll be able to get Australia to change its laws and that simply results in new claims, new levels of ambit. What we've sent as a message to Indonesia is, if you object to our laws, we won't treat you the way you treat us. We won't simply explain our laws and say, well, we have our own legal system. Instead, if you complain enough, withdraw your ambassador, complain, we'll actually offer to change our domestic legislation to try to win your favour back. Now, the message that that sends to the region is a really disturbing one and I don't know of any other country around that's willing to change its domestic law to try to fix what essentially is a foreign policy issue.

I think that really captures exactly what has happened here. What kind of signal are we sending out to the international community? It is: if you do not like the way our law is operating on your nationals, all you need to do is come to us and speak to the Prime Minister, the minister for immigration or the Attorney-General and we will do whatever it is that you would like us to do to change our laws in order to accommodate your position and that of your nationals.

What this approach completely seems to ignore is that, when you are sending that kind of signal, it is not just about sending a signal to Indonesia to let them know that we are their friends and are prepared to be friendly neighbours to them. This law is not just about a signal; it is going to actually affect real people and real lives. People are going to be hurt by this law. It might not be a huge number of people but that, nevertheless, will be no consolation to those individuals. People are going to have their lives wrecked by this law. They are going to pay the price with their sanity. We have seen on many occasions just how poor mental health provisions can be within detention centres, particularly when associated with long-term

detention and particularly when it involves children. Of course it is important that we have good relations with Indonesia, but diplomatic solutions should not be forged by changing Australian law, particularly when it results in a contravention of our international refugee obligations as this law does and will.

Senator ADAMS (Western Australia) (3.17 pm)—I rise to take note of answers given to questions asked of Senator Vanstone today. I note that those opposite seem very concerned about the offshore processing strategy carried out at Nauru. I think that I might be able to enlighten them on what is really happening.

Why is it important that we have the offshore processing strategy? I will describe what happens. The two offshore processing centre sites on Nauru have been critical to the success of our offshore processing. They have served Australia well. To ensure efficient and cost-effective operation of offshore processing, the offshore processing centres will be consolidated on Nauru through closing one site and maintaining the other in a state of high readiness. This reflects recent changes to processing arrangements for unauthorised boat arrivals.

Maintaining the Nauru offshore processing centre is an important part of the government's approach to the management of unauthorised boat arrivals. The people who will benefit from this are the people of Australia, as it represents a significant saving in revenue. The initiative and the savings measure under this government will return to government some \$33.8 million over four years. In what we have done in the past, Australia has maintained two offshore processing centre sites on Nauru and another on Manus Island. Manus will be retained as a contingency facility in case it is needed. The savings are ongoing and will be reviewed in the 2007-08 budget.

On the number of people that can be handled at Nauru, the capacity of the new facility will be reduced from the previous 1,500 to around 500, which will make it far more comfortable for people who happen to be there. Nauru will have a capacity of up to 100 people immediately, with a further 400 places to be available very soon. Unauthorised arrivals to Nauru are accommodated under Nauruan visa arrangements. Those visa arrangements have allowed open-centre arrangements. Informal advice from the government of Nauru is that similar conditions would apply to women, children and family units in any future case load transferred to Nauru for processing but that single males would be subject to closed-centre arrangements. Women and children will be able to move freely at any time during the day.

The reason that Nauru is preferable to Christmas Island is that the facility on Christmas Island has not been completed and is not expected to be commissioned until mid-2007 at the earliest. The government will consider how it uses offshore processing centres, including Christmas Island, in light of circumstances that exist at that time. It is important to remember that Australia received nearly 9,000 unauthorised sea arrivals in the two-year period to June 2001, so it is important to maintain contingency capacity. The reason that Nauru is preferable to Manus is that the memorandum of understanding provides for a total of 2,500 places in Manus or Nauru until June 2007. The government has not ruled out sending unauthorised arrivals to either Manus or Nauru. Manus has been mothballed since 2003. Nauru was more recently in operation, and its continued operation is welcomed by the Nauruan government.

I think it is very important that I mention to those opposite the mental health team which is going to visit Nauru. Senator Amanda Vanstone announced on 13 June that

an independent group of mental health experts would visit Nauru to assess the two remaining residents of the offshore processing centre. She said that she is very concerned about the mental health of the two Iraqi men on Nauru following a recent clinical assessment done by International Organisation for Migration medical staff. She has asked the department to organise a mental health assessment team from Australia to go to Nauru to interview and assess these men and provide a report on the options to manage their mental health while they remain there. As they are subject to adverse security assessments, the Australian government will not be bringing them to Australia. (*Time expired*)

Senator WORTLEY (South Australia) (3.23 pm)—I rise to take note of answers given by Senator Vanstone during question time today in relation to the Legal and Constitutional Legislation Committee report on provisions of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, tabled on Monday, and statements made by the minister.

The government does not want to proceed with the recommendations of this report. It wants the bill to go through this parliament without adopting the recommendations. That is clear. We have a government-dominated Senate inquiry which considered the government's proposal to process all unauthorised boat arrivals at offshore detention centres. The government-dominated committee received 136 submissions and held a public hearing before preparing its report. The recommendations contained in the report received unanimous support from the committee members. But now the government does not want to adopt the committee's No. 1 recommendation, which is:

In light of the limited information available to the committee, the committee recommends that the Bill should not proceed.

This is the simple and clear recommendation of the committee: that the bill should not proceed. Why does the government not want to adopt the recommendation? One cannot help but wonder about the discussion that may have taken place last night, or perhaps even this morning, between Prime Minister Howard and his Minister for Immigration and Multicultural Affairs, Senator Vanstone. Was it a discussion about why, according to the government, this bill must proceed, how much significance should be given to appeasing Indonesia and how much the people of Australia should be told about its elected government appeasing the Indonesian government?

It seems that the Prime Minister and his immigration minister have different points of view, because yesterday in the House of Representatives Prime Minister Howard was asked a question by Labor's immigration spokesperson, Tony Burke, about the government's intention not to adopt the committee's recommendation. The question read, in part:

... why won't the Prime Minister listen to Australian parliamentarians as much as he has listened to Indonesian parliamentarians?

The Prime Minister's response was:

These policies have nothing to do with listening to Indonesian politicians.

That is not the view of everyone in the government, and some of them are even prepared to go on the record. Last night, only hours after the Prime Minister's statement to parliament during question time, his Minister for Immigration and Multicultural Affairs, Senator Vanstone, appeared on the ABC's *The 7.30 Report*, saying:

Well, I think, as you say, it is indisputable we've taken into account the concerns of Indonesia.

Here is a further quote from Minister Vanstone:

Yes, we are taking into account what the Indonesians want because they're very helpful to us on border protection.

Well, that is a revelation. The government is changing our laws because Indonesia wants it to. The immigration minister has admitted that Indonesia has influenced this legislation. This morning in an interview on *AM*, this question was put to the minister:

... Australia is listening to Indonesia, but does the release of Abu Bakar Bashir indicate that Indonesia wouldn't listen to Australia in this way?

The minister's response was that we have to follow our law, they have to follow their law. That is the point, Minister. The Howard government, through this bill, is making changes to our law. You even reiterated this in the interview when you said it is a change to our policy. There was no demand for these changes from Australia. But on 15 May, one month before the tabling of the Legal and Constitutional Legislation Committee's report, the Indonesian foreign minister stated that he had been assured by Australia that Australia would not accept individuals processed on Nauru even if determined to be refugees and that this 'solved the issue'. Following the meeting, Minister Downer said Indonesia was 'pleased with the Australian government's changes to processing of asylum seekers who arrive by sea'. Under the proposed changes made by this bill, refugees could be held indefinitely. (*Time expired*)

Question agreed to.

Nuclear Energy

Senator MILNE (Tasmania) (3.28 pm)—
I move:

That the Senate take note of the answer given by the Minister for Finance and Administration (Senator Minchin) to a question without notice asked by Senator Milne today relating to nuclear reactors.

It has been a mystery to those of us who have followed the climate change and energy

security debate that the government has suddenly discovered nuclear energy as the answer to both. I note that Senator Minchin, whilst he said that the Prime Minister has enunciated clearly why we are having the inquiry, failed to say what those reasons were.

Those of us who follow the debate on climate change know, for a start, that only 39 per cent of greenhouse gas emissions come from electricity generation; the rest come from transport and other sources, and nuclear energy does nothing to deal with transport emissions. Nuclear energy would not come on stream for between 10 and 15 years; therefore it cannot address the urgency of climate change. It is dangerous and there can be accidents—and that was the point of the reference to the Lucas Heights reactor. Even in a country like Australia, accidents do happen in nuclear facilities. It is no use saying: ‘Chernobyl would never happen again. New facilities do not have accidents.’ At the Ranger Uranium Mine and Lucas Heights accidents do occur and have adverse consequences for both human health and the environment to varying degrees.

We recently heard Senator Ellison tell us that nuclear power plants are not terrorist targets. I noticed that Senator Minchin carefully avoided the discussion of the notion of a terrorist attack on nuclear reactors—because, of course, it is a complete nonsense to say that a nuclear power plant is not more of a target than the electricity grid or a rail network. Why did the government just spend \$10.6 million on securing the entrance to Lucas Heights if it is no more of a concern as a reactor than Central Station in Sydney? Where is the \$10.6 million on security around there? It is a nonsense, and we all know it is, especially given that overseas reports—every single one of them—into the feasibility of nuclear power state a terrorism attack as one of the significant risks associ-

ated with nuclear. The question is: is a country prepared to take those risks?

More importantly, we get to the economics—and this is where Senator Minchin is absolutely correct. He knows—as do I and anyone following the nuclear debate—that nuclear power in Australia is not economically feasible and never will be. Even if you do put a price on carbon—and the Greens advocate that we should be putting a price on carbon, we should be capping emissions, we should be going to an emissions trading system and we should be examining carbon taxes—nuclear is still not going to make it into feasibility. So why we are having the debate?

I welcomed Senator Minchin saying straight up that the government is interested in expanding uranium mining and it is interested in downstream processing with enrichment. That is precisely what the Prime Minister discussed with President Bush when he was in the United States recently. President Bush wants to set up a number of nuclear fuel supply centres around the world to supply enriched uranium to a series of countries as a lease and take back the waste. This follows quite clearly from yesterday’s vote in here when the government did not support my motion to ban the construction of high-level nuclear waste repositories in Australia.

The real reason for this inquiry has nothing to do with climate change or energy. It has everything to do with downstreaming uranium into enrichment and taking back high-level nuclear waste—as dictated by President Bush and his global nuclear energy plan, the GNEP. The Prime Minister, John Howard, sees Australia as being George Bush’s nuclear supply centre in this region—and with the capacity to take back waste, including from the United States. President Bush cannot get agreement in America to have Yucca Mountain be the repository for

high-level waste, so he would welcome the Prime Minister of Australia taking back high-level waste. I appreciated Senator Minchin's honesty today, reaffirming what everybody knows: nuclear power is not economically viable in Australia. There is another agenda running here. It is expanded uranium mining and enrichment. It was good to see the Minister representing the Prime Minister getting that on the record.

Question agreed to.

PERSONAL EXPLANATIONS

Senator STOTT DESPOJA (South Australia) (3.33 pm)—I seek leave under standing order 190 to make a very brief statement.

The DEPUTY PRESIDENT—Is leave granted?

Senator Kemp—The government is prepared to support leave being granted.

The DEPUTY PRESIDENT—There being no objection, leave is granted.

Senator STOTT DESPOJA—Thank you, Mr Deputy President—and I thank the minister. I understand that today I have been misrepresented by the Australian Broadcasting Corporation on their news bulletin at, I believe, two o'clock this afternoon, regarding the vote on the disallowance in relation to the Australian Capital Territory Civil Unions Act. The ABC incorrectly stated that the vote would have been different had I been in the chamber. I want to make it very clear for the record that I was paired for that vote. Indeed, I and my three other Australian Democrat colleagues all voted in favour of the disallowance—a disallowance of which I was a co-sponsor.

I attempted today to come back from sick leave to be here for this important vote and debate. Despite my best attempts, and being at Adelaide Airport at six o'clock this morning and on an aeroplane by 7.30 am, I was still in the same aeroplane at 1.05 pm this

afternoon. And as much as I enjoy circling Canberra, it was a great disappointment not to be here for the vote. But I want to make it very clear that my vote was paired and my vote was recorded. My absence did not affect the outcome of the vote. Contrary to ABC claims, the vote would not have been closer had I been sitting in this chamber.

In closing, I do not think anyone doubts my personal commitment and political commitment to these issues, particularly in relation to gay and lesbian issues and same-sex couples—as my private member's bill, which was introduced today, attests.

I hope the ABC will get the voting information right. I acknowledge their attempts in the last hour or so to correct the record.

Senator FERRIS (South Australia) (3.35 pm)—I seek leave to make some additional comments on the same subject.

Leave granted.

Senator FERRIS—I would just like to confirm Senator Stott Despoja's comments and point out that the government did pair Senator Stott Despoja. She was paired to the opposition, which meant that her vote was taken into account as supporting the motion.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Skilled Migration

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural Affairs) (3.36 pm)—I seek leave to make a clarification in relation to an answer I gave in question time today.

Leave granted.

Senator VANSTONE—In question time today I indicated to an opposition senator that the limitation for the minimum salary level for 457 visas being based on a 38-hour week had gone to the Governor-General yesterday. I gave that advice on the basis of an email that was received in my office at

1.26 pm today. It is every minister's dream—or I should say 'nightmare'—to get subsequent advice during question time! Anyway, that is what happened.

There were 457 visa regulations that went to Exco yesterday. I know that because I was there. That is how I know that Dr Marie Bashir is the acting Governor-General. However, those regulations do not relate to the 38-hour week basis being made crystal clear. That will be done by a *Gazette* notice, which is in my office. The regulations that went to the Governor-General yesterday are a further indication—and I might take the opportunity of indicating what they are about—in relation to the minimum salary level to make sure that the maximum number of people can get advantage from the increase. I regret misadvising the Senate.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint

Report: Government Response

Senator KEMP (Victoria—Minister for the Arts and Sport) (3.37 pm)—I present the government's response to the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on its inquiry into Australia's maritime strategy, and I seek leave to incorporate the document in *Hansard*.

Leave granted.

The document read as follows—

GOVERNMENT RESPONSE TO JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

AUSTRALIA'S MARITIME STRATEGY

RECOMMENDATION 1:

The committee recommends that the Government develop a national security strategy (NSS) which addresses Australia's key interests such as, but not limited to:

- economic;

- business;
- leisure/tourism;
- diplomatic and trade;
- social and cultural;
- transnational crime;
- illegal migration;
- population policy;
- the protection of critical infrastructure such as water, power;
- transport and information communications;
- environmental; and
- defence and security.

The NSS should clearly articulate and demonstrate that there is a coherent and coordinated approach by Government to securing our national interests. (paragraph 3.28)

Government Response:

The Government keeps, and will continue to keep, its security policy framework and settings under review. The current strategy for managing national security is set out in a series of policy documents. These include policy documents from the Departments of Foreign Affairs and Trade (*Advancing the National Interest: Australia's Foreign and Trade Policy Paper*, *Transnational Terrorism: The Threat to Australia*, and *Weapons of Mass Destruction: Australia's Role in Fighting Proliferation—Practical responses to new challenges*) and Defence (*Defence 2000: Our Future Defence Force*), and two strategic reviews (*Australia's National Security: A Defence Update 2003* and *Australia's National Security: A Defence Update 2005*). *Protecting Australia Against Terrorism: Australia's National Counter-Terrorism Policy and Arrangements*, released by the Department of Prime Minister and Cabinet, and the National Counter-Terrorism Plan are the primary documents on Australia's national counter-terrorism policy and arrangements, and set out collaborative arrangements between the Commonwealth and States and Territories for preventing, preparing for and responding to terrorist incidents within Australia. The Government notes the recommendation to develop a national security strategy. The Government regularly considers national security issues in the National

Security Committee of Cabinet, to ensure a coherent, whole-of-government focus. To foster interagency coordination and a stronger whole-of-government focus on national security issues, the National Security Division was established in the Department of Prime Minister and Cabinet in July 2003.

In addition, there is a network of formal Inter-Departmental Committees that provides a venue for inter-departmental coordination of agencies with national security responsibilities.

Recommendation 2:

The committee recommends that the Defence Minister develop a new Defence *White Paper* for issue during 2005-06. From the introduction of this *White Paper*, a new Defence White Paper should be developed every four years through a rolling four year program. The proposed new *White Paper* should re-emphasise the point that Australia's defence policy is ultimately defensive. The committee would envisage that 'power projection ashore' would relate to instances where Australian forces, as part of coalitions, have been requested to assist with the affairs in other nations. The Government, in developing the new *White Paper*, should take into account the conclusions made by the committee including:

- Australia's strategic objectives be the defence of Australia and its direct approaches together with greater focus on, and acquisition of, capabilities to operate in the region and globally in defence of our non-territorial interests;
- clear articulation of why Australia's security is interrelated with regional and global security;
- the continuation of the commitment to 'self-reliance' in those situations where Australia has least discretion to act;
- focusing on measures that will enhance interoperability with Australia's allies such as the US; and
- developing and implementing a maritime strategy which includes the elements of sea denial, sea control and power projection ashore. (paragraph 4.124)

Government Response:

On releasing *Defence 2000: Our Future Defence Force*, the Government undertook to review our defence posture periodically to ensure Australia continues to have the appropriate mix of concepts, capabilities and forces to meet any changes to the strategic environment. In response to the attacks of September 2001 and October 2002, a review of Defence strategy, in the form of *Australia's National Security: A Defence Update 2003* was undertaken. This review, and the subsequent one undertaken in 2005, confirmed that the principles set out in the 2000 White Paper remain sound. *Defence 2000*, the *Defence Update 2003*, and the *Defence Update 2005* include the Government's position on the issues raised in the committee's recommendation.

The Government does not agree with the recommendation that White Papers be developed every four years. The Government will continue to implement Defence 2000 and will maintain an up-to-date strategic assessment to inform changes in our capability priorities, defence planning and wider national security requirements. It will, from time to time, continue to provide public updates of its strategic assessment of our security environment and the policy priorities that flow from this.

Recommendation 3

The Department of Defence should make a statement, subject to security requirements, outlining the Army sustainment model and providing the Parliament with reassurances that the model will be effective and will meet contingencies consistent with guidance provided in the 2000 Defence White Paper. (paragraph 5.46)

Government Response:

The Army Sustainment Model is a tool that will enable the Army to more accurately determine the capability and resources required to meet Government requirements. This includes the strategic direction issued in the 2000 Defence White Paper to sustain a brigade deployed on operations for extended periods and, at the same time, maintain at least a battalion group available for deployment elsewhere. The additional 1,485 personnel to be recruited under the *Hardened and Networked*

Army plan will make the Army more capable of sustaining deployed forces.

Recommendation 4

The Minister for Defence should make a statement outlining Army Reserves policy focusing on Reserve:

- training;
- effectiveness;
- equipment and capabilities;
- readiness;
- transition to new functions;
- blending with regular units; and
- detailed cost data. (paragraph 5.47)

Government Response:

In recent years, the Government has clearly articulated its support for the three Service Reserves in policy documents such as *Defence 2000* and in a range of new and amended Defence legislation to strengthen the reserve components of the ADF and increase the circumstances in which they can be employed. This has included a plan to deploy Reserves on Australian Navy Ships as Transit Security Elements, the introduction of workplace guidelines enabling Defence reservists to be released for training and operations, the establishment of the ADF Reserves Employer Support Payment Scheme and the establishment of the Reserve Response Force. The *Defence Update 2005* and *Hardened and Networked Army* announcement included plans to refine the role of the Army Reserve to provide a focus on high readiness individuals and small teams to contribute to operational deployments. Approximately 2,800 high readiness Reservists will be made available to support the Army's front line deployable units. Additionally, in the *Defence Update 2005* the Government directed the ADF to further develop active reserves with specific roles and tasks to support Australia's domestic security.

Recommendation 5

The committee recommends that the Department of Defence review the number of air-to-air refuelling (AAR) aircraft that it will need to mount effective operations. The committee is of the view that Defence may require more AARs than has currently been planned. (paragraph 5.72)

Government Response:

The Government does not agree that further review of the number of air-to-air refuelling (AAR) aircraft required to mount effective operations is required, as detailed analysis was completed as part of the process to acquire the AAR aircraft.

The number of AAR aircraft being acquired has been determined based on assessment of what would be needed to support credible contingencies.

Recommendation 6

The committee recommends that the Department of Defence continues to examine air combat capabilities in the region and the cost of ongoing upgrades to the F/A-18A versus its fatigue and ageing. If the F-35 will not be available by 2012 then the Government should give cost details of prolonging the lifespan of the F/A-18A, and provide details on the range of options to maintain air superiority in the region. (paragraph 5.73)

Government Response:

As part of its responsibilities for national security, the Government is continuing to examine regional combat capabilities, including air combat capabilities. The Defence Capability Plan includes funding to maintain the F/A-18A and F-111 capability as required. The requirement to extend the capability will be determined when the Government makes its decision on the F-35, although the DCP contains provision—for the upgrade for the F/A-18 as contingency funding in the event that the introduction into service of the F-35 is delayed.

Recommendation 7

The committee recommends that the Minister for Defence by 2006 make a statement clarifying Australia's strike capability in the light of its decision to retire early the F-111. (paragraph 5.74)

Government Response:

The Government clearly articulated the reasons for its decision to retire the F-111 early in the Defence Capability Review. The F-111 will not be retired until a range of capability enhancements are in place to ensure that the Air Force has a strong and effective land and maritime strike capability. These capability enhancements include AEW&C and new A330 tanker aircraft entering

service, the systems upgrade of the F/A-18 aircraft including its all-weather weapon capability.

Recommendation 8

The Government's decision to purchase three air warfare destroyers for delivery by about 2013 is supported. The Department of Defence, however, should explain how adequate air protection will be provided to land and naval forces before the air warfare destroyers are delivered in 2013. (paragraph 5.90)

Government Response:

The Government will protect its land and naval forces prior to the delivery of the air warfare destroyers through three key upgrades. Project SEA 1390 will upgrade the weapons and radar systems of the FFG class. Project Sea 1448 will upgrade the self-defence capabilities of the ANZAC class. Joint Project 2089 will improve the ADF's information exchange capability in a joint context through the provision of Link 16 and Variable Message Format information protocols to the ANZAC, upgraded F/A-18 and Armed Reconnaissance Helicopter platforms.

Recommendation 9

If in 2006 the Government confirms that it will purchase the Joint Strike Fighter (F-35) then it should consider purchasing some short take-off and vertical landing (STOVL) F-35 variants for the provision of organic air cover as part of regional operations. (paragraph 5.91)

Government Response:

The CTOL variant of the F-35 is the focus of Defence planning and analysis. This is because the CTOL is seen as providing the most cost-effective option to meet Australia's future air combat requirements. The Government plans to make a decision on the acquisition of the F-35 in 2008.

Recommendation 10

The committee recommends that the Government outline its progress with joint operations and regional cooperation initiatives which seek to enhance the security and protection of vessels using sea lines of communication (SLOCs). (paragraph 6.37)

Government Response:

The ADF conducts a number of joint operations and regional cooperation initiatives to enhance

the security and protection of vessels using sea lines of communication. The ADF maintains a regular series of maritime exercises with South-East Asian nations that aim to both increase the ADF's interoperability with regional armed forces for maritime operations, and to improve the capability of regional nations' maritime forces to contribute to regional security.

The ADF also maintains a regular series of bilateral and multilateral maritime exercises within the Asia Pacific region that aim both to increase the ADF's interoperability with regional armed forces for maritime operations, and to improve the capability of regional nations' maritime forces to contribute to regional security. These exercises develop the capabilities of Australia and its neighbours.

The ADF is involved in conferences in various countries in the Asia Pacific region, which address regional maritime security. The Five Power Defence Arrangement (FPDA) countries have moved to expand the focus of the arrangements to look at cooperating on threats such as terrorism and maritime security. A combined FPDA exercise held in September 2004 included a maritime interception activity.

Recommendation 11

The committee recommends that when the Department of Defence develops a new Defence *White Paper*, it should ensure that the maritime strategy includes clear and explicit reference to Australia's *Oceans Policy* and explains its interrelationship with Defence policy. (paragraph 6.38)

Government Response:

The Government notes the committee's recommendation.

Recommendation 12

The committee recommends that the Government provide a report to Parliament outlining its progress with helping to develop a regional *Oceans Policy*. (paragraph 6.39)

Government Response:

The Pacific Islands Regional Ocean Policy (PIROP) was endorsed by Pacific Islands Forum leaders in August 2002. The PIROP is the first such regional policy in the world, and encompasses the region of small island developing

states in the Pacific—namely Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

The vision of the Policy encourages the entire region to strive for “a healthy ocean that sustains the livelihoods and aspirations of Pacific Islands communities”. The five Guiding Principles of the PIROP are:

- Improving our Understanding of the Ocean
- Sustainably Developing and Managing the use of Ocean Resources
- Maintaining the Health Of the Ocean
- Promoting the Peaceful Use of the Ocean
- Creating Partnerships and Promoting Co-Operation

Australia strongly supported the development of this Policy by providing to the Pacific Region significant information, advice and experience from the development of Australia’s Oceans Policy.

The implementation of the PIROP is also strongly supported by Australia, and assistance with the development of the PIROP and its implementation strategy was a key partnership initiative between Australia and the Pacific region from the World Summit on Sustainable Development. Australia has contributed AUD\$40,000, as well as logistical support and policy advice, to the Secretariat of the Pacific Community to support this initiative.

Australia is continuing to work with the region toward the realisation of PIROP goals. In February 2004, officials from the National Oceans Office, the Department of Foreign Affairs and Trade, and the Department of the Environment and Heritage attended the Pacific Islands Regional Ocean Forum in Suva, Fiji. The meeting was attended by approximately 200 participants, including government representatives from Pacific Island countries and territories, conservation NGOs, regional agencies, industry and academics.

The Forum discussed a range of possible elements for potential inclusion in a final implemen-

tation strategy, and agreed a process for drafting a framework for implementing the Policy. This process is currently under way. Australia is pursuing an implementation plan which is easy to use, clearly outlines priority actions and how they will be achieved, identifies funding sources, and includes reference to existing regional programs and activities. At the recent 2004 Pacific Islands Forum leaders’ meeting, leaders noted the progress in implementing the Pacific Islands Regional Ocean Policy.

Recommendation 13

The committee recommends that the Government, as a matter of urgency, respond to the measures proposed by the Independent Review of Australian Shipping, and state whether or not it intends to introduce an Australian Shipping policy. (paragraph 6.75)

Government Response:

The Government has set out the key elements of its approach to shipping policy, in 2004 at the Natship conference in Melbourne. While this policy speech touched on many of the issues raised by the Independent Review of Australian Shipping (IRAS), a review commissioned by the shipping industry for the industry, the Government will not be responding to it formally.

The Government believes that the best way it can support any industry is to maintain Australia’s strong domestic economy.

Australia’s international trade must continue to have access to internationally competitive shipping. IRAS has acknowledged that shipping arrangements that would make our exports uncompetitive would be against the wider national interest. While it is essential for Australia’s economic future, it does create challenges for Australian shipping operators.

The Government will continue to supplement coastal shipping for Australian industries by issuing permits for foreign ships in accordance with the established regulatory provisions. However, this will only be done in those cases where no Australian licensed ship is available.

In summary, the Government’s shipping policy continues to be a blend of providing shippers with access to competitive shipping and a level of

preference for the local industry in the coastal trades.

The Government is committed to enforcing the highest standards of maritime safety, security and environmental protection. It has emphasised that it will never reduce Australia's strict safety, security and environmental standards. Australia's port state control system is world class and will continue that way and Australia has met the 1 July 2004 international deadline for security plans to be approved and in place.

The Government has also made it clear that if there are any security concerns about any ship, its crew or cargo, we will place additional security measures on that ship or require it to leave Australian waters.

Recommendation 14

The committee recommends that, as part of the next Defence *White Paper*, the Department of Defence outline the role of merchant shipping and its support for defence objectives. (paragraph 6.76)

Government Response:

In developing a new Defence White Paper, the Government will consider a wide range of security issues, including other national policies that have implications for national security.

Australia's strategic circumstances and current and proposed force structures do not rely on the existence of a merchant marine fleet. Our experience in recent operations has been to contract for these services, and there are a large number of providers ready and able to undertake this role. Our access to such capabilities meets our current needs and is expected to meet operational needs in the foreseeable future.

CUSTOMS AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

CUSTOMS TARIFF AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

EXCISE LAWS AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

EXCISE TARIFF AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

Report of Economics Legislation Committee

The DEPUTY PRESIDENT—Pursuant to standing order 38, I present the report of the committee on the provisions of the Customs Amendment (Fuel Tax Reform and Other Measures) Bill 2006 and three related bills, together with the *Hansard* record of proceedings and documents presented to the committee, which was presented to the President when the Senate adjourned yesterday. In accordance with the terms of the standing order, the publication of the report was authorised.

Ordered that the report be printed.

FUEL TAX BILL 2006

FUEL TAX (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2006

Report of Economics Legislation Committee

The DEPUTY PRESIDENT—Pursuant to standing order 38, I present the report of the committee on the provisions of the Fuel Tax Bill 2006 and a related bill, together with the *Hansard* record of proceedings and documents presented to the committee, which was presented to the President when the Senate adjourned yesterday. In accordance with the terms of the standing order, the publication of the report was authorised.

Ordered that the report be printed.

**MARITIME TRANSPORT AND
OFFSHORE FACILITIES SECURITY
AMENDMENT (MARITIME SECURITY
GUARDS AND OTHER MEASURES)
BILL 2005 [2006]**

**Report of Rural and Regional Affairs and
Transport Legislation Committee**

Senator FERRIS (South Australia) (3.39 pm)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present the report of the committee on the provisions of the Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005 [2006] together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

DELEGATION REPORTS

**Parliamentary Delegation to Turkey and
Ireland**

Senator FERGUSON (South Australia) (3.39 pm)—by leave—I present the report of the Australian parliamentary delegation to Turkey and Ireland, which took place from 16 to 28 October 2005. I seek leave to move a motion to take note of the document.

Leave granted.

Senator FERGUSON—I move:

That the Senate take note of the document.

The delegation conducted a successful and enjoyable visit to Turkey and Ireland, meeting all its agreed aims and objectives. I thank my fellow delegation members: Senator Stephens, the deputy leader of the delegation, who is Irish-born, which made her an instant celebrity in Ireland; and Senators Andrew Bartlett and Gavin Marshall, together with Mr Kerry Bartlett and Mr Phil Barresi from the House of Representatives. The camaraderie between members of the delegation made this a very enjoyable group to lead and it

contributed to the overall success of the delegation's visit.

Prior to departure, the delegation received very valuable and comprehensive briefings from the Irish Ambassador, Mr Declan Kelly, and the Turkish Ambassador, Mr Tansu Okandan. While Mr Okandan has now completed his posting to Australia, the delegation was pleased to meet his replacement, Mr Murat Ersavci, at a formal reception hosted by the Australian Ambassador, Ms Jean Dunn, while in Ankara.

Australia enjoys a strong and friendly relationship with Turkey. While the relationship has a strong foundation with the events of Gallipoli, and the shared experience which played such an important role in the developing nationhood of both countries, recent high-level visits to both countries have seen a broadening in the scope of the relationship. Prime Minister Howard visited Turkey in April 2005, and this was reciprocated by Prime Minister Erdogan who, accompanied by senior ministers, visited Australia in December 2005. These and other ministerial and high-level visits have led to many developments, including enhanced trade opportunities, agricultural cooperation, a work and holiday visa arrangement, defence cooperation and dialogue on a range of international, political and security issues.

Before commencing its formal program, the delegation visited Kemal Ataturk's mausoleum and participated in a wreath-laying ceremony. The delegation held a number of valuable meetings with members of the Turkish Grand National Assembly, including Minister Osman Pepe, who has visited Australia, the chairmen and members of a number of parliamentary committees, and the Turkish-Australian Parliamentary Friendship Group.

Prospects for trade and opportunities for an increased business relationship with Aus-

tralia and Australian companies were discussed with members of the Ankara Chamber of Commerce, as well as at meetings with the governorships of Istanbul and Canakkale. Austrade now operates a post in Istanbul and, with the work of Senior Trade Commissioner Damian Fisher, a number of key growth areas have been identified as providing opportunities for Australian companies—including infrastructure programs, oil and gas production, education and training, information and communication technologies, and health care and medical products. The delegation also met members of the Istanbul arts and cultural community with Mr Fisher, and discussed opportunities for cultural exchange and film and project investment.

The delegation felt honoured and was deeply moved by visiting the sites at Anzac Cove, Lone Pine and other places that play such an important role in our national history. It is truly difficult to grasp the enormity of the courage and the sacrifice that was displayed in gaining, and ultimately losing, such small areas of land. Gallipoli Peninsula Peace Park, which includes not just Anzac Cove but other sites of importance to the Turks and the British, is now attracting an increasing number of visitors, and that has resulted in the need for development to improve access and facilities.

The Australian embassy had compiled a most valuable and interesting program of meetings and visits in Turkey. On behalf of the delegation, I particularly thank Ambassador Jean Dunn for her wise advice and assistance at formal meetings and for hosting the delegation. I also thank Mr Brian Dunn for his support of the accompanying spouses and all the embassy staff, but especially Libby Petrovic and Elif Wade, who capably and professionally assisted the delegation to ensure that the visit ran smoothly.

The program for the visit to Ireland was organised by the Irish Parliamentary Association and consisted of a busy schedule, with a balance of official meetings, interesting and informative visits and social occasions. I particularly thank Dr Rory O'Hanlon, the Ceann Comhairle or Speaker, who provided so much of his valuable time to be with the delegation at official and social occasions, including hosting a visit to his home county of Monaghan. I also thank Mr Seamus Pattison, the Deputy Speaker, for the visit to County Kilkenny. To Cait Hayes and Jackie Leavy of the Irish Parliamentary Association office goes our special gratitude for accompanying the delegation and ensuring that the visit was a success. Cait and her staff certainly exemplify the famous generosity and warmth of Irish hospitality.

The relationship between Ireland and Australia is based on an old friendship that arises from over 30 per cent of Australians claiming some Irish ancestry. Many of the people that the delegation met had visited Australia, had family in Australia or had children who worked or studied in Australia. In the case of Senator Stephens, many of her family still remain in Ireland.

The delegation was able to discuss a range of international and domestic economic, social and political issues with political leaders, including their gracious and charming President, Mary McAleese; Mary Harney, the Tainaiste or Deputy Prime Minister and the Minister for Health and Children; Senator Rory Kiely, the Cathaoirleach or Chairperson of the Senate; leaders of the main political parties; and the Joint Committee on Foreign Affairs.

The economic growth in Ireland in recent years was reinforced through visits to the Dublin Docklands Development Authority and the International Financial Services Centre, which has attracted major global banks

and insurance companies to locate in Ireland. Science Foundation Ireland also successfully attracts international and local researchers by investing in academic researchers and teams who can generate new knowledge and leading-edge technologies in fields underpinning biotechnology, information and communications technologies and emerging opportunities.

The delegation visited the Australian Studies Centre at the University College of Dublin. This centre offers courses in Australian history to undergraduates. It also conducts Australian studies research seminars and occasional conferences, although it does not have the funding or resources to support other projects such as a visiting speakers program. The centre plays a valuable role in providing a background on Australia and Australian history to students who, upon graduation, will enter influential fields within the commercial, legal and political arenas. The delegation was pleased to be able to gain an appreciation not just of the pride with which their links to Australia are held but also of Irish rural life through visiting and meeting with people outside the capital city and experiencing the diversity that is Ireland's culture and heritage.

I also thank Elton Humphrey, the secretary of the delegation, for his dedication, for making sure that everything was done for us as delegation members and for the efficient manner in which he conducted himself. He made our trip more enjoyable. Finally, I should mention the accompanying spouses, because this was, it is fair to say, a very happy delegation, due in no small part to Senator Stephens's husband, Bob, who, being the only male spouse, was a very good shopping companion of my wife, Anne, and Kerry Bartlett's wife, Christine. They contributed very much to the success of this visit. Their contribution, both in Turkey and in Ireland, added to the impact of the visit of

this delegation to both countries. I thank them for their contribution on what I think has been a worthwhile exercise.

Senator STEPHENS (New South Wales) (3.49 pm)—I would like to speak very briefly in support of the comments by Senator Ferguson. It was a great privilege to participate in the parliamentary delegation to Turkey and to Ireland. For me, it was a very special trip to Ireland because, as Senator Ferguson said, I was a celebrity wherever I went as soon as they realised I was born there. It was very special.

One of the most moving experiences that any delegation can have is to visit Canakkale to look at the graveyards there. It makes you appreciate the significance of the whole Anzac story. That was certainly the case for the delegation this time. I join with Senator Ferguson in thanking Her Excellency Ambassador Dunn and her husband, and all the embassy staff in Turkey. They did an amazing job. They kept us on our toes. We were briefed extensively on cultural, economic and political issues. We were there at a time when there was a heightened security alert, and we got to understand what the impacts of that were on the country, and that was very significant and very important for us to understand.

I want to speak briefly today, because I know we have a lot of business ahead of us. I want to make some comments about the trip to Ireland and the fact that for me it was very significant. We went back to where I was born, Wicklow. That was an emotional experience, but it was also fascinating to be able to show the delegation where I was born and the people who are so significant to me. We were able, by visiting Wicklow jail, to make a very concrete connection between our earlier visit to County Monaghan and the Carrickmacross poorhouse in County Monaghan, which was where many people gave up

everything and then finally were accepted on ships for Australia. It was where a lot of Australia's Irish immigrants came from. To see that and then the Wicklow jail, which is a very significant historic jail, demonstrated the connections with Australia. It was graphically demonstrated as well, as we had a re-enactment of floggings and drama to get us into the atmosphere. That was very significant.

Most significant too, though, was the engagement that we had with the members of the Irish parliament. We met members of all parties and had side meetings. We had a meeting with Fianna Fail, Fine Gael, the Greens and the Labour Party. Some of us met with some Sinn Fein members, which was also very important. Listening to the political dynamics of what is going on in Ireland was very significant as well. That is something you do not get to do very often and it was much appreciated.

We were very well looked after by Dr Rory O'Hanlon. We were overwhelmed by his hospitality. First of all, informally, when we arrived in Ireland very late one evening—I think it was almost midnight by the time we got to the motel—there was Dr O'Hanlon waiting to greet us officially. Not only did he do that and meet us the next day but he also picked me up for mass at 7 o'clock on the Sunday morning. It was just lovely to do that and to experience an Irish mass. It is exactly the same as a mass in Australia, I have to say, but it was beautiful, and it was very thoughtful of him and his wife. Then I went back to his house and actually had morning tea with him—that was an extraordinary personal gesture that he made.

He looked after us so well during the delegation. On the final evening we had a dinner. I just felt that it was such an extraordinary experience that I wanted to express my appreciation for all that had been done.

So I did, in Gaelic. I would actually like to put on the parliamentary record what I said in Gaelic, if I may. What I said on behalf of all of the delegation members was:

Ta athas an domhan ar an toscaireacht a bheith anseo inniu go haraithe me fhein, mar ta me arais i mo thir dhuchais.

Rugadh I gCill Maintain me agus ce go bhfuil conai orm anois san Astrail, mothaim go bhfuil me abaile abhus in Eirinn.

Is cuis bhroduil idom a bheith libh mar ionaidhi de mo thir nua, an Astrail

-tir in a rinne munitir na h Eireann sar-obhair o bunaoidh i nios mo na dha chead bliain o shoin.

Basically, what I said on behalf of us all was that our delegation was delighted to be there and that I was especially pleased to be back in Ireland. I was born in Wicklow and, even though I live in Australia, I still felt very much at home in Ireland. I was very proud to be there that day as a representative of Australia, a country to which Irish people had made such a huge contribution since its foundation over 200 years ago. It was a wonderful trip. I concur with Senator Ferguson. The company was fantastic, the support we had from everyone was wonderful and I think we all learned immensely. I think we did something good about strengthening the relationship between Australia and those two countries.

Question agreed to.

**TAX LAWS AMENDMENT (2006
MEASURES No. 3) BILL 2006**

**NEW BUSINESS TAX SYSTEM
(UNTAINTING TAX) BILL 2006**

**HEALTH LEGISLATION
AMENDMENT (PRIVATE HEALTH
INSURANCE) BILL 2006**

First Reading

Bills received from the House of Representatives.

Senator KEMP (Victoria—Minister for the Arts and Sport) (3.56 pm)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have one of the bills listed separately on the *Notice Paper*. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator KEMP (Victoria—Minister for the Arts and Sport) (3.56 pm)—I table a revised explanatory memorandum relating to the Tax Laws Amendment (2006 Measures No. 3) Bill 2006 and the New Business Tax System (Untainting Tax) Bill 2006 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—

TAX LAWS AMENDMENT (2006 MEASURES No. 3) BILL 2006

This bill amends various taxation laws to implement a range of changes and improvements to Australia's taxation system.

Schedule 1 to this bill extends eligibility for the beneficiary tax offset to farmers and small business owners in receipt of Cyclone Larry and Cyclone Monica income support payments. This ensures consistency with the taxation treatment of Newstart allowance.

The Government is providing the Cyclone Larry income support payments to farmers and small business owners whose income has been adversely affected by that cyclone.

The Government is also providing the Cyclone Monica income support payments to farmers and small business owners in the Cape York region

who have been adversely affected by the cumulative effects of Cyclone Larry and Cyclone Monica.

Schedule 2 to this bill also gives effect to the Prime Minister's announcement that certain payments to assist recovery by businesses adversely affected by Cyclone Larry and Cyclone Monica are to be tax-free. This decision recognises the extraordinary hardship inflicted and the threat to the communities recovery prospects.

Schedule 3 extends eligibility for the beneficiary tax offset to drought affected taxpayers in receipt of interim income support payments.

Interim income support payments are made to farmers in areas where an exceptional circumstances application lodged by a State demonstrates a prima facie case for full exceptional circumstances assistance. Interim income support is available for up to six months while the case for full exceptional circumstances assistance is being considered. Applying the beneficiary tax offset to interim income support payments ensures consistency with the taxation treatment of exceptional circumstances relief payments.

Schedule 4 to this bill amends the Income Tax Assessment Act 1997 to ensure that a company's share capital account will become tainted if it transfers certain amounts to that account. If a company taints its share capital account, a franking debit arises in the company's franking account. If the company chooses to untaint its share capital account, an additional franking debit may arise and untainting tax may be payable. The new share capital tainting rules will apply to transfers made to a company's share capital account after today.

The new share capital tainting rules are a further component of the simplified imputation system and replace the old share capital tainting rules that were in the Income Tax Assessment Act 1936.

Schedule 5 to this bill will provide an exemption from capital gains tax (CGT), for recipients of the WorkChoices grants. This ensures that recipients of the Government's Unlawful Termination Assistance Scheme do not incur a capital gain or loss. The Unlawful Termination Assistance Scheme provides eligible applicants with Government

assistance for independent legal advice to assess the merits of their unlawful termination claim.

Similarly, the CGT exemption will apply to the Alternative Dispute Resolution Assistance Scheme. This scheme provides eligible parties with the opportunity to receive alternative dispute resolution services.

The Government is also expanding the CGT exempt status to include government grants that reimburse expenses. This allows recipients of expense-reimbursing government grants to better utilise the grant.

Each of these CGT changes will take effect from the 2005-06 income year.

Schedule 6 to this bill introduces an offset for certain taxpayers whose Medicare levy surcharge liability arose, or was significantly increased, as a result of a significant, eligible lump sum payment in arrears. Prior to this bill taxpayers have been able to receive concessional income tax treatment to help offset the effects of receiving a lump sum payment in arrears but an equivalent concession has not been available for the Medicare levy surcharge.

This amendment will benefit those who are generally not liable for the Medicare levy surcharge but become liable in a particular year due to receipt of a large lump sum payment in arrears, and those who would otherwise have had to pay a larger Medicare levy surcharge.

Schedule 7 to this bill amends the Superannuation Guarantee (Administration) Act 1992 to require a superannuation fund or retirement savings account provider to report to the Commissioner of Taxation. The required reports will contain details of employer and total contributions made to a superannuation fund account or retirement savings account provider.

Schedule 8 to this bill will exclude, from reporting, fringe benefits provided to address certain security concerns relating to the personal safety of an employee, or an associate of the employee, arising from the employee's employment. This measure applies retrospectively from 1 April 2004. As a result of this reporting exclusion, the payment summaries of employees who receive such fringe benefits will not include these amounts.

Schedule 9 amends the Income Tax Assessment Act 1936 to protect revenue and the integrity of the taxation system by preventing the inappropriate use of pre-1 July 1988 funding credits. This will ensure they can only be used in accordance with the original policy intent. In particular, pre-1 July 1988 funding credits will only be able to be used by superannuation schemes to reduce their taxation liability on contributions made after 1 July 1988 if those contributions were made for the purpose of funding benefits that accrued before 1 July 1988.

Schedule 10 to this bill will allow two types of deductible gift recipients—prescribed private funds and public ancillary funds—to obtain an Australian Business Number where the funds distribute to deductible gift recipients that are not charities (such as public ambulance services and research authorities) provided that these funds are income tax exempt. This ensures that the funds can access the same tax concessions as other funds that distribute solely to deductible gift recipients that are charities.

Schedule 11 gives effect to the Government's announcement in the 2005-06 Budget that it will increase philanthropy by establishing five new categories of organisations that can receive tax deductible gifts. The categories cover war memorials, disaster relief, animal welfare, charitable services and educational scholarships.

Schedule 12 amends the A New Tax System (Goods and Services Tax) Act 1999 to confirm that the GST charity concessions apply in accordance with the original policy intent. It also clarifies that charities operating retirement villages are required to be endorsed by the Commissioner of Taxation in order to access the relevant GST charity concessions, as other charities must.

Schedule 13 makes a technical clarification to the Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005, to ensure that the reduced four year amendment period for income tax assessments involving tax avoidance applies from the 2004-05 income year as announced by the Government.

Schedule 14 to this bill contains a measure amending the wine equalisation tax (WET) producer rebate scheme in the A New Tax System (Wine Equalisation Tax) Act 1999. The Govern-

ment announced in the 2006-07 Budget that it would provide enhanced assistance to the wine industry, by increasing the maximum amount of wine producer rebate claimable by a wine producer (or group of producers) to \$500,000 in each financial year from 1 July 2006.

Finally Schedule 15 amends the A New Tax System (Goods and Services Tax) Act 1999. It will ensure that supplies of certain types of real property remain input taxed. This measure confirms the long-standing GST treatment of these transactions and applies from 1 July 2000. The need for the amendment arises from the reasoning of the Full Federal Court of Australia in the Marana Holdings case. If the measure was not adopted, property investors would face significant changes to the GST treatment of affected premises—advantaging some whilst disadvantaging others. It would add to uncertainty, complexity and the compliance burden on taxpayers.

Full details of the measures in the bill are contained in the explanatory memorandum.

NEW BUSINESS TAX SYSTEM (UNTAINTING TAX) BILL 2006

This bill is a companion Bill to the Tax Laws Amendment (2006 Measure No. 3) Bill 2006.

The purpose of this bill is to impose untainting tax. A liability to untainting tax arises when a company chooses to untaint a tainted share capital account.

Full details of the measures in this bill are contained in the explanatory memorandum already presented.

HEALTH LEGISLATION AMENDMENT (PRIVATE HEALTH INSURANCE) BILL 2006

The Health Legislation Amendment (Private Health Insurance) Bill 2006 primarily will amend the National Health Act 1953 to improve the protection of consumers by increasing the powers of the Private Health Insurance Ombudsman.

The Private Health Insurance Ombudsman independently investigates and resolves complaints about private health insurance and is an unofficial umpire in dispute resolution at all levels within the private health insurance industry. Currently,

the Ombudsman's power is limited in relation to investigation and mediation of disputes. He receives and investigates complaints but does not have jurisdiction to resolve them. This frustrates consumers who have no clear alternative path of redress.

The private health sector is a partnership between health funds and health care providers including hospitals, doctors and ancillary service providers. Health insurance brokers also play a role in the sector.

