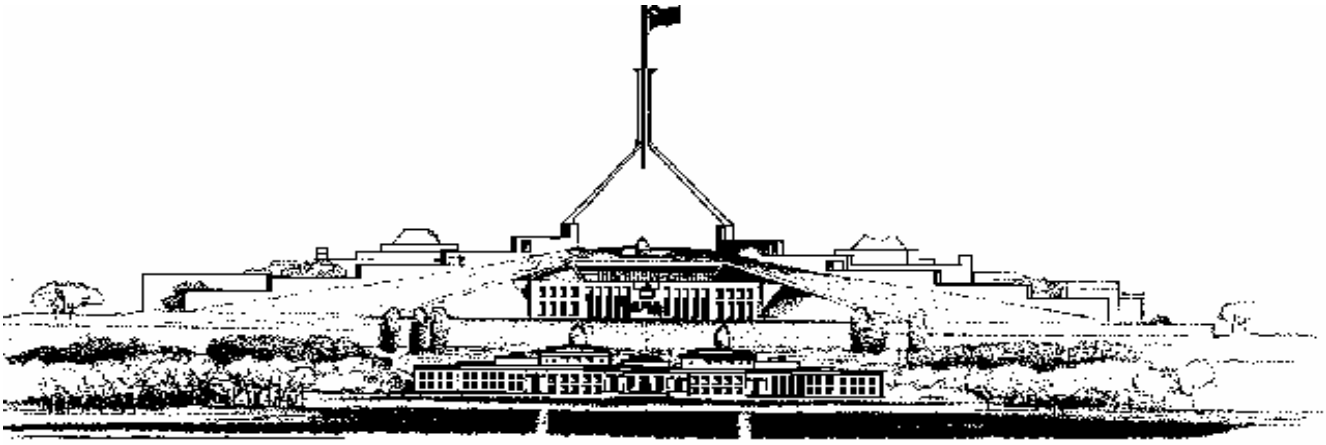
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



Senate

Official Hansard

No. 11, 2006

THURSDAY, 12 OCTOBER 2006

FORTY-FIRST PARLIAMENT
FIRST SESSION—SEVENTH 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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NORTHERN TASMANIA	92.5 FM
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FORTY-FIRST PARLIAMENT
FIRST SESSION—SEVENTH 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 Stephen Parry

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 Transport and Regional Services and Deputy Prime Minister	The Hon. Mark Anthony James Vaile MP
Treasurer	The Hon. Peter Howard Costello MP
Minister for Trade	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 Minister Assisting the Prime Minister for Indigenous Affairs	The Hon. Malcolm Thomas Brough MP
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 and Minister Assisting the Minister for Workplace Relations	The Hon. Joseph Benedict Hockey MP
Minister for Community Services	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 to the Minister for Transport and Regional Services	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

CONTENTS

THURSDAY, 12 OCTOBER

CONTENTS—*continued*

Thursday, 12 October 2006

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

NOTICES

Presentation

Senator Siewert to move on the next day of sitting:

That the Senate—

(a) notes that the week beginning 15 October 2006 is National Carers Week;

(b) acknowledges the enormous contribution made by carers to Australian society, often at great personal cost;

(c) recognises that a recent report by Access Economics, *The economic value of informal care*, estimates that 1.2 billion hours of informal care are currently provided by unpaid family carers;

(d) notes that this would translate into an economic cost to the community of $30.5 billion; and

(e) calls on the Government to recognise the economic and social contributions of carers by further investigating options for support and incentives.

BUSINESS

Rearrangement

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

That the order of general business for consideration today be as follows:

(1) general business order of the day no. 20—Sexuality and Gender Identity Discrimination Bill 2003 [2004]; and

(2) consideration of government documents.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:

General business notice of motion no. 578 standing in the name of the Chair of the Rural and Regional Affairs and Transport Committee (Senator Heffernan) for today, relating to an extension of time for the committee to report, postponed till 18 October 2006.

General business notice of motion no. 580 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, relating to the Arab-Israeli conflict, postponed till 17 October 2006.

NUCLEAR WEAPONS

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.32 am)—I move:

That the Senate—

(a) notes the resolution of the International Physicians for the Prevention of Nuclear War, on 10 September 2006 in Helsinki, calling for:

(i) relevant governments to make public all information relevant to the health and environmental consequences of their nuclear test explosions, including opening their archives to independent researchers,

(ii) long-term health and environmental effects of nuclear test explosions to be comprehensively and independently evaluated,

(iii) underground and underwater nuclear test sites and related contaminated areas to undergo best practice clean-up to be secured as much as feasible against radioactive and chemical toxic leakage into the biosphere and to be subject to long-term monitoring, and

(iv) responsibility for these public health measures to properly belong to the governments which conducted the nuclear test explosion;

(b) urges the Government to initiate talks with nuclear weapons states that have conducted tests and those states that have hosted these tests with a view to developing a treaty between the parties to at least put in place the measures called for in paragraph (a);

(c) encourages the Government to redouble efforts to encourage other countries to ratify the Comprehensive Nuclear-Test-Ban Treaty and bring it into force; and

(d) urges the Government to use its best diplomatic endeavours to dissuade North Korea from further nuclear weapons testing, and resist calls for military action against North Korea.

Question put.

The Senate divided. [9.36 am]

(The President—Senator the Hon. Paul Calvert)

Ayes……	32
Noes……	36
Majority……	4

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.
Forshaw, M.G.	Hogg, J.J.
Hurley, A.	Hutchins, S.P.
Kirk, L.	Ludwig, J.W.
Lundy, K.A.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	Murray, A.J.M.
Nettle, K.	O'Brien, K.W.K.
Polley, H.	Ray, R.F.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
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.	Coonan, H.L.
Eggleston, A.	Ellison, C.M.
Ferris, J.M. *	Fierravanti-Wells, C.
Fifield, M.P.	Heffernan, W.
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.	Nash, F.
Parry, S.	Patterson, K.C.
Payne, M.A.	Ronaldson, M.
Santoro, S.	Scullion, N.G.
Troeth, J.M.	Trood, R.B.
Vanstone, A.E.	Watson, J.O.W.

PAIRS

Evans, C.V.	Campbell, I.G.
Marshall, G.	Minchin, N.H.
Stott Despoja, N.	Ferguson, A.B.

* denotes teller

Question negatived.

INDIGENOUS AFFAIRS

Senator BARTLETT (Queensland) (9.39 am)—I move:

That the Senate—

(a) notes that:

(i) Australia was occupied by Aboriginal and Torres Strait Islander peoples who had settled on the continent for many thousands of years before British colonisation, and

(ii) Aboriginal and Torres Strait Islanders suffered major dispossession and dispersal upon acquisition of their traditional lands by the colonisers;

(b) urges the Government to affirm:

(i) the importance of Aboriginal and Torres Strait Islander cultures and heritage, and

(ii) the entitlement of Aboriginal and Torres Strait Islanders to self determination subject to the Constitution and the laws of the Commonwealth of Australia; and

(c) calls on the Government:

(i) to support the adoption of the draft United Nations Declaration on the Rights of Indigenous Peoples, and

(ii) to ratify the Declaration upon its adoption as a way of ensuring that Indigenous peoples have minimum standards for the protection of their fundamental human rights.

Question negatived.

WORLD SIGHT DAY

Senator CROSSIN (Northern Territory) (9.39 am)—I move:

That the Senate—

(a) notes that 12 October 2006 is World Sight Day;

(b) recognises that approximately 500 000 Australians are blind or have low vision;

(c) acknowledges that with Australia's increasingly ageing population, it is likely that the number of Australians who are blind or have low vision will increase;

(d) supports the commitment of the member organisations of Vision 2020 for raising awareness about conditions such as age-related macular degeneration, cataracts, diabetic eye disease, glaucoma, and refractive error and the serious level of trachoma in our Indigenous population; and

(e) commends the work of the many support groups available for those people who are blind or have low vision.

Question agreed to.

NUCLEAR NONPROLIFERATION

Senator MILNE (Tasmania) (9.40 am)—I move:

That the Senate—

(a) notes:

(i) the deteriorating security situation in North Asia following North Korea's nuclear test,

(ii) that India is not a signatory to the Nuclear Non-Proliferation Treaty (NPT),

(iii) that the India-United States of America (US) nuclear deal contravenes the NPT, and

(iv) that any sale of Australian uranium would contravene the NPT; and

(b) calls on the Government to use its position in the Nuclear Suppliers Group to block the India-US nuclear deal and reject any sale of uranium to India.

Question put.

The Senate divided. [9.41 am]

(The President—Senator the Hon. Paul Calvert)

Ayes……	6
Noes……	56
Majority……	50

AYES

Allison, L.F.	Bartlett, A.J.J.
Brown, B.J.	Milne, C.
Nettle, K.	Siewert, R. *

NOES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Bishop, T.M.	Boswell, R.L.D.
Brandis, G.H.	Brown, C.L.
Calvert, P.H.	Campbell, G.
Carr, K.J.	Chapman, H.G.P.
Colbeck, R.	Conroy, S.M.
Coonan, H.L.	Crossin, P.M.
Eggleston, A.	Ellison, C.M.
Faulkner, J.P.	Ferris, J.M. *
Fierravanti-Wells, C.	Fifield, M.P.
Forshaw, M.G.	Heffernan, W.
Hogg, J.J.	Humphries, G.
Hurley, A.	Hutchins, S.P.
Johnston, D.	Kirk, L.
Ludwig, J.W.	Lundy, K.A.
Macdonald, I.	Mason, B.J.
McEwen, A.	McGauran, J.J.J.
McLucas, J.E.	Moore, C.
Nash, F.	O'Brien, K.W.K.
Parry, S.	Patterson, K.C.
Payne, M.A.	Polley, H.
Ray, R.F.	Santoro, S.
Scullion, N.G.	Sherry, N.J.
Stephens, U.	Sterle, G.
Troeth, J.M.	Trood, R.B.
Vanstone, A.E.	Watson, J.O.W.
Webber, R.	Wortley, D.

* denotes teller

Question negatived.

Senator Murray—Mr President, I am not going to ask that we recommit the vote. The bells only rang for one minute and I could not get back in time. I ask that my vote be recorded with the Democrats, please.

NOTICES

Postponement

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (9.46 am)—by leave—I move:

That general business notice of motion no. 585 standing in my name for today, relating to China and Tibet, be postponed till 16 October 2006.

Question agreed to.

COMMITTEES

Legal and Constitutional Affairs Committee

Meeting

Senator FERRIS (South Australia) (9.47 am)—I move:

That the Legal and Constitutional Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 16 October 2006, from 7.30 pm, to take evidence for the committee's inquiry into the performance of the Australian Federal Police, adopted by the committee pursuant to standing order 25(2)(b).

Question agreed to.

Foreign Affairs, Defence and Trade Committee

Extension of Time

Senator FERRIS (South Australia) (9.47 am)—I move:

(1) That the time for the presentation of the report of the Foreign Affairs, Defence and Trade Committee on the provisions of the Defence Legislation Amendment Bill 2006 be extended to 27 October 2006.

(2) That the committee may consider any proposed government amendments to the bill.

Question agreed to.

WEEDBUSTER WEEK

Senator MILNE (Tasmania) (9.48 am)—I move:

That the Senate—

(a) notes that:

(i) the second week in October is National Weedbuster Week,

(ii) weeds seriously deplete biodiversity and cost the Australian economy approximately $4 billion per year,

(iii) climate change, as stated at the 15th Australian Weeds Conference, will make weed management increasingly more difficult, with sleeper weeds and warmer conditions leading to the habitat expansion of some weed species,

(iv) funding for the Defeating the Weed Menace Programme ends in the 2007-08 financial year, and

(v) the Weeds cooperative research centre ends its current term in 2008; and

(b) calls on the Government to:

(i) consider extending the Defeating the Weed Menace Programme beyond its current term with an increase in its scope and funding base, and

(ii) fulfil its promise to fund a program to increase public awareness of the weed problem in Australia.

Question agreed to.

WILLEM ZONGGONAU

Senator NETTLE (New South Wales) (9.48 am)—

That the Senate—

(a) notes:

(i) the recent death of West Papuan politician Willem Zonggonau while visiting Australia,

(ii) that Mr Zonggonau was a member of the Papuan legislature and Indonesian upper house in the 1960s, and

(iii) that while living in exile in Papua New Guinea Mr Zonggonau worked tire-

lessly for freedom and peace in West Papua; and

(b) expresses its condolences to Mr Zonggonau's family and friends, and the people of West Papua for their loss.

Question agreed to.

MIGRATION LEGISLATION AMENDMENT (ENABLING PERMANENT PROTECTION) BILL 2006

First Reading

Senator BARTLETT (Queensland) (9.49 am)—I move:

That the following bill be introduced: A Bill for an Act to remove unfair impediments preventing holders of temporary protection visas from obtaining permanent protection visas, and for related purposes.

Question agreed to.

Senator BARTLETT (Queensland) (9.49 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) (9.49 am)—I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard* and to table an explanatory memorandum relating to the bill.

Leave granted.

The speech read as follows—

MIGRATION LEGISLATION AMENDMENT (ENABLING PERMANENT PROTECTION) BILL 2006

This Private Senator's Bill is one of a number of Migration Act Amendment Bills which I am tabling in the course of this year. This bill seeks to remove the unfair provisions which prevent people on Temporary Protection Visas (TPV) who have been convicted of certain legal offences from being eligible to receive a permanent Protection Visa when their TPV expires. Currently, such people can only be issued with a further TPV unless the Minister chooses to use his or her discretion to waive this requirement.

Punitive provisions were introduced for holders of TPVs who are convicted of minor crimes. In such cases, Temporary Protection Visas are rolled over for an additional period of four years from the date of conviction, thus postponing the prospect of family re-union by that period of time.

The Department of Immigration and Multicultural Affairs advises that the Migration Regulations have been amended to ensure that a person is not granted a Permanent Protection Visa for four years from the date of a conviction in Australia, whether during detention or while in the community, for a criminal offence carrying a maximum penalty of imprisonment of twelve months or more.

A 'maximum penalty of imprisonment of twelve months or more' can potentially cover quite minimal criminal offences in Australia, from abusive language to theft of a bicycle.

These provisions result in the double punishment of a refugee who has already been convicted through the judicial system by depriving them of certainty and security, as well as measures such as family reunion, for a subsequent four years period.

The Democrats do not believe that there is any justification for such a penalty under the Refugee Convention. Such penalties are entirely disproportionate to the offence committed. These provisions can only have negative consequences and should be abolished.

I commend this bill to the Senate.

I table the explanatory memorandum, and I seek leave to continue my remarks later.

Leave granted; debate adjourned.

MEDICAL INDEMNITY LEGISLATION AMENDMENT BILL 2006

AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT) BILL 2006

AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT) (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2006

First Reading

Bills received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.51 am)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have 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 ELLISON (Western Australia—Minister for Justice and Customs) (9.51 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—

MEDICAL INDEMNITY LEGISLATION AMENDMENT BILL 2006

The Medical Indemnity Legislation Amendment Bill is a further refinement of legislation implementing the Government's medical indemnity package, in the light of consultations with insurers and doctors regarding their experience of its operation.

The Government's original package of medical indemnity legislation in 2002 addressed the affordability of medical indemnity for doctors and the industry's long-term viability, in a period of upheaval.

Thanks to these changes, medical practitioners in private practice have been able to obtain affordable medical indemnity insurance cover and insurers have been protected against more extreme claims. However those who had left the medical workforce—including retirees, and those on maternity leave—often faced significant ongoing costs for "run-off cover" for incidents which had occurred during their careers but had not been reported.

The Run-Off Cover Scheme, or ROCS, which began on 1 July 2004, is a logical extension of the medical indemnity package, designed to provide secure insurance for doctors who have left private practice. The intention was that medical indemnity insurers would provide cover under ROCS on the same basis as to doctors in the workforce, but in the former case the government would reimburse the cost of claims to insurers.

Although the Government pays ROCS claims, these are funded by a levy on insurers so that the scheme operates on a cost-neutral basis, to the benefit of taxpayers, patients and doctors alike.

The present Bill will align ROCS more closely to current industry practice, increase the level of certainty around the provision of ROCS cover, and simplify the administration of the scheme, following concerns raised by insurers and medical practitioners.

In particular, ROCS cover will no longer be limited to incidents which were covered by medical indemnity insurance at the time of their occurrence, but will also include those which were uncovered at the time, but for which the doctor subsequently took out retroactive cover—specifically, in his or her last contract of insurance before entering ROCS.

This change recognises that some of these gaps in cover may have been brief and inadvertent; if a doctor has addressed this by taking out retroactive

cover, it seems unreasonable to exclude such periods from ROCS cover.

The cover insurers offer individual doctors under ROCS will mirror that provided immediately before they become eligible for ROCS. Other provisions ensure that the payment of claims—and the reimbursement of the cost of those claims by Medicare Australia—will be closely linked to insurers' ordinary business practices.

From the doctors' point of view, therefore, the transition to ROCS will be seamless: they will continue to receive the same cover and the same service.

Some of the provisions of this bill extend beyond ROCS. Apart from those clarifying abbreviations, these include a relaxation of penalty provisions in relation to compulsory offers of retroactive cover: doctors who accept such an offer will no longer have to respond in writing, but those who refuse retroactive cover will. This will ensure that no doctor misses out on retroactive cover by accident.

This change could be said to prejudice the system in favour of doctors' taking out retroactive cover, but stops short of requiring it: medical indemnity insurance, including cover for past incidents, remains the responsibility of the individual doctor.

The government is working with medical indemnity insurers to ensure that doctors understand the importance of this decision, and in particular recognise that the medical indemnity cover they will have in retirement, in relation to past incidents, now depends entirely on their last contract of insurance. This means they should take particular care in relation to medical indemnity cover as they begin to think about retirement.

This bill builds upon the solid base of the Government's existing medical indemnity package, particularly in relation to ROCS. It provides for greater certainty, smoother operation and a seamless transition for doctors leaving the private medical workforce.

It demonstrates the ongoing commitment of the Government to the medical indemnity industry, doctors and patients, and to working with doctors and insurers to ensure that medical indemnity insurance continues to operate viably, fairly and efficiently for the benefit of the industry, doctors, patients and taxpayers.

AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT) BILL 2006

I am pleased to present legislation to give effect to a Federal Government initiative that will provide non-liability cancer treatment for Australians who participated in the British Nuclear Testing Program in Australia from 1952 to 1963.

This bill will implement an undertaking given by the Government in 2003 when it announced its response to the Review of Veterans' Entitlements. The undertaking was to respond positively to the health needs of the participants, at the conclusion of the Mortality and Cancer Incidence Study of the group.

The study found that the rate of some cancers among the test participants was higher than in the general Australian population, even though a link with exposure to radiation was not found.

While no link to exposure to radiation was found, the Government is of the view that support is appropriate for a group that has a clearly defined health care need, hence the health care package being offered under this legislation.

The bill will provide participants with non-liability treatment for all malignant cancers regardless of causation, as well as access to ongoing cancer testing.

Persons who may be eligible under the bill include those who were Australian Defence Force personnel, Australian Public Service employees and third party civilian contractors.

This initiative is expected to benefit up to 5500 Australian participants of the nuclear weapons tests.

The health care initiatives will be funded and delivered through the Department of Veterans' Affairs. Persons eligible under the bill will have access to extensive health care services including GP services, hospital care and pharmaceutical benefits.

The commencement date for eligibility for treatment will be three months prior to the date of lodgement of the claim or 19 June 2006, the date

of the Government's decision, whichever is the later.

Participants will also have continued access to existing statutory workers' compensation schemes such as the *Safety, Rehabilitation and Compensation Act 1988*, and the Administrative Scheme administered by the Department of Employment and Workplace Relations.

Early passage of the bill will mean that eligible persons can begin to benefit in a timely manner.

This initiative demonstrates this Government's commitment to the Australian military and civilian personnel who participated in the British nuclear tests and will assist in addressing their health needs.

AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT) (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2006

I am pleased to present the Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Bill that will make minor amendments to a number of other Acts as a consequence of the Australian Participants in British Nuclear Tests (Treatment) Bill. This bill will also make transitional provisions in relation to the commencement date for eligibility for treatment and travelling expenses.

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

Ordered that the Medical Indemnity Legislation Amendment Bill 2006 be listed on the *Notice Paper* as a separate order of the day.

BUSINESS

Rearrangement

Senator PARRY (Tasmania) (9.52 am)—I move:

That business of the Senate order of the day no. 1 be postponed to a later hour of the day.

Question agreed to.

Consideration of Legislation

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.52 am)—I move:

(1) That the time allotted for the remaining stages of the Broadcasting Services Amendment (Media Ownership) Bill 2006 and three related bills be as follows:

Committee stage	Thursday, 12 October 2006—commencing immediately, until 1.15 pm
Third reading	Thursday, 12 October 2006—until 1.45 pm.

(2) That this order operate as an allocation of time under standing order 142.

Senator LUDWIG (Queensland) (9.53 am)—I wish to speak to the motion. Again we see this government move a guillotine. Why? Because of this government's incompetence to manage the legislative program and the incompetence of the Minister for Communications, Information Technology and the Arts herself to handle the passage of the legislation through this house. The government has to rescue the minister from scrutiny and so this guillotine ensures that there will not be further scrutiny during the committee stage of this legislation and that the Senate will not be able to hold the government to account on these bills. But it is not the first time this government has done this.

This legislation is four broadcasting bills in a package. A total of 25 bills have now been guillotined by this government to push legislation through the Senate to ensure that it will not get scrutiny, that it will not get the proper attention it deserves. We now have an outrageous use of both the guillotine and the gag to make sure that the legislation will not get proper scrutiny.

It is worth mentioning some of the highlights—one could almost say the lowlights—of these bills because what this package of

bills represents is one of the most significant changes to media ownership in this country in the last 20 years. It is likely—in fact, more likely—to lead to an increased concentration of media ownership, a rationalisation of news and production services, a loss of diversity of media content and the boosting of the power and influence of a small number of media owners. That in itself deserves scrutiny in the Senate, to ensure that those things can be properly looked at and properly seen.

Not only did these bills suffer at the hands of this government but, instead of ensuring scrutiny in the debate, the government's handling of the legislation has been a complete shambles, culminating in the government today guillotining the debate, rushing the bills through, giving them the bum's rush, because the government could not get its act together earlier in the week. The Senate Standing Committee on Environment, Communications, Information Technology and the Arts was not given sufficient time to have a look at this legislation. What you now have, though, are echoes from the government's own backbench about this bill. Senator Ian Macdonald, during the committee stage in here, expressed disappointment at the very rushed nature of the inquiry. So we now have even the backbench starting to get a little bit nervous about how this government is dealing with its legislative program.

The report by the Senate committee was not tabled until Friday afternoon, and senators were expected, on the government's original program, to arrive here and debate the legislation on Monday morning without having had time to properly digest the report, without having had time to properly go through it and to contact people who might have an interest and look at issues. But it did not happen on Monday. Why? Because the government was not ready again. On Tuesday it was on again, off again. The way this government runs this place is a complete shambles.

Senator Coonan insisted on the importance of the legislation and that it had to be passed in this sitting, while she scratched around trying to win over senators on her own side, playing to the National Party, playing to the Liberal backbenchers, playing to anyone she could. When the Prime Minister himself sensed that support for this legislation might be flagging, his tune changed. You could see that. He distanced himself from Senator Coonan and distanced himself from the bill. He was letting her hang out to dry. And you could see then, when he said, 'It's a second-order issue,' that he was sidestepping the blast that might have been coming his way and putting Senator Coonan in its path.

But The Nationals came to the rescue. They rescued the Prime Minister, to ensure that the legislation would be passed. It was not only Senator Fielding but also The Nationals who ensured that this bill would be passed.

Since the Howard government has had a majority in the Senate, the committees—the proper forum for scrutiny, where proper debate should happen—have been ground down by this government, ground under its heel. Instead, we now find the government makes shabby and shady backroom deals with coalition senators, with the minister conducting individual negotiations.

That surprised me, really—allowing the backbenchers, the National Party members, to be split up and picked off, one by one. When you look at it, though, it is what the Liberals are doing to you Nationals anyway in each seat—they are picking you off one by one. So it is not surprising that the minister, when she wants to talk to the National Party, talks to them one at a time.

Instead of this, we should have proper process, we should have proper review and we should have proper scrutiny and debate. But this government has abandoned that. If the Prime Minister thinks that that is the appropriate process, that is not what he said when he first got an inkling that he might have control of the Senate. What he said back then was:

> But I want to assure the Australian people that the Government will use its majority in the new Senate very carefully, very wisely and not provocatively. We intend to do the things we've promised the Australian people we would do but we don't intend to allow this unexpected but welcome majority in the Senate to go to our heads.

How surprising! I am sure he is now distancing himself from those words as well. He went on to say:

> We certainly won't be abusing our newfound position, we'll continue to listen to the people and we'll continue to stay in touch ...

This is now an arrogant, out-of-touch government that is not listening to the people, not ensuring proper scrutiny—and indeed ensuring that the debate will not be aired. What we have is a minister who manages to hide behind the coalition, the backbench, the National Party, Senator Fielding and anyone else she can hide behind to ensure that she does not have to answer questions in respect of this bill. Ultimately this motion will ensure that there will be reduced committee time, so the minister will not have to answer questions. I would not be surprised as well if some of the coalition backbenchers come down to filibuster during that committee debate to take oxygen away from the Senate. I would not be surprised if the minister has already distributed notes for them to come down and ask her some dorothy dixers so that she can filibuster during the committee stage, because she really does not want to take any questions from the opposition about this bill. She can then scurry out of this place and say, 'I've got through another committee process, although reduced.' We will see if the backbenchers want to participate in that: shame on them if they do.

We saw the same thing happen with the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. All week the government dillydallied with it. They said that we might deal with it or we might not deal with it. Ultimately the government kept the Senate waiting while they tried to sort out their own internal divisions. Finally they did not bring the legislation on until right at the death knock really. I had come down to give my speech in the second reading debate on that bill and the government told me as I walked in the door that they had pulled it. In this case they have managed to convince the National Party to support them.

The government did not bring this legislation on until Tuesday this week. What we have now is very limited time and very limited debate. When you look at the National Party role in this, you see that they have done nothing short of abandon rural and regional Australia. They have abandoned it in Victoria. The tide is running out on them in New South Wales. And they have now made sure that in Queensland they will also abandon it. This week's events have been an abuse of the Senate—an absolute abuse of the Senate. They should be ashamed. They should understand that the role of the Senate is to scrutinise and to hold the government to account. They have turned their back on that role. It is an indictment also of the Howard government's mismanagement and internal division. It shows how ragged and ratty this government is becoming—it really does.

These bills had a very short life, and it is worth considering exactly how these bills went through. The bills were introduced, as I have said, on the last sitting day of the previous session. They were listed for debate on

the first day of the sitting session, but the government's own ineptitude and internal division made sure that they did not come on then. The debate was finally brought on. We had a second reading debate, but we are not going to have scrutiny in the committee stage. You only have to look at the range of amendments that are being proposed and put forward—there are pages and pages of them that are being dealt with in respect of these bills, but we are not going to get proper scrutiny in respect of that. We are not going to find out what all the parts of the deals were that this minister put together because this government is not going to allow a fulsome committee debate to occur. In total what we have had is three short days on the *Notice Paper* before the government started forcing its changes through parliament.

We had the inquiry referred to the Senate committee on 14 September. You had submissions required by 25 September. So this government is treating with contempt not only this place but also those people who want to make proper submissions to Senate committees when you look at that short turnaround—it was only 11 days. But people did turn their minds to it. There were 71 submissions received. That is because this is a very important matter, and they turned their minds to it in a very short space of time to provide a view. Hearings for the inquiry took place on 28 and 29 September, meaning the committee had only two days to consider all of the submissions in time for the hearing. The committee was then required to finish in just one week, by 6 October 2006. The report was then tabled on 9 October, the same day the debate was meant to commence—but it was available, as I said, on the Friday before. So that is the compressed period we had for debate. That is what the government are now doing in respect of these debates: they are sending them to committees and they are ensuring that the committees do not function properly because of the limited time they have available.

We heard yesterday another complete outrage: the government are now sending bills to committees without the bill. They are simply referring the bill, sight unseen, to a committee. Goodness knows when the committee is actually going to get the bill. Hopefully it will be introduced within that week, but there is no guarantee. So what they have done is say: 'We have referred the bill to a committee.' But the committee cannot start the examination because, of course, there is no bill. In any other place it would be a farcical circumstance. I will sell you a Demtel square plastic box with nothing in it as well. That is what the government are doing. They are not setting out the reasons for the referral, what will be in the bill, what the committee should be looking at and what submissions it should be seeking from interested parties. None of that can start because what they did was to send bills off to a committee without the bills themselves.

Senator Sandy Macdonald—Well, are we going to get onto this bill?

Senator LUDWIG—Of course, what we have is a government that is trashing our democratic principles in this place. The Senate is a check on government. It is a politically dumb act to take the course that this government is now taking in respect of this Senate—

Senator Sandy Macdonald—Well, let's get on and debate it.

Senator LUDWIG—We have interjections from the backbench again, but it is interesting that they come from a senator who also thinks that the committee's time is being rushed. I also welcome his contribution to this debate. Over the last 12 months, the government have slowly been reducing the ability of references committees, or committees at large, to do their work. But it did not

start there. It started when they got control of the Senate. What you then had was routine abuse that has continued, and it has continued unabated. It is about squeezing the ability of the Senate to actually hold the government to account. But that will not deter Labor. We will continue to press forward.

The government have unilaterally altered the allocation of questions at question time to take away questions. You have routinely rejected amendments to bills, even where they are supported by government members of committees. The government have blocked references of bills to committees with no reason—and references to committees with no reasons as well—and even without the bill. You have reduced the time for committees to consider bills. You have also used the gag and the guillotine to pass legislation, as I have said, 25 times. You have reduced the number of sitting days for the first half of this year. You have rejected many of the proposals for proper references for committees to look into issues, such as private health insurance, the detention of Cornelia Rau and a range of other matters in relation to which you then have said, 'We don't want the government to look at those.'

The government have rejected motions for the production of documents because you want to hide them from scrutiny. You have rejected requests for committees with respect to the consideration of information in the last 12 months. You have removed the spillover days from estimates hearings in May 2006 because you do not want estimates hearings to scrutinise the government. You want to take away those eight days to ensure that you cannot be examined and that the ministers would not feel a bit precious if a question were asked.

The government has refused to answer questions at estimates. You will all recall that senators are not allowed to ask a question about the AWB—heaven forbid! You have produced longer delays in answering questions. You have also increased the number of claims that answering questions on notice would be too expensive. This is a government that I have painted as having drawn itself into a little bundle to protect itself over the last 12 months from scrutiny, accountability and review. Now you are trying to pull the wool over your own eyes. The backbench should open up and should not be party to this outrage. What you have also done is ensure that witnesses would not appear at committees.

Those are the charges that are being put to you. I hope senators on the other side will be able to agree and start standing up for themselves—and for the government, because the government will not stand up for itself—to defend the ability of the Senate to hold this government to account and scrutinise the legislation, but I doubt it.

Senator IAN MACDONALD (Queensland) (10.10 am)—What hypocrisy, what a whole lot of crocodile tears from the Labor Party. I do want to debate this bill. I have some concerns regarding the amendments that I want to explore with the Minister for Communications, Information Technology and the Arts. As Senator Ludwig has indicated, and I have said this in my speech on the second reading, I do have some concerns, to a degree, about the constricted nature of the Senate committee inquiry. The Labor Party's principal spokesman was not available on the day, otherwise we would have had a little extra time.

I want to get on and debate it now. Senator Ludwig has spent 18 minutes waffling, talking about Cornelia Rau and other people—nothing to do with this—and holding us up from getting on with the bill. I have taken, I think, 30 seconds. I am going to stop now because I want to get on and actually debate

the bill in whatever time is available. There are a number of things that need to be addressed and the minister needs to explain those to us. We want her to explain them to us but, for as long as we carry on with this sort of ridiculous debate, we will not get to the bill and give it the sort of scrutiny that it deserves.

Senator BARTLETT (Queensland) (10.11 am)—If Senator Ian Macdonald wants to genuinely explore these issues—I agree there are genuine issues to explore—then there is a simple course of action: do not vote for this gag. He can explore them completely and fully to his total satisfaction, and the same goes for Senate Joyce, who, I know, also has legitimate concerns. This is the absurdity of the situation: people on the coalition side who express genuine concerns, whether it is about the shortness of the committee process or a lack of opportunity to examine very detailed amendments which only appeared yesterday, then go and vote in favour of motions that restrict their own opportunity to do so. That is the great tragedy here.

I fully understand that we are all in parties. To some extent, we all have to operate within the wider collective good, as it is perceived, for our various parties. But if we are to have any hope at all for democracy—and Senator Joyce was referring to this, I think, yesterday in his second reading contribution—there must be a greater ability for individual senators to vote on issues in a way that reflects the public interest. That is what this is about, when it all boils down to it. I will not go on for long, either, because I recognise that the perverse impact of what the government are doing—even taking up time pointing out the perverse aspect of what they are doing and the travesty of process that they are inflicting on us—takes away time from debating and examining the legislation. So I will be brief.

The absolutely atrocious perversion of democracy that occurs and is occurring consistently with this process, with these most fundamental and crucial pieces of legislation, in a whole range of areas for the last 12 months or more since the coalition government got control of the Senate, simply cannot pass without comment. Senator Ludwig went into those in detail, so I will not repeat them. This simply cannot pass without comment. This motion here will restrict to less than three hours the opportunity for all senators to simply get on the record what the impact of these wide-ranging and complex amendments will be, to put the minister under scrutiny as to what the impact will be and to ask questions and clarify what the impact will be.

It also has to be said that this is not just a matter of gagging ourselves and the Senate by passing motions like this; it actually gags the general public. It seriously restricts the ability of journalists, reporters and independent experts to examine what is before us. This stuff is going to become the law. It is not just some debating tactic or a technique to win the day to get a tick on some political point-scoring board. This is going to become the law for years and years to come. It is simply impossible for people, whether they are in the press gallery or in the wider community and have expertise in this area, to properly and adequately go through the detail of the changes that have been tabled in this place just in the last 24 hours—let alone during the ridiculously short time frame for the legislation as it was initially presented—and examine, highlight and make others aware of what the consequences will be. It is as much a problem of gagging and putting a blindfold on the wider community and people with expertise as it is about the Senate itself. It is a serious undermining of democracy, and it only occurs because every single individual coalition senator votes for it time

after time. If they have concerns about the legislation, as I know many of them do, and if they want to explore the impacts then they should not vote for this motion and they will have ample opportunity to explore the legislation fully.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.16 am)—It is an outrageous process that is taking place here, but it is part of the fact that the government, with the numbers in this place, has the ability to guillotine the legislation unless government members vote against that guillotine and allow a proper debate in this place. While the numbers prevail, so the guillotine will prevail. The one very important fact here is the fact that the government has also got behind it in this matter the vote of Family First. I would not be surprised if the Family First senator came in and voted against the gag, because he has now safely committed his vote to the media barons and the government through this legislation.

I want to take this opportunity to comment on that vital vote and the speech that has been so decisive in this matter, delivered in here yesterday by Family First. It is a completely incoherent speech when you look at it. Senator Fielding said:

> ... Family First is concerned about the possibility of a monopoly of our major media outlets and the potential abuse of power that that represents.

He also said that Family First believes that the arguments against this legislation are strong, but then he said that people out there—and that includes families—do not care; they want to be entertained. Then, extraordinarily, without the debate being enjoined on the reasons why we should be concerned about this legislation concentrating media ownership, Senator Fielding committed Family First strongly to backing it. What a dereliction of duty that was.

He is absent from the chamber, as he has been through most of the process, and of course now we are going to get the debate truncated. But what is very significant here is that Family First, put in here by the Labor Party through its preferences in Victoria, has become a de facto part of the Howard government when it gets to vital legislation like this.

Senator Ian Macdonald—It is a change from having the Labor Party putting you into power.

Senator BOB BROWN—Whatever you like, Senator. The fact is that in Victoria the Greens got over nine per cent of the vote and Family First got just over one per cent of the vote, and it was the Labor Party preferences that made the crucial difference there. I do not know what your vote was.

I would expect that Senator Fielding, who has the crucial role, would be here at the moment defending the failure of that speech yesterday and giving some sense to the crucial position that he has taken. He was not here through the series of very important motions that we divided on a while ago, and he is not here now, and I think that is an extraordinary dereliction of duty by Family First. Senators have a duty to be right on top of legislation like this and to make considered votes based on what goes on inside the chamber. I do not know what goes on outside the chamber. I do not know what it is that has motivated Family First to put an argument against this legislation and then vote for it, but that has not been comprehensible to anybody who has been in this chamber watching this piece of legislation move towards finality. Thank you, Family First. Family First is effectively voting to limited the diversity of media that families in this country see.

Having disparaged the ability of families—ordinary Australians—to discern that it is good for them that they should have

greater diversity, not less diversity, Senator Fielding effectively says that families do not care. What nonsense! What a put-down of families in Australia that is. There are great concerns about this potential concentration of media ownership and foreign ownership of what we read and see—the news gathering that we get put before us. Family First say, 'We'll vote with the government to do just that.' That is an extraordinary dereliction of the commitments that Family First say they have to average Australians, who are being sold out here this morning in this Senate in Senator Fielding's absence.

Senator JOYCE (Queensland) (10.21 am)—There are concerns. It was interesting to watch what the markets did yesterday. Austereo, for instance, went up by five per cent. We might be fooling ourselves, but the market certainly is not; it knows exactly what is about to happen. There is going to be a wave of mergers and a centralisation of media content, and we are going to change the democratic process in this nation. That is what is going to happen.

It is good to see that Senator Ludwig has left, because the Premier of Queensland, Mr Beattie, refers to the Labor Party as hacks in today's *Financial Review*. He said they are not doing their jobs as senators, that this Senate is irrelevant and that it needs to be replaced because it is not representing the states any more. He is taking that argument to his federation or whatever conference down in Melbourne.

Today is going to be an interesting test of whether we prove Mr Beattie wrong or whether we prove Mr Beattie right. I believe absolutely in the process of this Senate. I believe absolutely in ideals, of people rising above their political masters and, on a very important piece of legislation, voting for what is right for this nation. I know the Labor Party has signed a pledge that they cannot do that; I hope that we have not. That is a debate the Australian people will have, whether this Senate is relevant.

This is a major issue. We are talking about the free flow of information out to the community, the free flow of the fourth estate. As such, I think there are a lot of issues that need proper debate and need proper attention. We need to have a look at what the issues are in these amendments that we are dealing with. It is disappointing, and it is on the record, that Family First have decided they are going to allow, without challenge, the centralisation of media content without any protection mechanisms that will change the nature of our democracy. People voted for Family First because they thought they would have another voice that would be a decent voice. If they let these things through today without challenge, I suspect they have defrauded the general aspirations of what people expected them to be. That has to go on the record.

How can Family First vote for something that they did not even turn up to the committee on? They were a no-show at the committee. There was no dissenting report from Family First, because they were not interested in it. What they do today is vitally important for the future of our nation, because the people who become very powerful in this are the people who control the media—the fourth estate. That is not the actual media or the journalists; it is the major shareholders in media companies who have an interest in what goes on.

This is one of the most important pieces of legislation we are ever going to deal with, it really is. It is about democracy and what happens. It is interesting about regional groups and the two out of three rule, but the final question is: are we going to get an overcentralisation of the media? And, if we get that, what is our remedy to fix that situa-

tion? If we do not have the courage to fix it now before there is an overcentralisation of the fourth estate, before there is an overcentralisation of opinion, then we have got no hope of fixing it afterwards. If the political weight of certain groups that have inspired this legislation is so strong now, what hope have you got if you bring about a duopoly? What hope have you got of changing it then?

The responsibility of your vote today is for our nation in 10 years time. This is very important for everybody. Mr Beattie has laid down a challenge to the Senate: prove yourself relevant or hand it over to someone else. I believe that this place is relevant. I believe absolutely in the honour that is bestowed on you to be in this place and that you rise above that. Today is going to be an interesting test to see whether that exists or not.

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (10.26 am)—I will be very brief, because we want to get on with the debate of this bill. I remind the Senate that we have had a Senate committee report in relation to these bills—there was three weeks of deliberation in relation to these bills—and that there has been adequate scrutiny of this process. We have also had extended debates on the second reading speech as well.

There has been some comment in relation to the Family First senator, Senator Fielding. In fairness, I must rise to his defence. When you only have one senator, it is very difficult to become involved in every process of the Senate. It is much easier when you have parties where you have a number of senators to draw on.

Senator Ian Macdonald—Senator Brown didn't turn up at the committee.

Senator ELLISON—In relation to the Greens, they have a number of senators and we do not often see them at committees.

Senator Ian Macdonald—The Greens weren't at the hearings.

Senator ELLISON—As Senator Macdonald reminded me, they were not at the committee hearings. For the record, when you compare this government to the previous government, we have a record of scrutiny of legislation in the Senate which is a much better one than that of the previous government, which applied the guillotine rule more than double the number of times we have. It is essential that we manage the government's legislative program for the remainder of the year. We have some three sitting weeks left and some 40 packages of legislation left, we have an estimates week and we have a week designated specifically for the therapeutic cloning bill. We really do have a heavy schedule for the rest of the year, and I remind senators of that when considering time management of legislation in this chamber.

I totally reject Senator Ludwig's concocted outrage in relation to the arrogance and dismissal of the Senate powers by this government in Senate scrutiny. We have demonstrated time and time again that we are willing to accommodate Senate committee references. We have allowed time for debate and time for committee scrutiny of bills. When I first came into this chamber as an opposition senator, we used to have a Friday committee and that was the total sum of scrutiny of bills that was given. I remind senators of that. But I will not hold things up, and I commend the motion to the Senate.

Question agreed to.

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2006

BROADCASTING LEGISLATION AMENDMENT (DIGITAL TELEVISION) BILL 2006

COMMUNICATIONS LEGISLATION AMENDMENT (ENFORCEMENT POWERS) BILL 2006

TELEVISION LICENCE FEES AMENDMENT BILL 2006

In Committee

Consideration resumed from 11 October.

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2006

Senator IAN MACDONALD (Queensland) (10.29 am)—I do not want to speak for long in this first part of the committee stage. Suffice it to say and to repeat for the third time that I also was concerned at the constrained nature of the committee hearing. It was not a very exhaustive thing. The Labor Party—through Senator Conroy—had 10 minutes to question witnesses. Government senators had about 30 seconds or, if we were lucky, we got 90 seconds. That is because there were so many of us there wanting to make a contribution to this debate.

I was very impressed, as always, with Senator Murray's comments yesterday. A lot of what he says is true. Hopefully his warnings will never come to pass, but it is something that we as senators need to carefully look at.

I think, now that the government does control the Senate, government senators have to be much more stringent in their scrutiny of some bills, not with the purpose of trying to interfere with the government's program, which I support, but just to make sure that the bills which come through are drawn in a way that will achieve the government's goals. I am concerned about a number of the pieces of this legislation. Most of it we all support, I think. There are some elements that I am concerned about. I have negotiated with the minister and with the minister's office. I am relatively satisfied with most of the amendments that are coming forward, although I do want to question the minister on some of these as we go.

I am concerned at some of the amendments coming through that could lead to country radio stations shutting down. I was distressed to see in today's *Australian*, and perhaps in other papers as well, the comments by Macquarie Regional Radioworks that certain stations might have to shut down because they will simply not be profitable. One of them referred to is in Mareeba. It is a radio station I well know because it is up where I come from. I am very often in Mareeba. I use that radio station. If, as a result of what we do today, that radio station and the Roma radio station, which is the other one mentioned—and Senator Joyce would be concerned if the Roma radio station shut down—ceased operation, that would mean a lesser voice for country people with commercial radio stations. Whilst the Mareeba and Roma stations might not be perfect at the moment, they are certainly much better than nothing.

If the figures mentioned in this article are correct—and I have taken some time to check them out—and those radio stations continue to lose money then any sensible employer, any sensible owner, will shut them down. Why would you keep a radio station going if you are losing money on it? If the impositions we make in this bill are such that two radio stations in Queensland that I know of are going to shut down then I think that is bad legislation.

We can try to impose conditions on country radio stations to make sure they do fea-

ture country interest stories but, if in doing that we shut the station down, how are we advanced? We have gone backwards. That particularly concerns me. I again, as my colleague Senator Brandis did, refer to yesterday's *Financial Review* editorial and urge my colleagues to understand that you can overregulate country radio stations and you can, by overregulating them, get the reverse effect to what you are trying to achieve—that is, you will have less understanding in the area.

Senator George Campbell made some comments about me yesterday that I do not want to go into. Suffice it to say that Senator George Campbell, from his ivory tower in Sydney, would not really understand much about country radio. But he should understand that the ABC in country Australia is a very viable and very local organisation. Country commercial radio stations know that. They have real competition in country areas. You can turn off the commercial radio station and go to the ABC, because the ABC is very local and runs good programs. That is why the commercial radio stations have to continue looking at what their audience wants. If their audience wants local news, they will run local news because they want the listeners. They want the listeners because they want the advertisers, and the advertisers will only advertise if they know they have listeners.

I ask the minister to consider whether we should perhaps not be regulating regional commercial radio as much as is proposed, although my negotiations with the minister have achieved some things but not all I would have hoped—but I guess a little bit is better than nothing. But perhaps we would have been better looking at this in another way. Perhaps we would have been better saying, 'Let's take the shackles off community radio and leave commercial radio in the country regulated only by their audience.'

I know there are a lot of community radio stations in many, many towns in country Queensland—I am sure there are in other parts of Australia, but as a Queensland senator I want to talk about Queensland—but they are constricted in the amount of money they can earn. They cannot sell advertising. They can sell sponsorships in a very limited sort of way. There are one or two community radio stations that I am personally familiar with who do a great job. They do employ journalists, but they struggle to make ends meet. What if we were to remove the limitation of five minutes of advertising per hour on community radio—five minutes which, if you do not use them in that hour, you cannot save up for the next hour? We could perhaps look at that sort of thing. I am not sure, but the minister might be able to indicate to me whether that is relevant in this whole package of legislation. Or perhaps the minister is considering these matters in some other forum or some other set of legislative packages.

One way to address this which perhaps we could have explored a bit more was to leave commercial radio as it is—relatively unregulated, particularly in country areas—and unleash community radio, which puts another competitive element in the country market. I do not think community radio will ever directly compete with commercial radio, but it is something that is worth thinking about. I think we would have been better looking at that than imposing regulations on commercial radio in country areas that can lead to some of them shutting down, as today's papers have said.

By and large, I am satisfied that the bill is appropriate. I am delighted that the minister took on a lot of the suggestions made by the committee—that is, by Senator Eggleston, Senator Brandis, Senator Ronaldson and me. The minister has taken up the recommendation on the two out of three rule for country

Australia but which the Liberal Treasurer, Mr Costello, has, by his influence, extended right across the spectrum. That is a good win for the Liberal Party, and I appreciate that—it does ensure diversity of voice.

I am delighted that the minister has addressed the B-channel access. It is something that I questioned a lot of witnesses about at some length in the committee hearings. I know Senator Conroy also raised some questions on the B channel. I am delighted that the minister has taken on my thoughts on that, which are displayed in the committee report, although I do want to question the minister about that, because there are a couple of elements that I think need a bit of scrutiny, perhaps a bit of tweaking. I am delighted the minister took up Senator Brandis's point on the powers of the ACMA and the ACCC.

Senator Conroy—The National Party had nothing to do with it?

Senator IAN MACDONALD—All senators contributing had something to do with it. You were there, Senator Conroy. I do not need to explain to you what happened in the committee hearings. You and I sat through every single minute of those hearings. There were some senators who wandered in and out at various times. You would have to acknowledge that Senator Brandis led the debate and in fact wrote the report on that matter. You would have to acknowledge that I led the debate on the B channel and supported that. You would have to acknowledge that all senators, I think, were supportive of the two out of three rule.

Senator Conroy—All of your senators.

Senator IAN MACDONALD—I thought you would have been too, Senator.

Senator Conroy—As I have said, you can't put lipstick on a pig and think it is going to—

Senator IAN MACDONALD—Well, we will see. You need a bit of practical realism in all of this, Senator Conroy. You have an opportunity to make this work. You know it is going to go through. You have an opportunity, as I had, to speak to the minister and say, 'This will not work; this is silly. Why don't you try this?' That is what I think we are here for—to try and understand the realities.

Senator Murray made the point that we put a lot of faith in the minister. Yes, Senator Murray, we do. I am afraid that is how it has got to be. This communications package is one that our government has been to several elections on. It has been known in the broad for a long, long time. You do have to put a lot of faith in the minister, and I do. We do need to look at the things that we know are going to happen and try and make them happen in the right way. That is my role here today and that is what I want to do. I direct those questions to the minister for her to answer at an appropriate time.

Senator JOYCE (Queensland) (10.41 am)—I would like to say that I support these amendments. I can assure you that, without these amendments for local content, the bill would not have got this far. I want to put that clearly on the record. These amendments protect local content for regional areas. The National Party is emphatic about that. There are obviously other senators who have the same concerns, and we are glad that they do. It is the right of senators to be part of the process. Obviously, when you have few numbers, you have to be in many places at once, but you endeavour as best you can to do your job.

These amendments protect local journalism in country areas. If you do not have a local journalist, you are hardly going to have local content. The amendments are a vital part of this package. I believe strongly that

there are other issues that need to be added to this package. I still have serious concerns about sections of this legislation, which will be expressed in the way I vote. Without the local content measures, certainly there would be no support for this bill from the National Party. Therefore, we are strongly in support of this bill.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.42 am)—I will make some very brief comments in response to this whole issue of getting the balance right between requirements for local content and the financial and other pressures on existing licensees. The first point I would make is that certainly these provisions are not intended to be onerous, but they very clearly are designed in such a way as to ensure that people who live in rural and regional areas do continue to get local content, irrespective of what other mergers or movements in licence holders may occur as a result of these amendments.

As amended, the bill will provide for local content requirements for all regional radio licensees from 1 January 2008. Any radio licensees subject to a trigger event—that is, a merger or sale or transfer of a licence, which can only occur after the new diversity laws come into effect on proclamation—will also be required to provide minimum levels of local news and information of 12½ minutes a day and five bulletins a week as well as weather reports, community service announcements and emergency warnings, where necessary. This will form part of the 4.5 hours. They will also be required to establish local content plans and to maintain a local presence so that you do not have a situation of excessive hubbing. I am not making any allegations here; I am simply saying that it is noted that there is a potential for hubbing that removes the local presence from those who otherwise would wish to have some local news.

But the government recognises—and I want to make this point very clearly, particularly for those radio licensees who might be listening to this debate—that a requirement for 4½ hours a day of local content may not be the appropriate level for licensees to maintain commercial viability. During the Senate committee hearings it was found that many current local radio licensees already do provide a significant level of local content anyway—quite logically because it is part of their business; it is not hard to understand. But, in my view, there is no point at all in legislating local content levels if licensees go out of business in trying to meet them. So we are going to try to get this balance right and to give licensees an opportunity to talk to the regulator about the potential impact on their business models so that we will have some objective evidence and data about what target we should be trying to meet.

The government also acknowledges that regional Australia is extremely diverse, ranging from large and rapidly growing centres like the Gold Coast to small towns struggling to deal with drought and population shifts, which is probably the main concern of those communities. Accordingly, the amended bill requires the government to cause a review to be conducted on this issue. I will be directing the ACMA to look at local content across regional radio and to advise whether the 5½-hour level is appropriate. In particular, we will be seeking advice on whether different levels should apply to smaller operators and, of course, whether smaller and larger markets should have some different treatment.

Once the ACMA has reported to the government, by 30 June next year, the legislation will contain an opportunity for me to revise the requirement, though it will be subject to a disallowable instrument. It will be open, ac-

countable and transparent and parliament will have another opportunity to look at this issue. I will also ask the ACMA as part of this review to advise on whether small or family owned licensees could be unintentionally caught by the provisions of the trigger event such that they may become subject to news and information requirements and local presence requirements without undergoing a sale or a substantial transfer of control of their licence.

I hope that I have covered the gamut there, from those concerned that these are too onerous down to those concerned that they are not stringent enough. I want to make it very clear that there is currently no requirement at all and will not be until there is a review. We will be able to conduct a review before the commencement of any of these obligations. The more particular obligations, of course, will not happen unless there is a trigger event to do with a sale, a merger or a substantial transfer of control.

Senator MURRAY (Western Australia) (10.47 am)—I want to indicate at the outset that the Democrats will be supporting the government amendments that are listed on the running sheet. The reason we are doing that is that we think they strengthen the legislation. In saying that we will be supporting those amendments, I want to acknowledge our party's appreciation for the work of Liberal and National party senators, and some Liberal and National party members, in ensuring that the government adjusts its package to recognise real issues of concern with the legislation that was before us.

In an earlier remark, Senator Ian Macdonald made a true point which is well understood by parliamentarians but probably not as well understood elsewhere. That was that parliamentarians are obliged, including those in my own party, to put a great deal of faith and trust in the portfolio holder, because you simply cannot get across every issue with the welter of issues that are before us. But it is incumbent on all parliamentarians to not take that to an extreme and to be alert to issues of national public interest or significance which need attention. Now that the government does have the numbers in the Senate, a number of Liberal and National senators and members have stepped up to the plate in being a little more assertive, whereas formerly they could rely on the opposition or the crossbench to do that job for them, knowing where those parties stood on matters of principle.

In finding their feet in that regard, there have been allegations of disloyalty and disunity, whereas in fact leading proponents of this assertiveness, such as Senator Joyce, are merely indicating that that is the proper role in an environment where otherwise the executive would hold sway—because, as we know, even if there are members of the cabinet who disagree with particular matters, once the majority are concluded that that is how it will be those ministers have to fall in line. That does not apply to parliamentarians not in the cabinet; they do not have to fall in line; and in this bill they have not fallen in line. Therefore the amendments by the government would not have happened without the active engagement of Liberal and National senators, and those of us who are not government senators would have been left in the situation where we simply put amendments and lose on a mass vote without proper consideration of what we put before the parliament.

With respect to Liberal and National senators, I would say that sometimes they should have a closer look at some of the amendments from the crossbenchers that they are throwing out automatically, because sometimes they do have merit. Over the last nine or 10 years, many amendments forced upon the government have, in retrospect, been

found to be perfectly acceptable, have actually worked rather well and people have been pleased that they have come about. All wisdom does not reside in me or in my party and neither does it reside in anyone else or any other party, so I think what we are seeing here is a development in maturity, frankly, in the way the Senate operates in a situation where the government has the numbers.

Having made those broad remarks in appreciation of the role of those who in many respects had great courage, frankly, in standing up on these matters, given the view of some of their colleagues that you have to be loyal and united regardless of the issue, I will indicate our broad support throughout for the government amendments, which improve this package.

Senator RONALDSON (Victoria) (10.52 am)—I have listened to Senator Murray. Senator Murray is someone that I have a great deal of respect for, but he seems to have forgotten that the majority of the Liberal members actually put forward some quite substantial amendments to this bill. This notion that we are some sort of policy lackey, just blindly following what the executive says, is, quite frankly, patent nonsense. It is absolute, patent nonsense.

I want to deal with a couple of other matters. There have been some very unfortunate reflections on other people in this chamber over the last 24 hours—particularly, I have to say, in relation to Senator Fielding. This is one person with a staff of three. I do not agree with everything that Senator Fielding has said since he has been here, but I will tell you what I do respect him for: the fact that he puts an enormous amount of work into coming to a position on the matters that go before this chamber.

It is all right for Senator Conroy to giggle over there. He has the resources of the union movement and the Labor Party. He has resources everywhere. But somehow it is a joke when someone says that Senator Fielding is doing it hard. He is putting an enormous amount of work in with a very limited number of staff. I defy anyone to stand up here and accuse Senator Fielding of not giving due consideration to the matters that have come before this chamber in the last 14 months. I think that is a disgraceful allegation.

What amuses me even more is this. There was a reflection on Senator Fielding—the person with three staff and no other resources—for not being at the committee hearings. Senator Fielding was attacked by Senator Brown, the 'Where's Wally?' of the Senate, who has the resources, who does have the backing and who did not bother coming to the committee hearings. He did not bother coming to this committee. And where was Wally during the Telstra committee inquiry? You know where he was, Senator Conroy; he was wandering around—

Senator Murray—I raise a point of order, Madam Chairman. As much as I enjoy Senator Ronaldson's contributions, I do not think that referring to another senator as Wally is within the orders of the Senate.

Senator Conroy—I also raise a point of order, Madam Chairman. It is to do with relevance. I am not sure what 'Where's Wally?' has to do with the debate in question. I understand a filibuster when I see one. I understand that Senator Ronaldson wants to protect the minister from questioning, at all costs. But I ask you to draw him back to the bill.

Senator Ian Macdonald—On the point of order, Madam Chairman: Senator Ronaldson is responding to other senators who have already spoken in this debate so far. You will recall that Senator Brown, in his typical fashion, spent some time accusing Senator Fielding and Family First. Obviously Senator

Ronaldson is just responding to that. I did not see Senator Conroy make the point when Senator Brown was doing that. He did not suggest that that was beyond the call of the debate. And there was another senator who attacked Senator Fielding. I think it is important that Senator Ronaldson be allowed to continue along this line.

Senator Conroy—On the point of order, Madam Chairman: it is clear that Senator Macdonald is referring to a previous debate.

Senator Ian Macdonald—No, it was this one.

Senator Conroy—Senator Brown was speaking on the motion about the guillotine. He was not speaking on the bill. This is a debate about the bill. I appreciate that you are now nodding, but Hansard will not record your embarrassment, so I would like to put that on the record.

The TEMPORARY CHAIRMAN (Senator Crossin)—On the point of order, Senator Ronaldson, I am sure that you are aware of the standing orders and the need to reflect properly on members of this chamber. I just remind you of that. I also remind the chamber that we have not actually moved the first set of amendments yet, so we might want to give some consideration to the time constraints the chamber is under in considering this bill.

Senator RONALDSON—Thank you, Madam Chairman. As always, I respect your advice in relation to these matters. Senator Brown did not come into those Telstra committee inquiry hearings. He did not come into those. Yet he viciously attacks people who disagree with his views. It is a bit rich. I am not filibustering; I am responding. I am just about to talk about some other matters. If you talk about a filibuster, what about Senator Ludwig this morning? Twenty minutes! What did Senator Ludwig talk about, Senator Conroy? I think I heard some mention about some environment bills.

Senator Ian Macdonald—Cornelia Rau.

Senator RONALDSON—Some environment bills—and Cornelia Rau. How was that possibly relevant? And you are talking about wasting time!

Senator Conroy—On a point of order, Madam Chairman: Senator Ronaldson appears to be now making the same mistake that Senator Macdonald did. They are now debating comments that were made in a previous debate and that are not relevant to this bill. Senator Ludwig was speaking on the guillotine. Senator Brown was speaking on the guillotine. Madam Chairman, I ask you to bring Senator Ronaldson back and not let him flout your previous advice. I ask you to bring him back to the bill.

The TEMPORARY CHAIRMAN—Thank you, Senator Conroy. Senator Ronaldson, I also remind you to think of the time for consideration of this bill when you are making your comments.

Senator RONALDSON—I said before that I respected Senator Murray. I respect his integrity and I respect his intellect. Clearly what Senator Murray was trying to elicit from witnesses during the two days was some evidence to substantiate his claim about some change in the nature of our democracy if these bills were to pass—that somehow democracy as we know it will suddenly tumble down in front of us.

Senator Murray was consistent—I will give him his dues—because he raised these matters from the ACCC right through the rest of the two days. Senator Murray does not give credit lightly, and I respect him for that. When he gives credit to someone, you must take due notice of it. We had Mr Anthony Bell, the Managing Director of Southern Cross Broadcasting, appear before us. Mr Bell said in evidence:

Southern Cross Broadcasting supports the proposed reforms on cross-media ownership. There appears to be little realistic substance behind arguments to retain the status quo and, in many cases, these arguments are based on self-interest and fear of competition rather than what is appropriate for the community.

Later on during Mr Bell's evidence Senator Murray said:

Mr Bell—

and I would ask you to reflect on the comments I made before about Senator Murray's comment that people should not be taken lightly—

we are well served as a committee by having people with your long experience and, I would guess, expertise talking to us. With that long perspective in mind, I want you to give me your broad response to this legislation. We legislators are primarily concerned with this legislation from two perspectives in my view. One is with respect to consumers and the other one is with respect to our democracy. My question is: do you consider this package as a whole to actually assist the health, improve the health or support the health of our democracy?

And the response—from someone whom Senator Murray had already acknowledged as a man of great experience:

I certainly do not see it as a threat to the health of our democracy in any way.

In those two days of inquiry Senator Murray did not acknowledge, from my recollection—and I know he will correct me if I am wrong—the expertise of any other witness.

Senator Murray—No, there was Nick Greiner.

Senator RONALDSON—He acknowledged Nick Greiner. I cannot remember but, as always, if Senator Murray tells me something was said, then I will respect that. So Nick Greiner was the only other person. This was in two days. I would put it to the Senate that Senator Murray only made those comments because he did respect the expertise of Mr Bell. Mr Bell gave Senator Murray an answer that he did not want. In finishing, I will quote Senator Murray: 'All wisdom does not reside in me nor in anyone else in this chamber.' I think they were the rough words. That is absolutely right. For Senator Fielding to be attacked as viciously as he was because he may possibly vote one way means—

Senator Murray—Not by me.

Senator RONALDSON—and I accept not by Senator Murray—that some of those opposite are not prepared to respect Senator Fielding's right to make a decision on the evidence before him and to vote as he sees appropriate. I think that is a very sad reflection.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.04 am)—I want to deal with an issue that Senator Ian Macdonald raised in his earlier contribution—the very important role of community radio. Of course community radio deserves a hearing and an audience, because it is a major contributor to diversity, which has been a very significant part of the debate that we have had in relation to this whole media package, both in metropolitan and regional areas. I am very glad that Senator Macdonald has seen fit to raise the issue on behalf of constituents in community radio.

There are over 160 regional community radio stations, and large amounts of local content are on community radio. It might be called more of a micro audience, but it is certainly very important to those who have the benefit of listening to local radio. It is characterised also by a very large number of local volunteers. It is, if you like, glue in a community if they have a community radio, because of the volunteers and the local content. It does provide a very important role in keeping those in communities—certainly

small communities—in touch. It is extremely important to Indigenous communities. Often community radio can be the only source of broadcasting, in effect, that they get of messages that can be very important, such as extreme weather warnings and things of that nature.

It is not included in the voice count because of its particular characteristics. For that matter, nor is community television included in the voice count. That is not because it does not provide diversity but because, due to its particular structure and characteristics, it is certainly not thought appropriate to also be counting it as some additional voice. Community television and community radio fall out of the voice count, as does ABC radio. Metropolitan communities are served by up to five ABC stations, with Radio National, Local Radio, Triple J and various others, and of course there is SBS and ABC television. Community radio is also outside the voices count, as is pay television and certainly all of those new platforms, such as the internet.

There is no doubting the importance of community radio or the government's commitment to it. The government does provide significant funding that the community sector leverages into large amounts of local content. I know that because it recently had a survey which I launched, and that was a very interesting indicator of both its audience reach and why it is so popular with local content, which also includes local music and entertainment. So it is a very valued resource within the community.

I look forward to working with the sector in its transition—both radio and TV—to the new digital platforms. It will be quite a challenge for very small analog community radios to make that kind of shift and, no doubt, it will take some time. Radio does pose particular issues in the move to digital, but community television does deserve to be brought along in how we are thinking about the new digital space. I expect to have something more to say about the Digital Action Plan and how community television will be accommodated within the scheme to get us to switch off the analog signal and free up all that spectrum so that we will be in a position to use the spectrum more effectively and to make sure that community TV is accommodated.

Senator Macdonald made an interesting suggestion about whether or not community radio and the community sector should have so many restrictions on their advertising content. As Senator Macdonald would appreciate, that does pose some interesting issues in relation to how effectively that might then act as a competition lever for existing commercial radio and television. There is a moratorium on new commercial radio licences on the broadcasting services band as part of the move to digital. There are some particular pressures on the community TV sector and the community radio sector that I will be very interested to deal with and to look at. I certainly welcome Senator Macdonald's contribution and suggestions in this regard. We will take that matter forward, but not as part of these bills.

Senator IAN MACDONALD (Queensland) (11.10 am)—I will just clarify something on that particular exchange. Senator Coonan, as I understand it, when we talk about a minimum of four voices in a country area and a minimum of five voices in a city area, we are really saying that that is four voices plus community radio. In most country parts of Australia there is a community radio station, so it is really at least five voices in the country.

I just want to make sure that it is understood that there are four voices, plus community radio, plus the ABC and perhaps plus SBS. I am just trying to get confirmation.

There is a lot of variety particularly in the areas that I represent but also in cities where, as I understand it—as I drive into cities occasionally—there are about three or four different community radio stations. So you actually have five voices, plus the three or four community radio stations, plus five ABC stations, plus SBS. So there is a diversity of opinion and views. I just want to confirm that that is the case, because it is a very important point that we need to consider when we are talking about diversity of opinion in Australia.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.11 am)—Thank you, Senator Macdonald. I do think it is a very important matter that really cannot be overemphasised. It is important to realise that the voices that we have talked about as part of this package are, namely, the four voices in regional areas as the minimum and the five voices in metropolitan areas. Remember, of course, this is a floor; it is not a target. It is very important to realise that it is quarantined to the regulated platforms of commercial radio, free-to-air commercial television and print newspapers in a defined licence area. That does not include, for instance, the *Australian* or the *Financial Review*, which are national newspapers. It certainly does not include the up to five radio stations that the ABC broadcasts. It certainly does not include SBS radio. It does not include ABC television or SBS television. And, of course, we are about to lift the genre restrictions on both the ABC and SBS, which the Labor Party supports. All of these are additional sources of diversity but, as I remarked in my earlier contribution, it is important to note that community radio has a particular place. The government recognises that. It is not included in any of these voices. It is a significant level of additional local community input, and we recognise that and I think that that will clarify your point.

Senator CONROY (Victoria) (11.13 am)—Can we be serious here for one moment? If you just want to stand around and congratulate each other, please go back to your party room and do it. This is the Senate. This is the only opportunity for those senators who have not had a chance to properly consider all these amendments—because they have been dropped on us at the last minute—to get any clarification of what is in them. The opportunity to ask these questions is now. You have guillotined that time down to four hours: do not make the Senate the same farce that you acknowledge the Senate committee was.

Senator Ian Macdonald—I'm asking serious questions.

Senator CONROY—No, you are congratulating each other on what a brilliant job you have done.

Senator Ian Macdonald—I want to clarify issues.

Senator CONROY—Clarify! Amendments (1) and (2) on sheet PZ245 relate to ACMA's powers to grant prior approval—

Senator Murray—I rise on a matter of procedure. Could the minister move the amendments and then we can speak to them.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.14 am)—by leave—I move government amendments (1) to (12) on sheet PZ245, (1) to (15) and (17) to (19) on sheet QS387 and (1) on sheet QS391:

(1) Schedule 1, item 8, page 13 (line 23), omit "concerned.", substitute "concerned; and".

(2) Schedule 1, item 8, page 13 (after line 23), at the end of subsection 61AJ(4), add:

(e) if subparagraph (b)(ii) applies—inform the applicant accordingly.

(3) Schedule 1, item 8, page 14 (line 5), omit "under subsection (1)".

(4) Schedule 1, item 8, page 14 (after line 6), at the end of section 61AJ, add:

(9) The ACMA must deal with applications under subsection (1) in order of receipt.

(10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

(5) Schedule 1, item 8, page 16 (line 26), omit "each", substitute "any".

(6) Schedule 1, item 8, page 16 (after line 26), after subsection 61AN(4), insert:

(4A) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:

(a) the registered controller failed to comply with a notice under section 61AJ; and

(b) the notice related, to any extent, to the media operation.

(4B) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:

(a) an approval under section 61AJ was given on the basis that the ACMA was satisfied that a person other than the registered controller would, within a particular period, take action that, to any extent, relates to the media operation; and

(b) the person failed to take the action within that period.

(4C) If:

(a) the ACMA made any of the following decisions (the ***original decision***) in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence:

(i) a decision to enter the media group in the Register under subsection 61AY(1) or 61AZ(1);

(ii) a decision under subsection 61AZE(1) confirming the entry of the media group in the Register;

(iii) a decision under section 61AZF affirming a decision under subsection 61AZE(1) to confirm the entry of the media group in the Register;

(iv) a decision under section 61AZF revoking a decision under subsection 61AZE(1) to cancel the entry of the media group in the Register; and

(b) any of the following subparagraphs applies:

(i) in the case of a decision under subsection 61AZE(1)—a person applied to the ACMA for a reconsideration of the original decision;

(ii) in the case of a decision under section 61AZF—a person applied to the Administrative Appeals Tribunal for a review of the original decision;

(iii) in any case—a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the original decision; and

(c) the original decision was set aside or revoked; and

(d) after the original decision was set aside or revoked, the ACMA entered another registrable media group in

relation to that licence area in the Register; and

(e) after that other group was entered in the Register, the Administrative Appeals Tribunal or a court made a decision the effect of which was to restore or affirm the original decision;

subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of that other group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of any media operation in that other group.

(7) Schedule 1, item 8, page 16 (after line 29), after subsection 61AN(6), insert:

(6A) If:

(a) the ACMA gives a direction under subsection (1) in the circumstances referred to in subsection (4C); and

(b) subsection (8) does not apply;

the period specified in the direction must be 2 years.

(8) Schedule 1, item 8, page 23 (after line 11), at the end of section 61AZ, add:

Register frozen while ACMA reconsideration is pending or AAT/court proceedings are pending

(5) If:

(a) the ACMA makes a decision under this Subdivision in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence; and

(b) any of the following subparagraphs applies:

(i) in the case of a decision under subsection 61AZE(1)—a person applies to the ACMA for a reconsideration of the decision;

(ii) in the case of a decision under section 61AZF—a person applies to the Administrative Appeals Tribunal for a review of the decision;

(iii) in any case—a person applies to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the decision;

then:

(c) despite subsection (1), the ACMA must not enter any other registrable media group in relation to that licence area in the Register under that subsection during the period (the ***pending period***) when that application has not been finalised unless the ACMA is satisfied that, assuming that the decision were not to be set aside or revoked, the coming into existence of the media group does not have the result that:

(i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or

(ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and

(d) if the ACMA is satisfied that another registrable media group in relation to that licence area has come into existence during the pending period—subsection (3) has effect, in relation to the other registrable media group, as if the relevant notification, or the last of the relevant notifications, as the case may be, had been received on the first day after the end of the pending period.

(6) For the purposes of subsection (5), an application for reconsideration of a decision is taken not to have been finalised during the period of 28 days beginning on:

(a) if, because of the operation of subsection 61AZF(9), the decision is

taken to be affirmed—the day on which the decision is taken to have been affirmed; or

(b) in any other case—the day on which the decision on the reconsideration is notified to the person concerned.

(7) For the purposes of subsection (5), if:

(a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and

(b) the Administrative Appeals Tribunal makes a decision on the application;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.

(8) For the purposes of subsection (5), if:

(a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and

(b) the Administrative Appeals Tribunal made a decision on the application; and

(c) a person appeals from the decision to the Federal Court; and

(d) the Court makes a decision on the appeal;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.

(9) For the purposes of subsection (5), if:

(a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and

(b) the court makes a decision on the application;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.

(10) For the purposes of subsection (5), if:

(a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and

(b) the court made a decision on the application; and

(c) the decision became the subject of an appeal; and

(d) the court or another court makes a decision on the appeal; and

(e) the decision mentioned in paragraph (d) could be the subject of an appeal;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.

(11) The regulations may provide that, in specified circumstances, an application is taken, for the purposes of subsection (5), not to have been finalised during a period ascertained in accordance with the regulations.

(12) The regulations may extend the 28-day period referred to in subsection (6), (7), (8), (9) or (10).

(9) Schedule 1, item 8, page 24 (after line 34), after section 61AZC, insert:

61AZCA ACMA must deal with notifications in order of receipt

(1) For the purposes of sections 61AY, 61AZ, 61AZA, 61AZB and 61AZC, the ACMA must deal with notifications given, or purportedly given, under Division 6 in order of receipt.

(2) Subsection (1) has effect subject to subsection 61AZ(5).

(10) Schedule 1, item 8, page 29 (line 10), after "subsection (1)", insert "at the end of that 28-day period".

(11) Schedule 1, item 8, page 30 (line 20), after "subsection (5)", insert "at the end of that 28-day period".

(12) Schedule 1, page 37 (before line 18), after item 18, insert:

18A At the end of section 205PA

Add:

• The Federal Court may also grant injunctions in relation to transactions that are prohibited under Division 5A of Part 5 (which deals with media diversity).

18B Section 205Q

After "contravention of", insert "section 61AH or".

18C At the end of clause 2 of Schedule 1

Add:

(5) The following are examples of situations that, depending on the circumstances, may be relevant in determining whether a person is in a position to exercise control of 2 or more licences:

(a) the licensees share any or all of the following:

(i) equipment;

(ii) studios;

(iii) other production facilities;

(iv) transmission facilities;

(v) human resources;

(vi) other resources;

(b) the program content of a substantial percentage of the total number of hours of programs broadcast under one of those licences is the same as the program content of a substantial percentage of the total number of hours of programs broadcast under the other licence or licences;

(c) the licensees have financial relationships with each other;

(d) both of the following subparagraphs apply:

(i) the person is in a position to exercise control of one or more of the licences;

(ii) the person has a financial relationship with another person who is in a position to exercise control of the other licence or one or more of the other licences.

(1) Schedule 1, item 8, page 7 (after line 4), after the definition of ***statutory control rules*** in section 61AA, insert:

unacceptable 3-way control situation has the meaning given by section 61AEA.

(2) Schedule 1, item 8, page 11 (after line 6), after section 61AE, insert:

61AEA Unacceptable 3-way control situation

For the purposes of this Division, an ***unacceptable 3-way control situation*** exists in relation to the licence area of a commercial radio broadcasting licence (the ***first radio licence area***) if a person is in a position to exercise control of:

(a) a commercial television broadcasting licence, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and

(b) a commercial radio broadcasting licence, where the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and

(c) a newspaper that is associated with the first radio licence area.

(3) Schedule 1, item 8, page 15 (after line 28), after Subdivision B, insert:

Subdivision BA—Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence etc.

61AMA Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—offence

A person commits an offence if:

(a) one or more transactions take place on or after the commencement day; and

(b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation

to the licence area of a commercial radio broadcasting licence; and

(c) the person was:

(i) a party to the transactions; or

(ii) in a position to prevent the transactions taking place; and

(d) the ACMA has not approved the transactions under section 61AMC.

Penalty: 20,000 penalty units.

61AMB Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—civil penalty

(1) This section applies if:

(a) one or more transactions take place on or after the commencement day; and

(b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and

(c) the ACMA has not approved the transactions under section 61AMC.

(2) A person must not be:

(a) a party to the transactions; or

(b) in a position to prevent the transactions taking place.

(3) Subsection (2) is a civil penalty provision.

61AMC Prior approval of transactions that result in an unacceptable 3-way control situation coming into existence etc.

(1) A person may, before a transaction takes place that would place a person in breach of section 61AMA or 61AMB, make an application to the ACMA for an approval of the transaction.

(2) An application is to be made in accordance with a form approved in writing by the ACMA.

(3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) If, after receiving an application, the ACMA is satisfied that:

(a) if the transaction took place, it would place a person in breach of section 61AMA or 61AMB; and

(b) either:

(i) the applicant; or

(ii) another person;

will take action, within a period of not longer than 12 months, to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned;

the ACMA may, by written notice given to the applicant:

(c) approve the transaction; and

(d) if subparagraph (b)(i) applies—specify a period within which action must be taken by the applicant to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned; and

(e) if subparagraph (b)(ii) applies—inform the applicant accordingly.

(5) The period specified in the notice must be at least one month, but not longer than 12 months.

(6) The ACMA may specify in a notice given to an applicant the action that the ACMA considers the applicant must take to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned.