This bill is intended to ensure the Ombudsman will be able to effectively represent consumer interests arising from all aspects of their privately insured experience. Currently, the Ombudsman's powers centre on complaints and investigations relating to the activities of health funds. The bill expands the responsibilities of the Ombudsman to include receiving complaints by, and in relation to, health care providers and brokers. This effectively imposes the same obligations on all parties involved in a privately insured episode, instead of placing accountability solely on health funds.

The Ombudsman will not intervene in matters of clinical care: that remains—and must remain—the province of registration boards and state health care complaints commissioners.

The bill also expands the types of documents of which the Ombudsman can require production, such as health fund, health care provider and broker records.

Through the amendments, voluntary mediation will be supplemented with a power to compel parties to a dispute to undertake mediation where the Ombudsman deems it appropriate. This may include impasses in contract disputes between health funds and providers.

The Ombudsman can currently make recommendations about the practices and procedures of health funds. This bill expands this recommendatory power to the practices and procedures of health care providers and brokers.

Penalties will be included for parties, other than consumers, who fail to comply with matters relating to providing records, participating in mediation and reporting to the Ombudsman. These penalties are in line with the penalties that currently exist in the National Health Act 1953 and will

provide support to the Ombudsman in relation to complaints and investigations. Furthermore, the bill ensures that the Ombudsman and the staff of the office are protected from civil and personal liability as a result of exercising the increased powers.

Peak bodies of the private health industry, including the Australian Health Insurance Association, the Australian Medical Association and the Australian Private Hospitals Association were consulted in the development of the bill. All support the proposed changes.

The bill also includes a minor amendment to the Private Health Insurance Incentives Act 1998 that applies to the 2005-06 financial year and later financial years.

This is an administrative amendment that extends the time Medicare Australia—the former Health Insurance Commission—has to provide annual data to the Australian Taxation Office on the Private Health Insurance Rebates from 90 days to 120 days. The change will improve administration of the Rebates and will not disadvantage those consumers who claim their Rebates through their tax return. This proposed change follows a recommendation of the Australian National Audit Office.

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

Ordered that the Health Legislation Amendment (Private Health Insurance) Bill 2006 be listed on the *Notice Paper* as a separate order of the day.

**NATIONAL HEALTH AND MEDICAL
RESEARCH COUNCIL AMENDMENT
BILL 2006**

**SUPERANNUATION LEGISLATION
AMENDMENT (TRUSTEE BOARD
AND OTHER MEASURES) BILL 2006**

Assent

Message from His Excellency the Governor-General was reported informing the Senate that he had assented to the bills.

BUSINESS

Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (3.58 pm)—I move:

That—

- (1) Intervening business be postponed until after the consideration of the following business of the Senate items:
 - (a) the order of the day relating to the disallowance of Petroleum Retail Marketing Sites Amendment Regulations 2006 (No. 1); and
 - (b) order of the day no. 2 relating to the disallowance of the Workplace Relations Regulations 2006.
- (2) At 7.30 pm, intervening business be postponed until after the consideration of government business orders of the day nos 6 to 14.

Question agreed to.

**PETROLEUM RETAIL MARKETING
SITES AMENDMENT REGULATIONS
2006 (No. 1)**

Motion for Disallowance

Debate resumed.

Senator STEPHENS (New South Wales) (3.59 pm)—This disallowance motion regarding the Petroleum Retail Marketing Sites Amendment Regulations 2006 relates to the government's downstream petroleum reform package and the introduction of the Petroleum Retail Legislation Repeal Bill 2006, which has the effect of repealing the 1980 sites and franchise acts.

As part of the process of introducing the reform package, the government has made regulations to omit regulation 3 of the Petroleum Retail Marketing Sites Regulations 1981. The effect of this amendment is to suspend the reporting and compliance obligations that currently apply to the major oil companies under the Petroleum Retail Marketing Sites Act. This act is therefore effec-

tively inoperative unless the regulations are subsequently withdrawn or disallowed. That is the context of the disallowance motion standing in the name of Senator Joyce.

Labor is supporting this disallowance on the government regulation. It has the effect of removing the four major oil companies from the scope of the Petroleum Retail Marketing Sites Act. Labor's principal argument with the government on this issue is one of process, not substance. Before I go to the issue of substance, I want to reiterate the point that the regulation has the effect of repealing the sites act before the parliament has had the opportunity to consider the merits of the repeal bill. We on this side of the chamber see this as an unacceptable abuse of power and an attack on parliamentary democracy. Labor is very concerned about when the government might choose to use this method next: perhaps on matters of national security or immigration. Who knows? But on the substance of this issue, which is where we really do feel at odds with the government, Labor is prepared to repeal the sites act provided that the government strengthens section 46 of the Trade Practices Act to maximise competition by protecting small and independent petrol station owners. We heard from Senator Joyce this morning how important it is to do that.

While Labor and the government disagree on the scope of the amendments necessary to section 46 of the Trade Practices Act, the government has not even agreed to bring forward the amendments it said it would in response to the March 2004 recommendations of the Senate committee. When the Senate Economics Legislation Committee considered the Petroleum Retail Legislation Repeal Bill 2006, Labor senators, in our additional remarks, called again for those recommendations in relation to section 46 of the Trade Practices Act to be brought on as part of the oil code and the new bill.

Senator Joyce certainly acknowledged section 46 in his speech today, but it is our argument that he needs to do much more than support the disallowance. He must call for reform of section 46 to be included as part of the government's reform package. I must say that on process the government has got into a mess of its own making. Despite Senator Minchin's contribution this morning, when he tried to defend the process, the problem is quite simply that the government has had three years to reform the 26-year-old regime which regulates the retail petrol industry. Because it has been incapable of producing an acceptable model, it wants to repeal the sites act through the back door. To do so would offend the rights of the parliament and would risk putting upward pressure on petrol prices.

The government should immediately bring on the repeal bill for debate. We have asked for it, we have prepared for it and we are ready to support it—but only if we can actually see it, and the proposed oil code—so that we can see whether the government is prepared to strengthen section 46 of the Trade Practices Act to maximise competition by protecting small and independent petrol station owners. Instead, the government has sought to undermine the sites act and the will of the parliament by undeclaring, by regulation, the major petrol retailers from the operation of the sites act.

Labor cannot support this late and unilateral act, which does not provide the Trade Practices Act protection that small service station owners need. It does not even meet the need for improved Trade Practices Act protection that the government has accepted is necessary. That is why Labor is supporting this disallowance motion. In doing so, Labor appreciates this puts one of the major retailers, BP, in an unenviable position. BP has many licence agreements with small service station owners that are due for renewal. If the

sites act is not repealed, BP may be forced to enter into new five-year licence agreements in order to continue supply to the motoring public. Clearly, BP would prefer not to be forced into this position in relation to some licences. But BP's problem is entirely of the government's making. It could have fixed it two years ago. The government's actions in undeclaring the major petrol retailers are simply not appropriate, for both process and substantive reasons. They are not even consistent with the government's stated policy.

Petrol market reform is about enhancing competition and putting downward pressure on petrol prices. As it stands, the government's package could lead to the demise of many independents, a reduction in competition and higher petrol prices. Senator Joyce went to that issue very clearly in his contribution to this debate. To resolve this matter once and for all, the government should bring on the legislation to repeal the sites act and the amendments to the Trade Practices Act. Only this would give operators in the market the certainty and protection they need. The government could easily achieve this before the parliament rises next week.

Senator JOYCE (Queensland) (4.06 pm)—We have heard today the debate with respect to regulations that get rid of the Petroleum Retail Marketing Sites Act 1980 and the Petroleum Retail Marketing Franchise Act 1980. A couple of clear issues have been illustrated throughout the debate. What has happened with these regulations is that the intent of a piece of legislation that has not yet been debated is about to be put into place. This Senate has not had the chance to debate the issue that there has been a regulatory change that has brought about the intent of a piece of legislation that we have not yet had a chance to see.

Going back to the issue, everyone acknowledges that the current oil code is

flawed. There is no argument that the current oil code is flawed. The problem with the current oil code has been brought about by Coles and Woolworths circumventing the intent of the 1980 act. However, there is nothing in this regulation or the proposed legislation that deals with the fact that Coles and Woolworths have circumvented the intent of the act. We have basically found the people who have broken the intent of the act and let them off the hook. We have done nothing to actually address the problem. Instead, in some obscure piece of logic, rather than addressing the problem we are going to affect an innocent third party in this: the independent branded and franchisees, the mum-and-dad operators. They are going to have to suffer the slings and arrows of the fact that Coles and Woolworths have circumvented the intent of the act.

The intent of 1980, when the coalition government initially brought in this piece of legislation, is still as good now as it was then. The world has not changed that much in 26 years. The government's intent then was to keep wider participation in the retail market to prevent vertical integration. And now we are about to bring in a piece of legislation that is going to bring a narrower participation in the retail market and create vertical integration. I do not see the logic of how we have managed to do that complete 180-degree turn on what has always been a strong small business intent.

A lot of people have had to deal with the bluff of the major oil companies. We have had the major oil companies saying, 'If this doesn't go through, we're going to pull out of Australia; the world will collapse.' I think that is a load of rubbish. They have been doing very well for themselves and they will continue to do very well for themselves—and we want them to do very well for themselves. But it is a sign of the sorts of tactics they use, the standover tactics: 'You'—that

is, the parliament of Australia—‘will do this or else.’ I take with a grain of salt the predictions by one oil company in particular, which said to my office that they had an intention, if this did not go through, to leave Australia. How ridiculous is that?

I also acknowledge that in the National Party we have a clear intention to try to get ethanol out into the market. Everyone clearly states that, if this goes through in its current form, it is going to be an inhibitor to getting ethanol out into the market. Getting a biorenewable fuel alternative out into the market that basically makes Australia a benefactor of the biorenewable fuel industry rather than a casualty of it will be affected by the fact that the independents are not in the market. They will be under undue pressure because of this, because all of a sudden you are going to have the supplier of the independents’ product also being a competitor in the retail market. We have some obscure belief that somehow their major competitor is going to look after them. Of course they are not. As soon as they prove themselves a viable threat, they are going to put them out of business. Since the Boral case and the running down of the predatory pricing laws, they have every ability to do that. That is another issue that connected to this.

I agree with Senator Bartlett and Senator Stephens that we should be dealing with section 46 of the Trade Practices Act. That is a big issue and it needs to be brought forward. It is a protection for small business. There is a government approved form of section 46. It has been there since 2004. It is just languishing; it is just sitting there. That piece of legislation should be enacted. It should be brought forward. I do not think even the oil companies would have a problem with that. If it were brought forward, we would have a mitigating circumstance that would allow a more relevant roll-out of this piece of legislation.

But this regulation is all one way. The way it goes, it is all in the favour of the incumbent oligopoly of the four major oil companies and Coles and Woolworths. Coles and Woolworths are, by default, Caltex and Shell. Sometimes they pose; Caltex and Shell will say, ‘We can’t do anything about Coles and Woolworths.’ Of course not! They are moving so much product through them that they do not want to do anything about them. They have managed to get about 52 per cent of the retail market in fuel, which links up with their control of the retail market in a whole range of other fields. Of course they are quite happy to move that product.

Then they put their hand on their heart and say, ‘We will deal with ethanol when it has a competitive advantage.’ The fact that ethanol is at about 80c at the terminal gate price and fuel is at about \$1.40 does not seem to strike a chord. Of course there is an absolute competitive advantage of about 60c a litre to get ethanol out into the market, but they do not want to do it, because it does not fit their corporate plan. It does not fit their plan to roll out an alternative product to the product they are selling and they control from the oilwell to the bowser.

One of the main mechanisms that we have to do it in this nation is the independents. A clear example of that is here in Canberra. Four sites sell ethanol. Three of them are independent. And what are we going to do? We are going to pass a piece of legislation that those three independents say will work directly against their future in the market. We are passing a piece of legislation that does not promote ethanol; it inhibits it. You cannot say you want to promote a product if you are trying to get it off the market by taking away your mechanism of retailing it. That is another issue. The major oil companies’ move to not be proactive in pushing for the government’s policy of getting a biorenewable fuel industry off the ground will be enhanced

because of the continued enactment of this regulatory instrument.

We have heard a lot today that there will be a strengthening of the lease agreements for these new franchisees and branded operators. But of course that avoids the crucial issue: that is only if the oil company chooses to renew them. It is like me saying to you: 'I'm going to offer you a great deal on the lease of your house, if I choose to lease it to you. But, when there is a commercial advantage of me not leasing it to you, I'm not going to do it.' The oil companies are not going to be renewing leases if they can make a greater margin out of operating it themselves. But, in these three by three by three year leases which have been talked about today, at the completion of that term they have two choices: to take over the site and operate it themselves or to lease it on to someone else under these new leasing arrangements.

That is the choice, and they can choose not to renew it. They can choose just to say: 'We've thought about it. We don't have to pay you anything for it. You're out of there and we're in there tomorrow.' There is no protection against that. There is no mitigating measure against that. The protection in the past was exactly this regulatory instrument. They had to deal with it. They had to get their product moving. To get their product moving, they had to have the sites out there, and they were not allowed to own more than five per cent of sites. Now they are allowed to own the whole lot. There is nothing stopping them. The reason they are so absolutely enthusiastic about getting this through, and I know they have been lobbying in the corridors here flat out, is that that is exactly what they intend to do—take over these sites.

Who is going to suffer from that? In the short term it is going to be the mum-and-dad

operators, the small businesses that we in this chamber are supposed to represent. They are the people that we are supposed to be looking after. They are the people who do not have the capacity or the lobbying ability to gather together in big numbers; put together a huge budget to come here and knock down every door; be the benefactors, if they have to be, of political parties; and do whatever else to achieve their objectives. Mum-and-dad operators do not have that capacity. What they have is the hope and the sense of goodwill that this place will protect their interests. That is not going to happen with this regulation going through.

We are going to make a clear statement today with this regulatory instrument about whether or not we believe there should be a protection for the smaller operators in the Australian market in general. There is no section 46 to go hand in hand with this. There is no section of the market that is going to be quarantined either volumetrically or by site numbers for smaller operators. It will be a further inhibitor on rolling ethanol out, yet we say that is what we want to do. I do not know how we are going to do it. Twenty million litres a year—that is how pathetic it is—is what the major oil companies have managed from 2001 to now, the year of our Lord 2006. They are managing to put 20 million litres into the fuel that we utilise. Their target is 350 million litres by about 2010. They are actually going down; they are not going up. They are putting less out, not more. They are going backwards in achieving their objectives. Even 350 million litres is only 0.7 of one per cent. It is so small. It is three-fifths of five-eighths of very little at all.

How are we going to try and deal with that? We are going to force them by giving them greater power to not achieve the objective that the Australian government has asked them to achieve. It is going to be inter-

esting. In the future we are going to have major arterial roads with strangulated sites. That means sites on both the left- and the right-hand sides of the road owned and financed by the major oil companies. They are going to have the capacity to move huge volumes of fuel and they are going to have a close proximity to the refining capacity. It is a very efficient way to move the product. The purpose of the retailing arm is to move product. The margin is not made in Australia; it is made overseas. The purpose of the retailing arm in Australia is to move product. So you are going to have strangulated sites on the major arterial roads, and that is going to lead to the most efficient utilisation of refining capacity. There are no intended new refineries in Australia, so the refining capacity will have an absolute horizon of product that they can move.

When they move that refining capacity to the strangulated sites and the major sites they will own and control themselves, you will be left with other remote regional sites which will be very much at the bottom of the pecking order. There is nothing in this about guaranteeing supply. If they say they do not have the product, that is it—they do not have it. And they will probably be telling the truth—they will not have it. They will have utilised it in their own sites. They also, by the way, have a way of getting around that. They have categorisation of product. They have branded product for themselves and other product. Once the other product, which goes off to the independents, is out, that is it; it is game over. So you are going to have small town operators which they always had to rely on the past to get product out basically being left with a completely unaffordable product, which means they cannot pick up the passing trade, which means they are not a viable concern, which means they close down. When they close down, that is yet an-

other service that gets removed from these areas.

I know this is an issue that does not ring bells. It is not going to claim the collective psyche of the Australian people like other issues. It is maybe a little bit dry. But the issue comes down to this—it will affect us all in the long term. In the long term, once there is vertical control, not only will you extract a greater margin on the product you sell—that is, not only will you put up the price of fuel—but you will have a commercial and corporate obligation to do exactly that. You have an obligation to get the best return for your shareholders. So, if there is the capacity for you to raise the price, that is exactly what you are going to do. Of course that is exactly what is going to happen here, and it is exactly what happened in the UK. But we all think there is something remarkable about Australia: ‘No, it’s not going to happen here. It happens everywhere else but it won’t happen here.’ Of course it will happen here. Look at the history and ask, ‘What was one of the greatest mechanisms of forcing a reduction in prices?’ Lo and behold, it was the independents. What are we going to do? We are going to take the independents out of the market.

In the short term it always comes to back to this: the purpose of the economy is not to create the lowest price product for the end consumer, but that is a consequence of a good economy and it has happened here; the purpose of the economy is to create the greatest connection between the wealth of our nation and its people. It does that primarily through small business, primarily by giving the people of Australia the ability to buy and sell a product in a retail fashion, and that is being lost in this nation. We have 73 per cent of the retail market controlled by Coles and Woolworths. They are the largest outlets for liquor, the largest holders of gambling licences and the largest retailers of fuel.

These are two organisations. This is also an exacerbation of that process.

It is an issue that might be dry, it might be about a regulatory instrument and it might not have claimed the Australian psyche, but it is extremely important to where we go as a nation. We have heard, and I agree, that this would never be tolerated in the United States; there is no way in the world. They have antitrust legislation. The bastion of free market democracy would not tolerate this. We would, but they would not, and there is a reason for that—they believe that the American people have a right to participate in the wealth of America. It is fundamental. If you read Jefferson, he will tell you all about it. But we are moving away from that.

So there are other sides to this debate beyond the dry and dogmatic, beyond saying: 'This is just a change in a regulatory instrument. It does not mean very much. It's not that important. I don't know what Senator Joyce is banging on about.' There is a clear outcome for this and a clear reason. In this chamber we have to grab the agenda for small business again. We have to recognise the fact that they are not going to be knocking down the doors of this place. They do not have the capacity to do that. Today the Motor Trades of Australia body passed a unanimous resolution with the 130,000 members supporting that we find some protection for them, supporting that this regulatory instrument in its current form is a bad outcome for them.

It is interesting where the inspiration for this came from. I remember during the first campaign driving up the road at Gin Gin, I think it was, near Bundaberg, and stopping at a small petrol station to grab a sandwich. We introduced ourselves to the owners and said g'day to them—trying to collect their votes, as you all know you try to do. The owner almost jumped the counter just to explain the

absolute frustration of his life, the fact that the corporate service station up the road was able to sell fuel at a price he could not possibly buy it at. Yet this is supposed to be a free market, an unregulated market. They were being forced out of a job. I thought about that. You can just walk out the door, think, 'I'm not going to get his vote,' and forget about it or you can try to follow the issue through and try to progress the issue. You can have it stored in the back of your mind that this is something that, if you ever got the chance to deal with it, you would deal with. Today is the chance to deal with that issue. I imagine I am going to fail, but the point is you give it your best shot and have a go.

I suppose it will come down to the vote. I implore people just to think about this. Think about this if you think about regional towns. Think about this if you think about small business. Think about this if you think about how our nation is developing—whether we are disenfranchising the Australian people from the wealth of their own nation, whether we are creating the overcentralisation and greater corporatisation of our nation, whether we are creating a mechanism where we are all going to end up as middle managers in business but never owning the business, whether we are creating a nation where what you achieve in life is to go up three or four floors in the building in which you work but you are never going to own the building. If you want to own the building then you have to create the environment for small business to prosper.

My colleagues, that is the issue and one item that we need to address. If we had section 46 on the table, then I suppose you could let this through. But it is not on the table. There is no prospect that we can see for that coming out. We are having the agenda run by people who are not in favour of small business.

Senator MILNE (Tasmania) (4.25 pm)—by leave—I apologise to the Senate for missing my place in the speakers queue. I would just like to congratulate Senator Joyce for the effort and research that he has put into this disallowance motion. The Greens support the position that he has put, and we do so for a number of reasons. The first one, which is highly significant, is in terms of procedure. It is totally inappropriate parliamentary procedure to bring in regulations before the parliament has had a chance to deal with the legislation that will govern petroleum retail into the future. It is bad process.

It was interesting to me that, in the energy efficiency opportunities consultation process, big business—the 200 largest energy users in the country—were not prepared to see the legislation come into the parliament until they had seen the regulations. But here, when the boot is on the other foot, big business is very happy to see the regulation come in before there has been any debate on the principle concerning the repeal bills and the proposed oil code. I am not prepared to do that. I think it is grossly unfair to small business in this country that we would have a situation where regulations pre-empt the decision of the parliament, because nobody can know at this point what the decision of the parliament is going to be. Secondly, the effect of this regulation would be to remove the four major oil companies from the provisions of the Petroleum Retail Marketing Sites Act, as I indicated, before the legislation and regulations are in. I understand why they want to do it. I understand that the entry of the supermarkets has created a perverse effect with regard to the petroleum retail industry. But that is not an excuse for dealing with the situation in this way.

The Greens will consider the repeal bill and the proposed oil code in the future provided that the government strengthens section 46 of the Trade Practices Act so that

there is clear evidence of the way in which the government intends to protect small and independent retailers. We certainly take the point that, as Senator Joyce has outlined and as the Motor Trades Association has said, the service station operators looking at the proposed code as it now stands believe it is defective because it will not ensure a level playing field allowing small service station operators to be able to compete fairly in the market with the large supermarkets and oil companies.

Finally, I support Senator Joyce's interest in maintaining a distribution network for alternative fuels into the future. He is right in saying that independent operators are our best hope in that regard. We know that 61 per cent of greenhouse gases are generated from the transport sector. I think there is a very important role for alternative fuels to play, not only in rural regeneration and jobs but in meeting our greenhouse gas emission targets. I am as keen as anyone to see a distribution network maintain jobs in rural areas and for small businesses to maintain their position in the market.

To that end, the Greens support the disallowance. As I indicated, we will consider the repeal bill and the proposed oil code into the future, because we certainly do not like the fact that the supermarkets have 73 per cent of the market. The situation as it is is unsatisfactory. We do want to support small business. We do want to support the roll-out of alternative fuels. We want to make sure that fairness is the principle that operates and not just effective competition for the majors in the retail petroleum trade.

Senator BARTLETT (Queensland) (4.30 pm)—I would like to seek leave to speak to the matter. I was also caught by an unanticipated collapse in the speakers list.

Leave granted.

Senator BARTLETT—In other circumstances I possibly would have let things slide, but I did particularly want to put a few things on the record from a personal point of view and specifically as a senator for Queensland. I also am prepared to support this disallowance of the Petroleum Retail Marketing Sites Amendment Regulations 2006 (No. 1), although not for all of the same reasons that have been put forward by Senator Milne and Senator Joyce. I think there are other factors and I take a different view on some of the issues involved in this matter.

It is a difficult issue and it is, as I think Senator Stephens said, a situation of the government's making, and it is an unfortunate one where we have regulation in place in anticipation of legislation repealing the Petroleum Retail Marketing Sites Act but the bill to do that is not before the Senate. It is still before the House of Representatives and indeed, as I understand it, it is not even likely to be debated by the House of Representatives before the parliament rises next week.

I could see the rationale if there were a range of leases coming up. A brief exemption from the cap under the existing act in anticipation of the bill being debated might then be tenable because it does put BP—and it is predominantly BP we are talking about—in a difficult situation. It is the only oil major at the moment, as I understand it, which is operating at the cap of allowable sites under the existing act. But when the legislation is so far off in the distance it does make it difficult. You basically have a regulation that negates the existing law indefinitely. If there was a sunset clause in the existing regulation, then it may be more acceptable. We would all know how long we had before the legislation had to be debated. But there is no sunset clause. That is a serious problem that the government themselves have created.

The fact that this regulation exempts or makes the existing act not operational in respect of the cap has an extra problematic aspect in that the oil code is not operational as yet. That has not been gazetted so even the protections, such as they are, under the new oil code—and there are a range of opinions about how effective the new oil code may be—do not apply as the new oil code is not yet in place. That also creates a problem, particularly in terms of the very serious issue of subverting the will of the parliament, even if it was the parliament of the 1980s that passed these acts back in the Fraser era.

Nonetheless, I want to indicate that I also support the intent of my colleague Senator Murray and Senator Joyce—and others who have mentioned it—about the desirability of bringing on some of the changes of the Trade Practices Act that were reflected in recommendations of a previous Senate committee report—recommendations that were also supported by government senators. The committee was chaired by Senator Brandis as I recall. I believe the government have indicated their preparedness or their support for a number of those recommendations—indeed most of them—but as I seem to find myself saying repeatedly in this place about a range of issues, it is one thing to say you support a matter and it is another thing to actually do something about it. We have not seen any sign at all of movement from the Treasurer's office about any changes coming forward. It is a problematic situation when we have a regulation that links to an act that has not appeared, which in turn relates to concerns that many in this place have regarding recommended reforms of the Trade Practices Act which also have not appeared yet. Unfortunately, these are not all coming together at once. They are coming together in different stages and we cannot see what the final total outcome might be. That is the rea-

son it is appropriate to support this disallowance at this time.

However, I want to say a couple of other things. It is important to emphasise the role that the major oil companies can play and, indeed, to some extent are already playing in the roll-out of alternative fuels—biofuels and ethanol. I do not believe that it will be a range of small independent operators that are likely to be able to really break the back of getting ethanol or other biofuels into the market in a big way; it will need to have the involvement of one or more of the major oil companies. As I mentioned before, it is BP that is affected by this regulation. It also happens to be BP that has done the most that I am aware of—I am not saying that others have not done anything—in relation to producing and rolling out ethanol in recent years. In my own state of Queensland, BP has a refinery in Brisbane at Bulwer Island and BP also owns a significant number of sites in Brisbane, where I live. While I appreciate the importance of having competition in regional areas and the importance of trying to maintain petrol prices that are reasonable, it is also important to have an effectively operating market in the major cities as well. It does need to be acknowledged that if major oil companies want to go further, and BP for example wants to take biofuels further, then market reform is likely to be essential for them to be able to do so.

The Democrats have a record as strong as anybody in supporting small business. But the fact is that small business and independent operators in the petrol station field have been declining dramatically under the existing system for many years and they are particularly being crunched at the moment, as we all know, by Coles and Woolies. They are doing that in conjunction with some of the other major oil companies who have basically just gone around the existing act. The fact is the existing act's time has passed us

by. The market has changed so much that the act is not functioning. Ironically, it is allowing people like Coles and Woolies to exert unfair competitive practices and preventing the oil companies from providing competition to those retailers. Coles and Woolies are doing quite well on their own in eliminating independent players from the market wherever they think there is a market opportunity to do so; where they do not, they will leave them alone.

So a huge decline in the number of independent retailers has occurred under the existing system. It is likely to continue to occur wherever there is an opportunity for the major retailers to maintain pressure on them. Whether or not you have one or two more oil companies, such as BP, in there is not likely to make any difference. I do think it is important that independents have a level playing field, and the existing system does not provide that. That is why Trade Practices Act reforms are important and, I would also say, why a good oil code—I will not pass opinion on whether the oil code that is coming in is good or not—is important.

I have heard all the talk about small retailers and independent retailers being important to maintain lower petrol prices. If we are talking about protecting small retailers and doing everything we can to keep them in business no matter what, then—sorry to suddenly sound like an economic rationalist—it will probably actually mean higher petrol prices. That may be a good thing from an environmental point of view, I hasten to add, but I do think we need to be realistic about what the impact of what we are doing will be.

I did want to indicate that wider aspect of the debate, particularly because the regulations do specifically affect my own state of Queensland quite significantly. I know that Senator Joyce, along with the Democrats,

has been pushing biofuels and ethanol very strongly. Indeed, I have to say the Democrats have been doing so for much longer, going way back even before I was in this place to the early 1990s, when very significant initiatives were introduced, because of agreements reached with the Democrats, to provide assistance to starting up ethanol in this country—assistance, I might add, that was completely annihilated by the Howard government when they first came into office in 1996 and totally undid that work. Now we have to start up again because of the actions of the Howard government, having lost 10 years and, as Senator Murray said, with \$25 million down the drain. We lost a significant start-up in developing an ethanol industry because of the Howard government's actions 10 years ago. So our record on biofuels and ethanol is second to none in this place.

I do believe that the major companies have a significant role to play in expanding the use of biofuels. This is not a promotional spiel for BP, but BP have not just made nice sounds about this but done something, unlike the Howard government. They have developed a roll-out of ethanol. They have already sold significant amounts of their E10 blend, through their own service stations in Australia. If they are able to roll that out through a larger number of stations through market reform, then that will lead to an expansion of the availability of ethanol. BP have also—and this is already on the public record—announced that they will be creating biofuels at their Bulwer Island refinery in Brisbane. It is a biofuel made out of tallow, so it actually creates a bit of a problem for me as a vegetarian: I do not like the idea of pouring dead cows into my petrol tank. I will not get into an argument about what should and should not be defined as a biofuel, but this is nonetheless a biofuel: it is renewable and you can put it in a tank and run your car on it. Vege-

tarians around the country will have ethical crises as a consequence, but that is another matter.

Senator Murray—It puts a tiger in your tank!

Senator BARTLETT—A dead cow in your tank is not quite a tiger, Senator Murray, but I suppose it is getting there! So, significant amounts of biofuel are being developed at the Bulwer Island refinery in my home town of Brisbane. The CSR refinery at Sarina, near Mackay in Queensland, has a significant ethanol contract, as does the BP plant in Perth, which happens to be in my colleague Senator Murray's home state.

Again, on a side issue, BP is the company that has produced Opal fuel, which is a very effective replacement fuel for remote communities to combat petrol sniffing. There are also market risks and price risks involved in developing that fuel, and there are cost issues in expanding its production. You cannot divorce those factors from the constraints that are placed on BP by the current inefficiencies of the existing sites legislation.

I say all that to put the debate in a broader context and to signal to others who, like me, have an interest in increasing the use of biofuels and ethanol, particularly in Queensland, that there is a direct link between the major players, who have to have a role in that, and current laws, which actually impede that. There are also related issues, as I stated at the start of my speech, such as the lack of progress with regard to Trade Practices Act reform. That is a much wider issue than just assisting small business and independent operators of petrol stations; it is important across the board. I completely understand and support the attempt to use this legislation and this situation to try to increase the pressure on the government to back up their words by taking some action for a change in this area—action for which there is wide-

spread support and, I might say, almost universal support, at least verbally, from people on all sides of this chamber.

The primary legislation is still in the House of Representatives and has not yet been debated. If this disallowance motion is defeated, which I suspect it will be—just—then that still leaves us in this undesirable situation where the existing law is basically being negated via regulation which has no sunset clause on it. The oil code is not even operational, and there is even less incentive for the government to move on its repeal of the sites act, let alone the Trade Practices Act. That is an undesirable situation for pretty much everybody, whether it is the independent service station operators, the major oil companies or anybody else, because nobody knows what is going to happen. It is all just going to sit there pending, hanging over everybody, and it is not going to be resolved. That will create a situation of uncertainty for all players, and I think that is undesirable.

I have indicated here, on the record, my wider views about some of these issues. If the government would show some genuineness on this issue and even progress debate on the primary legislation and move it forward, then I might have a stronger belief that they are genuine about that they are doing. We also need to see some movement from the Treasurer, of course. From experience on a whole range of issues, that is an area where movement seems to be difficult to get. I do not want to add yet another element to the debate but, as I mentioned earlier today, this is a Treasurer who was willing to leave major reforms to choice of superannuation completely off to one side and not progress it at all for years purely because the government were not interested in moving at all to address discrimination within superannuation laws against same-sex couples. We have a Treasurer with a record of not even being

willing to progress his own policy initiatives in a major area like choice of superannuation purely because of stubbornness about the important but nonetheless much smaller issue of removing some discrimination. So I do not hold my breath for movement from the Treasurer on this, but I really do hope that he does move.

With regard to that issue, we all have an interest in trying to maintain at least a fair playing field for small operators—the mum and dad operators, as Senator Joyce called them. I guess after today's vote we will not have dad and dad operators or mum and mum operators; we are stuck with only mum and dad operators. But it is important to ensure that all small businesses get a fair go. As I said, the way the market has developed, a lot of them have been pushed out of business as it is, and that situation and those pressures on them are going to continue regardless of what happens. That is an existing situation and a reality that people have to deal with, but the continuing uncertainty about the future in this whole area is a problem for everybody from all sides of the debate. It is problem that only the government can resolve, and they can resolve it by actually doing something for a change, rather than just using a mechanism like this regulation to circumvent everything and make no progress on the core issues involved.

Question put:

That the motion (**Senator Joyce's**) be agreed to.

The Senate divided. [4.51 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	29
Noes.....	<u>31</u>
Majority.....	2

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Carr, K.J.
Crossin, P.M.	Faulkner, J.P.
Fielding, S.	Forshaw, M.G.
Hurley, A.	Joyce, B.
Kirk, L.	Ludwig, J.W.
Marshall, G.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	Murray, A.J.M.
Nettle, K.	Polley, H.
Ray, R.F.	Siewert, R.
Stephens, U.	Sterle, G.
Stott Despoja, N.	Webber, R. *
Wortley, D.	

NOES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Chapman, H.G.P.
Colbeck, R.	Eggleston, A.
Ferguson, A.B.	Ferris, J.M.
Fierravanti-Wells, C.	Fifield, M.P.
Humphries, G.	Johnston, D.
Kemp, C.R.	Lightfoot, P.R.
Macdonald, I.	Macdonald, J.A.L.
Mason, B.J.	McGauran, J.J.J.
Minchin, N.H.	Parry, S.
Patterson, K.C.	Payne, M.A.
Ronaldson, M.	Scullion, N.G. *
Troeth, J.M.	Trood, R.
Watson, J.O.W.	

PAIRS

Campbell, G.	Heffernan, W.
Evans, C.V.	Campbell, I.G.
Hogg, J.J.	Coonan, H.L.
Hutchins, S.P.	Nash, F.
Lundy, K.A.	Santoro, S.
Sherry, N.J.	Ellison, C.M.
Wong, P.	Vanstone, A.E.

* denotes teller

Question negatived.

**WORKPLACE RELATIONS
REGULATIONS 2006**

Motion for disallowance

Debate resumed from 14 June, on motion
by **Senator Wong**:

That the Workplace Relations Regulations 2006, as contained in Select Legislative Instrument 2006 No. 52 and made under the *Workplace Relations Act 1996* and the *Workplace Relations Amendment (Work Choices) Act 2005*, be disallowed.

Senator MARSHALL (Victoria) (4.55 pm)—I am in the middle of my contribution to this disallowance motion moved by Senator Wong. Before I continue on from where I left off yesterday before the debate was interrupted, I could probably draw a comparison between this disallowance motion and the vote that we just took on the disallowance motion moved by Senator Joyce.

Senator Joyce argued that there was a fundamental injustice in expecting small business to be able to negotiate appropriately and effectively with big business. He recognised that there was an imbalance of power in those relationships and that the small operators, the people with lesser bargaining power, needed some protection from the government. Labor supports Senator Joyce on that because Labor believes that there is imbalance in the power relationships in contractual arrangements. But the same principle applies in the Work Choices regulations and the Work Choices bill. If he is concerned about the power imbalance of a small business compared to a big business, he should also be concerned about the power imbalance of a worker trying to negotiate with big business or a small business. The principle is exactly the same.

An individual worker, like a small business, does not have equal bargaining power when negotiating with big business or a worker does not have equal negotiating power when they have to negotiate as an individual with an employer. So I invite Senator Joyce on the same principle that Labor joined him on, which Labor supports, to join with Labor, the Democrats and the Greens

when we move to the other side of the house for the vote to support Labor's disallowance motion on the Work Choices regulations.

The people who are going to be hurt most in the initial stages of Work Choices are low-income earners and families in particular. I noticed Senator Fielding also joined with Labor, Senator Joyce and the minor parties on the previous disallowance motion—again, I expect for the same principle: that there is an imbalance and the mums and dads' businesses, which Senator Joyce passionately talked about—and quite rightly so—will also be affected. That is the same proposition that Labor puts before the Senate on the disallowance of these bills: families and family members will be hurt and they will be hurt significantly by the Work Choices legislation and the regulations that underpin that legislation. So I extend the same invitation to Senator Fielding to join with Labor and the other parties in supporting this disallowance for the same principal reasons that we all supported the previous disallowance.

Yesterday when I was interrupted I was in the middle of a quote from Justice Giudice, who is the president of the Australian Industrial Relations Commission. That was following on from a number of examples I was giving about the damage that Work Choices would do to Australian workers. I will continue on from where I left off. Justice Giudice says:

This will be accompanied by a slowdown in the rate of growth of minimum wages—that is what the Fair Pay Commission is for. If those things are going to occur, they will probably have to be accompanied by a reduction in social welfare otherwise the incentive to work will reduce.

I do not want to leave you in any doubt that these are very significant changes.

He also said:

The absence of protection for collective bargaining rights was a political area of real conflict and real difficulty.

Of course, he, like the 151 academics I talked about and everybody else, apart from the vested interests of employers, said the same things about the impact of the Work Choices bill and the underpinning regulations, which Labor is seeking to disallow today.

This legislation is unfair and it achieves this unfairness through three areas—and I am not sure whether I am going to have the time to go into the detail of all of them. It restricts the ability of workers to collectively organise to try and bring back the balance of negotiating power with employers to create a more even balance. It introduces Australian workplace agreements, which have priority now in terms of agreement making in this country in industrial relations. It pits an individual worker against an employer. We say that that is an unfair balance. It does not give workers the proper ability to negotiate on equal terms with employers with respect to their employment conditions. The third way it achieves this unfairness is by the removal of unfair dismissal protection. Regardless of any opportunity that you may have to try and negotiate improved wages and conditions without protection from dismissal for unfair reasons, you become incredibly vulnerable in the workplace. AWAs are nothing more than a means to cut wages and conditions and undermine decency and fairness in our workplaces.

The choice that the government likes to champion is no choice at all. The choice workers in this country now have under Work Choices is the choice to take it or to leave it. The Prime Minister's response to that choice is: if workers do not like it, they can simply go and find another job. That is not a real opportunity for most working Australians. That is not a real choice. People need to work. People need to hang on to their jobs. When they are confronted with a choice of take it or leave it in respect of AWAs that

strip away their so-called protected award conditions, AWAs that may give them no wage increase during the life of the agreement and AWAs that in fact may even cut their existing wages, they have the choice of: do you want a job or not? People in regional areas, people with families who have to make mortgage payments, people with kids who have to be put through school and people with bills to pay on a week-to-week basis, sometimes a day-to-day basis, do not have the luxury of saying, 'Well, I won't take that job. I will simply leave it and hunt around for another job.' That is no choice for Australian workers, but that is how these regulations underpin this evil and pernicious legislation, which will drive down the wages of millions of working Australians and damage family structures in this country.

How are workers expected to negotiate their own terms and conditions of employment? We have workers at all sorts of different levels. Workers, as individuals, do not have, as we know, equal bargaining power with employers. There is a basic inequity in the bargaining relationship. The capacity of people to negotiate varies across the spectrum. We have people of varying ages. How do we expect people out of school negotiating their employment conditions at their first job, when they have had no experience in the workforce, to adequately negotiate with a multinational company that might have an army of professional human resource managers who negotiate industrial agreements? People with varying education standards—with low levels of education or with very little English—will have to try to negotiate employment conditions by themselves. Employers have the resources of human resource management and the resources and the ability to actually say, 'Take it or leave it' and produce an agreement to put in front of people. We have people who will not have the knowledge or the understanding of these

laws, these complicated laws, which now run to 1,800 pages of legal jargon and technical detail. We are expecting workers across the spectrum to have a full grasp of that sort of legislation. It is a ridiculous scenario, but this government would have us believe it is a fair and equitable system. Well, it is not and we know it is not and no-one, apart from the vested interests of employers and this government, says it is a good system. No-one else says it at all.

Work Choices and these underpinning regulations that come into effect on 27 March have already led to a massive diminution of working conditions. We found that out in the estimates hearings just recently. For the first month after the introduction of Work Choices, what did we find? We were told that 6,340 workplace agreements were lodged with the Office of the Employment Advocate during that month, covering 10,257 employees. In the snapshot of the first month—before employers had really had an opportunity to get into these laws—the initial results were all bad; they were all down. What did we see? Sixteen per cent of all AWAs removed every single so-called protected award condition. Every AWA removed at least one so-called protected award condition. In regard to the three most commonly excluded protected award conditions, we saw that 64 per cent of AWAs removed annual leave loading from agreements; 63 per cent of all AWAs removed penalty rates; and, in terms of people who are required to work shiftwork, 52 per cent of agreements that had shiftwork provisions in them removed shift loading penalties. So people are working whatever hours across the board and they are getting no shift penalty loadings—no reward.

Some people in the government would have us believe that you have to agree to sign away those protected award conditions. This is where the government fails to understand

the basic reality in the workplace. Do you really expect anyone to believe that people have been happy to sign away all these protected award conditions? Of course that is not what is happening. What is happening is that agreements are being put in front of people on a take it or leave it basis with those provisions already removed. It is not about agreement. Sure, the government will say, 'The worker has to sign on to it.' Again, that demonstrates its absolute ignorance about what really happens in the workplace, because people are not willingly negotiating away these conditions; they are being told, 'Take the job on these conditions: sign here or go elsewhere.' That is the choice that is being put in front of Australian workers and that is what the statistics show is happening.

The government will say, 'Yes, but some of those conditions might have been negotiated away for more money.' What have we seen? We have seen in the case of Spotlight, for instance, that penalty rates were negotiated away for 2c more an hour. It may be true. We are not able to break down some of those statistics. Some of the agreements may give even a slightly higher wage increase for trading away your penalty rates. I do not know. That information will come out over time. But what I can also tell you—and this was confirmed by the Office of the Employment Advocate—is that 22 per cent of all AWAs provided for no wage increase at all. Do you really think people are willingly entering into agreements that remove their penalty rates, remove their shift loadings and do not even provide for all public holidays? In fact, only 59 per cent of AWAs provided for gazetted public holidays. I remember Senator Joyce feeling very strongly about this issue. Only 59 per cent of AWAs signed after Work Choices in the month of April actually provided for gazetted public holidays. This is a disgraceful outcome. It is only the tip of the iceberg.

This is the opportunity that employers have been waiting for to rip off wages and conditions. They and the government have been running this mantra that this sort of flexibility will improve productivity. What a nonsense! The government do not seem to understand the difference between profitability and productivity. How does removing penalty rates for a hospitality worker increase productivity? If they serve the same amount of meals, if they have to carry the same amount of plates and if they have to do the same amount of work, how does cutting out their shift loadings, annual leave loading and penalty rates increase productivity? It does not; it increases profitability. We are happy for companies to be profitable. We want companies to be profitable, but we do not want those increases in profits to be at the expense of the pockets, the wages and conditions, of ordinary working Australians who are mostly in the low-paid, low-skilled areas. That is the picture that is being painted here by the Office of the Employment Advocate's own figures that we identified in Senate estimates.

None of these outcomes surprise me. It is what everyone who has any basic understanding about workplace relations predicted would happen. It is what happens when workers are subject to duress. It is duress that is being applied in the workplace. This applies not only to new employees who are applying for a job and get presented with an agreement which they have no input into negotiating and who are told: 'Sign here; take it or leave it,' but also to existing employees, who are also being put under duress. How do we know that? Because we see it. The reports come out. They are publicised in the papers. People ring us. People ring their unions. It is well known. We have seen people being sacked for smirking. If you are in a workplace and your employer wants to take away your penalty rates, annual leave load-

ing and shift loading, they present you with a new AWA. It does not matter whether there is an existing agreement in place or not. You get presented with an AWA and you say, 'I don't really want to take a wage cut, thanks very much.' The next thing you know, you can be sacked for any reason as long as it is not an unlawful discriminatory reason, which is a small, narrow group of events based around discrimination. You get told: 'If you want to continue to work here and if you want a wage increase, you will sign this AWA and, if you resist, I will find some reason to get rid of you whenever I like, whether it be for smirking, chewing gum or because I don't like the look of you. I can simply sack you and you have no legal recourse.'

Senator STERLE (Western Australia) (5.12 pm)—I rise to speak in support of Labor's disallowance motion for the regulations to this evil and disgusting act. The many reasons that these regulations should be disallowed have been touched on in contributions from senators on the issue of industrial relations in recent days. In fact, Senator McGauran spent a large part of a speech on Tuesday defending the act these regulations have been drafted under and chiding me about my use of what he called 'all the old language of Labor'. He then went on to talk about me and my cudgel. While I am somewhat disconcerted by Senator McGauran's interest in my cudgel, I am more than happy to take to him with it.

Senator McGauran is the star of one of my favourite political cartoons by David Rowe. I want to paint the picture for you, Mr Acting Deputy President. The setting is in Collins Street, Melbourne. Far away in the distance, a farmer can be seen calling out after lost stock. 'Julian! Julian!' he cries. Back on Collins Street, the Treasurer stands clearly uncomfortable and somewhat disgusted. An eager pig wearing an Akubra with 'McGau-

ran' written on the side is vigorously adjoined to the Treasurer's leg in a most unseemly way. I imagine Senator McGauran choked on his latte as he read the *Financial Review* that day.

When Senator McGauran finally got around to talking about something other than me and my cudgel, he asked rhetorically: 'Why would we'—the Howard government—'jeopardise a 16.8 per cent rise in wages?' I know Senator McGauran's sheltered and privileged upbringing has given him a limited understanding of the real world, but the answer to that question is simple. It is because the Howard government hates working people, especially those who dare to stand together in union in the face of the greed and mismanagement of their bosses. The Howard government not only threatened the rise in wages they pretend to be responsible for but they also outright opposed these pay raises at every step of the way.

Over its 10 years in office, the Howard government has opposed every minimum wage outcome awarded by the Australian Industrial Relations Commission. If the Howard government had had its way, the 1.6 million Australian employees on the minimum wage would be \$44 a week, or \$2,300 a year, worse off. That is the Howard government's guarantee—that is the Howard government's record. That is why the Howard government removed the ability of the Australian Industrial Relations Commission to set the minimum wage and why these regulations, and the substantive act the regulations are drafted under, give this power to the new so-called Fair Pay Commission.

The only reason I can imagine why the Howard government would want to change the way the minimum wage is set is that it thinks this new body will be closer to the government's low-wage agenda than the

AIRC was. Des Moore, the Director of the Institute for Private Enterprise, was right when, in a speech on 3 December 2005, he said:

This new legislation is shot full of contradictions that, on the one hand, purport to “allow Australia’s employers and employees the freedom and the choice to sit down and work out the arrangements that best suit them” but, on the other hand, continues to severely constrain that freedom.

The Work Choices act and regulations contain a list of prohibited content. Apparently, Australian companies need to be protected from the possibility that they might want to make an agreement with their workers on some matters. The regulations prohibit the provision of payroll deduction facilities for union dues. I did not realise that Australian companies needed the Howard government to legislate to protect them from the possibility that they might want to agree to provide their workforces with payroll deductions for union fees. I did not realise that Australian companies needed the Howard government to legislate to prevent them from agreeing to send their workforce to union training.

The CFMEU, in my home state of Western Australia, set up the Construction Skills Training Centre in Welshpool. It is very highly regarded by its clients and provides quality training to workers. But, apparently, Australian companies need to be protected from themselves, just in case they might have the strange idea that training centres like the Construction Skills Training Centre in Welshpool might assist their workforce to be safer and more productive. The Howard government has sent a very clear message to the companies of Australia: ‘You can choose to bargain but only on our terms. You can choose to bargain on those terms we want you to bargain on, but you cannot choose to bargain about issues we prohibit.’

Senator McGauran might be uncomfortable with my ‘old language of Labor’, but I

suspect that is because he is only comfortable with the 19th century language of the master-servant relationship—language such as, ‘I’ll take tea in the drawing room, James,’ or, ‘Jeeves, saddle my steed and fetch me my riding crop.’ The likes of Senator McGauran are only comfortable when they have someone meek and submissive to order around, and that is why they hate proud and independent trade unionists so much. These regulations are about giving bosses the riding crop to whip their workers into line. That is why I oppose them and that is why they need to be disallowed.

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

**PETROLEUM RETAIL MARKETING
SITES AMENDMENT REGULATIONS
2006 (No. 1)**

Motion for Disallowance

Senator WEBBER (Western Australia) (5.19 pm)—I seek leave to have the question on the previous vote put again.

Leave granted.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—The question is that the disallowance motion moved by Senator Joyce be agreed to.

A division having been called and the bells having been rung—

Senator Conroy—I seek leave to explain my absence from the last division.

Leave granted.

Senator Conroy—I was doing a media interview and was in a bit of a lather, which will come as no surprise, over the appointment of Keith Windschuttle to the ABC board. It is an unbelievable appointment. I seek the chamber’s forgiveness.

Senator O’Brien—I also seek leave to explain my absence from the last division.

Leave granted.

Senator O'Brien—I was absent because I was engaged in conversations about the cancellation of certain services into South Australia and Northern Tasmania by Qantas.

Question put:

That the motion (**Senator Joyce's**) be agreed to.

The Senate divided. [5.24 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	31
Noes.....	<u>31</u>
Majority.....	0

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Campbell, G.
Carr, K.J.	Conroy, S.M.
Crossin, P.M.	Faulkner, J.P.
Fielding, S.	Hurley, A.
Hutchins, S.P.	Joyce, B.
Kirk, L.	Marshall, G.
McEwen, A.	Milne, C.
Moore, C.	Murray, A.J.M.
Nettle, K.	O'Brien, K.W.K.
Polley, H.	Ray, R.F.
Siewert, R.	Stephens, U.
Sterle, G.	Stott Despoja, N.
Webber, R.*	Wong, P.
Wortley, D.	

NOES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Chapman, H.G.P.
Colbeck, R.	Eggleston, A.
Ferguson, A.B.	Ferris, J.M.
Fierravanti-Wells, C.	Fifield, M.P.
Humphries, G.	Johnston, D.
Kemp, C.R.	Lightfoot, P.R.
Macdonald, I.	Macdonald, J.A.L.
Mason, B.J.	McGauran, J.J.J.
Minchin, N.H.	Parry, S.
Patterson, K.C.	Payne, M.A.
Ronaldson, M.	Scullion, N.G.*
Troeth, J.M.	Trood, R.
Watson, J.O.W.	

PAIRS

Evans, C.V.	Campbell, I.G.
Forshaw, M.G.	Nash, F.
Hogg, J.J.	Heffernan, W.
Ludwig, J.W.	Coonan, H.L.
Lundy, K.A.	Santoro, S.
McLucas, J.E.	Vanstone, A.E.
Sherry, N.J.	Ellison, C.M.

* denotes teller

Question negatived.

Senator Robert Ray—Best out of five!

**WORKPLACE RELATIONS
REGULATIONS 2006**

Motion for Disallowance

Debate resumed.

Senator SIEWERT (Western Australia) (5.28 pm)—The Greens will be supporting this motion to disallow the Workplace Relations Regulations 2006. In our contributions to the debate when the Work Choices bill passed through the Senate last year, we made clear our principal concerns.

We asked the government to provide evidence that these reforms would increase productivity, which it could not do satisfactorily. We looked to the statistics on industrial disputes, but these showed that such actions had been falling steadily for decades. We produced research that suggested that young people in particular would find themselves engaged in a highly unequal bargaining position with their employers.

We were particularly concerned by research undertaken on the impacts of the so-called reforms undertaken in Western Australia by the Court government—reforms that depressed the minimum wage and made it less than in the rest of the country, disadvantaged women and low-skilled workers, and accelerated the race to the bottom. These dubious reforms were repealed by Labor after they attained government in 2001. By most conventional measures, the state economy is now one of the leaders of the nation.

We suspected that the federal government's real agenda was to drive down the minimum wage and make it easier for companies to treat their workforces more like disposable components. It looked as though the less industrial bargaining power you had in this brave new world of Work Choices the harder life was about to get for you. The government insisted that we had nothing to worry about and pushed the bill through this place with a minimum of scrutiny and very little tolerance for any reasoned debate or amendment by the minor parties. Of course, that was with the exception of Senator Joyce's amendment to save Christmas—and that turned out to be a farce, didn't it?

Seven months later, we are unfortunately seeing many of our predictions being borne out. The new laws are being used punitively against workers by some businesses. Other businesses are being forced, through competitive forces, to take what they probably consider to be unsavoury measures to cut wages and dismiss workers. In other words, we are starting the race to the bottom, just as we saw in Western Australia. During the debate last time, some depressing cases from Western Australia were articulated, particularly cases involving the cleaning industry and security guards.

I emphasise that we do not believe that all businesses wish to treat their workforces in this way, but already a number of businesses are treating their workforces with contempt. The media is full of stories of workers who have been subjected to what I believe are very discriminatory and unfair practices. We warned of a race to the bottom, and by golly it has started.

We can now move beyond predictions and theories and look at what is happening on the ground. As other senators have pointed out during this debate, the results of the first month's survey of contracts examined by the

Office of the Employment Advocate are very clear and depressing. Every contract surveyed has abolished at least one award condition. One in six have abolished all award conditions apart from the mandatory five. Sixty per cent have wiped out leave loading, and 63 per cent have abolished penalty rates. Right up until the release of this survey, Kevin Andrews was insisting that the vast majority of new contracts would not affect penalty rates and overtime.

Statistics have been described as 'human beings with the tears wiped off'. We now have a number of very clear case studies showing how Work Choices is being applied on the ground. The first to feel the impacts were the workers at the Cowra abattoir. On 30 and 31 March this year, 29 workers were sacked. They were invited to reapply for 20 of the jobs they had just lost, at a wage cut of \$180 a week. The Office of Workplace Services, OWS, began an investigation which Kevin Andrews suggested was proof that there were still protections for workers.

As the first cab off the rank, the blowtorch of media and—very gladly—union scrutiny was applied, and the company backed down, despite later confirmation that they had been fully within their rights. At the end of May, a copy of the OWS report was leaked to the media, and it established once and for all that, under Work Choices, it is entirely lawful to sack workers and rehire them on lower pay and lesser conditions. A handful of ministers were the only people who were surprised that this could occur.

Workers in other cases can hardly expect this kind of profile. Most cases will slip under the radar, which is presumably exactly what the government is hoping for. The key message is that what happened at Cowra was not an abuse of the Work Choices law, or a mischievous application, or an accident. The

laws are being used precisely as the government intended.

Around 400,000 people leave study and enter the Australian workforce every year. Next year's young entrants to the workforce are going to find that they are playing on a field that is very much tilted against them. The no disadvantage test is gone, and they will be pressured into accepting lesser conditions and lower pay just to get a toehold in the workforce. This can be as simple as demanding that young workers pay for their own uniforms. In Western Australia there are cases where young people have been forced to work basically for free for five or six weeks while they pay for their work uniform. This is in part-time positions.

Unions South Australia has reported that a third of young people are pressured to work unpaid overtime, and up to 43 per cent are pressured to work while sick. These are people without training in industrial law or negotiating skills. They have been abandoned by this government. Senators may be aware of the case of the 16-year-old worker in a juice bar who was made redundant one day, when her employer went into administration, and was offered her old job back, by the new owner, the next day. The new AWA amounted to a \$5 an hour pay cut. Instead of rolling over, she contacted her union, and the government's own Office of Workplace Services stepped in. Ultimately the New South Wales Industrial Relations Commission ruled that the company had acted unlawfully. This is just the tip of the iceberg. How many kids out there would just knuckle under if they were told that they had to cop a pay cut or go and look for another job? I suspect that most young people do not know their rights and are not experienced in the big wide world, and they would not have sought that sort of redress.

We also have strong concerns about how women are being disadvantaged by these laws. In the government's single-minded drive to sign everyone up to AWAs, it seems to have missed the fact that, according to Australian Bureau of Statistics data from May 2004, non-managerial workers on AWAs were earning two per cent less than their coworkers on registered collective agreements. For women on AWAs, hourly earnings were some 11 per cent less than for women on collective agreements.

The Coffs Harbour Spotlight workers were in the media this month, when they were offered a 2c an hour pay rise in exchange for shift penalties and other benefits worth \$90 a week. Those are the kinds of choices we are talking about in Work Choices. There is a lot to be said about how the government has handled the Spotlight scandal—because it is a scandal. It has positively celebrated the result as a win for the economy. The fact is that most of the Spotlight workers are women. Most of the people in retail, clerical and community services are women. Women are more likely to be employed in these lower paid segments of the workforce—precisely the sectors that will be hardest hit by the regulations we are confronted with today.

ABS figures from April of this year show that, across all industries, women still earn 20 per cent less than men in Australia. Over the last 20 years, improvements to the award system have slowly been closing this gap. In gutting the award system and instituting the law of the jungle, the government is putting even these meagre improvements at risk.

One area which has attracted very little attention is the fact that, by making the details of employment contracts private matters, we will soon have no way of tracking sex discrimination in pay and conditions. I strongly suspect that Work Choices will act to widen

the gender pay gap, but I do not see how the ABS is going to be able to follow the trends if the terms and conditions within AWAs remain a strictly private matter.

On 1 April this year it was reported that a single mother was given 10 minutes to leave her child-care job of nearly five years. No reasons were given and, under these laws, no reasons were necessary. The child-care centre in question had fewer than 100 employees, so job security has gone out the window in that workplace.

The media is littered with these sorts of terribly sad human stories. There is the case of the office worker in a doctor's surgery who was sacked on the spot for not immediately signing up to an agreement presented to her. It would have forced her to work in a different office than the one she had been working in for 20 years. Before she had even been given the opportunity to query the new arrangements, she had been fired. A week earlier, it would have been unlawful. But, with Work Choices coming into effect, she had no choice in the new Work Choices environment.

When is it going to sink in, even for a government obsessed with economic rationalism, that these personal stories have huge implications for the economy? People with no job security are less likely to apply for or receive a home loan. People without job security delay major purchases and delay starting families. In its zest to work through the big business shopping list that it is obviously working through and ticking off—'Done that!'—and trading it off for a hugely insecure and politically powerless workforce, the government is undermining everything it claims to be working towards: a stronger economy. These sorts of effects will ultimately destabilise the economy.

The government appears to have not learned a thing in the seven months since it

rammed Work Choices through the parliament. The strategy is clearly to simply crash through and hope for the best, and try and persuade people that their personal hardship and insecurity is necessary for the good of the economy. The Greens' stand on industrial relations is based on the simple fact that the economy is there to serve people—and not the other way around. These regulations are putting the finishing touches on a process that should never have been set in motion. For this reason we do not support these regulations.

Senator WONG (South Australia) (5.40 pm)—In closing the debate, there are a number of matters I want to remind the chamber about before we vote on these regulations. The first is that we have the opportunity to consider, when we are voting on these, precisely what some of the known impacts of Work Choices, the government's extreme industrial relations legislation, have been since it has been enacted. We know, for example, that the majority of Australian workplace agreements entered into since this legislation came into effect abolish penalty rates. I think all of them abolish some of the protected conditions. We know, for example, that Australian workers have been asked to trade away penalty rates, leave loading, shift loadings and rostering certainty for the princely sum of 2c an hour—entirely legal under this government's legislation. We also know that it is legal, according to advice from the government's own department in the context of a highly publicised case, that it is legal for an employer to dismiss people and then re-engage others on lower wages and conditions.

We also know that AWAs—I think it is the 2004 or 2005 figures, but I might stand corrected—have demonstrably reduced the wage increases offered to those workers under them. Particularly, we are concerned about working women in this country. On the

most recent figures, non-managerial female employees earned on average 11 per cent less when they were on an Australian workplace agreement.

A great many things that a great many people said would come to pass have started to come to pass since this legislation has been in place. We have an opportunity today, when voting on these regulations, to bear in mind exactly what is happening, particularly to lower paid workers and employees with little bargaining power, and, more importantly, just how invasive and intrusive this legislation is and the extent to which it is intended to drive down wages and conditions in Australia.

Senator Siewert raised the issue of the cleaning industry. I want to talk very briefly about a campaign which the LHMU, the union which covers cleaners, is running with its members to try to improve wages and conditions for cleaners. We often do not notice—certainly in Parliament House—who cleans our offices. We do not necessarily think about what their pay and conditions are, nor about the hours they work. The fact is that a great many cleaners in this country do work for extraordinarily low wages. Most of them are on casual arrangements or are precariously employed. A lot of them are not permanently employed and a lot of them do not have access to the entitlements which permanent employment brings.

When I spoke to a group of cleaners in Adelaide not long ago, cleaners from all over the city—almost all of them women, and a lot of them women from non-English-speaking backgrounds—about the Work Choices legislation, I asked them: ‘Do you think you’re going to have a better chance negotiating better pay and conditions by negotiating individually with your employer with fewer minimum statutory conditions and award conditions under the govern-

ment’s Work Choices?’ Every one of them said no and thought it was ridiculous. They thought it was ridiculous because they know what the reality of their working life is. They already have low wages and conditions which are problematic. But they know that they are not going to get better wages and conditions by negotiating individually with their employer without the protection of the many award conditions and without the involvement of their trade union.

For this group of women, these cleaners, the government’s rhetoric around the choice and opportunity is frankly nothing more than a joke, just as the government’s rhetoric about higher wages is no more than a joke to those employees at Spotlight who were asked to trade away penalty rates, rostering certainty and shift loadings for 2c an hour. That is the reality of Work Choices. We know what some of the effects are. We have the opportunity today to disallow this complex array of regulations that are associated with this legislation, and I urge the Senate to so do.

Question put:

That the motion (**Senator Wong’s**) be agreed to.

The Senate divided. [5.50 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	30
Noes.....	<u>32</u>
Majority.....	2

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Campbell, G.
Conroy, S.M.	Crossin, P.M.
Fielding, S.	Forshaw, M.G.
Hogg, J.J.	Hurley, A.
Hutchins, S.P.	Kirk, L.
Ludwig, J.W.	McEwen, A.
Milne, C.	Moore, C.

Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Polley, H.
Ray, R.F.	Siewert, R.
Stephens, U.	Sterle, G.
Stott Despoja, N.	Webber, R.
Wong, P.	Wortley, D.

NOES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Chapman, H.G.P.
Colbeck, R.	Eggleston, A.
Ferguson, A.B.	Ferris, J.M.
Fierravanti-Wells, C.	Fifield, M.P.
Humphries, G.	Johnston, D.
Joyce, B.	Kemp, C.R.
Lightfoot, P.R.	Macdonald, I.
Macdonald, J.A.L.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Parry, S.	Patterson, K.C.
Payne, M.A.	Ronaldson, M.
Scullion, N.G.	Troeth, J.M.
Trood, R.	Watson, J.O.W.

PAIRS

Carr, K.J.	Heffernan, W.
Evans, C.V.	Campbell, I.G.
Faulkner, J.P.	Nash, F.
Lundy, K.A.	Santoro, S.
Marshall, G.	Vanstone, A.E.
McLucas, J.E.	Coonan, H.L.
Sherry, N.J.	Ellison, C.M.

* denotes teller

Question negatived.

**EMPLOYMENT AND WORKPLACE
RELATIONS LEGISLATION
AMENDMENT (WELFARE TO WORK
AND OTHER MEASURES)
(CONSEQUENTIAL AMENDMENTS)
BILL 2006**

Second Reading

Debate resumed from 14 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Senator ADAMS (Western Australia) (5.53 pm)—I rise this evening to speak about the Employment and Workplace Relations

Legislation Amendment (Welfare to Work and Other Measures) (Consequential Amendments) Bill 2006. This is a part of a very important step forward for modern Australia. The government is continuing to strengthen Australia's economy as part of a long-term plan for the future. Figures released last week show that over 1.8 million jobs have been created since the coalition was elected in 1996, with unemployment falling to 4.9 per cent, the lowest level since 1976. There are now a record 10.1 million Australians in work.

These increased opportunities have not happened by accident. They have occurred as a direct result of the coalition's disciplined economic management over the past 10 years. I have previously given my support to this bill and was pleased when it received passage through parliament as I believe that these changes are crucial in building a progressive and responsive social wage system for this nation. To ensure the changes contained within the bill are applied in a consistent manner and the intention of the changes are realised, a few additional amendments are required to take place. These amendments are of a technical and somewhat minor nature but are imperative to achieving the outcome this government has worked so hard towards implementing.

These amendments include terminology changes and changes to ensure consistent treatment of similar groups of income support recipients, most notably principal carers. Principal carers can be parents with a dependent child, registered foster carers, registered distance educators, recognised home schoolers and those caring for a disabled child. From 1 July 2006 people claiming parenting payment will only be able to qualify for payment if they have a child under eight years of age if the person is single, and six years of age if the person is partnered. After this time, people will be able to claim

and, if eligible, receive another income support payment such as Newstart allowance or youth allowance.

To ensure consistent treatment between principal carers receiving parenting payment, Newstart and youth allowance, this bill amends the Social Security Act so principal carers who qualify for youth allowance or Newstart allowance will be exempt from the newly arrived resident waiting period of 104 weeks. A person will not have to meet the 104-week rule if the person: is the principal carer of one or more children; is not a member of a couple; is not undertaking full-time study; is not a new apprentice; and, at the start of the person's current period of Australian residence, was not a lone parent. To clarify further: a lone parent is a person who is not a member of a couple and who has a dependent child. This rule is similar to the exception provided to newly arrived resident parents who qualify for parenting payment when, following their Australian residency, they become single.

Single principal carer parents who are in the unenviable position where they are grieving the death of a child will continue to receive the same rate of Newstart allowance or youth allowance, whichever they are currently entitled to receive, for another 14 weeks. So, for 14 weeks after this sad event has taken place, when the parent is going through the difficult task of informing the rest of the family and making funeral arrangements, they will be able to access benefits and concessions and their rate of payment will not decrease or cease altogether. These concessions include the telephone allowance, which I am sure all senators understand would be a necessary tool during this uneasy time. They would also still have access to the pensioner concession card.

If a partnered parenting payment recipient is incapacitated due to illness or injury, for

example, they may be eligible for temporary exemption from their participation requirements, which from 1 July 2006 will be 15 hours per week. During this time, where they are still looking after their family and trying to get themselves back on track, they will have access to the pharmaceutical allowance. The extension of the pharmaceutical allowance will provide a consistent approach between all activity tested income recipients. This is an example of a government which understands the special circumstances some parents find themselves in. The parents want to engage in the workforce but circumstances beyond their control mean that they cannot fulfil their obligations.

Similarly, individuals who are caring for a child, or children, or a relative are to have no participation requirements for up to 13 weeks. This is not based on whether they are a parent but the fact that they have special circumstances that temporarily limit their capacity to look for work. Under Welfare to Work, the existing rules around foster carer exemptions will make some allowance for family carers who are principal carers, be it of their child or the child of a relative. This allowance will be made through the guide to the Social Security Act and will identify the circumstance where a family carer may be treated as a foster carer.

From 1 July 2006 a new higher rate of mobility allowance will be available to certain income support recipients with disabilities to assist them to participate in the workforce. Currently, people receiving Newstart allowance, youth allowance and disability support pension can qualify for an advance payment of mobility allowance. This advance is for a period of 26 weeks. During this period no further mobility allowance is payable. This bill makes amendments to ensure that people who qualify for the new, higher rate of mobility allowance during the time when a lower rate advance period is

being paid can acquit the advance period earlier. The number of days that remain of the 26-week advance period would be offset against those already incurred to find the new, correct rate of payment.

I would like to reinforce the three principles that underline the welfare to work measures: people who have the capacity and are available to work should do so; the best form of family income comes from a job rather than welfare; and services provided to people who have an obligation to seek work should focus on getting them into work as soon as possible. It is important that we support those people who find themselves temporarily out of work and help those who want to work find employment. It is important that we iron out these technical issues now to ensure that the welfare to work measures achieve the twin goals of lifting workforce participation and reducing welfare dependency while maintaining a strong safety net for those who need it. I support these necessary amendments contained within the bill.

I would like to continue and mention the latest figures which show the Australian government's employment service providers have achieved a record number of jobs for the unemployed. Over the past year Job Network members have placed more than 640,000 people into jobs—30 per cent of those were long-term positions for disadvantaged job seekers. The coalition government has created more than twice as many full-time jobs in the last year than Labor did in the last six years. There has never been a better time to find a job in Australia, as unemployment has dropped to less than five per cent, and many of these jobs are in the retail, hospitality and manufacturing sectors where people can train on the job.

Our Job Network members have had an outstanding success finding jobs for single

parents, the long-term unemployed and people with a disability, and we expect this success to continue. Over 90 per cent of those on parenting payments are women, many of whom have volunteered to go back to work even though they remain eligible for welfare. In the past 12 months alone there have been 44,900 jobs found for job seekers receiving a parenting payment, which is a new annual record. More than 11,000 job seekers receiving the disability support pension were placed in a job—a 45 per cent increase over the numbers of the previous year and a new annual record. Currently only those able to work for more than 30 hours a week in open employment are required to look for work. After 1 July 2006 those able to work at least 15 hours a week will be supported back to part-time work where suitable jobs are available.

In the past year, to April 2006, more than one million new vacancies were lodged on the Job Network national vacancy database, an increase of four per cent on the previous 12 months. We expect this figure to continue to increase as more employers become aware of the advantages of creating a flexible workplace and the availability of highly productive employees who have been long-term unemployed or are parents, people with a disability or mature age people. In the past year, nearly 100,000 people who have been unemployed for over 12 months were placed into a position and more than five per cent of these are long-term placements.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.04 pm)—I thank honourable senators for their contributions and especially Senator Judith Adams for the very well considered contribution that she has just made. I understand that Senators Evans and Stephens were in fact on the speakers list but kindly dropped off to assist the management of time in this

chamber, and I want to place on record my thanks and the government's thanks for that.

This Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) (Consequential Amendments) Bill 2006 will ensure that the policy intention of the welfare to work changes contained in the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005 are fully realised and consistently applied. Terminology and provisions in the social security law need to be replaced, amended or repealed to clarify the policy intention in relation to certain welfare to work measures. These measures build consistency across working age payments. These include allowing partner allowance recipients who have a temporary incapacity exemption to have access to the pharmaceutical allowance and allowing single principal carer parents who are bereaving the death of a child and are receiving Newstart allowance or youth allowance to continue to receive the same rate they were receiving before their child died for another 14 weeks after the death of the child.

This bill demonstrates the government's commitment to giving people of working age every opportunity to move from welfare dependency into work. These reforms recognise the fact that the best form of welfare is a job. For the first time the Social Security Act will provide for the assessment of people based on their capacity and availability to work. This is a significant shift from the old paradigm where people were assessed first and foremost on their incapacity or lack of availability to work. This approach has led to a situation where many Australians of working age have been condemned to a life on welfare. Our community should never presume that working age people on income support do not have the same desire that other Australians of working age have to

succeed in life and participate in our nation's prosperity when, in fact, most people on income support are keen to work and to find a job to match their capabilities. The government will preserve a well-targeted social safety net while at the same time encourage working age people to find jobs and remain employed. The government is strongly committed to these principles. With record economic and employment growth, there has never been a better time to provide the necessary assistance and support for people of working age to enter the labour force and secure paid employment.

There are also a number of important reasons for seeking to increase labour force participation. These include the need to address the issue of a rapidly ageing population and the current skilled and unskilled labour shortages in which business is struggling to fill vacancies and satisfy demand for goods and services. Without action now, Australia could face a shortage of nearly 200,000 workers over the next five years. With a record unemployment rate of 4.9 per cent—and that is a record low, the lowest rate in 30 years—there is now an increased opportunity for all to participate in the economic and social life of Australia.

The challenge of implementing welfare reform is to obtain the right balance between obligations and support. This must be accompanied by appropriate incentives and support mechanisms to ensure that job seekers continue to be able to be provided with services and support. These will go a long way to helping job seekers prepare for work, find a job and stay employed. The government believes that its reforms strike this balance. The majority of Australians would agree that it is not unreasonable to expect those people who are available and capable of work to participate in the workforce. The economic and social arguments for such re-

form are both compelling and necessary. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SIEWERT (Western Australia) (6.09 pm)—I move Greens amendment (1) on sheet 4954:

- (1) Schedule 1, page 8 (after line 7), after item 1, insert:

1A After section 5B

Insert:

5BA Registered and active family carers

- (1) A person is a *registered and active family carer* if the Secretary is satisfied that:
- (a) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to provide family care in that State or Territory; and
 - (b) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to be in receipt of child care support payment as a family carer in that State or Territory; and
 - (c) the person is taken, in accordance with guidelines made under subsection (2), to be actively involved in providing family care in that State or Territory.
- (2) The Secretary may, by legislative instrument, make guidelines setting out the circumstances in which persons are taken, for the purposes of the social security law, to be actively involved in providing family care in that State or Territory.

During my contribution in the second reading debate, I articulated the reasons why I think this amendment giving an exemption to family carers is particularly important. I will highlight those very briefly again. I appreciate that Senator Adams addressed the issue of family carers but, while I acknowledge that some attempt has been made to address these issues, I do not think the measures the government has taken adequately protect family carers. I do not believe this bill gives them the same protection that foster carers have. Because of the difficulties that I have explained previously about family carers not being registered and different states having different registers, the fact is that family carers are different from foster carers.

In the second reading debate, I also went through the history of how this issue had developed. I said how extremely pleased I was that the government had moved to exempt foster carers from this legislation. And I believe I gave very compelling evidence about the number of children who are affected by these changes but not protected under the foster carer provisions because they are in family care and family carers are not adequately protected under this legislation.

I believe the amendment I have moved is essential to give proper and due protection to family carers and the nearly 9½ thousand children in family care. I reiterate that these are the children who are placed in family care. I believe that there are probably nearly as many children in informal family care as there are placed in formal family care. This is particularly so in Aboriginal communities—and I articulated the number of children in Aboriginal communities who are in family or kinship care. The figures that I was talking about are for those who are formally placed in family and kinship care. Once again, I believe that the actual numbers are probably far greater. These people who are

providing family and kinship care to children need all the support that we as a community and this government can provide, to ensure that these children grow up to be fully functioning members of our community.

I beseech senators to look into their hearts and support this amendment so that we give family carers every encouragement we can to ensure that their task of looking after these children is easier. These are the children of Australia who are in crisis, who are suffering trauma and who have in many cases, unfortunately, been subject to abuse, which is why they are in family or kinship care. We should take every step and make every effort and every endeavour possible to make their lives even one little bit easier.

Senator WONG (South Australia) (6.13 pm)—I rise just to indicate that Labor will be supporting the amendment moved by Senator Siewert and that we share the range of concerns that were outlined previously in this chamber about the adequacy of the way in which this bill and the principal act deal with the issue of family carers.

While I am on my feet, I would ask if the minister in his response could address one issue relating to this bill, and that is the amendments to the social security guidelines. In the Senate Employment, Workplace Relations and Education Legislation Committee inquiry last year into the original Work Choices legislation, which came before the Senate in December, evidence was given by the Department of Employment and Workplace Relations about quite extensive obligations and rights which would be included in the social security guidelines but not in the legislation. We still have not seen those. The act commences in 15 days or thereabouts, but no copies of the proposed guidelines have been provided to this chamber, to my knowledge.

I want to make the point very clearly that one of the issues before the Senate committee was the extent to which quite a number of obligations were going to be placed in the guidelines as opposed to in the act itself. I would have thought that, if the government is in a position to provide those, it should do so as soon as possible. We are amazed that, with just over two weeks to go until the largest shake-up of social security in this country in a generation, this government has not been competent enough to provide guidelines to this chamber or to the community about how significant aspects of these welfare changes will work.

I also want to place on record that the department has also advised senators, through the Senate estimates process, of guidelines regarding the financial case management which will occur for people whose payments are ceased under the new breaching regime. Again, despite the fact that those guidelines will apply in just over two weeks, they have not yet been finalised or made public to my knowledge. If senators are unaware, these are the guidelines which relate to Centrelink providing emergency payments for people who will not get income support for two months. The government's own figures indicate that 18,000 Australians or thereabouts will be denied income support payments for a two-month period. Financial case management—that is, access to emergency payments for food and housing—will only be provided to around 4,000 or 5,000 people, which leaves around 14,000 Australians with nothing but charity to rely on for a two-month period, even if they remedy whatever breach they engaged in. Even if they try and attend the interview, take the job or remedy whatever the problem was with their previous behaviour, they get a two-month penalty.

These are very important aspects of the government's welfare changes. These are part of a package which was announced over

a year ago in the May 2005 budget. We not only find it extraordinary that the government is bringing this bill through the Senate some two weeks before the changes come into effect because it has had to fix up some of its failings in the previous legislation but we also want to know where the guidelines are—both the social security amendments and the financial case management guidelines—which will be part of the implementation of the changes to this legislation that come into effect in two weeks.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.17 pm)—I thank senators for their brevity. I acknowledge that Senator Siewert's contribution is genuine and well meant. In fact, she pursued some of these issues during Senate estimates. I put on record my acknowledgment of her genuine interest in this area. I say to her that the government is not minded to her amendment, and I will briefly outline the reasons why.

The government believes that wherever possible it is better for people to receive income from a job rather than from welfare. The government has already recognised the fact that family carers may have circumstances where, due to caring for the children of other family members, they are unable to look for work and may therefore need an exemption from the activity test. This exemption will allow for an individual caring for a child or children of a relative to have no participation requirements for up to 13 weeks. This is not based on whether they are a parent but the fact that they have special circumstances that temporarily limit their capacity to look for work.

Also under Welfare to Work, the existing rules around foster carer exemptions will make some allowance for family carers who are principle carers, be it of their child or the child of a relative, where they are considered

to be active and are registered under the relevant state or territory legislation or regulation. This allowance will be made through the guide to the Social Security Act, which will identify the circumstances where a family carer may be treated as a foster carer. This will provide for a longer exemption from participation and the potential for a higher rate of payment where they are on income support.

I understand that the Department of Employment and Workplace Relations has consulted with all states and territories and with non-government agencies on this issue. I also believe that information on these guidelines was provided to Senator Siewert, the mover of this amendment, in response to a question on notice from the February additional Senate estimates hearings. In addition, in the recent budget it was announced that it will be easier for grandparents or other relatives who are looking after children to be identified as principle carers. The Welfare to Work reforms are not yet in place, so it is far too early to be talking about further adjustments when we believe we already have appropriate supports in place.

In response to Senator Wong, the guidelines are designed to provide as much flexibility as possible. I understand that some of them are online, but I offer Senator Wong a briefing by Minister Andrew's office on what the guidelines will contain and the time line. I am unable to advance that issue any further. I make the same offer in relation to the breaching regime guidelines. Suffice to say, to fill in what might be a void in this debate, you are only excluded from receiving payments in circumstances where you are in breach for a third time or you reject a job. Those who are particularly vulnerable in our community, I understand, are case managed on an individual basis to ensure that they are given the sort of security that our community would expect. I understand that the Minister

for Human Services may have made a statement in relation to this, but I confess that I am not sure of or acquainted with it, so all that I can offer to the honourable senator opposite is a briefing by Minister Andrew's office.

Senator WONG (South Australia) (6.22 pm)—Thank you for that offer. It does not really deal with the principal issue, which is: when will they be finished? Is the minister not able to get advice on that issue? There is no-one in the department who can tell the Senate when the guidelines which govern a substantial proportion of the obligations in its so-called Welfare to Work package announced in the May 2005 budget will be finished.

Senator Abetz—That is right.

Senator WONG—I place on record the opposition's concern with the lateness of the development, the publication and the provision to the opposition, NGOs and the community of aspects of the government's implementation of the welfare changes which will have such an enormous effect on social security recipients.

Senator SIEWERT (Western Australia) (6.23 pm)—I would also like to respond to some statements that Senator Abetz made. I have not been provided with that information—and this is why I have learnt to be more specific in my estimates questions. Senator Abetz will probably recall that in our last estimates I was trying to be very specific about getting specific answers to my questions additionally. When I asked this question in February, the response I got was: 'Yes, the department has been thinking about it'—words to that effect; I do not have them in front of me—and that they have been consulting. I was not told what the outcomes of that consultation were. I have merely been told that meetings were being undertaken, so I have not been given that answer. I have had

a very short answer. There may be further answers. That is why I asked for a lot more detail during the May estimates, which unfortunately the department was not able to give me.

There is still no accurate understanding of what different states' registers do and do not cover—some states cover family carers; other states do not—and what the definition of carers is. That is what I understand from answers that I received from estimates—or in fact did not receive in estimates. That is how it currently stands.

I want to reiterate: family carers do the same job as foster carers and, in many circumstances, under even more traumatic circumstances. They do the same things. Treat them the same in the legislation. Give them the same provisions as foster carers are given. It is much more complicated for family carers than it is for foster carers and, because many of them do it in informal circumstances, they probably have less opportunity to understand and fewer ways of finding out what their rights are and what support they can access. I still fail to see why family carers cannot be given the same provisions as foster carers. It would make implementation of this program much easier for everybody if they were treated the same.

The answer that was given was that they still—I did not write the exact words down—have an obligation, and the best thing for families is that people are in work. Yes, in most circumstances it is, but when you are caring for children and, in many cases, you are caring for three or four children, it is impossible. Your first obligation has to be the care and support of the children in your care. That is why the government saw fit to bring in amendments to look after foster carers. They should be doing the same thing for family carers. The minister just explained the provisions, which I believe are inadequate,

that will attempt to look after family carers. We will be watching the implementation of these provisions very closely to see if they in fact provide the same cover and support for family carers. I doubt that they are going to. I think they are going to be much more complicated. I believe that the amendment I am moving is a much better way to deal with this issue.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.27 pm)—I will deal with Senator Siewert's issue first. If I am right—and I stand to be corrected in relation to this—I have in front of me question on notice No. 18 from additional Senate estimates on 16 February 2006, and I thought you had been provided with that. That was my advice. I assume that is the question you are referring to. If it is not, could I invite you to ring either my office or Minister Andrews's office to see where that answer is.

Senator SIEWERT (Western Australia) (6.27 pm)—I do not have the actual question number in front of me. Is that the one with a short paragraph in it?

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.27 pm)—No. Unlike most of Senator Siewert's questions, this was a short one. I envy the quick way that she speaks and gets in a whole stack of questions in the one breath—something I can never do. The question was: Have you had discussions with the states about these classifications and whether family carers and kinship carers are actually registered as foster carers and will meet your exemptions? Have discussions been held?

Was that the question?

Senator SIEWERT (Western Australia) (6.28 pm)—That was the question, but it does not answer my question about how they are being dealt with. When I was following that in May, I was not given the detail. The

answer to the question I asked then was, yes. What I did not include at the time was: what were the outcomes of those? I have since learnt to ask what were the outcomes, which is what I did in May. I have not had the answer to that yet.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.28 pm)—That was the supplementary estimates in May, and you still do not have an answer to that—I understand that. I thank you for correcting me in that regard.

In relation to Senator Wong's question about the guidelines, I am advised that, because this government is such a consultative government, consultations have been held as we speak right up until today. Today was the cut-off point for changes to the guidelines. The changes have been made on a progressive basis to the proposed guidelines. When and as suggestions have been made and deemed appropriate they have been incorporated in the guidelines, so it has been a work in progress. The department is unable to advise me as to how much work is required to absolutely finalise them in relation to any outstanding suggestions—

Senator Wong—Will it be before 1 July?

Senator ABETZ—I will just put that interjection on the record for *Hansard*. Senator Wong asked whether the guidelines will be available before 1 July. I understand the secretary of the department indicated that they would be online and available on 3 July, which will be the first working day of the impact of the guidelines. I assume 1 and 2 July are a Saturday and a Sunday, so that is the calendar.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (6.30 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**Sitting suspended from 6.31 pm to
7.30 pm**

**BROADCASTING SERVICES
AMENDMENT (SUBSCRIPTION
TELEVISION DRAMA AND
COMMUNITY BROADCASTING
LICENCES) BILL 2006**

Second Reading

Debate resumed from 1 March, on motion by **Senator Ellison**:

That this bill be now read a second time.

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (7.30 pm)—I thank senators for their support of this legislation. I will make a couple of points in closing the debate. The Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006 amends the Broadcasting Services Act 1992, the BCA, to increase flexibility in the operation of the 10 per cent requirement for new spending on drama on subscription television. The bill amends the BCA to allow preproduction expenditure on script development to be claimed in the financial year it is incurred rather than when principal photography commences. It also provides that expenditure in excess of the annual 10 per cent quota be carried forward to the next year to encourage a higher level of investment.

The Australian Communications and Media Authority, the ACMA, is provided with a discretion to deal with changes in the corporate arrangements of community broadcast-

ing licensees, without putting those licences at risk. The bill also makes a minor amendment to the definition of drama program and has retrospective application from 1 January 2006. The proposed amendments have the support of the subscription television broadcasting sector and the production industry. Those are the comments I would like to make to close the debate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

**TAX LAWS AMENDMENT
(MEDICARE LEVY AND MEDICARE
LEVY SURCHARGE) BILL 2006**

Second Reading

Debate resumed from 14 June, on motion by **Senator Abetz**:

That this bill be now read a second time.

Senator STEPHENS (New South Wales) (7.33 pm)—The Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2006 amends the Medicare Levy Act 1986 to increase the Medicare levy low-income thresholds for individuals and their families. The dependent child-student component of the family threshold will also be increased. The increases are in line with movements in the consumer price index. This bill also increases the Medicare levy low-income threshold for pensioners below age pension age so that they do not have a Medicare levy liability where they do not have an income tax liability. The A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999 will also increase the Medicare levy surcharge low-income threshold in line with movements in the CPI. The individual threshold will be increased from \$15,902 to \$16,284, while the level of the family income threshold will also rise from

\$26,834 to \$27,478. That threshold will also be increased by a further \$2,523 for each dependent child or student. This bill also proposes to increase the threshold amount for pensioners below age pension age, so that pensioners who face no income tax liability will not have a Medicare levy liability. The threshold amount for pensioners who are under age pension age will also go up from \$19,252 to \$19,583.

The Medicare levy also applies at a reduced rate to taxpayers with taxable incomes above the threshold amount but not more than the phase-in limit. For 2005-06 the rate of the Medicare levy payable in these circumstances is limited to 20 per cent of the excess over the threshold amount that is relevant to the particular person. The phase-in limit for individuals is increased from \$17,191 to \$17,604. Pensioners who are under age pension age will have an increase in the phase-in limit from \$20,812 to \$21,170. There is no phase-in limit for families as the figure changes with the number of dependants. Instead, there is a formula that limits the levy payable by persons with families to 20 per cent for 2005-06 of the amount of family income that exceeds their family income threshold, and this range is increased for dependants.

A Medicare levy surcharge of one per cent applies on taxable income in certain cases where taxpayers do not have private patient hospital cover. The surcharge of one per cent also applies to the reportable fringe benefits in certain cases where taxpayers do not have private patient hospital cover. However, a family member who would otherwise be liable for the surcharge is not required to pay the surcharge where the total of that person's taxable income and reportable fringe benefits do not exceed the individual low-income thresholds. Unlike the Medicare levy, there is no shading-in of the surcharge above the threshold amount. References to the individ-

ual low-income threshold amounts of \$15,902 in the Medicare levy surcharge provisions in respect of surcharge on a taxable income are also being increased to \$16,284. References to the individual low-income threshold amount of \$15,902 in the Medicare levy surcharge provisions of the bill in respect of surcharge on reportable fringe benefits are also being increased to \$16,284. On that basis, Labor is supporting the bill.

Senator MURRAY (Western Australia) (7.37 pm)—The Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2006 amends the Medicare Levy Act 1986 and the A new Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999. Section 7 of the Medicare Levy Act says no Medicare levy is payable where a taxpayer has a taxable income at or below the taxable threshold amount. The bill increases the low-income thresholds for individuals and families in line with the movements of CPI from \$15,902 to \$16,284 and increases the threshold under which the Medicare levy for pensioners below pension age is not payable. There is no medical care liability where such persons do not have an income tax liability.

Senator Stephens has covered the bill adequately. I indicate that the Democrats do support the bill, but I want to take the opportunity during the debate on the second reading of this bill to draw the attention of the chamber to a problem. I have known about this problem, but I was reminded of it by a summary in the *Age* on Saturday, 10 June 2006 entitled 'The state of gay rights in Australia'. Under the heading 'Medicare levy and safety nets' it said:

The Medicare Levy surcharge affects same-sex couples differently due to the Medicare Levy Act's definition of couples. This means that the surcharge is calculated at a higher rate for gay couples.

My party and many parliamentarians from all parties were very pleased to hear the Prime Minister the other week comment that he was not in favour of discrimination that acted to the detriment of Australians. He was specifically being asked about the situation for same-sex couples. I thought that this should be an occasion for the Senate to ask the government if they would advise the Senate of this particular issue.

I move the second reading amendment standing in my name on sheet 4963:

At the end of the motion, add:

“but the Senate requests that the Government;

- (a) report to the Senate not later than the first sitting day of 2007, on the costs and ramifications of adjusting the Medicare Levy surcharge to ensure that it affects or is calculated for same-sex couples on the same basis as mixed-sex couples; and
- (b) provide a statement of the Government’s policy position in relation to that issue”.

It is a simple request. It requires a simple response. This would be the cost, and this is the government’s policy. As a courtesy and due to the fact that it is non-controversial legislation, I will take the votes on the voices.

Senator STEPHENS (New South Wales) (7.40 pm)—I indicate to the chamber that Labor will be supporting the amendment standing in the name of Senator Murray. Recognising the Prime Minister’s commitment to eliminating discriminatory impacts of legislation, this is an important step forward.

Question negatived.

Original question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

TAX LAWS AMENDMENT (2006 MEASURES No. 2) BILL 2006

Second Reading

Debate resumed from 13 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Senator STEPHENS (New South Wales) (7.42 pm)—I rise to speak on the Tax Laws Amendment (2006 Measures No. 2) Bill 2006. This bill amends various sections of the Income Tax Assessment Act 1997 and has six schedules. Before turning to the bill, I would like to make some comments with regard to the taxation aspects of the budget. Labor is concerned that the extraordinary budget spending spree has been financed by Treasury projections of company tax revenue, which itself has had to be revised upwards by \$40 billion since December. This government has revenue exceeding a quarter of GDP. The Treasurer can now gloat that he is the highest taxing treasurer in the history of the Commonwealth. This enormous tax take is based on the assumption that corporate tax revenue will grow greater than company profit. Concerns have been raised that the accelerator is not sustainable. Access Economics has argued:

Funding a Budget on such a speculative assumption is an enormous policy gamble.

Last year in the budget, company tax was \$40 billion. However, for this year it is estimated at \$50 billion, increasing to \$61 billion over the forward estimates. The \$40 billion parameter revision in the last four months is quite extraordinary. It shows that there is enormous scope for error in these estimates. If there is scope for error on the upside, why not on the downside when commodity prices fall as the Treasurer accepts that they will?

There is a real risk that company tax revenue will collapse and the current tax cuts and family tax measures will have to be continually financed from a rapidly eroding tax base. It was not responsible of the government to engage in this sort of extraordinary spending when there is still considerable uncertainty in relation to the company tax revenue projections. The same uncertainties also apply to the petroleum rent resource tax, which is now predicted to blow out to \$4 billion in 2009-10. Labor does, however, support many of the tax measures in the bill and will not oppose any measure, subject to the caveat that the relevant legislation adequately represents the policy intent.

I now turn to the schedules to the bill. Schedule 1 will see *ex gratia* lump sum payments of either \$40,000 or \$10,000 made to aircraft maintenance personnel working on F111 fuel storage upgrades. These one-off payments are being made to certain personnel who experienced a unique working environment in the maintenance of F111 aircraft fuel tanks. This measure follows concerns about adverse health effects of the aircraft maintenance personnel working on those F111 fuel storage upgrades. The government does not accept liability, but seeks to legislate to create certainty that any payments received will be tax-free in the hands of the beneficiaries. As capital items, they should not be assessable but could potentially be deemed as income in kind, as they relate to employment under section 26(e). While such special interest group legislation tends to add to the complexity of the tax laws, the opposition supports this measure.

Schedule 2 will add two organisations as deductible gift recipients, thus allowing donations to be tax deductible. The first recipient is Playgroup Victoria Inc., an organisation that offers valuable support to parents. Playgroups facilitate positive learning and social experiences for children, families and

carers. The St Michael's Church restoration fund is the other recipient. St Michael's Uniting Church in Melbourne is raising money for urgent restoration and critical repair work required to preserve the church building.

Schedule 3 will ensure the cost base for capital gains tax is extended to correct a previous error. The Tax Law Improvement Project was the government's notoriously unsuccessful attempt to simplify the tax act. In what has become a familiar story under the Howard government, it actually resulted in a much larger act. The government is now seeking to correct an anomaly that was created as part of this process. The cost base for capital gains tax was adjusted in the 1997 act to include options for the disposal of assets and issuing of shares. However, it has now come to light that this has excluded certain types of options, most commonly those related to the issue of options in a unit trust. These options, and any payment to exercise them, are to be included in the capital gains tax cost base.

Do the government read legislation before it is introduced, or are they content to catch the errors after they have hurt small businesses? The number of mistakes this government have been forced to correct suggests that they are asleep at the wheel. Unfortunately, it appears that Minister Dutton is following the worst traditions of his predecessor, Mr Brough, who was notorious for the number of 'Brough-ups' in the tax legislation that he introduced. Those errors or corrections came to an impressive list. The current total is approximately 14 in the last 12 months or so.

Schedule 4 of the bill retrospectively allows capital gains tax rollover relief where assets are compulsorily acquired. When an asset is disposed of post May 1985, capital gains tax applies even if the asset is acquired as a result of Commonwealth law. In some

cases, where an asset must be disposed of, this means that the pre 1985 GST free treatment is lost. This change ensures that roll-over relief is provided where acquisition is compulsory. That means that the GST free treatment will transfer to the new owner if the asset was purchased before the CGT regime applied, and post 1985 assets will not incur capital gains tax until sold. This provision appears to be necessary to ensure compulsory acquisitions occur on just terms. The explanatory memorandum of the bill does not make it clear exactly what type of contracts and acquisitions the bill is intended to cover. It would certainly help the debate if the government disclosed its intentions.

Schedule 5 of the bill narrows the scope of the franking deficits tax. Under the simplified imputation system, a company's tax transactions operate through a franking account. Payment of tax is a credit, and the franking of a dividend creates a debit to the franking account. To ensure against excessive dividend franking, a franking deficit tax applies if, at the end of the year, the franking account is in deficit. The tax is equal to the deficit. As the deficit tax is simply a bringing forward of a future tax liability, the tax can be offset against future tax liabilities under what is called the 'franking deficits tax offset'. But this offset could also be a mechanism for excessive franking. To protect against this, where the franking deficit tax liability is greater than 10 per cent of franking credit in a year, the deficit tax offset is reduced by 30 per cent. This can be a harsh provision where the variation in the franking deficit occurs due to something outside the control of the company. The bill narrows the scope under which this reduction in the offset occurs so that, if the deficit is outside the company's control, the offset is not reduced. The commissioner is given a new discretion to remit a reduction in this offset.

While on the surface this provision appears reasonable, the explanatory memorandum does not outline the cases in which it is expected to occur. There is some reference in the explanatory memorandum that this measure is required in the case of a reduction in PAYE instalments due to some downturn in profit. Again, I call on the minister to provide further explanation of when this provision will apply and to indicate that its introduction has no relation to the extreme industrial relations laws introduced by the Howard government.

Schedule 6 overrides the requirement for a superannuation guarantee contribution to be made to a state fund if an employee nominates another fund. The superannuation choice regime allows an employee to nominate the fund where their superannuation guarantee payments are to be made. However, superannuation guarantee contributions to certain funds are mandated under state law. This schedule overrides such state legislation to specify that, if an employee specifies a fund, no obligation exists upon the employer to make the superannuation guarantee payments mandated under state law.

Labor does not seek to oppose this schedule, as it is necessary for the introduction of the super choice regime. However, Labor must register its concern surrounding the criminal penalties and the compliance burden imposed on small business by this super choice regime. A two-year jail sentence for a discussion with an employee about which fund to choose certainly does not seem fair. These compliance costs hurt small business owners, both in the hip pocket and with the time it takes to complete this government's red tape.

A further schedule corrects anomalies and errors in previous tax bills.