(7) In deciding whether to approve a transaction, the ACMA may have regard to:

(a) any relevant undertakings that:

(i) have been accepted by the ACMA under section 61AS; and

(ii) have not been withdrawn or cancelled; and

(b) such other matters (if any) as the ACMA considers relevant.

(8) If the ACMA refuses to approve a transaction, the ACMA must give written notice of the refusal to the applicant.

(9) The ACMA must deal with applications under subsection (1) in order of receipt.

(10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

61AMD Extension of time for compliance with prior approval notice

(1) A person who has been given a notice under section 61AMC may, within 3 months before the end of the period specified in the notice but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.

(2) The ACMA may grant an extension if it is of the opinion that an extension is appropriate in all the circumstances.

(3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:

(a) the period originally specified in the notice; or

(b) 6 months;

whichever is the lesser period.

(5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:

(a) the endeavours that the applicant made in attempting to comply with the notice; and

(b) the difficulties that the applicant experienced in attempting to comply with the notice;

but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.

(6) If the ACMA does not, within 45 days after:

(a) receiving the application; or

(b) if the ACMA has requested further information—receiving that further information;

extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:

(c) the period originally specified in the notice; or

(d) 6 months;

whichever is the lesser period.

(7) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

61AME Breach of prior approval notice—offence

(1) A person commits an offence if:

(a) the person has been given a notice under section 61AMC; and

(b) the person engages in conduct; and

(c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

(2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

61AMF Breach of prior approval notice—civil penalty

(1) A person must comply with a notice under section 61AMC.

(2) Subsection (1) is a civil penalty provision.

(3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

(4) Schedule 1, item 8, page 16 (line 2), at the end of the heading to section 61AN, add "**—unacceptable media diversity situation**".

(5) Schedule 1, item 8, page 17 (after line 16), after section 61AN, insert:

61ANA Remedial directions—unacceptable 3-way control situation

(1) If, on or after the commencement day, the ACMA is satisfied that an unacceptable 3-way control situation exists in relation to the licence area of a commercial radio broadcasting licence, the ACMA may give a person such written directions as the ACMA considers appropriate for the purpose of ensuring that that situation ceases to exist.

(2) The ACMA's directions may include:

(a) a direction requiring the disposal of shares or interests in shares; or

(b) a direction restraining the exercise of any rights attached to:

(i) shares; or

(ii) interests in shares; or

(c) a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; or

(d) a direction that any exercise of rights attached to:

(i) shares; or

(ii) interests in shares;

be disregarded.

(3) Subsection (2) does not limit subsection (1).

(4) A direction under subsection (1) must specify a period within which the person must comply with the direction.

(5) The period must not be longer than 12 months.

(6) If the ACMA is satisfied that the person:

(a) acted in good faith; and

(b) took reasonable precautions, and exercised due diligence, to avoid the unacceptable 3-way control situation coming into existence;

the period specified in the direction must be 12 months.

(7) If the ACMA is satisfied that the person acted flagrantly in breach of section 61AMA or 61AMB, the period specified in the direction must be one month.

(8) The Parliament recognises that, if a period of one month is specified in a direction, the person to whom the direction is given or another person may be required to dispose of shares or interests in shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage flagrant breaches of sections 61AMA and 61AMB.

(6) Schedule 1, item 8, page 17 (line 18), after "61AN", insert "or 61ANA".

(7) Schedule 1, item 8, page 17 (line 24), omit "The ACMA", substitute "In the case of a direction under section 61AN, the ACMA".

(8) Schedule 1, item 8, page 17 (after line 30), after subsection 61AP(3), insert:

(3A) In the case of a direction under section 61ANA, the ACMA may grant an extension if it is of the opinion that:

(a) an unacceptable 3-way control situation is likely to cease to exist in the licence area concerned within 3 months after the end of the period specified in the direction under section 61ANA; and

(b) the applicant acted in good faith; and

(c) an extension is appropriate in all the circumstances.

(9) Schedule 1, item 8, page 18 (line 10), after "61AN", insert "or 61ANA, as the case may be".

(10) Schedule 1, item 8, page 18 (line 25), after "61AN", insert "or 61ANA".

(11) Schedule 1, item 8, page 19 (line 2), after "61AN", insert "or 61ANA".

(12) Schedule 1, item 8, page 19 (line 10), omit "either", substitute "any".

(13) Schedule 1, item 8, page 19 (line 20), omit "area.", substitute "area;".

(14) Schedule 1, item 8, page 19 (after line 20), at the end of subsection 61AS(1), add:

(c) a written undertaking given by a person that the person will take specified action to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area of a commercial radio broadcasting licence.

(15) Schedule 1, item 8, page 22 (lines 22 to 37), omit paragraph 61AZ(1)(c), substitute:

(c) the ACMA is satisfied that the coming into existence of the media group does not have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence;

(17) Schedule 1, item 18, page 37 (table item dealing with section 61AJ, 2nd column), after "61AJ", insert "or 61AMC".

(18) Schedule 1, item 18, page 37 (table item dealing with section 61AK, 2nd column), after "61AK", insert "or 61AMD".

(19) Schedule 1, page 37 (before line 18), before item 19, insert:

18BA Section 205Q

Before "subsection", insert "61AMB or".

(1) Schedule 1, item 8, page 6 (lines 4 to 10), omit the definition of ***metropolitan licence area***, substitute:

metropolitan licence area means:

(a) a licence area in which is situated the General Post Office of the capital city of:

(i) New South Wales; or

(ii) Victoria; or

(iii) Queensland; or

(iv) Western Australia; or

(v) South Australia; or

(b) the licence area known as Western Suburbs Sydney RA1.

We also oppose schedule 1 in the following terms:

(16) Schedule 1, item 8, page 31 (line 4) to page 33 (line 3), Subdivision F **to be opposed**.

I also table a supplementary explanatory memorandum relating to the government amendment on sheet QS396 to be moved to the Broadcasting Services Amendment (Media Ownership) Bill 2006. The memorandum was circulated in the chamber on 12 October 2006.

Senator CONROY (Victoria) (11.15 am)—Thank you, Minister, for giving us another explanatory memorandum to digest in the middle of the debate! Amendments (1) and (2) on sheet PZ245 relate to ACMA's power to grant prior approval to transactions that would create an unacceptable media diversity situation. ACMA can approve a transaction if it is satisfied that the situation would be remedied by the actions of a third party. Could the minister outline what sorts of actions are envisaged here?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.16 am)—I will come to Senator Conroy's specific question in a minute. This amendment amends the provisions in the bill to require ACMA to inform applicants for prior approval of its decision and enables ACMA to deal with prior approval applications in the order in which they are received. Amendment (9) in particular provides a similar requirement that

ACMA must process notifications in order of receipt. I think this is a very important matter and that is why I want to speak to it. Amendments (1) and (2) provide for the addition of subparagraph (e) to 61AJ(4), which will clarify that, where ACMA grants an approval on the basis of the anticipated actions of a third party, ACMA must make this fact known to the applicant.

Amendment (4) provides that ACMA must deal with applications for prior approval to carry out transactions that would place a person in breach of the section—that is, 61AG or 61AH—in the order in which they are received. Sections 61AG and 61AH provide for criminal and civil offences respectively if a person carries out a transaction and it results in an unacceptable media diversity situation coming into existence in relation to the licence area of a commercial radio broadcasting licence, or if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence and a transaction is carried out that reduces the number of points in a licence area. It will provide greater certainty and fairness for industry and the operation of the register of controlled media.

Coming specifically to Senator Conroy's issue, the new subsection in the bill provides that a person will not have committed an offence—I assume that is what Senator Conroy is getting at—in creating an unacceptable media diversity situation if they have received prior approval for the transaction from ACMA before the transaction takes place. This new provision is similar to the existing section 67 of the Broadcasting Services Act, which enables ACMA to grant prior approval for transactions that would breach the current cross-media rules or the statutory control rules. This new provision will operate alongside section 67, as consequentially amended. ACMA may approve the transaction under new subsection 61AJ(4) if it is satisfied that the transaction would place the person in breach of the new section—that is, 61AG or 61AH—and either the applicant or a third party will take action within a period of up to two years to ensure that either the unacceptable media diversity situation ceases or the number of points in the licence area is restored if there is an existing unacceptable media diversity situation.

I will go on a little about ACMA's powers and responsibilities, because Senator Conroy has raised an important part of the package. ACMA has specific powers and responsibilities in this process. It can seek further information from the applicant before making a decision—there is a new subsection 61AJ(3). In deciding whether to approve the transaction, ACMA must consider all relevant matters. That includes any relevant undertakings given by a third party under new section 61AS. ACMA may specify in the notice the action that the applicant is to take—that is new section 61 AJ(6). For example, ACMA may approve the transaction subject to the person divesting their interests in a specific media operation. ACMA must specify a time period for approved transactions, during which the action to prevent or alleviate the unacceptable media diversity situation must be taken. The period must be at least one month but no longer than two years.

ACMA is able to allow an extension of time for compliance or, in other circumstances, may seek further information from the applicant before making a decision in relation to an extension request. Extensions can be for no longer than either the original period specified in the notice or one year, whichever is the shorter period. In deciding whether to grant an extension, ACMA must have regard to what the applicant has done, the endeavours they have made to comply with the notice and any difficulties the applicant has experienced in attempting to comply

with the notice. However, ACMA must not have regard to any financial disadvantage that may be suffered by the applicant. For example, the fact that the price of shares has recently dropped would not be a relevant consideration in those circumstances. I think that probably covers the substance of what you have asked, Senator Conroy.

Senator CONROY (Victoria) (11.22 am)—Thank you for that, Minister. That was helpful. It did not quite cover the specific that I am trying to get to. You read it out; you talked about 'remedied by the actions of a third party'. I am just trying to get an understanding of what actions a third party could take that would be considered to be a remedy. So, as an example, if someone announced that they were going to open a new newspaper in the area, would that be the sort of thing that would fall into the category of actions? And what would the other actions be that could remedy the situation?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.23 am)—The answer to that is, 'Yes, that is an example.'

Senator CONROY (Victoria) (11.23 am)—Are there any others you are able to share with us?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.23 am)—I have just been confirmed in my supposition that it would also be divestment of licence. They were the kinds of issues.

Senator CONROY (Victoria) (11.23 am)—Does the legislation contain any criteria to guide ACMA on when they should be able to approve transactions that breach the five-four test? Mr Chapman, when he appeared before us very briefly, suggested that they would use their professional judgement. I am just wondering if the legislation contains any guidance.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.24 am)—Thank you, Senator Conroy. What would apply is really the same position as applies now. There are some definitions in the act; it is all about control, and obviously it would vary substantially depending on how a group is defined in the act. But it really is still the same approach that currently applies under the act, which relates to control.

Senator CONROY (Victoria) (11.24 am)—Mr Chapman indicated that ACMA would just use their professional judgement. If we have not put any extra guidance in for them, could I ask why not? It is a fairly sensitive area; I just thought we might want to give them a bit more guidance than 'whatever Mr Chapman and ACMA think is the right way to go'.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.24 am)—I am reminded that they already have a procedure and an approach that is followed in respect of section 67 applications now. Mr Chapman, I think, is quite capable of thinking around whether or not there is sufficient clarity if there needs to be anything else, but really it is still the same approach. The definitions are there. ACMA does this already. So it is difficult to imagine that they would not be in a position with their current procedures and approaches to be able to communicate with those wishing to engage in these transactions and to have a clear understanding of what is required under the act and the way in which ACMA will approach it.

Senator CONROY (Victoria) (11.25 am)—There has been a lot of discussion—and you mentioned it earlier—about the first-mover advantage under the rules proposed by the bill, and the amendment provides that ACMA is to deal with applications for regis-

tration in the order in which they are received. How would ACMA deal with applications to register media groups? There are a number of different forms of communication, as you are well aware. So, for example, if an application was lodged at nine o'clock on the first morning by email, another application was lodged at nine o'clock on the first morning by fax, and another application was literally shoved under the door so that when the office opened at nine o'clock it would also have been received by hand or mail at nine o'clock in the morning, how is ACMA going to determine which is the first, if they all literally arrive at the same time, at nine o'clock?

Senator Ian Macdonald—You asked this of the department, you might recall.

Senator CONROY—And they said they had not got a process at that stage. Actually I asked it of ACMA and the department, and neither of them had a suggestion at that stage, Senator Macdonald.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.26 am)—I can answer that very succinctly, I think. They will be dealt with in the order in which they are received.

Senator CONROY (Victoria) (11.27 am)—The point is that it is possible, with the different forms of communication, for three to be received at the same time. They can be received by email, fax and hand, all on the dot of nine o'clock, from three different organisations.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.27 am)—Senator Conroy, are you seriously suggesting that somebody can be receiving something in their hand, accessing their emails and dealing in some other way with some other platform, all at exactly the same time? These transactions are timed. But, obviously, ACMA has some ability to have some discretion in how it understands it receives these things. It just does not seem other than—let me put it this way—the most outlandish suggestion that, right at the very same instant, three applications over three different platforms could all be registered at exactly the same time. I think that is really clutching at straws.

Senator CONROY (Victoria) (11.28 am)—Could I put it to you that it is not clutching at straws at all. Because of the way the legislation is structured, with what is called 'first-mover advantage', the first person in the door is advantaged. All of the organisations will know that whoever gets in first is going to have an advantage. So it is quite conceivable that three different organisations—or even two different organisations—will literally be waiting to email, fax and hand in their applications to the organisation. And let us be clear what you mean when you say 'one person': ACMA is not one person; ACMA is an organisation.

It is entirely possible that three separate organisations could all put in their applications at the same time, because of the way you have structured the legislation. There must be some way, other than the toss of a coin, to determine which is the first when billions of dollars are at stake. You just have to look at the morning's stock market, at what happened late yesterday and what will be happening even as we speak. There is going to be a frenzy on the stock market and there is going to be a situation where major players—when there are billions and billions of dollars at stake—are going to want to be first in the door. So there needs to be some thought given to how we are going to process the applications if they are all coming in at the same time—which is entirely possible; it is not clutching at straws at all—when billions of dollars are at stake.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.29 am)—Senator Conroy, it happens in other industries, doesn't it? For instance, it happens in the mining industry and it happens in other industries. There is a first-mover advantage. It is not something that the regulator is incapable of dealing with. Whilst this mythical and remote possibility of things flooding over different platforms to ACMA is theoretically possible, obviously the organisation has an opportunity to deal with them in the order in which they are received. That is the way in which it will happen. I doubt very much that the kind of issue that is concerning you here this morning is likely to be a material one.

Senator IAN MACDONALD (Queensland) (11.30 am)—I am interested in Senator Conroy's point, and I think we briefly touched on this at the committee hearing. It was something that did concern me as well. I hear what the minister says, but I wonder if someone who has more time than I could actually look at this. I thought it was the department who gave an answer on this. It might have been ACMA. There were a lot of things happening that day, but I thought they said that they would look at them all—and there are a lot of other criteria to be looked at because there are a hell of a lot of anticompetitive instances to be looked at. Someone might perhaps look up what the department actually said because I thought an answer was given which, as I recall, sort of satisfied me at the time. Senator Conroy's memory may be better than mine on what was said.

Senator CONROY (Victoria) (11.31 am)—It was so rushed, Senator Macdonald. It could be that it was the department we were asking. I thought it was both, but I accept that it may have been just the department. I have to say that I am a bit more concerned about it. I am sure that if News Ltd get theirs in at nine o'clock and are knocked back on the basis that two others were received by hand at nine o'clock across the counter by the person to whom they have to be submitted, News Ltd are going to take it very seriously. I would imagine that you would be in court on the definition. We have set up a process. If billions of dollars of merger activity is going to be based on literally the flip of a coin, I would imagine that News Ltd or any of the other major media players would be absolutely wanting to enforce the letter of the law. I am conscious of making sure that we have a process that will actually stand up in a court—not just because the minister says, 'I didn't think it was going to happen,' and then suddenly, bang: three applications turn up in the morning.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.32 am)—I will add to my earlier response seeing as it is a matter of concern to colleagues. There is of course an amendment we are discussing that deals specifically with subsection E of division 5A of the bill, to enable ACMA to deal with situations in which two or more registrable notifications are made. The bill will be amended to require ACMA to deal with the notification of media transactions in order of receipt ensuring that, should circumstances arise in which only one transaction of two or more transactions is registrable as compliant with the requirements of the Broadcasting Services Act, the transaction first notified to ACMA will be the one that is registered. It will provide greater certainty and fairness for industry in the operation of the Register of Controlled Media Groups.

Of course this is not, should the Senate pass this legislation, due to come into operation tomorrow morning; it will come into operation upon proclamation. ACMA has the power to determine a process of dealing with applications as they are received even if it is

down to the last second. So, whether it is theoretical or not, I am very confident that ACMA will be able to have processes in place that will enable it to deal with the process and how these applications are received. It is certainly the intent of the amendments to give ACMA that power to be able to deal with notifications in order of receipt. It certainly already has the power to determine any process that is required in order to be able to deal with applications as they are received.

Senator CONROY (Victoria) (11.34 am)—A further process might be worthwhile just to protect the Commonwealth, I suspect, but I appreciate that answer. I want to go now to the two out of three rule. Can the minister confirm that, even with the two out of three rule, it is still possible for the number of owners to fall from six to four in regional markets like Bundaberg, Townsville and Rockhampton and in Cairns you could still go from seven to four? Minister, could you confirm that that is the case?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.35 am)—What I want to do in relation to the debate on the two out of three rule is, first of all, make some preliminary comments, because I think it is important; it certainly is a very important part of the structural underpinning of these diversity protections. The purpose of the amendments is to amend provisions in the bill to prohibit the control of more than two out of the three regulated media platforms of print, free-to-air television and radio. This so-called two out of three rule will prevent three-way mergers. Amendments (1) and (2) define an unacceptable control situation as being one where a person is in a position to exercise control over all three types of regulated media and provide that a breach of the rule could result in the pursuit of civil or criminal penalties by ACMA should prior approval for any breach not have been successfully obtained by the person undertaking the transaction. The legislation also contains an amendment that provides that remedial directions may be issued by ACMA for the correction of an unacceptable three-way control situation.

Amendment (8) provides for an extension of the amount of time allowed for an unacceptable three-way situation to be corrected in appropriate circumstances. Amendment (14) allows ACMA to accept written undertakings that the person undertaking a transaction will take specified action to ensure that an unacceptable three-way control situation does not exist in relation to the licence area of a commercial radio broadcasting licence. Amendment (19) will enable ACMA to apply to the Federal Court for an injunction to restrain a person from engaging in any conduct that would result in an unacceptable three-way control situation coming into existence in a commercial radio broadcasting licence area. Of course, there are further technical amendments.

This measure will prevent the establishment of potentially dominant three-way media groups. The government think that that is an important structural additional safeguard in this package of legislation, in addition to the voices test, because it provides a limit on the types of mergers as well as the number of them. In respect of Senator Conroy's specific question, my very clear understanding is that it certainly does not change the floor of either four voices in regional areas or five voices in metropolitan areas. It is an important provision that will prevent undue concentration and protect diversity.

The TEMPORARY CHAIRMAN (Senator Chapman)—I call Senator Parry.

Senator Conroy—The Government Whip!

Senator PARRY (Tasmania) (11.38 am)—I have been seeking the call for some time, Senator Conroy, and we have been generous in allowing you to have all the questions. I also wish to ask a question of the minister about ACMA. I think it is important at this stage, at least, to place on the record for those in the gallery, if for no other purpose, what ACMA stands for. We all talk here using acronyms and we understand what ACMA is. ACMA is the Australian Communications and Media Authority. It is important to have the full name placed on the record from time to time.

My question goes to what powers ACMA has. I think it is very important that the public of Australia have fears allayed concerning—

Senator Conroy—Is this a question?

Senator PARRY—It is a question. It is an important question and it is important that the public of Australia understand that this legislation will have protection mechanisms. When people are reading this debate, I think they need to be assured of that. I have a serious question to ask the minister concerning the powers of ACMA. I think it is a critical matter. When you change major legislation in this country, when you change things that have attracted as much media attention as this has, you need to assure the public of Australia that there are correct mechanisms in place. I think that is a very important thing.

Senator Lundy—I can't believe you're doing this again.

Senator PARRY—I am not doing it again; this is the first question I have asked. I just want to ask the minister about the powers of ACMA in relation to prevention of breaches of the media diversity rules. It needs to be emphasised and it needs to be always on the public record. People listening to this debate need to understand that there are severe penalties in place if things do not go correctly, and also that the authorities that this government has in place have the ability to undertake measures that will prevent breaches of any of the acts. I put that question to the minister concerning the media diversity rules and the powers that ACMA has to prevent these breaches.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.41 am)—I thank Senator Parry for the question. I am grateful for the opportunity to place this matter on the record. I do agree that it is a matter of importance that those listening to the debate clearly understand that there are some very significant powers in both of the regulators to prevent breaches of media diversity rules. Those rules of course go to the heart of the cross-media changes. Those rules are that, if a company undertakes a transaction that creates an unacceptable media diversity situation, ACMA has a number of very powerful sanctions at its disposal. Creating what could be termed 'an unacceptable media diversity situation' is a criminal offence. It is punishable by a fine of $2.2 million per day, and $11 million per day for companies. The regulator, ACMA, may also seek similar fines via civil penalties, without having to refer the matter to the Director of Public Prosecutions. Obviously, there is a very different onus if the Director of Public Prosecutions is involved in imposing a penalty.

ACMA can issue a remedial direction requiring the parties involved to divest the asset causing the breach—we dealt with that a little earlier—or to do anything else necessary to restore media diversity in the affected licence area. These are very important matters that have been raised, for instance, by Senator Joyce, and I feel that I am not only entitled to deal but also have a duty to deal with the issues that have been raised about what can happen if there is any particular

breach. Failure to comply, as I say, involves the risk of both criminal and civil penalties. Under an injunction power to be provided by government amendment—and that was also something sought by the Senate committee, which I have agreed to—ACMA will be able to obtain an injunction requiring a company to divest, or otherwise take action, to remedy any unacceptable media diversity situation.

I think it is also very important that I deal with the role of the ACCC, because clearly the media is subject to two regulators. The ACCC will play a key role, although perhaps a reduced role now that the two out of three structural change is being introduced across all licence areas, in ensuring that potential media transactions are carefully assessed for their impact on competition in relevant markets.

This is separate from, but will certainly complement, measures to protect diversity, including the five-four diversity test and the existing licence and reach limits, which do not change. I think that is worth saying, because there is no suggestion that the existing requirements that mean that you cannot own more than one television station, one newspaper or two radio stations in a licence area will change—and neither will the existing reach limits, which are to 75 per cent of the Australian population.

The ACCC will continue to assess proposed mergers under section 50 of the Trade Practices Act 1974 to ascertain whether the proposed transaction will have the effect of substantially lessening competition in the affected markets or market. The bill will require all mergers involving commercial radio, commercial television and associated newspapers within a regional radio licence area to obtain formal clearance from the ACCC prior to seeking an exemption from the cross-media restrictions from the regulator, the ACMA—the Australian Communications and Media Authority. This will cover those media mergers likely to have the greatest impact on diversity and competition—three-way mergers. Of course, this has now changed, so the ACCC will no longer need to have that particular power, which becomes obsolete with the two out of three change. In the circumstances, I think the ACCC's powers have been very clearly articulated.

The ACCC has in fact released a paper providing guidance on its approach to potential media mergers. The paper provides guidance on the approach the ACCC will take in determining what markets are affected by a media merger. That is a very important matter that affects the public and the public interest, and the paper provides considerable information on the type of analysis the ACCC will undertake in assessing media mergers and how it will address media specific issues. The key markets the ACCC will be focusing on are advertising, the supply of content to consumers—and that of course includes news and information—and the purchasing of content from content providers.

The ACCC, critically and very specifically, discusses rural and regional markets, particularly with regard to the impact that we have seen of technological advancements on regional media assessments. In the ACCC's view, rural and regional markets are currently highly localised and that is likely to continue for the foreseeable future. The ACCC notes that regional markets typically depend on a small number of media outlets for local news and information and are generally less well served by new media, such as pay television or the internet, which tend to very much address and complement national markets.

While new media may be available in regional areas, they may not be an appropriate substitute—and I have never claimed they

were. I have simply said that they are an emerging and exponentially accelerating force in media and that certainly they will, to a large extent, attract advertisers and no doubt threaten some of that advertising revenue for local media—local newspapers in particular. So the ACCC considers that factors such as these will impinge on media mergers in rural and regional Australia.

But, in response to Senator Parry more broadly, I am very grateful for the question, because I do think that there is a great deal of interest in the role of the regulators. Now that there has been the two out of three structural change to protect diversity, while there is a reduced role for the regulators, they are still a critical part of ensuring that media mergers comply with the provisions of this bill.

Senator MURRAY (Western Australia) (11.49 am)—I would like to gently remind members of the Senate that there are three portfolio holders present in this debate—the minister, the shadow minister and me—and Senator Joyce also has an amendment before the chamber. There are 25 sets of amendments we have to deal with, and there are four bills. The government has had the opportunity to prepare its package. I personally have no objection—and would not have any objection—whatsoever to anyone participating in the debate but, in view of the guillotine that we are under and the fact that we have 25 sets of amendments to deal with, I do hope that members on the government side will be fair and ensure as much time as possible is given to those who have amendments. The government has five sets of amendments, and there are 20 others that belong to Labor, the Democrats and The Nationals.

Senator BERNARDI (South Australia) (11.50 am)—The minister touched on the ACCC's responsibility for media diversity. Could she detail whether there is any overlap between the responsibility of the Australian Communications and Media Authority and that of the ACCC in this legislation?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.51 am)—I thank Senator Bernardi for the question. There is obviously—

Senator Conroy interjecting—

Senator COONAN—Senator Conroy, I would like to address Senator Bernardi's question, please. The question related to the overlap between the ACCC and the ACMA. While they clearly have very defined roles, there is no doubt that there is some complementarity in the way in which they will be approaching media mergers. But the role has been very clearly delineated for both the ACCC and the ACMA.

The ACMA will administer the diversity test and the local content arrangements and requirements. The ACCC will look after what is a market for media in terms of mergers. The ACCC will look after the competition side of it; the ACMA will look after the diversity side of it. Their roles are clearly delineated, and whilst there is some complementarity, they do have very important and distinguished approaches that are very important to this package. I take Senator Conroy's point.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that the amendments to schedule 1 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question now is that subdivision F in schedule 1, item 8 stand as printed.

Question negatived.

Senator MURRAY (Western Australia) (11.53 am)—I move:

(1) Schedule 1, item 8, page 20 (after line 15), at the end of Subdivision D, add:

61 ATA Injunctions

(1) Subject to subsection (2), where, on the application of the ACMA, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

(a) a contravention of section 61AG, 61AH, 61AL, 61AM, 61AQ or 61AR;

(b) attempting to contravene such a provision;

(c) aiding, abetting, counselling or procuring a person to contravene such a provision;

(d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) conspiring with others to contravene such a provision;

the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) Where an application for an injunction under subsection (1) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).

(3) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(4) The Court may rescind or vary an injunction granted under subsection (1) or (3).

(5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(7) Where the ACMA makes an application to the Court for the grant of an injunction or an interim injunction under this section, the Court shall not require the ACMA or any other person, as a condition of granting an injunction or an interim injunction, to give any undertakings as to damages.

61ATB Stay of injunctions

(1) The Court may stay the operation of an injunction granted under section 61ATA if:

(a) any of the following has applied for the stay:

(i) a Minister of the Commonwealth;

(ii) the ACMA;

(iii) a party to the proceeding for the injunction; and

(b) the Court considers that granting the stay would, in all the circumstances, be just.

(2) An order staying the operation of the injunction may be expressed to have effect for a specified period and may be varied or rescinded by the Court at any time.

(3) Nothing in this section affects other powers of the Court.

(4) In this section, ***injunction*** includes an interim injunction.

61ATC Divestiture

(1) The Court may order, on the application of the ACMA, if the Court finds or has found in another proceeding instituted under this Part that a person has contravened section 61AG, 61AH, 61AL or 61AM, the disposal by the person of all or any of the shares or assets acquired in contravention of that section.

(2) Where:

(a) the Court finds, in a proceeding instituted under this Division, that a person (in this subsection referred to as the ***acquirer***) has acquired shares in the capital of a body corporate or any assets of a person in contravention of section 61AG, 61AH, 61AL or 61AM; and

(b) the Court finds, whether in that proceeding or any other proceeding instituted under this Division, that the person (in this section referred to as the ***vendor***) from whom the acquirer acquired those shares or those assets, as the case may be, was involved in the contravention; and

(c) at the time the finding referred to in paragraph (b) is made, any of those shares or those assets, as the case may be, are vested in the acquirer or, if the acquirer is a body corporate, in any body corporate that is related to the acquirer;

the Court may, on the application of the ACMA, declare that the acquisition, in so far as it relates to the shares or assets referred to in paragraph (c), is void from the day on which it took place and, where the Court makes such a declaration:

(d) the shares or the assets to which the declaration relates are deemed not to have been disposed of by the vendor; and

(e) the vendor must refund to the acquirer any amount paid to the vendor in respect of the acquisition of the shares or assets to which the declaration relates.

(3) Where an application is made to the Court for an order under subsection (1) or a declaration under subsection (2), the Court, instead of making an order under subsection (1) for the disposal by a person of shares or assets or a declaration under subsection (2) that the acquisition by a person of shares or assets is void, may accept, upon such conditions (if any) as the Court thinks fit, an undertaking by the person to dispose of other shares or assets owned by the person.

(4) An application under subsection (1) or (2) or an undertaking under subsection (3) may be made at any time within 3 years after the date on which the contravention occurred.

(5) Where an application for an order under subsection (1) or for a declaration under subsection (2) has been made, the Court may, if the Court determines it to be appropriate, make an order or a declaration by consent of all the parties to the proceedings, whether or not the Court has made the findings referred to in subsections (1) and (2).

I will not delay the Senate in committee at all, because this is a question of numbers. The minister and the chamber are well aware

of my view that you can diminish industry specific laws if you strengthen regulators. I am of the view that the ACCC is too weak with respect to the Trade Practices Act and its provisions, and that strengthening that would improve competition in this country a great deal. I am of the view that with respect to these specific issues, the ACMA deserves to be strengthened and the Foreign Investment Review Board provisions need to be strengthened. Now and again I quarrel with Senator Brandis on issues, but I must say that his concerns and the concerns of other members of the committee with respect to the injunctive powers of the ACMA were well conceived. I certainly always respect Senator Brandis's contribution in these areas, where he is very well informed.

I have the view that the government has moved quite a way in improving the injunction capacity of the ACMA, but my advice is that it needs to be stronger than it has been put to the chamber in government amendments, and so I have constructed a far stronger set of injunctive abilities. No doubt, the government will reject those and, therefore, I will not have the numbers, but they are on the record and I would urge the government, when the friendly debate is over, to look more deeply at this area and perhaps to consider whether any of the provisions I suggest or any strengthening of the injunctive rules that they are bringing in could be advanced.

Senator CONROY (Victoria) (11.55 am)—I indicate, on behalf of the opposition, that we will be supporting Senator Murray's amendment.

Question negatived.

Senator JOYCE (Queensland) (11.56 am)—by leave—I move:

(1) Schedule 1, item 8, page 7 (after line 17), at the end of section 61AB, add:

(3) For the purposes of this Division:

(a) each entity and any related entity of a commercial radio broadcasting licensee or a commercial television broadcasting licensee is deemed to be worth one point in accordance with section 61AC;

(b) ***related entity*** in this subsection has the same meaning as in section 26-35 of the *Income Tax Assessment Act 1997*.

(2) Schedule 1, item 8, page 10 (after line 7), at the end of section 61AC, add:

(3) Despite anything to the contrary in this section, a commercial radio broadcasting licensee or commercial television broadcasting licensee which broadcasts a content of 20% or less comprising ***comment*** (where ***comment*** includes news, current affairs, issues of public opinion and talkback radio) in any 24 hour period, is deemed to not be worth one point for the purposes of this section.

The concern that is addressed in these amendments is an overarching control of the media by only a couple of interests over a period of time. Obviously one of the key issues is the voices test. I take on board that the minister has said that community radio stations have been extracted from the voices test. It would be handy if other media outlets that are really not as relevant are taken into account as to whether or not they constitute a point for determining a voice. You have to have five voices in metropolitan areas and four in regional areas, but some of these voices are such things—and they may be about to change—as racing stations and music stations. I do not believe they affect the political debate and the expression of opinion in the same way as TV stations and radio stations that have a strong content of talkback. This is about putting a greater control on that, and at least making a more serious statement about what voices are.

We have in the tax act a concise related entity test. We have related entity tests or associated entity tests in this legislation, but I believe the one from the tax act would go further. If we can chase people around looking for money and looking for holes in acts, then that is the one that would have a far greater intent of being able to determine what voices are in this. I believe this amendment goes to the matter of the legislation, but it is basically improving on issues that are there. The reason why we are trying to do that is to protect the democratic process, to protect the fourth estate and to make sure that not so much media outlets—media outlets will always have a role to play—but those who have major shareholdings in media outlets do not attain, on the centralisation of the media, inordinate power that I believe they should not have.

In America they have had problems in radio, where one organisation has ended up controlling such a raft of radio stations they have had to incur divestiture powers, which of course we do not have. This is an attempt at doing it. It is a shame that from the start of the debate, when we could have been dealing with these amendments, we have been filibustered. These amendments are for the strong consideration of the Senate.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.59 am)—These amendments have been moved by my colleague Senator Joyce. I think it appropriate that I say something about them, because I do listen to and have respect for Senator Joyce's views on a number of matters. I think it appropriate that I put on record why the government disagrees with this particular approach whilst acknowledging his genuineness and his desire to achieve an outcome here that I do not think is achieved with these particular amendments. But I do think it is appropriate that I record it very briefly.

His item (1) inserts the definition of a related entity, which he has taken, as I understand it, from the Income Tax Assessment Act 1997 and put into the Broadcasting Services Act 1992. Item (2) of Senator Joyce's amendment removes from the count of separate media groups in a licence area any radio or television licence with less than 20 per cent comment—defined as news, current affairs, issues of public opinion and talkback—in its programming.

In respect of the first matter, the amendment deals with how control is interpreted in the Broadcasting Services Act. If I may say so, Senator Joyce has correctly appreciated that this is a crucial issue in how effective the diversity test proposed in the bill will be. However, I believe that it is unnecessary. Section 6 of the Broadcasting Services Act currently has a definition of 'associates' which operates in a similar way to the definition of a 'related entity' that Senator Joyce proposes to add to the Broadcasting Services Act. Like the 'related entity' definition, the 'associate' definition covers relatives and business partners of a party. However, the 'associate' definition does go further and includes other parties who may act at the direction of or in concert with another. This enables the regulator to determine that an individual or company is in a position to control a broadcasting licence even if they do not directly own or control the licence or are not related to a person who does control the licence. This level of flexibility is necessary to ensure that the control provisions of the Broadcasting Services Act are both effective and rigorous.

Senator Joyce's second proposed amendment would substantially affect the operation of the diversity protection mechanism in the bill by excluding a number of commercial broadcasting licences from the five-four test. Under the current cross-media rules, all commercial broadcasting licences are treated

similarly in terms of licensing, regardless of their content. This is because, if you think about it for a minute, the level of influence of a broadcasting operation is subject to change and working out what is influence requires a subjective judgement. Senator Joyce's proposed amendment proposes just one method of assessing influence, but of course there are others. For example, ratings also provide an indication of influence and clearly ratings like the format or content of a broadcaster can change rapidly. Also, they can be very popular. So it is very difficult to rely on something like ratings.

No matter how you structure a test, it means that a decision maker at some point—the chairman of the industry regulator, the ACMA, or I suppose the minister or a judge, if the issue were to be appealed—would have to make a subjective judgement about the level of influence or about whether a broadcaster meets the requirement to be a media voice under Senator Joyce's test. But, more seriously, assuming you could get over those difficulties, the amendment opens up opportunities to fundamentally undermine the rigour of the five-four test, in this way. A commercial broadcasting licence that is outside the five-four test is a far more valuable one than if it is within it as it can be acquired by other operators, of course, without breaching the five-four rule. The amendment would therefore create a clear incentive for the owners of radio and television licences to possibly dumb down their services so they no longer counted for the voice test, enabling them to be sold to incumbents in the same market, in clear contravention of the five-four rule.

The amendment as drafted could also exclude television licensees who may not produce at least 4.8 hours of news and current affairs a day. Given that many Australians primarily rely on evening news as a main source of information, I think this really is an unintended outcome, although I repeat that I acknowledge the genuineness of Senator Joyce's attempts with respect to the proposed amendment. But I think it has very significant and unacceptable risks.

Senator JOYCE (Queensland) (12.05 pm)—There is the assertion that it changes all parts of the broadcasting licence. This is dealing specifically with what would be assessed as a point when there is a merger in one of the regional or metropolitan markets. There has been a linkage made—and I do not presume it to be there in this amendment—that this changes everything in the broadcasting licensing section. What it really deals with is that, when you are counting up the points—which are the number of voices in the market—you will be counting only points that are relevant for that purpose, points that are relevant as putting out a predominant amount of content. 4.8 hours a day is not a lot. If you take news, current affairs, talkback and public opinion pieces, I think 4.8 hours a day is a fair indication of whether it is an effective voice or not.

If we do not deal with that, if we have something that puts out basically no content at all—a music station—when it comes to a merger, when they are going to cut down the numbers in a market, that would be counted to the same extent as an outlet that affects opinion predominantly. If that is the case then you could actually reduce the media because you would have the potential to have an outlet that is predominantly music staying in the market and one that actually affects opinion being merged or taken over.

Senator MURRAY (Western Australia) (12.06 pm)—I am sure the chamber has noticed that even the good Lord is shining his light on Senator Joyce with this amendment, and who am I to resist such a sign or omen? The Democrats will support these amendments.

Senator CONROY (Victoria) (12.07 pm)—I think these amendments are a very worthy attempt to strengthen an absolutely pathetic voices and diversity test. As Senator Joyce and others have made the point previously, how could you possibly give a radio station that plays music all day and has two or three minutes of news and current affairs per hour the same weighting as an empire that will be created under this legislation of PBL and Fairfax? How on earth could you seriously stand up in front of the Australian public and say, 'These have the same influence'? This is a debate about influence and it is about the capacity to influence.