Senator MURRAY (Western Australia) (7.52 pm)—Mr Acting Deputy President

Hutchins, I was just speaking to one of your colleagues about how much she enjoys listening to tax debates—

Senator Stephens—Especially from you!

Senator MURRAY—and she hopes that in the future she can participate more in tax debates.

Senator Webber—She has always been a fan of yours, Senator Murray.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—We will see what we can do!

Senator MURRAY—The purpose of the Tax Laws Amendment (2006 Measures No. 2) Bill 2006 is to implement a number of disparate legislative taxation measures to achieve a range of government policy outcomes. The bill is arranged into seven unrelated schedules with key amendments pertaining to the Income Tax Assessment Act 1997, the Income Tax (Transitional Provisions) Act 1997 and the Superannuation Guarantee (Administration) Act 1992. A number of minor technical amendments are also proposed which address a large number of other acts.

Schedule 1 seeks the passage of the government's ex gratia lump sum payment to maintenance workers involved in the F111 deseal-reseal program. The bill ensures that lump sum payments to Defence Force maintenance workers exposed to chemicals whilst working on F111 fuel tanks are exempt from taxation. This might not otherwise be the case without a specific legislative directive. The payments are valued at either \$10,000 or \$40,000, depending on the circumstances of each affected employee. According to the government, the payment recognises the difficulties eligible personnel suffered, regardless of whether there are any adverse health impacts.

Schedule 2 adds a further two specific gift recipients to the deductible gift recipient list of the Income Tax Assessment Act 1997. The two additional recipients include Playgroup Victoria Inc. from 24 February 2006 and the St Michaels Church Restoration Fund from 24 February 2006.

Schedule 3 clarifies the capital gains tax treatment of options. This amendment is necessary as there were a number of unintended legislative consequences arising from the rewrite of the capital gains tax provisions of the Income Tax Assessment Act 1997 as part of the Tax Law Improvement Project. That is, incidentally, a reminder that these acts are so complicated that, even when the experts draft the changes, some years later problems and difficulties can be discovered. The measures in schedule 3 essentially reinstate the position in the Income Tax Assessment Act 1936 in relation to options exercised on or after 27 May 2005, the date of the announcement of this amendment.

Schedule 4 amends the tax laws pertaining to compulsory acquisition. Specifically, the bill seeks to amend subdivision 12B of the Income Tax Assessment Act 1997 to extend the circumstances in which a taxpayer may choose to obtain a CGT rollover when an asset is compulsorily acquired. Corresponding changes are made for balancing adjustment offsets under the uniform capital allowance provisions. Notably, the financial impact of schedule 4 is uncertain but is estimated to be at a cost to revenue of approximately \$5 million over the forward estimates period.

Schedule 5 amends the Income Tax Assessment Act 1997 to limit the circumstances in which the franking deficit tax offset is reduced. This measure has retrospective effect as of 1 July 2002, the start of the simplified imputation system.

Schedule 6 extends the super choice legislation provisions to employees currently governed under state law that conflicts with enabling employees to choose their own superannuation fund. The schedule amends the Superannuation Guarantee (Administration) Act 1992 by ensuring that employers that are constitutional corporations and who make super guarantee contributions to a fund nominated in a state law do not have to make these contributions to that fund if an employee chooses an alternative fund.

Schedule 7 is the final schedule in this bill and aims to address a number of technical corrections and improvements to taxation legislation. These corrections should improve the useability of the taxation laws in a minor way by fixing errors such as duplications of definitions, missing asterisks from defined terms and incorrect numbering and referencing.

What is the price that can be placed on an individual's quality of life? As repulsive as this question may be, it forms the basis of schedule 1 of this bill. According to the government, a one-off ex gratia payment of either \$10,000 or \$40,000 is a fair price to pay. I think that the government is getting a bargain, and I am not alone. According to F111 Deseal/Reseal Support Group president Ian Fraser, 'Forty thousand dollars for a ruined life is simply not enough.' Clearly there is no price that can be placed on one's health and wellbeing. Whilst I appreciate, to an extent, the government's attempt to address the harm caused to a number of Department of Defence employees in the course of their duty, I must also condemn their corporate style 'admit no liability' approach to this matter. Advice from the F111 Deseal/Reseal Support Group indicates that the amounts in question are insufficient to help people battling illnesses due to chemical exposure.

Undoubtedly, Australian government employees deserve better. They deserve more than a one-off payment that, according to the government, is being made regardless of whether there is evidence of an adverse health impact. If there were not an adverse health impact, it is a generous gift. If there is an adverse health impact, the amount is probably far too low. Otherwise stated, the payment does not in any way imply negligence or fault on the part of the government.

Surely Defence personnel who are government employees and are exposed to chemicals that may lead to adverse health effects should receive the best long-term care and support the government can afford. With examples of maltreatment such as this, it comes as no surprise that the Defence Force is battling to achieve its recruitment targets. Its reputation is atrocious on matters like this. If you return dead or injured or if you are injured in the normal course of your work, such as in these cases, the general sense in the community is that you are going to be undercompensated or 'under cared for'. That is not a good way to encourage recruitment. Whilst I will always support cases that will alleviate some degree of harm caused, the government is capable of far better and the employees in question deserve far better.

Turning to schedule 4: this is a highly technical revision to the timing of balancing adjustment offsets for the uniform capital allowances provisions for compulsory acquisitions. The change enables the deferment of recognising capital gains and is beneficial to affected taxpayers. This is an equitable change, since compulsory acquisitions largely remove control from asset owners, who therefore cannot control the timing and impact of their capital gains tax event.

Schedule 5 is the schedule which affects the franking deficit tax offset. It reduces the number of instances where companies are

penalised by way of a reduction in the size of the tax offset they can claim for franking deficit tax to ensure that it only applies in income years where a company has made, directly or indirectly, a franked distribution. This change is in line with the intention behind the reduction in tax offset for excessive franking deficits for companies and ensures that companies that book an excessive franking deficit balance due to the imposition of a penalty or through circumstances outside of the companies' control are not penalised. While these changes may be seen as a concession to poorly managed companies, they do better restate the intention behind the underlying law and as such should be supported.

The Democrats were key negotiators with the government for the outcomes of the superannuation choice legislation that came into effect last year. This is the topic for schedule 6 of this bill, which extends the choice of superannuation plan option to several groups of employees who, until now, have faced legislative uncertainty over whether they are able to access the benefits of the new federal laws.

Whilst choice of super fund laws have already been enacted, it has been recognised that a number of funds are potentially exempted from these provisions due to monopolistic protections under state law. This includes employees whose superannuation is governed under the following legislation: the New South Wales Coal and Oil Shale Mine Workers (Superannuation) Act 1941, the Queensland Coal and Oil Shale Mine Workers Superannuation Act 1989 and the Western Australian Coal Industry Superannuation Act 1989. The changes proposed in this bill amend the Superannuation Guarantee (Administration) Act 1992 to effectively override these state powers, and, whilst this may be viewed as yet another example of centralism by the government, they are consistent with

the policies and decisions that we support and that were instrumental in establishing super choice. They ensure consistency and have the support of the Democrats. The Democrats support the bill as a whole.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (8.02 pm)—I would like to thank Senator Stephens and Senator Murray for their comments concerning this non-controversial legislation. Senator Stephens raised a couple of technical questions, and I undertake that she will be provided with answers to those as soon as possible.

This legislation implements a variety of changes and improvements to the tax laws to provide tax exemptions for the F111 ex gratia lump sum payments, improvements to capital gains tax rules and simplified imputation system changes. This legislation also provides for the specific listing for two funds as deductible gift recipients and makes changes to superannuation rules. I commend this bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

EXPORT MARKET DEVELOPMENT GRANTS LEGISLATION AMENDMENT BILL 2006

Second Reading

Debate resumed from 13 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

**AGE DISCRIMINATION AMENDMENT
BILL 2006**

Second Reading

Debate resumed from 13 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

**PLANT HEALTH AUSTRALIA (PLANT
INDUSTRIES) FUNDING
AMENDMENT BILL 2006**

Second Reading

Debate resumed from 13 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

**FISHERIES LEGISLATION
AMENDMENT (FOREIGN FISHING
OFFENCES) BILL 2006**

Second Reading

Debate resumed from 13 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Senator O'BRIEN (Tasmania) (8.06 pm)—The Fisheries Legislation Amendment (Foreign Fishing Offences) Bill 2006, which we are considering today, makes a number of amendments to the Fisheries Management Act 1991 and the Torres Strait Fisheries Act 1984. The amendments provide for increased fines and for custodial sentences of up to three years imprisonment for persons caught fishing illegally in those parts of Australia's

territorial sea that are subject to Commonwealth fisheries jurisdiction. The area covered by this legislation is the zone beyond a line three nautical miles from the coast, which represents the state or territory boundary and up to a line 12 nautical miles from the coast, which represents the rest of Australia's territorial sea. Importantly, this legislation does not and cannot apply to the areas of the Australian fishing zone that lie out beyond the 12 nautical mile boundary of Australia's territorial sea.

This legislation will therefore not apply to persons caught fishing illegally in the fishing zone between the 12 nautical mile line and the 200 nautical mile limit of our fishing zone. This is because, as a signatory to the United Nations Convention on the Law of the Sea, Australia is prohibited from imposing custodial penalties for foreign fishing offences beyond the 12 nautical mile territorial sea limit. This is not the first time that custodial sentences have been included in Australia's fishing legislation, but in both the Fisheries Management Act and the Torres Strait Fisheries Act custodial sentences are generally provided only for non-fishing offences such as obstructing a fisheries officer or providing false information.

Labor will be supporting this legislation. We recognise that it is a very small step in the right direction. It will put in place a small additional deterrent for those foreign fishers who are considering fishing in our waters. Evidence was provided during estimates that the vast bulk of sightings by Coastwatch of illegal foreign fishers operating in Australia's fishing zone are in waters beyond our 12 nautical mile territorial limit and will therefore not be subject to the new custodial provisions contained in this legislation.

The bill before us today is not likely to make a major dent in a problem that has basically been spiralling out of control for

many years under a succession of Howard government fisheries ministers. We need to understand the dimensions of this problem. Last year, Coastwatch reported that in the 2004 calendar year there were 8,108 sightings of possible illegal fishing vessels in Australia's fishing zone. Coastwatch now says that in the 2005 calendar year there were 13,018 sightings. Even if this figure has been inflated as a result of multiple sightings of the same vessel and of including vessels that have been legally transiting through our waters, it is clear that incursions by foreign fishing boats operating illegally in our waters are increasing at an alarming rate.

It is true that over time there has also been an increase in interceptions but, unfortunately, incursions have been increasing far more quickly than apprehensions. Even with the additional funding that was provided in this year's budget, the government only expects to apprehend an additional 300 illegal foreign fishers a year. We need to put this in perspective. The number of sightings has been increasing by around 5,000 a year in recent years and the government has responded by providing funds to apprehend an additional 300 a year. No wonder this situation is spiralling out of control.

This is a situation that cannot be allowed to continue. It is not just the impact on our fish stocks and on the livelihoods of our fishing families and of fishing communities that we are concerned about. We are concerned also about the risks to our agricultural industries, and to our native flora and fauna, that these incursions pose. We have all seen reports of illegal foreign fishers bringing with them birds, dogs and other animals. We know that these animals are sometimes brought to camps on the Australian mainland. We know that many of these fishers themselves carry diseases such as tuberculosis and that their animals have the poten-

tial to carry bird flu, rabies and even foot-and-mouth disease.

But it is not only the quarantine risk that Australian fishers worry about. Australian fishers and officials are concerned that the illegal foreign fishers are becoming increasingly aggressive in the way they operate. Fishers have spoken about waking up at night out at sea and finding foreign fishers on their boat searching for food and water. There is concern about suspected links between some illegal fishers, drug importers and people smugglers.

There is also evidence that these fishers are becoming better organised. The minister himself has pointed to links between the foreign fishers and organised crime figures from Indonesia and elsewhere. Australian fishers and officials have reported that they are seeing more boats from the more distant areas in Indonesia as well as those from closer islands such as Roti who have been fishing in our waters for a very long time. As well, we are seeing bigger boats, ice boats and even mother ships and factory boats.

The changing nature of the problem can be seen in microcosm in the changing nature of the fishers that are being encountered in the so-called MOU box. When the sea boundary with Indonesia was originally negotiated, the MOU box, which lies within Australian waters, was set aside as an area where traditional fishers, principally from the island of Roti, could fish in the traditional way as they had for generations. These days it is not only traditional boats from Roti that are encountered in the MOU box. Today, powerful boats with relatively sophisticated fishing equipment are using the MOU box and, according to Australian fishers, fish stocks in that area have become severely depleted. This highlights the need for better cooperation between the Australian and the Indonesian governments, especially on issues

such as who may fish in the MOU box area and other border related issues.

It is clear that illegal incursions in our waters by foreign fishers are out of control—out of the government's control, certainly. The measures in this bill alone will do little to alter this alarming situation. This is a national problem demanding a coordinated national response. But the opposition is not convinced that we are getting a coordinated response—certainly not the one that is needed.

State and territory officers who are on the front line have reported that information sharing among the various authorities dealing with this problem is not always what it should be. They say there is a particular problem with some Commonwealth agencies who are very reluctant to share vital information. They say that coordination is not always as good as is desirable and the best, most efficient, use is not always made of existing, available equipment and human resources. Better coordination and cooperation between authorities is vital if we are to successfully overcome this problem.

I note that the minister has at last acknowledged the importance of this and that some funds for this purpose were made available in this year's budget. But acknowledging the problem is not enough. This alone will not ensure better coordination and cooperation between Commonwealth agencies. Labor has long advocated bringing the federal agencies and equipment together in a well-equipped Australian coastguard as the best, most effective way of ensuring a well-resourced and well-coordinated response.

In addition there needs to be a renewed spirit of trust and cooperation between federal and state and territory authorities. On the ground at the local level in many places such cooperation between state and Commonwealth officers is the norm, and at the local

level is where it should occur. The problem occurs much higher up the command chain. Ministers in particular have been far too fond of blame shifting and pointing the finger at one another.

We also need to utilise the local knowledge and long experience that lies in local communities, particularly Aboriginal communities, right across Northern Australia. Again, the government has finally come around to at least acknowledging that in many Aboriginal communities lies a wealth of experience that can be better used in surveillance and other activities associated with curbing illegal foreign fishing. But it is a very tentative start. It has become clear that to make the best use of Indigenous expertise a well-funded and well-coordinated program is needed. Aboriginal rangers should have training opportunities available to them that will equip them with skill sets roughly equivalent to those possessed by state or territory fisheries officers or national park service officers. They should also be provided with all the specialised equipment they need to do such a job. Better use should also be made of the resources and expertise of Australian fishers. Again, the government has made some noises in this area, but we have yet to see what, if anything, will happen in practice.

What is needed is a better focused effort from the Commonwealth. Labor believes this would best be done with an Australian coastguard. There needs to be better coordination across all levels of government and with the Indigenous community and Australian fishers. Much work also needs to be done with the Indonesians on issues such as the MOU box and the border and on finding viable alternatives for Indonesian fishers who have been operating in our waters. The legislation before us today has the support of the opposition, but no-one should pretend to believe that it will do more than scratch the surface

in deterring illegal fishers from fishing in our waters.

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Senator Ian Macdonald, I have Senator Bartlett next on the running sheet.

Senator BARTLETT (Queensland) (8.17 pm)—I cannot say I have much enthusiasm to jump Senator Macdonald. I was keen to hear what he had to say about this. But that is all right; I will go first. The Fisheries Legislation Amendment (Foreign Fishing Offences) Bill 2006 predominately deals with custodial penalties for foreign fishing offences in those parts of the Australian territorial sea that are within what is known as the Australian fishing zone. As I understand it, the waters that become subject to the proposed custodial penalties as a result of this legislation are those that are between three and 12 nautical miles offshore from the Australian mainland or from most islands, including those in the Torres Strait.

The Democrats, along with, I imagine, pretty much everybody in this parliament, have a concern about illegal fishing in Australian waters, particularly in respect of the environmental impact of uncontrolled or unregulated fishing. We have a concern in some areas, certainly not universally, about the environmental impacts of some legally authorised fishing as well. It is wider than just saying all environmental problems are due to illegal people and everything else is fine. Nonetheless, illegal fishing is a significant problem and one that does need to be dealt with more effectively. It is, of course, almost impossible to eliminate. I think we need to acknowledge and be realistic about that. But at the same time we need to do all that is reasonably possible to reduce its impact and extent.

The main aspect of this legislation is to deal with bringing in custodial penalties.

That is an aspect that I have mixed views on in relation to the people that are likely to be predominantly caught by it and also how much actual practical benefit it will bring, purely based on a cost-benefit analysis and leaving aside the human consequences for those that get caught. There is also the issue of the disparity that will still be in place. These penalties will not apply for those areas outside the Australian fishing zone, further out into the exclusive economic zone, the EEZ, which goes out to 200 nautical miles. Custodial penalties will not apply in those areas because that would be not in compliance with the UN Convention on the Law of the Sea. Article 73 of that convention requires that:

Coastal State penalties for violations of fisheries laws ... may not include imprisonment—

for areas in the EEZ—

in the absence of agreements to the contrary by the States concerned ...

I did find it interesting to discover when looking at this area that we do not have such an agreement with Indonesia. I am a bit perplexed about why that is. I am sure Senator Macdonald, with his experience in this, would be able to tell us why. It is obviously crucial for us in making significant progress in reducing illegal fishing in Australian waters to have as much cooperation as possible from Indonesia in particular and also from some other countries in the region, most notably PNG, and further afield. But Indonesia is critical in this regard.

An aspect that also concerns me is that predominantly it will be poorer Indonesian fishing folk who will be likely to be caught up in the custodial aspects of this legislation. I am not convinced that locking up a lot of not terribly well-off Indonesian fishermen is necessarily going to lead to a dramatic increase in the environmental benefit, not just from the Australian point of view—

environmental benefit is from everybody's point of view. I note the comments made by Mr Wilson Tuckey, the member for O'Connor, in the other place in his speech on this legislation. He said:

... for the lesser individual, the crewman, this process of incarceration has not worked.

We do currently have scope for incarceration in some state waters, out to the three-mile limit. As I said, there are already some crewmen locked up as a result of fishing offences. I note Mr Tuckey's view that that has not worked. I presume when he says that it has not worked he means that it has not provided an adequate disincentive to have a significant impact in reducing the extent of illegal fishing. I certainly find that a useful assessment of his. If that is the case, as he states, then I am not sure that expanding the number of people likely to be locked up or the length of time they are likely to be locked up for will be a net positive gain for Australia.

Leaving aside an examination of the human impact of locking up some of the poorer people and looking at it in terms of a purely dispassionate cost-benefit analysis of the extra expense to Australia of imprisoning people—which is usually not that cheap—and the overall net gain, as a consequence of that, with regard to reduced problems from illegal fishing, I am not necessarily convinced that that is the best way for our resources to be devoted. I am not just saying, 'It's terrible to lock people up and we shouldn't do it,' although I am not saying it is good to lock people up either; I am also saying that I am not convinced that being more hardline with imprisonment is the best way to direct our resources.

Clearly that is not the only area to which we are directing our resources, and I am not suggesting that it is; I am merely expressing my lack of certainty that this will be a par-

ticularly useful piece of legislation or the best way to direct our resources. I am sure it will be useful in a political sense. It is always useful to governments, when there is an issue of people infringing on an area, to say: 'We're going to be tough on this. We're going to lock people up. We're going to take a more hardline approach.' When looking at the federal parliamentary arena, I often get the sense that, whilst in the broad, most people prefer to have the more national scope for taking on issues compared to the restrictions of people in the state parliamentary arena, sometimes there is a bit of wistfulness from some that they do not really get as much chance to jump on the law-and-order bandwagon as much as their state colleagues.

I occasionally see that they would love more of a chance to jump on the law-and-order bandwagon, do some chest beating and say: 'We're being tough on this. We're locking people up.' Obviously there is still some scope to do that, as we all know. Those chances are often taken wherever possible. It seems to be an almost irresistible instinct of politicians at all levels, wherever they can, to jump on the law-and-order bandwagon as a way of looking like they are tackling a problem. Again, I am not saying that such approaches are ineffective all the time. But I can certainly say that there are many times when they are not effective—sometimes they are completely counterproductive. I think we could be much more judicious with regard to that.

So there may be some political benefit in looking tougher in this area. I am not convinced that it will actually have a positive benefit in the area we are trying to deal with. It seems perplexing to me that there appears to be such a difficulty in detecting illegal fishing—and not just the act of illegal fishing. There are numerous reports—sufficiently numerous so that I find it difficult to believe that they are all made up—of

many illegal fishing people stopping on Australian soil for a break, to recuperate and the like, before going back out to sea. Obviously there are issues there in terms of quarantine and other matters, but for me it is more a somewhat sad irony, I suppose. For all the farcical ranting that we have about border security and asylum seekers—who, of course, have nothing to do with border security at all because they pose no challenge to our security—we are somehow incapable of stopping fishing people from getting to Australia. And we are incapable of stopping them illegally operating in Australian waters. But as soon as there are refugees on these boats, we have the Navy at our disposal to go charging all around the place trying to stop them getting here.

Maybe if the fisheries department just pretended that these were not fishing people, that they were refugees, then they would be able to detect them all immediately. We seem to be quite happy to lock up refugees for many years at a time, certainly much longer than we lock up fishing people, so I am amazed that the fisheries department has not taken that approach. They might suddenly find themselves more able to detect all of these fishing people in Australian waters. It is astonishing that there can be literally thousands of illegal fishing vessels in Australian waters that we are not able to detect but, as soon as there are asylum seekers on a vessel, the Navy gets called out.

We have all of those resources used to grab a few refugees who present no threat to Australia at all, who do not challenge our borders and who do not impact on border security, but we cannot use those resources to deal with what is a threat to some extent. It is not a border security threat in any true meaning of the words—not that this government worries about the true meanings of words, of course—but there are certainly threats with regard to quarantine and impact

on the environment, and to some extent there are economic threats. We do not have the resources available for that, but we can bring out the Navy to deal with asylum seekers.

I guess that shows the reality of this government's priorities. But a bit of legislation saying that we are being tougher by locking up a few poor fishermen is not necessarily an adequate response, from my point of view. I suggest we redirect some of the literally hundreds of millions of dollars that have gone into intercepting asylum seekers and put that towards intercepting and dealing with fishing vessels. I am sure that when Senator Ian Macdonald was the relevant minister he would have loved to have had a few extra hundred million dollars to deal with this issue rather than them being diverted to deal with asylum seekers. It is a bit of a shame that we have those distorted priorities, but I guess that is a reality we have been living with in the political arena in Australia for some years.

To conclude, on behalf of the Democrats I voice my scepticism about how effective this will be and I reinforce the point and join with all speakers, I suspect, in this debate in seeking to ensure we have more effective activities to reduce the amount of illegal fishing in Australian waters. It is important that we do have more successes in that regard. I do not dispute that other resources have been put into this area, some of which have had some effect. However, more needs to be done in that respect and I would suggest that there are better ways of directing resources than will be taken up as a consequence of legislation like this.

Senator SIEWERT (Western Australia) (8.30 pm)—I wish to speak briefly on the Fisheries Legislation Amendment (Foreign Fishing Offences) Bill 2006 to explain why I was reluctant to let it go through as non-controversial legislation without making

some comment. First, I would like to acknowledge the offer of the briefing and the briefing that we received from the minister's office. It was very helpful in assisting us to understand some of the issues that I had about the legislation.

People in this chamber are probably well aware that the Greens have been concerned about illegal fishing and the depletion of our oceans for a very, very long time. We have no argument with the government's rationale for taking action to prevent illegal fishing in Australian waters. As I have said, people are well aware that we have had concerns about this for a long time. The scale of quarantine risk and the depletion of fishing grounds are now recognised by everybody from Indigenous people fishing their traditional waters to state and territory fisheries officers, the Commonwealth fisheries agencies and commercial operators who are now confronting this issue on a daily basis. So on this basis I believe the need for action is noncontroversial.

There is evidence that the rapid increase in illegal fishing activity to our north is being driven by the collapse of fisheries in Indonesia brought on, at least in part, by the same industrial fishing fleets and illegal operators that are now pushing south towards Australia. But I do not believe that just throwing people in jail is the answer. I do understand that the government is taking other actions, and I will go into that area later. I am deeply interested in knowing what else the government is doing to deter the large-scale operators other than simply increasing the penalties for a large number of impoverished fishermen and fisher-people who are moving further and further south from their traditional fishing grounds.

The passage of this bill will certainly enable the government to say it is taking strong action against illegal fishing, but it does raise

many questions. How many people does the government anticipate are likely to be charged under this new regime? Does the minister acknowledge that the number of people in detention could quickly become very large unless other elements of the government's strategy prove to be successful and are implemented at the same time? Where, and for how long, will people be detained while their cases are pending? What will be the impact on the various state court and prison systems of the potentially large numbers of non-English speaking Indonesian villagers who will be moving through our judicial system?

As I have said, the Greens support sensible measures to protect the Australian marine environment and the industries that depend on it. I am aware that the government does have other actions that it is taking, although it seems to me at the moment that this legislation to throw people in jail seems to be dominating the headlines. I have mentioned elements of this plan before. The Australian Marine Conservation Society, for example, has published a very thorough and well thought out plan or concept of what needs to be put in place to deal with illegal fishing, such as to start with a better understanding of our seas and the impact of illegal fishing.

I would like to point here to the fact that we do not have a thorough understanding of that marine environment, our seas, and the impact illegal fishing is having. For example, during estimates I asked the Department of the Environment and Heritage's Marine Division some questions about sharks. I asked if the department acknowledges that the true status of most shark populations in Australian waters is unknown, and the answer was yes. I asked if they acknowledge that the most basic biological information is missing for almost all species of shark, and the answer was yes. I asked the department if they acknowledged that the knowledge of habitat

preferences and other ecological requirements is poor or unknown, and they answered yes.

Then I asked if they were aware that there is inadequate monitoring, enforcement and research programs specifically designed for sharks, and they said no. If they have already acknowledged that we have a poor understanding of their status, their biological information and their habitat preferences and other ecological requirements, I really do fail to see how they can then say that monitoring, enforcement and research programs specifically designed for sharks are adequate.

I also asked them if they believe that there is widespread concern about the apparent decline in shark numbers, and they answered yes. When I asked whether the National Plan of Action for the Conservation and Management of Sharks has been reviewed they said no. I am deeply concerned about those responses. I was very pleased that they were actually honest enough to admit that there were concerns about the knowledge of our shark populations, but I am deeply concerned that they could not answer that further action is being taken.

We have not yet fulfilled the first point of the Australian Marine Conservation Society's 10-point plan—that first dot point. They also believe that we need to adopt a shared sea approach, which means working with our northern neighbours to protect our shared resources and seas. They also believe that we need to establish marine protected areas across the Arafura and Timor seas. I believe that an essential approach to managing our fisheries is to have a comprehensive, adequate and representative marine reserve system. We need to protect the species that are already threatened by fishing impacts.

Again, I come back to the information I have just supplied about sharks. We are not adequately protecting those sharks and we do

not know enough about them yet. The AMCS also believe we need to improve the food security and livelihoods of coastal and Indigenous peoples. Again, there is much work that we could do in that area. We also need to recognise the rights of Indonesian coastal indigenous communities in the Arafura and Timor seas.

The AMCS also suggest, and this is an area they have talked about before, in point No. 6:

Breaking the illegal fishing trade cycle using international trade measures.

I believe that this is an area that is not being explored enough and that we need to take a much more lateral approach to using international trade measures. No. 8 in their suggested approach is 'establishing a collaborative and comprehensive fisheries management framework' for our northern waters, and I am aware that negotiations are going on between our governments on this very important issue. No. 9 is:

Implementing monitoring, compliance and surveillance operations.

Obviously, a large part of the work that the Australian government has been focusing on is surveillance operations, so we are starting to take care of that part. Point No. 10 recommends:

Building capacity of coastal and Indigenous communities to tackle illegal fishing.

I am pleased that money has been invested in helping our northern Aboriginal and Torres Strait Islander communities to tackle illegal fishing and that their important role has been recognised. However, I do not believe that all of the elements of this plan are being implemented. It would be very encouraging to see the government take a much more comprehensive approach to this important issue. I am concerned that what does appear to come out in a lot of the rhetoric is that the government is taking the path of least resistance.

While I agree that penalties need to be put in place, it cannot be the only egg in the basket. As I said, a much more comprehensive approach needs to be taken. Just heavily pushing the 'lock 'em up' approach is not going to solve the problem. Also, while I think that we may agree to disagree with the government, I do not believe that the threat of jail in Australia will necessarily act as a deterrent when fisherpeople are trying to earn some money to support their families and put food on their tables. Instead of what is a significant push for jailing fisherpeople, I very strongly believe that we need to be tackling the Mr Bigs of this industry.

This will come as a surprise to many in this place, and it may be the one and only time it ever happens, but like Senator Bartlett I am going to quote Wilson Tuckey. He may not really like being quoted by a Greens senator, but here we go.

Senator Abetz—I think his endorsement is in doubt!

Senator Webber—Absolutely! His endorsement is in grave doubt now!

Senator Humphries—Kiss of death!

Senator SIEWERT—Yes! In his remarks on this bill in the other place, he pointed out that it is not satisfactory to simply jail indigenous fishermen—he said 'fishermen'; I tend to use 'fisherpeople' or 'fishers'—while leaving the organisers untouched. I could not agree more. This is an extremely complex and difficult issue. There is no one simple answer and, while I do not think the government believes there is one simple answer, I am afraid that that is the message that is being sent. It requires a complex, careful response. As I have articulated and as the Australian Marine Conservation Society has very clearly pointed out, we are not going to solve this problem if we rely on just locking people up.

We need to look at the causes of this problem. We need to be investing in our near neighbours to increase their capacity to repair the reefs and to share some of our knowledge and expertise in fishing. I believe and acknowledge that Australia has some of the greatest fishing expertise and best fisheries management practices in the world. We lead the world in marine protected areas—do not take that as meaning that I think there are enough, because there are not—but it has to be acknowledged that we lead the world in trying to put in place marine protected areas. Do not rest on your laurels; we still have a comprehensive system to roll out by the year 2012 to meet obligations and commitments this government has made. We need to share that knowledge with our northern neighbours. We have to tackle this in a comprehensive way and we have to acknowledge it is going to take time. It is going to take time to repair reefs, to develop capacity, to find alternative industries for our northern neighbours and to develop the necessary protocols and regional fishing organisations. We are in this for the long haul: there are no short-term answers and we need a comprehensive approach.

Senator IAN MACDONALD (Queensland) (8.42 pm)—I must say I am delighted to see such interest in the Fisheries Legislation Amendment (Foreign Fishing Offences) Bill 2006 and in fisheries management generally. I also have to say that, broadly speaking, I agree with what Senator Siewert and Senator Bartlett said in their comments on this bill. A lot of the things that they were both urging the government to do are things that the government has in place or has in mind, things that will happen in the fullness of time. I think the contributions by the last two speakers have been useful in that regard, and they did in fact recognise some of the good work that the government has been doing in recent years.

I am rather proud of my own involvement in this. About five years ago, when I first came to the fisheries portfolio, the rape of the patagonian toothfish in the Southern Ocean was in its prime and there was a lot of illegal activity in the north. Nothing had been done in the Labor years; I recall that no-one cared about illegal fishing anywhere then. In fact, illegal fishermen and boat people used to land on the shores of Darwin Harbour and catch a taxi into town. That is what the protection was like back in Labor's time. Of course, things have changed considerably in the last five years. The patagonian toothfish, which was under severe pressure, has now, at least in Australian waters, been given some protection. I have to acknowledge an environment group in Tasmania, Isofish and its organiser, Alistair Graham, with whom I worked very closely when I was parliamentary secretary for the environment; we actually put in place some programs then to track the criminals around the world.

Over the years, the government has put a lot of money into the fight against the patagonian toothfish pirates in our territorial seas, particularly around Heard and McDonald Islands. I have to say with some pride—touch wood—that we have cleaned the pirates out of Australian waters insofar as the rape of the patagonian toothfish species is concerned. It is still a problem on the high seas. Several years ago, Australia took a leading role in forming an international task force to try and address illegal fishing on the high seas. Patagonian toothfish were our real interest, but other nations came together to join Australia and the United Kingdom in the High Seas Task Force that took forward a lot of measures to address illegal fishing on the high seas.

Fortunately, or perhaps unfortunately, the high seas have always been seen as the domain of the world at large. Nobody owned

the high seas, so you could ply the high seas without particular rules and regulations. I guess that was good one, two or three centuries ago but, nowadays, when the marine environment is so fragile and precious, we have to look at some regimentation of the high seas. The High Seas Task Force, of which Australia was an initial member and a leading force in, pushed the envelope regarding what could be done on the high seas.

The United Nations Convention on the Law of the Sea was to be reviewed this year. I must say that I have lost track of what exactly happened to it. I hope to be going to the UN in a couple of weeks time to see what happened with that. One of the things that I thought the United Nations Convention on the Law of the Sea—which I will refer to as UNCLOS hereafter—should look at were regulations and rules on the high seas insofar as the environment and fisheries management are concerned. People who understand the UN system tell me that changing UNCLOS will take something like 20 to 50 years, and that is why the High Seas Task Force was trying to find new, different and immediate ways of addressing those problems.

Both Senator Siewert and Senator Bartlett again mentioned concerns about incarcerations. This is a good measure. This is a step in the right direction. It was initiated just before Christmas, and instructions were given to the departmental people to address this by bringing in legislation to correct the problem. Curiously enough, the idea came to us from the Indonesians, who explained to us that this is what they did with their illegal fishing coming from the Philippines in the north. I have to say with some embarrassment that the penny dropped. It had never been suggested by us prior to that, but it became very obvious that we should introduce this measure, and I am pleased to see the bill before the parliament today. It will be a step

in the right direction. It will not make a great deal of difference to incarceration. Already, we incarcerate for fishing penalties through a backdoor method. Fishermen are fined and they have little prospect of paying the fine, so they are jailed by the state courts for non-payment of the fine—for contempt of court—rather than for the fishing offence.

Regarding the problems that Senator Siewert and Senator Bartlett mentioned about where to house the incarcerated people and how to deal with them, over the last few years both the Department of Agriculture, Fisheries and Forestry and the Customs people have got that down to a very fine art. It works very well and very humanely, and there are processes in place which deal with the real culprits—the captains and the senior fishing masters. The junior crew are usually sent straight back. This bill will not make a great deal of difference there, but it does give us the laws to arrest at first instance in the three to 12 nautical mile area. Quite rightly, people say as I do that illegal fishers should not be getting into the 12 nautical mile area, because, if they are into the 12 nautical mile area, they are almost on the coast. We really have to protect our borders at the border of the exclusive economic zone, at the 200 nautical mile mark.

In the last four budgets—it might even be five—additional money each year has gone into the fight against illegal fishing. I am very proud. Senator Ellison and Senator Abetz have continued that work and money continues to flow to help in the fight against illegal fishing. Senator O'Brien continues to make political points without being terribly helpful with the problem. He keeps talking about this ridiculous idea of a coastguard. Obviously, he does not really understand it, although we have tried to explain it time and time again. The arrangement we have now maximises the resources that Australia puts into the fight. The Navy, the Army, the Air

Force, Customs, Coastwatch and the states all combine in the fight against illegal fishing. You get the maximum bang for your buck with the maximum use of resources. Australia, quite obviously, does not have the resources of the United States or the United Kingdom, but we do very well.

Senator O'Brien continues to make the political point of there being 12,000 or 15,000 sightings. Sure, there are a lot of sightings, but do you know why? It is because there is a lot of activity out there looking for illegal fishing boats these days. Years ago, you did not have many sightings but you then had few people out there looking for them. The increase in surveillance that we have had in recent years has meant that there has been an increase in sightings. I continue to say, regarding the raw figure that Senator O'Brien quotes with some relish—you would think he is almost delighted that, because these people are coming in, he can make a political point—that many of the sightings are sightings of the same vessel two, three, four and even five times over. The real number is not quite that. But let us not argue about the figures; there are still a lot of illegal fishing vessels coming from Indonesia—far too many.

Bear in mind also that this has been happening for about 10,000 years. The Indonesians have always fished off the north-west coast of Western Australia and in the Gulf of Carpentaria, but it has become a real problem in the recent past to the extent that it is now affecting Australia's very careful management of the fisheries in those areas. But we have to address the problem. The only way I can see that you will ever address the Indonesian fishing problem is not just by continuing to put money into our gunboats, not only putting money into increased surveillance and enforcement, not only empowering Aboriginal communities—which I am delighted to say we have worked on very

closely in the last couple of years; that program is coming into place and it can be increased—but we also have to get the Indonesians on side.

Perhaps this is not the right time of the cycle to be saying this, but I have always thought that we need to be very close to the Indonesians. I know some in this chamber and in this parliament like to criticise the Indonesians, indirectly—if not directly. I think that is foolish. Indonesia is our biggest neighbour: some 200 million-plus people. I often make the point that I live closer to the Indonesian capital than I live to the Australian capital.

Senator Webber interjecting—

Senator IAN MACDONALD—And you do too; you live much closer to the Indonesian capital. We have to be good neighbours to the Indonesians, and they have to be good neighbours to us. I am sure they want to be. In my visit with the foreign minister, Mr Wirajuda, and the fisheries minister, Mr Freddy Numberi, before Christmas to discuss these issues, both these quite senior ministers indicated that they wanted to be good friends with Australia across a wide range of areas. If the fisheries issue was a needle in that relationship, they wanted to fix it up. They were both very keen to do that. A number of initiatives arose from that meeting and from a previous meeting between Mr Downer and the foreign minister. It is perhaps too much to say that we got a signed agreement, but there was a general understanding that we would have to have joint patrols along the EEZ line and, more importantly, we would have to get the Indonesians on side to look for the Mr Bigs and do the sorts of things that Senator Bartlett and Senator Siewert have been, rightly, saying we need to do.

We need to track where the money is coming from to support the transport of the fish once it is brought to shore. We need people

on the ground in Indonesia following those things through, seeing where the money is coming from and going to. We cannot do that. It is a sovereign country, so we can only do it if we have the Indonesians on side. I am delighted to say that in those general discussions there was a broad agreement that Indonesia would help.

We also raised the issue that I think Senator Bartlett referred to, that UNCLOS prevents the jailing of people on the high seas without agreement—I emphasise the UNCLOS terminology of ‘without agreement’. I think it is essential that we get agreement from the Indonesian government that we and they can both—it has to be a two-way street—jail in the first instance illegal fishermen apprehended on the seas between the 13-nautical mile and the 200-nautical mile area. If we got the agreement of the Indonesian government and we were able to form a treaty along those lines, we would be able to jail in the first instance.

As I said before, jailing probably is not the best outcome; prevention is the best outcome. Again, I think Senator Siewert or Senator Bartlett may have raised this issue. If they have not, others have said to me over a number of years: ‘These Indonesians are poor. You bring them in and put them in an Australian jail. They get a fresh set of clothes. They get the best toiletries. They get a health check they’ve probably never had in their own country. They actually get paid in some of the state jails and they actually go home having had a good look at another country free of charge and perhaps with more money in their pocket than they have ever had before.’ There are people who doubt the effectiveness of jailing.

We have to prevent them from coming and we cannot do that by ourselves. All the money in our budget would not provide us with enough gunboats and warships to do

that. We have to get the Indonesian government on side and we have to work very co-operatively with them at the marine border, the EEZ line. We also have to get the support of the Indonesian government to do the work in the fishing ports in Indonesia.

We are doing a lot of work. We are doing it with the Indonesians and we have done some of this in the past. We have sent out a lot of information to Indonesian fishermen advising them what is permitted and what is not permitted, but more needs to be done. It can only be done if the Indonesian government are totally on side. I think there is a desire for them to do that and it is something the Australian government should be pursuing very forcibly.

At the estimates committees I asked the officers from the Department of Foreign Affairs and Trade whether this action was proceeding, and they assured me that it was, although I was not overly confident at the tone of their responses. I am sure that the wheels move slowly but—and perhaps Senator Abetz may be able to update us on this; my information is a little dated these days, although it is dated back to estimates committee insofar as that is concerned—it is essential that we work very closely with the Indonesian government.

I want to challenge a couple of the issues raised by other speakers. Senator Siewert, again, in spite of what I think are your party's crazy ideas in many areas of public debate, in the area of fisheries management and fisheries protection, we have been fairly closely aligned. Your knowledge and interest in this area is something that I have appreciated. You should be aware, however, that Australia was one of the first signatories to the international plan of action on sharks. We have a plan of action and we are carefully pursuing it. Some of the state governments were a little recalcitrant coming into that

plan. We eventually got them there. We are doing a lot of work in international trade measures and, in many instances, we have done that in very close cooperation with some of the environment NGOs around the world. Australia, as you rightly say—

Senator Allison—You should take up whales.

Senator IAN MACDONALD—I was always able to avoid the whale thing because whales are not fish; they are mammals, and it was not really within our purview—

Senator Abetz—Senator Campbell is doing a good job.

Senator IAN MACDONALD—Senator Abetz is quite right: Senator Campbell is doing a marvellous job. Even those of you who do not appreciate Senator Campbell's skills would have to accept that he is doing a magnificent job in trying to gather support against the Japanese. I do not think that anyone can criticise Australia in relation to our approach to whaling internationally.

There are always these sorts of comments, 'You send gunboats down to protect Australia's waters insofar as fishing is concerned; why don't you do it with whaling?' The simple answer is: where we protect patagonian toothfish with gunboats, we do the same for whaling because it is within Australia's exclusive economic zone. Once outside that zone, we cannot help with patagonian toothfish and we cannot help with whaling either. It is the high seas, and it concerns the issue I mentioned before that really does need to be addressed at an international level. It is something that Australia has actually started that 50-year journey to try and address.

Senator Siewert mentioned regional fisheries management organisations, and I think she mentioned that Australia is at the forefront of activity to establish regional fisheries management organisations in our sphere of influence. The most recent has been the

Western and Central Pacific Fisheries Management Commission, chaired, I might say, very well by an Australian official, Mr Glenn Hurry. That is an organisation into which we and some of the environmental NGOs have put a lot of effort. We are now getting that new RFMO across the southern Pacific Ocean. There is work being done in the south-west Indian Ocean. Australia has been instrumental in getting the Indian Ocean Tuna Commission operational—I have often described it as being dysfunctional. We have actually achieved something along the line of getting that organisation functional and operating as it needs to operate to stop the huge overcatch of tuna in the Indian Ocean that will see the destruction of the species if the IOTC cannot address the issues.

There are a few other areas about which I want to take particular issue with Senator O'Brien. He talked about information sharing with the states. I wish Senator Abetz well in dealing with the states. He seems to have got off to a slightly better start than I did. I invited the Western Australian minister here on three occasions. On two occasions, he made the agreement to come but just did not bother to turn up, and then he criticised us for not sharing information with them. And information which did go to some of the states ended up in the newspapers, particularly that rag from Western Australia, the *West Australian*, where secret operations were printed on the front page. Why would you share information with these sort of people?

We have come a long way, but there is still a long way to go. This particular bill before the Senate today is another step in the journey that the Australian government is taking to beat illegal fishing whenever it occurs and to look after the marine environment. I certainly commend the bill to the Senate.

Senator WEBBER (Western Australia) (9.02 pm)—The Fisheries Legislation Amendment (Foreign Fishing Offences) Bill 2006 is the latest move by the Howard government to deal with the scourge of illegal fishing in Australian waters. There are many people in Australia who have been asking the Australian government for years to take decisive action to deal with illegal fishing. This is not something that took place overnight. Consider these figures: between 1 January 2003 and 31 March 2004, there were 1,588 sightings of possible illegal fishing vessels in Australian waters; in the calendar year 2004, there were 8,108 sightings of possible illegal fishing vessels; and in the calendar year 2005, this had jumped to 13,018 sightings. In 2003, we would have had perhaps an average of 132 sightings per month, in 2004 that had jumped to 675 sightings per month and last year that had reached the truly staggering figure of 1,084 sightings per month. At this stage, we have not been provided with any information about the number of sightings so far for this year. We can only hope that there has been a decrease.

The fishing industry, especially in Western Australia, has been raising this issue with governments for years. State and territory ministers have been raising the issue with the Commonwealth for years. I am sure that the Commonwealth agencies and departments such as Coastwatch, Customs, AFMA and the Navy have been reporting this surge of illegal fishing. Time and time again, we were assured by the Commonwealth government that they were winning the battle against illegal fishing. An almost tenfold increase in monthly sightings in a two-year period does not suggest that we are winning that battle. The surge in illegal fishing seems to actually be suggesting that we have lost the battle. It seems to be suggesting that we have run up the white flag, surrendered our sovereignty and declared that everything is going okay.

The previous minister for fisheries, Senator Ian Macdonald, put out press release after press release saying that we were winning the battle—I have been told that this ran to some 150 individual press releases. It is a significant admission of failure that during that time we saw monthly sightings increase nearly tenfold. With the appointment of the new fisheries minister and a range of new budget initiatives to the tune of over \$300 million, we are now seriously expected to believe that we are now winning the battle.

People would be more than justified in being cynical in response to the government's latest announcements on dealing with illegal fishing. Illegal fishing affects this country in numerous ways. Firstly, our fishing resources have been ravaged by illegal fishers, putting at risk the Australian industry and Australian jobs. As I have heard people from the fishing industry say time and time again: 'We are sticking to our quotas based on the best science available to ensure a sustainable industry. We are sticking with the government's rules, yet we think they are letting the stocks be destroyed by illegal fishing.'

Although it may not be as significant an industry as some others in my home state of Western Australia, fishing is still a significant employer and earner of export income. We cannot expect our Australian fishing industry to comply with the rules when we do not protect the fishery in the first place. There is a fundamental flaw in the logic of sustainable resource management when it only applies to those people who are operating legally. A sustainable catch determined by the best data available is meaningless when our fish stocks are being pilfered by illegal foreign fishing.

Secondly, there is an incredible risk to the viability of Indigenous communities who are reliant on the sea for their livelihoods. Labor members and senators have recently trav-

elled to communities such as One Arm Point in Western Australia and Maningrida in the Northern Territory. While there, they were shown the damage being done to Indigenous economic self-determination by illegal fishing. For the government to talk about economic self-sufficiency for Indigenous communities and then act inadequately to combat illegal fishing would be seen by many as a disgrace. There is no point advocating economic self-sufficiency when we fail to protect that resource. Trochus shell harvesting is at risk of collapse for the Indigenous community at One Arm Point, because we as a nation have failed to protect the reefs from pillaging by foreign fishing.

Thirdly, there is a risk to the biodiversity of our country. There are numerous reports of illegal fishing vessels arriving in Australia, landing and setting up camps. These vessels are not only carrying crews but in some cases animals, such as chickens, dogs and even one report of monkeys. Given the efforts we make in this country to protect our biodiversity through stringent quarantine systems, it is somewhat disheartening to realise that we are not doing enough to prevent foreign vessels carrying animals from landing in Australia. It is no good only enforcing Australian quarantine regulations at our major cities and towns when we fail to protect ourselves around the entire country.

It is not just the risk of the introduction of pests and disease that is affecting our biodiversity. Illegal fishing is killing anything and everything that can be used as bait. One of the officials of the Western Australian fisheries department told the Labor members and senators that, when fisheries officers were examining overhead photos, they could not work out what the circular patterns were in the water. Upon investigating, they realised that turtles had been staked through one of their flippers and left tethered to an outcropping or pole. Once their fishing was finished,

the illegal fishers would then return, grab the turtles and go home.

I am not using these examples as a means of demonising illegal foreign fishing vessels and their crews; I am demonstrating that these problems have arisen because we have let it get to this stage. Where once most foreign fishing vessels were only operating in very limited areas along our northern and western coastlines, the evidence now suggests that they are travelling further and further along our coastline. Reports from representatives of the fishing industry in Western Australia are now suggesting illegal fishing vessels are appearing well down the Pilbara coast. Where only a few years ago most of the incursions were along the Kimberley coast, it is now clear that, as our fishing grounds are being devastated by illegal fishing, they are now travelling further to maintain their catch. There are now also reports of incursions along the Queensland coast.

This legislation will amend the Fisheries Management Act 1991 to provide for increased fines and custodial sentences of up to three years imprisonment for persons caught fishing illegally in those parts of Australia's territorial waters that are subject to Commonwealth fisheries jurisdiction. These new penalties will apply to fault based indictable offences and not to strict liability offences. The coverage of these changes will apply to that area beyond the three-mile nautical state and territory jurisdiction and the 12-mile Commonwealth jurisdictional limit. Our exclusive economic zone, which extends from 12 nautical miles to its 200-mile limit, is excluded from these provisions because, as a signatory to the United Nations Convention on the Law of the Sea, we are prohibited from having a custodial penalty regime on fishing offences beyond the 12-mile sea limit. I, like many other Australians, wonder about how this tough new regime is going to work. There may very well be over \$300

million allocated over four years but, when there are over 13,000 sightings—over 1,000 a month—I am concerned that, even if we double our apprehension rate, we are still going to face a significant incursion into Australian waters. The member for Flinders in the other place said:

We will destroy the practice of illegal fishing and we will not stop until we have achieved that.

I am not interested in being told that this new package will do that because, like many representatives of the fishing industry in Western Australia, I have heard all of that before. Every time that the issue comes up, the government comes into this place and thunders on about how its latest initiative will solve the problem. Yet the illegal fishing vessels still come.

There is a strategy that should be followed to finally deal with the issue of illegal fishing. Firstly, we must ensure that our national rights and sovereignty are defended to the absolute limits of our capability. We must as a matter of course seize any vessel that is engaged in illegal fishing. Those fishing vessels must be destroyed either at sea or at destruction points on land. Of course there are risks associated with bringing vessels onshore for destruction, specifically the risk of marine pests that may be carried on foreign fishing vessels. However, we must not allow this to deter resolute action. The only way to stop this problem is to destroy the vessel. We must not make the mistake that we made with the administrative forfeiture where we would intercept the vessel at sea, seize the fishing gear and allow the fishing vessel to leave, because, when we do that, they go back to their home ports, take on new fishing gear and return straight back to Australian waters. People in the industry liken this approach to that of Rex Hunt catching fish: catch, kiss and release. It might make a good fishing program on television, but it is a pretty pathetic fishery protection program.

Secondly, we must create a single agency with responsibility for dealing with the problem. The current shared approach of involving numerous government departments, agencies and the defence forces has not worked up until now. A single agency with the jurisdiction to enforce any fishery, customs or quarantine power with dedicated patrol platforms, including aircraft, is needed. There must be one agency that can report back to this parliament and the Australian people about what is being done to deal with illegal fishing. To give some idea of the difficulties that the current multiagency approach provides, you only have to try to find your way through the maze at Senate estimates. To get the complete picture, you have to ask questions of AQIS, Customs, Defence, AFMA, the Department of Agriculture, Fisheries and Forestry and sundry other agencies. If the government is serious about smashing illegal fishing, the time has come to put one agency in charge with dedicated patrol platforms to ensure that illegal fishing vessels are intercepted whenever and wherever they are breaking Australian law.

Thirdly, we must accept the reality that some work needs to be done to provide a different form of livelihood for those people engaged in illegal fishing. The bosses who control the illegal fishing industry to our north are making a fortune, but unless we work with the Indonesian government—and I agree with Senator Ian Macdonald—and through agencies like AusAID to develop reasonable alternative jobs then we cannot be surprised that more and more people are prepared to engage in illegal fishing. When you earn a pittance and the opportunity exists to earn a much larger income by engaging in illegal fishing then of course the bosses have no difficulty in sourcing recruits. Imprisonment and other penalties will, of course, make it less attractive. But you have to ask: 'What would have happened if we had acted

sooner rather than later?' One of the tests of national sovereignty is to be able to defend yourself and your interests. We have failed that test for too long when it comes to illegal fishing.

Senator ABETZ (Tasmania—Minister for Fisheries, Forestry and Conservation) (9.15 pm)—The Fisheries Legislation Amendment (Foreign Fishing Offences) Bill 2006 is before the Senate and is part and parcel of a comprehensive suite of activities undertaken by this government to fight the scourge of illegal fishing. The contribution of honourable senators, for which I thank them, has highlighted the difficulty that Australia currently faces. Unfortunately, it seems that some senators opposite revel in the numbers and the difficulties that we as a nation face in that regard, and on occasions they misrepresent that which actually occurs. Just for the record: yes, there were 13,000 sightings last year, but it is accepted by most sensible commentators that the vast majority of those were double, treble and sometimes quadruple sightings.

Even if there were only 1,000 incursions, that would be 1,000 too many. There has been talk about the 'catch and release' suggestion, the legislative forfeiture that Senator Webber just referred to. She was at estimates, so she would have heard that the reason for that is largely operational. When you come across a couple of illegal fishing vessels and you only have one vessel to apprehend with, you have a choice. Do you apprehend one vessel and let the other one go, or do you undertake a legislative forfeiture on one and apprehend the other? I think most people would accept that doing the legislative forfeiture on one vessel and catching another is a better result than only catching one vessel. So far this calendar year, we have already apprehended 185 foreign fishing vessels and we have undertaken legislative forfeitures in numbers of, I think, the high 40s.

That shows the resolve with which the government is approaching this issue—and that is before the new moneys become available from the budget announcements.

With regard to the MOU box, an area off Western Australia that has specific significance for traditional fishers from Indonesia, a memorandum of understanding exists between Australia and Indonesia. It is not legally binding, but I think we in this place would all agree that it is morally and politically binding. That memorandum of understanding specifically states that only traditional fishers are allowed in that area. ‘Traditional fishers’ means those without a motorised vessel. Therefore, motorised vessels in that area are apprehended and dealt with as though they were in any other part of the Australian fishing zone. This has been raised from time to time by fishers. I am delighted that the Western Australian Fishing Industry Council, after its meeting with Mr Downer, understood and accepted to a large extent that the abolition of the MOU box would, in practical terms, make no difference and the suggestion that the MOU box is being used as an avenue or a safe haven to make incursions into Australian water is incorrect.

Senator O’Brien once again raised the old hoary suggestion of the coastguard. I think the Labor Party are now on about version six of their coastguard. Each time they are challenged about the detail, they run away and decide on a different type of red to paint on the side of the vessels. Other than that, they do not really have much else to offer the Australian people. So the Labor Party decided on a task force to have a look around the country and make some suggestions. Mr Beazley, in his new aggressive, angry Beazley persona, had to indicate to the Australian people that the Labor Party’s policy on illegal fishing would be to sink them at sea. How hairy chested can you get? He said, ‘We would sink their boats at sea.’ When

asked about it, he said, ‘Yes, we would take the people off.’ That is a good start. But would you take the fuel, the engines, the fishing nets and the fishing lines off the boats before sinking them? Had I been a journalist, with respect to that great profession, those are the sorts of questions I would have asked Mr Beazley. You would have seen him like a fish on deck, flip-flopping and floundering around, because he would not have known the answers.

If the nets go down with the boats, they will turn into ghost nets and turn our northern waters into a veritable junkyard. Sometimes we sink boats at sea—for safety and other reasons. But, if a boat is in a sufficient state, we try to destroy it on land. The reason for that is that, if you destroy at sea, bits and pieces can still float ashore and be a quarantine risk. We talk to the fishing industry, and they do not really appreciate getting their lines and nets caught up in bits and pieces of sunken Indonesian vessels. Even in the area of fisheries, Mr Beazley finds it difficult to come up with a sensible, comprehensive policy. No wonder he is struggling in other areas, such as workplace relations—but we will not go there this evening.

The package that Senator O’Brien sought to belittle has been welcomed overwhelmingly by the fishing industry, by the *Northern Territory News*, by the *West Australian*—what is it called? That is right, the *West Australian*!

Senator Webber—Yes, the *West Australian*! I won’t tell them you forgot their name.

Senator ABETZ—Can I say that Senator Ian Macdonald, who contributed in this debate as well, did a very good job in laying the groundwork for what we are now doing as a government.

We have been told by those on the other side that we should be doing more with the Indonesians. Yes, we should, and that is a

good idea. We will always try to do more, but I cannot help but reflect, even in this area of relations with Indonesia. When Mr Howard was first running for the prime ministership in 1996, what was the great throwaway line of the Labor Party? It was that if Mr Howard were to become Prime Minister, we would not be able to have a good relationship with Indonesia. The relationship would be hopeless. Yet today at question time and all this week we have been told that our relationship with Indonesia is so good that we seem to do everything that Indonesia wants. The Labor Party cannot have it both ways on these issues.

I think Senator Bartlett asked why we do not have an agreement with Indonesia under UNCLOS—the United Nations Convention on the Law of the Sea. If two neighbouring countries have an agreement in relation to imprisonment of illegal fishers then you can imprison them. The simple reason that we do not have an agreement is that the Indonesians will not agree. But, as Senator Ian Macdonald indicated, when he was undertaking those discussions with Indonesia, Indonesia revealed that they have in their territorial zone penalties for imprisonment. That is what this bill now does: it imposes the potential for incarceration, subject to judicial discretion, on those caught in the 12 nautical mile zone.

The suggestion was made by one senator—I think it may have been Senator Weber—of what would have happened if we had acted sooner. I simply say that no Labor Party senator has ever suggested that we ought to have this sort of legislation. It is a genuine government initiative, which I am delighted that Labor supports. But it is a bit rich to come in here and say that we should have acted sooner when no Labor senator made the suggestion before we as a government put it on the table.

Senator Bartlett then went on to talk about refugees. I will not dwell on that in any length other than to say that I reject his assertions in relation to the government's policies. This evening we are dealing with the scourge of illegal fishing.

Can I move to Senator Siewert's speech. 'Just throwing people into jail is not the answer' was one of her comments. I agree. What you need is a comprehensive package, and that is exactly what we are implementing. This is just part of the comprehensive package.

The suggestion was that we should try to target the Mr Bigs. Seizing their assets is exactly what hurts the Mr Bigs, because they are the ones who fund these boats. Sure, there are poor villagers onboard but, if you capture enough of their vessels, the economic viability of the total operation becomes so prejudiced that hopefully they will say that it is no longer economically viable, and as a result they will stay out of our waters. We also intend, as Senator Ian Macdonald indicated, to charge and pursue the masters and captains of the vessels. Juveniles, for example, will be sent home.

Senator Siewert asked—I think rhetorically—how many will be charged under this new law. I tell you what my hope and aspiration is: none, because I would like to think that nobody would ever enter our waters illegally. I think that is a bit of a naive hope, but how many people actually get that close to our shores remains to be seen. I think it will be a major deterrent because there have been reports of Indonesian fishers, in particular, seeking to enter our waters and coming on land or into our inland river system overnight and then going back out during the day. Now, if they are caught close to shore, they will face that extra penalty, and hopefully that will be an extra disincentive for them to come close to shore. What are the impacts

going to be? It is hard to tell. I would like to think that this will be a deterrent to Indonesian fishers taking risks close to our shores.

I cannot help myself but mention that Senator Siewert was trying to take issue with the term 'fisherman'. She is so politically correct that she wants the non-gender based term. But, of course, that is where people in this place and around Australia who are the politically correct mania police, as I call them, just fall over themselves—

Senator Webber—The mania police?

Senator ABETZ—Their politically correct mania turns them into a police force, and they try to prosecute every potential offence. If you look at the history of the word 'fisherman', the 'man' bit comes from 'manus', the Latin, which is 'hand'. So really the term is 'fisherhand' and therefore it is non-gender-specific and does not refer to the fisherperson's sex. Nevertheless, if it made Senator Siewert feel somewhat purer for having said that, then I hope that she feels good about that this evening—albeit she is technically incorrect.

I have already thanked Senator Ian Macdonald for his involvement in this issue over many years. He has made a fantastic contribution and I am delighted that I can put that on the record this evening. He asked a few questions about what we are doing in Indonesia. Part and parcel of our new package is \$1.2 million which is set aside for a public information campaign in Indonesia to try to dissuade them from undertaking activities, and part of that campaign will warn the villagers of the huge penalties that they now potentially face. Our package also includes an extra \$6.4 million for staffing at our embassy in Jakarta.

Senator Webber made a contribution, and I accept her interest in this area, but I think I have already corrected her in relation to the administrative forfeiture matter that she

raised. She also suggested that we needed one single approach on this. We do have that in the Joint Offshore Protection Command. When people are out on our waters, we do not want them to be alert only for illegal fishers; we want them to be alert for customs, for quarantine, for illegal immigration and other matters. That is why it is good to have a Joint Offshore Protection Command that takes all these things into account. It shows that the government is able to deal with all these things with the expertise of all those departments.

I think I have dealt with the matters raised by honourable senators during the debate. I thank them for their contribution and their support for this legislation.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

ENERGY LEGISLATION AMENDMENT BILL 2006

Second Reading

Debate resumed from 13 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Senator GEORGE CAMPBELL (New South Wales) (9.33 pm)—I seek leave to incorporate Senator O'Brien's speech on the second reading.

Leave granted.

Senator O'BRIEN (Tasmania) (9.33 pm)—*The incorporated speech read as follows—*

The Labor Party welcomes this bill.

It does, after all, implement the policy that the Federal Labor Party and my colleague, the member for Hunter, took to the 2004 election, and I quote:

“In natural gas, industry remains engaged in battle with the ACCC over a range of regulatory issues. Australia still lacks all the necessary ingredients for the development of a mature and fully competitive gas market and yet again, Parer’s recommendations have been ignored.

No initiatives have been taken to tackle the various barriers to enhancing upstream competition and nothing has been done to address regulatory risk, whether real or perceived. ... Labor will retain a strong Gas Code but, consistent with the Parer Review, will pursue two significant changes to provide greater certainty for new investors. We will provide for binding and up front coverage rulings and binding up front agreements locking in key regulatory parameters for extended and agreed periods of time.”

But this bill has been a long time in coming and it still does not go far enough in implementing the many energy market reform measures that still remain outstanding.

The bill will amend Part IIIA of the Trade Practices Act 1974 to provide new incentives for investment in gas pipelines, or more accurately, to remove existing barriers to investment.

There are two mechanisms.

The first is an ability to obtain an upfront ruling on whether full price regulation in the gas access regime should apply to a new pipeline.

If a pipeline does not meet the coverage criteria, it will be granted a full exemption for 15 years—called a binding no-coverage ruling.

The second mechanism is a price regulation exemption, also for 15 years, for new pipelines bringing foreign natural gas to Australian markets, subject to certain obligations.

Both mechanisms involve a prior competition and public interest assessment by the National Competition Council before a final Ministerial decision can be made, and that is a sound accountability mechanism.

They are welcome mechanisms to encourage investment in gas supply and gas transmission infrastructure for Australia’s future.

And they are much needed.

Australia is a gas rich nation with over 140 trillion cubic feet of known reserves and we have

been finding gas faster than we have produced it for the last 20 years.

But most of it is remote from markets.

Ninety five per cent of Australia’s natural gas resources are in the remote northwest, but 90% of Australia’s population live on the eastern seaboard and most of the country’s energy-intensive job-creating industries are in the southwest and the east.

I can’t put it more starkly than that.

That is why we need to be thinking about strategic national energy infrastructure today and promoting investment in things like natural gas transmission.

Natural gas is also the best transition fuel for a lower carbon economy with proven reserves more than capable of meeting the nation’s energy growth needs over the next few decades.

We have to get more of it into the energy mix, along with renewables and cleaner coal.

That means:

- Enhancing the competitiveness of gas in the domestic market;
- Achieving greater interconnection of major supply and demand hubs; and
- Expanding domestic gas markets in electricity generation, process energy, gas to liquids and chemicals.

The opening up of new markets for natural gas is critical to underpin the development of remote gas production, processing and pipeline infrastructure for future gas supply security.

Without investment in that infrastructure today, Australia’s gas resources could be too expensive to get to market in the future and be locked away forever or destined only for export markets as LNG.

In Mr Howard’s Australia it’s commercial to get gas to Shanghai but not to Darwin or Sydney.

Nor can we assume that gas exports will necessarily create additional domestic industries or energy infrastructure.

More needs to be done to develop value-adding gas chemicals and gas-to-liquids industries and expand domestic gas infrastructure to complement the LNG industry.

Australia's competitors in the global gas market, like Qatar, are way ahead of us already.

How do we address this?

Well, this bill goes some of the way towards removing the impediments to increased investment in interconnection and barriers to gas-on-gas competition.

The private sector now owns the majority of Australia's gas transmission pipelines and substantial private sector investment will be required over the next decade and beyond.

It is in our national interest to encourage, not deter, this investment and that is why the provisions of this bill are welcome.

Whilst pipeline infrastructure developed since the last 1990s (Eastern Gas and SEAGas) ensured continuity of gas supply following the Moomba incident, it is clear that more could and should be done to facilitate linkage of uncommitted gas supplies to markets, improving security and reliability of supply as well as encouraging gas-on-gas competition.

The absence of a carbon price signal is also undermining the competitiveness of gas, thereby holding back demand and investment, and forcing regulatory intervention.

Consequently, in this looming crisis, Labor accepts the need to provide greater certainty for investors as gas plays catch-up in the market.

Regulatory burdens are growing not shrinking, and competition regulators are under increasing pressure to provide long-term income-guarantees for infrastructure investors.

The existing cooperative gas access regime has created barriers to efficient investment in new pipeline infrastructure and this bill will encourage more efficient investment and provide investors with regulatory certainty.

The bill also recognises the additional complexity of international gas infrastructure projects like the PNG gas pipeline and provides investors with regulatory certainty.

Both mechanisms will have a positive impact on securing investment in gas pipeline infrastructure for Australia's long term energy security needs.

But as I said before, energy market reform is happening too slowly. Let's look at where COAG has got to so far this year.

Whilst the commitment to progressive national roll out of smart meters from 2007 is to be commended, it is heavily qualified and only time will tell whether the initiative is truly national.

Beyond that, we are promised a recommitment to earlier COAG reform proposals and a new "high level, expert" Energy Reform Implementation Group.

This new committee is due to report back to COAG before the end of 2006 on a range of energy market issues including options for a national grid, structural weaknesses in the electricity market, and financial market measures to support energy markets.

What the communique doesn't say is that this new committee is the Prime Minister's latest attempt to address the inertia of his energy Minister, the Ministerial Council of Energy, and the National Electricity Market Ministers Forum on real energy policy issues.

They have done virtually nothing over the last almost five years.

The fact is we are no further advanced on national energy market reform than we were when the Parer review was announced in June 2001 along with the establishment of the MCE and NEM.

The Parer review was released in December 2002 and only a handful of its recommendations have ever been implemented.

It was August 2004 when the Productivity Commission Review of the Gas Access Regime was released and COAG now promises us a response by the end of 2006—a full two and a half years later.

After Parer in 2002, it took until July 2004, with legislation introduced in mid June 2004 at the eleventh hour, to set up the Australian Energy Regulator and the Australian Energy Market Commission, and then it took another year to agree on who would head it, where it would be located, and how it would interface with the ACCC, with operations not actually commencing until July 2005.

This government's answer to the problem is to go back to June 2001 and make the same mistakes again—a new national body, a review of the same issues, and still no action or leadership.

That's what is really needed—action and national leadership. Well over a year ago I said, and I've said it many times since:

“Internationally competitive supplies of energy are critical to Australia's global competitiveness in a range of manufacturing and value adding industries and while the success of the reforms of the 1990s cannot be denied, nor can the fact that much more needs to be done.

COAG recognised this by commissioning the Parer Report, but little action has been taken by this government.

The Parer report identified all the deficiencies in our energy markets but barely any of its recommendations have been implemented.

Our electricity and gas sectors remain burdened by excessive regulation, overlaps in regulatory roles, slow and cumbersome code change processes, anti-competitive marketing practices, poor market design and poor, if any, planning mechanisms.

It's time for this government to get moving on both the Parer recommendations and the Productivity Commission recommendations.”

And I recall that my colleague, the member for Hunter, also said this many times during the course of the last Parliament when he was the Shadow Minister responsible for energy.

Let me say that one of the biggest issues for the natural gas industry is the expansion of its markets.

And this is a big issue for Australians too because natural gas is part of the answer to their concerns about petrol prices and supply security.

Of course the government is out of touch with the triple whammy facing Australians around the kitchen table these days—higher interest rates and mortgage payments, industrial relations changes undermining their wages and conditions, and record high petrol prices.

This government treats tax cuts as “go away” money for motorists worried about petrol prices.

It did nothing in the budget to bolster Australia's fuel supply security or look to the long term.

And it has done nothing in this bill.

The fact is that without developing alternative fuels industries in Australia, we will increasingly be hostage to supplies from the Middle East, West Africa and Russia.

I don't need to spell out the implications of that for energy security.

Australians want to know that their governments, and the companies with stewardship of their resources, have a plan to secure their energy supplies for the future at affordable prices.

But there is no plan and they are far from “relaxed and comfortable” about that.

The Howard government has failed Australians by letting the opportunity pass to create the right fiscal and regulatory environment to make gas to liquids a new industry option and a new fuel supply source for Australia.

The answers are there for Mr Howard and Treasurer Costello in Kim Beazley's Fuels Blueprint just as they were on gas pipeline investment in Labor's 2004 election policy.

If the government was serious about the gas industry and gas market reform, they could have seriously reviewed the PRRT regime and considered special treatment of capital investment in gas to liquids fuel projects and associated gas production infrastructure.

The Commonwealth could have faced up to some responsibility for resource related infrastructure instead of passing the buck to the States.

Above all, they could have sent a clear signal to Australians that they are interested in their future fuel supply security and to the industry that this should be part of Australia's national gas strategy.

Australia's competitors in the gas industry are way ahead of us, particularly in the Middle East where countries like Qatar, already a formidable competitor for the Australian LNG industry, are developing GTL projects making clean transport fuels for the global market.

It is now almost five years since the government's own GTL Task Force highlighted the potential significance of a GTL industry to Australia's economy saying it could underwrite offshore gas

supply infrastructure to bring forward the possibility of major new domestic gas pipelines to connect the national market, increase domestic gas competition and energise gas exploration.

The potential benefits of course go beyond unlocking new resource wealth and creating new industry, more jobs and more exports—they include the opportunity for Australia to address this most pressing of problems, our future transport fuel security.

But five years later no action has been taken.

There is a long list of failures that I could point to on energy market reform—the issues I've discussed today are just some of them.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.33 pm)—The Democrats will be supporting the Energy Legislation Amendment Bill 2006. This bill implements a number of changes, including the Gas Pipelines Access (Commonwealth) Act 1998 and the Trade Practices Act 1974 in relation to the conferral of functions and powers on the National Competition Council and the Commonwealth minister under the cooperative gas access regime. It amends the Trade Practices Act 1974 to accommodate incentives for new pipelines in the cooperative gas access regime which were recently introduced in the South Australian parliament, and it allows the Australian Energy Regulator to apply to the Federal Court for a disconnection order. It amends the Administrative Decisions (Judicial Review) Act 1977, the Australian Energy Market Act 2004 and the Trade Practices Act 1974 to correct certain incorrect references in relation to the application of the cooperative electricity regime. Finally, the bill repeals the Pipeline Authority Act 1973.

As I understand it, these amendments have the support of the states and the industry, and I must say that it is good to see the federal government and the states working jointly through the Ministerial Council on Energy to make improvements to the gas

regime in Australia. Gas will, of course, play a very important part in the early mix of low-carbon-emitting energy sources as Australia aims to achieve that 60 per cent reduction of 1990 levels of greenhouse gas emissions by 2050. However, this is only part of the job that needs to be done with respect to energy reform in Australia, and it is our view that this government has monumentally failed in delivering Australia a sustainable energy policy for the future.

The debate on greenhouse gas emissions and climate change has been around for more than three decades. Over a decade ago, most countries joined an international treaty, the United Nations Framework Convention on Climate Change, to begin to consider what can be done to reduce global warming and to cope with whatever temperature increases are inevitable. The federal government showed some promise early on with the announcement in late 1997 of the establishment of the mandatory renewable energy target, known as MRET, to help foster the renewable energy industry in Australia. But since then, the government has abandoned any sensible policy on energy. It was not until 2004, less than two years ago, that this government produced an energy white paper—its blueprint of how future energy goals would be met.

The Senate Environment, Communications, Information Technology and the Arts References Committee examined the government's energy white paper in 2005. The report of the Democrats-chaired committee, *Lurching forward, looking back*, criticised the energy white paper, saying that it did not go far enough and it lacked a viable time frame for success. The paper did not contain effective planning for the future needs of Australia in energy supply, in greenhouse emission reductions or in alternative renewable energy development. The report made a small number of achievable recommenda-

tions, none of which, as I understand it, have been implemented.

This government continues to refuse to ratify Kyoto, an international and legally binding agreement to reduce greenhouse gas emissions worldwide, and instead opted for the Asia-Pacific Partnership on Clean Development and Climate, which has no price signals, no targets and no real plan for reducing greenhouse emissions. In late 2005 the government signalled it was looking to carbon capture and storage from coal-fired power as a primary means to address greenhouse emissions. Then, of course, earlier this year the government announced major funding for so-called clean coal technology. This is despite evidence that underground storage is expensive and highly risky as the technologies are unproved in the context of stationary energy generation, not expected to be developed and available for implementation until the middle of the next decade and will lead to an increase in energy costs.

And this year the Minister for the Environment and Heritage blocked two wind farms for very suspect, spurious reasons. This action has effectively brought to a halt any further investment in wind power in Australia. The chief executive of ActewAGL, Mr John Mackay, said on ABC radio:

Unless ... Federal Government ... stops playing politics at a local level, any wind farm, including ours, has got to be a doubtful proposition ...

If this was not bad enough, the whole renewable energy industry is under threat because the government continues to refuse to expand or increase the mandatory renewable energy target which it established nine years ago. This was supposed to raise Australia's renewable energy generation to 12 per cent of the total electricity production, but of course it has gone backwards—it is now, even under MRET, lower than it was before

MRET began. That is because, instead of increasing our renewable energy by two per cent progressively, a fixed target of 9,500 gigawatt hours was established, which turned out to be a gross underestimation of what two per cent might look like in 2010.

Only last month the Senate inquired into a government bill that makes minor changes to MRET. Every business and industry representative unequivocally said in their submissions that renewable development had now stalled because sufficient projects already exist to fully deliver the 9,500 gigawatt hour target. All of them called for an increase and an extension to MRET. But the government stubbornly refuses to do anything about this situation, proclaiming how successful it has been.

Then we have, less than four weeks later, the Prime Minister announcing an inquiry into nuclear power. Nuclear energy was not even a vague consideration in the government's energy white paper, and that was just two years ago. How Australia can possibly plan for a reduction of 60 per cent in our greenhouse emissions by 2050 when it cannot even see two years ahead is anyone's guess. But now, suddenly, after a visit to the US President, George Bush, our Prime Minister is talking about nuclear power as the way forward to reduce greenhouse emissions. I wish the many much more sound recommendations of the Senate inquiry into greenhouse issues a few years ago had received his undivided attention—the sort of attention that has obviously been paid to our great and powerful friends. Despite empirical evidence showing that nuclear power is not economically, socially or environmentally acceptable as a means to address climate change, our Prime Minister has set up a task force stacked with pro-nuclear members who may compare its viability against coal but not stray beyond that to renewable energies.

We have another bill before the Senate this week, the Fuel Tax Bill 2006, which is part of a package designed by Treasury—which knows so much, of course, about greenhouse—which will destroy the renewable biofuels industry in this country. I should also mention that we have various states implementing their own greenhouse gas abatement price signals and emissions trading schemes because the federal government refuses to establish a national scheme. In fact, there was a scheme put together by the Australian Greenhouse Office some years ago, and that would have provided the groundwork for us to proceed with a national plan. But no, it is not just gathering dust; it is very much in the too-hard and not-to-be-interested-in basket.

All in all, Australia's approach to climate change is laughable and, frankly, an international embarrassment. If I hear the minister talking about how much has been done to reduce greenhouse gases and mentioning yet again the appliance labelling for water efficiency—which in fact the Democrats pushed the government into doing—as one of the key climate change measures I think I will scream! Climate change and our energy future is a very serious economic, social and environmental issue for Australia, and the federal government has no long-term sustainable plan to address it. The International Energy Agency has concluded that environmental sustainability is Australia's biggest single energy policy challenge.

The issue of energy is being dealt with in at least six different departments by this government: the Department of the Environment and Heritage; Department of Industry, Tourism and Resources; the Department of Education, Science and Training; the Department of Agriculture, Fisheries and Forestry; Treasury; and the Department of Foreign Affairs and Trade—and no doubt the Department of the Prime Minister and Cabinet.

We have various bodies responsible for research, monitoring and regulation of various energy related areas, such as the Renewable Energy Regulator, the Energy Market Commission, a number of CRCs, NEMMCO, ABARE and Geoscience Australia—and that is just to name a few.

But there appears to be no coordinated, holistic approach to sustainable energy solutions and implementation and no-one is actually delegated to undertaking independent research and public consultation within a national framework. In fact, the only body that was close to understanding those kinds of activities, the Australian Greenhouse Office, once proudly acclaimed on the world stage as the first such department in its own right, was shunted back into the Department of the Environment and Heritage as a mere division. We do not hear very much from the Australian Greenhouse Office now, as a result of that.

Both the Productivity Commission and the Business Council of Australia argue that the current lack of a long-term national policy framework on climate change is impeding investment decisions in Australia's energy infrastructure. The Australian Conservation Foundation argues:

To reduce greenhouse gas emissions and encourage investment in our energy system we need a strong, nationally consistent policy framework that creates a long-term price signal for greenhouse pollution and consistently supports and drives the development and deployment of new low greenhouse technologies.

That is something the Democrats have been saying for a very long time. We agree that we need this strong, nationally consistent policy framework and we believe that what is sorely needed is an independent body that can plan and coordinate sustainable energy solutions.

To this end I will be moving a second reading amendment to the Energy Legislation Amendment Bill 2006 calling on the

government to establish a sustainable energy commission. Australia cannot afford to keep addressing climate change in a piecemeal, faddish way. It is my hope that this evening the Senate, in particular the government members of the Senate, will support this amendment. I move:

At the end of the motion, add:

“but the Senate is of the view that:

- (a) The Government should establish a Sustainable Energy Commission;
- (b) The Sustainable Energy Commission should be responsible for:
 - (i) providing leadership and national coordination of sustainable energy policies,
 - (ii) conducting public inquiries and research on sustainable energy options and strategy,
 - (iii) advising government policy makers and stakeholders across government on sustainable energy matters,
 - (iv) monitoring and reporting on progress of sustainable energy policy and industry programs,
 - (v) monitoring international progress on sustainable energy policy, and
 - (vi) educating and disseminating information on sustainable energy”.

Senator MILNE (Tasmania) (9.46 pm)—I rise tonight to support the amendment to the Energy Legislation Amendment Bill 2006 moved by Senator Allison for the establishment of a sustainable energy commission for Australia. The issue, as Senator Allison has outlined, is the completely ad hoc manner in which energy is addressed in Australia and indeed how industry is addressed in Australia.

We have no industry policy and no energy policy. We have a policy that simply says: ‘We don’t pick winners of any kind. We just support everything and then something might emerge from the pack.’ Whilst we say we do

not support anything, we direct all the subsidies to the industries that we have known for a long time are traditional supporters of and donors to the conservative side of politics. We get the big end of town—the coal industry, the uranium industry and the mining industry generally—all supporting government policy and the government arguing there should be a level playing field when it comes to renewables but never acknowledging the extent of the subsidies that are already there for the mining industry and the oil and gas industry in particular.

The Australian Greenhouse Office has been there in theory. As Senator Allison points out, it is now part of the Department of the Environment and Heritage. That was supposed to coordinate a whole-of-government approach in relation to energy policy, and that has not occurred. In the last few weeks we have seen total confusion. The government talks about energy security. That is a critical issue, even though it was not mentioned by the Treasurer, Peter Costello, in his budget. He did not mention energy security, climate change or oil depletion as challenges to the budget. The budget died on budget night. Is anyone talking about the budget? I do not think so. Since then, the whole debate in Australia has been focused on energy issues.

The issue of energy security is seen by the government simply in terms of, ‘Let’s make sure we’ve got enough energy to support the Australian lifestyle, the Australian way of life.’ The fact is you cannot deal with energy security without dealing with the ramifications of climate change and also the geopolitics. That brings in the Department of Foreign Affairs and Trade, environment and all the sustainability issues. That is what is wrong with the Prime Minister’s whole push on nuclear—it fails to recognise that energy security has national security ramifications.

It was completely laughable to hear Senator Ellison talking about the fact that the government did not consider nuclear reactors as a terrorist threat. It was completely absurd. Given that every other government around the world looking at its energy strategies recognises terrorism as a concern with nuclear power stations, I find it extraordinary that the Australian government, with its supposed interest in national security and terrorism issues, failed to recognise reactors as a potential target.

The other issue with climate change is that it is the biggest national security threat that we face. It is not a security threat in terms of an invasion as such but it has the potential to disrupt the entire region. Imagine if we had abrupt climate change and massive relocation of people. There would be all sorts of issues about water shortages and food scarcity. There would be internal dislocation and movement from the Pacific. New Zealand have made it clear that they will cooperate with a number of Pacific island countries and recognise climate refugees. Australia, of course, are saying not only will they not recognise climate refugees but they will not take even the most basic mitigation measure and ratify the Kyoto protocol.

We need a whole-of-government approach to the issue of energy security, recognising that inherent in that are the issues of sustainability and dealing with climate change. If we actually had that focus, we would recognise that nuclear is a complete nonsense when it comes to energy in Australia because we do not need it, it is too slow, it is too expensive and it will not address the greenhouse gas issue in the time frame that is required. Plus, it is dangerous, which is why President Bush would like to set up a new alliance of nuclear energy supply centres around the world, and he is discussing with our Prime Minister the possibility of Australia becoming one of those nuclear fuel sup-

ply centres. That is what this debate is about, and it is about time we had some honesty about that.

It was quite refreshing to hear Senator Minchin today be honest about it and recognise that, as an economic rationalist, as he says he is, there is no way known that nuclear is ever going to be economically viable in the next hundred years in this country, even with a carbon tax. That is getting closer to recognising what the real agenda here is, and that is that the Australian budget and Australian economy are essentially dependent on corporate profits from mining and that this is about the expansion of uranium mining and the export of uranium to China and India. It is as simple as that.

I support the idea of setting up a sustainable energy commission. The UK has its Sustainable Development Commission, which looks at issues in the whole area of sustainability, and we should be doing exactly the same. We need some national coordination in energy policy and we need national coordination and prioritising in industry policy as well. We need stakeholders and the community to be involved in these discussions and we need to have a monitoring of progress on sustainable energy policies. In terms of renewable energy policy, Australia is so far behind it is embarrassing. If you look at the German experience, where they decided to move from nuclear to solar, you will see that they introduced a feed-in law. This excites many Australians when you talk to them about it. The Germans introduced a law which required energy wholesalers to purchase renewable energy from anyone who wanted to sell it to them for a fixed price and for a fixed period of time. The result of that was that people could go to their bank and borrow money in order to cover their roof with photovoltaic cells because the bank could be assured of a fixed return on the amount of energy that was sold into the grid.

The result has been that Germany has made a massive shift out of nuclear and into renewable energy, solar in particular, and has created over 150,000 jobs in the process—more jobs than ever they had in the coal industry. What is more, they are generating a whole new industry sector for Germany.

The Chinese are doing the same. They have set a 15 per cent renewable energy target, making Australia's two per cent look absolutely pitiful and ridiculous. Dr Shi has become Australia's first solar billionaire as a result of rolling out photovoltaic technology in China—not in Australia, but in China. He has made \$1 billion and given money back to Professor Martin Green at the University of New South Wales for his work there because the government does not fund the research work that is required. What an embarrassment. What a shame for this nation. Down here at the ANU we have sliver cell technology, which is reducing the cost of photovoltaics by 75 per cent. That also is a technology that is now being chased by the Germans, the Japanese and the Chinese. If we are not very careful, that technology will head overseas as well. There is example after example of the government just turning its back.

What about solar thermal? That is a fantastic technology. The CRC for coal research, in its recent paper on solar thermal, said that, for an area of 35 square kilometres of Australia, solar thermal could meet all of Australia's baseload electricity. That is amazing. They say that it can be cost-effective with coal in seven years. Why are we talking about nuclear even for a minute when we have the potential to roll out solar thermal? It is not a pie in the sky. The US already has a 250-megawatt solar thermal station operating as we speak. The advantage of solar thermal is that it can be used in conjunction with coal as a transition strategy that removes the problems of burning coal in power stations

and treats coal as a chemical to be used in association with the solar technology so that you get the baseload power.

It is extraordinary to me that we have a government that is so wedded to the dollars from coal and uranium exports and the big end of town, the whole mineral industry, that they are not looking at the clever end. In terms of the low emissions technology fund, it is going to technologies, as Senator Allison said, like carbon capture and storage, that have not been proven. By adopting that strategy, you end up with business as usual: ongoing coal mining and ongoing construction of coal-fired power stations. We have heard a lot from the government, including from the science minister, Minister Bishop, about how nuclear is supposedly cleaner and greener because it is greenhouse friendly.

I want anyone in the government—I do not mind who it is—to tell me: what is the carbon footprint of the Roxby Downs expansion at Olympic Dam? What is not being said is that currently that mine uses about 30 million litres of water a day out of the Great Artesian Basin. The expansion will see it going to about 150 million litres a day. Where are they going to get it from? They cannot get it out of the Murray River and they cannot get it out of the Great Artesian Basin. They are going to have to build a desalination plant in South Australia to desalinate water to send it up to the Olympic Dam site. How are they going to fire the desalination plant? They will either have to go with a coal-fired power station or a gas-fired power station—either way, it is a fossil fuel solution. So much for saying that uranium out of Olympic Dam is somehow going to contribute positively in relation to greenhouse. It is going to make a mega negative contribution to greenhouse—and add to that the costs of the energy involved in processing the uranium and the mining emissions that are going to come from transport fuels.

Then, of course, at the end of the day, if you look at the whole nuclear fuel cycle, you have the decommissioning of the plants. The government could not even put a dollar figure on what it is going to cost to decommission Lucas Heights. If they cannot even do that, why are they having an inquiry into this whole issue? Let us put a dollar value on that before we start, so that we get some real figures out there in this whole energy and policy discussion mix instead of misleading the Australian people into thinking this is something to do with energy security or greenhouse. It is to do with neither. It is simply to do with the government's relationship with BHP Billiton, the export contract with China and the potential export contract with India, which of course would undermine the nuclear non-proliferation treaty.

What is incredibly ironic is that the two wind farms that were signed onto by Roaring Forties in the last week are going to return, on their own, more than half of the dollar value that was expected from the estimated return on the deal from China on the uranium exports. So let's get real here about the kind of dollars we are talking about, the mess we are going to create for future generations, and the real prospects in terms of which energy sources Australia could employ that would be sustainable, create jobs, strengthen the economy and contribute to our global responsibility on greenhouse gas emissions.

That is why I support Senator Allison's initiative here in trying to set up a sustainable energy commission that goes across government and stops this ad hoc approach—where the Department of Foreign Affairs and Trade does not realise that climate change is a national security issue, where the industry groups do not have any sense of the potential of these new industries to create jobs and where you have the environment department giving one set of advice in relation to wind farms. We all know full

well that the wind farm decisions were based on a promise during the election campaign in a marginal seat that if the people voted for the Liberal Party the minister would stop the wind farm, and that is what happened. Then in Western Australia it is Senator Campbell's bid to change from the upper house to the lower house and get preselection in that seat that has led to the decision on the West Australian wind farm.

Senator Ian Macdonald—What a fantasy!

Senator MILNE—I am glad that Senator Macdonald thinks it is a fantasy. It is certainly what people think may occur in terms of the member for that particular seat, Wilson Tuckey, and the future preselection to the lower house—but we will see in the course of events what does happen in relation to that. But that is the kind of idiocy that we are getting in climate policy across Australia and the lack of consistency and the lack of actual real concern about sustainability and commitment to it. That is why setting up a sustainable energy commission would be a very good idea, and I commend Senator Allison on this initiative. The Greens will be supporting it.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (10.02 pm)—I thank the senators for their comments and contributions to the Energy Legislation Amendment Bill 2006, not that they had anything to do with the legislation—but we do come to expect that. The bill will in fact amend part IIIA of the Trade Practices Act 1974 to ensure that two greenfields incentives for the investment in new pipelines—which were passed by the South Australian parliament on 8 June 2006—can function properly. The bill assists with encouraging new pipeline developments to meet Australia's increasing demands for natural gas.

In relation to Senator Allison's amendment to the legislation, the government will not be supporting the amendment. In fact, we have a body that looks after the issues that Senator Allison was looking to deal with. That body is the Ministerial Council on Energy which was established in 2001 by the Council of Australian Governments, and that body is the national policy and governance body for the national energy market. That body essentially looks at all of the issues that Senator Allison is addressing in her amendment. We will not be supporting the amendment and I commend the bill to the Senate.

Question negatived.

Original question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

AUSTRALIAN TRADE COMMISSION LEGISLATION AMENDMENT BILL 2006

Second Reading

Debate resumed from 13 June, on motion by **Senator Kemp**:

That this bill be now read a second time.

Senator IAN MACDONALD (Queensland) (10.04 pm)—I want to take only a little of the Senate's time to urge it to support the Australian Trade Commission Legislation Amendment Bill 2006 which makes changes to the governance arrangements of Austrade and which will establish an executive management structure with a CEO directly accountable to the minister and bring the agency under the coverage of the Financial Management and Accountability Act and the Public Service Act. This has happened following the Uhrig report into a number of government statutory authorities and officeholders, and it is part of a long-term approach by the government to have a look at

which agencies are better conducted as independent statutory authorities and which should be brought more closely under the department.

I want to use the opportunity to congratulate Austrade on the work it has done over the years. I certainly hope that the new arrangements will be appropriate in continuing to support Australia's export activities to the world. Over the years Austrade has been in charge of the Export Market Development Grants project, and a lot of Australian exporters have done a lot of work and have been assisted by Austrade. I want to briefly mention Mr Laurie White and his company Austavate International Pty Ltd that has, over many years, done a considerable amount of very good work in promoting Australia's exports to Asia, and for doing that he has received a number of commendations over a long period of time. He has been very much involved in establishing new industries and exporting Australia's cleverness, one might call it, to the world.

Mr White is now in semiretirement and I happened to meet him quite by chance a couple of years ago. But he has been working on a project in China. He has made an application for an export market development grant and his application has gone in. I understand those applications are dealt with by the department or Austrade in that they are assessed and, if they are appropriate for funding, they are funded and if they are not appropriate the application is rejected and reasons are given for the rejection.

Unfortunately, in the case of Austavate's application for an EMDG, the process seems to have gone somewhat awry. On 5 December 2005 there was a routine audit, conducted by a Mr Paul Newby, of the company's paperwork which would support the EMDG claim. As I said, I understand routine practice is that, following inspection of the

papers, the application is either approved or rejected and, if it is rejected, an explanation is given. In this particular instance, this process does not appear to have been followed and there have been a number of unfortunate incidents in the way the application has been dealt with.

On the day following the inspection in Sydney—that is, on 6 December—an inspection in Hong Kong was attempted. Finance inspectors from, I assume, Austrade actually called on the offices of the Hong Kong representative. No appointment had been made, no contact had been made, with the proposed interviewee. He happened to be in mainland China at the time. But these two inspectors came unannounced to interview him. When his brother told the finance inspectors that the man they wanted to interview was in China, they said that they would get back to him. The brother obtained some telephone numbers. Unfortunately, the inspectors did not ring back, so the man to be interviewed actually rang the inspectors and was told that they were returning to Australia the next day and so they could not see him. Since then, these inspectors have demanded that the Hong Kong representative come to Australia to be interviewed with Mr White.

According to my information—and my information comes from Mr RG Strange, an ex trade commissioner and the first chairman of the Export Market Development Grants board; he has given me a complete statement about this—it appears that the processes have been rather inappropriately followed in this matter. I have written to Mr Vaile about the matter and I am sure that Mr Vaile will be pursuing the matter to make sure the application is properly assessed.

As I say, Mr White would like to get the grant, but he is philosophical about it: if he is eligible, he will get it and, if he is not eligible, his application will be rejected and he

will be told the reasons for the rejection. But this process where inspectors are attempting to convince Mr White that he should actually withdraw the application, which he refuses to do, all seems to be a bit untoward. Now, it is an area that I am not particularly familiar with, but I have, as I said, referred this to Mr Vaile and I am sure he will fully investigate it.

Of course, it is all relevant to the bill before the chamber at the moment in that we are looking at a new form of operation for Austrade. Austrade has over many years done an excellent job. Its officers are excellent, all working in the interests of Australia. This one little glitch that has been brought to my attention is, I am sure, just that, a glitch, and is not representative of the work that has been done by the Austrade board and the Australian Trade Commission over many years. This bill before us today will bring in a new arrangement for the governance of Austrade, following the Uhrig report on the issue. It is a bill that I think deserves support and I urge the Senate to support it.

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (10.11 pm)—I thank Senator Ian Macdonald for his comments and his generosity about Austrade. I note the questions that he raised and I undertake to ensure that they will be answered in due course, but I also understand that Minister Vaile has indicated that he will give Senator Ian Macdonald some further information.

In the brief summing-up that I would like to do, I make the point that it was a great pleasure for me to be the parliamentary secretary for trade. I got to know Austrade very well in the brief time that I held that position. Austrade has 130 officers in 30 countries around the world. It is the primary facilitator of Australian trade. It is quite frequently the first point of contact with Australia for for-

eign businesspeople. I do commend the quality of the people, their training and the programs, including the EMDG scheme, which was subject to legislative change earlier this evening.

Austrade are the facilitators of an extremely busy trade agenda; there is no question about that. We are a great export country and we have a great export culture which is being developed and encouraged by Austrade. People like Australians. They like dealing with us and they like to trade with us, and Austrade certainly play a very important role in that. They have of course a very busy agenda in terms of the promotion of the FTAs that have been negotiated over the last couple of years. I think the work that they have done on the US FTA is really quite remarkable. It involved an incredible amount of work in terms of identifying the benefits on a state-by-state basis for Australia and the United States. Austrade is an extremely professional organisation and it has a lot of work to do, of course, in the general trade mix, in connection with the very busy trade policy agenda in which Australia plays a very big part—especially at this time, with the conclusion of the Doha Round of the WTO which I know a lot of senators would be interested in.

This bill that we are dealing with tonight amends the Australian Trade Commission Act 1985 by bringing Austrade under the coverage of both the Financial Management and Accountability Act and the Public Service Act and by establishing an executive management structure, with a CEO directly responsible to the Minister for Trade. I think it is probably appropriate at this time to thank, on behalf of the government, the work that the board of Austrade have done. It is a very professional organisation and it has certainly been helped in that regard by the board, but times have moved on. The amendments in this legislation are in re-

sponse to the review of the corporate governance of statutory authorities and office holders conducted by Mr John Uhrig. He recommended some changes which the government has chosen to accept. The amendments do not impact on Austrade's functions or Austrade's delivery of export promotion and facilitation services to Australian business. I commend Austrade and I commend the legislation to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

EXCISE LAWS AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

EXCISE TARIFF AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

CUSTOMS AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

CUSTOMS TARIFF AMENDMENT (FUEL TAX REFORM AND OTHER MEASURES) BILL 2006

Second Reading

Debate resumed from 13 June, on motion by **Senator Kemp**:

That these bills be now read a second time.

Senator STEPHENS (New South Wales) (10.15 pm)—I begin by thanking the participants in the Senate inquiry into the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006, the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006, the Customs Amendment (Fuel Tax Reform and Other Measures) Bill 2006 and the Customs Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006 and the officials who were required

to produce the report on such short notice. It is an increasingly common trend that legislation is being referred to committees for consideration without adequate time for witnesses to prepare submissions or for the committee to do justice to the kind of legislation that is being presented.

The report on these bills, which was tabled out of session last night, makes some rather strong conclusions in favour of reform of alcohol taxation. We received quite significant evidence in that inquiry about the need for reform of alcohol taxation, but we were cautioned about doing it in an ad hoc manner. On that basis, for expediency, I indicate that Labor is supporting the government's amendments to these bills but is not supporting Senator Murray's amendments, simply because we believe that there needs to be much greater scrutiny and consideration of the proposals that he has put before us.