I accept Senator Fielding had a position and a point of view yesterday. I do not understand it and I cannot fathom it, but we might get a chance to have a quick chat about it during the debate. You cannot seriously argue that a music radio station or a radio station that does nothing but broadcast horseracing should carry the same weight as News Ltd if it buys Seven or Ten.

Senator Joyce is making a worthy attempt to give the diversity test some teeth. It is clear, on any objective analysis, that it is farcical to suggest that a racing station and an empire like PBL and Fairfax coming together could possibly have the same impact on the Australian community. So we will be supporting Senator Joyce's amendments.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.09 pm)—I thought it was worth very briefly placing on record why the government has not been persuaded that anything is added by some sort of qualitative test. Of course, working out how to attribute points or to exclude certain commercial licensees from being included in the objective test really does not assist.

The fundamental problem of a qualitative mechanism, such as media-specific public interest tests, really relates to its very subjectivity. We have seen the way in which a subjective approach to media can be seriously twisted and misrepresented, and it has bedevilled other jurisdictions around the world who have tried to grapple with something like media-specific public interest tests. Having subjective tests for media influence has two significant concerns. First of all, it creates great uncertainty for an industry that obviously has to plan, invest and operate within very stringent controls anyway—and will still do so should this legislation pass—as the outcome of the test and its consequences for mergers and acquisitions would be dependent on entirely subjective factors. No-one would know when they would ever be able to move or invest. Public confidence in the objectivity and the efficiency—'efficacy' is probably a better word—of media diversity protections would be dependent on the subjective judgement of the regulator or perhaps the minister. I do not want to do this. I certainly do not want to be making those kinds of subjective decisions.

Quite frankly, I think perceptions that assessments are dependent on subjective decisions erode public confidence in the objectivity and transparency of such a system. I am quite sure that my friend Senator Conroy would be in here two seconds after I approved any media mergers, complaining about influence and complaining about mates. Can you imagine that situation?

There are no generally accepted methods for measuring diversity or plurality or related parameters such as media concentration or share of voice across different markets. As a result, the criteria that would be used in assessing the public interest impact of a media merger would inevitably require a high degree of subjective judgement and would involve the potential for allegations of all sorts

of political interference. There would be a subjective judgement by a single individual or a group of individuals, the regulator, the relevant minister, some other relevant legal framework or the judiciary.

Some submissions to the discussion paper *Meeting the digital challenge: reforming Australia's media in the digital age*, which I released earlier, suggested that a voices test such as the proposed five-four test that is part of this package would not be adequate protection for diversity, because all operators would be treated as being equivalent regardless of size or perceived influence, which is the point raised by Senator Joyce and those on the opposition benches and crossbenches. The current framework actually takes the same approach and regulates entities according to licence type, not individual ratings. Therefore, all commercial television and radio licences are treated the same under the current rules.

The influence of an individual broadcaster cannot be measured directly by ratings, which certainly change over time. Some media may rate poorly but add significantly to diversity by providing audiences with the choices to access alternative viewpoints. No-one as yet, so far as I can tell, has devised a credible way of measuring the different levels of influences of newspapers, radio and television or, for example, for talk versus music formats in radio. A lot of young people really do enjoy radio, and I do not think we should be disparaging of the ways in which young people access news and talkback. I do not think the intention is to be disparaging. But I think it would be unwise and difficult to base media policy on such an uncertain and intangible quality.

Senator MILNE (Tasmania) (12.13 pm)—I rise to note that Senator Joyce's amendments and the Australian Greens amendment are the same. There is no point in trying to move them separately, but I note that the Australian Greens support these amendments and their intent.

Question put:

That the amendments (**Senator Joyce's**) be agreed to.

The committee divided. [12.18 pm]

(The Chairman—Senator JJ Hogg)

Ayes……	35
Noes……	35
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.	Evans, C.V.
Faulkner, J.P.	Fielding, S.
Forshaw, M.G.	Hogg, J.J.
Hurley, A.	Hutchins, S.P.
Joyce, B.	Kirk, L.
Ludwig, J.W.	Lundy, K.A.
McEwen, A.	McLucas, J.E.
Milne, C.	Moore, C.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Polley, H.
Ray, R.F.	Sherry, N.J.
Siewert, R.	Stephens, U.
Sterle, G.	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.	Coonan, H.L.
Eggleston, A.	Ellison, C.M.
Ferguson, A.B.	Fierravanti-Wells, C.
Fifield, M.P.	Heffernan, W.
Humphries, G.	Johnston, D.
Lightfoot, P.R.	Macdonald, I.
Macdonald, J.A.L.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Nash, F.	Parry, S. *
Patterson, K.C.	Payne, M.A.
Ronaldson, M.	Santoro, S.
Scullion, N.G.	Troeth, J.M.

Trood, R.B.	Vanstone, A.E.
Watson, J.O.W.	

PAIRS

Marshall, G.	Ferris, J.M.
Stott Despoja, N.	Kemp, C.R.
Wong, P.	Campbell, I.G.

* denotes teller

Question negatived.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that schedule 1 as amended be agreed to.

Senator CONROY (Victoria) (12.22 pm)—We are obviously not comfortable with the new rules and the diversity test. We would urge people to vote against them. We are keen to move onto other areas. We indicate that these new tests are not sufficient at all.

Senator MURRAY (Western Australia) (12.22 pm)—As you know, Mr Temporary Chairman, on sheet 5075 revised I have the same amendment. Our view is that the package is much improved by the efforts of the Liberal and National senators, but it is still an unacceptable situation. We oppose the schedule.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.22 pm)—The government will not be supporting the amendment, and I wish to place on record why. The amendment proposes to oppose schedule 1 and the removal of the cross-media laws in their entirety while supporting the retention in the bill of the removal of the foreign ownership restrictions and the imposition of local content requirements. The retention of the cross-media laws would ensure that Australia's media industry simply remains unamended and, as I have said in earlier contributions, trapped in a 20th century world where radio, free-to-air television and old-fashioned newsprint are regarded as the only sources of news, entertainment and diversity of opinion.

For 20 years, Australia's media companies have laboured under a very restrictive regime that actually rewards complacency and does not permit growth across platforms. We need to be very clear that the cross-media laws impose a regulatory straitjacket on the media industry, and of course that ultimately has costs for media companies and for consumers, who both expect Australia to be in the global environment for media and certainly expect media companies to be providing services they both expect and want.

The diversity goals of the cross-media rules can be achieved. They are very important. Let me acknowledge that: the diversity rules are very important. The diversity goals can be achieved in other, less punitive and restrictive ways. This is basically what the government has proposed. The continuation of such restrictions while foreign ownership controls are removed really makes no sense. That is a very puzzling position. It would prevent any local companies from responding to the competitive threat of new entrants, because they would be paralysed in their current structure, while foreigners could simply invest in such a way that they would provide a serious competitive threat. I welcome foreign investment—don't get me wrong about that—but I simply do not think that you can have foreign investment at the expense of local media companies.

Imposing local content requirements—I will just specify it again, because it is a critical part of the package—on a regional radio sector that is prevented from expanding across media would also directly impact on the viability of that sector. We have to get a bit of reality into this debate. You cannot hobble a particular sector of the media so significantly with obligations and not at the same time give them some capacity to be

able to attract investment, grow and take advantage of other new platforms in a way that is going to mean that ultimately consumers would not be disadvantaged. Consumers need to be advantaged by these arrangements, not disadvantaged. I believe that the set of protections that we have built into this test adequately does that.

It is also important to say that the removal of the cross-media restrictions will allow media companies to be able to continue to meet some of the obligations that they currently have to the broader Australian community. Yesterday I referred—and it is really worth saying—to the fact that as a community we really value Australian content. We impose—at some significant expense, as I am constantly reminded by free-to-air television broadcasters—a requirement that they must provide 55 per cent Australian content. It is simply unrealistic to expect that these kinds of companies, which are commercial operations, can be expected to continue to meet those kinds of obligations and other regulatory requirements in relation to content and standards—and Australian content in particular, which is a very important thing—and not have some idea about what is needed for them to be able to properly deploy their assets.

With the tests that have been put in—the cross-media changes, which are now very rigorous indeed, limiting the types of mergers, limiting the number of mergers and ensuring that there is local content—we just have to stop being timid about this or we will never move from a 20-year-old law made at a time when none of these other platforms and technological changes had been heard of or even thought of. The rules might have been appropriate for another era; they are certainly not appropriate for the 21st century in circumstances where we are also moving into the digital space and, in order to meet the needs of consumers, companies are going to need to be able to continue to grow and invest.

Question agreed to.

Senator JOYCE (Queensland) (12.28 pm)—I move:

(1) Page 37 (after line 21), after Schedule 1, insert:

Schedule 1A—Amendments to deal with abuse of market power, creeping acquisitions and a divestiture remedy in relation to media markets

Broadcasting Services Act 1992

1 After section 61AZK

Insert:

Subdivision G—Misuse of market power in a media market

61AZL Misuse of market power in a media market

(1) A corporation that has a substantial degree of power in a media market shall not take advantage of that power in that or any other market for the purpose of:

(a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market; or

(b) preventing the entry of a person into that or any other market; or

(c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(2) For the purposes of subsection (1):

(a) the reference in paragraph (1)(a) to a competitor includes a reference to competitors generally, or to a particular class or classes of competitors; and

(b) the reference in paragraphs (1)(b) and (c) to a person includes a reference to persons generally, or to a particular class or classes of persons.

(3) In determining for the purposes of this section whether a corporation has a substantial degree of market power in a media market, the Court will at least take into account the following principles:

(a) the threshold of a substantial degree of power in a market is lower than the former threshold of substantial control previously used in section 46 of the *Trade Practices Act 1974*; and

(b) the substantial market power threshold does not require a corporation to have an absolute freedom from constraint, it is sufficient if the corporation is not constrained to a significant extent by competitors or suppliers; and

(c) more than one corporation can have a substantial degree of power in a market; and

(d) evidence of a corporation's behaviour in the market is relevant to a determination of substantial market power.

(4) If:

(a) a body corporate that is related to a corporation has, or 2 or more bodies corporate each of which is related to the one corporation together have, a substantial degree of power in a media market; or

(b) a corporation and a body corporate that is, or a corporation and 2 or more bodies corporate each of which is, related to that corporation, together have a substantial degree of power in a media market;

the corporation shall be taken for the purposes of this section to have a substantial degree of power in that market.

(5) In determining for the purpose of this section whether a corporation has a substantial degree of power in a media market, the Court may consider the corporation's degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.

(6) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a market, the Court shall have regard to the extent to which the conduct of the body corporate or of any of those bodies corporate in that market is constrained by the conduct of:

(a) competitors, or potential competitors, of the body corporate or of any of those bodies corporate in that market; or

(b) persons to whom or from whom the body corporate or any of those bodies corporate supplies or acquires goods or services in that market.

(7) In determining for the purposes of this section whether a corporation:

(a) has a substantial degree of power in a media market; or

(b) has taken advantage of that power for the purpose described in paragraph (1)(a), (b) or (c);

the Court may have regard to the capacity of the corporation, relative to other corporations in that or any other market, to sell in that or any other market a good or service at a price below the cost to the corporation of producing or acquiring the good or supplying the service.

(8) In this section:

(a) a reference to power is a reference to market power;

(b) a reference to a market is a reference to a market for goods or services; and

(c) a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an

acquirer of goods or services in that market.

(9) Without extending by implication the meaning of subsection (1), a corporation shall not be taken to contravene that subsection by reason only that it acquires plant or equipment.

(10) This section does not prevent a corporation from engaging in conduct that does not constitute a contravention of any of the following sections, namely sections 45, 45B, 47 and 50, of the *Trade Practices Act 1974* by reason that an authorization is in force or by reason of the operation of section 93 of the *Trade Practices Act 1974*.

(11) A corporation may be taken to have taken advantage of its power for a purpose referred to in subsection (1) notwithstanding that, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the corporation or of any other person or from other relevant circumstances.

61AZM Prohibition of acquisitions that would result in a substantial lessening of competition in a media market

(1) A corporation must not directly or indirectly:

(a) acquire shares in the capital of a body corporate; or

(b) acquire any assets of a person;

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a media market.

(2) A person must not directly or indirectly:

(a) acquire shares in the capital of a corporation; or

(b) acquire any assets of a corporation;

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a media market.

(3) Without limiting the matters that may be taken into account for the purposes of subsections (1) and (2) in determining whether the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a media market, the following matters must be taken into account:

(a) the actual and potential level of import competition in the market;

(b) the height of barriers to entry to the market;

(c) the level of concentration in the market;

(d) the degree of countervailing power in the market;

(e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;

(f) the extent to which substitutes are available in the market or are likely to be available in the market;

(g) the dynamic characteristics of the market, including growth, innovation and product differentiation;

(h) the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor;

(i) the nature and extent of vertical integration in the market.

(4) Where:

(a) a person has entered into a contract to acquire shares in the capital of a body corporate or assets of a person;

(b) the contract is subject to a condition that the provisions of the contract relating to the acquisition will not come into force unless and until the person has been granted an authorization to acquire the shares or assets; and

(c) the person applied for the grant of such an authorization before the ex-

piration of 14 days after the contract was entered into;

the acquisition of the shares or assets shall not be regarded for the purposes of this Act as having taken place in pursuance of the contract before:

(d) the application for the authorization is disposed of; or

(e) the contract ceases to be subject to the condition;

whichever happens first.

(5) For the purposes of subsection (4), an application for an authorization shall be taken to be disposed of:

(a) in a case to which paragraph (b) of this subsection does not apply—at the expiration of 14 days after the period in which an application may be made to the Tribunal for a review of the determination by the Commission of the application for the authorization; or

(b) if an application is made to the Tribunal for a review of the determination by the Commission of the application for the authorization—at the expiration of 14 days after the date of the making by the Tribunal of a determination on the review.

(6) In this section:

market means a substantial market for goods or services in:

(a) Australia; or

(b) a State; or

(c) a Territory; or

(d) a region of Australia.

(7) For the purposes of the application of this section in relation to a particular corporation, an acquisition by the corporation shall be deemed to have or to be likely to have the effect of substantially lessening competition in a media market if that acquisition and any one or more of the other acquisitions by the corporation or a body corporate related to the corporation in that or any other market during the previous ten years together have or are likely to have that effect.

61AZN Pecuniary penalties

(1) If the Court is satisfied that a person:

(a) has contravened section 61AZL or 61AZM

(b) has attempted to contravene either provision;

(c) has aided, abetted, counselled or procured a person to contravene either provision;

(d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene either provision;

(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of either provision; or

(f) has conspired with others to contravene either provision;

the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the Court determines to be appropriate having regard to all relevant matters including the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission, the circumstances in which the act or omission took place and whether the person has previously been found by the Court in proceedings under this Part.

(2) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed $10,000,000 for each other act or omission to which this section applies.

(3) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed $500,000 for each act or omission to which this section applies.

61AZO Injunctions

Where, on the application of the Commission or any other person, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

(a) a contravention of any of section 61AZL or 61AZM;

(b) attempting to contravene either provision;

(c) aiding, abetting, counselling or procuring a person to contravene either provision;

(d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene either provision;

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of either provision; or

(f) conspiring with others to contravene either provision;

the Court may grant an injunction in such terms as the Court determines to be appropriate.

61AZP Actions for damages

(1) A person who suffers loss or damage as a result of conduct of another person that contravened section 61AZL or 61AZM may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

(2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct arose.

61AZQ Divestiture for abuses of market power and anti-competitive mergers

(1) The Court may, on the application of the Commission or any other person, if it finds that a corporation has contravened section 61AZL or 61AZM, by order, give directions for the purpose of securing:

(a) the disposal or divestiture of shares or assets acquired in contravention of section 61AZM; or

(b) the reorganisation or division of the corporation into separate and distinct entities including directions for the disposal or divestiture of all or any of the shares in or assets of the corporation to facilitate the reorganisation or division of the corporation.

61AZR Definitions

In this Subdivision:

the Court or ***the Federal Court*** means the Federal Court of Australia.

Commission means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974*.

authorization means an authorization under Division 1 of Part VII of the *Trade Practices Act 1974* granted by the Commission or by the Tribunal on a review of a determination of the Commission.

Tribunal means the Australian Competition Tribunal established under the *Trade Practices Act 1974*, and includes a member of that Tribunal or a Division of that Tribunal performing functions of that Tribunal.

The minister put the position that you cannot be subjective. We will take that on board. This amendment gives the capacity to move away from a completely 'written in the sand' type of restriction to something that deals with greater powers for those who can have more latitude in making their decision.

One point was clearly made all through the committee hearings: the powers of the ACCC and the ACMA in their current form do not have the capacity to be an effective arbiter of mergers and acquisitions in this process. The fundamental fear that must be dealt with is: what if we get this wrong? What that means is this: if, after passage of this legislation, we find that there is an over-

centralisation of the Australian media market which affects our democratic process, there are no powers in this parliament to bring about a divestiture. That is the crucial issue. If there is only a 20 per cent chance that that should come about, then surely we should be bringing about the powers to actually deal with that. Surely we should be able to have the capacity, like they have in the United States of America, to break up an organisation that has become too powerful and that has started to challenge the role of the government.

This amendment deals with the aspect of controls against an organisation that might challenge the role of the parliament. It gives that power in a great breadth so that decisions can be fleshed out and considered. An issue brought up over and over again during the inquiry was that the powers of the ACCC and ACMA are no good once the egg is scrambled. Once an inherent oligopoly or monopoly is present in the market, you cannot retract from that position.

I know this amendment is a magnum opus, but this is a terribly important piece of legislation. The amendment deals with a range of things. On the misuse of market power, currently, if you want to set up a new newspaper there is the capacity for opposing newspapers to just price you out of the market on advertising to put you out of business. When we talk about the ability of entry and exit into the print media, it is just not there. Obviously there is no free entry and exit into the television or radio markets. They are regulated. The government protects them by regulation. It is not a free market. That is why we must be so considerate of this.

You have to remember that the benchmark return of the main media companies in Australia is way beyond what it is overseas. That is because of the inherent protections they have. If we were to remove all forms of regulation in television so you could open up new television licences then we probably would not require this as much. But those protections stay in place. We have to be ever more cautious of making sure that we have the regulatory mechanisms to balance up our own regulatory mechanisms, unless we are envisaging removing all regulatory mechanisms on radio and TV—and I know that that is not the case. We cannot change the Trade Practices Act in this piece of legislation, so we must insert these powers on the misuse of market power so you cannot predatory price someone out of the market.

We must put in place controls for the prohibition of acquisitions that would substantially lessen competition in market. We must have injunctions, pecuniary penalties and, most importantly, that sword of Damocles, if you have everything wrong—the ability to have divestiture powers. That is the parachute that the Australian public want—the parachute whereby, if the intent of the Senate is wrong, we have the mechanism to deal with the issue. It is vitally important, because if we do not and if we get a monopoly that comes into play in Australia, that is it, you are stuck with it. If we do not have the powers now or we are scared, for want of a better word, to take on the major media houses now in trying to scale down some of the things in this bill, then you will be absolutely terrified once they actually arrive at their position of a monopoly or oligopoly of trying to take them on.

We could have the case where the power of this parliament is secondary in our nation to some major media organisation. That is not what we want. America have the benefit of the Clayton act and the Sherman act. They have the benefit of acts to deal with the powers of corporations that challenge the role of government. In Australia we do not have them. The most effective mechanism for controlling the nation is controlling the me-

dia. When there is a revolution, they do not announce it over the internet; they take over the radio station, the paper and the television stations. You do not put a Google search out for 'change in democracy'. Those main mastheads of media are still as powerful as they ever were. That is why it is so important that we deal with this in a cognisant way. That is why, if we are going to go through with this legislation, we must have these powers in there. Otherwise, we are loading the gun for Australia for 10 years time. I do not think that is an honourable outcome for this Senate.

Senator MURRAY (Western Australia) (12.35 pm)—I too will be very brief, because we are under the guillotine. This is an excellent effort to deal with a complex problem. It would, of course, be much better in the substantive Trade Practices Act, but the fact is that that act does not cover off these areas of concern and we have no means to amend that act in this debate. This is an excellent contribution to a very real problem which was recognised by the Senate Economics References Committee in March 2004, and the Democrats will support it.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.36 pm)—I will be very brief, given the time. I would like, first of all, to assure Senator Joyce that the government acknowledges his concerns about the need to ensure the right balance in the media ownership package. Indeed, we share those concerns. It is important that we find the balance in providing the scope for media companies to respond to emerging pressures but at the same time respond to concerns about competition, diversity and local content.

The government opposes this amendment because it would provide a significant duplication of the provisions already in the Trade Practices Act but out of context with the rest of the Trade Practices Act. The government has always seen the media ownership provisions as being complementary to the normal competition provisions in the TPA. To conduct a successful merger in any market, a set of companies would need to pass the five-four, the two out of three test and the normal competition rules that provide that a merger must not result in a substantial lessening of competition. There will also, of course, be significant protections of diversity and competition in media markets.

We have been assured that all the necessary powers with regard to the competition test are already contained in the Trade Practices Act. These are a matter for the ACCC, the expert in dealing with competition issues. It is not appropriate, in our view, to take a small part of the Trade Practices Act and insert it into the Broadcasting Services Act, because it will surely lead to a range of unintended consequences. Neither is this amendment necessary in order to achieve Senator Joyce's desired outcomes, in my view.

The proposed amendment also includes a divestiture provision for abuses of market power. Again, this is not needed. The media ownership rules already provide for strong divestiture powers for ACMA where an unacceptable media diversity situation exists. The government is also amending the bills to provide an injunctive power for ACMA to prevent mergers from occurring, if they were to result in an unacceptable media diversity situation. For those reasons, we do not think the amendment is necessary.

Senator CONROY (Victoria) (12.38 pm)—On Senator Joyce's behalf I am obviously disappointed by Senator Coonan's response. I think Senator Joyce has made another excellent attempt to go to the nub of the problem with this legislation. Probably

the only thing I would say, Senator Joyce, is that I am genuinely surprised that you did not include the public interest test as an addition, because that is the important part. It still only leaves competition, which—as we have discussed at length with Mr Samuel and amongst ourselves in the committee—is not sufficient to protect the diversity of opinion. No marketing voices can easily be identified. But I think it is a very worthy attempt to bring to bear a more rigorous examination of merger activity, particularly in this field. Therefore, I indicate that the opposition will be supporting the amendment.

Senator MILNE (Tasmania) (12.39 pm)—I indicate that the Australian Greens wholeheartedly support this amendment. We think that it is entirely appropriate to recognise the misuse of market power. I think Senator Joyce has gone a long way to doing that in his amendment, and we support it.

Senator JOYCE (Queensland) (12.39 pm)—The reason for the duplication is that there is a belief that the ACCC powers do not go far enough. Because we are not going to get the Trade Practices Act brought in here today so we that can change those powers, we have to try to put them into this act. That is why that is the case. In relation to the significant lessening of the competition test that has been brought up, the fact is that there is not a significant lessening of competition unless you can put up prices without affecting your demand, and I imagine that would be advertising revenue. The only time that really comes about is when there is a monopoly or almost a monopoly in the market. If that happens in the media market, we will have a major problem.

I acknowledge what Senator Conroy said about the public interest test. As I said, this is a magnum opus. I did not have the capacity to include and define a public interest test in it, with the time that we had available. It would really need to go a committee of all of its own, and that would need to come up with recommendations as to what a public interest test is.

Question put:

That the amendment (**Senator Joyce's**) be agreed to.

The Senate divided. [12.45 pm]

(The Deputy President—Senator JJ Hogg)

Ayes……	36
Noes……	36
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.	Evans, C.V.
Faulkner, J.P.	Fielding, S.
Forshaw, M.G.	Hogg, J.J.
Hurley, A.	Hutchins, S.P.
Joyce, B.	Kirk, L.
Ludwig, J.W.	Lundy, K.A.
McEwen, A.	McLucas, J.E.
Milne, C.	Moore, C.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Polley, H.
Ray, R.F.	Sherry, N.J.
Siewert, R.	Stephens, U.
Sterle, G.	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.	Campbell, I.G.
Chapman, H.G.P.	Colbeck, R.
Coonan, H.L.	Eggleston, A.
Ferguson, A.B.	Ferris, J.M. *
Fierravanti-Wells,	Fifield, M.P.
Heffernan, W.	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.
Nash, F.	Parry, S.
Payne, M.A.	Ronaldson, M.

Santoro, S.	Scullion, N.G.
Troeth, J.M.	Trood, R.B.
Vanstone, A.E.	Watson, J.O.W.

PAIRS

Marshall, G.	Ellison, C.M.
Stott Despoja, N.	Patterson, K.C.

* denotes teller

Question negatived.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.48 pm)—by leave—I move the local content requirements that are contained in government amendments (13) to (21) on sheet PZ245; amendments (1) to (12) on sheet PZ249; amendment (1) on sheet QS393; amendment (2) on sheet QS391; amendments (1) to (3) on sheet QS395, which are the amendments to government amendment (21) on sheet PZ245; and amendment (1) on sheet QS396, which is the amendment to government amendment(1) on QS393:

Sheet PZ245

(13) Schedule 2, page 38 (after line 7), after item 1, insert:

1A After paragraph 3(1)(e)

Insert:

(ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance; and

(14) Schedule 2, item 7, page 51 (line 7), before "has", insert "(except in sections 61CR and 61CS)".

(15) Schedule 2, item 7, page 52 (line 29), after "Division", insert "(other than sections 61CR and 61CS)".

(16) Schedule 2, item 7, page 52 (line 30), after "Division", insert "(other than sections 61CR and 61CS)".

(17) Schedule 2, item 7, page 56 (after line 29), at the end of section 61CH, add:

Occurrence of trigger event when ACMA's decision is pending

(7) If:

(a) a commercial radio broadcasting licensee gives the ACMA a draft local content plan under section 61CF as the result of the occurrence of a trigger event for the licence; and

(b) another trigger event for the licence occurs before the ACMA makes a decision under subsection (1) in relation to the plan;

then:

(c) the ACMA is taken to have refused to approve the plan; and

(d) subsections (5) and (6) do not apply to that refusal.

(18) Schedule 2, item 7, page 58 (after line 21), at the end of section 61CM, add:

Occurrence of trigger event when ACMA's decision is pending

(7) If:

(a) under section 61CK or 61CL, a commercial radio broadcasting licensee gives the ACMA a draft variation of an approved local content plan; and

(b) a trigger event for the licence occurs after the receipt of the variation but before the ACMA makes a decision under subsection (1) in relation to the variation;

then:

(c) the ACMA is taken to have refused to approve the variation; and

(d) subsections (5) and (6) do not apply to that refusal.

(19) Schedule 2, item 7, page 59 (line 11), omit "**Investigations about other**", substitute "**Other**".

(20) Schedule 2, item 7, page 59 (after line 24), at the end of section 61CR, add:

(4) This section does not limit the powers conferred on the Minister by section 61CS.

(21) Schedule 2, item 7, page 59 (after line 24), at the end of Subdivision D, add:

61CS Minister may direct the ACMA to impose licence conditions relating to local content

(1) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.

(2) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.

(3) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.

(4) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.

(5) The ACMA must comply with a direction under subsection (1), (2), (3) or (4).

(6) This section does not limit the powers conferred on the ACMA by section 43.

61CT Regular reviews of local content requirements

(1) At least once every 3 years, the Minister must cause to be conducted a review of the following matters:

(a) the operation of section 43B;

(b) the operation of this Division;

(c) the operation of paragraph 8(2)(c) of Schedule 2;

(d) whether section 43B should be amended;

(e) whether this Division should be amended;

(f) whether paragraph 8(2)(c) of Schedule 2 should be amended.

(2) For the purposes of facilitating the conduct of a review under subsection (1), the ACMA must make available information about regional commercial radio broadcasting licensees' compliance with:

(a) licence conditions imposed as a result of section 43B; and

(b) licence conditions imposed as a result of an investigation directed under section 61CR; and

(c) licence conditions imposed as a result of a direction under section 61CS; and

(d) the licence condition set out in paragraph 8(2)(c) of Schedule 2.

(3) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).

(4) The ACMA must comply with a direction under subsection (3).

(5) The Minister must cause to be prepared a report of a review under subsection (1).

(6) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

Sheet PZ249

(1) Schedule 2, item 7, page 50 (line 24), omit paragraph (a) of the definition of ***designated local content program*** in section 61CA, substitute:

(a) a news bulletin; or

(aa) a weather bulletin; or

(2) Schedule 2, item 7, page 50 (after line 28), after the definition of ***draft local content plan*** in section 61CA, insert:

eligible local news bulletins means local news bulletins that meet the following requirements:

(a) the bulletins are broadcast on at least 5 days during the week;

(b) the bulletins broadcast on each of those days have a total duration of at least 12.5 minutes;

(c) the bulletins are broadcast during prime-time hours;

(d) the bulletins adequately reflect matters of local significance;

(e) none of the bulletins consists wholly of material that has previously been broadcast in the licence area concerned.

eligible local weather bulletins means local weather bulletins that meet the following requirements:

(a) the bulletins are broadcast on at least 5 days during the week;

(b) the bulletins are broadcast during prime-time hours.

(3) Schedule 2, item 7, page 50 (line 29) to page 51 (line 1), omit the definition of ***eligible local news and weather bulletins*** in section 61CA.

(4) Schedule 2, item 7, page 51 (after line 14), after the definition of ***metropolitan licence area*** in section 61CA, insert:

news bulletin means a regularly scheduled news bulletin.

(5) Schedule 2, item 7, page 51 (lines 15 and 16), omit the definition of ***news and weather bulletin*** in section 61CA.

(6) Schedule 2, item 7, page 51 (after line 29), after the definition of ***trigger event*** in section 61CA, insert:

weather bulletin means a regularly scheduled weather bulletin that is transmitted:

(a) as a stand-alone bulletin; or

(b) in conjunction with a news bulletin.

(7) Schedule 2, item 7, page 53 (after line 14), after paragraph 61CD(a), insert:

(aa) minimum service standards for local weather; and

(8) Schedule 2, item 7, page 53 (line 26), omit "and weather".

(9) Schedule 2, item 7, page 53 (lines 29 and 30), omit "and weather".

(10) Schedule 2, item 7, page 54 (after line 4), after subsection 61CE(2), insert:

Local weather

(2A) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for local weather*** during a particular week if, during that week, the number of eligible local weather bulletins broadcast by the licensee is at least the local weather target number.

(2B) For the purposes of subsection (2A), the ***local weather target number*** is:

(a) 5; or

(b) if the Minister, by legislative instrument, declares that a greater number is the local weather target number—the greater number.

(11) Schedule 2, item 7, page 57 (after line 13), after subparagraph 61CK(1)(b)(i), insert:

(ia) paragraph 61CE(2B)(b); or

(12) Schedule 2, item 7, page 59 (after line 4), after section 61CP, insert:

61CPA Licensee must submit annual compliance report

(1) This section applies if an approved local content plan for a regional commercial broadcasting radio licence was in force during the whole or a part of a financial year.

(2) The regional commercial radio broadcasting licensee must, within 3 months after the end of the financial year, give the ACMA a report about the licensee's compliance with the approved local content plan during the whole or the

part, as the case may be, of the financial year.

(3) A report under subsection (2) must:

(a) be in a form approved in writing by the ACMA; and

(b) set out such information as the ACMA requires.

Sheet QS393

(1) Schedule 2, item 3, page 40 (after line 10), after section 43B, insert:

43C Local content—regional commercial radio broadcasting licences

(1) The ACMA must ensure that, at all times on and after 1 January 2008, there is in force under section 43 a condition that has the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance.

Material of local significance

(2) The condition must define ***material of local significance*** for the purposes of the condition. If a regional commercial radio broadcasting licensee is required to comply with section 61CD, the definition of ***material of local significance*** must be broad enough to cover material that the licensee must broadcast in order to comply with that section.

Applicable number

(3) For the purposes of the application of subsection (1) to a regional commercial radio broadcasting licence, the ***applicable number*** is:

(a) 4.5; or

(b) if the Minister, by legislative instrument, declares that another number is the applicable number for regional commercial radio broadcasting licences generally—the other number; or

(c) if:

(i) the Minister, by legislative instrument, declares that another number is the applicable number for a specified class of regional commercial radio broadcasting licences; and

(ii) the regional commercial radio broadcasting licence is included in that class;

the other number.

(4) The Minister must not declare a number under paragraph (3)(b) or subparagraph (3)(c)(i) that is less than 4.5 unless:

(a) the Minister has caused to be conducted a review of:

(i) whether a declaration should be made under paragraph (3)(b) or subparagraph (3)(c)(i) specifying a number that is less than 4.5; and

(ii) if so, the content of the declaration; and

(b) the Minister has caused to be prepared a report of the review; and

(c) the declaration made by the Minister is in accordance with a recommendation in the report.

Section 43 powers etc.

(5) To avoid doubt, this section does not create any obligations under subsection 43(2) that would not exist apart from this section.

(6) Subsection 43(5) does not apply to the condition.

(7) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.

Definitions

(8) In this section:

daytime hours means the hours:

(a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and

(b) ending at 6 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

metropolitan licence area means:

(a) a licence area in which is situated the General Post Office of the capital city of:

(i) New South Wales; or

(ii) Victoria; or

(iii) Queensland; or

(iv) Western Australia; or

(v) South Australia; or

(b) the licence area known as Western Suburbs Sydney RA1.

regional commercial radio broadcasting licence means a commercial radio broadcasting licence that has a regional licence area.

regional licence area means a licence area that is not a metropolitan licence area.

Sheet QS391

(2) Schedule 2, item 7, page 51 (lines 8 to 14), omit the definition of ***metropolitan licence area***, substitute:

metropolitan licence area means:

(a) a licence area in which is situated the General Post Office of the capital city of:

(i) New South Wales; or

(ii) Victoria; or

(iii) Queensland; or

(iv) Western Australia; or

(v) South Australia; or

(b) the licence area known as Western Suburbs Sydney RA1.

Sheet QS395

Amendments to government amendments on sheet PZ245

(1) Amendment (21), paragraph 61CT(1)(a), omit "section 43B", substitute "sections 43B and 43C".

(2) Amendment (21), paragraph 61CT(1)(d), omit "section 43B", substitute "sections 43B and 43C".

(3) Amendment (21), paragraph 61CT(2)(a), after "section 43B", insert "or 43C".

Sheet QS396

Amendment to government amendments on Sheet QS393

(1) Amendment (1), omit subsection 43C(4), substitute:

(4) Before 30 June 2007, the Minister must cause to be conducted a review of:

(a) whether:

(i) a declaration should be made under paragraph (3)(b); or

(ii) one or more declarations should be made under subparagraph (3)(c)(i); and

(b) the number or numbers that should be specified in the declaration or declarations concerned; and

(c) in the case of a declaration or declarations under subparagraph (3)(c)(i)—the class or classes that should be specified in the declaration or declarations concerned.

(4A) The Minister must cause to be prepared a report of a review under subsection (4).

(4B) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

(4C) Before the end of whichever of the following periods ends first:

(a) the period of 15 sitting days of the House of Representatives after the completion of the report;

(b) the period of 15 sitting days of the Senate after the completion of the report;

the Minister must:

(c) either:

(i) make a declaration under paragraph (3)(b); or

(ii) make one or more declarations under subparagraph (3)(c)(i); and

(d) cause a copy of each such declaration to be laid before each House of the Parliament in accordance with section 38 of the *Legislative Instruments Act 2003*.

Senator IAN MACDONALD (Queensland) (12.49 pm)—I would like to question the minister on the trigger events. It has been suggested to me that an internal corporate restructure, which does not really impact upon the effective ownership of a radio station, could be seen to be a trigger event. It has been suggested to me that the third paragraph of 'trigger events', which talks about controllers, could be a trigger event. I indicate to the minister that I am not going to vote against this amendment, even if the answer is not what I want, but I do think that if an internal corporate restructure does trigger the events that require these happenings to happen it really is something the government should look a bit more closely at.

I understand that time is brief, and I do not want to hold the Senate up unnecessarily, so I will ask a couple of questions at the same time, if I may. Do the requirements for local news and weather happen from now, or only upon the happening of a trigger event, meaning that if the ownership remains permanent—say, for the next 20 years—there will be no mandatory requirement for local news and weather and community announcements? I only raise this, Minister, because as you know I do have some concern at the mandating of these requirements.

I concede that most of the radio stations that I am familiar with are in Queensland. But I did sit through the committee hearings and questioned all of the radio station witnesses that came before us. And they represented the corporate giants, one might call them; they represented regional commercial radio; and they represented some country stations that were not in the regional grouping. Members of the committee will recall we had evidence by telephone from a representative of a family which owns one or two radio stations in country New South Wales.

As I understand it, and my local knowledge of the Queensland market is that, almost all of them, certainly stations in little places like Longreach and Mount Isa—although I do not think that Mount Isa would like to be called little—and stations like 4KZ in Innisfail, which transmits out to Karumba, have local news. I know this because, fortuitously, they occasionally ring me when they want a clever comment or, rather, a serious comment, one that does put the case.

They all do have weather and, as I said in my speech in the second reading debate, I am aware that whenever there is a cyclone around, which is most important up where I come from, the local stations and the ABC will stay on air 24 hours a day as they are needed. They will do that for number of reasons: they are good corporate citizens; they are local. But they also know that that is what their listeners want and, as I have said a number of times, what the listeners want is what the advertisers want and, if the advertisers are unhappy, then they do not pay the money and the radio station goes bust.

I mentioned earlier, Minister, reports in today's media suggest that some of the larger corporate chains or networks will, if this goes through, simply be unviable and will be losing money. They have particularly nominated, as I mentioned earlier, 4AM in Mareeba and the Roma radio station. I would be very distressed if anything we did in this chamber led to the Atherton Tablelands area and the south-western Queensland area having one fewer voice, one fewer radio station. That has always been my concern. It is a

concern I repeat because, even though they may not be perfect at the moment and perhaps do not have as much localism as I might like, at least they are there. If we do things that cause them to permanently lose money, they are going to shut down and we are going to have nothing. So something bad is better than nothing at all. They are the concerns I have.

So, Minister, to draw together the questions I have asked: does an internal corporate rearrangement represent a trigger event? And, if so, is that what the government intended? And is that good policy? And, if it is not, perhaps the minister might look at it some other time. As I say, I am not going to vote against the amendment today, but I do think it needs to be aired. The other thing is: what are the time lines for the introduction of the news and weather?

While I am on my feet I will also ask this of the minister: I raised the issue of community radio, to which the minister gave a very full and comprehensive reply, but not directly on the following issue. I am not asking the minister to commit to doing it, but could I get the minister to say that the government might have a look at the restrictions on community radio, at the appropriate time?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.57 pm)—Thank you, Senator Macdonald, for that series of questions. I will be very brief, given where we are at in the schedule. On your principal question, which related to corporate restructure: it depends, of course, on what is a trigger event, and the intention is to ensure that a trigger event is not avoided. It is all tied up with the whole notion of a change of control. So, obviously, with restructures it will always depend on the circumstances, and I could not possibly answer every combination or permutation that might come up. That is why the regulator is there.

I did say yesterday, and I think it is very important that small licence holders know that, as I have said very clearly, I intend to look at the impact on smaller family-owned licensees as part of the ACMA review on local content. I did give a very long answer previously in relation to how the local news, weather and other announcements would operate.

It is very clear that there is no immediate obligation on anyone to do anything. We will, if these bills pass, be imposing a requirement, but it will be deferred until there can be a proper review to establish the right balance and proper benchmarks. That should give a level of comfort to anyone listening to this debate that we are interested in hearing about the impact of these requirements and how they might impact on a particular business case.

I anticipate that there will certainly be some small operators that may require to be exempted from some of the requirements. It is going to come back to the parliament because if this mandatory requirement is altered at all then it must be done by way of a ministerial direction, a disallowable instrument. I fully intend it to be reviewed in a transparent, accountable and very open way.

Senator RONALDSON (Victoria) (12.59 pm)—I share some of the concerns of Senator Ian Macdonald. We certainly do not want to throw the baby out with the bathwater. I do intend to support these amendments but I am relieved to hear the minister's comments in relation to her concern to make sure we get this aspect right.

Question agreed to.

Senator CONROY (Victoria) (1.00 pm)—As there is a virtually identical item from the Democrats, and because we only have 15 minutes to go, I withdraw Opposi-

tion item (2) on sheet 5065 to oppose item 6 of schedule 2.

Senator MILNE (Tasmania) (1.00 pm)—I move Greens amendment (3) on sheet 5086:

(3) Schedule 2, item 7, page 54 (line 31) to page 55 (line 2), omit subsection 61CE(6), substitute:

(6) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for designated local content programs*** during a particular week if, during that week, the amount of local content programs is at least:

(a) the local content program target amount; or

(b) if the average weekly amount of local content broadcast under the licence during the benchmark year is greater than the local content program target number—that amount.

(7) For the purposes of subsection (6), the ***local content program target amount*** is:

(a) 4 ½ hours in every 24 hour period; or

(b) if the Minister, by legislative instrument, declares that a greater amount is the local content program target amount—the greater amount.

Question negatived.

Senator MURRAY (Western Australia) (1.00 pm)—I withdraw Democrat item (2) on sheet 5075 revised to oppose the entirety of schedule 2. Therefore the Democrats oppose items 4 to 6 in schedule 2 in the following terms:

(3) Schedule 2, items 4, 5 and 6, page 40 (lines 11 to 17), **TO BE OPPOSED**.

Senator CONROY (Victoria) (1.01 pm)—I indicate that, given the failure of the other amendments to try and toughen up the current bill, Labor will be supporting Senator Murray's amendment.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that items 4 to 6 in schedule 2 stand as printed. The ayes have it.

Senator MURRAY (Western Australia) (1.02 pm)—I am sorry, but I missed that. The motion was that the schedule stand as printed. The government called aye—is that correct?

The TEMPORARY CHAIRMAN—Yes.

Senator MURRAY—I did not hear that. We called no and we are saying that the noes have it.

The TEMPORARY CHAIRMAN—It has been called.

Senator Coonan—I speak pretty loudly.

The TEMPORARY CHAIRMAN—I called it for the ayes. I did not hear anyone for the noes.

Senator MURRAY—That is why I stood to correct the record. The noes have it. I am asking for a division and I have a voice attached to it.

The TEMPORARY CHAIRMAN—All right. I think I should put the question again just for clarity. The question is that items 4 to 6 of schedule 2 stand as printed.

Question put.

The committee divided. [1.07 pm]

(The Chairman—Senator JJ Hogg)

Ayes……	37
Noes……	35
Majority……	2

AYES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Campbell, I.G.
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.	Heffernan, W.
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.	Nash, F.
Parry, S.	Payne, M.A.
Ronaldson, M.	Santoro, S.
Scullion, N.G.	Troeth, J.M.
Trood, R.B.	Vanstone, A.E.
Watson, J.O.W.	

NOES

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.	Forshaw, M.G.
Hogg, J.J.	Hurley, A.
Hutchins, S.P.	Joyce, B.
Kirk, L.	Ludwig, J.W.
Lundy, K.A.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	Murray, A.J.M.
Nettle, K.	O'Brien, K.W.K.
Polley, H.	Ray, R.F.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Webber, R. *	Wong, P.
Wortley, D.	

PAIRS

Ellison, C.M.	Marshall, G.
Patterson, K.C.	Stott Despoja, N.

* denotes teller

Question agreed to.

Senator MURRAY (Western Australia) (1.10 pm)—The Democrats oppose schedule 2 in the following terms:

(4) Schedule 2, page 40 (line 20) to page 49 (line 31), Division 5B, **TO BE OPPOSED**.

The CHAIRMAN—The question is that schedule 2, item 7, division 5B, stand as printed.

Question put.

The committee divided. [1.11 pm]

(The Chairman—Senator JJ Hogg)

Ayes……	36
Noes……	34
Majority……	2

AYES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Campbell, I.G.
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.	Heffernan, W.
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.	Nash, F.
Payne, M.A.	Ronaldson, M.
Santoro, S.	Scullion, N.G.
Troeth, J.M.	Trood, R.B.
Vanstone, A.E.	Watson, J.O.W.

NOES

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.
Forshaw, M.G.	Hogg, J.J.
Hurley, A.	Hutchins, S.P.
Joyce, B.	Kirk, L.
Ludwig, J.W.	Lundy, K.A.
McEwen, A.	McLucas, J.E.
Milne, C.	Moore, C.
Murray, A.J.M.	Nettle, K.
O'Brien, K.W.K.	Polley, H.
Ray, R.F.	Sherry, N.J.
Siewert, R.	Stephens, U.
Sterle, G.	Webber, R. *
Wong, P.	Wortley, D.

PAIRS

Ellison, C.M.	Marshall, G.
Parry, S.	Evans, C.V.
Patterson, K.C.	Stott Despoja, N.

* denotes teller

Question agreed to.

Senator MURRAY (Western Australia) (1.14 pm)—Mr Chairman, I withdraw Democrat amendment (5) on sheet 5075 revised.

Senator Bob Brown—This would be a timely opportunity to remind fellow senators that, in the consequent votes, anybody who has a pecuniary interest which is not declared should declare it now.

The CHAIRMAN—That is not required. The time allocated for the consideration of the committee stage of these bills has expired.

BROADCASTING LEGISLATION AMENDMENT (DIGITAL TELEVISION) BILL 2006

Bill—by leave—taken as a whole.

Government amendment (3) on sheet PZ244—

(3) Schedule 1, item 4, page 3 (lines 16 to 18), **to be opposed**.

The CHAIRMAN—The question is that schedule 1, item 4 stand as printed.

Question negatived.

Government amendments (1), (2) and (4) to (61) on sheet PZ244—

(1) Schedule 1, item 1, page 3 (line 9), at the end of the definition of ***anti-siphoning event***, add "For this purpose, disregard subsections 115(1AA) and (1B).".

(2) Schedule 1, page 3 (after line 11), after item 2, insert:

2A Before section 27

Insert:

26B Licence area plans—multi-channelled national television broadcasting services

(1) Licence area plans are not required to deal with SDTV multi-channelled national television broadcasting services.

(2) Subsection (1) ceases to have effect at the end of the simulcast period, or the simulcast-equivalent period, for the coverage area concerned.

(3) In this section:

SDTV multi-channelled national television broadcasting service has the same meaning as in Schedule 4.

simulcast-equivalent period has the same meaning as in Schedule 4.

simulcast period has the same meaning as in Schedule 4.

(4) Schedule 1, page 4 (after line 13), after item 9, insert:

9A Clause 2 of Schedule 4

Insert:

simulcast-equivalent period, in relation to a national television broadcasting service, has the meaning given by clause 4D.

9B Before clause 5 of Schedule 4

Insert:

4D Simulcast-equivalent period for a coverage area

If there is no simulcast period for a coverage area in relation to a national television broadcasting service, the ACMA may, by legislative instrument, declare that a specified period is the simulcast-equivalent period for the coverage area.

(5) Schedule 1, item 18, page 6 (line 6), at the end of the heading to clause 41H, add "**etc.**".

(6) Schedule 1, item 18, page 6 (line 9), after "period", insert ", or a simulcast-equivalent period,".

(7) Schedule 1, page 9 (after line 12), after item 28, insert:

28A Variation of national television conversion scheme

(1) This item applies to a variation by the ACMA of the national television conversion scheme if:

(a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and

(b) the variation is made within 30 days after the commencement of this item.

(2) Clause 33 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.

(3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.

(4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

(8) Schedule 2, page 11 (after line 20), after item 6, insert:

6A After section 26

Insert:

26A Licence area plans—multi-channelled commercial television broadcasting services

(1) If:

(a) a commercial television broadcasting licence for a licence area was in force immediately before 1 January 2007; and

(b) the licence authorises the licensee to provide a HDTV multi-channelled commercial television broadcasting service in the licence area;

the relevant licence area plan is not required to deal with the HDTV multi-channelled commercial television broadcasting service.

(2) Subsection (1) ceases to have effect at the end of the simulcast period, or the simulcast-equivalent period, for the licence area concerned.

(3) In this section:

HDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

simulcast-equivalent period has the same meaning as in Schedule 4.

simulcast period has the same meaning as in Schedule 4.

6B After subsection 26B(1)

Insert:

(1A) Licence area plans are not required to deal with HDTV multi-channelled national television broadcasting services.

6C Subsection 26B(2)

Omit "Subsection (1) ceases", substitute "Subsections (1) and (1A) cease".

6D Subsection 26B(3)

Insert:

HDTV multi-channelled national television broadcasting service has the same meaning as in Schedule 4.

(9) Schedule 2, page 13 (after line 32), after item 9, insert:

9A Subsection 38A(9)

Omit "services under", substitute "at least one service under each of".

(10) Schedule 2, item 15, page 16 (after line 9), after subsection 40(12), insert:

Licence condition

(13) If the ACMA allocates a commercial television broadcasting licence under subsection (1), the licence is subject to the condition that the licensee may only provide the commercial television broadcasting service concerned in digital mode (within the meaning of Schedule 4).

(11) Schedule 2, item 17, page 17 (line 15), after "period", insert ", or a simulcast-equivalent period,".

(12) Schedule 2, item 17, page 17 (line 24), after "period", insert ", or a simulcast-equivalent period,".

(13) Schedule 2, item 29, page 19 (after line 31), after paragraph 7(1)(mb), insert:

(mc) subject to subclauses (5), (6) and (7), if:

(i) the licence was allocated under section 38A or 38B; and

(ii) there is a simulcast-equivalent period for the licence area of the licence;

the licensee will provide a HDTV multi-channelled commercial television broadcasting service during the

simulcast-equivalent period for the licence area;

(14) Schedule 2, item 40, page 21 (line 3), omit "and (mb)", substitute ", (mb) and (mc)".

(15) Schedule 2, item 40, page 21 (line 8), omit "Paragraph (1)(ma) does not apply", substitute "Paragraphs (1)(ma) and (mc) do not apply".

(16) Schedule 2, item 40, page 21 (line 13), omit "Paragraph (1)(mb) does not apply", substitute "Paragraphs (1)(mb) and (mc) do not apply".

(17) Schedule 2, item 40, page 21 (line 19), after "(mb)", insert ", (mc)".

(18) Schedule 2, items 47 and 48, page 22 (lines 12 to 25), omit the items, substitute:

47 Clause 2 of Schedule 4 (definition of *simulcast-equivalent period*)

Repeal the definition, substitute:

simulcast-equivalent period:

(a) in relation to a commercial television broadcasting service—has the meaning given by clause 4C; or

(b) in relation to a national television broadcasting service—has the meaning given by clause 4D.

48 After clause 4B of Schedule 4

Insert:

4C Simulcast-equivalent period for a licence area

If there is no simulcast period for a licence area of a commercial television broadcasting licence, the ACMA may, by legislative instrument, declare that a specified period is the simulcast-equivalent period for the licence area.

(19) Schedule 2, page 24 (after line 16), after item 50, insert:

50A After subclause 6(5B) of Schedule 4

Insert:

(5BA) An election made under subclause (5A) or (5AA) remains in force until:

(a) it is revoked, by written notice given to the ACMA, by:

(i) if neither of the licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable has been transferred since the making of the election—the holder of the licence allocated under section 38A or 38B; or

(ii) if the licence allocated under section 38A or 38B has been transferred since the making of the election—the holder of that licence; or

(iii) if a parent licence referred to in whichever of section 38A or 38B is applicable has been transferred since the making of the election—the holder of that parent licence; and

(b) the ACMA approves the revocation under clause 7B.

50B Paragraph 6(7C)(b) of Schedule 4

Omit "in writing", substitute "under clause 7B".

50C Subclauses 6(7D) and (7E) of Schedule 4

Repeal the subclauses.

50D Subparagraph 6(7F)(b)(ii) of Schedule 4

Omit "the other", substitute "each other".

(20) Schedule 2, page 24 (after line 31), after item 51, insert:

51A After clause 7A of Schedule 4

Insert:

7B Revocation of multi-channelling election

Scope

(1) This clause applies if a commercial television broadcasting licensee gives the ACMA a notice of revocation under subclause 6(5BA) or (7C).

Approval of revocation

(2) If the ACMA is satisfied that there is sufficient radiofrequency spectrum available, the ACMA must, by notice in writing given to the licensee:

(a) approve the revocation; and

(b) specify a day as the day on which the revocation takes effect; and

(c) vary the relevant digital channel plan under the commercial television conversion scheme to allot a channel to the licensee.

(3) For the purposes of subclause (2), any part of the spectrum covered by a determination under subsection 34(3) is taken not to be available.

(4) The ACMA may, before the day specified under paragraph (2)(b), by notice in writing, vary the day on which the revocation takes effect.

Refusal to approve revocation

(5) If the ACMA refuses to approve the revocation, the ACMA must give written notice of the refusal to the licensee.

(21) Schedule 2, item 70, page 29 (line 9), after "period", insert ", or the simulcast-equivalent period,".

(22) Schedule 2, item 74, page 30 (line 18), after "period", insert ", or the simulcast-equivalent period,".

(23) Schedule 2, item 85, page 34 (line 8), after "period", insert ", or a simulcast-equivalent period,".

(24) Schedule 2, item 85, page 34 (line 30), after "period", insert ", or a simulcast-equivalent period,".

(25) Schedule 2, item 85, page 35 (line 24), after "period", insert ", or a simulcast-equivalent period,".

(26) Schedule 2, item 85, page 36 (line 1), after "captioning service", insert "for the program".

(27) Schedule 2, item 85, page 36 (line 6), after "period", insert ", or a simulcast-equivalent period,".

(28) Schedule 2, item 85, page 36 (line 18), after "captioning service", insert "for the program".

(29) Schedule 2, item 86, page 37 (line 13), at the end of the heading to clause 41C, add "**etc.**".

(30) Schedule 2, item 86, page 37 (line 17), after "period", insert ", or a simulcast-equivalent period,".

(31) Schedule 2, item 87, page 38 (line 23), at the end of the heading to clause 41J, add "**etc.**".

(32) Schedule 2, item 87, page 38 (line 26), after "period", insert ", or a simulcast-equivalent period,".

(33) Schedule 2, page 41 (after line 14), after item 90, insert:

90A Subsection 102(2D)

After "transmitting", insert ", in digital mode,"

90B Subsection 102(2D)

After "service", insert "or services".

90C Subsection 102(2D)

After "the licence", insert "(the ***related licence***)".

90D After subsection 102(2E)

Insert:

(2EA) If the related licence is transferred, the new transmitter licence is taken to be issued to the person to whom the related licence is transferred.

90E After subsection 102(2F)

Insert:

(2G) If:

(a) under subclause 6(5BA) of Schedule 4 to the *Broadcasting Services Act 1992*, the licensee of a commercial television broadcasting licence (the ***related licence***) gives the ACMA a notice of revocation of an election; and

(b) the ACMA approves the revocation under clause 7B of Schedule 4 to that Act;

the ACMA must issue to the licensee of the related licence a new transmitter licence that authorises the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.

(2H) The new transmitter licence comes into force on the day on which the revocation takes effect.

(2J) If the related licence is transferred, the new transmitter licence is taken to be issued to the person to whom the related licence is transferred.

90F Paragraph 102(3)(b)

After "service", insert " or services".

(34) Schedule 2, page 41 (after line 16), after item 91, insert:

91A Subsection 102A(2D)

After "licensee" (first occurring), insert "of a commercial television broadcasting licence (the ***related licence***)".

91B Subsection 102A(2D)

After "service", insert "or services".

(35) Schedule 2, Part 1, page 42 (after line 24), at the end of the Part, add:

92A Subsection 103(1)

After "apparatus licence", insert "(other than an apparatus licence issued under subsection 102(2D), 102(2G) or 102A(2D))".

92B Subsection 103(4)

Omit " or 102A".

92C Subsection 103(4A)

Omit "section 102", substitute "subsection 102(1)".

92D Paragraphs 103(4A)(a) and (b)

Omit "section", substitute "subsection".

92E After subsection 103(4B)

Insert:

(4C) A transmitter licence issued under subsection 102(2D):

(a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and

(b) does not have effect while the related licence referred to in that subsection is suspended.

(4D) A transmitter licence issued under subsection 102(2G):

(a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and

(b) does not have effect while the related licence referred to in that subsection is suspended.

(4E) A transmitter licence issued under subsection 102A(1):

(a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and

(b) does not have effect while the related licence referred to in that subsection is suspended.

(4F) A transmitter licence issued under subsection 102A(2D):

(a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and

(b) does not have effect while the related licence referred to in that subsection is suspended.

(36) Schedule 2, page 43 (after line 17), after item 93, insert:

93A Approval of revocation of multi-channelling election etc.

(1) This item applies to a notice that was given under subclause 6(7D) of Schedule 4 to the *Broadcasting Services Act 1992* before the commencement of this item.

(2) The notice has effect, after the commencement of this item, as if it had been given under subclause 7B(2) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Schedule.

93B Variation of the day on which a revocation of a multi-channelling election takes effect

(1) This item applies to a notice given under subclause 6(7E) of Schedule 4 to the *Broadcasting Services Act*

1992 before the commencement of this item.

(2) The notice has effect, after the commencement of this item, as if it had been given under subclause 7B(4) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Schedule.

93C Variation of program standards

(1) This item applies to a variation by the ACMA of a program standard if:

(a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and

(b) either:

(i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or

(ii) the variation is made within 30 days after the commencement of this item.

(2) Section 126 of the *Broadcasting Services Act 1992* does not apply to the variation.

(3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.

(4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

93D Variation of commercial television conversion scheme

(1) This item applies to a variation by the ACMA of the commercial television conversion scheme if:

(a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and

(b) either:

(i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or

(ii) the variation is made within 30 days after the commencement of this item.

(2) Clause 18 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.

(3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.

(4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

93E Variation of national television conversion scheme

(1) This item applies to a variation by the ACMA of the national television conversion scheme if:

(a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and

(b) either:

(i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or

(ii) the variation is made within 30 days after the commencement of this item.

(2) Clause 33 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.

(3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.

(4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

(37) Schedule 3, page 45 (after line 13), after item 2, insert:

2A After subsection 26A(1)

Insert:

(1A) If:

(a) a commercial television broadcasting licence for a licence area was in force immediately before 1 January 2007; and

(b) the licence authorises the licensee to provide a SDTV multi-channelled commercial television broadcasting service in the licence area;

the relevant licence area plan is not required to deal with the SDTV multi-channelled commercial television broadcasting service.

2B Subsection 26A(2)

Omit "Subsection (1) ceases", substitute "Subsections (1) and (1A) cease".

2C Subsection 26A(3)

Insert:

SDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

(38) Schedule 3, page 45 (after line 13), after item 2, insert:

2D Paragraph 38B(21A)(c)

Omit "one or both", substitute "any or all".

2E Subsection 38B(21B)

Omit "a commercial", substitute "at least one commercial".

(39) Schedule 3, page 49 (after line 6), after item 6, insert:

6A Paragraph 7(1)(p) of Schedule 2

After "section", insert "101B, 101C,".

(40) Schedule 3, item 14, page 51 (line 14), at the end of the heading to clause 41A, add "**etc.**".

(41) Schedule 3, item 14, page 51 (line 18), after "period", insert ", or a simulcast-equivalent period,".

(42) Schedule 3, item 14, page 52 (line 20), at the end of the heading to clause 41B, add "**etc.**".

(43) Schedule 3, item 14, page 52 (line 25), after "period", insert ", or a simulcast-equivalent period,".

(44) Schedule 3, item 15, page 54 (line 3), at the end of the heading to clause 41D, add "**etc.**".

(45) Schedule 3, item 15, page 54 (line 8), after "period", insert ", or a simulcast-equivalent period,".

(46) Schedule 3, item 15, page 55 (line 13), at the end of the heading to clause 41E, add "**etc.**".

(47) Schedule 3, item 15, page 55 (line 16), after "period", insert ", or the simulcast-equivalent period,".

(48) Schedule 3, item 15, page 56 (line 24), at the end of the heading to clause 41F, add "**etc.**".

(49) Schedule 3, item 15, page 56 (line 27), after "period", insert ", or the simulcast-equivalent period,".

(50) Schedule 3, item 15, page 57 (line 30), at the end of the heading to subclause 41G(1), add "*etc.*".

(51) Schedule 3, item 15, page 57 (line 35), after "period", insert ", or the simulcast-equivalent period,".

(52) Schedule 3, item 15, page 58 (line 3), at the end of the heading to subclause 41G(2), add "*etc.*".

(53) Schedule 3, item 15, page 58 (line 7), after "period", insert ", or the simulcast-equivalent period,".

(54) Schedule 3, item 16, page 58 (line 14), at the end of the heading to clause 41K, add "**etc.**".

(55) Schedule 3, item 16, page 58 (line 17), after "period", insert ", or the simulcast-equivalent period,".

(56) Schedule 3, item 16, page 59 (line 24), at the end of the heading to clause 41L, add "**etc.**".

(57) Schedule 3, item 16, page 59 (line 27), after "period", insert ", or the simulcast-equivalent period,".

(58) Schedule 3, item 16, page 60 (line 29), after "period", insert ", or the simulcast-equivalent period,".

(59) Schedule 3, item 16, page 60 (line 34), after "period", insert ", or the simulcast-equivalent period,".

(60) Schedule 3, page 61 (before line 1), before item 17, insert:

16A Section 5 (paragraph (a) of the definition of *datacasting transmitter licence*)

After "section", insert "101B, 101C,".

16B Subsection 100(1)

After "100B,", insert "101B, 101C,".

16C After section 101A

Insert:

101B Transmitter licence—application if multi-channelling election is in force in relation to remote licence area

(1) If:

(a) a commercial television broadcasting licence (the ***related licence***) allocated under section 38B of the *Broadcasting Services Act 1992* is in force on or after 1 January 2009; and

(b) an election under subclause 6(7B) of Schedule 4 to that Act is in force for a commercial television broadcasting service provided under the related licence;

the licensee of the related licence may, before the end of whichever of the following periods is applicable:

(c) the simulcast period for the licence area;

(d) the simulcast-equivalent period for the licence area;

apply in writing to the ACMA for the issue of a transmitter licence under this section.

(2) An application under subsection (1) must be in a form approved by the ACMA.

Issue of transmitter licence

(3) If:

(a) an application is made under subsection (1); and

(b) the ACMA is satisfied that there is sufficient radiofrequency spectrum available;

the ACMA must:

(c) vary the relevant digital channel plan under the commercial television conversion scheme to allot a channel to the licensee of the related licence; and

(d) issue to the licensee of the related licence a transmitter licence authorising the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.

(4) For the purposes of paragraph (3)(b), any part of the spectrum covered by a determination under subsection 34(3) of the *Broadcasting Services Act 1992* is taken not to be available.

(5) If the related licence is transferred, the transmitter licence is taken to be issued to the person to whom the related licence is transferred.

Definitions

(6) In this section:

simulcast-equivalent period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

simulcast period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

101C Transmitter licence—application before the end of the simulcast period etc. if multi-channelling election is in force

(1) If:

(a) a commercial television broadcasting licence (the ***related licence***) allocated under section 38A or 38B of the *Broadcasting Services Act 1992* is in force on or after 1 January 2009; and

(b) an election under subclause 6(5A), (5AA) or (7B) of Schedule 4 to that Act is in force for a commercial television broadcasting service provided under the related licence; and

(c) no transmitter licence has been issued to the licensee of the related licence under section 101B;

the licensee of the related licence may, before the end of whichever of the following periods is applicable:

(d) the simulcast period for the licence area;

(e) the simulcast-equivalent period for the licence area;

apply in writing to the ACMA for the issue of a transmitter licence under this section.

(2) An application under subsection (1) must be in a form approved by the ACMA.

Issue of transmitter licence

(3) If:

(a) an application is made under subsection (1); and

(b) the ACMA is satisfied that there is sufficient radiofrequency spectrum available;

the ACMA must issue to the licensee of the related licence a transmitter licence authorising the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.

(4) For the purposes of paragraph (3)(b), any part of the spectrum covered by a determination under subsection 34(3) of the *Broadcasting Services Act 1992* is taken not to be available.

(5) The transmitter licence comes into force at the end of the simulcast period, or the simulcast-equivalent period, for the licence area of the related licence.

(6) If the related licence is transferred, the transmitter licence is taken to be issued to the person to whom the related licence is transferred.

Consequences of revocation of election

(7) If:

(a) an application is made under subsection (1); and

(b) the election referred to in paragraph (1)(b) is revoked before the ACMA makes a decision on the application;

the application is taken never to have been made.

(8) If:

(a) a transmitter licence is issued under subsection (3); and

(b) the election referred to in paragraph (1)(b) is subsequently revoked;

the transmitter licence is cancelled.

Definitions

(9) In this section:

simulcast-equivalent period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

simulcast period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

16D Paragraph 102(2A)(e)

Omit "another commercial television broadcasting service (the ***additional service***)", substitute "one or more other commercial television broadcasting services (the ***additional services***)".

16E Paragraph 102(2A)(f)

Omit "the additional service", substitute "at least one of the additional services".

16F Paragraph 102(2A)(g)

Omit "the additional service", substitute "any of the additional services".

16G Paragraph 102(2A)(h)

Omit "service", substitute "services".

16H Subsection 102(2C)

After "service" (first occurring), insert "or services".

16J Paragraph 102(2F)(a)

After "service", insert "or services".

16K Paragraph 102A(2A)(e)

Omit "another commercial television broadcasting service (the ***additional service***)", substitute "one or more other commercial television broadcasting services (the ***additional services***)".

16L Paragraph 102A(2A)(f)

Omit "the additional service", substitute "at least one of the additional services".

16M Subsection 102A(2A)

Omit "the additional service in", substitute "any of the additional services in".

(61) Schedule 3, page 63 (after line 20), at the end of the Schedule, add:

18 Subsection 103(1)

After "subsection", insert "101C(3),".

19 Subsection 103(2)

After "101A,", insert "101B, 101C,".

20 After subsection 103(4)

Insert:

(4AA) A transmitter licence issued under section 101B:

(a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and

(b) does not have effect while the related licence referred to in that section is suspended.

(4AB) A transmitter licence issued under section 101C:

(a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and

(b) does not have effect while the related licence referred to in that section is suspended.

21 Subsection 106A(2)

After "section", insert "101B, 101C,".

22 Subsection 107(3)

After "101A,", insert "101B, 101C,".

23 Subsection 108(5)

After "101A,", insert "101B, 101C,".

24 Subsection 109(1)

After "section", insert "101B, 101C,".

25 After subsection 109(1)

Insert:

(1A) The conditions of a licence issued under section 101B, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the commercial television broadcasting licence referred to in section 101B.

(1B) The conditions of a licence issued under section 101C, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the commercial television broadcasting licence referred to in section 101C.

26 Subsection 109(2)

Omit "the licence", substitute "a licence issued under section 102 or 102A".

27 Paragraph 111(1)(d)

After "101A,", insert "101B, 101C".

28 Subsection 125(2)

After "101A,", insert "101B, 101C,".

29 Subsection 129(1)

After "101A,", insert "101B, 101C,".

Government amendments (1) to (9) on sheet QS385—

(1) Clause 2, page 2 (after table item 3), insert:

3A. Schedule 2A	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

(2) Schedule 2, page 10 (before line 6), before item 1, insert:

1A Subsection 6(1)

Insert:

channel B datacasting transmitter licence has the same meaning as in the *Radiocommunications Act 1992*, and includes an authorisation under section 114 of that Act by the licensee of such a licence.

(3) Schedule 2, page 10 (after line 24), after item 3, insert:

3A Subsection 6(1)

Insert:

domestic digital television receiver has the same meaning as in the *Radiocommunications Act 1992*.

(4) Schedule 2, page 17 (after line 11), after item 16, insert:

16A After section 51

Insert:

51A This Part does not apply to certain channel B datacasting transmitter licences

This Part does not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

(5) Schedule 2, page 18 (after line 24), after item 23, insert:

23A After subsection 212(2A)

Insert:

(2B) The rule in subsection (2) does not prevent an action, suit or proceeding against a person under the *Radiocommunications Act 1992* in relation to a breach of any of the conditions of a datacasting transmitter licence.

(2C) The Minister may give the ACMA a written direction about the exercise of the power conferred by subparagraph (1)(b)(ii).

(6) Schedule 2, page 40 (after line 14), after item 88, insert:

88A At the end of clause 41 of Schedule 6

Add:

(3) Subclauses (1) and (2) do not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

(7) Schedule 2, page 40 (after line 15), before item 89, insert:

88B Section 5

Insert:

BSA exempt re-transmission service means a service that, under subsection 212(1) of the *Broadcasting Services Act 1992*, is exempt from the regulatory regime established by that Act.

88C Section 5

Insert:

channel A datacasting transmitter licence has the meaning given by section 98A.

88D Section 5

Insert:

channel B datacasting transmitter licence has the meaning given by section 98B.

88E Section 5

Insert:

commercial broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

88F Section 5

Insert:

commercial radio broadcasting licence has the same meaning as in the *Broadcasting Services Act 1992*.

88G Section 5

Insert:

community television broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

88H Section 5

Insert:

domestic digital television receiver means domestic reception equipment that:

(a) is not a hand-held device; and

(b) is capable of receiving television programs transmitted in:

(i) SDTV digital mode; or

(ii) HDTV digital mode; and

(c) has such other characteristics (if any) as are specified in a legislative instrument made by the ACMA under this paragraph.

For the purposes of paragraph (b), disregard clause 6 of Schedule 6 to the *Broadcasting Services Act 1992*.

88J Section 5

Insert:

HDTV digital mode has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

88K Section 5

Insert:

national broadcaster has the same meaning as in the *Broadcasting Services Act 1992*.

88L Section 5

Insert:

open narrowcasting television service has the same meaning as in the *Broadcasting Services Act 1992*.

88M Section 5

Insert:

subscription television broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

88N At the end of Division 1 of Part 3.3 of Chapter 3

Add:

98A Channel A datacasting transmitter licence

(1) The ACMA may, by writing, declare that a specified datacasting transmitter licence proposed to be issued is a ***channel A datacasting transmitter licence*** for the purposes of this Act.

(2) If such a datacasting transmitter licence is issued, the licence is a ***channel A datacasting transmitter licence*** for the purposes of this Act.

(3) A declaration under subsection (1) is not a legislative instrument.

(4) A copy of a declaration under subsection (1) is to be made available on the ACMA's Internet site.

98B Channel B datacasting transmitter licence

(1) The ACMA may, by writing, declare that a specified datacasting transmitter licence proposed to be issued is a ***channel B datacasting transmitter licence*** for the purposes of this Act.

(2) If such a datacasting transmitter licence is issued, the licence is a ***channel B datacasting transmitter licence*** for the purposes of this Act.

(3) A declaration under subsection (1) is not a legislative instrument.

(4) A copy of a declaration under subsection (1) is to be made available on the ACMA's Internet site.

(8) Schedule 2, page 42 (after line 24), after item 92, insert:

92F After subsection 106(5)

Insert:

(5A) A system so determined must provide that a person is not eligible to apply for a channel A datacasting transmitter licence unless the person meets specified requirements.

92G Subsection 106(7)

After "(5),", insert "(5A),".

92H After subsection 106(9)

Insert:

(9A) The Minister may give written directions to the ACMA in relation to the exercise of the power conferred by subsection (5A).

92J Subsection 106(10)

After "(9)", insert "or (9A)".

92K At the end of subsection 106(11)

Add "or (9A)".

92L Paragraph 109A(1)(g)

Before "a condition", insert "if the licence is neither a channel A datacasting transmitter licence nor a channel B datacasting transmitter licence—".

92M Paragraph 109A(1)(ga)

Repeal the paragraph, substitute:

(ga) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, or a person so authorised, will commence to transmit a datacasting service within 18 months after the allocation of the licence or within such longer period as is notified in writing by the ACMA;

92N Paragraph 109A(1)(h)

Repeal the paragraph.

92P At the end of paragraph 109A(1)(i)

Add:

or (iii) that service is a BSA exempt retransmission service;

92Q After paragraph 109A(1)(i)

Insert:

(ia) if the licence is a channel A datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service unless:

(i) the service is provided under, and in accordance with the conditions of, a BSA datacasting licence, and the service is capable of being received by a domestic digital television receiver; or

(ii) the service is an open narrowcasting television service that is capable of being received by a domestic digital television receiver; or

(iii) the service is a community television broadcasting service that is capable of being received by a domestic digital television receiver;

(ib) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if the datacasting service is:

(i) a commercial broadcasting service; or

(ii) a subscription television broadcasting service that is capable of being received by a domestic digital television receiver;

(ic) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if the licensee or the person so authorised is:

(i) a company that holds a commercial television broadcasting licence; or

(ii) a person who is in a position to exercise control of a commercial television broadcasting licence; or

(iii) a company, where a person is in a position to exercise control of the company and a commercial television broadcasting licence; or

(iv) a national broadcaster; or

(v) a company, where a national broadcaster is in a position to exercise control of the company;

and the datacasting service is capable of being received by a domestic digital television receiver;

(id) if the licence is a channel B datacasting transmitter licence—a condi-

tion that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service provided under a BSA datacasting licence if the holder of the BSA datacasting licence is:

(i) a company that holds a commercial television broadcasting licence; or

(ii) a person who is in a position to exercise control of a commercial television broadcasting licence; or

(iii) a company, where a person is in a position to exercise control of the company and a commercial television broadcasting licence; or

(iv) a national broadcaster; or

(v) a company, where a national broadcaster is in a position to exercise control of the company;

and the datacasting service is capable of being received by a domestic digital television receiver;

(ie) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if:

(i) the service is a BSA exempt retransmission service; and

(ii) the service is capable of being received by a domestic digital television receiver;

(if) if the licence is a channel A datacasting transmitter licence or a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service unless that service is transmitted in digital mode (within the meaning of Schedule 4 to the *Broadcasting Services Act 1992*);

92R Subsection 109A(1A)

After "(1)(g)", insert "or (ga)".

92S Subsection 109A(1B)

Repeal the subsection, substitute:

(1B) For the purposes of subparagraph (1)(ib)(ii), it is immaterial whether a domestic digital television receiver is capable of receiving subscription television broadcasting services when used:

(a) in isolation; or

(b) in conjunction with any other equipment.

(1C) A condition specified in a licence under paragraph (1)(k) may deal with the commencement or continuity of transmission of datacasting services.

(1D) Subsection (1C) does not limit paragraph (1)(k).

(1E) Paragraphs (1)(g) and (ga) do not limit subsection (1C).

92T Subsection 109A(4)

After "subparagraphs", insert "(1)(ic)(ii), (iii) and (v), (1)(id)(ii), (iii) and (v),".

92U At the end of section 109A

Add:

(5) Subsections (2) and (3) do not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

Ministerial directions

(6) The Minister may give the ACMA a written direction about the exercise of the power conferred by paragraph (1)(k) to specify conditions in a channel A datacasting transmitter licence.

92V Paragraph 125(1)(a)

Omit "(h), (i)", substitute "(i), (ia), (ib), (ic), (id), (ie), (if)".

92W Subsection 128C(1)

Omit "(h), (i)", substitute "(i), (ia), (ib), (ic), (id), (ie), (if)".

92X Section 128D

Omit "(h), (i)", substitute "(i), (ia), (ib), (ic), (id), (ie), (if)".

92Y Section 128E

Repeal the section.

(9) Page 44 (after line 3), after Schedule 2, insert:

Schedule 2A—Amendments commencing on Proclamation

Broadcasting Services Act 1992

1 After Part 9

Insert:

PART 9A—TECHNICAL STANDARDS

130A Technical standards for digital transmission

(1) The ACMA may, by legislative instrument, determine technical standards that relate to the transmission in digital mode of any or all of the following services delivered using the broadcasting services bands:

(a) commercial television broadcasting services;

(b) national television broadcasting services;

(c) community television broadcasting services;

(d) subscription television broadcasting services;

(e) television broadcasting services provided under a class licence;

(f) datacasting services provided under datacasting licences.

Conditional access systems

(2) Standards under subsection (1), to the extent that they deal with conditional access systems, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those systems should be open to all providers of eligible datacasting services.

Application program interfaces

(3) Standards under subsection (1), to the extent that they deal with application program interfaces, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those interfaces should be open to all providers of eligible datacasting services.