Although a participant in the inquiry, Labor chose not to make any additional comments to the inquiry report, but I must say that recommendations 2 and 3 of the report, which relate to volumetric taxation of alcohol and excise on low-alcohol products, including some ready-to-drink products, are technically beyond the scope of the terms of reference of the inquiry that Senator Murray initiated. The bills do not propose any change to the excise rate for alcohol products, although some minor definitional issues are addressed. Consequently, any recommendation that seeks to indicate a position in relation to excise rates falls outside the scope of the inquiry report. The bills give effect to the fuel tax bills. They also involve some streamlining of excise customs classifications for alcohol and tobacco and changes to the rate of duty for aviation gasoline, which is in effect a cost recovery measure.

The Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill changes the list of products subject to excise so that only two rates of duty apply: one for aviation fuel and one for other fuels. Excise duty of 38.143c per litre and customs duty at the excise equivalent rate of 38.143c per litre will be applicable to all fuels other than aviation fuels. Relief from the incidence of fuel tax is delivered in the fuel tax bills through a provision for fuel tax credits. The bill proposes a nine per cent reduction in the duty rates for aviation gasoline and kerosene. New arrangements for cost recovery of aviation fuel have also been introduced. The reduction in the duty for aviation gasoline was announced in November 2005 as part of these changes. However, it is not clear why such a reduction is needed, and I pose that question to the minister this evening and invite him to answer it in his summation of the debate on the bills.

Schedule 1 of the bill amends the Excise Act 1901 and makes consequential amendments to a number of other acts to implement measures to streamline existing excise arrangements. It also amends the Energy Grants (Cleaner Fuels) Scheme Act 2004, adding a new fuel tax to the cleaner fuels grants scheme. Renewable diesel, which is a liquid fuel manufactured from vegetable oils or animal fats through a process of hydrogenation, is added to the definition of 'cleaner fuel'.

Schedule 2 of the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006 repeals a number of acts. Coal is listed in the excise tariff and has attracted a free rate of duty since 1992. The inclusion of coal in the excise tariff means that it is an excisable product and, therefore, coal producers are required to be licensed as excise manufacturers. Coal is omitted from the excise tariff rather than included at the free rate of excise duty, as in the existing law, the

Coal Excise Act, which contains licensing and other requirements. It is repealed as it is no longer considered necessary to impose these requirements on activities involving coal.

The Spirits Act, which provides for controls over the manufacture of spirits, including brandy, whisky, rum and methylated spirits, is repealed on the basis that most of the provisions it contains are adequately covered in the Excise Act or are no longer relevant to the effective management of the alcohol taxation regime. The Distillation Act, which provides controls on the distillation of spirits, including stills, distilleries, licences and fortification of Australian wine, is also repealed.

The Customs Amendment (Fuel Tax Reform and Other Measures) Bill amends the Customs Act 1901 in three ways: to strengthen customs control over certain imported goods that are used in the manufacture of excisable goods; to repeal the customs related provisions of the fuel penalty surcharge legislation; and to replicate certain provisions of the Spirits Act 1906, which, again, are to be repealed.

The purpose of the Customs Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006 is to amend the Customs Tariff Act 1995 to implement changes that are complementary to amendments contained in the Customs Amendment (Fuel Tax Reform and Other Measures) Bill 2006. These measures are designed, as the government argues, to strengthen customs control over certain goods that are used in excise manufacture and ensure that excise equivalent goods are subject to the same duty when imported as they would be under the Excise Tariff Act 1921—that is, the same products when manufactured or produced in Australia.

In the House of Representatives, the member for Hunter asked the Assistant Treasurer a number of questions. The minis-

ter has answered one of these questions in part. Minister Dutton has not proved very cooperative in answering questions put to him in the parliamentary debate on the bills. So I now ask the minister representing him in this chamber to address these matters. For the record I will put the questions again. The first question is as follows: these bills reduce the customs duty and excise for Avgas and AVTUR by nine per cent. The minister has indicated in the explanatory memoranda to these bills that reduction is part of a change to the cost recovery regime for aviation services. However it is not clear exactly how this reduction in the excise and customs duty operates as part of the new arrangements. So I now ask the minister: what is the cost to revenue of reducing excise and customs duty rates for aviation gas and aviation turbine fuel?

The second question relates to the definition of biodiesel in schedule 1 item 2 of the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006 and this is quite a significant change. The definition of biodiesel is now to be amended so that biodiesel includes liquid fuels manufactured by chemically altering vegetable oils or animals fats like tallow to form mono-alkyl esters. Labor now seeks information as to whether this change in definition will allow manufacturers to claim that products previously not part of the biodiesel regime will now be able to claim their products as biodiesel products with the consequent concessional excise regime applying. If the definitional change means that some products will be brought into the biodiesel net that were previously excluded, we ask the minister to provide to the Senate details of the products included and the producers of those products, and to indicate to the Senate what discussions have been held with oil companies in relation to this change. We also ask the minister to consult with his colleagues and report back to

the Senate about any consultations that have been held with oil producers in relation to this definitional change.

The third question is in relation to how the new customs changes relate to biodiesel and ethanol. Will the minister now inform the Senate what is the precise schedule of changes for reduction of customs changes for these products until the full introduction of the new fuel tax regime? We are seeking a table of annual customs rates for these products up until 2020. The minister has provided details of effective tax rates. We are now seeking the precise schedule for proposed customs and excise rate changes. Given those three important questions, Labor is supporting this bill.

Senator MURRAY (Western Australia) (10.26 pm)—These four bills are being dealt with cognately. Like all customs and excise bills, they are difficult to both read and use. They deal with a variety of matters related to excise and customs. Parts of these four bills directly relate back to the proposals in the white paper, *Securing Australia's Energy Future*, that proposed among other things a fuel tax credit scheme to replace the Energy Grants Credits Scheme. These four bills are interlinked in some aspects with the Fuel Tax Bill 2006 and its accompanying consequential amendments bill.

The overall Democrat position on these four bills is not significantly affected by our views on the Fuel Tax Bill 2006 to which we are opposed. With respect to all non-fuel aspects of these four bills, the Democrats support them very fully and we support the bill overall. Although I expect they will inevitably fail because the government has not yet, hopefully, accepted low-alcohol wine and low-alcohol RTDs as policy, I will take the opportunity to propose amendments introducing such a regime for RTDs because I know that by doing so it therefore puts a

schema in front of the Senate and to the broader community that they are able to consider at their leisure.

This amendment of mine continues previous amendment attempts on the same lines, and I will note for the record that I have been a persistent and consistent advocate, as has my party, for the encouragement of low-alcohol products along the same lines as beer. I am pleased to have noted that the Labor Party is supportive of that approach and I am also very pleased to record that the Liberals on the committee led by the chair, Senator George Brandis, are also of the same opinion.

My colleague and party leader Senator Alison will be dealing with the changes to the excise on fuel and its impact on the fledgling biofuels industry in debate on the Fuel Tax Bill 2006. All I will say is that it is very disappointing that the government has seen fit to disadvantage biofuels, which are just getting started and which could hold a key to help secure Australia's energy future.

I will briefly outline the four bills dealing first with the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006. The purpose of this bill is to amend or repeal several acts to effect the government's proposals with respect to excise contained in the energy white paper and simplify and update legislative requirements relating to excise. The bill prescribes circumstances where excisable and imported inputs that may be used in excise manufacture will be removed. The prescription ability is retained. Fuel blending will be considered blending unless the resulting blend is carved out as per the Excise Act or the Fuel Tax Bill 2006. Regulations can be made to limit movement permissions granted by the commissioner of tax, where duty has not been paid. All excise licences expire and specific requirements on expiry and renewal dates are provided for. I note the government

amendments in that respect, and we support those amendments.

Streamlined rules for measuring the volume, weight or alcoholic strength of an excisable good is in the bill. Anyone who possesses a tobacco leaf can be asked to account for it and pay excise duty as if it had been manufactured into excisable tobacco—a good integrity measure. Bottling of duty paid bulk beer is excise manufacture to prevent lower excise liability applying. The concessional spirit scheme is streamlined to reduce administrative burdens on users of concessional spirits and to protect the revenue. Remissions, rebates and refunds are allowed in prescribed circumstances and regulations may be made for and in relation to the Commissioner of Taxation granting approvals in such circumstances. The recovery of debts under section 60 of the Excise Act is covered by the Tax Administration Act 1953, so it is no longer needed as a section. The tax commissioner can direct licence holders to keep, retain and produce records. The bill adds a definition of renewable diesel to mean liquid fuel manufactured from vegetable oil or animal fats by a process of hydrogenation. In noting that point, I recall the somewhat macabre and humorous remark of Senator Bartlett on another bill where he said, ‘They are now replacing a tiger in your tank with a cow in your fuel.’ The bill repeals provisions and certain acts which are redundant or inconsistent with best practice regulation.

Moving to the second bill, the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006, the purpose of the bill is to repeal the current excise tariff and replace it with a new one. The new law impacts in the following areas: the excise tariff is streamlined, incorporating a simpler two-tier numbering system, replacing a complex numbering system and disaggregations often based on the prospective use of the product as the basis for the classification; conces-

sional rates of excise duty for burner fuels and free rates of duty for fuels used otherwise than as fuel are no longer available; duty-free treatment for products for use by certain parties is no longer delivered by free rates in the excise tariff; fuel from various non-petroleum sources is captured by the excise tariff—all fuels which can be used in an internal combustion engine should be subject to fuel tax, so the excise tariff captures liquid fuels irrespective of their production, method or feedstock—and a certain product which is recycled for own use is excluded; the tobacco rate will apply to all tobacco products not in stick form, including snuff tobacco—another good integrity and health measure; and certain definitions are clarified and redundant definitions and indexation provisions are omitted. These definitions relate to alcohol and fuel.

The third bill is the Customs Amendment (Fuel Tax Reform and Other Measures) Bill 2006. The purpose of this bill is to amend the Customs Act 1901 to strengthen Customs control over certain imported goods that are used in the manufacture of excisable goods, to repeal the customs related provisions of the fuel penalty surcharge legislation and to replicate certain provisions of the Spirits Act 1906, which is to be repealed, as opposed to—what do priests do? I am trying to remember the word for what priests do with people whose heads spin around.

Senator Brandis—Exorcise.

Senator MURRAY—They are exorcising the Spirits Act 1906. Thank you, Senator Brandis.

The fourth bill is the Customs Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006. The purpose of the bill is to amend the Customs Tariff Act 1995 to implement changes that are complementary to amendments contained in the above act. This bill amends the Customs Tariff Act by:

reducing customs duty applicable to aviation gasoline and aviation kerosene, in line with alterations to the Excise Tariff Act 1921; amending schedules 3, 5 and 6 of the Customs Tariff Act to ensure uniformity of customs duties with excise rates of duty; changing the definition of mead to conform with the definition in the A New Tax System (Wine Equalisation Tax) Act 1999—which I wish they had not done, because I think it should have been done volumetrically; aligning the snuff tobacco rate with excise rate and imposing a duty on tobacco leaf of \$290.74 per kilogram to protect the revenue—this import duty will not be payable when the tobacco leaf is used in excise manufacture; repealing items 44 and 67 of schedule 4 of the customs tariff that currently allow concessionary importation for excise equivalent goods that are for use in the manufacture of excisable goods; reclassifying biodiesel from chapter 15 to chapter 38 of the customs tariff; and implementing related and consequential amendments to the customs tariff. A fairly formidable list.

Numbers of these changes are administrative and technical and modernise and improve the customs and excise regime, and are to be welcomed as such. The minor changes to tobacco and alcohol are positive from a health, administrative and tax perspective. The real issue of contention with these bills, more so with respect to the fuel tax bills, concerns biofuels and changes to fuel taxes.

As we all know, excise is levied in part to influence consumer behaviour. That is primarily the reason why the excise on cigarettes is so high. It is an attempt to give people a reason to stop smoking, and it has been effective. In case the health benefits are not a call to action, then a hip-pocket shock might do the trick. I am pleased to see in this legislation amendments are proposed to treat all tobacco products in the same way as cigarettes. And I want to compliment the gov-

ernment, as I have in previous debates, for their action in introducing a far better excise regime with respect to tobacco products than we had formerly. This will have an impact on the number of people who roll their own cigarettes, not to mention chewing tobacco, both of which are heavy contributors to the rate of mouth and throat cancer in Australia.

I took the opportunity to refer these bills to the Senate Economics Legislation Committee to examine alcohol related issues. The alcohol changes in the bills are supported by the various sectors of the industry, who welcome the streamlining. That was not at issue. The committee reference was, quite frankly, an excuse to address some of the larger issues which sit on the horizon and, because these sorts of bills which affect alcohol only come along once in a while, we had to take the opportunity when it came. I am grateful to both major parties for supporting that reference.

The health professionals and spirits industry have urged the government to continue incremental reform—and that makes a great deal of sense to me, given the high stakes at hand with respect to the industry concerned—in particular, as for low-alcohol beer, to introduce price incentives for low- to mid-strength ready-to-drinks. A great virtue of ready-to-drinks and the reason I and others have strongly supported them is that they are a measured drink and you get away from the barbaric practice of people just sloshing a bit of Coke into a large amount of spirit and not having a measured drink. Health authorities continue to advocate customs and excise tariff changes that embrace volumetric taxation for wine and cider and differential tax rates based on alcohol strength.

As a party, the Democrats continue to be the strongest advocates in parliament for further alcohol tax reform to encourage responsible consumption but, as individuals, I know

that there are members of all parties who are very supportive of the view that further alcohol tax reform should encourage responsible consumption. In that respect, I want to put on the record my recognition of the courageous stance—and the man is not without courage in any forum—of the committee chair, Senator George Brandis, who has grasped that nettle and has made recommendations for the government to consider the long-term adoption of a volumetric tax system for all alcohol products and has recommended that the government commence planning and consultations with relevant parties as a step towards this goal. He quite rightly used a long-term approach. It is a difficult issue and needs careful management. His other recommendation in this area was that the government apply the same tax and excise treatment to low- and mid-strength ready-to-drink alcohol products as it applied to similar strength beer products. The tax and excise structure for RTDs should incorporate the three-tiered structure currently applied to beer, with the 1.15 per cent excise-free threshold that applies to beer extended to low- and mid-strength RTDs but not to full-strength RTDs with 3.5 per cent alcohol by volume and above. I thought the chair's summary of the evidence and the support of the other parties in ensuring a unanimous report was very important, so I express my thanks to you, Sir, for your chairing of that committee.

I have worked long and hard to bring more equity into the way in which alcohol is taxed in Australia, because I have strong connections to the industry and always have. I am very much connected to their economic interests, but I also have a very strong social view, and I think taxation has a major part to play in the way in which responsible consumption can occur. Alcohol is alcohol. It is a basic principle that like goods should be taxed alike. In the case of alcohol, that is volumetrically. Discrimination in tax levels

should only occur as a result of sound policy reasons, which have economic and health considerations in this particular case. In the case of alcohol, that requires tax concessions to encourage the consumption of low-alcohol beverages. We have the precedent and we know how well it works and has worked with beer. Economic support for any part of the industry, such as small wine farmers, should be via grants or rebates. It should not be via discriminatory tax exemption. I am supportive of measures to boost the economic circumstances of regional communities through encouraging tourism and through maintaining small business wine farmers on the land, but I do not think it should be done through tax exemptions; I think it should be done through grants or rebates.

One reason excise is levied on alcohol is that the government, health authorities, doctors and the road safety councils around the country all realise that alcohol impacts on the health of our citizens, it contributes to family violence, it contributes to road fatalities and it increases the strain on our health system. So any strategies which can be implemented to limit the abuse or misuse of alcohol consumed should be supported. There is no point in spending money on road safety advertisements about drink driving, healthy eating and drinking habits or on family violence issues if the excise and customs system does not play its part in pricing to affect consumption. As I have said on a number of occasions before, the government's low-alcohol policy is insufficient, because it only focuses on beer when there are clear opportunities for incentives to encourage low-alcohol ready-to-drink beverages and wines.

As I said earlier, I took the opportunity to refer these bills to the Senate Economics Legislation Committee to examine alcohol related issues. In the submission from Beam Global Spirits, they urged the government to

provide identical excise tax treatment for RTDs as it currently does to low- and mid-strength beer—that is, low- to mid-strength RTDs should have access to the 1.15 per cent excise-free threshold that is currently available to all beer products, because the effect of that is to lower the price. If you lower the price, you encourage consumption of those low-alcohol products. You might think, ‘They would say that, because it works in their favour.’ Of course it does. They are going to sell more products, but this argument is supported by the Alcohol and Other Drugs Council of Australia and many other health bodies which were listed in submissions to us. In their submission, the Alcohol and Other Drugs Council of Australia pointed out:

Outside of beer, little incentive exists within the current tax system to manufacture, promote and consume reduced strength alcoholic products.

And that is not a group, as the chair said in his report, that could be seen to have its own bottom line as a motivator.

This approach, advocated by both sides of the argument, is about public health. In Australia, there are more than 3,200 alcohol related deaths per annum. More than 400,000 hospital bed days are taken up with alcohol related illness and an estimated \$4.5 billion of taxpayers’ money is spent addressing alcohol related harm. That makes for a very stretched public health system. Many of the submissions to the committee pointed out that, from a public health perspective, the excise and taxation on alcohol should be based on alcohol content and the strength of drinks rather than the cost of manufacture or the method used to produce the alcohol. The policy priority for government should be—and it is not reflected in this new raft of legislation—to introduce excise taxation incentives for the low-alcohol consumption of RTDs and wines.

Although I am supporting the passage of these bills, I still take issue with the wine equalisation tax. I have been against it from the start—although I should note that my party was not—because it has created a low-price cheap alcohol cask market that is at the centre of alcohol abuse and because as a value-added tax it punishes the premium and small business bottled wine sector. The wine industry in Australia has exploded over the last 15 years and now there is a wine glut in Australia where well-known winemakers are being forced to the wall. The way in which the excise has been levied on wine is part of the problem. The way in which excise is levied on premium wines impacts on the ability of that end of the market to do well.

These customs and excise bills yet again do not address the volumetric taxation of wine. Part of the consequences of such a decision by the government is that the economics of the industry are distorted. I notice the government has again been lobbied by the wine industry to provide a bail-out, and that lobbying has been successful. I notice that in legislation soon to be in this place, the Tax Laws Amendment (2006 Measures No. 3) Bill 2006, one of the schedules we will be voting on is to increase the WET producer rebate from \$290,000 to \$500,000.

That kind of ad hoc approach to industry support seems absurd. Why not create a system in which the wine industry is assisted in a sensible, ongoing way through industry support, rather than distorting the excise system so that wine industry support ends up as a greater priority, and pricing wine casks so that the appalling alcohol abuse in some Indigenous communities, including in my state, can be lessened through price mechanisms. This is further evidence of a short-term approach being taken to a problem, rather than a long-term, considered plan to maintain the viability of the industry.

Once again, I commend the chair of the committee that looked at it for understanding that point and making it in the report. Cheap cask wine is at the centre of alcohol abuse, which in turn is a cause of family and domestic abuse. Price affects alcohol consumption. That is empirically established fact. A simple change in the way the excise is levied has the potential to change consumer habits. The government should take that step, and support it with advertisements, family assistance programs, housing programs, health programs and so on. Volumetric taxation of wine is, in the long term, the way to go. (*Time expired*)

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (10.46 pm)—Tonight, we are addressing the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006, the Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006, the Customs Amendment (Fuel Tax Reform and Other Measures) Bill 2006 and the Customs Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006. The main part of my speech will address the alcohol excise. These bills form part of a package of legislation required to make changes to customs and excise arrangements, and to replace the current system of fuel tax concessions with a single fuel tax credit system. The overall package will simplify the current system of fuel tax concessions and make it more transparent. I intend to make further comments on these fuel excise initiatives for business in my speech on the Fuel Tax Bill 2006. I understand the government is responding to Senator Brandis's report on it, and we will see that bill when the government has looked at that.

This package of four bills also brings into effect certain changes for the Australian distilled spirits industry, and I wish to concentrate some of this speech on the aspects of

the bills which relate to liquor. I have maintained an interest in this industry over a period of more than 20 years. I have always been a strong advocate of the Queensland sugar industry, and I have spent much of my 23 years in the Senate looking after sugar's subsidiary value-added industries. You could not get a better example of this type of industry than Bundaberg Rum. Its base is in the electorate of Hinkler, whose political interests are looked after by my good friend and lower house colleague Paul Neville.

Distilled spirits is one of the main tertiary products of the sugar industry, and Bundaberg Rum is a company watched over closely by my National Party colleagues and me. We have implemented many changes after consulting with Bundaberg Rum and the Australian distilled spirits industry through DSICA. This package of bills takes the next step. It repeals the Distillation Act 1901 and the Spirits Act 1906. This outdated legislation is no longer required, because the provisions will be covered by the Excise Act. Early on, however, we did identify one area that the Distilled Spirits Industry Council of Australia and the Nationals agreed needed to be addressed.

Maturation of Bundaberg Rum and other high-quality distilled spirits in wood makes the spirit taste better. It takes all the biteys out, improves the characteristics and makes it smoother and more mature. We had to make sure the maturation legislation remained. Otherwise, we would have been taking away the current requirement that brandy, whisky and rum be matured for at least two years before they can be marketed as such in Australia. That keeps us up with the world standard. It means that you cannot make raw ethanol spirit from sugar, grains, potatoes—or whatever else contains hydrocarbon in the form of sugar or carbohydrates—and then flavour it artificially and label it rum, whisky or brandy before selling

it to Australian consumers on its own or in a ready-to-drink mix.

We have fought to keep the spirit maturation rules in place over many years. In 1979, a similar proposal was rejected, and in 1986 I helped to defeat in the Senate a Hawke government proposal to remove the maturation rules. Former member of the National Party Bryan Conquest and I argued that raw ethanol had significantly lower production costs than Bundaberg Rum and its manufacturers, many of whom would enter the Australian market from overseas, would be able to spend a lot more on advertising and marketing in our domestic market and still provide a product at the same or at a lower price, disadvantaging our domestic producers.

The coalition government have proven that we will fight to maintain and improve our high-quality Australian spirit industry and companies like Bundaberg Rum that invest in and support regional communities and workers. I have asked Paul Neville about it, and he has told me that the Bundaberg Rum distillery employs 56 local workers and is the top tourist attraction in the Bundaberg area. The company is currently undertaking a \$24 million expansion plan, which has included putting in new timber maturation vats at a cost of many millions of dollars.

It would have been wrong for us to have allowed such investment to effectively be negated by allowing the importation and sale of lower quality raw ethanol based spirits. I would like to thank the Treasurer, Peter Costello, on this matter. I approached him with the member for Hinkler. He listened and saw what the damage would be if the provision for compulsory maturation were removed and how the product would deteriorate also. The Treasurer moved quickly to assist Bundaberg Rum and the Australian distilled spirits industry by making sure we kept the two-year maturation period in place,

and I thank him sincerely on behalf of the Distilled Spirits Industry Council and our friends at Bundaberg Rum.

I note from the submission by the Distilled Spirits Industry Council of Australia to the Senate Economics Legislation Committee that they are also putting forward a strong case for gaining access to the taxation differential that is applied to low- and mid-strength alcohol beer for their low- and mid-strength alcohol ready-to-drink mixes. I support the detailed supplementary submission by the Distilled Spirits Industry Council of Australia and their arguments to senators, and I recognise that the submission has been examined closely and addressed by Senator Brandis's committee. The peak body for our distilled spirits industry has put forward a well-researched and solid case that the government should give ready-to-drink spirit mixes access to the 1.15 per cent by volume excise-free threshold which applies to beer products, as well as the reduced excise rates that apply to packaged and draught low- and mid-strength beer. Recommendation 3 of the committee's report states:

The Committee recommends the Government apply the same tax and excise treatment to low and mid strength ready-to-drink (RTD) alcohol products as is applied to similar strength beer products. The tax and excise structure for RTDs should incorporate the three tiered structure currently applied to beer, with the 1.15 per cent excise free threshold that applies for beer extended to low and mid strength RTDs but not to full strength (3.5 per cent alcohol by volume and above) RTDs.

I know that the committee's recommendations will be considered as part of the government's process, with my support and with Paul Neville's support. We will certainly back these recommendations.

In the brief time I have left, I want to say that one of these bills contains a provision to make biofuel from tallow. British Petroleum

is going to put quite a large plant in Queensland. Biodiesel made from tallow does not really have the properties of true biodiesel or ethanol. This bill deems tallow to be biofuel and biodiesel, with all the excise benefits that are afforded to biodiesel. I am concerned that this biodiesel really is not biodiesel, but we are blessing it and saying, 'You are biodiesel because the Senate has said you are biodiesel.'

I am concerned that this government has put a target of 350 million litres, which is a very small amount—about 7.5 per cent of our total fuel use—on ethanol and biodiesel. That is an election commitment made by this government. I am concerned that this new biodiesel made from tallow will fill a lot of that 350 million litre target that the government has set and we therefore will not have as much ethanol going into that target. It is a pitifully small target to start with. Flooding the target with this tallow diesel—I will not call it 'biodiesel', because it is not, but it is renewable—and giving it the excise benefits concerns me, as there will not be much room for ethanol production in Australia. I want to put that on the record. I am concerned and I have expressed those concerns in various places where we are allowed to give our positions. I will address the other biofuels and the excise in relation to the Fuel Tax Bill 2006, which is a much more important bill as far as biofuels are concerned.

Let me say that the decision we made on Bundaberg Rum—making sure that rum, whisky and brandy would be matured in oak casks, which take all the bitey things out and make it smooth and mellow—is one that I think is worthwhile pursuing. Some Treasury officials decided that alcohol was alcohol, even if you produce it raw out of ethanol. You could call it what you like and there would be no penalty on calling it rum. You could put a bit of raspberry juice in it and

have a raspberry and rum. But it is not raspberry and rum; it is raspberry and ethanol.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Watson)—Order! It being almost 11.00 pm, I propose the question:

That the Senate do now adjourn.

Mr Clifford Hocking AM

Senator KEMP (Victoria—Minister for the Arts and Sport) (10.59 pm)—I rise this evening to pay tribute to Clifford Hocking AM, who passed away on Monday, 12 June. He was a shining light in the development of artistic culture in Australia, and his life was devoted to nurturing and supporting Australian and international talent.

Clifford Henry Hocking was born in Melbourne on 9 February 1932 to Olive and Fred Hocking. The youngest of five boys, he grew up in Eaglemont and, from an early age, showed an avid interest in music and books. He spent his early working life at the ABC, then travelled to Europe, Lebanon and India, returning home to set up a record store, Thomas's, in Exhibition Street, Melbourne, which he ran until 1961. Back in London, he met up with a young Australian actor who was finishing a West End run of *Oliver!* and wondering what to do next. Hocking suggested a one-man show back in Australia. Between 1962 and 1969, Barry Humphries performed his first one-man shows in three national tours under Clifford Hocking's management.

In 1965, Clifford joined forces with business partner David Vigo and, in the words of Michael Shmith of the *Age*, 'redefined concert presentations and repertoire in Australia'. Over the next 40 years, under the Hocking-Vigo banner, audiences were presented with more than 160 tours of musical groups and more than 40 theatrical productions in 10

different countries. The list of artists is very impressive. It included the Alvin Ailey Dance Company, Blossom Dearie, Cleo Laine, The Chieftains, Elvis Costello, the Harlem Gospel Choir, Jacques Loussier, John Williams, Kate Cerebrano, Max Adrian, Paco Pena, the Peking Opera, Rowan Atkinson, Ravi Shankar, Slava Grigoryan, Stephane Grappelli, Slim Dusty, Stan Getz and the Soweto Gospel Choir—to name but a few.

Clifford was appointed Artistic Director of the Adelaide Festival in 1990 and of the Melbourne International Arts Festival in 1997. He presented the New York City Ballet and the Gate Theatre of Dublin, as well as commissioning the Australian Ballet and the Bangarra Dance Theatre to perform the work *Rites* to Stravinsky's *Rite of Spring*. The *Age* reported earlier in the week: 'His festivals set new standards and broke box office records. His ability to marshal programs that were at once diverse and challenging, yet also entertaining, was almost unparalleled.'

In 1990, he was made a member of the Order of Australia, in 1991 he was awarded the first Kenneth Myer Medallion for the Performing Arts, and in 2001 he was awarded the JC Williamson Award in recognition of his outstanding contribution to live entertainment. More recently, as Director of the Harold Mitchell Foundation, he supported a number of artists, including David Tong and his much-loved Australian Youth Orchestra. I understand that only last week Clifford was speaking with great enthusiasm about the foundation's support for the work of Australian Aboriginal artists to be featured in Jacques Chirac's new museum in Paris, the Musee du Quai Branly.

We will never know the full extent of Clifford Hocking's contribution. To quote again from the tribute in the *Age*, Clifford was:

... such a part of the city's cultural life that people are finding it hard to believe that he has left the stage.

... ..

He was inspirational to at least three generations of arts practitioners.

Clifford Hocking was a man with the courage of his convictions, an extraordinary breadth of knowledge, strong business acumen and the profound and intuitive ability to tap into the human spirit and its potential. He was known for having the best address book in the business. He will also be remembered for his towering intellect, his devastating wit, his inspirational prose, his larger than life personality, his insatiable curiosity, and the love of all the good things in life.

Forty-five years of extraordinary artistic discoveries is a record simply unparalleled in the arts scene in Australia. We bid farewell to one of the finest and possibly the last of the great international impresarios. This is indeed a great loss to the arts community. My daughter, Nathalie Kemp, worked with him for a period of time and was a great admirer of his work. I am sure that all senators join with me in marking the moment in remembering Clifford Hocking.

Albany Port Authority

Senator MARK BISHOP (Western Australia) (11.05 pm)—I rise this evening to address an issue which affects Albany, a port on the southern coast of Western Australia. The issue goes to the heart of this small community of some 28,000 people. It is also, unfortunately, an issue that highlights Defence's disregard for important local concerns. The issue is the clean-up of Albany's Princess Royal Harbour from old, dumped ordnance dating back to the days of World War II. It should have been resolved between the government and Albany Port Authority many years ago.

The ordnance in the harbour clearly belongs to the Commonwealth. But Defence's approach to this issue is the same as it is with many other matters, including military justice. Its approach is adversarial. It has thrown good money after bad trying to defend the indefensible and, in doing so, has made this something of a David and Goliath battle.

It has even incurred the wrath of the judge presiding over the case. Justice Templeman of the West Australian Supreme Court has become totally frustrated by Defence's adversarial attitude. He has ordered transcripts of the court case to be sent to the Minister for Defence, Dr Brendan Nelson. It seems the judge is also fed up with Defence's belief in might over right.

The story starts in 2000, when the Albany Port Authority started dredging its harbour. On the verge of a mining boom, the authority needs to make its port deeper, wider and safer for expected heavier traffic. After all, a strong community depends on this port—a community of fishermen, grain farmers, miners and small merchants needing to ship out their exports to domestic and international markets. So, when divers discovered an old bomb lying at the bottom of the harbour, they simply continued to dredge. Then they found more, and more again. It reached the stage where Western Australia's Work-Safe ordered dredging to stop until the harbour was deemed safe.

At this point, it should simply have been a matter of the Commonwealth assuming responsibility. It should have ensured the dumped bombs were cleared quickly, efficiently and economically. This is, after all, ordnance from World War II. Indeed, evidence given to the Supreme Court proves they were dropped by soldiers in clearance exercises shortly after World War II. It was the Commonwealth's way of ridding the mainland of unused ordnance. There are

even photos in existence showing former soldiers dropping the bombs over the edge of a ship.

So the Albany Port Authority wrote to the government to enlist its help in clearing the harbour. That was five years ago. Since that time there have been 14 expert reports written on the bombs, four attempts at mediation and two expert meetings held. Yet still the government uses delaying tactics to avoid resolving this matter. Once again, Defence has resorted to the courts—and dragged its feet over five long years to delay a resolution.

Remember, this is the same department that has paid \$380,000 in legal fees to Dr McKenzie in light of a most reprehensible set of circumstances, as determined by the Medical Board of Western Australia; has spent many long years engaged in delaying settlement in numerous military justice matters; continues to exhaust all legal avenues relevant to the matter of suicide victim Air Cadet Eleanore Tibble in her mother's quest for justice; and has denied realistic compensation to Air Vice Marshal Peter Criss after controversially dismissing him. It did this by substituting a lesser sum by the minister's delegate in lieu of the recommendation from mediation proceedings.

We can obviously see a pattern starting to emerge here. An aggrieved party approaches Defence for resolution of a controversial and often painful matter. Yet time and again Defence uses its might to fight the rights of these lesser opponents. It continues to discard any notion of justice and ignores appeals to commonsense or rationality. It has little regard for model litigant obligations—as in this case involving the clean-up of Princess Royal Harbour.

Let us revisit proceedings in the Supreme Court, where Defence is manoeuvring to avoid responsibility for this clean-up. Just a

few weeks back, Justice Templeman of the Supreme Court of Western Australia threw out 17 subpoenas from the Commonwealth, reflecting his frustration with Defence's latest legal tactics. He says the government does not have a defence in the matter and states the obvious. Here is what the judge said about the subpoenas and Defence's handling of the case—and I quote from numerous extracts:

In the 10 years as a judge of this court, I don't think I have ever seen a set of subpoenas which are so blatantly fishing and so oppressive as these ...

He also said:

It's not appropriate to have some forensic contest at the public expense ...

And also:

With these 17 subpoenas, the Commonwealth is seeking to build a haystack and then look into it to see if a needle or two can be found with which to puncture the plaintiff's case ...

And he said:

... these subpoenas are an abuse of the process of the court ...

He concluded by saying that ultimately it is the taxpayers who will bear the cost not only of the clean-up but also of Defence's legal bills. The judge is hoping Dr Nelson will step in and order a speedy resolution to the matter. But it remains to be seen whether the minister will take note and act. After all, disregard and disrespect seem to go hand in glove with this government and its leadership, as is manifest in this department.

I say this because I was hoping to raise the matter of the Albany Port Authority at Senate estimates. I wanted to quiz Defence officials as to how much this legal battle is costing taxpayers, whether the legal bill is likely to cost more than the clean-up itself and what steps Defence has taken to mediate a settlement in this matter. The community of Albany have been waiting for an answer. They

are going to have to wait a little longer. Unfortunately, I never had the chance to put my questions at estimates. As we know, the government abolished spill-over days at Senate estimates earlier this year. It effectively cut the time available to question officials. That means I have had to resort to putting my questions on notice.

I started this speech tonight describing the case of Defence versus Albany Port Authority as a David and Goliath battle. I say this because Defence has \$57 million at its disposal for legal bills in the 2004-05 financial year alone. To put this in context: Albany Port Authority has an annual turnover of just \$7 million a year. As with so many other victims seeking justice, the authority is hardly able to afford the legal might afforded to Defence. So again we see an issue being dragged through the courts with little regard to the eventual cost to taxpayers and with wilful disregard of the victims.

Albany's harbour cannot be expanded safely until this matter is resolved. It will not take long for shipping companies to put their business elsewhere, so let us hope Albany Port Authority has a bit of stamina for this battle. Judging by the way Defence has treated previous victims seeking justice, it is going to be in for a long wait.

National Competition Council

Senator MURRAY (Western Australia) (11.14 pm)—A couple of weeks ago, what the Big Australian is now calling its new best friend, Treasurer Peter Costello, did not bother to make a decision, which seems rather out of character. In a week when he was basking in the afterglow of a big-spending and big-noting budget which also put real long-term tax reform on the backburner, I might say, and sitting in the big chair as acting Prime Minister while the Prime Minister was away, he made no decision in an area crying out for leadership. The

Treasurer did not make an announcement about the National Competition Council's declaration with respect to access to BHP Billiton's railway line in the Pilbara.

Many newspaper reports referred to the Treasurer's rejection of the application. That is putting it much too strongly. All the Treasurer did was let the application sit on his desk for 60 days until it lapsed. This might have got the Treasurer out of a sticky situation, where he might have had to make a decision and then provide reasons for that decision. The Treasurer obviously did not want to do that. He did not want to put in writing why he failed to give access to a much smaller competitor and allowed a much larger multinational to keep its monopoly railway line all to itself. Such a decision makes smaller mining companies the targets for takeovers, as happened when the other big mining company, Rio Tinto, took over North after North had battled competition issues for many months.

There are several problems with the Treasurer's lack of decision making in this instance. Firstly, I believe that it runs contrary to the spirit and the obligations of the Trade Practices Act. Recent amendments to the Trade Practices Act put in strict time limits for the making of decisions by the ACCC, the National Competition Council and the Australian Competition Tribunal. These amendments were brought about because the ACCC recognised that delays in these matters were often to the detriment of smaller competitors without deep pockets and that a swift decision was more just and equitable than a delayed decision. In every one of these cases there are significant economic interests which are time sensitive under review.

Let me put my views on the record. I do not agree with infrastructure monopolies in private hands. I do agree with persons hold-

ing infrastructure getting a full and proper commercial return on their investment. I do agree that the new entrant should fund or help fund additions to the original infrastructure if that is required. That rail line in the Pilbara was built because the public let it be built, through taxpayer provided easements, facilitation and concessions. It was built in the public interest, not the private interest; it was built with parliamentary support and it should be shared in the public interest.

I have previously questioned the role of the Treasurer in this whole approvals system. This particular failure to make a decision simply confirms my belief that, in the interests of accountability, transparency and openness, if the Treasurer is to have a place in regulating matters of competition he must be required to make decisions and to detail them in writing. If the parliament is to give the Treasurer that role, he must exercise that role. Submissions to him too should be detailed, whether verbal or written. Otherwise, who knows what blandishments or improper pressures might be assumed to be there or might even be privately applied. My own opinion is that, as a politician, the Treasurer is put in an invidious situation in these circumstances and therefore should be removed from such processes and that these processes should be left entirely in the hands of the regulator, the law and the courts.

The National Competition Council was required to give its reasons for making the declaration in November of last year. They are set out for everyone to see, as they should be in a court. It was my understanding, prior to the Treasurer choosing the 'do nothing' option, that the minister was required to apply certain criteria, come to a decision for or against and make the reasons for that particular decision known. How wrong I was. I assume the Treasurer was lobbied extensively about this matter. He needed to provide reasons for his decision so

that all parties—and I include the Australian Competition Tribunal as one of the parties—interested in the reasons for the decision would have a clear idea of how to respond and proceed.

The manner in which the Treasurer has acted in this matter makes a mockery of the role of the regulator. It is a waste of taxpayers' money and I think it subordinates the intent of the original legislative power that was given to him. Worse, it represents regulatory stasis and an unjustified holding up of a Western Australian economic project on apparently subjective grounds. At the moment, large transnational companies know that if they do not like a declaration from the regulator then they can go to the Treasurer and, with the various carrots and sticks available to them, try and get him to change it. Either you have faith in your regulator, your courts, the law and the frameworks you are setting in place by legislation or you need to work harder to get the legislative drafting and the structure and architecture right.

For most people in Canberra, the Pilbara is a long way away. But all those living in the big cities should remember that the Trade Practices Act does not only apply to mining in these circumstances and that pipelines and national infrastructure are not things that are singular to the mining industry. It is no good just saying this is also affected by another jurisdiction, the Western Australian jurisdiction, because that is so for every state. Infrastructure is something that is common to a number of industries. Take telecommunications—telecommunications infrastructure is an important debate that we are having in this country. As James Packer, the chairman of PBL, pointed out recently:

... Australia's position in this area is embarrassing. We need faster broadband to stay competitive with the rest of the world.

He went on to say that the government should provide:

... policy and regulatory certainty to encourage the provision of fast broadband.

I agree with Mr Packer and I am sure many others do too.

What does that have to do with trains in the Pilbara? The answer is: a lot. Who owns the most telecommunications infrastructure in Australia and who is expanding their share of that market? Telstra, the largest of all. If Telstra spends all that money on infrastructure, why should it open up its railway lines of optic fibre to its smaller competitors to use, especially if the precedent on rail lines supports it taking that view? The competition train is not just in the Pilbara; it is in everybody's backyard. To make an analogy, in the not too distant future there is every chance that a big telco player will be trying to stop the smaller ones from using their train lines to get their product to the consumer portals.

If you are a small telco then this particular play by the Treasurer just might give you pause. It might stop you from spending that money on R&D, new products and a whole range of services, because this government, for all that Senator Coonan says, appears to be the friend of the bigger player incumbent, and there might not be any room for the smaller non-incumbent competitors on the railway line to, hopefully, telco riches.

On the other hand, will the Treasurer treat telecommunications infrastructure differently from the way he treats rail infrastructure? Once a matter has been through the ACCC and the NCC, will the Treasurer make a decision—that is the first point—and then will he make a decision in favour of the smaller players? And, if he does, how can any consistency in trade practices regulation be created when previous decisions were made in favour of the monopolist bigger players?

The role of the Treasurer in competition policy is a bad idea if his non decision in the BHP Billiton rail line matter is proof that he favours incumbents without even giving reasons. I do not know what is in his mind. I do not know what submissions he received, nor does anyone in this chamber or anybody listening. The submissions to him and the decisions made are not available to the public. This sort of practice is bad for business because it decreases certainty; it is bad for the economy because it delays projects and puts up barriers which are unhelpful and unnecessary; it is bad for competition because it distorts the business playing field; it is bad for the regulator because they look foolish when their decisions are simply ignored rather than dealt with in an open and accountable way; and it is bad for the taxpayer, who wants value for money, certainty in investment and in the future. As far as I am concerned, this decision—or non decision—is bad for Western Australia.

**Delegation Report: Denmark and Sweden
Civil Unions**

Senator BARNETT (Tasmania) (11.23 pm)—I seek leave to incorporate my speech on the report on the delegation to Denmark and Sweden held on 16 and 27 October 2005. This report was tabled on 11 May last month.

Leave granted.

The document read as follows—

I am pleased to be able to table a report of the Parliamentary delegation, of which I was a member, to Denmark and Sweden in October, 2005.

I had the pleasure and honour of joining the delegation for an 11-day visit. The delegation was ably led by the Hon David Hawker, Speaker of the House of Representatives, and my colleague Senator Andrew Murray was also a member. We all worked well as a team and found the visit informative and productive.

For my part the visit included familiarisation tours of the Parliaments in both countries, studies of wind farms and a tour of the Vestas Wind Systems manufacturing plant in Viberg, Denmark while taking the opportunity to renew ties with the two Parliaments and their members, and gaining an understanding of the position both countries occupy with regard to European union issues and international affairs.

I also took time to meet parliamentary and other officials on issues relevant to my work as a Tasmanian Senator, such as pulp mills and childhood obesity.

Fortuitously the visit coincided with the birth of Prince Christian to Danish Prince Frederik and Princess Mary, formerly of Tasmania. We arrived a day after the birth and on arrival as a proud Tasmanian Senator I presented the hotel we were staying in with an Australian flag. The delegation members dubbed me the Ambassador for Tasmania. We were delighted to have an audience with her Majesty Queen Margrethe II of Denmark, and I had the opportunity to laud the wonderful attributes of Tasmania.

This was indeed a pleasure for me, as Chairman of the Federal Parliamentary Australia-Denmark Friendship Group. Last year I was able to secure the Australian Flag flown in the House of Representatives on the day of the marriage between Princess Mary and Prince Frederik. I had the flag presented to the Royal couple through the good help and assistance of the Danish Consul-General, Jorgen Mollegaard.

I commissioned a 30cm by 40cm frame on behalf of Tasmanian Federal MPs, using the expert work of fine furniture centre “1842” owner Trevor Jones. Rare Tasmanian timbers have been used to make a picture frame gift from Tasmanian Federal Liberal MPs for the Christening of the son of Crown Prince Frederik and Princess Mary of Denmark.

The timber is the same as the stands of trees presented to the Danish Royals as a wedding gift by Prime Minister John Howard on behalf of the Australian Government in May last year, and comprise mainly Huon Pine (*lagarostrobos franklinii*) timber with the rare species of Cider Gum (*eucalyptus gunnii*) and Snow Gum (*Eucalyptus pauciflora*) found near the Lagoon of Islands on

the property "Dungrove" in the Central Highlands of Peter and Anne Downie. The limbs of the rare timber were taken from dead trees.

The gift was presented to the Danish Royal couple in time for the Christening and naming of their baby on January 21 this year.

Huon Pine is famous the world over while the Cider and Snow Gums are rare species from the cool climate areas of Tasmania. The Cider Gum is not normally commercially available so I am grateful for Peter and Anne Downie to make the dead limb available for Trevor Jones's work.

I also thank Mark Leech—Forestry Consultant—for assisting to locate the special timber for Trevor Jones. Trevor is a graduate of the Tasmanian School of Fine Furniture (2004) and together with his wife Robyn own and manage Launceston's largest commercial art gallery.

Trevor has kindly crafted the frame at his own time and cost and I am highly indebted to both he and Robyn for their generosity. We all hope the gift will build the relationship.

Mr President, I had also previously raised the idea of a sister city relationship between Tasmanian cities and Copenhagen to help strengthen trade and cultural ties in light of the Royal link to Tasmania, but more about that later.

The visit provided a valuable opportunity to strengthen relations between our parliament and the parliaments of Denmark and Sweden.

In recent years, government-to-government and people-to-people relations have been growing as we have found many issues of common interest which we share with these Scandinavian countries. These include promotion of free trade, combating of terrorism and improving the environment.

The delegation's visit sought to ensure that the parliamentary dimension to our relationship with Denmark and Sweden also received a boost. It also provided an opportunity to gain a better understanding of key issues currently under consideration within the European Union.

Danish and Swedish parliamentarians with whom we met emphasised the importance of strengthening contacts between parliamentarians, as a way

to promote broader cooperation on issues where we share similar approaches.

The delegation was impressed by the strength of the parliamentary committee system in both Denmark and Sweden. Parliamentary committees in those countries play a vital and very active role in scrutinising both legislation and government administration.

From discussions held with Danish and Swedish parliamentary committees, it was evident that there are a range of issues on which we can share information and ideas. These include security, immigration, the ageing population, work-family balance, labour market reform and the environment, to name a few.

The delegation was also impressed by the fact that the Danish and Swedish parliaments both determine their own budgets. This helps to reinforce the independence of their Parliaments. The delegation's visit also preceded last year's successful visit to Australia by the King and Queen of Sweden.

During its time in Denmark, the delegation was fortunate to visit the Foulum Agricultural Research Centre—a most impressive centre on the largest Danish island of Jutland. There the delegation met with a range of Danish research scientists, and an Australian research scientist Dr Mark Henryon, who are working on a range of interesting projects aimed at improving agricultural production and ensuring better environmental outcomes.

While these scientists noted that there are contacts between our countries, they said we would greatly benefit from more formalised contacts between our research institutions.

The delegation visited Sweden shortly after the announcement that two Australians Robin Warren and Barry Marshall had been named as Nobel Laureates. We were fortunate to visit the Nobel Museum in Stockholm and found out that its Centennial Exhibition was not scheduled to visit Australia. The delegation urges the government to examine whether it may be possible to bring the exhibition to Australia given Australia's proud association with the Nobel Prize.

To return to the possibilities which exist for trade between our nations, especially Denmark. I have

said before in this place that I have always believed in the trade and cultural possibilities and opportunities presented to us through the royal marriage of Tasmanian Mary Donaldson to Crown Prince Frederik.

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.

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 have 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.

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.

Already tourism and trade figures between Australia and Denmark have surged as a result of the royal wedding in Copenhagen two years ago. There were initial reports that the tourism flow between the two countries jumped by up to 80 per cent, 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.

There are numerous possibilities. For instance, Australian wine exports to Denmark increased from \$11 million in 1999-2000 to \$38 million in 2003-04.

To this end, on March 30 this year I hosted a lunch at Parliament House for His Excellency Klavs Holm, the Danish Ambassador to Australia, where he spoke on the impact of the Danish Royal Family on trade and investment.

While on the trip last October I was astonished to discover that in Sweden the Uppsala museum holds a stuffed Tasmanian Tiger dated 1808. I have advised the Tasmanian Museum and Art Gallery to ascertain if this is the oldest preserved Tasmanian Tiger in the world. Initially, the Tasmanian museum thought the date was related to the explorer. However, the museum at Uppsala has different advice. Inquiries continue. We were hosted by County Governor Mr Anders Bjorck at Uppsala and he advised me of a tour by the museum to Australia and I invited him to Tasmania. I will say more about this in due course.