Conversion schemes

(4) The commercial television conversion scheme under clause 6 of Schedule 4 must be consistent with any standards determined under subsection (1).

(5) The national television conversion scheme under clause 19 of Schedule 4 must be consistent with any standards determined under subsection (1).

Instruments

(6) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

Compliance

(7) A national broadcaster must comply with a standard determined under subsection (1).

Note 1: For compliance by holders of commercial television broadcasting licences, see clause 7 of Schedule 2.

Note 2: For compliance by holders of community television broadcasting licences, see clause 9 of Schedule 2.

Note 3: For compliance by holders of subscription television broadcasting licences, see clause 10 of Schedule 2.

Note 4: For compliance by providers of television broadcasting services provided under a class licence, see clause 11 of Schedule 2.

Note 5: For compliance by holders of datacasting licences, see clause 24 of Schedule 6.

Note 6: For compliance by holders of datacasting transmitter licences, see section 109A of the *Radiocommunications Act 1992*.

Definitions

(8) In this section:

application program interface has the meaning generally accepted within the broadcasting industry.

conditional access system means a conditional access system that:

(a) relates to the provision of one or more eligible datacasting services; and

(b) allows a provider of an eligible datacasting service to determine whether an end-user is able to receive a particular eligible datacasting service.

digital mode has the same meaning as in Schedule 4.

eligible datacasting service means:

(a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or

(b) a television broadcasting service transmitted in digital mode using the broadcasting services bands.

national television broadcasting service has the same meaning as in Schedule 4.

130B Technical standards for domestic digital reception equipment

(1) The ACMA may, by legislative instrument, determine technical standards that relate to domestic reception equipment that is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:

(a) commercial television broadcasting services;

(b) national television broadcasting services;

(c) community television broadcasting services;

(d) subscription television broadcasting services;

(e) television broadcasting services provided under a class licence;

(f) datacasting services provided under datacasting licences.

Offence

(2) A person commits an offence if:

(a) the person supplies equipment; and

(b) the equipment is domestic reception equipment; and

(c) the equipment is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:

(i) commercial television broadcasting services;

(ii) national television broadcasting services;

(iii) community television broadcasting services;

(iv) subscription television broadcasting services;

(v) television broadcasting services provided under a class licence;

(vi) datacasting services provided under datacasting licences; and

(d) the equipment does not comply with a standard determined under subsection (1).

Penalty: 1,500 penalty units.

Civil penalty

(3) A person must not supply domestic reception equipment if:

(a) the equipment is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:

(i) commercial television broadcasting services;

(ii) national television broadcasting services;

(iii) community television broadcasting services;

(iv) subscription television broadcasting services;

(v) television broadcasting services provided under a class licence;

(vi) datacasting services provided under datacasting licences; and

(b) the equipment does not comply with a standard determined under subsection (1).

(4) Subsection (3) is a civil penalty provision.

Instruments

(5) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

Reception of subscription television broadcasting services

(6) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription television broadcasting services when used:

(a) in isolation; or

(b) in conjunction with any other equipment.

Exemptions

(7) The ACMA may, by legislative instrument, exempt specified domestic reception equipment from subsections (2) and (3).

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Definitions

(8) In this section:

digital mode has the same meaning as in Schedule 4.

national television broadcasting service has the same meaning as in Schedule 4.

supply has the same meaning as in the *Trade Practices Act 1974*.

PART 9B—INDUSTRY CODES AND INDUSTRY STANDARDS

Division 1—Simplified outline

130C Simplified outline

The following is a simplified outline of this Part:

• Industry codes may be registered by the ACMA.

• The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.

• Compliance with industry standards is mandatory.

Division 2—Interpretation

130D Industry codes

For the purposes of this Part, an ***industry code*** is a code developed under this Part (whether or not in response to a request under this Part).

130E Industry standards

For the purposes of this Part, an ***industry standard*** is a standard determined under this Part.

130F Industry activities

(1) For the purposes of this Part, each of the following is an ***industry activity***:

(a) providing a commercial television broadcasting service;

(b) providing a national television broadcasting service (within the meaning of Schedule 4);

(c) providing a community television broadcasting service;

(d) providing a subscription television broadcasting service;

(e) providing a television broadcasting service under a class licence;

(f) providing a datacasting service under a datacasting licence;

(g) importing, manufacturing or supplying domestic reception equipment that is capable of receiving any or all of the following:

(i) commercial television broadcasting services;

(ii) national television broadcasting services;

(iii) community television broadcasting services;

(iv) subscription television broadcasting services;

(v) television broadcasting services provided under a class licence;

(vi) datacasting services provided under datacasting licences;

(h) operating a transmitter under a datacasting transmitter licence.

Reception of subscription television broadcasting services

(2) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription television broadcasting services when used:

(a) in isolation; or

(b) in conjunction with any other equipment.

Definitions

(3) In this section:

import means import into Australia.

national television broadcasting service has the same meaning as in Schedule 4.

supply has the same meaning as in the *Trade Practices Act 1974*.

130G Sections of the industry

(1) For the purposes of this Part, ***sections of the industry*** are to be ascertained in accordance with this section.

(2) The ACMA may, by legislative instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of industry activity constitute a section of the industry for the purposes of this Part.

(3) The section must be identified in the determination by a unique name and/or number.

(4) A determination under subsection (2) has effect accordingly.

(5) Sections of the industry determined under subsection (2):

(a) need not be mutually exclusive; and

(b) may consist of the aggregate of any 2 or more sections of the industry determined under subsection (2); and

(c) may be subsets of a section of the industry determined under subsection (2).

(6) Subsection (5) does not, by implication, limit subsection (2).

130H Participants in a section of the industry

For the purposes of this Part, if a person is a member of a group that constitutes a section of the industry, the person is a ***participant*** in that section of the industry.

Division 3—General principles relating to industry codes and industry standards

130J Statement of regulatory policy

The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the industry should develop codes (***industry codes***) that are to apply to participants in that section of the industry in relation to the industry activities of the participants.

130K Examples of matters that may be dealt with by industry codes and industry standards

(1) This section sets out examples of matters that may be dealt with by industry codes and industry standards.

(2) The applicability of a particular example will depend on which section of the industry is involved.

(3) The examples are as follows:

(a) the labelling of domestic reception equipment;

(b) electronic program guides, including the provision of information for the purpose of compiling electronic program guides;

(c) the numbering of digital services, including the use of logical channel numbers;

(d) application program interfaces (within the meaning of section 130A);

(e) conditional access systems (within the meaning of section 130A);

(f) the updating of software used in domestic reception equipment.

130L Industry codes and industry standards not to deal with certain matters

For the purposes of this Part, an industry code or an industry standard that deals with a particular matter has no effect to the extent (if any) to which the matter is dealt with by:

(a) a code registered, or a standard determined, under Part 6 of the *Telecommunications Act 1997*; or

(b) a code registered, or a standard determined, under Part 9 of this Act; or

(c) a standard determined under Part 9A of this Act; or

(d) a standard determined under Part 4 of Schedule 4 to this Act; or

(e) a code registered, or a standard determined, under Part 5 of Schedule 5 to this Act; or

(f) a code registered, or a standard determined, under Part 4 of Schedule 6 to this Act.

Division 4—Industry codes

130M Registration of industry codes

(1) This section applies if:

(a) the ACMA is satisfied that a body or association represents a particular section of the industry; and

(b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the industry activities of those participants; and

(c) the body or association gives a copy of the code to the ACMA; and

(d) the ACMA is satisfied that:

(i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and

(ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and

(e) the ACMA is satisfied that, before giving the copy of the code to the ACMA:

(i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and

(ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and

(f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:

(i) the body or association published a draft of the code and invited participants in that section of the industry to make submissions to the body or association about the draft within a specified period; and

(ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period.

(2) The ACMA must register the code by including it in the Register of industry codes kept under section 130ZA.

(3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.

(4) If:

(a) an industry code (the ***new code***) is registered under this Part; and

(b) the new code is expressed to replace another industry code;

the other code ceases to be registered under this Part when the new code is registered.

130N ACMA may request codes

(1) If the ACMA is satisfied that a body or association represents a particular section of the industry, the ACMA may, by written notice given to the body or association, request the body or association to:

(a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the industry activities of those participants; and

(b) give the ACMA a copy of the code within the period specified in the notice.

(2) The period specified in a notice under subsection (1) must run for at least 120 days.

(3) The ACMA must not make a request under subsection (1) in relation to a particular section of the industry unless the ACMA is satisfied that:

(a) the development of the code is necessary or convenient in order to:

(i) provide appropriate community safeguards; or

(ii) otherwise deal with the performance or conduct of participants in that section of the industry; and

(b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.

(4) The ACMA may vary a notice under subsection (1) by extending the period specified in the notice.

(5) Subsection (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.

(6) A notice under subsection (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

130P Publication of notice where no body or association represents a section of the industry

(1) If the ACMA is satisfied that a particular section of the industry is not represented by a body or association, the ACMA may publish a notice in the *Gazette*:

(a) stating that, if such a body or association were to come into existence within a specified period, the ACMA would be likely to give a notice to that body or association under subsection 130N(1); and

(b) setting out the matter or matters relating to the industry activities that

would be likely to be specified in the subsection 130N(1) notice.

(2) The period specified in a notice under subsection (1) must run for at least 60 days.

130Q Replacement of industry codes

(1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.

(2) If the replacement code differs only in minor respects from the original code, section 130M has effect, in relation to the registration of the code, as if paragraphs 130M(1)(e) and (f) had not been enacted.

Note: Paragraphs 130M(1)(e) and (f) deal with submissions about draft codes.

Division 5—Industry standards

130R ACMA may determine an industry standard if a request for an industry code is not complied with

(1) This section applies if:

(a) the ACMA has made a request under subsection 130N(1) in relation to the development of a code that is to:

(i) apply to participants in a particular section of the industry; and

(ii) deal with one or more matters relating to the industry activities of those participants; and

(b) any of the following conditions is satisfied:

(i) the request is not complied with;

(ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;

(iii) the request is complied with, but the ACMA subsequently refuses to register the code; and

(c) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:

(i) provide appropriate community safeguards in relation to that matter or those matters; or

(ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.

(2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an ***industry standard***.

(3) Before determining an industry standard under this section, the ACMA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.

(4) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

130S ACMA may determine industry standard where no industry body or association formed

(1) This section applies if:

(a) the ACMA is satisfied that a particular section of the industry is not represented by a body or association; and

(b) the ACMA has published a notice under subsection 130P(1) relating to that section of the industry; and

(c) that notice:

(i) states that, if such a body or association were to come into existence within a particular period, the ACMA would be likely to give a notice to that body or association under subsection 130N(1); and

(ii) sets out one or more matters relating to the industry activities of the participants in that section of the industry; and

(d) no such body or association comes into existence within that period; and

(e) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:

(i) provide appropriate community safeguards in relation to that matter or those matters; or

(ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.

(2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an ***industry standard***.

(3) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

130T ACMA may determine industry standards—total failure of industry codes

(1) This section applies if:

(a) an industry code that:

(i) applies to participants in a particular section of the industry; and

(ii) deals with one or more matters relating to the industry activities of those participants;

has been registered under this Part for at least 180 days; and

(b) the ACMA is satisfied that the code is totally deficient (as defined by subsection (6)); and

(c) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and

(d) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.

(2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.

(3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an ***industry standard***.

(4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).

(5) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.

(6) For the purposes of this section, an industry code that applies to participants in a particular section of the industry and deals with one or more matters relating to the industry activities of those participants is ***totally deficient*** if, and only if:

(a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or

(b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.

(7) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

130U ACMA may determine industry standards—partial failure of industry codes

(1) This section applies if:

(a) an industry code that:

(i) applies to participants in a particular section of the industry; and

(ii) deals with 2 or more matters relating to the industry activities of those participants;

has been registered under this Part for at least 180 days; and

(b) section 130T does not apply to the code; and

(c) the ACMA is satisfied that the code is deficient (as defined by subsection (6)) to the extent to which the code deals with one or more of those matters (the ***deficient matter*** or ***deficient matters***); and

(d) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and

(e) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters.

(2) The period specified in a notice under paragraph (1)(d) must run for at least 30 days.

(3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters. A standard under this subsection is to be known as an ***industry standard***.

(4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).

(5) On and after the day on which the industry standard comes into force, the industry code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subsection does not affect:

(a) the continuing registration of the remainder of the industry code; or

(b) any investigation, proceeding or remedy in respect of a contravention of the industry code that occurred before that day.

(6) For the purposes of this section, an industry code that applies to participants in a particular section of the industry and deals with 2 or more matters relating to the industry activities of those participants is ***deficient*** to the extent to which it deals with a particular one of those matters if, and only if:

(a) the code is not operating to provide appropriate community safeguards in relation to that matter; or

(b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter.

(7) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

130V Compliance with industry standards

(1) If:

(a) an industry standard that applies to participants in a particular section of the industry is registered under this Part; and

(b) a person is a participant in that section of the industry;

the person must comply with the industry standard.

Offence

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

(c) the person's conduct contravenes the requirement.

Penalty: 1,500 penalty units.

Civil penalty

(3) Subsection (1) is a civil penalty provision.

130W Formal warnings—breach of industry standards

(1) This section applies to a person who is a participant in a particular section of the industry.

(2) The ACMA may issue a formal warning if the person contravenes an industry standard registered under this Part.

130X Variation of industry standards

The ACMA may, by legislative instrument, vary an industry standard that applies to participants in a particular section of the industry if it is satisfied that it is necessary or convenient to do so to:

(a) provide appropriate community safeguards in relation to one or more matters relating to the industry activities of those participants; and

(b) otherwise regulate adequately those participants in relation to one or more matters relating to the industry activities of those participants.

130Y Revocation of industry standards

(1) The ACMA may, by legislative instrument, revoke an industry standard.

(2) If:

(a) an industry code is registered under this Part; and

(b) the code is expressed to replace an industry standard;

the industry standard is revoked when the code is registered.

130Z Public consultation on industry standards

(1) Before determining or varying an industry standard, the ACMA must:

(a) cause to be published in a newspaper circulating in each State a notice:

(i) stating that the ACMA has prepared a draft of the industry standard or variation; and

(ii) stating that free copies of the draft will be made available to members of the public during normal office hours throughout the period specified in the notice; and

(iii) specifying the place or places where the copies will be available; and

(iv) inviting interested persons to give written comments about the draft to the ACMA within the period specified under subparagraph (ii); and

(b) make copies of the draft available in accordance with the notice.

(2) The period specified under subparagraph (1)(a)(ii) must run for at least 30 days after the publication of the notice.

(3) Subsection (1) does not apply to a variation if the variation is of a minor nature.

(4) If interested persons have given comments in accordance with a notice under subsection (1), the ACMA must have due regard to those comments in determining or varying the industry standard, as the case may be.

(5) In this section:

State includes the Australian Capital Territory and the Northern Territory.

Division 6—Register of industry codes and industry standards

130ZA ACMA to maintain Register of industry codes and industry standards

(1) The ACMA is to maintain a Register in which the ACMA includes:

(a) all industry codes required to be registered under this Part; and

(b) all industry standards; and

(c) all requests made under section 130N; and

(d) all notices under section 130P.

(2) The Register is to be maintained by electronic means.

(3) The Register is to be made available for inspection on the Internet.

2 After paragraph 7(1)(b) of Schedule 2

Insert:

(ba) the licensee will comply with subsection 130V(1) (which deals with industry standards);

3 Paragraph 7(1)(n) of Schedule 2

Repeal the paragraph.

4 Paragraph 7(1)(oa) of Schedule 2

Omit "regulations made for the purposes of clause 36B of Schedule 4 (which deals with the accessibility of domestic reception equipment)", substitute "standards under section 130A (which deals with technical standards for digital transmission)".

5 Subclauses 7(2B), (2C), (2D) and (2E) of Schedule 2

Repeal the subclauses.

6 After paragraph 9(1)(c) of Schedule 2

Insert:

(ca) the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);

(cb) the licensee will comply with subsection 130V(1) (which deals with industry standards);

7 After paragraph 10(1)(b) of Schedule 2

Insert:

(ba) the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);

(bb) the licensee will comply with subsection 130V(1) (which deals with industry standards);

8 After paragraph 11(1)(b) of Schedule 2

Insert:

(ba) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);

(bb) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the licensee will comply with subsection 130V(1) (which deals with industry standards);

9 Clause 2 of Schedule 4

Insert:

HDTV commercial television format standard means:

(a) if the licence area concerned is not a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by commercial television broadcasting licensees in such a licence area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 8(8); or

(b) if the licence area concerned is a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by commercial television broadcasting licensees in such a licence area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 8(10A).

10 Clause 2 of Schedule 4

Insert:

HDTV national television format standard means:

(a) if the coverage area concerned is not a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by national broadcasters in such a coverage area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 23(8); or

(b) if the coverage area concerned is a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by national broadcasters in such a coverage area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 23(10A).

11 Clause 2 of Schedule 4

Insert:

SDTV commercial television format standard means:

(a) if the licence area concerned is not a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by commercial television broadcasting licensees in such a licence area; or

(b) if the licence area concerned is a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by commercial television broadcasting licensees in such a licence area.

12 Clause 2 of Schedule 4

Insert:

SDTV national television format standard means:

(a) if the coverage area concerned is not a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by national broadcasters in such a coverage area; or

(b) if the coverage area concerned is a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by national broadcasters in such a coverage area.

13 Subparagraphs 8(7)(a)(ii) and (iii) of Schedule 4

Repeal the subparagraphs, substitute:

(ii) a SDTV commercial television format standard; or

(iii) a HDTV commercial television format standard; or

14 Paragraphs 8(10)(c) and (d) of Schedule 4

Repeal the paragraphs, substitute:

(c) a SDTV commercial television format standard; or

(d) a HDTV commercial television format standard; or

15 Subparagraphs 23(7)(a)(ii) and (iii) of Schedule 4

Repeal the subparagraphs, substitute:

(ii) a SDTV national television format standard; or

(iii) a HDTV national television format standard; or

16 Paragraphs 23(10)(c) and (d) of Schedule 4

Repeal the paragraphs, substitute:

(c) a SDTV national television format standard; or

(d) a HDTV national television format standard; or

17 Clause 35A of Schedule 4

Repeal the clause.

18 Part 3A of Schedule 4

Repeal the Part.

19 Division 1 of Part 4 of Schedule 4

Repeal the Division.

20 Division 4 of Part 4 of Schedule 4

Repeal the Division.

21 Division 1A of Part 3 of Schedule 6

Repeal the Division.

22 Paragraph 24(1)(ca) of Schedule 6

Omit "regulations made for the purposes of clause 36B of Schedule 4", substitute "standards under section 130A (which deals with technical standards for digital transmission)".

23 Paragraph 24(1)(g) of Schedule 6

Repeal the paragraph, substitute:

(g) the licensee will comply with subsection 130V(1) (which deals with industry standards);

24 Paragraph 46(e) of Schedule 6

Omit "or clause 60 of this Schedule".

25 Paragraph 52(1)(c) of Schedule 6

Omit "20B,".

26 Subclauses 54(2) and (3) of Schedule 6

Omit "20B,".

27 Part 10 of Schedule 6

Repeal the Part.

Radiocommunications Act 1992

28 Paragraph 109A(1)(fa)

Repeal the paragraph.

29 After paragraph 109A(1)(ga)

Insert:

(gb) a condition that the licensee, or a person so authorised, will comply with any standards under section 130A of the *Broadcasting Services Act 1992* (which deals with technical standards for digital transmission);

(gc) a condition that the licensee, or a person so authorised, will comply with subsection 130V(1) of the *Broadcasting Services Act 1992* (which deals with industry standards);

Government amendment (1) on sheet QS390—

(1) Schedule 2, page 42 (after line 24), after item 92, insert:

92QA Before paragraph 109A(1)(j)

Insert:

(ij) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, will comply with an access undertaking in force under Division 4A in relation to the licence;

92UA After Division 4 of Part 3.3 of Chapter 3

Insert:

Division 4A—Access to channel B datacasting transmitter licences

118A Access to channel B datacasting transmitter licences

A reference in this Division to ***access*** to a channel B datacasting transmitter licence is a reference to access to services that enable or facilitate the transmission of one or more content services under the licence, where the access is provided for the purpose of enabling one or more content service providers to provide one or more content services.

Note: *Content service provider* and *content service* are defined in section 118M.

118B Applicant for channel B datacasting transmitter licences must give the ACCC an access undertaking

(1) A person is not eligible to apply for a channel B datacasting transmitter licence unless:

(a) the person has given the ACCC a written undertaking that, in the event that the licence is issued to the person, each of the following persons:

(i) the first holder of the licence;

(ii) any person authorised by the first holder of the licence to operate radiocommunications transmitters under the licence;

(iii) any future holder of the licence;

(iv) any person authorised by a future holder of the licence to operate radiocommunications transmitters under the licence;

will:

(v) comply with such obligations in relation to access to the licence as are ascertained in accordance with the undertaking; and

(vi) do so on such terms and conditions as are agreed with the holder of the licence (or the person so authorised) or, failing agreement, on such terms and conditions as are ascertained in accordance with the undertaking; and

(b) the ACCC has accepted the undertaking.

(2) The undertaking must be in a form approved in writing by the ACCC.

(3) The undertaking must be accompanied by the fee (if any) specified in the Procedural Rules. The amount of the fee must not be such as to amount to taxation.

(4) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.

(5) The Procedural Rules may make provision for or in relation to a time limit for giving the undertaking.

118C Further information about access undertaking

(1) This section applies if a person gives an access undertaking to the ACCC.

(2) The ACCC may request the person to give the ACCC further information about the access undertaking.

(3) If:

(a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and

(b) the person does not give the ACCC the information within the time limit allowed by the Procedural Rules;

the ACCC may, by written notice given to the person, reject the access undertaking.

(4) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the ACCC may refuse to consider the access undertaking until the person gives the ACCC the information.

(5) The ACCC may withdraw its request for further information, in whole or in part.

(6) Information obtained by the ACCC under this section is taken to be protected Part XIB or XIC information for the purposes of section 155AB of the *Trade Practices Act 1974*.

118D ACCC to accept or reject access undertaking

(1) This section applies if a person gives an access undertaking to the ACCC.

Decision to accept or reject access undertaking

(2) After considering the access undertaking, the ACCC must:

(a) accept the access undertaking; or

(b) reject the access undertaking.

(3) If the ACCC rejects the access undertaking, the ACCC may give the person a written notice advising the person that, if the person:

(a) makes such alterations to the access undertaking as are specified in the notice; and

(b) gives the altered access undertaking to the ACCC within the time limit allowed by the Procedural Rules;

the ACCC will accept the altered access undertaking.

Notice of decision

(4) If the ACCC accepts the access undertaking, the ACCC must give the person a written notice stating that the access undertaking has been accepted.

(5) If the ACCC rejects the access undertaking, the ACCC must give the person a written notice:

(a) stating that the access undertaking has been rejected; and

(b) setting out the reasons for the rejection.

118E Duration of access undertaking etc.

(1) If:

(a) a person gives an access undertaking to the ACCC in relation to a channel B datacasting transmitter licence; and

(b) the ACCC accepts the access undertaking; and

(c) the licence is issued to the person;

the access undertaking:

(d) comes into force when the licence is issued; and

(e) remains in force while the licence is in force; and

(f) is suspended while the licence is suspended.

(2) To avoid doubt, if:

(a) an access undertaking is in force in relation to a channel B datacasting transmitter licence; and

(b) the licence is transferred;

then:

(c) the transfer does not result in the lapse of the access undertaking; and

(d) the transferee, and any person authorised by the transferee to operate radiocommunications transmitters under the licence, is bound by the access undertaking.

(3) If:

(a) a channel B datacasting transmitter licence is renewed; and

(b) immediately before the expiry of the original licence, an access undertaking was in force in relation to the original licence;

the access undertaking:

(c) remains in force while the new licence is in force, as if:

(i) it were an access undertaking in relation to the new licence; and

(ii) each reference in the access undertaking to a holder of the original licence were a reference to a holder of the new licence; and

(d) is suspended while the new licence is suspended.

118F Variation of access undertakings

(1) This section applies if an access undertaking is in force in relation to a channel B datacasting transmitter licence.

(2) The licensee may give the ACCC a variation of the access undertaking.

Decision to accept or reject variation

(3) After considering the variation, the ACCC must decide to:

(a) accept the variation; or

(b) reject the variation.

(4) If the ACCC rejects the variation, the ACCC may give the person a written notice advising the person that, if the person:

(a) makes such alterations to the variation as are specified in the notice; and

(b) gives the altered variation to the ACCC within the time limit allowed by the Procedural Rules;

the ACCC will accept the altered variation.

Notice of decision

(5) If the ACCC accepts the variation, the ACCC must give the licensee a written notice:

(a) stating that the variation has been accepted; and

(b) setting out the terms of the variation.

(6) If the ACCC rejects the variation, the ACCC must give the licensee a written notice:

(a) stating that the variation has been rejected; and

(b) setting out the reasons for the rejection.

118G Further information about variation of access undertaking

(1) This section applies if the licensee of a channel B datacasting transmitter licence gives the ACCC a variation of an access undertaking.

(2) The ACCC may request the licensee to give the ACCC further information about the variation.

(3) If:

(a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and

(b) the licensee does not give the ACCC the information within the time limit allowed by the Procedural Rules;

the ACCC may, by written notice given to the licensee, reject the variation.

(4) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the ACCC may refuse to consider the variation until the licensee gives the ACCC the information.

(5) The ACCC may withdraw its request for further information, in whole or in part.

(6) Information obtained by the ACCC under this section is taken to be protected Part XIB or XIC information for the purposes of section 155AB of the *Trade Practices Act 1974*.

118H Decision-making criteria

Acceptance of access undertaking

(1) The ACCC may, by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept access undertakings.

(2) In deciding whether to accept access undertakings, the ACCC must apply criteria determined under subsection (1).

Acceptance of variation of access undertaking

(3) The ACCC may, by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept variations of access undertakings.

(4) In deciding whether to accept variations of access undertakings, the ACCC must apply criteria determined under subsection (3).

118J Register of access undertakings

(1) The ACCC is to maintain a Register in which the ACCC includes all access undertakings that are in force.

(2) The Register may be maintained by electronic means.

(3) The Register is to be made available for inspection on the Internet.

118K Enforcement of access undertakings

(1) This section applies if an access undertaking is in force in relation to a channel B datacasting transmitter licence.

(2) If:

(a) the ACCC; or

(b) any person (the ***affected person***) whose interests are affected by the access undertaking;

thinks that a person (the ***third person***) has breached the access undertaking, the ACCC or affected person may ap-

ply to the Federal Court for an order under subsection (3).

(3) If the Federal Court is satisfied that the third person has breached the access undertaking, the Court may make all or any of the following orders:

(a) an order directing the third person to comply with the access undertaking;

(b) an order directing the third person to compensate any other person who has suffered loss or damage as a result of the breach;

(c) any other order that the Court thinks appropriate.

(4) The Federal Court may discharge or vary an order granted under this section.

118L Procedural Rules

(1) The ACCC may, by legislative instrument, make rules:

(a) making provision for or in relation to the practice and procedure to be followed by the ACCC in performing functions, or exercising powers, under this Division; or

(b) making provision for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the ACCC under this Division; or

(c) prescribing matters required or permitted by any other provision of this Division to be prescribed by the Procedural Rules.

(2) Rules under subsection (1) are to be known as Procedural Rules.

(3) The Procedural Rules may make provision for or in relation to any or all of the following:

(a) the confidentiality of information or documents given to the ACCC by a person who gave the ACCC an access undertaking or a variation of an access undertaking;

(b) the form and content of undertakings, variations or other documents given to the ACCC under this Division;

(c) requiring the ACCC to give information to the ACMA about the operation of this Division;

(d) requiring the ACMA to give information to the ACCC that is relevant to the operation of this Division.

(4) The Procedural Rules may make provision for or in relation to a matter by empowering the ACCC to make decisions of an administrative character.

(5) The Procedural Rules may provide that the ACCC may refuse to consider an access undertaking if:

(a) the ACCC is satisfied that the access undertaking:

(i) is frivolous; or

(ii) is vexatious; or

(iii) was not given in good faith; or

(b) the ACCC has reason to believe that the access undertaking was given for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Division.

(6) The Procedural Rules may provide that the ACCC may refuse to consider an access undertaking given by a person in relation to a channel B datacasting transmitter licence if (apart from section 118B) the person is not eligible to apply for the licence.

(7) Subsections (3), (4), (5) and (6) do not limit subsection (1).

118M Definitions

In this Division:

access has the meaning given by section 118A.

access undertaking means an undertaking under section 118B.

content service means a service covered by subparagraph 109A(1)(i)(i) or (ii), but does not include a service cov-

ered by subparagraph 109A(1)(ib)(i) or (ii).

content service provider means a company who provides, or proposes to provide, a content service.

Procedural Rules means Procedural Rules made under section 118L.

92VA Paragraph 125(1)(a)

Before "or (j)", insert ", (ij)".

92WA Subsection 128C(1)

Before "or (j)", insert ", (ij)".

92XA Section 128D

Before "or (j)", insert ", (ij)".

The CHAIRMAN—The question is that the remaining amendments on sheets PZ244, QS385 and QS390, circulated by the government, be agreed to.

Question agreed to.

Opposition amendments (1), (2) and (3) on sheet 5066—

(1) Schedule 1, item 18, page 5 (line 28) to page 7 (line 6), **TO BE OPPOSED**.

(2) Schedule 2, item 87, page 38 (line 19) to page 39 (line 23), **TO BE OPPOSED**.

(3) Schedule 3, item 16, page 58 (line 10) to page 60 (line 34), **TO BE OPPOSED**.

Democrats amendments (2) and (3) on sheet 5076—

(2) Schedule 2, item 8, page 13 (lines 4 to 24), section 35B, **TO BE OPPOSED**.

(3) Schedule 2, item 15, page 14 (line 18) to page 16 (line 9), subsection 40(5) to 40(12), **TO BE OPPOSED**.

The CHAIRMAN—The question now is that opposition amendments (1), (2) and (3) and Democrats amendments (2) and (3) on sheet 5076 be agreed to.

Question agreed to.

Opposition amendment (4) on sheet 5066—

(4) Schedule 2, page 40 (after line 14), after item 88, insert:

88 After section 115A

Insert:

115B Review of high definition multi-channelling by commercial broadcasters

Before 31 December 2007, the Minister must cause to be conducted a review of high definition multi-channelling by commercial broadcasters in relation to the effectiveness of HDTV multi-channelling in encouraging the take-up of digital TV.

Democrats amendments (1) and (4) on sheet 5076—

(1) Schedule 1, page 9 (after line 22), at the end of the Schedule, add:

PART 3—FURTHER AMENDMENTS

Australian Communications and Media Authority Act 2005

30 Subsection 20(1)

After "instrument", insert ", in accordance with the merit selection process set out in section 20A".

31 After section 20

Insert:

20A Procedures for merit selection of members

(1) The Minister must, within 9 months of the commencement of this section, determine a code of practice for selecting a member to be appointed by the Governor-General that must include the following general principles:

(a) merit, including but not limited to appropriate subject, research and management experience; and

(b) appointment on the recommendation of an independent selection panel established by the Minister; and

(c) probity; and

(d) openness and transparency.

(2) The Minister must cause to be tabled in each House of the Parliament a copy of the code of practice within 15 sitting days of that House after determining the code in accordance with subsection (1).

(3) The Minister must cause to be tabled in each House of the Parliament an amendment of the code of practice within 15 sitting days of that House after the amendment is made.

20B Audit of procedures

(1) The operation of section 20A must be audited by the Public Service Commissioner each financial year.

(2) The result of an audit conducted in accordance with this section is to be included in the annual report of the Public Service Commissioner.

(3) An audit conducted pursuant to subsection (1) must examine the code of practice as determined and any appointments made in accordance with the code of practice.

(4) Schedule 2, item 15, page 15 (after line 18), after subsection 40(7), insert:

(7A) Before forming an opinion in accordance with subsection (7)(b), the Minister must first confer with the Leader of the Opposition in the House of Representatives whether a proposed commercial television broadcasting service is likely to be contrary to the public interest.

Schedule 2, page 17 (after line 11), after item 16, insert:

16AA At the end of subsection 42(1)

Add:

; and (c) the condition that the licensee may only provide commercial television broadcasting services in digital mode (within the meaning of Schedule 4).

The CHAIRMAN—The question now is that amendment (4) on sheet 5066, circulated by Senator Conroy, and that amendments (1) and (4) on sheet 5076, circulated by Senator Murray, be agreed to.

Question negatived.

COMMUNICATIONS LEGISLATION AMENDMENT (ENFORCEMENT POWERS) BILL 2006

Bill—by leave—taken as a whole.

Government amendments (1) to (7) on sheet QS389—

(1) Schedule 1, item 48, page 25 (line 10), after "136E", insert "or subclause 49(3) of Schedule 6".

(2) Schedule 1, item 48, page 25 (line 15), after "136E", insert "or subclause 49(3) of Schedule 6".

(3) Schedule 1, item 50, page 32 (line 5), at the end of paragraph 215(1)(b), add "or".

(4) Schedule 1, item 50, page 32 (after line 5), after paragraph 215(1)(b), insert:

(c) Part 8 of Schedule 6;

(5) Schedule 1, item 50, page 32 (line 25), at the end of paragraph 215(5)(b), add "or".

(6) Schedule 1, item 50, page 32 (after line 25), after paragraph 215(5)(b), insert:

(c) Part 8 of Schedule 6;

(7) Schedule 1, page 32 (after line 31), after item 50, insert:

50A After paragraph 9(1)(a) of Schedule 6

Insert:

(aa) a breach of a civil penalty provision occurring; or

50B At the end of subclause 9(2) of Schedule 6

Add:

; and (f) whether a civil penalty order has been made against:

(i) the first-mentioned person; or

(ii) a person referred to in paragraph (c) or (d).

50C At the end of clause 49 of Schedule 6 (before the notes)

Add:

(3) A person must not provide a datacasting service if the person does not have a datacasting licence to provide that service.

(4) Subclause (3) is a civil penalty provision.

(5) A person who contravenes subclause (3) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

50D Clause 50 of Schedule 6

Repeal the clause, substitute:

50 Remedial directions—unlicensed datacasting services

(1) If the ACMA is satisfied that a person has breached, or is breaching, subclause 49(3), the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that subclause, or is unlikely to breach that subclause, in the future.

Note 1: For exemptions for broadcasters, see clause 51.

Note 2: For exemptions for designated teletext services, see clause 51A.

Offence

(2) A person commits an offence if:

(a) the person has been given a notice under subclause (1); and

(b) the person engages in conduct; and

(c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

(3) A person who contravenes subclause (2) commits a separate offence in respect of each day (including a day of a conviction for the offence or any subsequent day) during which the contravention continues.

Civil penalty

(4) A person must comply with a notice under subclause (1).

(5) Subclause (4) is a civil penalty provision.

(6) A person who contravenes subclause (4) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Definition

(7) In this clause:

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

50E After clause 52 of Schedule 6

Insert:

52A Civil penalty provision relating to breach of conditions of datacasting licences

(1) A datacasting licensee must not breach a condition of the licence set out in clause 14, 16, 21 or 24.

(2) Subclause (1) is a civil penalty provision.

(3) A person who contravenes subclause (1) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

50F At the end of clause 53 of Schedule 6

Add:

(6) A person must comply with a notice under subclause (1).

(7) Subclause (6) is a civil penalty provision.

(8) A person who contravenes subclause (6) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

The CHAIRMAN—The question is that the amendments on sheet QS389, circulated by the government, be agreed to.

Question agreed to.

TELEVISION LICENCE FEES AMENDMENT BILL 2006

Bill—by leave—taken as a whole.

Democrats amendments (1) to (3) on sheet 5085—

(1) Schedule 1, page 3 (after line 4), before item 1, insert:

1A After section 2

Insert:

2A Application—3 year moratorium

This Act does not apply to a HDTV multi-channelled commercial television broadcasting service or a SDTV multi-channelled commercial television broadcasting service until the later of:

(a) 3 years after the date on which that service is first broadcast; or

(b) the date on which a report by ACMA is presented to both Houses of the Parliament which recommends that the licence fees commence in respect of that service.

(2) Schedule 1, page 3 (after line 4), before item 1, insert:

1A After section 2

Insert:

2A Application—1 year moratorium

(1) This Act does not apply to a HDTV multi-channelled commercial television broadcasting service or a SDTV multi-channelled commercial television broadcasting service until the expiration of one year after the date on which that service is first broadcast.

(2) A licensee broadcasting a HDTV multi-channelled commercial television broadcasting service or a SDTV multi-channelled commercial television broadcasting service may apply to the ACMA for an exemption from payment of fees under this Act for up to three years after the date on which the service was first broadcast.

(3) An application under subsection (2) is to be forwarded with a written recommendation by ACMA to the Minister for consideration.

(3) Schedule 1, page 3 (after line 6), at the end of the bill, add:

2 After section 7

Insert:

7A Review of the licence fees for non-core television broadcasting licences

(1) No later than 1 January 2011, the Minister must cause to be conducted a review of the licence fees payable in relation to:

(a) a HDTV multi-channelled commercial television broadcasting service; or

(b) a SDTV multi-channelled commercial television broadcasting service being operated by a licensee.

(2) The following matters must be taken into account in conducting a review under subsection (1):

(a) the financial viability of the services being offered on the digital terrestrial television platform; and

(b) the take-up of digital television in the applicable licence area; and

(c) any other relevant matters.

(3) The Minister must cause to be prepared a report of a review under subsection (1).

(4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

The CHAIRMAN—The question is that amendments (1) to (3) on sheet 5085, circulated by Senator Murray, be agreed to.

Question negatived.

The CHAIRMAN—The question is that the Broadcasting Services Amendment (Media Ownership) Bill 2006, the Broadcasting Legislation Amendment (Digital Television) Bill 2006 and the Communications Legisla-

tion Amendment (Enforcement Powers) Bill 2006, as amended, be agreed to; and that the Television Licence Fees Amendment Bill 2006 stand as printed.

Question put.

The committee divided. [1.24 pm]

(The Chairman—Senator JJ Hogg)

Ayes……	36
Noes……	32
Majority……	4

AYES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Brandis, G.H.
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.
Heffernan, W.	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.	Nash, F.
Parry, S.	Patterson, K.C.
Payne, M.A.	Ronaldson, M.
Scullion, N.G.	Troeth, J.M.
Trood, R.B.	Watson, J.O.W.

NOES

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.
Forshaw, M.G.	Hogg, J.J.
Hurley, A.	Hutchins, S.P.
Kirk, L.	Ludwig, J.W.
Lundy, K.A.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	Murray, A.J.M.
Nettle, K.	O'Brien, K.W.K.
Polley, H.	Ray, R.F.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Webber, R. *	Wortley, D.

PAIRS

Campbell, I.G.	Stott Despoja, N.
Ellison, C.M.	Marshall, G.
Santoro, S.	Wong, P.
Vanstone, A.E.	Evans, C.V.

* denotes teller

Question agreed to.

Broadcasting Services Amendment (Media Ownership) Bill 2006, Broadcasting Legislation Amendment (Digital Television) Bill 2006 and Communications Legislation Amendment (Enforcement Powers) Bill 2006 reported with amendments; Television Licence Fees Amendment Bill 2006 reported without amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (1.27 pm)—I move:

That these bills be now read a third time.

Question put.

The Senate divided. [1.32 pm]

(The Deputy President—Senator JJ Hogg)

Ayes……	36
Noes……	32
Majority……	4

AYES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Brandis, G.H.
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.
Heffernan, W.	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.	Nash, F.
Parry, S.	Patterson, K.C.
Payne, M.A.	Ronaldson, M.

Scullion, N.G.	Troeth, J.M.
Trood, R.B.	Watson, J.O.W.

NOES

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.
Forshaw, M.G.	Hogg, J.J.
Hurley, A.	Hutchins, S.P.
Kirk, L.	Ludwig, J.W.
Lundy, K.A.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	Murray, A.J.M.
Nettle, K.	O'Brien, K.W.K.
Polley, H.	Ray, R.F.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Webber, R. *	Wortley, D.

PAIRS

Campbell, I.G.	Stott Despoja, N.
Ellison, C.M.	Marshall, G.
Santoro, S.	Wong, P.
Vanstone, A.E.	Evans, C.V.

* denotes teller

Question agreed to.

Bills read a third time.

Sitting suspended from 1.34 pm to 2.00 pm

QUESTIONS WITHOUT NOTICE

Climate Change

Senator STEPHENS (2.00 pm)—My question is to Senator Ian Campbell, the Minister for the Environment and Heritage. Is the minister aware of growing acceptance in the corporate world about the need for a carbon-trading scheme at the same time as the government continues to oppose such a scheme? Wasn't Mr Greg Paramor, the head of the property company Mirvac, making exactly this point when he noted, 'It's kind of funny that the corporate world has picked up on this and the government hasn't'? Isn't Mirvac now voluntarily working to offset its carbon emissions, in the belief that eventually the government will have to act? Aren't many other leading businesses also considering following suit? Given that business is leaving the minister far behind and taking real action on climate change, aren't the minister's pompous claims about leading the world completely false?

Senator IAN CAMPBELL—This is an incredibly important question because we do know that abating greenhouse gases and trying to mitigate greenhouse gas increases is the only way that the world, working cooperatively and effectively together, can stop dangerous climate change and dangerous rises in sea level and atmospheric temperatures. So coming up with effective policies to achieve just that has been a strong focus of the government.

Yes, some people do advocate trading schemes. Recently, the Premier of New South Wales put out a plan for a possible emissions-trading scheme. We found on that day that, because of the ineffectiveness of it from an environmental point of view and because of the fact that it would impose significant costs on industry in states like WA and Queensland, by lunchtime the Western Australian Labor government had withdrawn and by dinnertime the Queensland Labor government had withdrawn from the trading scheme that the senator is referring to.

That sort of national trading scheme in Australia would have perverse environmental consequences. A lot of people focus on the cost on jobs, as Mr Beattie and Mr Carpenter have done, because you are effectively bringing in a new tax which will drive up the cost of energy in Australia at a time when Australians are saying: 'We don't want the cost of energy to go up. We're sick of paying higher fuel prices. We don't want higher energy prices.' At a time when the Australian people are saying that, Australia's internationally competitive businesses are

saying that and we are trying to make energy more efficient, you have the Labor Party federally saying: 'Let's put a carbon tax on. Let's put a tax on energy. Let's put a tax on jobs.'

As I said, the Labor Premier of Queensland, who cares about jobs in Queensland—and coal is an industry in Queensland—and the Labor Premier of Western Australia have said, 'No, we won't be part of that because of the economic consequences.' But what Mr Beattie and Mr Carpenter have not said, and what I will say, is that it also has perverse environmental consequences. If you put up the cost of doing business in Australia and drive internationally competitive businesses to shift their operations offshore then you are doing a bad thing for the environment, because you are shifting the greenhouse gas emissions to Indonesia, China or somewhere else where they have less regulation of other emissions.

So what the Australian government have done is in fact to introduce a range of initiatives which will allow the corporate sector to engage in emissions reduction. For example, the Greenhouse Friendly program involves companies using a trading system and an offset system for their carbon. They are able, under the Kyoto rules, with the endorsement of the Australian government, to offset their carbon-creating activities with Greenhouse Friendly activities—with abatement activities—and they can go to the Australian people and claim that they are carbon neutral. We as a government have facilitated that because we think it is a very worthwhile thing to do. Through the Greenhouse Challenge program we have also engaged with over 700 businesses which have measured their greenhouse inventories and have put in place greenhouse reduction plans, and they have to report on them annually. So we do believe that an effective response to greenhouse gas reduction and climate change is required, but the Labor Party's plan to put a new tax on energy and people's power bills and to increase their petrol bills is not the answer. *(Time expired)*

Senator STEPHENS—Mr President, I ask a supplementary question. Does the minister recall saying at Senate estimates in February that carbon trading was part of the answer to reducing emissions? When does the minister plan to start showing some leadership by backing up these grand claims about leading the world on climate change with action? If he supports carbon trading, when will the minister take action on greenhouse emissions and provide business with a long-term incentive to cut carbon pollution?

Senator IAN CAMPBELL—Business does have an incentive. The trouble with the Labor Party is that they ignore the hundreds and hundreds of millions of dollars we have spent. In my last answer, Senator Evans was sitting there interjecting—creating hot air and greenhouse gases as usual. What he was saying was, 'Tell us what you're doing.' I tell you every day. The Labor Party have a two-word policy—they say, 'Sign Kyoto.' We are spending hundreds of millions of dollars to put 12,000 solar cells on people's roofs through the Solar Cities program. Our Greenhouse Challenge program allows businesses to reduce their abatement and to get credit for it. We have created, through the Greenhouse Friendly program, a voluntary carbon-trading scheme. You cannot even get the Labor states to sign up to your trading scheme. You want a carbon tax. The premiers of WA and Queensland will not have a bar of it, because they are too smart.

Economy

Senator BERNARDI (2.07 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. Will the minister inform the Senate of recent indications as to the strength of the Australian

economy, and in particular the labour market? Further, will the minister inform the Senate of the steps the government is taking to lock in and maintain Australia's prosperity through continued economic reform?

Senator MINCHIN—I thank Senator Bernardi for that very appropriate question. One of the most important responsibilities of any national government is to manage the economy so that it can create and maintain prosperity and it can create job opportunities for its citizens. Today we have seen further evidence of the Howard government's success in that great endeavour.

The ABS has today revealed that in the month of September the unemployment rate for Australia fell to 4.8 per cent, with 31,400 new jobs created. So, since the beginning of the Work Choices legislation some six months ago, the Australian economy has created no less than 205,000 new jobs. We also have a new record high participation rate of 65.1 per cent. This really is quite an outstanding result and really is vindication of the reforms of the coalition government. Our workplace relations reforms have been aimed very much at just this—creating jobs by getting greater flexibility in the workplace—and our tax and welfare reforms have been aimed at encouraging workforce participation, which is now at a record high.

Of course this great news today on jobs would have been unthinkable when our opponents, the Labor Party, were last in office. When the current Labor leader, Kim Beazley, was employment minister, unemployment exceeded 10 per cent and it was the view of that government and many around it that the days of full employment would never be seen again. In stark contrast to the situation under the previous Labor government, today we have employers who are actively competing for workers. The tightness that we have in the labour market, which is in many ways a great thing and great for workers, does present its own challenges. But again, our government is moving to meet those challenges.

Today, Prime Minister Howard outlined an $837 million Skills for the Future package. The package makes a very big investment in improving the basic skills of Australia's workforce. Most importantly, it adds to the flexibility of the Australian economy by providing support for retraining of adults through mid-career apprenticeships as well as vouchers for adults seeking year 12 or equivalent qualifications. The package creates new engineering places in Australian universities; it helps apprentices gain vital business skills through a new business skills voucher.

As the Treasury paper released today with this package outlines, the real key to managing and maintaining our prosperity is to ensure flexibility in every part of the economy. We have to have an economy that does make the necessary adjustments to the pressures that are brought upon it. We do that by attracting skilled labour into the booming sectors of the economy through higher wages in those sectors, but doing it in such a way that those higher wages do not flow through to every other sector of the economy, which would just cause high inflation leading to the unemployment that we experienced under our predecessors.

That is the reason why Labor's ideological commitment to centralised, union dominated pattern bargaining would be the greatest threat imaginable to Australia's prosperity. We have to maintain economic reform to maintain that prosperity. We ask the Labor Party to join us in that quest, but all we get is opposition, and today we saw it again. They cannot even bring themselves to reform broadcasting laws in this country which are 20 years old and out of date. But, through the Howard government, we have managed

those reforms and we are setting this economy up to maintain and lock in prosperity for our children and their children.

Climate Change

Senator WEBBER (2.10 pm)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. Is the minister aware that the Photovoltaic Rebate Program has been responsible for helping families in thousands of homes across Australia to install solar panels? Hasn't this program assisted families to take action on climate change by investing in clean energy? Can the minister confirm that Channel 7's *Sunrise* program is right when it says:

> Our federal government has already slashed solar electricity rebates and is planning to phase them out completely by the middle of next year.

Why has the minister decided to phase out these programs? Why is the minister afraid to help Australian families to invest in solar energy by continuing the solar electricity rebate program?

Senator IAN CAMPBELL—I welcome Senator Webber's question, because she draws attention to a program that has and will roll out solar cells onto the roofs of both private homes and schools across this country. We are on target to achieve about 12,000. In the budget before the last one, this government extended that program because it is such a good program. It is a way of building what I call a bridge into the Solar Cities program.

We have increased the expenditure on the rollout of solar powering of communities through the Solar Cities program. For example, the Photovoltaic Rebate Program—or the solar roofs program, as I like to call it because people know what it is when you call it that—will have an expenditure of roughly $20-odd million. The Solar Cities program is nearly quadruple that; it is about $75 million. This is a massive ramping up of investment in the deployment of solar cells to create energy for households and also for schools.

In the last budget, I took a program that was terminating and extended it for a further two years. Labor went around saying that we had halved the rebates. The rebates have ensured that the number of homes that get solar energy cells put on roofs as a result of the extension of the program that I got through the budget last year will double. When we evaluated the program we found that we would get an even better uptake and rollout of solar technology with a lower grant. So yes, the grant is lower per house, but the number of houses that are getting the solar cells is doubling because the program is so well subscribed. So we are getting twice the number of solar cells for the same money.

I welcome the campaign by the *Sunrise* program. I welcome the fact that it is drawing attention to what people can do in their own homes to reduce their footprint. I am a great supporter of the program, and I am looking at how we can spread solar energy across the country. We have got the Solar Cities program. Thousands upon thousands of new homes will benefit in places like Adelaide and Townsville, where we have already committed to rolling out the Solar Cities program, and, over the next few weeks, I will announce at least two and possibly three more solar cities, which will see a massive expansion of solar energy being provided into homes across Australia.

In relation to PVRP, I am very keen to see a program to succeed PVRP that does what we did last time. I have extended it once already as environment minister. I am very keen to extend it again, but I am absolutely certainly we can improve it more. One of the problems at the moment is that it goes generally to very wealthy people. It cuts out middle Australia and it is virtually unaffordable

for low-income Australians. I have said to the renewable energy industry that, when a replacement for the PVRP scheme is negotiated and worked on, which I am working on at the moment, we want to make sure that people on lower and middle incomes can get it because, quite frankly, at the moment the people who generally get it are very, very high income earners, and I would like to see low- and middle-income earners be able to shift their homes and schools across to solar power.

Senator WEBBER—Mr President, I ask a supplementary question. Given the minister's answer and the fact that the program finishes in 12 months and the rebate has been halved, doesn't that mean that the program is in fact being phased out? Given the minister's grandiose rhetoric about climate change, aren't solar energy programs a small price to pay for a potentially significant contribution to clean energy?

Senator IAN CAMPBELL—They say that we have slashed the rebates. They would rather have higher rebates and fewer solar roofs. What we say is that we would rather get more solar roofs for the money. I have already extended the solar roofs program. I intend extending it again, but I want to make sure we get better value for money. I want to make sure we get more greenhouse gases out of the atmosphere for every taxpayer's money. Senator Webber seems to think she would rather give people more money for less greenhouse gas abatement. I think if you care about climate change you will ensure that you get more greenhouse gas abatements per dollar of taxpayers' money.

Employment

Senator TROETH (2.16 pm)—My question is to the Minister representing the Minister for Employment and Workplace Relations, Senator Abetz. Will the minister update the Senate on the latest employment figures? What do these figures say about the Howard government's job-creating Work Choices industrial relations policy? Is the minister aware of any alternative policies?

Senator ABETZ—I thank the chair of the relevant Senate committee, Senator Troeth, for her very important question. As Senator Minchin has already mentioned, today's official September job statistics from the Australian Bureau of Statistics reveal that Australia's unemployment rate remains at a record 30-year low of 4.8 per cent. This has been achieved while the participation rate rose to a record high of 65.1 per cent. So in other words more people than ever are in the job market yet the unemployment rate did not rise.

The question is: how can this be so? It can be so because, in the month of September, another 31,400 new jobs were created—comprising, interestingly enough, a slight decline of part-time jobs of 4,600 but a massive increase of 36,000 in full-time jobs. So not only do we have more jobs; we have more full-time jobs. Indeed, full-time jobs are replacing part-time and casual jobs.

Senator Troeth asked what these figures say about the Howard government's job-creating Work Choices policy. Simply, Work Choices is creating jobs. Work Choices is working. Work Choices is your right to work. Let us put this into context. For 23 months before the introduction of Work Choices, unemployment oscillated between five and 5.3 per cent. It took the job-creating Work Choices to break the five per cent barrier and keep it there for some six months now. The simple facts are that, since Work Choices was introduced, a massive 205,000 new jobs have been created, 164,000 of those full time.

But do you remember Mr Beazley's mantra? Work Choices was going to destroy jobs; there would be mass sackings. They are very

quiet now, aren't they, in the face of the facts. It is no coincidence that this massive growth in full-time jobs coincides with the abolition of Labor's job-destroying so-called unfair dismissal regime, which was responsible for the casualisation in the workforce.

It has been a while, so let's have another 'Who said it?'. Who said this a few years ago, bemoaning the casualisation of our workforce:

> Our work force is more ... casualised ... We have the second highest level of casual employment in the developed world.

You have guessed it. It was Mr Beazley, in 2000. In 2000, the Leader of the Opposition was bemoaning a situation which his policies helped create and which of course our policies are now rectifying.

If you want a test—a cut-through, objective test—of whether or not Work Choices is working, you do not have to look only at the 205,000 new jobs as a very important statistic. There is another very important statistic: the glum look on the faces of those opposite—and, more importantly, that for the last 22 weeks the Labor Party in this place have failed to ask a single question about Work Choices. It is the big, election-winning issue and they have been unable to ask a question for the last 22 weeks. Do you know why? It is because they know they would be hit with the facts and figures. *(Time expired)*

Crocodile Safari Hunting

Senator CROSSIN (2.21 pm)—My question is to Senator Campbell, the Minister for the Environment and Heritage. I refer the minister to his decision to block the establishment of a crocodile safari hunting industry in the Northern Territory and the refusal to allow export licences. Is the minister aware of the reaction to his decision by his colleague the member for Solomon, who said the minister was 'acting like some sort of itinerant drunk full of Dutch courage'? Is the minister aware of another description attributed to a Liberal Party insider, who described the minister as 'almost barmy'? They said:

> I'm expecting we'll soon have to send in the rescue team to bring him back to civilisation.

Could the minister indicate whether he has been invited on a crocodile tour with Mr Tollner and, given that Mr Tollner said the minister's decision was completely wrong, can he indicate whether he has any plans to review this decision?

Senator IAN CAMPBELL—Mr Tollner is a very vigorous advocate for the interests of the Northern Territory as he sees them. As we know on both sides of politics, we can have friendly fire. People can call each other daleks; people can call me whatever they want—it goes with the territory. Senator Conroy and Senator Carr and I have pretty thick hides—not as thick as a crocodile's, but we can put up with the odd sling and arrow. Mr Tollner has very strong views on this issue. I know that a number of people in the Northern Territory do.

What I did was to maintain existing Australian government policy, which is to give the Northern Territory government a permit to cull crocodiles, using professional park rangers and so forth. They do have a problem with crocodiles because of the very bad management of crocodiles back in the sixties and seventies, with uncontrolled hunting. They have got very serious problems up there and culling is part of the solution. Their proposal was to have amateur people come in. I made a decision that that was not in the best interests of wildlife management in Australia. Many people passionately supported my decision; many others did not.

I am glad to say—although it did not get any coverage—that the Australian Labor Party's spokesman on the environment assured me that I had the Australian Labor Party's full support for my decision, and I

welcome that. Often you do not get bipartisanship on these things. I believe I made the right decision in the interests of Australia's wildlife. I am very proud of that decision and I have no plans to review it.

Senator CROSSIN (2.24 pm)—Mr President, I ask a supplementary question. Is the minister aware of the growing disquiet in the industry in the Northern Territory and in the government about this decision? Haven't his own colleagues described him as 'a complete and utter dill', if I can remember Mr Tollner's words on radio last week, and further advised others to ignore him? Does the minister think that his decision and the impact on the crocodile safari hunting industry has damaged his ambition to be Treasurer, as was highlighted in this week's *Bulletin*?

The PRESIDENT—Senator Campbell, that question does not relate to your portfolio, but if you wish to answer it you may.

Senator IAN CAMPBELL—Can I just say that I thought that the Australian Labor Party's position was to support my decision. I suggest that Mr Albanese should talk to Senator Crossin. She is sending very mixed signals about the Australian Labor Party's support for what I regard as a very sound environmental decision. They are all over the place on the environment, so it is not surprising to me that Senator Crossin should contradict her environment spokesman on this issue.

Our position is clear. I know that Mr Tollner does not like it, but I have a lot of respect for him as a very effective member of the parliament who stands up for the Territory's interests—clearly not something that Senator Crossin is that good at at this stage.

Employment

Senator FIERRAVANTI-WELLS (2.25 pm)—My question is to the Minister for Immigration and Multicultural Affairs, Senator Vanstone, representing the Minister for Education, Science and Training. Will the minister inform the Senate how initiatives in the Skills for the Future package will help young Australians secure work and is the minister aware of any alternative policies?

Senator VANSTONE—I thank Senator Fierravanti-Wells for her question. She has a longstanding interest in young Australians and in particular in the skilling of Australians. The Skills for the Future program—$837 million over five years—is a dramatic gesture to upskill Australians and in particular to help adults in need of literacy and numeracy skills to enter the workforce. There will, in the whole package, as Senator Minchin has outlined, be more university places for engineering and incentives for higher technical skills. But I want to focus on one particular element—that is, the work skills vouchers. That element comprises almost half of the total package, at $408 million over five years.

A basic education clearly is critical to workforce success, to getting a job and being able to take all the rich opportunities that an economy like Australia's now offers people who have skills. So, from January next year, work skills vouchers will help 30,000 Australians who are over 25 years of age and who do not have year 12 or equivalent qualifications to get the qualifications they want or they need to get work. What the package will provide is $3,000 to use in a TAFE, a private or a community college for all accredited literacy, numeracy and basic education courses and all vocational certificate II courses. This in effect gives many, many Australians—we expect 30,000 Australians—a second chance at getting the skills they need to take all the opportunities Australia offers. The vouchers could be used, for example, for a certificate II in adult general education, or in automotive, mechanical and vehicle servicing, or in community services—in particular, children's services—or

in hospitality; for example, in commercial cookery.

Australians over 25 without year 12 or equivalent qualifications will have this opportunity. Priority will be given firstly to unskilled workers who are wishing to acquire qualifications, then to income support recipients—perhaps parents or carers who are returning to the workforce and facing or about to face active Jobsearch requirements within the next two years—then to unemployed job seekers in receipt of income support, then to those in Job Network and those actively looking for work and then to others not looking for work. They can apply for the vouchers from next month, when there will be a telephone hotline, a website and further details available.

There are other initiatives in the package. There is support for mid-career apprentices from July 2007. There will be financial incentives that will be paid to either employers or workers who decide they want to upgrade their skills mid-career by moving from work to an apprenticeship at certificate III or IV level, and that will give other people further opportunities.

There are business skills vouchers for apprentices—that will be $12 million over five years. This is particularly important. The Labor Party have consistently ignored the opportunity for people to get into business. They never gave people the real opportunity.

Senator Chris Evans—Ten years you've had to address this!

The PRESIDENT—Order!

Senator VANSTONE—There are plenty of people who have done apprenticeships and are very capable of running a business—

Senator Chris Evans—400,000 turned away from TAFE!

The PRESIDENT—Senator Evans!

Senator VANSTONE—who will welcome the opportunity of having up to $500 towards the cost of an accredited small business. There is plenty to say about what the government has done in addition to what I have just said. We have a very proud record in terms of training apprentices over the years that we have been in government.

Senator Chris Evans—What nonsense!

The PRESIDENT—Order!

Senator VANSTONE—I see the senator interjecting and I would welcome the opportunity to clarify that for him. *(Time expired)*

Senator FIERRAVANTI-WELLS (2.30 pm)—I ask a supplementary question, Mr President. Would the minister explain why the government will not be adopting alternative policies to the ones that she has now outlined?

Senator VANSTONE—I thank Senator Fierravanti-Wells for the very well placed question. Of course we will not be adopting alternative policies—of course we will not—because the policies we have been following have been doing extremely well.

Senator Chris Evans—Your policies bring in cheap labour!

The PRESIDENT—Order! Senator Evans!

Senator VANSTONE—There were, for example, over 400,000 Australian apprentices in training in the March quarter in 2006, so I thought it might be interesting to look at the number in training in the year that Mr Beazley was the minister. It was only 122,000, compared to 403,000. It is a 361 per cent increase since the coalition was elected. Apprenticeship completions are up 361 per cent. There is a record 1.64 million publicly funded students undertaking vocational and technical education—

Senator Chris Evans—Ten years on, nothing to say.

The PRESIDENT—Order!

Senator VANSTONE—22 per cent more than when we came to government. You never looked after people who did not go to university. You're a bunch of job snobs, the lot of you! *(Time expired)*

The PRESIDENT—Senator Evans, I called you to order at least a dozen times during that question and I am warning you.

Stem Cell Research

Senator FIELDING (2.31 pm)—My question is to the Minister representing the Minister for Industry, Tourism and Resources, Senator Minchin. Minister, your government has committed more than 100 million taxpayer dollars to embryonic stem cell research. Minister, what results have there been to show for this money?

Senator MINCHIN—I will accept off the top of my head that Senator Fielding is correct with respect to the amount of funding that has been contributed to the Australian Stem Cell Centre. As Senator Fielding well knows, the parliament passed legislation some four years ago with respect to research on surplus embryos as a result of IVF procedures. It is now lawful in this country to conduct such research. Senator Fielding well knows that my own personal position in what was a conscience vote was contrary to that outcome. Nevertheless, it is now the law of this land that it is legally possible, under certain restrictions, to conduct research on surplus embryos.

There is the Australian Stem Cell Centre, which has been established with a view to conducting such research in a competitive environment for grant funding. It did receive and has received funding under various federal government programs with which it can conduct research. Once a field of research is legally endorsed in this country then it is perfectly proper and appropriate for research centres to apply for research funding from grant programs that provide such medical research funding. They are normally competitive processes. The Australian Stem Cell Centre has got to compete with other research centres for that money in order to win research funds.

There was an independent review of the Australian Stem Cell Centre which was a scheduled performance review, and that is part of the normal function of the administration of that program. The review assessed the ASCC's obligations under the Biotechnology Centre of Excellence program and the Major National Research Facilities Program. The review confirms that the ASCC has built a strong foundation for meeting its obligations, has a high standard of science, has excellent management and research staff and has developed world-class research in IP management processes.

The review confirmed that the ASCC has been professionally established and managed. The review found that the ASCC could strengthen its strategic focus, relationship management and long-term financial planning in order to more readily meet the long-term program objectives. The review also considered that the administration of the grant deed, particularly reporting requirements, could be streamlined. The ASCC and Commonwealth offices are working together to implement the review's findings.

So the centre to which Senator Fielding refers, which has received Commonwealth funding under several government programs, has been properly reviewed. Those were the outcomes of the review. I acknowledge that Senator Fielding would, like me, not personally support this sort of research, but, whether he or I like it or not, it is lawful in this country to conduct such research. Our job as a government is to make sure that those who receive Commonwealth taxpayers' funds to conduct such research do so prop-

erly and effectively and in accordance with the deed under which they receive the funding. That review of the performance has been conducted and the results are as I outlined.

Senator FIELDING—Mr President, I ask a supplementary question. Minister, how can the government continue to justify spending tens of millions of dollars of taxpayers' money on embryonic stem cell research when the world stem cell expert, Professor James Sherley, says in today's *Australian* that there is no hope whatsoever of such research producing cures?

Senator MINCHIN—I do not know whether this is a commentary that comes before the debate that we are all going to have on the private members' bills which are being brought before us. Senator Fielding, I and others will all have our opportunity to express our own views on this matter. However, as Senator Fielding well knows, the fact is that we had a debate four years ago. This parliament made lawful, under certain circumstances, research on embryos that have been produced as a result of IVF procedures and that are surplus to the IVF procedure. Arrangements were set up under which research centres could compete for funding under a variety of government programs with independently observed criteria. This particular centre won the right to Commonwealth government funding to conduct that research under a properly contested and independently assessed regime. The performance of the fund is being assessed. That is a matter for the law. *(Time expired)*

Fisheries

Senator IAN MACDONALD (2.37 pm)—My question is to the Minister for Justice and Customs. The minister, Senator Abetz and, indeed, all senators will be very proud of the work that the Customs marine officers and the Australian fisheries officers do in protecting Australian sovereignty and Australian fisheries in the Southern Ocean. I ask the minister if he can update us on initiatives that have happened in the protection of our sovereignty in fisheries in the Southern Ocean since the days of the chase of the *Viarsa*, which is well known, and since the more recent arrest of the *Taruman* in Macquarie Island waters and the even more recent conviction of the captain and one crew member of that vessel. I ask the minister if he could update us on initiatives in the Southern Ocean.

Senator ELLISON—Senator Ian Macdonald is quite right to point to the great work being done by Australian fisheries officers and Customs marine personnel in the protection of our sovereign waters and particularly the fisheries in the Southern Ocean. As Senator Ian Macdonald has pointed out, it is a whole-of-government approach, with fisheries on one hand—for which Senator Abetz has responsibility—and Customs on the other, for which I have responsibility.

Recently Australia signed an agreement with France in relation to an enforcement cooperation treaty on our efforts in the Southern Ocean, particularly with regard to the exclusive economic zone around Heard and Macdonald islands. This was an important step forward in our activities in the Southern Ocean and increased further the great cooperation that we are having with France in patrolling these southern waters. In particular, most French patrols will have Australian personnel on them—and vice versa, with Australian patrols having French personnel on them. That is very important. This is built on great work done over a period of years. I point to the Australia-France Surveillance Treaty, which came into force on 1 February 2005. That laid a foundation for the cooperation that we see today.

Senator Ian Macdonald did a great deal to set that up and also in relation to the work

done with French ministers. Senator Ian Macdonald also went to Reunion, as I recall, to promote the patrols by France and Australia, which work in synchronisation with each other. Of course, the coordination of our surveillance is very important. There has been a long line of hard work to set up the cooperative effort that we now see in the Southern Ocean today. The effort has yielded great success. There has been great work by our personnel in carrying out very important work in the protection of our sovereign waters and our fisheries, as Senator Macdonald alluded to in his question.

It is interesting that, as a result of enforcement activity, there have been no sightings of illegal fishing vessels in Australia's southern exclusive economic zone around Heard and Macdonald islands for more than 12 months. It is worth recalling that since 1997 nine vessels have been apprehended for illegal fishing. That has resulted in consequential action with the seizure of vessels and the prosecution of the people concerned. Senator Ian Macdonald has rightly pointed to the *Taruman*; there was a recent successful prosecution of the main players involved in that.

In the 2005-06 budget, resourcing of a further $217 million was announced to progress this initiative out to the year 2010. That is very good news for the patrolling of Australia's sovereign waters and the protection of her fisheries. We had a situation in the Southern Ocean where there was illegal fishing. We had effective action taken by Australia, and we are now seeing the results of that. That was the result of very good work over a period of time. We acknowledge the great cooperation that we get from France in relation to this task.

Housing

Senator CARR (2.42 pm)—My question without notice is to Senator Minchin, the Minister representing the Prime Minister. I again refer the minister to the growing community concern that young Australian families now find it harder than ever to buy their first home. Is the minister aware that yet another report was released yesterday highlighting the difficulties faced by young Australians trying to buy a house? Doesn't that ABS *Housing finance* report show that the proportion of first home buyers in the market fell to a mere 16.1 per cent in August, the lowest level in 18 months and a full four percentage points below the long-run average? Haven't the commentators from the ANZ, the Housing Industry Association and the Macquarie Bank been unanimous in blaming this on interest rate hikes in May and August? What is the minister's explanation for why so many young couples and families are unable to buy their own homes under the Howard government?

Senator MINCHIN—We are getting rather bored with this line of questioning from Senator Carr. He keeps trying but is really making no impact whatsoever because the Australian people have a lot of common sense—and a long memory. They remember what interest rates were like under the Labor Party, the party that Senator Carr represents. The interest rates under Labor were horrendous. Young Australian families suffered immeasurably under the former Labor government.

One of the great things we have done in government is to bring inflation under control. The new Governor of the Reserve Bank made the point that in the 10 years we have been in office inflation has averaged between two and three per cent—unlike our predecessors, who completely lost control of the economy: inflation went through the roof, interest rates went through the roof, and people lost their homes, their businesses and their livelihoods. It is one of the great achievements of this government to have

worked to give the Reserve Bank the independence that it must have in order to ensure that the great scourge of any economy—that is, inflation—is kept under control.

The way it keeps inflation under control is by having independent responsibility for setting interest rates. Interest rates, of course, are much lower under our government than they ever were under our predecessors, the Labor government. The reason mortgage payments may be higher is that Australians, in a situation where we have unprecedented prosperity—as we have seen, 4.8 per cent unemployment, high participation rates, the lowest unemployment for 30 years—have enormous confidence in the prosperity of this economy and their own financial positions. They are borrowing more because they have more confidence in their capacity to service those loans. They are buying bigger houses and they are taking out bigger loans. Interest rates are lower than they were under our predecessors and they have confidence about their jobs, so they are able to take on bigger mortgages. That means, by definition, their payments are higher than they otherwise would be but off the base of a much lower interest rate than was the case under our predecessors.

Of course many commentators have made the point that one of the big issues with house prices is land affordability. It so happens that it is state Labor governments that are responsible for land release policies in this country, so it is Labor governments in this country that are responsible for land release problems. The Urban Development Institute of Australia has noted that there has been a failure throughout Australian capital cities to adequately match land supply and demand and that a subsequent affordability crisis has prevailed. If Senator Carr cares about young Australian families wanting to buy a home, he should talk to the state Labor premiers and get them to do something about land affordability to enable young Australian families to have a chance to have a home.

Senator CARR—I ask a supplementary question, Mr President. Is the minister aware that, if the proportion of families who own their home was the same as it was in 1996, there would be another 70,000 young Australian families who would actually have their own home? Is he aware of the Reserve Bank governor's comments yesterday which contained a strong suggestion that there would be another interest rate rise before the end of the end the year? What impact would this have on the capacity of young families and couples to become first homeowners?

Senator MINCHIN—What I am aware of is that mortgage interest rates at the moment are around 2.7 percentage points lower than when we came to office and inherited the train wreck that the Labor Party created with this economy. Those lower mortgage interest rates are saving households around $495 a month in interest payments. It was this government that introduced the First Home Owners Scheme in 2000 to assist first home buyers. Over 830,000 first home buyers have now taken part in the scheme. What Australians know is that, whatever the level of interest rates, they will always be lower under our government than they ever would be under Labor.

Environment: Kyoto Protocol

Senator MILNE (2.47 pm)—My question is to the Minister for the Environment and Heritage, Senator Campbell. Given the government's emphatic statements over its term of office that Australia will meet its very generous Kyoto target of an increase of eight per cent in greenhouse gas emissions over 1990 levels, why has the minister started this week to back-pedal from that claim, now saying that Australia 'is likely to meet' the target, Australia 'will struggle to meet' the target and that we are 'one of the

five countries that might' get there? What advice or information has the minister now received in the lead-up to the meeting of the parties to the Framework Convention on Climate Change in Nairobi in a few weeks time to indicate that Australia will not meet, is unlikely to meet or will struggle to meet its Kyoto target, and why is that the case?

Senator IAN CAMPBELL—I have changed my language, and I am very glad that Senator Milne at least has picked it up, because it is a very important issue. There are two key factors. Firstly, Australia did make a policy commitment to achieve 108 per cent and we are committed to doing that. Senator Milne asked the reason why there is some risk we might go over 108 per cent. That risk has always been there. We have consistently tracked towards 108, but the risk of going over, when you have an economy that is growing at the rate that we are going with the expansion of industry and housing, is always there. The reason we have stayed below 108 per cent is that we have a range of very effective policy measures engaging the business community, the farm sector and the local government sector. There is $2 billion worth of expenditure from the Commonwealth government on programs like the photovoltaic rebate scheme, putting 12,000 solar cells on top of roofs; getting rid of deforestation in Australia; getting rid of land clearing in virtually every state of Australia; and planting 20 million hectares of trees. All of those measures will save around 85 megatons of carbon and will help us get towards our target. But, yes, there is a risk of going over. The reason I have changed my language is that, as we go to the United Nations framework convention meetings each year—and I will be attending the meeting in Nairobi—

The PRESIDENT—Order! Senator Boswell and Senator Heffernan, if you wish to have a conversation, either go outside or resume your seats.

Senator IAN CAMPBELL—As we go to the United Nations framework convention we always prepare a report on Australia's tracking towards its Kyoto target. We are committed to that Kyoto target. But the fact is that, because of the very strong growth in our economy, there is certainly a risk of going over the 108. We may in fact do that. That report will become public. Senator Milne knows I table that every year. I will have the full information before the Australian people.

We are committed to that target; we are one of the few countries that is on track at the moment to reach our target. I make it clear that there are many other countries—Kyoto signatories—who are going well over their target. France, for example, while not going well over, are on track to achieve about a 109 per cent increase in their emissions; Ireland are on track to have a 133 per cent increase over their 1990 emissions, which is 20 per cent above their target; Spain, again another Kyoto signatory, is looking at a 151 per cent increase in their emissions over 1990 levels; Portugal, a 152 per cent increase in their emissions; Norway, 123 per cent; the Canadians are on track to go 116 per cent over their 1990 levels; and Australia, at the moment, on current estimates, is on track to reach 108. But I am flagging the potential that we could go over. What will the government do if we look like we are going over? We will have to take policy measures to try to get us back there again, because we are committed to fighting internationally and nationally the challenge of climate change with practical measures, real measures, to stop carbon going into the atmosphere. We will deliver, as opposed to the Labor Party and the Greens. All they deliver is slogans and not action.

Senator MILNE—Mr President, I ask a supplementary question. I thank the minister for acknowledging that he has backed off the emphatic assurance of meeting the targets and for acknowledging that the likelihood is that we will not. I asked him to identify what advice he has had as to why we are not likely to get there and what the cause of that has been. Also, he said a moment ago that he will have to change his policies accordingly. Given that he has always said that he will not introduce emissions trading or a carbon tax because we are on track to meet our targets, now that he is acknowledging that the likelihood is that we will not get there, will he now change position and adopt emissions trading, a carbon tax and a greenhouse trigger in EPBC so that we can get there?

Senator IAN CAMPBELL—If I thought that emissions trading would solve Australia's problem we would do it, but it will not. All it does is put a new tax on the economy. What we know is that we need multitrillion dollars of investment in new technologies to capture carbon and bury it underground, to bring on geothermal, to roll out more solar cells, to get people to change light bulbs across the country. We know what it takes. They are practical measures involving investment, but what Labor and the Greens want to do is to smother the economy. They want to close down coal mines and communities. They want to massively reduce the size of the economy and reduce jobs.

We want to have economic growth and low greenhouse gas emissions. We are going to do both because we are committed to it with practical measures. I will present an entire report which will show to the whole world exactly where the growth is, but one of the big growths is Labor state governments continuing to build coal-fired power stations all around the place. That is the main growth: energy production built by state governments. I am not condemning them for it, but that is where it comes from. *(Time expired)*

Skilled Migration

Senator MARK BISHOP (2.54 pm)—My question is to the Minister for Immigration and Multicultural Affairs, Senator Vanstone. Can the minister explain what powers she has under migration law to approve labour agreements that allow employers to undercut the legislative minimum salary rate for 457 visa holders? Has the minister approved any applications for agreements with employers that provide for salaries below the statutory minimum? If so, can the minister indicate whom those agreements apply to?

Senator VANSTONE—I thank the senator for his question. Labour agreements have been used by this government and previous governments for some time to deal with either an industry wide agreement, as might be the case with, for example, the meat industry—and there is an agreement under negotiation there that has not yet been resolved—or an agreement for a particular company that may want advantages in terms of its understanding of its capacity to bring people into Australia.