I also was fascinated during my visit to Sweden to look at wind power plants and pulp mills. We met with the Forestry and Environment Commissions in Sweden and they reported no significant consequences from pulp mills in their country. We were advised that in Sweden four pulp mills share a large lake with large population centres around it

Mr President, I join with Speaker David Hawker and members of our delegation in thanking the Danish and Swedish parliaments for the warmth of their welcome and for the informative program they developed for the delegation's visit. Also special thanks to our Ambassadors to Denmark and Sweden, Matthew Peek and Richard Rowe, and their staff for the tremendous support provided to the delegation. We are also grateful to the Department of Foreign Affairs and Trade, the Parliamentary Library and the Parliamentary Relations Office for their contributions to ensuring the success of the visit.

I also take this opportunity to thank the delegation's Deputy Leader, the Member for Chisholm, Anna Burke, and the other delegation members for their work and commitment throughout the delegation.

I would also like to convey my thanks to delegation secretary Andres Lomp whose excellent work in supporting the delegation was a significant factor in the success of the visit.

I commend the report to the Senate.

Senator BARNETT—Tonight I stand to congratulate the Prime Minister, Philip Ruddock and the coalition government on the upholding and protecting of the institution of marriage. The Howard government was right to strike down the ACT Labor government's civil unions law. The Greens, Labor and Democrats disallowance motion that was introduced and debated today was lost. I am proud and humbled to be part of the Howard government and the majority which supported the definition of marriage as being between a man and a woman.

The ACT law is marriage by another name. It was a thinly disguised attempt to undermine both the institution of marriage and the federal Marriage Act. If we send our minds back to 2004, both major parties at the federal level supported an amendment to the Marriage Act to enshrine marriage as being between a man and a woman. In my view, this was a profound and historic commitment to a centuries old bedrock institution which ultimately protected and nurtured children. It removed confusion about marriage. It removed the possibility of confusion about the definition of marriage. It stemmed from growing concerns and confusion about the definition of marriage in 2003 and early 2004 following certain Federal Court decisions. I started researching this issue in and around that time and could see the need for an amendment to our federal Marriage Act. I drafted a letter to the Prime Minister which was signed by 30 coalition colleagues.

The Howard government debated this matter and introduced the bill. Labor initially would not support the bill and sent the legislation to a Senate committee of inquiry, and I had the pleasure of being a member of that committee. The committee received a record number of submissions and the overwhelming majority were to support the government's amendment. I hosted in the parliament in this capital city a public forum on the importance of marriage. It was organised by the Australian Christian Lobby in conjunction with the Australian Family Association and the Fatherhood Foundation. Over 1,000 people attended at very short notice. It was addressed by the Prime Minister, John Howard, and others. Labor could see that the community support for the amendment was there, and with an election not far away Labor subsequently decided to support the bill and subsequently it became law. That is a little history.

In March this year the ACT legislation was introduced and established an alternative system of marriage like relationships. Again, it created confusion in the distinction between marriage and other relationships. So what is the position of federal Labor? Sadly, federal Labor has played politics with the solemnity of marriage. Labor cannot uphold marriage as being between a man and a woman and at the same time support the ACT law. The two, in my view, are mutually exclusive.

The ACT has transgressed on federal law. It has infringed on federal law. Section 5(2) of the ACT legislation says it all, in my view: A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage.

Yes, that says it all. It cannot be that a state or territory can usurp a federal law simply by using different words. Section 51(xxi) of the Constitution assigns marriage to the Com-

monwealth. It is not a matter for legislation by any state or territory. No number of weasel words by the ACT or any state can actually change that. The traditional institution of marriage is the real victim of the ACT law. It depreciates and demeans marriage. A gay union cannot and should not be equated with marriage. Section 24(1) of the revised ACT legislation states, 'a union entered into by any two people under the law of a foreign country and that cannot be recognised as a marriage in Australia' because of the federal Marriage Act 1961 'is a civil union for the purpose of territory law.'

There are no residency requirements under the ACT legislation, so any Australian same-sex couple married overseas could get their union registered in the ACT. The federal parliament's marriage amendment in 2004 was specifically designed to stop the recognition of overseas homosexual marriages. It was designed that way to thwart what was happening with the Federal Court decisions that were causing the confusion.

What is marriage? Marriage is a bedrock institution. It is worthy of protection. Marriage has endured for thousands of years across cultures and across religions. It is a social institution which benefits the family, the family members and society. Marriage is not a fashion to be updated. It provides for stability in society. It provides a solidly built roof under which children are nurtured and grow. It specifically benefits the children and is designed to ensure that their welfare is maximised. There should be no doubt about its definition.

The only discrimination that can possibly be alleged is that against children by the ACT government. The rights of children seem to have been neglected in this whole debate. Of course the ACT legislation we have struck down is, in fact, an amended version. The original, introduced in March

this year, was worse. It included the establishment of the age of 16 as the age of consent for entry to a civil union—that is, a person not entitled to vote, gamble or purchase alcohol. Of course our Attorney-General, the Hon. Philip Ruddock, wrote to the ACT government about their offensive legislation but, alas, they had their chance and their changes were entirely insubstantial.

In recent weeks the ACT government's actions have been both provocative and offensive. Upon review of both the original draft of the bill and the revised and then passed Civil Unions Act, I wrote to the Prime Minister and the Attorney-General expressing my views and concerns. I have continued to express them and the need for action to thwart the ACT gay marriage laws. So of course I believe today is a good day, and a great day for the institution of marriage, for families and especially for our children.

During the past few weeks Rodney Croome of the Gay and Lesbian Rights Group has released a statement saying that my efforts were an attack on homosexual people. They were not. He said that they were an attack on the Tasmanian significant relationships register. They were not. Property and superannuation rights are preserved for those who remain in a homosexual relationship, and that is different to marriage; marriage is an entirely different matter altogether.

I want to thank the hundreds of people who have personally contacted me expressing thanks and appreciation for the Howard government's steadfast belief in the institution of marriage. I want to acknowledge the work of the Australian Christian Lobby and the leadership of its CEO, Jim Wallace. I want to thank the Australian Family Association and their national representative, Mary-Louise Fowler; Mieke de Vries, the AFA representative in Tasmania; the Fatherhood

Foundation; the many churches and the people in the ACT and around Australia. I want to thank them all, and all those people who have taken the time to express their views on what they see as the fundamental bedrock institution in society and the importance of marriage. I want to thank them for their time, their efforts, their thoughts and their prayers.

The Prime Minister, the Hon. John Howard, said on 8 March 2004:

I think there are certain benchmark institutions and arrangements in our society that you don't muck around with, and children should be brought up ideally by a mother and father who are married. That's the ideal. I mean I'm not saying people who are unmarried are incapable of being loving parents. (*Time expired*)

Mary River: Proposed Dams

Senator BARTLETT (Queensland) (11.34 pm)—I want to speak again tonight briefly about the dams that have been proposed by the Beattie Labor government in Queensland, my home state, and indeed in the south-east corner where I reside. These are known as the Traveston dam on the Mary River, just south of Gympie, and the other dam is proposed for Rathdowney, usually called the Tilley's Bridge dam, on the Logan River near Beaudesert, south of Brisbane.

I very genuinely call on the Beattie government to recognise that these proposals, particularly with regard to the Traveston dam, are absolutely and undoubtedly doomed to fail. I believe very strongly that it will save the people of that region an enormous amount of anguish, suffering and angst if Mr Beattie and his government recognise now that that proposed dam is completely untenable, would be immensely expensive and completely inefficient, and is simply not going to work. And that is before you look at the environmental impacts—the impacts on the severely endangered species of that region.

I note that the local federal member for that region, the member for Fairfax, Mr Somlyay, and indeed the member for Wide Bay, Mr Truss, have both expressed concerns based on slightly different issues—from my reading of them, anyway—about that particular dam. I am surprised, I must say, that I have not heard similar concerns expressed by the relevant federal member, the Liberal member for Forde, Mrs Kay Elson.

There are different factors with regard to the Rathdowney dam, although there are also similar issues, particularly the unlikelihood of the dam producing anywhere near the amount of water that is proposed. I very strongly suggest that the proposal to put a dam on the Mary River is simply never going to happen, but whilst this battle continues—and it has the potential to continue literally for years—the people living in that area will continue to suffer enormously from uncertainty and fear about what the future holds for them. Given that there are so many clear and logical arguments as to why this dam is completely untenable, it would be far better for the people of that region if the government simply acknowledged this upfront rather than putting everybody through that trauma over such a long time, continuing to waste significant amounts of taxpayers' money in the process.

We have seen this again just in the last couple of days with the state minister responsible for water, Mr Palaszczuk, acknowledging that the dam wall in the Traveston area will have to be realigned after initial drilling failed to hit bedrock at the proposed location. From all that I have heard, such bedrock as has been found is far deeper than was anticipated. Trying to put a dam wall in place at a very great depth will add further to the expense and affect a whole range of other issues with regard to the viability of the dam. If I were a betting person, which on most occasions I am not, I think

there would be a lot of money to be made from starting a book on precisely what date the announcement will be made that the decision has been made not to go ahead with this dam.

I think the arguments against this dam are so comprehensive that it is almost beyond belief that it will be built, and the only possible reason it would be built would be out of sheer, intransigent bloody-mindedness. It would not be the first time that completely crazy decisions have been continued with at massive public expense purely because of a government's inability to admit that it was wrong. One thing that most people do acknowledge about Mr Beattie, whatever else their views of him might be, is that he is pretty good, as far as premiers or leaders of governments go, at admitting that he is wrong. He actually does it quite often. He apologises a lot and he usually gets away with it. So I call on him to use that great skill of his, acknowledge that he has got this one wrong, back down now, save everybody a lot of anguish, save the taxpayers of Queensland a lot of money and look at other options. What he called, astonishingly, the 'Armageddon option' of recycling waste water that has been purified back into the drinking system is something that I believe should be put at the top of the priority list rather than left in some bizarre political wasteland called the 'Armageddon option'. Once we hear that from the Beattie government, I will start to believe that we are finally seeing some sanity in Queensland's water policy.

Senate adjourned at 11.40 pm

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Employment and Workplace Relations: Grants**(Question No. 1530)**

Senator O'Brien asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 18 January 2006:

For each financial year since 2001-02, what grants or payments has the Minister's department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

Senator Abetz—The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

The Department of Employment and Workplace Relations and its agencies have not made any grants or payments to City View Christian Church in any financial year since 2001-02.

Veterans' Affairs: Grants**(Question No. 1543)**

Senator O'Brien asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 18 January 2006:

For each financial year since 2001-02, what grants or payments has the Minister's department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

Senator Ian Campbell—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

Nil.

Indigenous Education Strategic Initiatives Program**(Question No. 1638)**

Senator Chris Evans asked the Minister representing the Minister for Education, Science and Training, upon notice, on 22 March 2006:

With reference to the Indigenous Education Strategic Initiatives Programme (IESIP):

- (1) Can the Minister confirm that there was a 63 per cent, or approximately \$142 million, underspend in the IESIP in the 2004-05 financial year; if not, what was the exact amount of the underspend.
- (2) Can details be provided showing a specific breakdown of the measures and/or activities under IESIP, including how much money was allocated for, and spent on, each one in the 2004-05 financial year and the percentage of underspend for each specific measure/activity.
- (3) For each specific measure/activity, please provide an explanation for the underspend in the 2004-05 financial year.
- (4) What amount of departmental expenses and administered funds has been allocated for, and spent on, each specific measure/activity under IESIP in the 2004-05 financial year.
- (5) How much money has been allocated for, and spent to date on, each measure/activity under IESIP in the 2005-06 financial year.

- (6) What amount of departmental expenses and administered funds has been allocated for, and spent to date on, each specific measure/activity under IESIP in the 2005-06 financial year.

Senator Vanstone—The Minister for Education, Science and Training has provided the following answer to the honourable senator's question:

- (1) Can the Minister confirm that there was a 63 per cent, or approximately \$142 million, underspend in the IESIP in the 2004-05 financial year; if not, what was the exact amount of the underspend.

No. The Indigenous Education (Targeted Assistance) Act 2000 (the Act) appropriates funds on a calendar year basis and allows for payments to be made over an 18 month period. The 2004-05 financial year estimate reflected amounts expected to be expended from both the 2004 and 2005 appropriations under the Act. While there was an under expense in 2004-05, the budget was rolled over into 2005-06 and will be expended within the 18 month period allowed by the legislation.

The quoted under expense of \$142 million is not correct. It does not allow for expenditure of \$16.4 million in 2004-05 on the Away from Base and Indigenous Education Direct Assistance (IEDA) programme elements. The actual under expense was \$126m. The revised estimate for 2005/06 (\$395 million) also reflects changes resulting from a number of factors including revised enrolment numbers and changes to the expense profile for 2006 appropriations. Taking all these matters into account the rollover into 2005/06 is \$129 million.

- (2) Can details be provided showing a specific breakdown of the measures and/or activities under IESIP, including how much money was allocated for, and spent on, each one in the 2004-05 financial year and the percentage of underspend for each specific measure/activity.

	Estimate 2004-05 \$'m	Actual 2004-05 \$'m	Variance from Estimate \$'m	% Variance from Estimate
Supplementary Recurrent Assistance	120.862	64.558	-56.304	-46.6%
Targeted	78.420	23.224	-55.195	-70.4%
Away from Base	26.473	12.006	-14.467	-45.4%
TOTAL	225.755	99.788	-125.966	-55.8%

- (3) For each specific measure/activity, please provide an explanation for the underspend in the 2004-05 financial year.

Reported shortfalls in expenditure under the Indigenous Education (Targeted Assistance) Act 2000 at 30 June 2005 were, in part, due to extended negotiation with some 20 major and 230 minor education providers in reaching agreement on education outcome targets to accelerate further closure of the education divide between Indigenous and non Indigenous students, and to strengthen accountability and reporting arrangements for the 2005-2008 quadrennium. As at 30 June 2005, agreements were in place with 169 providers. Of the agreements outstanding, eight were with major providers, delaying recognition of expenses to 2005-06. 248 Agreements are now in place.

A number of non-Supplementary Recurrent Assistance (Targeted and Away from Base) payments, expected to be made in the first half of 2005, did not eventuate. This was due to ongoing negotiations or outstanding compliance issues, delaying recognition of expenses to 2005-06. Whilst take up of the Whole of School Intervention Strategy in the first half of 2005 was slower than anticipated, projects totalling \$36m had been approved at end December 2005.

The following table sets out expenses recognised in the second half of 2005 which would normally have been recognised in the first half of 2005:

	Expense expected January – June 2005 but recognised July – December 2005 \$'m
Supplementary Recurrent Assistance	57.695
Targeted	35.005
Away from Base	11.049
TOTAL	103.749

It is expected that all funding appropriated for 2005 will be expended within the 18 months allowed by the legislation.

- (4) What amount of departmental expenses and administered funds has been allocated for, and spent on, each specific measure/activity under IESIP in the 2004-05 financial year.

DEST does not attribute Departmental expenses to individual programme elements. The financial figures provided by programme are Administered expenses. Details of these are provided in the table at answer 2.

- (5) How much money has been allocated for, and spent to date on, each measure/activity under IESIP in the 2005-06 financial year.

	Revised Estimate 2005-06 \$'m	Expense 2005-06 (as at 4 May 2006) \$'m
Supplementary Recurrent Assistance	206.084	180.326
Targeted	162.148	95.572
Away from Base	27.301	27.410
TOTAL	395.533	303.308

- (6) What amount of departmental expenses and administered funds has been allocated for, and spent to date on, each specific measure/activity under IESIP in the 2005-06 financial year.

DEST does not attribute Departmental expenses to individual programme elements. Details of the allocation and expenditure of Administered funds is provided in the table at answer 5.

Hillsong Emerge Projects

(Question No. 1665)

Senator Chris Evans asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 29 March 2006:

With reference to the Indigenous Business Development Programme grant made to Hillsong Emerge Pty Ltd totalling \$672 000 for business development through the Enterprise Hubs and Shine program:

- (1) Can a timeline be provided of discussion and correspondence between the department and representatives from Hillsong Emerge in relation to the business development grant before Hillsong Emerge submitted its formal application, including the location, date and attendees of any meetings, and the dates and general contents of any correspondence.
- (2) Did Hillsong Emerge approach the department, or vice-versa, in relation to the business development grant.
- (3) What services were intended to be provided free-of-charge to the Indigenous community through the Hubs.
- (4) Is the department aware of any services provided by Hillsong Emerge from the Hubs that were not free-of-charge; if so, can details be provided, including the fee for the service.
- (5) Were services for a fee to Indigenous clients permitted under the grant.
- (6) Did the department regulate or monitor fees that were charged by Hillsong Emerge for services rendered to Indigenous clients.

- (7) Was the department aware that Hillsong Emerge offered to draft business strategic plans and proposals from these hubs for Indigenous clients for a fee; if so: (a) on what date did the department become aware of this; and (b) was this permitted under the grant.
- (8) Were services to non-Indigenous clients permitted under the grant.
- (9) How much funding was allocated for, and spent on, material by Hillsong Emerge to promote the activities of the Hubs.
- (10) How much of the funding grant was allocated and spent by Hillsong Emerge on developing staff manuals.
- (11) (a) How much money did the Chief Executive Officer (CEO) of Hillsong Emerge receive from this funding grant; and (b) what is the extent of the role of the CEO in the operation of the hubs.
- (12) Will the Enterprise Hubs, run by Hillsong Emerge, receive any further funding from the Indigenous Business Development Programme after February 2006; if so, what will be the extent of the funding, including: (a) the amount of the grant or interim funding; (b) the nature and objectives of the initiative; (c) the specific programs, activities and services provided under the initiative; (d) the locations of the initiative; and (e) the start date and end date of the initiative.
- (13) Has Hillsong Emerge received, or will it receive, any funding grants under the Indigenous Business Development Programme in the 2005-06 financial year; if so, can the following details be provided: (a) the amount of the grant; (b) the nature and objectives of the initiative; (c) the specific activities/services provided under the initiative; (d) the locations of the initiative; and (e) the start date and end date of the initiative.
- (14) Not including Hillsong Emerge, are there any, or have there been, other enterprise hubs funded by the Indigenous Business Development Programme; if so, for each hub can the following details be provided: (a) the name of the organisation responsible for operating the hub; (b) the amount of funding granted in each of the: (i) 2004-05, and (ii) 2005-06 (to date) financial years. (c) the locations of the hub; (d) the programs that are run from the hub; (e) the purpose of the programs; (f) the number of staff who are employed under the grant; and (g) the performance indicators for the programs.

Senator Abetz—The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

- (1) Yes.

Hillsong Emerge submitted a scoping proposal dated 30 April 2004 which was received by ATSIIS on 7 May 2004.

A formal application dated 26 August 2004 was submitted to the Department and received on 31 August 2004.

The files available to IBA do not contain any references to meetings between staff and Hillsong Emerge however staff had developed a working relationship with Hillsong through its involvement in the MED pilot in the Sydney region and the capacity building activities undertaken by Hillsong in the Redfern region.

- (2) The file does not indicate who made the first approach however ATSIIS had previously provided funding to investigate the learnings of the Hillsong Emerge micro enterprise development pilot in Sydney for linkages with the Opportunity International Micro Enterprise Development pilot so it is likely that discussions were undertaken throughout this process.
- (3) The range of resources and services included:
 - Consultants to assist with planning, advocacy and coaching;
 - Product development/innovation assistance;

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- Sales and market distribution assistance;
 - Training workshops focusing on enterprise-related skills;
 - Business directory with access to city-wide customer base;
 - Exposure to new media opportunities;
 - Enterprise exposition;
 - Job placement service;
 - Brokerage/networking contracts;
 - Mentoring contracts;
 - Space for design, experimentation and development; and
 - Personal development program for high school and after school (Shine).
- (4) Neither the Department nor IBA is aware of any services provided by Hillsong Emerge on a fee for service basis. Hillsong Emerge recently advise that they did not charge any fees for service delivered under the grant.
- (5) The original program Funding Agreement entered into by ATSSIS does not specify any fees for services permitted under the grant.
- (6) Monitoring of fees was not applicable as the grant did not provide for fee-for-services activities.
- (7) (a) and (b) Neither the Department nor IBA is aware of any evidence that Hillsong Emerge sought to charge fees to Indigenous clients to draft business strategic plans. Hillsong Emerge have recently advised that they did not seek to impose such charges.
- (8) The funding agreement was to achieve outcomes for Indigenous Australians however it does not specifically exclude assistance to non-indigenous Australians. Hillsong advised verbally that no services funded under the grant were delivered to non-indigenous people.
- (9) A specific figure for promotion is not included in the approved budget however the following items include allowance for promotion:
Supplies and Printing \$6,000.
- (10) The budget shows the following which included funding for training materials (but not specifically developing staff manuals):
Shine Course Materials & Operational expenses \$23,500
Trainer and Training resources \$46,128
- (11) (a) \$36,000 from the original grant for the Enterprise Hubs. (b) The Hillsong Emerge CEO spent 90% of his time administering the activities of both the Enterprise Hubs and the Micro Finance project, an exact breakdown of the time spent on each activity over the period of the grant is not available.
- (12) Hillsong Emerge have chosen not to reapply for funding for the Enterprise Hubs from Indigenous Business Australia, however, it has continued to operate the hubs targeting Indigenous people.
- (13) Apart from the original grant of \$670,000 plus the extension for January and February 2006 no additional funding has been provided by Indigenous Business Australia under the Indigenous Business Development Programme to Hillsong Emerge Ltd in 2005-2006 financial year
- (14) (a) **Adelaide City Business Ltd.**
(b) (i) 2004-2005 \$99,400 (commenced October 2004).
(ii) 2005-2006 \$159,670.
(c) Adelaide
(d) Indigenous Business Hub and Outreach Program
-

- (e) There are 2 purposes of the program:-
- (i) **Incubator (with walls) Objectives:**
To promote and support the development of a minimum of 15 existing Indigenous Business Enterprise located in the Greater Metropolitan Region of Adelaide;
To promote and provide:-
- (a) Opportunities for a minimum of 5 indigenous Australians to gain self-employment through the establishment of their own business enterprises;
- (b) a minimum of 4 enterprise training workshops directly related to business development;
- (c) innovative approaches to work and enterprise; and
- (d) Indigenous Businesses to identify and assist in the preparation of submissions for relevant business funding.
- (ii) **Outreach Program (without walls):**
To promote and provide opportunities for Indigenous Australians to gain self-employment through the establishment of their own business enterprises.
To work with a minimum of 20 existing Indigenous businesses;
To assist a minimum of 5 Indigenous Australians to start a business;
Work within a minimum of 45 businesses (incubator 8, virtual 12, outreach 25); and
To promote and provide:-
- (a) innovative approaches to work and enterprise.
- (b) enterprise training and other training for indigenous business owners.
- (c) support to businesses in applying for funding grants that will assist in their business development.
- (f) 6.
- (g) Performance Indicators:-
1. Number of Indigenous people employed.
 2. Number of Indigenous people employed through this project.
 3. Number of Indigenous people who participated or were assisted.
 4. Number of mentee/mentor relationships developed.
 5. Number of mentors assigned.
 6. Number of workshops/seminars/training sessions held.
 7. Provide a comprehensive report on activities undertaken.
 8. Provide a comprehensive written report on assistance provided to Indigenous persons or businesses.
 9. Provide a copy of plans or agreements made.
 10. Provide a copy of reports or documentation provided by consultant.
 11. Provide a profile of each participant.
 12. Provide a profile of the mentor assigned.
 13. Provide a written report explaining the figures provided as part of the performance indicators for the activities undertaken.
- (a) **Balkanu Cape York Development Corporation**
- (b) (i) nil.

(ii) 2005-2006 \$547,000.

- (c) Cairns, Weipa and Cape York.
- (d) Small Business Support services to Indigenous Australians providing ongoing business support, advice and mentoring.
- (e) To establish a Mobile Hub and Business Hub in the Cairns, Weipa areas of Queensland for delivering small business support services to Indigenous Australians providing ongoing business support, advice and mentoring to Indigenous people in that region.

This project aims to increase Indigenous peoples participation in the economy and improve their ability to take advantage of available small business opportunities and increase individual skills and capacity which leads to increased income levels within the real economy.

This funding is 'supplementary' funding and compliments funds received for similar activities provided by State and Australian Government Agencies. Responsibilities associated with the ongoing management of the hub include:

- establishing a capacity in local communities to build local enterprises that are owned and operated within the community;
- Identifying and encouraging Indigenous persons with viable business aspirations;
- developing and providing business facilitation and incubation services from the idea stage through to operation and ongoing support;
- Promoting and encouraging entrepreneurship within Indigenous communities;
- establishing business support and facilitating network; and
- develop networks and relationships with State and Federal Government, corporate and philanthropic organizations dealing with business support services and business development.

The expected outcome of the Business Hubs Strategy is to assist Indigenous people within Northern Queensland to:-

- (i) Increase the number of individuals and families engaged in businesses.
- (ii) Increase the number of businesses remaining viable and profitable.
- (iii) Increase the awareness of business opportunities available.
- (iv) Increase the commercial activity opportunities in the region.
- (v) Increase the opportunities to increase non-welfare income in the region.
- (vi) Increase Indigenous participation levels in both new and existing economic activities.
- (f) 5.
- (g) Performance Indicators:-
- 1 Number of business plans developed.
 - 2 Number of businesses operating after six months.
 - 3 Number of businesses operating after twelve months.
 - 4 Number of Indigenous businesses supported.
 - 5 Number of Indigenous people employed.
 - 6 Number of Indigenous people who participated or were assisted.
 - 7 Number of new Indigenous small businesses established.
 - 8 Number of referrals to other services.
 - 9 Number of workshops/seminars/training sessions held.

-
- 10 Provide a comprehensive report on activities undertaken.
- 11 Provide a comprehensive written report on assistance provided to Indigenous persons or businesses.
- 12 Provide a list of stakeholders or clients and their contact details that are involved in the activity or project or are provided with services.
- 13 Provide a profile of each participant.
- 14 Provide a report including outcomes of meetings held, agreements developed, relationships built and networking undertaken as part of this project.
- 15 Provide a report outlining the referral or linking of clients to other agencies or services.
- 16 Provide a written report explaining the figures provided as part of the performance indicators for the activities undertaken.
- (a) **Creative Economy Pty Ltd**
- (b) (i) 2004-2005 \$255,240.
(ii) 2005-2006 \$743,405.
- (c) Brisbane based however provides outreach services nationally.
- (d) 2 programmes:-
(i) Indigenous Creative Business Development Programme.
(ii) Mobile Business Hub for Creative Industries.
- (e) The objectives of the project are to deliver small business support services to Indigenous Australians involved in creative industries. The project aims to increase Indigenous participation in the economy and improve small business opportunities increasing individuals skills and capacity to increase participant income levels within the real economy. This project is funded on a not-for-profit basis.
- (i) **Indigenous Creative Business Development Programme** is delivered across Australia, including regional and remote locations. The programme consists of services provided by a mobile business hub which incorporates Business Development Assistance including direct mentoring to enterprises to address specific creative business needs. Assistance is provided by industry specific professionals employed with Creative Economy providing participants with benefits from direct linkages to industry networks of Creative Economy mentors which assists in accelerating their businesses. Participants receive ongoing mentoring of their business, including face-to-face assistance, email, webcam sessions and phone support. Ongoing mentoring is important to support sustainable business development. The support provided to participants includes:-
- Product Analysis;
 - Product Development;
 - Market Intelligence;
 - Terms of Trade;
 - Finance & Accounting;
 - Business Development;
 - Pricing;
 - Business Processes and Systems;
 - Intellectual Property - Rights Management and Commercialisation;
 - Sales and Marketing;
-

- Customer Service; and
- Visual Merchandising.

Creative Economy will also conduct workshops around Australia on specific creative business topics (approximately 5). Workshops are informal and activity based as this provides participants with an opportunity to gain practical hands-on learning in developing their businesses across a range of key areas, such as:-

- (a) Business development.
 - Industry Structure - key players, supply chains, support;
 - Market Opportunities- defining market segments and market demands;
 - Making the Deal - establishing and maintaining contractual relationships, Standard agreements such as terms of trade;
 - Intellectual Property - understanding Intellectual Property - know and use your rights; and
 - Creative Business Management - Self and professional management.
 - (b) Product development
 - Product Development - how to develop product for market;
 - Quality Products - hands on activities to understand and implement quality control; and
 - Developing Mementos - maximising success.
 - (c) Sales & marketing
 - Product Presentation - labelling to include authenticating, packaging, product information;
 - Marketing Tools - artist resume, profile, statement, authenticity statement and photo, documentation and cataloguing artwork, pricing schedules;
 - Promotion - available in specific industry segments eg. music, visual arts, publishing;
 - Visual merchandising - assessment of retail displays and hands on activities for maximum visual impact; and
 - Customer Service.
- (ii) **Indigenous Creative Business Development Programme – Memento Sponsorship**
- IBA contributes to the sponsorship of Indigenous component of the Memento awards which seeks to improve quality and innovation in tourism gifts, promote authentic Australian Indigenous visual arts and craft and replace imported product by impacting on a market dominated by imported products. Support of this program provides economic returns for visual artists and craftspeople throughout the regions of Australia together with maximising yield of tourism dollars and reflects the spectacular regions of Australia in the mementos.
- (f) 8.
 - (g) Performance Indicators.
 - (i) Number of applications made for support.
 - (ii) Number of hours provided to support each client.
 - (iii) Number of Indigenous businesses supported.
 - (iv) Number of Indigenous people employed.
 - (v) Number of Indigenous people who participated or were assisted.
 - (vi) Number of mentee/mentor relationships developed.
 - (vii) Number of new Indigenous small businesses established.

- (viii) Number of referrals to other services.
- (ix) Number of workshops/seminars/training sessions held.
- (x) Provide a comprehensive report on activities undertaken.
- (xi) Provide a copy of policy and procedures used by your organisation to make decisions to support Indigenous persons or businesses.
- (xii) Provide a profile of each participant.
- (xiii) Provide a report outlining recommendations regarding the provision of future support services required by participant/client.

Superannuation

(Question No. 1668)

Senator Bob Brown asked the Minister representing the Treasurer, upon notice, on 29 March 2006:

- (1) What measures have been taken to ensure the superannuation deductions of newly arrived refugees are being transferred to appropriate superannuation schemes.
- (2) Are there cases in which such refugees in Tasmania do not receive the deductions benefits.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator's question:

- (1) The Superannuation Guarantee (Administration) Act 1992 (SGAA) requires all employers to make sufficient superannuation contributions to a complying superannuation fund for their eligible employees on a quarterly basis. This includes making contributions for the benefit of eligible refugees. Where an employer fails to pay the required amount of superannuation by the due date they become liable to pay the superannuation guarantee (SG) charge to the Australian Taxation Office (ATO).

Employers are responsible for self-assessing their liability to pay the SG charge. However, the ATO has in place a comprehensive compliance program with a view to ensuring employers meet their SG obligations.

The ATO's compliance strategy includes: contacting every employer who is the subject of a complaint and reminding the employer of their superannuation obligations; educating employers of their superannuation obligations; conducting compliance projects on identified 'high risk' employers; and auditing and prosecuting employers who refuse to comply.

The Government announced in the 2006-07 Budget that it will provide \$19.2 million over the forward estimates period to improve the responsiveness of the ATO to inquiries about compliance with the SG arrangements. The ATO will be able to provide enhanced services to employees with concerns about the payment of employer superannuation contributions required under the SG arrangements. This will be achieved by addressing the backlog of inquiries and providing more timely completion of future investigations.

- (2) This information is not available. The ATO is not able to disclose the specifics of individual cases due to the privacy and secrecy requirements contained in the SGAA.

Jian Seng

(Question No. 1672)

Senator O'Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 29 March 2006:

- (1) Does the Office of Transport Security monitor the presence of vessels in Australian waters; if so, how.
- (2) On what date did the Office of Transport Security identify the presence of the abandoned vessel *Jian Seng* in Australian waters.
- (3) How long had the *Jian Seng* been adrift before the Office of Transport Security identified its presence.
- (4) Was there any lapse of awareness by the Office of Transport Security in relation to the *Jian Seng*; if so, has the Minister investigated this lapse.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) No. The Office of Transport Security security assesses all security regulated ships seeking entry to Australia.
- (2) The Office of Transport Security was informed of the presence of the derelict *Jian Seng* on 24 March 2006 by the Australian Customs Service.
- (3) The *Jiang Seng* was identified by the Australian Customs Service.
- (4) No.

Community Development Employment Projects

(Question No. 1684)

Senator Chris Evans asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 6 April 2006:

- (1) When were the Community Development Employment Projects (CDEP) guidelines for the 2005-06 financial year first implemented.
- (2) What is the definition of a job placement.
- (3) How long does a job placement last for.
- (4) (a) How much are employers paid as an incentive to provide a job placement to a CDEP participant; and (b) can details be provided of all payments at the beginning, middle and end of the placement.
- (5) What is the Minister's definition of employment, including how many hours per week and how long it must last.
- (6) Do the job placements arranged by CDEP organisations differ from those that are arranged by Job Network providers; if so, how.
- (7) Are CDEP organisations and Job Network providers paid the same fee for placing a participant of their respective programs into a job placement; if not, what is the difference.
- (8) How many CDEP participants have been put in job placements since 1 July 2005.
- (9) How many CDEP participants have had job placements in CDEP organisations in the 2005-06 financial year.
- (10) Does the department have any data on how many CDEP participants obtain employment as a result of a job placement; if so, can the data be provided for the 2005-06 financial year.
- (11) Does the department have any data on how many CDEP participants have obtained full-time employment generally; if so, can the data be provided for the 2005-06 financial year.
- (12) How many CDEP participants have obtained employment, either full-time or part-time, in CDEP organisations in the 2005-06 financial year.

Senator Abetz—The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

- (1) The CDEP Guidelines 2005-06 were implemented on 1 July 2005.
- (2) A job placement is placement of a job seeker into paid employment.
- (3) A job placement must be at least 15 hours a week.
- (4) Employers do not receive specific incentive payments for the placement of CDEP participants.
- (5) The definition of employment for the purpose of Job Network Intensive Support outcome payments varies depending on the allowance type the job seeker was on prior to employment. Generally a minimum of 13 weeks of employment is considered an interim employment outcome and 26 weeks is considered a final outcome. Attachment A has an extract from the Job Network Request for Tender 2006 outlining Intensive Support Outcomes for differing groups of job seekers.

In terms of the CDEP programme and in order for CDEP organisations to claim the CDEP Placement Incentive (CDEPPI) the CDEP participant must obtain ongoing work of at least 15 hours per week and no longer be a CDEP participant.

- (6) No.
- (7) Job placement fees for Job Network members are \$275 for Fully Job Network Eligible job seekers and \$385 for highly disadvantaged job seekers or those unemployed for more than 12 months or in receipt of DSP.

CDEPPI is paid to CDEP organisations when a participant obtains ongoing work of at least 15 hours per week and exits CDEP. The CDEPPI is paid in two instalments. The first payment of \$550 is made on approval of the placement and the second payment of \$1650 is made after the person has completed 13 weeks in the job.

Outcome payments for Job Network members are more complex as the payments depend on length of unemployment and payment type. Attachment A outlines the various outcome payments.

- (8) There have been 2,562 CDEP participants reported to have achieved non-CDEP employment outcomes for the first nine months of this financial year (as at 31 March 2006).
- (9) CDEPPI claims relating to employment in CDEP organisations are not separately reported.
- (10) As stated above there have been 2,562 CDEP participants move into non-CDEP employment.
- (11) No. General employment statistics are reported at the Indigenous level rather than at CDEP participant level.
- (12) Please refer to 9 above.

3.5.7 Level of Intensive Support Outcome

There are two levels of achievement which will attract payment:

An Intensive Support outcome will be achieved if for the duration of the outcome period an eligible job seeker:

- who is receiving Newstart Allowance or Youth Allowance (other) remains each fortnight in employment, unsubsidised self-employment, an apprenticeship or a traineeship that generates sufficient income to have caused the person's basic rate of Newstart or Youth Allowance (other) to cease for the entire outcome period
- who is receiving Newstart Allowance or Youth Allowance (other) remains each week in a full-time apprenticeship or traineeship
- who is a parent or has a disability and is receiving Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part-time requirements, remains each week in employment, unsubsidised self-employment, an apprenticeship or a traineeship of at least 15 hours or more each week
- who is not in receipt of Newstart or Youth Allowance (other) remains each week in employment, unsubsidised self-employment, an apprenticeship or a traineeship of at least 20 hours or more each week
- who is a Fully JN Eligible job seeker with a Partial Work Capacity, has remained in employment, unsubsidised self-employment, an apprenticeship or a traineeship each week at a level that equals or exceeds the minimum number of hours per week assessed by Centrelink or a CWCA provider (but not less than eight hours per week)
- who is receiving a Parenting Payment (Partnered or Single) without participation requirements or Carer Payment and chooses to work reduced hours due to caring responsibilities and remains in paid employment, unsubsidised self-employment, an apprenticeship or a traineeship for at least 15 hours each week
- who has not completed Year 12 or equivalent and who is either 15 to 20 years of age or an indigenous job seeker, completes an Austudy/Abstudy/Youth Allowance (Student) eligible education or a training single qualification course, of two or more semesters duration:
 - at the equivalent of a full-time study load and transfers to Youth Allowance (Student)/Austudy/Abstudy or, where the job seeker does not transfer to study allowance, the 'qualifying education outcome requirements' are met
 - on a part-time basis (as defined by the training institution), during which the job seeker has also gained employment, unsubsidised self-employment, an apprenticeship or a traineeship sufficient to reduce the basic rate of Newstart or Youth Allowance (other) by an average of at least 60 per cent over the semester, or
 - on a part-time basis (as defined by the training institution), during which the job seeker, not in receipt of Newstart or Youth Allowance (other), gained employment, unsubsidised self-employment, an apprenticeship or a traineeship for an average of at least 15 hours per week averaged over the semester.
- who is a CDEP Participant and remains each week in employment or unsubsidised self-employment or an apprenticeship or a traineeship of at least 20 hours or more each week which is not funded by the fully Job Network eligible job seeker's CDEP wage

An Intensive Support Intermediate payment will be payable if for the duration of the outcome period an eligible job seeker:

- who is in receipt of Newstart Allowance or Youth Allowance (other) has gained employment, unsubsidised self-employment, an apprenticeship or a traineeship that generates sufficient income to have reduced the person's basic rate of Newstart or Youth Allowance (other) by an average of at least 60 per cent

- who is a parent or has a disability and is receiving Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part-time requirements and gains employment, unsubsidised self-employment, an apprenticeship or a traineeship that is on average 10 or more hours per week
- who is not in receipt of Newstart or Youth Allowance gains employment, unsubsidised self-employment, an apprenticeship or a traineeship for an average of 15 or more hours per week
- who is a Fully JN Eligible job seeker with Partial Work Capacity and gains employment, unsubsidised self-employment, an apprenticeship or a traineeship at a level that is on average 70 per cent of the minimum number of hours per week recommended by Centrelink or a CWCA provider (but not less than an average of 8 hours of work per week)
- who is receiving Parenting Payment (Partnered or Single) without participation requirements or Carer Payment and chooses to work reduced hours due to caring responsibilities who gains employment, unsubsidised self-employment, an apprenticeship or a traineeship that is on average 10 or more hours per week
- who is aged 21 years or more, has completed one semester of an Abstudy/Youth Allowance(Student)/Austudy eligible education or training single qualification course, of two or more semesters duration at the equivalent of a full-time study load and transfers to Youth Allowance (Student)/Abstudy/Austudy or, where job seeker does not transfer to study allowance, the 'qualifying education outcome requirements' are met, or
- who is aged between 15 and 20 years, has completed Year 12 or equivalent and completes one semester of an Austudy/Abstudy/Youth Allowance (Student) eligible education or training single qualification course, of two or more semesters duration at the equivalent of a full-time study load and transfers to Youth Allowance (Student)/Abstudy/Austudy, or where the job seeker does not transfer to study allowance, the 'qualifying education outcome/placement requirements' will need to be met.
- who is a CDEP Participant gains employment or unsubsidised self-employment or an apprenticeship or a traineeship of an average of 15 hours or more per week which is not funded by the fully Job Network eligible job seeker's CDEP wage.

3.5.8 Qualifying Education Outcome requirements

The course must be an eligible education or training course:

- currently approved for Austudy/Abstudy/Youth Allowance (Student) purposes
- a single qualification award course, for example, a Certificate IV, a diploma or a degree
- normally of two or more semesters of full-time study, that is, at least a full year in duration.

In determining eligibility:

- 'full-time study' load or equivalent
 - for university courses is assessed on the basis of a full-time student load definition for HECS purposes (for HECS purposes 75 per cent of a standard full-time load is still classified as full-time)
 - for other courses means at least 15 class contact hours a week
- a normal semester duration is usually 16 weeks, but not shorter than 13 weeks.

Table 4—Intensive Support outcome payments per job seeker

Duration of registration by Centrelink or other party notified by DEWR	Payment Type	Intensive Support Interim Payment 13 weeks	Intensive Support Final Payment 26 weeks
From commencement in Intensive Support to 12 months (if not identified as Highly Disadvantaged)	Intensive Support Under 12 Month Outcome	\$550	N/A
	NEIS Intensive Support Outcome	\$550	N/A
13–24 months OR if the Fully JN Eligible Job Seeker has been commenced in Intensive Support Customised Assistance	Intensive Support Outcome	\$1,650	\$825
	Intensive Support Intermediate Payment	\$550	\$550
	NEIS Intensive Support Outcome	\$550	N/A
25–36 months OR identified as Highly Disadvantaged	Intensive Support Outcome	\$3,300	\$1,650
	Intensive Support Intermediate Payment	\$550	\$550
	NEIS Intensive Support Outcome	\$550	N/A
3 years or longer (also payable for Highly Disadvantaged unemployed three years or longer and all job seekers on Disability Support Pension)	Intensive Support Outcome	\$4,400	\$2,200
	Intensive Support Intermediate Payment	\$1,100	\$1,100
	NEIS Intensive Support Outcome	\$1,100	N/A

Note: The duration of the job seeker's registration will be calculated at the time of placement into employment or qualifying education, not at the time of the outcome claim.

Asylum Seekers (Question No. 1710)

Senator Nettle asked the Minister for Immigration and Multicultural Affairs, upon notice, on 26 April 2006:

- (1) What information and training has been provided to the Department and Refugee Review Tribunal Decision makers to ensure that they are fully aware of the implications of the 2003 decision of the High Court of Australia to recognise sexuality as a legitimate basis of an asylum claim.
- (2) Can a copy of any training information or instruction be provided.
- (3) If no such material or training information exists, is there an intention to provide such information or training: if not, why not.

Senator Vanstone—The answer to the honourable senator's question is as follows:

- (1) While the name of the case has not been provided in the question, it is assumed that the question refers to the High Court of Australia judgement in the matter of Appellant S395/2002 v MIMIA [2003] HCA 71.

The Refugee Review Tribunal ensures all Members are aware of significant case law developments through comprehensive professional development and training arrangements.

Following the High Court decision in Appellant S395/2002 v MIMIA, the Refugee Review Tribunal's Legal Services Section provided advice to all Members in oral presentations and in several legal publications and documents. They included:

- Direct circulation of the full text of the judgement to every Member;
- The provision to every Member of an analysis and summary of the judgement;
- Legal Bulletin No.93 – “The Implications Appellant S395/2002 v MIMIA; Appellant S396/2002 v MIMIA [2003] HCA 71”.
- Legal Bulletin No. 94 – “Trends in Judicial review of Tribunal decisions October – December 2003”, which included discussion of Appellant S395/2002 v MIMIA;
- The RRT Bulletin for the month of January 2004 – included a detailed summary of Appellant S395/2002 v MIMIA;
- Legal Update for the month of December 2003 – January 2004 which also included discussion of Appellant S395/2002 v MIMIA.

The RRT Guide to Refugee Law in Australia - a major Tribunal legal reference tool regularly used by Members - is available electronically (along with all the abovementioned documents) and is on the RRT's website for public access. It was updated by the Legal Services Section to include reference to the significance of Appellant S395/2002 v MIMIA. Oral presentations by legal officers were provided to Members at Members' meetings formally drawing attention to the significance of this judgement.

The Department provides updates to decision makers through the publishing of weekly and fortnightly litigation reports. Past copies of these reports are available for further reference on the Department internal website. Training is also provided on case developments through Legal Framework Branch - the training is undertaken after liaison with policy areas and comprises basic and advanced courses in refugee law. These courses are each a day long in duration and cover the issues raised in Appellant S395 v MIMIA in addition to other cases. Legal Framework Branch also publishes the Refugee Law Guidelines which discuss the nature of Court decisions and offer guidance to decision makers as to how to interpret these cases, such as Appellant S395 v MIMIA. The Refugee Law guidelines were updated soon after the decision in Appellant S395 v MIMIA to include a reference to and discussion and guidance as to that case.

- (2) Yes, copies of relevant material or relevant excerpts from material will be forwarded to the honourable Senator.
- (3) Not applicable.

Attachment A

Excerpt from Litigation Report of 12 December 2003 to Legal and Onshore Protection Areas.

(NB- prior paragraph numbers refer to other cases that are not relevant to the answer to Parliamentary Question on Notice 1710).

S395 and S396 – High Court loss

5. On 9 December 2003 the High Court by majority of 4 (Kirby, McHugh, Hayne and Gummow JJ) to 3 (Gleeson CJ, Callinan and Heydon JJ) allowed Mr K and Mr R's appeal, set aside the RRT decision, and remitted the matter to the RRT for reconsideration.

6. The matter involves a Bangladeshi homosexual couple who were refused protection visas by the RRT on the basis that they had been content to live discreetly as homosexuals in Bangladesh and in doing so

had not suffered persecution, and were not therefore likely to suffer persecution if they returned. It was however accepted by the RRT that homosexuals in Bangladesh were a particular social group.

7. The majority judges accept that the RRT found, as a matter of fact, that the appellants will behave, or are likely to behave, discreetly if they return to Bangladesh. Their Honours concluded, however, that this ought not have been the end of the inquiry, and that the RRT erred in failing to ask why Mr K and Mr R would behave in that way, i.e. whether this was a voluntary choice by them, or whether this was a choice influenced by fear of harm.

Attachment B

Commonwealth of Australia

Department of Immigration and Multicultural and Indigenous Affairs

Refugee Law Guidelines

A guide for DIMIA decision-makers

July 2005

Disclaimer:

These materials were prepared by the Framework and Training section (in conjunction with other policy areas) of the Commonwealth Department of Immigration & Multicultural & Indigenous Affairs, solely for use by DIMIA decision-makers. It is not a legal textbook and should not be treated as such. Reading it is not a substitute for reading and understanding the relevant legislation, policy and any other instructional material. Framework and training section welcomes your comments on these materials. Please direct any comments to the Director, Framework and Training, Office of Legal Co-ordination, Department of Immigration and Multicultural and Indigenous Affairs, Canberra.

3.1.3 Does the applicant fear being denied fundamental human rights?

In certain circumstances, the denial of fundamental human rights for a Convention reason may constitute persecution within the meaning of s.91R(1)(b) of the Act, as well as under international law.

International human rights standards are an important consideration in the area of refugee law. There are a number of international treaties, which set out standards that decision-makers should be aware of. These include:

- the Universal Declaration of Human Rights (UDHR)
- the International Covenant on Civil and Political Rights (ICCPR)
- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Convention on the Rights of the Child (CROC)
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

These treaties set out a range of human rights obligations, however there is little authority on which human rights obligations have precedence over others and the denial of which rights will amount to persecution. Hathaway argues that failure to ensure the following rights is tantamount to persecution:¹

- Freedom from arbitrary deprivation of life
- Protection against torture or cruel, inhuman or degrading punishment or treatment
- Freedom from slavery
- The prohibition on criminal prosecution for retrospective offences
- The right to recognition as a person in law
- Freedom of thought, conscience and religion

Persecution may take the form of actual punishment for exercising such rights, or may take the form of a prohibition on the exercise of them.²

However, decision-makers should be aware that the mere fact that a particular right is denied is not necessarily enough to establish persecution. It is generally also important to ascertain the importance the asylum-seeker places upon the exercise of the particular right in issue. In *Win*³ the applicants claimed to fear persecution by the Burmese authorities on the basis of their political opinion because of their previous anti-government activities such as attending political demonstrations and smuggling passports to other political dissidents overseas. In determining whether the applicants could reasonably be expected to tolerate the denial of their right to freedom of expression, the Federal Court commented that in a restrictive regime:

“...a denial of...civil rights would amount to persecution when that denial is so complete and effective that it actually and seriously offends a real aspiration so held by an asylum seeker that it can be fairly said to be integral to his or her human dignity. It is not fatal to such a claim of persecution that the claimant fails to show that he or she is a leading exponent of a claim to, or the wish to, exercise such rights, let alone that he or she exhibits a capacity for martyrdom.”⁴

As outlined above, the High Court has held that harm or threat of harm will only amount to persecution where it is so oppressive or likely to be repeated or maintained that the person threatened cannot be expected to tolerate it.⁵ Thus an assessment of tolerability of harm is also relevant in assessing whether denial of human rights may amount to Convention persecution.

In a related context, the High Court in *Appellant S395*⁶ and *NABD v MIMIA*⁷ considered whether past behaviour or likely future behaviour should be taken into account in assessing whether an applicant might suffer persecution. The Court held, in both cases, that where it is determined that an applicant would act in a way which would not attract persecution, decision makers must ask whether this is a voluntary choice on the part of the applicant, or is motivated by fear of persecution.

Appellant S395 was a case involving an issue as to whether homosexual men could avoid persecution by acting discreetly. The Court held that persecution can be made out where an applicant must act discreetly to avoid the possibility of harm – that is, the need to act discreetly so as to avoid the threat of serious harm can in itself constitute persecution.

The issue in *NABD v MIMIA* was whether the RRT had erred in assessing whether the anticipated behaviour of an Iranian convert to Christianity was enough to raise a real chance of persecution. The country information drew a distinction between converts to Christianity who go about their devotions quietly and maintain a low profile (who are generally not disturbed), and persons involved in the aggressive outreach through proselytising. Relying on this distinction, and taking into account its finding that the applicant had practised his religion in a low key manner in Australia, the RRT found that the applicant would practise his religion quietly if he returned to Iran, and hence, would not be at risk of persecution. Importantly, the applicant’s likely conduct in Iran was not motivated by fear of adverse consequences.

The questions to be asked in such cases are:

Would this individual applicant behave discreetly if they returned to their country of nationality?

- If so, is the choice of the applicant to live discreetly a voluntary choice, or one which is motivated by fear of persecution?

- NB: decision-makers cannot ask whether an applicant could behave discreetly to avoid persecution, as this would amount to the decision-maker imposing on applicants a requirement to act discreetly.

4.5.6 Is the uniting characteristic focussed on what the applicant does or has done?

The uniting characteristic should be primarily focused on what a person is, rather than the applicant’s actions or possessions.

In *Ram*, Burchett J emphasised that if harmful acts are done purely on an individual basis, because of what the individual has done or may do or possesses, Convention persecution for reason of membership of a particular social group will not be attracted. Membership of the social group must provide the reason for the persecution.

However the distinction between actions and attributes should not be taken too far. Individuals who engage in similar actions can become a cognisable group.⁸ As Lockhart J has commented, social groups may have interests in common as diverse as education, morality and sexual preference.⁹

In *Morato v MILGEA*¹⁰ Black CJ stated:

It may be, for example, that over a period of time and in particular circumstances, individuals who engage in similar actions can become a cognisable group. The actions may, for example, bear upon an individual's identity to such an extent that they define the place in society of that individual and other individuals who engage in similar actions...

Thus similar actions engaged in by people may be a factor to be considered when examining whether a particular social group in fact exists or whether a person is a member of such a group. But all this is far removed from the present case where acts, without anything at all more, are said to define a particular social group.

For example, as a general rule, teachers, lawyers and doctors may not be seen as particular social groups. However, in Cambodia during the rule of Pol Pot, these groups were seen by the new order as having, through their education and status, the ability to influence public opinion and thus pose a threat. As a result, the whole class was targeted, not because of their individual attributes, but because of their participation in the targeted professions. Burchett J described this as a textbook example of a membership of a particular social group claim. This illustrates how an applicant's actions could found a particular social group claim.

On the other hand, in Appellant S395¹¹ the High Court made it clear that it is not appropriate to subdivide a particular social group, in this case homosexual men, into 2 sub-groups of discreet homosexual men and non-discreet homosexual men.

The High Court was concerned that consideration of whether the applicants were likely to live as a couple in a way that would not attract attention, would divert the decision maker from addressing the more fundamental question of whether there is a well-founded fear of persecution. The Court held that to determine the issue without determining whether acting discreetly was influenced by the threat of harm is to fail to consider the issue properly, noting that the perils faced by the applicants were not necessarily confined to their own conduct, discreet or otherwise.

The Court considered it is a mistake to assume that because members of a group are or are not persecuted, and the applicant is a member of that group, the applicant will or will not be persecuted. The central question is always whether this individual applicant has a 'well-founded fear of being persecuted for reasons of...membership of a particular social group'.

4.5.10 Examples of Particular Social Groups

c) Is the particular social group claimed, based upon sexual or gender preference?

Homosexuals and lesbians may comprise a particular social group, but whether they do so in relation to particular applications remains to be determined.

For example, in *MIMA v Gui*¹² the Federal Court found that the applicant feared persecution for reason of membership of a particular social group constituted by homosexuals in Shanghai, where they were the subject of selective police harassment. The Minister's appeal to the Full Federal Court was successful on grounds unrelated to the question of whether homosexuals can constitute a particular social group. The Full Court did not appear to be troubled by the finding that homosexuals could constitute a particular social group.

A validly made law regulating or prohibiting homosexual or lesbian relationships will generally be good evidence that these groups can constitute a cognisable particular social group in the relevant country. However, such laws may or may not be determinative of the question of whether an applicant would face persecution for reasons of membership of that group. In *MMM v MIMA*¹³ the Court rejected the submission that the mere existence of a criminal law penalising homosexual acts amounted to official persecution of homosexuals. The evidence before the Court indicated that the law was not enforced. On this basis the Court held that as there was no real chance of actual persecution, the claim to refugee status could not be made out. However, Madgwick J noted that ordinarily homosexuals would constitute a particular social group so that if the law was routinely enforced, it would amount to persecution.

In *Shah v MIMA*¹⁴, the Federal Court dealt with a case where the RRT had concluded that a homosexual applicant could return to India and practice his sexuality without facing a real chance of persecution. The RRT considered that the applicant would encounter public prejudice but, on the available information, concluded that any mistreatment would not amount to persecution. The appellant claimed that the RRT failed to consider the cumulative effect of actions taken against him. However, Tamberlin J found that the RRT had not erred and that while the vilification and harassment of the applicant were distasteful and upsetting, this did not amount to a serious punishment or penalty. The RRT had also accepted evidence which indicated that the treatment facing homosexuals in India varied enormously and found that internal relocation to New Delhi or Mumbai would not be unreasonable in the circumstances of the applicant's case.

In *LSLS v MIMA*¹⁵ [2000] FCA 181 the Federal Court dealt with case where the applicant challenged the RRT's finding that a homosexual man from Sri Lanka could 'avoid a real chance of serious harm simply by refraining from making his sexuality widely known – by not saying that he is homosexual and not engaging in public displays of affection towards other men.' The significance of this case for the present purposes is that the parties were prepared to accept that homosexuals can constitute a particular social group.

The Court rejected a claim that an inherent characteristic of the particular social group of homosexuals is 'the public proclamation of homosexuality for the purpose of meeting prospective sexual partners'.

Litigation on this point highlights the changeable nature of the law in this area. The decision in *S395*¹⁶ (which considered the interrelated issues of discretion, hiding one's sexuality and persecution) is a case in point. Delegates may wish to contact Framework and Training Section or Legal Opinions for guidance in this area.

¹ Hathaway *The Law of Refugee Status* (1991) p 109-111.

² *Win v MIMA* [2001] FCA 132

³ *Win v MIMA* [2001] FCA 132

⁴ *Win v MIMA* [2001] FCA 132, see also *Islam v MIMA* [2001] FCA 525

⁵ *MIMA v Haji Ibrahim* [2000] HCA 55

⁶ *Applicant S395/2002 v MIMIA* [2003] HCA 71

⁷ *Applicant NABD of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 29.

⁸ *Morato v MILGEA* (1992) 39 FCR 401 at 405

⁹ *Morato v MILGEA* (1992) 39 FCR 401

¹⁰ *Morato v MILGEA* (1992) 39 FCR 401 at 404-6.

¹¹ *Applicant S395/2002 v MIMIA* [2003] HCA 71

¹² *MIMA v Gui* [1999] FCA 1496

¹³ MMM v MIMA [1998] 1664

¹⁴ Shah v MIMA [2000] FCA 489

¹⁵ LSLs v MIMA [2000] FCA 181

¹⁶ Applicant S395/2002 v MIMIA [2003] HCA 71

Attachment C

REFUGEE REVIEW TRIBUNAL

LEGAL BULLETIN

Issue No.93 22 December 2003

MODIFYING CONDUCT AND PERSECUTION

The Implications of

Appellant S395/2002 v MIMA

Appellant S396/2002 v MIMA

[2003] HCA 71

SYNOPSIS©

In Appellant S395/2002 v MIMA; Appellant S396/2002 v MIMA¹⁷ (Appellant S395/2002), the High Court considered the significance of an applicant's "discreet" behaviour to the question of whether the applicant has a well-founded fear of persecution. By a 4-3 majority,¹⁸ the Court allowed an appeal from two men who claimed to have a well-founded fear of persecution because of their homosexuality. The majority held the Tribunal had failed to consider whether the appellants had acted discreetly only because they feared persecution if they did not, and disqualified itself from properly considering whether they had a well-founded fear of persecution if they were returned to Bangladesh.

IMPLICATIONS FOR THE TRIBUNAL

Generally speaking, Appellant S395/2002 reinforces existing principles relating to the assessment of claims involving the expression and suppression of opinions, beliefs and identity. The majority judgments make it clear that the Tribunal has no jurisdiction or power to require an applicant for protection to take steps to avoid persecution. Thus, it would be wrong to reject a claim based on homosexuality on the basis that the applicant could reasonably avoid persecution by being discreet. The decision-maker should not be distracted from the fundamental question, namely, whether the applicant has a well-founded fear of being persecuted.

Like other recent cases, Appellant S395/2002 also demonstrates that there can be differences of opinion as to the scope of an applicant's claims as well as the extent to which the Tribunal is required to consider a case not put to it. While the law on the latter question remains somewhat unsettled, the judgment of McHugh and Kirby JJ is consistent with the position as stated by a number of Full Federal Court cases, that the Tribunal should not limit itself to the case articulated by an applicant where the facts found by it, or not negated by its findings, might support an argument that the applicant is entitled to the protection of the Convention.

FACTS AND BACKGROUND

The appellants applied for protection visas on the basis that they feared persecution in Bangladesh for reasons of their homosexuality.

In affirming the delegate's decision, the Tribunal found that the appellants were homosexuals and that homosexual men in Bangladesh were a particular social group under the Convention. Referring to evidence on the position of homosexuals in Bangladesh generally, it found that "homosexuality is not accepted or condoned by society in Bangladesh and it is not possible to live openly as a homosexual in Bangladesh. To attempt to do so would mean to face problems ranging from being disowned by one's

family and shunned by friends and neighbours to more serious forms of harm, for example the possibility of being bashed by the police.” The Tribunal also found that Bangladeshi men could have homosexual affairs or relationships if they were discreet. It found that “Bangladeshis generally prefer to deny the existence of homosexuality in their society, and, if possible, will ignore rather than confront it”.

The Tribunal accepted that the appellants had lived together since 1994 and that they were shunned by their families because of their homosexuality and may have been the subject of gossip and taunts from neighbours who suspected they were homosexuals. However, it rejected their claims of serious harm, including that they were attacked, had lost their jobs because of their sexuality, and had a fatwa issued against them. The Tribunal concluded that the appellants had lived together for over 4 years without experiencing any more than minor problems with anyone outside their own families and that “they clearly conducted themselves in a discreet manner and there is no reason to suppose that they would not continue to do so if they returned home now”.

The appellants’ argued that the Tribunal erred in law in holding that the appellants did not have a well-founded fear of persecution. They argued that the Tribunal had, in effect, required that they act discreetly in order to avoid what otherwise would be persecution.

At first instance Lindgren J dismissed the appellants’ applications for review. The Full Court of the Federal Court dismissed their appeals from that decision.

THE HIGH COURT’S DECISION

By majority (McHugh, Kirby, Gummow and Hayne JJ, with Gleeson CJ, Callinan and Heydon JJ dissenting) the Court allowed the appeal. The Court unanimously found that the Tribunal had not required the appellants “to be ‘discreet’ about their membership of a group”, but had merely found that the appellants would live discreetly in the future, as they had done in the past, because “there is no reason to suppose that they would not continue to do so if they returned home now.”¹⁹ The majority nevertheless found that the Tribunal had misunderstood or misapplied the relevant law.

McHugh and Kirby JJ held that the Tribunal failed to determine whether the appellants had acted discreetly only because it was not possible to live openly in the same way as heterosexual people in Bangladesh²⁰ and disqualified itself from properly considering the appellants’ claims that they had a “real fear of persecution” if they were returned to Bangladesh²¹. If the Tribunal had found that a fear of harm had caused them to be discreet in the past, it would have been necessary for the Tribunal to consider whether their fear of harm was well-founded and amounted to persecution. This would have required it to further consider what might happen to the appellants if they lived openly as a homosexual couple in Bangladesh²². It followed that the Tribunal had constructively failed to exercise its jurisdiction²³.

Their Honours also held that the Tribunal failed to consider the issue of persecution in relation to the correct “particular social group”. By declaring that there was no reason to suppose that the appellants would not continue to act discreetly in the future, it effectively broke the genus of “homosexual males in Bangladesh” into two groups – discreet and non-discreet homosexual men in Bangladesh - and by doing so it fell into jurisdictional error²⁴.

Similarly, Gummow and Hayne JJ held that the Tribunal erred because it did not ask why the appellants would live discreetly; whether it was only because that was how they avoided persecution. The Tribunal found that it was not possible to “live openly as a homosexual in Bangladesh” and that to attempt to live openly “would mean to face problems”, but it did not relate those two findings to the position of the appellants. It did not consider whether the adverse consequences to which it referred sufficed to make the appellants’ fears well-founded²⁵. Their Honours also concurred with McHugh and Kirby JJ that the Tribunal fell into error by dividing homosexual males in Bangladesh into two groups²⁶.

In their dissenting judgments, Gleeson CJ and Callinan and Heydon JJ held that the appellants did not advance any claims beyond those connected with the factual accounts advanced by them to the Tribunal and in large measure rejected.

According to Gleeson CJ, a Tribunal decision must be considered in light of the basis upon which the application was made, not upon an entirely different basis which may occur to an applicant at some later stage in the process²⁷. The appellants had not claimed that they wanted to behave less discreetly about their sexual relationship and that their inability to do so involved persecution²⁸.

Justices Callinan and Heydon similarly reasoned that the appellants did not claim that they wished to express their homosexuality in other than a discreet way²⁹, or that their decision to live discreetly was influenced by a fear of harm if they did not, or that they were at risk of persecution if they wished to display, or inadvertently disclosed, their sexuality or relationship³⁰. The Tribunal accordingly did not err in not dealing with claims of that kind.³¹

DISCUSSION

Appellant S395/2002 essentially concerned the proper approach to claims that involved sexual identity and discretion. In dealing with that question, the two majority judgments considered the question of discretion and persecution and secondly, the extent to which the Tribunal must address claims arising on its findings of fact. The Court also discussed issues relating to membership of a particular social group, homosexuality as a particular social group, and laws relating to homosexuality.

Discretion and Persecution

Much of the appellants' argument was directed to the claim that the Tribunal had required them "to be 'discreet' about their membership of a group"³². Although the Court unanimously accepted that the Tribunal had not imposed that requirement,³³ the majority made it clear that the Tribunal has no jurisdiction or power to require an applicant for protection to take steps to avoid persecution.³⁴ McHugh and Kirby JJ explained that persecution does not cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. It was not a condition of Australia's protection obligations that the person affected must take steps, reasonable or otherwise, to avoid offending his or her persecutors.³⁵ Their Honours held that in so far as decisions of the Tribunal or Federal Court contain statements that asylum seekers are required, or can be expected, to take reasonable steps to avoid harm, they are wrong in principle and should not be followed.³⁶

Gummow and Hayne JJ observed that saying that an applicant would live discreetly in the country of nationality may be an accurate description of the way that person would go about his or her daily life, and to say that a decision-maker expects that person will live discreetly, if read as a statement of what is thought likely to happen, may also be accurate³⁷. But to say that an applicant is expected to live discreetly is wrong and irrelevant to the task of the Tribunal if it is intended as a statement of what the applicant must do. The Tribunal has no jurisdiction or power to require anyone to do anything in the country of nationality of an applicant.

Importantly, the majority also made it clear in that context that if the Tribunal finds that an applicant has lived or would live discreetly it will be necessary to consider why.

According to McHugh and Kirby JJ, the notion that it is reasonable for a person to take action that will avoid persecution will inevitably lead to a failure to consider properly whether there is a real chance of persecution, particularly where the actions of the persecutors have caused the person affected to modify his or her conduct by hiding his or her religious beliefs, political opinion, racial origins, country of nationality or membership of a particular social group.³⁸

Their Honours explained that where an applicant has acted in the way he or she did only because of the threat of harm, the well-founded fear of persecution held by the applicant is the fear that unless he or she acts to avoid harmful conduct, he or she will suffer harm. In these cases, it is the threat of serious harm with its menacing implications that constitutes the persecutory conduct. To determine the issue of real chance in such a case without determining whether the modified conduct was influenced by the threat of harm is to fail to consider the issue properly³⁹. If the Tribunal in the present case had found that

fear had caused the appellants to be discreet in the past, it would have been necessary then to consider whether their fear of harm was well-founded and amounted to persecution. This would have required consideration of what might happen to them if they lived openly as a homosexual couple.⁴⁰

It is implicit in the majority judgments that if the Tribunal finds that “discreet” behaviour in the past was not the result of fear of what would happen if the applicant were not discreet, then the question whether fear of harm is well-founded and amounts to persecution will not arise in the same way.

Tribunal Procedure – Claims which Arise on the Facts

The Minister argued, relying on what Gummow and Hayne JJ had said in *Abebe v Commonwealth*⁴¹ and on a passage in the joint judgment in *Re MIMIA; Ex parte Applicants S134/2002*⁴², that the appellants could not raise matters before the Court not claimed before the Tribunal. In *Abebe*, Gummow and Hayne JJ had stated, in a passage with which Gaudron and Kirby JJ agreed:

It is for the applicant to advance whatever evidence or argument she wishes to advance in support of her contention that she has a well-founded fear of persecution for a Convention reason. The Tribunal must then decide whether that claim is made out.⁴³

The dissenting judges in the present matter clearly accepted this argument. The reasoning of Gummow and Hayne JJ also appears to be consistent with what they had said in *Abebe*. Their Honours evidently took a broader view than did the dissenting judges of what the appellants had claimed⁴⁴.

However McHugh and Kirby JJ took a somewhat different approach. Their Honours stated that reliance on *Abebe* and *S134/2002* might have been persuasive if the Tribunal had rejected the appellants’ claims simply because their evidence lacked credibility. They reasoned however, that having examined the general issue of homosexuality and persecution in Bangladesh more generally, and having found on the basis of independent information that “it is not possible to live openly as a homosexual in Bangladesh” and “to attempt to do so would mean to face problems”, the Tribunal should have then gone on to address the claims that naturally arose for the appellants upon those facts.⁴⁵

After stating uncontroversially that the proceedings before the Tribunal were of an inquisitorial nature, their Honours commented that whatever the arguments or evidence of the applicant, the Tribunal is entitled, but not bound, to look into the issue generally but if it elects to do so, it must do so in accordance with law. Thus, in the present case, given that the appellants claimed that Bangladesh was “not a safe place for [them] at all”, the Tribunal was entitled to go beyond whether they faced persecution because of their personal history, and examine whether their more general fear of persecution was well-founded.

As in other recent decisions of the High Court⁴⁶, Appellant *S395/2002* demonstrates the difficulties that may arise in properly identifying the scope of an applicant’s claims as well as the extent to which the Tribunal is required to consider a case not put to it. While the law on the latter question remains somewhat unsettled, the judgment of McHugh and Kirby JJ is consistent with the position as stated by a number of Full Federal Court cases, that the Tribunal should not limit itself to the case articulated by an applicant where the facts found by it, or not negated by its findings, might support an argument that the applicant is entitled to the protection of the Convention.⁴⁷

Other Matters

Particular Social Group

In their discussion of the Tribunal’s approach to the relevant “particular social group”, McHugh and Kirby JJ reaffirmed the importance of properly considering the applicant’s particular circumstances. Their Honours emphasised that it is a mistake to assume that because members of a group are or are not persecuted, and the applicant is a member of that group, the applicant will or will not be persecuted. The central question is whether the individual applicant has a well-founded fear of being persecuted for reasons of membership of a particular social group. An applicant claiming refugee status is asserting an individual right and is entitled to have his or her claim considered as an individual, not as the undifferentiated member of a group.⁴⁸

Homosexuals as a particular social group

McHugh and Kirby JJ held unsurprisingly that as a matter of law it was open to the Tribunal to find that homosexual men in Bangladesh constituted a “particular social group” for the purposes of the Convention. They added that if the Tribunal had held otherwise its decision would arguably have been perverse.⁴⁹

Gummow and Hayne JJ commented that sexual identity is not to be understood in this context as confined to engaging in particular sexual acts or, indeed, to any particular forms of physical conduct. It may, and often will, extend to many aspects of human relationships and activity. That two individuals engage in sexual acts in private may say nothing about how those individuals would choose to live other aspects of their lives that are related to or informed by their sexuality.⁵⁰ Their Honours stated that the use of language of “discretion” may reveal that consideration of the consequences of sexual identity has wrongly been confined to participation in sexual acts rather than that range of behaviour and activities of life which may be informed or affected by sexual identity.⁵¹

Laws relating to homosexuality

McHugh and Kirby JJ held that where an applicant has claimed that the law of the country of his or her nationality penalises homosexual conduct two questions arise: 1) Is there a real chance that the applicant will be prosecuted if returned to the country of nationality? and 2) Are the prosecution and the potential penalty appropriate and adapted to achieving a legitimate object of the country? In determining the second question, international human rights standards as well as the laws and culture of the country are relevant matters. If the first question is answered “yes” and the second “no”, the claim of refugee status must be upheld, even if the applicant’s conduct is likely to attract prosecution.⁵² This statement is a reflection of what McHugh J had stated in *Applicant A v MIEA*.⁵³

Contact Officers:

Rey Hyland

Sue Burton

Legal Services Section, Sydney

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¹⁷ [2003] HCA 71 (High Court of Australia, Gleeson CJ, McHugh, Gummow, Kirby, Hayne, Callinan, & Heydon JJ, 9 December 2003).

¹⁸ *ibid*, per McHugh, Kirby, Gummow & Hayne JJ (Gleeson CJ, Callinan and Heydon JJ dissenting).

¹⁹ *ibid* at [10], [11], [14], [34], [84] & [107].

²⁰ *ibid* at [51].

²¹ *ibid* at [53].

²² *ibid* at [53].

²³ *ibid* at [54].

²⁴ *ibid* at [60].

²⁵ *ibid* at [88].

²⁶ *ibid* at [90].

²⁷ *ibid* at [1], referring to *Re MIMIA; Ex parte Applicants S134/2002v MIMIA* (2003) 195 ALR 1 at 8.

²⁸ *ibid* at [14].

²⁹ *ibid* at [107].

³⁰ *ibid* at [113].

³¹ *ibid* at [113].

³² *ibid* at [34].

³³ *ibid* at [10], [11], [14], [34], [84] & [107].

³⁴ *ibid* at [50], [82].

³⁵ *ibid* at [40].

³⁶ *ibid* at [50], referring to *Khalili Vahed v MIMA* [2001] FCA 1404, *SAAF v MIMA* [2002] FCA 343, *Nezhadian v MIMA* [2001] FCA 1415, *WABR v MIMA* (2002) 121 FCR 196, and RRT decisions V96/05496, N97/14489, N98/21362, N98/24718.

³⁷ *ibid* at [82].

³⁸ *ibid* at [43].

³⁹ *ibid* at [43].

⁴⁰ *ibid* at [53]. The judgment of Gummow & Hayne JJ, *eg* at [86], [88] is to similar effect.

⁴¹ (1999) 197 CLR 510.

⁴² (2003) 195 ALR 1 at 8.

⁴³ (1999) 197 CLR 510 at [187]. See also *Re MIMIA; Ex parte Applicants S134/2002* (2003) 195 ALR 1 per Gleeson CJ, McHugh, Gummow, Hayne and Callinan JJ at [31] to similar effect.

⁴⁴ *Appellant S395/2002* [2003] HCA 71 at [81].

⁴⁵ *ibid* at [38].

⁴⁶ See *eg Dranichnikov v MIMIA* (2003) 197 ALR 389.

⁴⁷ See *eg MIMIA v VFAY* [2003] FCAFC 191 (French, Sackville & Hely JJ, 22 August 2003) at [97] referring to *MIMA v Applicant S* (2002) 70 ALD 354, *Paramanathan v MIMA* (1998) 94 FCR 28, *Saliba v MIEA* (1998) 89 FCR 38.

⁴⁸ *Appellant S395/2002* [2003] HCA 71 at [58], [59]. See also the discussion of Gummow and Hayne JJ at [72]-[77].

⁴⁹ *ibid* at [55].

⁵⁰ *ibid* at [81].

⁵¹ *ibid* at [82].

⁵² *ibid* per McHugh & Kirby JJ at [45]. There was evidence before the Tribunal that s377 of the Penal Code of Bangladesh made homosexual intercourse illegal but that prosecutions under the provision were extremely rare. The appellants did not suggest that the existence of the law and its potential application to them constituted persecution for a Convention reason. See Gleeson CJ at [12]-[13], McHugh & Kirby JJ at [46], Gummow & Hayne JJ at [68], Callinan & Heydon JJ at [94], [109].

⁵³ (1997) 190 CLR 225 at 258. See also *Chen Shi Hai* (2000) 201 CLR 293.

Attachment D

RRT Bulletin

The Refugee Review Tribunal decisions digest

This bulletin covers recently published Tribunal decisions. The decisions summarised represent a cross-section of published decisions of the Tribunal. Selected summaries of High Court and Federal Court judgments, of interest to the Tribunal, are also included.

The Refugee Review Tribunal shall not be liable for any reliance by any person on the summaries contained in this Bulletin. Each summary provides a guide only to each decision and should not, under any circumstance, be used as a substitute for the full text of a decision.

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Palestine**(Question No. 1711)**

Senator Nettle asked the Minister representing the Minister for Foreign Affairs, upon notice, on 26 April 2006:

- (1) What was the status of the meeting that the Prime Minister had with Mr Yasser Arafat in March 2000.
- (2) Why does the Government not recognise the head of the Palestinian Delegation to Australia as an ambassador and afford that person the appropriate diplomatic entitlements.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator's question:

- (1) The status of the 1 May 2000 meeting between the Prime Minister and Yasser Arafat reflected Australia's policy. The Prime Minister met with Mr Arafat as the Head of the Palestinian Liberation Organisation and President of the Palestinian Authority, and not as the Head of a Palestinian State.
- (2) Australia does not recognise a state of Palestine, but maintains relations with the Palestinian Liberation Organisation, or PLO, which was recognised by the United Nations General Assembly in 1974 as the representative of the Palestinian people. The PLO is represented in Australia by the General Palestinian Delegation in Canberra. The Delegation is headed by an appointee of the Palestinian Authority President, Mahmoud Abbas, and his title is "Head of Delegation". Neither he nor the Delegation has any diplomatic status.

West Papua**(Question No. 1712)**

Senator Nettle asked the Minister representing the Minister for Foreign Affairs, upon notice, on 26 April 2006:

- (1) Does the Government accept the 1969 Act of Free Choice as a legitimate expression of the will of the West Papuan people.
- (2) Will the Government support calls for the United Nations Secretary-General to review the status of the Act of Free Choice.
- (3) What role does the Government see for the international community to mediate discussions between the Indonesian Government and the independence movement in West Papua.
- (4) (a) How does the Government propose to monitor human rights in West Papua; and (b) will the Government raise the status of West Papua as an issue in upcoming international and regional forums.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator's question:

- (1) The Australian Government supports Indonesia's territorial integrity and recognises its sovereignty over Papua which resulted from the 1969 United Nations' sponsored Act of Free Choice.
- (2) No.
- (3) The management of issues in Papua is a matter for the Indonesian Government and the Indonesian people to determine.
- (4) (a) The Australian Government, including through the Australian Embassy in Indonesia, continues to monitor developments in Papua, including human rights. This includes official visits to the province and ongoing dialogue with relevant stakeholders, such as central and regional government au-

thorities and human rights groups, including Indonesia's National Human Rights Commission which established an office in Papua in January 2005, and non-government organisations. The Australian Government takes seriously reports of alleged human rights violations in Papua and continues to urge the Indonesian Government to investigate suspected abuses and ensure that the human rights of all Indonesians are respected. (b) No. See answer (3).

Satirical Web Sites

(Question No. 1713)

Senator Nettle asked the Minister for Justice and Customs, upon notice, on 26 April 2006:

With reference to the actions of the Australian High Technology Crime Centre (AHTCC) in regards to a satirical internet page www.iohnhowardpm.org written by Mr Richard Neville.

- (1) (a) Who contacted the AHTCC in regard to the web page; and (b) when (time and date).
- (2) What was the complaint and/or reason for referring this website to the AHTCC.
- (3) (a) Who assessed the case within AHTCC; (b) what was the level of the official; and (c) what course of action was recommended.
- (4) On what legal basis was any course of action made.
- (5) What action did the AHTCC take in regard to the website.
- (6) (a) Which organisations did the AHTCC contact; and (b) did the AHTCC ask for the website to be removed from the Internet; if so, on what basis was this request made.
- (7) What further action has been taken in this case.
- (8) Has any similar request been made by any other ministry to investigate satirical websites; if so: (a) by which departments; (b) which sites; and (c) what action was taken.

Senator Ellison—The answer to honourable senator's question is as follows:

- (1) (a) Staff from the Department of Prime Minister and Cabinet. (b) Approximately 6:15pm on 13 March 2006.
- (2) (a) The website www.johnhowardpm.org appeared to be an imitation of the Prime Minister's official website. It was referred to determine whether any criminal offences had been committed and to seek advice.
- (3) (a) A Federal Agent. (b) Team Leader. (c) It was recommended that the AHTCC not pursue this matter.
- (4) The AHTCC did not pursue this matter as no criminal offences were identified.
- (5) The AHTCC contacted the domain name registrar for the purpose of making its initial assessment.
- (6) (a) The domain name registrar was contacted. (b) No.
- (7) None, no further action was required.
- (8) No. (a) N/A. (b) N/A. (c) N/A.

Satirical Web Sites

(Question No. 1714)

Senator Nettle asked the Minister representing the Prime Minister, upon notice, on 26 April 2006:

With reference to the request to remove a satirical Internet page, www.johnhowardpm.org, written by Mr Richard Neville.

- (1) On what basis was the decision made to ask the Australian High Technology Crime Centre (AHTCC) to investigate and/or pull down the satirical website.

- (2) On what legal basis was the decision made to ask the AHTCC to investigate and/or pull down the satirical website.
- (3) Who made the decision to follow this course of action.
- (4) Did the Prime Minister initiate this course of action.
- (5) Was the Prime Minister aware of this course of action.
- (6) Did the Prime Minister approve of this course action.
- (7) (a) On how many occasions has the department taken a similar action; and (b) on each occasion: (i) what were the circumstances and relevant websites, and (ii) what action was taken.
- (8) Was the department aware that this site was a satire.

Senator Minchin—The Prime Minister has provided the following answer to the honourable senator's question:

I am advised that:

- (1) The Australian High Technology Crime Centre (AHTCC) was asked to investigate the bogus website because it appeared, on the face of it, to be the official website of the Prime Minister. The bogus website copied the design of the official website without authorisation.
- (2) The AHTCC was not asked to pull down the site. The domain name provider, Melbourne IT, was asked to deregister the website on the basis of advice from the AHTCC that the website breached registration rules set down by the Internet Corporation for Assigned Names and Numbers (ICANN).
- (3) The department made the decisions to take these actions.
- (4) No.
- (5) No.
- (6) Not applicable.
- (7) (a) The department has not previously taken any similar action. (b) (i) Not applicable. (b) (ii) Not applicable.
- (8) The bogus website appeared, on the face of it, to be the official website of the Prime Minister and copied the design of the official site without authorisation.

Grapes

(Question No. 1717)

Senator Bob Brown asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 2 May 2006:

With reference to the oversupply of grapes in Australia, particularly, the Riverland:

- (1) Is it true that in the 1990s the Federal Government, in order to attract large investments in new plantings, offered the corporate sector and wine makers huge incentives, including accelerated depreciation of all new vineyard developments.
- (2) What is the Government doing to help growers survive the current glut.
- (3) Has the Government decided whether to reinvent the wine equalisation tax to the advantage of marginal growers or otherwise aid the industry.
- (4) What measures, if any, is the Government taking to help family farms survive the currently low grape prices.

Senator Abetz—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

- (1) Depreciation arrangements for vineyard establishment costs were introduced by the previous Government and applied to relevant expenditure incurred on or after 1 July 1993. The Government removed these arrangements with effect from 1 October 2004.
- (2) The Government is assisting wine grape growers through a number of initiatives:
 - \$200,000 in funding to wine grape growers to assist in the development of industry strategies to overcome current difficulties and promote long term viability;
 - \$130,000 in funding for wine grape growers to establish a nationally representative grower body, Wine Grape Growers Australia, which is now actively representing grower issues;
 - \$8.1 million in matching contributions to research and development through the Grape and Wine Research and Development Corporation;
 - Progressing amendments to the Trade Practices Act 1974 to simplify the collective bargaining process and to add unilateral variation clauses in contracts to the list of matters a court may consider when deciding on unconscionable conduct; and
 - Provision of income support and financial counselling services for growers facing financial difficulties through the Government's Agriculture Advancing Australia programme, which includes Farm BIS, Farm Help, and the Rural Financial Counselling Service.
- (3) The wine equalisation tax (WET) producer rebate implemented with effect from 1 October 2004 provides significant benefits to the wine industry, with an estimated 85 per cent of the benefits being received by small and medium sized wine producers in rural and regional Australia. The Government announced in the 2006-07 Budget that it will provide additional support to wine producers through the WET producer rebate. The Government has enhanced the WET producer rebate scheme from \$290,000 up to a maximum of \$500,000 each financial year from 1 July 2006. The enhanced assistance is worth \$126 million over the next four years.
- (4) Direct assistance to farm families experiencing severe financial difficulties is provided through the Farm Help programme. Farm Help is a flexible programme which can provide short-term assistance to all farm families, while they take steps to improve their long term financial prospects, either on or off farm. The programme provides:
 - up to 12 months income support at the Newstart Allowance rate;
 - up to \$5,500 for professional advice and training to assist recipients make informed choices about their future; and
 - a re-establishment grant, currently up to \$50,000, for people who decide to leave farming and sell the farm.

The Australian Government also provides assistance to farm families facing financial hardship through the Rural Financial Counselling Service which provides advice and counselling on financial management.

Armoured Vehicles

(Question No. 1718)

Senator Chris Evans asked the Minister representing the Attorney-General, upon notice, on 2 May 2006:

- (1) How many of the armoured limousines for VIP transport, ordered by the Attorney-General's Department from Tenix, have been delivered.
- (2) (a) When was each vehicle was delivered; and (b) are any still to be delivered; if so what is the expected date.
- (3) What was the delivery date for each vehicle under the original contract with Tenix.

- (4) If the deliver date of any vehicle has not been in accordance with the terms of the original contract, what is the reason for the delay.
- (5) What is the cost of the vehicles specified under the contract with Tenix.
- (6) What is the final cost of each vehicle, including security upgrades.
- (7) Can an explanation be provided of any discrepancy between the original negotiated cost of the vehicles and the final cost on delivery.
- (8) Can details be provided of any maintenance costs for each vehicle incurred since its delivery.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator's question:

- (1) All ten (10) of the armoured vehicles ordered from Tenix have been delivered.
- (2) The delivery of the vehicles commenced in March 2005 with the last vehicle delivered in October 2005

Vehicle 1	Canberra	31 March 05
Vehicle 2	Canberra	28 April 05
Vehicle 3	Canberra	27 May 05
Vehicle 4	Sydney	23 June 05
Vehicle 5	Sydney	1 July 05
Vehicle 6	Melbourne	28 July 05
Vehicle 7	Melbourne	10 August 05
Vehicle 8	Brisbane	22 September 05
Vehicle 9	Adelaide	10 October 05
Vehicle 10	Perth	15 October 05

- (3) The delivery schedule the contract specified that the vehicles were to be delivered between mid November 2004 and mid April 2005
- (4) The reason for the delay in delivery was due to the late delivery of armouring materials from overseas.
- (5) Contract cost for the supply of the vehicles was \$3,875,864.
- (6) Final cost for the supply of the vehicles was \$3,875, 864.
- (7) There was no change to the negotiated contract cost for the vehicles.
- (8) As at May 2006, 3 vehicles have incurred maintenance costs which amounted to \$308.45.

Oil for Food Program
(Question Nos 1727 and 1728)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

- (1) When in 2002 did: (a) the Minister; (b) the Minister's office; and (c) the department, become aware that the Iraqi Administration had refused to allow a ship carrying Australian wheat to unload due to alleged contamination of the grain.
- (2) How did: (a) the Minister; (b) the Minister's office; and (c) the department, become aware the ship's cargo had been rejected and, in each case, what action was taken in response.
- (3) When and how was: (a) the Minister; (b) the Minister's office; and (c) the department, advised that further shipments of Australian wheat had been rejected by the Iraqi Administration because the grain was allegedly contaminated.

- (4) Did: (a) the Minister; (b) the Minister's office; and (c) the department, receive specific advice about the rejection of each vessel; if so, in each case, when, who provided the advice, how was the advice provided and what action was taken in response.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is underway.

Oil for Food Program
(Question Nos 1730 and 1731)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

- (1) When in 2002 did the Minister and/or his office and/or the department communicate with a representative of AWB Limited about the Iraqi Administration's threat to reduce the volume of Australian wheat it would buy due to Australia's alliance with the United States of America, and, in each case, who initiated the communication, in what form was the communication made and who were the parties to the communication.
- (2) If the form of communication was a face-to-face meeting: (a) who attended and in what capacity did they attend; (b) where was the meeting conducted; and (c) if officers from the department did not attend and/or official minutes of the meeting were not recorded, why not.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is underway.

Oil for Food Program
(Question Nos 1733 and 1734)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

- (1) When in 2002 did the Minister and/or his office and/or the department communicate with representatives of AWB Limited about the repayment of a quality rebate under a contract associated with the United Nations Oil for Food Programme and, in each case, who initiated the communication, in what form was the communication made and who were the parties to the communication.
- (2) If the form of communication was a face-to-face meeting: (a) who attended and in what capacity did they attend; (b) where was the meeting conducted; and (c) if officers from the department did not attend and/or official minutes of the meeting were not recorded, why not.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is underway.

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Oil for Food Program
(Question Nos 1736 and 1737)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

- (1) When in 2002 did the Minister and/or his office and/or the department communicate with: (a) Tigris Petroleum or a representative; and/or (b) BHP Billiton or a representative, about the repayment of a debt by the Iraqi Grains Board and, in each case, who initiated the communication, in what form was the communication made and who were the parties to the communication.
- (2) If the form of communication was a face-to-face meeting; (a) who attended and in what capacity did they attend; (b) where was the meeting conducted; and (c) if officers from the department did not attend and/or official minutes of the meeting were not recorded, why not.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is under-way.

Oil for Food Program
(Question Nos 1739 and 1740)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

When in 2002 did the Minister and/or his office: (a) seek advice from the department; and (b) receive advice from the department, in relation to the threat by the Iraqi Administration to reduce the volume of Australian wheat it would buy due to Australia's alliance with the United States of America and, in each case, in what form was the advice sought or received.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is under-way.

Oil for Food Program
(Question Nos 1742 and 1743)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

When in 2002 did the Minister and/or his office: (a) seek advice from the department; and (b) receive advice from the department, in relation to the repayment of a quality rebate for a contract signed by

AWB Limited under the United Nations Oil for Food Programme and, in each case, in what form was the advice sought or received.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is under-way.

Oil for Food Program
(Question Nos 1745 and 1746)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

When in 2002 did the Minister and/or his office: (a) seek advice from the department; and (b) receive advice from the department, in relation to the repayment of a debt owed to Tigris Petroleum, or BHP Billiton, by the Iraqi Grains Board and, in each case, in what form was the advice sought or received.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is under-way.

Oil for Food Program
(Question Nos 1748 and 1749)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

- (1) On what dates in 2002 and 2003 did the Minister or his office: (a) seek advice from the Minister's department; and (b) receive advice from the Minister's department in relation to the decision by the Iraqi Administration to continue to purchase Australian wheat despite Australia's alliance with the United States.
- (2) In each case, in what form was the advice sought or received.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is under-way.

Oil for Food Program
(Question Nos 1752 and 1753)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

- (1) On what dates in 2002 and 2003 did the: (a) Minister; (b) Ministers office; and (c) department, communicate with a representative of AWB Limited about the decision by the Iraqi Administration to continue to purchase Australian wheat despite Australia's alliance with the United States against Iraq.
- (2) In each case: (a) who initiated the communication; (b) in what form was the communication made; and (c) who were the parties to the communication.
- (3) If the form of communication was a face-to-face meeting: (a) who attended and in what capacity did they attend; (b) where was the meeting conducted; and (c) if officers from the department did not attend and/or official minutes of the meeting were not recorded, why not.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is under-way.

Oil for Food Program
(Question Nos 1755 and 1756)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

- (1) When and how in 2002 and 2003 did the: (a) Minister; (b) Minister's office; and (c) department, become aware that AWB Limited had reached a settlement with the Iraqi Administration that would permit the unloading of Australian wheat that was alleged to be contaminated.
- (2) When was advice sought from the department about the settlement.
- (3) When was that advice received.
- (4) What was the form of that advice.
- (5) On what dates in 2002 did the: (a) Minister; (b) Minister's office; and (c) department, communicate with a representative of AWB Limited about the settlement.
- (6) In each case: (a) who initiated the communication; (b) in what form was the communication made; and (c) who were the parties to the communication.
- (7) If the form of communication was a face-to-face meeting: (a) who attended and in what capacity did they attend; (b) where the meeting was conducted; and (c) if officers from the department did not attend and/or official minutes of the meeting were not recorded, why not.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is under-way.

Oil for Food Program
(Question Nos 1758 and 1759)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 9 May 2006:

- (1) Did Mr Darryl Hockey, an employee of AWB Limited, meet with the: (a) Minister; (b) Minister's office; and/or (c) the department, in November 2002 seeking advice on how to arrange the repayment of a quality rebate to the Iraqi Grains Board; if so: (i) who did Mr Hockey meet with, (ii) where did the meeting take place, (iii) on what date did the meeting take place and, (iv) if the Minister and/or his office did not attend, when and how was the Minister and/or his office advised of the meeting.
- (2) Were official minutes of the meeting recorded; if not, why not.
- (3) Was Mr Hockey provided with advice on options for repayment to the Iraqi Grains Board; if so, in what form was this advice provided.
- (4) Did the Minister and/or the his office receive a copy of this advice; if so, when and how was this approval given.
- (5) Did the Minister and/or his office approve this advice; if so, when and how was this approval given.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs and the Minister for Trade to the honourable senator's question:

The Government acted promptly to establish an open and transparent inquiry into Australian companies named in the United Nations Independent Inquiry Committee final report. The Government has cooperated fully with the Inquiry. It would not be appropriate to answer questions relating to the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme while the Inquiry is underway.

Mr Shi Tao
(Question No. 1761)

Senator Bob Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 10 May 2006:

With reference to the answer to question on notice no. 1603 (Senate *Hansard*, 29 March 2006, p. 205) and, in particular, the 'No' answer to paragraph (4) which asked whether the Australian Government approved of Mr Shi Jao's imprisonment in China:

- (1) Having raised this case and heard the Chinese Government's response, what response or further action did the Australian Government make or take.
- (2) Was the Government satisfied with China's response; if not, why not.
- (3) Was the issue of Mr Shi's imprisonment raised when Chinese Premier Wen Jiabao visited Australia in 2006; if not, why not.
- (4) When will Mr Shi be released.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator's question:

- (1) The Australian Government has taken no further action at this stage, but Mr Shi's case may be raised again at the next round of the Australia-China Human Rights Dialogue, scheduled for 25 July 2006.

- (2) The Government accepts the response provided by the Ministry of Foreign Affairs, but does not approve of Mr Shi's imprisonment.
- (3) No. I did not consider it appropriate to raise a single, specific case. Instead, I raised human rights in general terms with Premier Wen Jiabao, and raised Australia's concerns about Tibet, press freedom and Falun Gong with the Chinese foreign minister.
- (4) Mr Shi's release will be determined by the Chinese authorities.

Mr Michael Cahill

(Question No. 1765)

Senator Ludwig asked the Minister representing the Minister for Foreign Affairs, upon notice, on 10 May 2006:

With reference to the case of Mr Michael Cahill, who went missing in Malaysia in 1998 and is currently the subject of an investigation by the Queensland State Coroner:

- (1) Has the department been contacted by the Australian Federal Police (AFP) or the Coroner.
- (2) Was information requested by either the AFP or the Coroner, if so: (a) was this information provided, and (b) if the information was not provided, why not.
- (3) Were the cables mentioned in the answer to question on notice no. 1384 (Senate *Hansard*, 8 February 2006, p. 265) to the AFP from November 2005 provided to the coroner, if not, why not.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator's question:

- (1) Yes.
- (2) Yes. (a) Yes.
- (3) Yes.

National Competition Policy

(Question No. 1794)

Senator Siewert asked the Minister representing the Treasurer, upon notice, on 11 May 2006:

- (1) (a) Of the roughly 2000 pieces of legislation cited as part of the National Competition Policy (NCP) Legislative Review Process, how many public interest requests for exemption, or partial exemption, have been received by the National Competition Council (NCC) from the states and territories; and (b) can a list of such requests be provided.
- (2) (a) Of those requests for exemptions not submitted by states and territories, how many requests for exemptions were submitted by (i) industry bodies or (ii) community interest groups; and (b) can a list of such requests be provided.
- (3) (a) How many public interest requests for exemption have been accepted by the NCC; and (b) can a list of these acceptances be provided.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator's question:

- (1) (a) and (2) (a) The legislation review process under National Competition Policy (NCP) does not involve states and territories or relevant stakeholders lodging public interest requests for exemption to the National Competition Council (NCC).

As part of NCP, all governments agreed to undertake a program for the review and, where appropriate, reform of legislation restricting competition. In total jurisdictions nominated around 1800

pieces of legislation for review. Also agreed was the establishment of the NCC to report to the Council of Australian Governments (COAG) on its assessment of jurisdictions' progress in implementing NCP and related reforms.

Each government was responsible for reviewing their respective legislation in line with the public interest test set out under the NCP agreements. This involves the guiding principle that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs; and that the objectives of the legislation can only be achieved by restricting competition.

Where states and territories have failed to meet their NCP obligations in relation to legislative review, the NCC recommended reductions to annual competition payments paid by the Australian Government. In 2005 the NCC completed its final assessment under the current NCP arrangements (www.ncc.gov.au).

- (1) (b) and (2) (b) Not applicable - see above.
- (3) (a) The NCC's 2005 assessment of jurisdictions' progress in implementing NCP and related reforms found that in aggregate terms, around 85 per cent of governments' nominated legislation has been reviewed and, where appropriate, reformed.
(b) Not applicable – see above.