What comes to mind here is—and, if you like, perhaps it was a precursor to the labour market agreements—the regional headquarters agreement made by the previous Labor government, signed by, I think, Senator Cook, with Amex to bring its regional headquarters to New South Wales. A competition—it was pretty much a bidding war—was held between, I think, two Labor states, but one might have been a Liberal state, to attract the Amex regional headquarters. In the end, New South Wales won the Amex regional headquarters.

That occasioned Amex to shut some call centres in a number of places around Asia and to seek the opportunity to bring in hun-

dreds—I do not have the details with me, but it was either 460 or 640 or something like that; let us say it was 400, but I will get you the details just in case I am remembering another brief—of people from those other call centres to set up in Australia. The only condition on that agreement was that they pay according to Australian law. In fact, it is subsequent versions of that agreement that have required some sort of salary uplift and some focus on what skills are coming in. It is that agreement that Amex now seek to renew.

It is true that Amex wrote to this government and suggested that the agreement be rolled over, under which, as I am advised, the same salaries would be paid as those paid to Australians in the job, and they would be roughly akin to the salaries paid to other Australians in some other call centres. I am certainly advised that a look at websites dealing with call centre operator jobs confirms that. Nonetheless, those salaries are below the minimum salary level. I have asked the New South Wales government for their view of that, and they are not happy with that.

It seems somewhat extraordinary to me since it was a New South Wales Labor government that attracted Amex to New South Wales, but nonetheless my department is negotiating with Amex to see what can be done in that context. The reason is that the minimum salary level is judged on a base salary on, I think, a 38-hour week, not taking into account other supplementary payments. It may be that Amex will choose to rejig the structure of its salaries so that there is more of a base salary to enable it to come up to the minimum salary level.

In any event, I have the capacity to do that. I have not done it yet. When we have had labour agreements we have included the Department of Employment and Workplace Relations. The initial one relating to the Amex call centre—and there would be others—was not in fact with the Department of Employment and Workplace Relations, which did not exist then. It was with the department of industry under Senator Cook. It was part of the regional headquarters program, and there was a supplementary agreement to that to attract Amex here. I have not been involved in negotiations in relation to any others. *(Time expired)*

Senator MARK BISHOP—Mr President, I ask a supplementary question. My question did not relate particularly to Amex—it was a more general proposition—but, having given that answer, can the minister indicate how many of those agreements have been signed and how many workers on 457 visas are employed under these agreements? If the minister does not have that information to hand, can she take the question on notice and report back to the Senate at a later date? Can the minister also report on whether she has approved any applications for agreements with employers that provide for salaries below the statutory minimum and, if so, can she indicate whom those agreements apply to? If the minister has not finalised those negotiations to date, can she also advise the Senate in due course as to whether there are any such negotiations in progress at this time?

Senator VANSTONE—I have not been involved in any other negotiations. There are negotiations going on now with the meat industry. I did, however, receive a letter from the then acting Premier of New South Wales urging us to enter into, as a matter of urgency, a labour market agreement with the meat industry in Western Australia because of the alleged shortages they had and, with an upcoming drought, the need for a large number of animals to be slaughtered very quickly. But that has not been signed because the meat industry is not happy with the requirements that the government has insisted

upon. You might like to ask me a question at another time, Senator Bishop, about whether some of the states believe that the minimum salary level is too high for them.

Senator Troeth—Mr President, on a point of order: I would like to request a ruling from you regarding the admissibility of Senator Fielding's question to Senator Minchin on embryonic stem cell research. I base my point of order on standing order 73(1)(k) and 73(1)(l) or, indeed, standing order 73(2). If you cannot give a ruling now, I would appreciate one later.

The PRESIDENT—I understand it has been the practice in the past that questions have not been allowed until debate on a bill has started. I understand that Senator Stott Despoja's bill has been introduced—Senator Patterson's bill has not yet been introduced. I think it has been the practice of past presidents—and I will check this out for you—to allow questions of that nature, and that is why I did allow it. There has been no debate on the bill at this point in time. I will review that and get back to the Senate next week.

Senator TROETH—Mr President, on the point of order: perhaps you could also consider standing order 73(l), which talks about proceedings in committee not reported to the Senate, because I understand that question has also been referred to the Senate Standing Committee on Community Affairs.

The PRESIDENT—I will look at that as well.

Senator Boswell—Mr President, on the point of order: I listened very closely to Senator Fielding's question and it was nothing to do with the bill at all. It was about the results that had been obtained with the expenditure of $100 million on embryonic stem cell research. It made no reference to any bill. So I put it to you, Mr President, that Senator Fielding's question was well within order.

The PRESIDENT—As I said, I will look at it, but I do believe that what you say is quite correct, Senator Boswell.

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Environment and Heritage

Senator CARR (Victoria) (3.03 pm)—I move:

That the Senate take note of answers given by the Minister for the Environment and Heritage (Senator Ian Campbell) to questions without notice asked today.

Today we heard from Senator Ian Campbell on a range of issues. This was in the context of widespread speculation that there is to be a reshuffle—widespread speculation that the government is in the process of undertaking spring cleaning. I think today's answers quite clearly demonstrated why it is so widely speculated that Senator Campbell would be the subject of that spring cleaning. I say that in the context of an article in the 17 October edition of the *Bulletin*, a highly entertaining piece written by Mr Wright, in which it was suggested that perhaps Senator Campbell needed some shoring up. We see in this article a series of quite laudatory comments being made and Senator Campbell's suggestions on how he sees his place in the world.

As a result of the answers given to today's questions, Mr Wright might want to write a follow-up article. He has now had more opportunity to review the research materials that are available and see that the range of comments being made highlight that there are entirely different views. He would be entitled to start with comments made by Senator Campbell himself. Senator Campbell said that, when he was an 18-year-old lecturer in a business course—the idea of being a lecturer at 18 years of age is extraordinary;

it must be an amazing business course at the Western Australian Institute of Technology—he wanted to be a cabinet minister. He was so committed to this that he immediately went off and joined the Democrats. In a letter he wrote to the *West Australian* on 16 October 1980 he pointed out how proud he was to be a Democrat and what a vital role the Democrats had to play in the Senate.

We also note that Senator Campbell wanted to be Treasurer but had a bit of trouble finding a House of Representatives seat in Western Australia. I think that is an extraordinary proposition. I note that he puts that down to power players in his home state of Western Australian because they continued to deny him his chance of preselection. Given that the *Bulletin* has awarded Senator Campbell its 'power man of the year' award, I would have thought he could have fixed that up—but he has not. I find that very disappointing.

What we have here, though, is that the colleagues of Senator Campbell do not seem to share the *Bulletin*'s award, or place value upon it, because Senator Campbell's Liberal colleagues think he is struggling. They know he is struggling because, when he is not patrolling the world's oceans on his worldwide quest, as I read in a recent press report, as if he were some sort of transmogrified Captain Ahab, what he is doing is saving parrots in Victoria and seeking to intervene in due process in Victoria to protect marginal seats. We also have his colleagues in the Northern Territory—and I am sure Senator Crossin will draw our attention to it much more clearly than I ever could—describing him as a 'complete dill', because he is a fellow who is behaving as if he is some sort of 'itinerant drunk full of dutch courage'. We have a view being expressed by a number of people that he is 'almost barmy and I am expecting to be sent out soon in a rescue party team to bring him back to civilisation'. These are extraordinary comments being made by his colleagues about the 'power man of the year'. You would have thought in this sort of context the powerbrokers of Western Australia could have organised to find him a lower house seat so he could stand as Treasurer and save us the difficulties we have from time to time of having to listen to the sort of nonsense that he is coming out with.

As Tony Wright has pointed out, the heat truly is on and it is coming from the Prime Minister. He knows the minister is an underperformer. He knows how long he has been in this chamber and how little he has contributed, and that in the period in which he has been the environment minister in the cabinet it is quite apparent that he has acted to the complete disservice to the people of this country and in a manner which is quite contrary to his responsibilities as a minister to ensure that the environment of this country is protected.

What we have seen from him time and time again is partisan, deliberate intervention in terms of heritage and other matters, often in breach of the law, and in a manner which is aimed at protecting the interests of the Liberal Party, not the interests of the environment. So it is in this context that I read Tony Wright's article with some amusement, and it is quite apparent to me that much more can be said. *(Time expired)*

Senator BERNARDI (South Australia) (3.09 pm)—I have to say that, in rising to respond to Senator Carr's rather inept personal attack on someone who is a very valuable minister, valued by his colleagues and this government, I found his attack extraordinarily personal. And, unlike many of Senator Carr's colleagues, I think he has indulged in a fit of schadenfreude or a malicious enjoyment of others' misfortunes.

It has been my custom to observe in here that most of the senators treat each other

with a great deal of respect. I suppose that Senator Carr is responding to how he is treated by his own Labor colleagues. In Senator Carr's remarks, his decrying of the achievements of Senator Campbell at an early age where he was involved in business and helping people in business, the politics of envy become apparent once again. One can only suppose that Senator Carr put himself forward as organiser for the teachers union because that is what you do if you want to get on in the Labor Party: you put yourself forward as an organiser. But he was rejected. Once? No, not once—he was rejected twice. How is Senator Carr regarded by his Labor colleagues? Well, I will not cast aspersions upon him but there is a North Korean dictator that he is likened to because of his conduct in a number of areas.

It is very disappointing to see personal attacks on ministers and I would like to say that this minister has been a very good minister. He has fought tirelessly for the environment. He has worked very hard to balance the economic needs of this country with its environmental needs and the continuing concerns for preserving our environment for not only our generation but also future generations. Part of this, of course, has come because the minister has been out there trying to stop whaling, a practice that this country does not support, and he has done a very good job in that regard.

He has also worked very hard to protect species such as the orange-bellied parrot. It occupied the Labor Party for quite a number of minutes in question time, so it is something that they feel very passionate about. But rather than support the minister's decision to ensure that the parrot in question was protected and the hundred breeding pairs were allowed to continue to breed unmolested, the Labor Party has sought to turn it into a political stunt.

The fact is there is a balance between our environmental policies and our economic requirements in this country. It is a very fine line. It is a line that we take very seriously as a country and as a government. In their attack on a minister for doing his job and acting in the best interests of not only this country's economic prosperity but also its environmental prosperity, we see a party that is completely bereft of ideas, sending in their war machines to try and denigrate a minister based on some speculative comments in a periodical. The fact is that the minister has been recognised by his colleagues, by the Prime Minister and by various publications as acquitting himself very well in his responsibilities and his roles.

Take some of the things that we have done. We touched on solar cities during question time. One of the great initiatives of this government has been to start the first solar city in my home town of Adelaide. Adelaide is certainly a great city in which to trial a project such as this because we have abundant sunlight and sunshine. We are working—again, with industry—in an attempt to reduce greenhouse gas emissions by installing solar panels across a number of homes in areas where it will benefit people financially and economically but also where it will have a great impact in leading the nation. So successful has been the take-up and the acceptance of and the interest in this program that, in Townsville in September of this year, the government announced that the second solar city initiative would be forthcoming in Townsville.

This minister is interested in protecting our wildlife and preserving our natural heritage and environment. He is interested in ensuring that our greenhouse gas emissions are reduced. And he is interested in us maintaining our position as an environmentally friendly and sustainable society. So I find it

very difficult to accept any criticism of—*(Time expired)*

Crocodile Safari Hunting

Senator CROSSIN (Northern Territory) (3.15 pm)—People in the Northern Territory will not be surprised at the behaviour of this environment minister but continue to be bitterly disappointed by this minister's inaction and inability to care about the Territory and complete ineptitude in dealing with issues in the Northern Territory. Let us not forget that this is the environment minister—probably the worst environment minister we have seen in this country in our lifetimes—who actually promised the people of the Northern Territory, four days before the federal election in 2004, that there would not be a nuclear waste dump in the Northern Territory. In fact, he gave Territorians a categorical assurance. His former best mate David Tollner is finally coming clean on the truth. It is unravelling like a ball of string. Mr Tollner admitted in a debate in the House of Representatives that he thought that this minister had pulled the wool over his eyes. He had been tricked into believing that there would not be a waste dump in the Northern Territory.

Now of course we have this fiasco about crocodiles in the Northern Territory. When I saw the current edition of the *Bulletin* with an article about global warming's first victims, I thought there would in fact be an article about Senator Campbell in there. I thought he would be global warming's first victim because he has done very little, in fact nothing, to assist in this problem. We have a picture of a yellow and black striped frog instead. This is a minister who thinks he can save the whales of the world simply by wearing a little bit of blue plastic around his wrist. This is the minister who behaves like a 'itinerant drunk full of dutch courage'. Mr Tollner must be right about that description, because every time the minister is asked a question about the Kyoto protocol and global warming, he pulls out this scrappy, tatty, little old piece of paper out of his chest pocket as if that is the only thing he has on this earth to rely on. That is what itinerants do: they carry their filing cabinets around with them all day in trolleys or paper bags. So not only is he acting like a drunk itinerant but he is behaving like one too.

In the Northern Territory we cull 600 crocodiles a year and out of those 25 can actually be safari hunted. What we want in the Northern Territory is an export licence so that the people who come in and hunt those crocodiles can take something away and have some benefit out of their activity. We do that with buffaloes and there is no problem. American hunters come into north-east Arnhem Land, hunt the buffaloes and take their skins home. They pay thousands of dollars. In fact, I have heard it quoted that they pay $10,000 for one buffalo hunt. What we want is to be able to do the same with crocodiles—25 to start with. These are shocking creatures. They are mongrels. They kill people—including an eight-year-old little girl at Maningrida the other day. Some people would say that we have preserved enough of them and we ought to start getting rid of some of them. What we want is to be able to actually use that expertise and safari hunt these crocodiles. When people come into this country and get rid of the crocodiles by hunting them, they want to be able to take home the heads and the skins.

I want to tell Senator Ian Campbell what we saw in the last couple of the weeks in the Amateur Fishermen's Association of the Northern Territory magazine. On the back page was a picture of a headless crocodile that was found floating up one of the rivers in the Northern Territory. So what we have is people actually removing the heads of crocodiles. They are doing it now, probably

illegally. So why does he not get on board with the Northern Territory, support this industry up there and allow the export licence for these? Even Warren Entsch said that he thought no croc hunting in the Northern Territory was a missed opportunity. Graeme Webb, a very famous crocodile expert in the Northern Territory, actually said that you would have to be a mental midget not to see that this is just a philosophical opposition. So who do we have here as environment minister? A mental midget. A drunk itinerant full of dutch courage. Even a bit of a dill, as Mr Tollner said. This is the man who aspires to be Treasurer. I think not. He is one of the most weak-kneed environment ministers we have ever had. He does not stand up for the Territory. He does not promote this industry in the Territory. He cannot get the Prime Minister on side in terms of the Kyoto protocol and driving down greenhouse gas emissions. This is a man who believes he can save the world by wearing little blue plastic bands on his wrists and carrying around scrappy little pieces of paper in his pocket to defend his position. What he ought to do is recognise— *(Time expired*

The DEPUTY PRESIDENT—I draw it to the attention of all senators that quotes from other sources cannot be used, if they are unparliamentary, to sustain an argument within the parliament. I draw that to the attention of all senators.

Senator McGAURAN (Victoria) (3.20 pm)—I had to laugh then. It is not often you get a laugh during this part of the day on a Thursday afternoon in a take note of answers debate, not even on the issue of broadcasting legislation. Senator Crossin—after I do not know how many years she has been here—has finally made me laugh. She thinks that Senator Campbell should not be Treasurer. She has the audacity to venture such an opinion—a senator who will not even see government, a senator who is fighting for her own preselection, a senator coming from the Northern Territory. She is very lucky, other than her factional support, that she is even in this parliament. Yet she dares to venture such a proud and arrogant boast. She thinks not. You have no say over it, Senator Crossin, just as you have no say about the government of the day. I suppose inside this chamber everyone thinks they are a little bigger and more puffed-up in importance than they really are. I can assure you that the two previous speakers really do think that they are better than they are. Have they ever walked past a mirror? Have they ever analysed their own careers? Have they ever dared look into themselves to see what trashed-up careers they really have, particularly the first speaker? Fancy wheeling Senator Carr out. He had already done his research on Senator Campbell.

Senator Carr asked a question today on housing affordability. On the face of it, it was a fair question. We are always happy to receive economic questions on this side. We encourage the other side to ask economic questions to establish their economic credibility. So the opposition got Senator Carr to ask a question on housing affordability. He did not take the opportunity to follow up his own question. There was sincerity in Senator Carr's question. He had already done his home research on Senator Campbell's previous careers, previous portfolios and quotes from the *Bulletin*. It could not matter what Senator Campbell ventured to say today in question time. Senator Carr gravitated to what he knows best—that is, personal attack.

I thought there was something funny and suspicious about question time today. I had an inkling that the Labor Party had completely given up. They spent the first four days asking questions with regard to the Telstra float. That is fair enough. Senator Minchin responded. He obviously browbeat them down so that they could not extend it

just one more day on the Telstra float. It would have been more credible than solar panels. That was an issue you picked up from the *Sunrise* show, anyway—an issue that has been running on the *Sunrise* show for the last several weeks—but someone now has just got the bright idea it has become a populist issue: 'Let's run it.' But it does not outweigh a more important issue, such as the Telstra issue. I would have given the opposition more credit and so would Senator Minchin. He had probably briefed up before question time on more Telstra questions, but you could not sustain it. You could not sustain a whole week on Telstra questions.

As Senator Abetz even said, 'Where are all the questions on industrial relations?'—an issue that Labor have said they will make the cornerstone of the next election. This is the No. 1 issue for you. For all you unionists across there—all of you—almost 100 per cent of you are former unionists and certainly belong to a trade union at the moment. Where is the No. 1 issue that you will take to the next election? You have told us that the sky is falling in, that it is detrimental to the Australian worker. Wouldn't you think you would ask one question in the last five months or so in this chamber? Instead, you raised the issue of solar panels and you used this period of questioning to attack Senator Campbell. Unfortunately, I got distracted. I cannot defend Senator Campbell enough, who, from the moment he came in here, has been a rising star. He is now in cabinet. He has been a junior minister—he has gone through the ranks quicker than most—and is now in one of the most successful cabinets that this country has ever seen.

Senator Campbell brings with him a background, prior to entering government, in small business. This is a man of broad knowledge that is valuable to the parliament, and he has undertaken issues within his own environmental portfolio with distinction. I particularly applaud him for his stance on the whaling issue—an issue that covers all spectrums of the environment that both the conservatives and the radicals in the environmental debate would support him on, and it has been a most difficult political issue to handle. *(Time expired)*

Senator WEBBER (Western Australia) (3.25 pm)—We learnt a few interesting things from the Minister for the Environment and Heritage in question time today. We learnt that the rebate under the current solar panel subsidy program has been halved and it is due to end in 12 months, and he is not sure what he will do after that, and we learnt that he is off to Nairobi. Yet again, he is off to a conference. We are not quite sure what he is going to do about encouraging the use of solar panels and solar electricity in Australia, but he is off to Nairobi to talk at yet another global forum on yet another global quest.

This is a minister who, rather than stay at home and take seriously the challenge of climate change in Australia, spends most of his time out of the country. Wherever there is a conference, wherever there is an international meeting, there is the minister. The minister attends the forums where the protocol that he refuses to sign is discussed. It is quite amazing. His approach is breathtaking. As I say, back home here in Australia, the rest of us are coming to grips with the need to tackle climate change, no more so than in the minister's home state of Western Australia. The south-west of Western Australia is internationally recognised as the climate change hotspot, probably the best example of the climate change hotspot in the world, if not in Australia. But, instead, where does the minister go to examine the effects of climate change, to discuss the policies that need to be implemented to deal with this enormous challenge? He goes international. He does not even go three hours south of Perth. On

his watch, not only has he not come to grips with the challenges of climate change but not one extra drop of water has gone into the Murray, as far as I can work out. There has not been a response from the minister to the Senate Standing Committee on Environment, Communications, Information Technology and the Arts report on the challenges of salinity—another enormous environmental challenge in Australia. There has not been one response to any of the significant issues.

As far as I can work out, whilst those on this side of the chamber recognise climate change is a serious threat, not just to our environment but also to our economy, to Senator Ian Campbell, former Vice-President Al Gore is correct: it certainly is a very inconvenient truth. Australia, as I say, is drying out quickly and, as we all know, water restrictions are in place in most places. Where is the minister for the environment on that? All these issues are a direct result of climate change. Where is he? He is in denial. He wanders the globe, talking about how he may or may not take it seriously. He will not sign up to the protocol that does take it seriously. He will not stay in Australia and address the real challenge. He did concede today that he may actually get around to tabling a document at some stage about what the Australian government may or may not be doing in its quest to address this issue. It probably will not be before he goes to Nairobi to discuss it yet again, but we will have to wait and see. That will only be after he is put under pressure.

When he is not undertaking that global quest to attend any conference on any environmental issue that he may come up with, back home in Western Australia he is on the local quest to find a seat in the House of Representatives. That brings me to the third achievement, which we did not actually learn in question time today. The other achievement that this minister really should mark down is extending Wilson Tuckey's career. Mr Tuckey learnt that Senator Campbell was interested in moving to the lower house when Mr Prosser announced his retirement. All of a sudden, when Senator Campbell announced he might like to be the member for Forrest, 20 locals thought that that would be a bad idea and they all nominated for preselection. Then Senator Campbell thought he would have a look at the seat of O'Connor. All of a sudden, Mr Tuckey, who has been making the journey over here for quite some time, became extremely interested in extending his tenure. It would seem that he does not see Senator Campbell as an adequate replacement and certainly does not support his quest to become Treasurer of this nation. All this—the quest to find a conference anywhere, any time; find a lower house seat anywhere, any time—when he is failing to address the real challenges.

This minister has really done only two things. Senator Crossin has talked about the plastic band, and who can forget the other announcement: his great environment announcement early on in his career, 'Let's expand the number of coloured shopping bags.' We have the green bag and his great environmental quest was to have the blue bag. *(Time expired)*

Senator MILNE (Tasmania) (3.30 pm)—I rise this afternoon to note that the Minister for the Environment and Heritage, Senator Campbell, has shifted the government's position on Australia's capacity to meet its Kyoto target. For the last nine years the government has said that it will meet 108 per cent of 1990 levels in the first commitment period, and that has been the excuse that the government has used day in and day out to avoid pressure to introduce emissions trading, to introduce a carbon tax, to introduce a national energy efficiency system of regulations and so on. Now we find—we heard him this week—that a shift has started and he has

started backing off, saying that it is unlikely, that we will struggle and that we hope.

It went backwards very fast, and the reason is this: Australia has to report to the Framework Convention on Climate Change in Nairobi in the second week of November on its greenhouse gas emissions and how it is tracking towards its target. Senator Campbell knows as well as I do that he is going to have to report the bad news to the world that the Australian government is not on track to meet its target, in spite of the fact that it got a megawindfall in terms of a one-off credit from land clearing. If you look at what has actually happened, we are finding that our electricity and heat emissions increased 43 per cent and our transport emissions increased 23 per cent from 1990 to 2004. That is what Australia is doing on greenhouse gas emissions.

As people out in the country are seeing the nation dry out, as the drought intensifies and as fires intensify and probably develop into megafires this summer, it is no good for Senator Campbell and the Prime Minister to put on their Akubra hats, visit these areas and pretend that drought relief and fire relief are going to be enough. People in Australia know that higher temperatures caused by global warming are leading to higher evaporation rates, less rainfall, more extreme drought, more extreme storms and fires, and terrible conditions—and, what is more, it is not going to get any better. In fact, it is likely to get much worse if the temperature goes higher by two degrees. We already have a temperature increase of 0.7 degrees. Imagine that doubling.

So the minister is actually culpable. People are going to look back at the Howard years as a decade of lost opportunity, as we only have 10 to 15 years to turn this around globally to avoid dangerous and utterly irreversible climate change, because the feedback loops in global ecosystems are such that you cannot, after a certain point, get the situation back. It is no use waking up in 10 years time; then it will be too late.

In May this year the government did not identify climate change as a risk to the budget. It is unbelievable when you look at what is happening out in rural Australia that that was not identified as a risk to the budget. In fact, Treasury said at the time that there may be a need for some more drought relief but that their analysis concludes this is unlikely to occur and that agricultural production forecasts are similar to previous years. How could Treasury say that? The CSIRO, the IPCC and practically every scientist in the country have been telling the government that this is happening and that these will be the impacts, but apparently Treasury do not have to listen.

I feel extremely angry about that on behalf of the Australian people, because on this very day there are fires burning all over the place out in the bush, including in Southern Tasmania, where they are experiencing 30 degrees and high winds in October. What is it going to be like around this country by the time we get to February? As Senator Webber said and no doubt Senator Campbell knows, south-west Western Australia is drying out faster than any other place in the world. This is not new information since May. This has been known by the world's scientists, and this government has deliberately ignored that. It is studied ignorance, and it is deliberate. That is why it is culpably irresponsible—and the world will know that in Nairobi.

Senator Campbell has an obligation to tell Australians today what he already knows. He has got the report card that he is going to give in Nairobi. He knows what is going to have to say in Nairobi. Minister, you tell the Australian people before you leave the country what it is you are going to tell the rest of

the world about the failure of government policy on climate change. This is the greatest issue facing the world, and we deserve to know how we are going.

Question agreed to.

MINISTERIAL STATEMENTS

Skills for the Future

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (3.35 pm)—On behalf of the Minister representing the Prime Minister, I table a statement on Skills for the Future.

Senator NETTLE (New South Wales) (3.35 pm)—I move:

That the Senate take note of the document.

This announcement by the Prime Minister today about funding for vocational education and training comes after 10 years of the Howard government starving the vocational education and training sector in Australia of funds it needed in order to ensure that young people and others in Australia could access the training, skills and experience that they needed in order to get employment in these areas. We have seen, as a result of this government failure to invest in our vocational education and training sector and in the TAFE sector in particular, that the government has created for itself, by its own mismanagement of funding in this arena, the skills shortage that we now face.

So we see in this announcement from the Prime Minister today, and in the response from the government, an acknowledgement in the lead-up to an election that they have created the skills shortage problem that we face right now and that there is a need for them to address it. We see a small amount of money being allocated. People might look at the amount—it is $837 million—and say, 'How could you say that's a small amount?' It is $837 million over four years, and it is not as much money as this government have taken out of the vocational education and training sector since they came into government.

In 1997 this government changed the funding formula by which it funds TAFE around this country. There was no longer indexation to the funding provided, and there was also no growth in funding when you had a growth in students. The vocational education and training sector, the TAFE sector in particular, has been starved of all this funding because it has had no growth funding and no indexation funding. This amount of money, this $837 million over four years, goes nowhere near addressing the shortfall in the funding cuts that this government has imposed on vocational education and training and on the TAFE sector in particular in Australia.

The other feature that we see in this proposal being put forward by the government is that its response is to set up a system of vouchers that individuals get whereby they can spend $3,000 getting skills training at any institution that they choose. It is not $3,000 that can be invested into the public sector through our TAFE systems; it is $3,000 that they can choose to spend on a private provider. This is what we have seen during 10 years of the Howard government. When it came into government in 1996, there was a strong and robust TAFE system, a public system for vocational education and training in this country. There were many suggestions about how that could have been improved but, compared with what we have got now, it was a reasonably well-funded and well-resourced public institution that was able to provide benefit to students, to business, to the whole of the Australian community and to our economy.

Over 10 years the government have substantially reduced the funding to this sector at the same time as they have introduced a

whole range of new players into the vocational education and training sector—private providers that do not have the same regulation or requirements from the federal government to ensure that they produce the same quality teaching and learning environments where people can access the skills and the training that they need to go on and work in our workforce. So we have seen this proliferation of small registered training organisations and private providers at the same time as we have seen funding from the government taken away from our very strong and world-renowned system of vocational education and training through our TAFE systems. Now with the government's proposal—having starved TAFE of funding for 10 years and created a skills shortage—we see, in the lead-up to an election, the government promising a small amount of money which individuals can then choose to invest in the government's private providers that they have supported and built up at the same time as they have reduced the funding for the public sector.

New South Wales TAFE had some research done by Allen Consulting Group in August this year, in which they looked at the value of the TAFE sector to the economy. This was specific to New South Wales. They found that over the next 20 years TAFE New South Wales's contribution to the New South Wales economy would be worth $196 billion. I will say that again: $196 billion is the contribution, just in New South Wales, of the TAFE sector to our economy. In that report there was a calculation that every dollar that was invested now in TAFE New South Wales would generate benefits worth $6.40 in today's dollar terms. That is a 640 per cent return on government investment. That is the kind of investment return that the government could have and should have by investing public funds into our public TAFE system so that people have access to vocational education and training in this country.

We have seen the approach of this government has been to withdraw the funding available from vocational education and training to such an extent that this year, for the first time, defence has overtaken education as the third biggest area of federal expenditure. The government's decision to spend $2 billion to buy four enormous C17 transport planes alone will cost more than its allocation to vocational education and training for the next financial year. It is a decision the government has made to prioritise defence above education, and, in particular, vocational education and training.

The extent of the Howard government's cuts is revealed by the latest figures from the National Centre for Vocational Education Research. They show that the Commonwealth's real funding per vocational education and training student hour has been cut by 24 per cent from 1997 to 2004. Given these figures—a 24 per cent cut in spending on vocational and education training between 1997 and 2004—it is unsurprising that we have the skills shortage that we face now in this country. And this announcement by the government, the $837 million over four years, will go nowhere near addressing these cuts that we have seen over the last 10 years.

At the WorldSkills Leaders Forum in Melbourne in May this year, former Prime Minister Bob Hawke was talking about the OECD statistics in this area. He said:

> This federal government has decreased spending on tertiary education by 8%, including vocational education and training, over the last decade, when all other OECD countries have increased such spending, on average by 38%—

He went on to say that this is a figure that this country should be ashamed of, especially now that a recent international survey of businesses found that the skills shortage cri-

sis in Australia was second worst only to Botswana's. The federal government's funding neglect of vocational education and training has been highlighted not only by the OECD but also by the Reserve Bank of Australia and the Australian Industry Group.

The federal government like to respond to these comments by talking about their investment in the new apprenticeships centres. Let me tell you about the situation in New South Wales, where the federal Minister for Vocational and Technical Education decided to cancel the Department of Education and Training's new apprentice centre contract from 30 June this year. He decided to cancel this contract to the public TAFE sector in New South Wales, despite the federal government's own assessment that gave the New South Wales training scheme a 98 per cent quality service rating and a 93 per cent satisfaction rating amongst apprentices and employers that had used its services.

It is probably the best training support service in Australia, and in New South Wales it assists more than 100,000 apprentices and trainees as well as 37,000 employers. Its consumer base is about 44 per cent of the New South Wales market. And, of the now 30 approved new providers that the federal government has listed in New South Wales, not one of them is a public provider. Many individual employers and group trainers in New South Wales have written to federal government MPs seeking a reversal of this decision. We have seen the federal government take funding away from vocational education and training and create a skills shortage, and now they are seeking to purport that this announcement will make a difference. *(Time expired)*

Senator WONG (South Australia) (3.46 pm)—I will be brief, because no doubt this matter will be debated again subsequently in this chamber. But I want to make some brief comments about the Prime Minister's announcement today. It is extraordinary, after 10 years of the Howard government and a failure to train Australians—a record which includes turning away 300,000 young Australians from TAFEs—that the government finally, when it is under a bit of political pressure, is doing something to address the skills crisis over which it is has presided and which in fact it has directly contributed to through its failure to train young Australians.

It is extraordinary that the Prime Minister comes now to the parliament and says, 'We've got a great plan,' simply because he is under political pressure because the community, business and the parliament—through the opposition and other parties—have been saying for some time: 'Our country needs more skilled workers; our country needs investment in training and education. That is the way of the future, not the low-wage, low-skill future that is implicit in the Work Choices legislation.' It is not until the government is under a bit of political pressure that it actually chooses to do something. It did not choose to do anything in the budget this year. We had a budget just a few months ago. Did we see investment in education and training in that budget? No. It happens only when the Prime Minister believes he is actually under a bit of political pressure, as he should be because of the economically irresponsible failure to invest in education and training.

I want to make one point—and, as I said, this will no doubt be the subject of further debate at a later stage—about who misses out in Skills for the Future. There is nothing in this package for young unemployed Australians below the age of 25. We all know—all the evidence shows—what investment in young people, early school leavers who do not go on to post-school education, can return. And what is the Prime Minister giving to those young people? He is essentially say-

ing under this package, 'If you're an early school leaver, we want you to hang around for nine years, between the ages of 16 and 25, before we give you access to the centrepiece of this package, which is the work skills vouchers.'

I want to make the point also that today saw the release of the unemployment figures and, despite the good headline rates, the figures demonstrate that, despite economic growth, we have one in five Australian teenagers unemployed. One in five Australian teenagers remain unemployed. On the same day, the Prime Minister announces this great skills package which does nothing for Australians under 25. Not one dollar of the Skills for the Future package goes to attracting Australian kids under 25 to get into traditional trade apprenticeships.

The fact is that the government has presided over a skills crisis. The government has been asleep at the wheel when it comes to education and training over the last 10 years. Now, because it is under a bit of political pressure, it is investing some money in education and training. There is nothing in the Prime Minister's package for young Australians at a time when one in five Australians teenagers who are looking for work remain unemployed. I seek leave to continue my remarks.

Leave granted; debate adjourned.

AUDITOR-GENERAL'S REPORTS

Report No. 6 of 2006-07

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 6 of 2006-07: *Performance audit: Recordkeeping including the management of electronic records.*

PRIVACY LEGISLATION AMENDMENT (EMERGENCIES AND DISASTERS) BILL 2006

Report of Legal and Constitutional Affairs Committee

Senator FERRIS (South Australia) (3.50 pm)—On behalf of the Chair of the Legal and Constitutional Affairs Committee, Senator Payne, I present the report of the committee on the provisions of the Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006, together with documents presented to the committee.

Ordered that the report be printed.

COMMITTEES

Membership

The DEPUTY PRESIDENT—The President has received letters from party leaders seeking variations to the membership of committees.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (3.52 pm)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

Community Affairs—Standing Committee—

Appointed—Substitute member: Senator Ferris to replace Senator Adams for the committee's inquiry into legislative responses to the Lockhart review on 24 October 2006

Economics—Standing Committee—

Appointed—Substitute member: Senator Parry to replace Senator Bernardi for the committee's inquiry into petrol pricing in Australia on 13 October 2006

Legal and Constitutional Affairs—Standing Committee—

Appointed—Participating member: Senator Webber.

Question agreed to.

SUPERANNUATION LEGISLATION AMENDMENT (SUPERANNUATION SAFETY AND OTHER MEASURES) BILL 2005

PETROLEUM RETAIL LEGISLATION REPEAL BILL 2006

Returned from the House of Representatives

Messages received from the House of Representatives informing the Senate that the House has agreed to the amendments made by the Senate to the bills.

SEXUALITY AND GENDER IDENTITY DISCRIMINATION BILL 2003 [2004]

Second Reading

Debate resumed from 25 November 2003, on motion by **Senator Greig**:

That this bill be now read a second time.

Senator BARTLETT (Queensland) (3.53 pm)—The Sexuality and Gender Identity Discrimination Bill 2003 [2004], as the date suggests, was introduced in 2003, but in reality it has been around in one form or another since it was introduce by former Democrats senator Sid Spindler back in 1995, in the days when the Labor Party was in government, which is a long time ago. It was reintroduced and stood on the *Notice Paper* in my name for about five years before it was once again reintroduced in slightly amended form by former Democrats senator Brian Greig in 2003.

The legislation—and the principles underpinning it—have been around for a long time and, frankly, I do not think there would be a single senator in this place who would not be aware of the broad thrust of it. Indeed, when it was first tabled in 1995, it was referred to a Senate committee as part of a much wider national Senate inquiry into sexuality discrimination and the report of that inquiry was tabled in December 1997 by the Senate Legal and Constitutional References Committee, with wide-ranging recommendations going beyond the ambit of the legislation. It is a real tragedy that the simple principles underpinning this legislation and the clear recommendations contained in that report that was tabled nearly nine years ago have not been acted on except in a small number of areas.

This debate this afternoon is an opportunity to test both the Labor Party and particularly the coalition as to how far they have progressed, if at all, over that period of time. The legislation in the broad ensures the removal of ongoing inequities under federal law discriminating against gay, lesbian and bisexual people in areas such as superannuation, death benefits, taxation arrangements, income support, immigration access, industrial relations conditions, Public Service entitlements—including bodies such as the Federal Police and the Defence Force—veterans pensions, access to the Family Court, Medicare and welfare legislation, among other things. It simply seeks to ensure that people are no longer discriminated against on the grounds of their sexuality or their gender identity under Commonwealth law.

It should be noted that this principle has been supported publicly by a growing number of people within the federal Liberal Party. I certainly welcome those statements. The most notable example would be that of the Liberal member for the seat of Leichhardt in my state of Queensland, Mr Warren Entsch, who has been on the record a number of times, as far back as before the last federal election, supporting the removal of discrimination against people in same-sex relationships under federal law. He has been joined by a number of other Liberal colleagues in more recent times. The member for Wentworth, Mr Turnbull, has been on the record recently saying similar things. Indeed, our Prime Minister himself, Mr Howard, at the end of last year stated that he did not believe

that people should be discriminated against under federal law because they are in same-sex relationships.

I hasten to emphasise that this does not deal with the matter of same-sex marriage or matters like adoption. What it deals with is the legal situation affecting people, particularly same-sex partners, under federal law, whether you are talking about taxation, superannuation, the defence forces, veterans, Medicare arrangements, social security legislation or a whole range of other areas. Just last week, the Senate Standing Committee on Economics tabled its report into the provisions of the Tax Laws Amendment (2006 Measures No. 4) Bill 2006. As my colleague Senator Murray pointed out in his minority report, these changes will have the effect of expanding existing discrimination that already applies to people in same-sex relationships under the capital gains tax regime. So, despite some of the positive statements being made by a range of coalition members, including the statement on the public record by the Prime Minister that he does not believe people should be discriminated against in general areas of federal law because they are in same-sex relationships, not only does that reality continue to exist but it is being expanded, for example, in that piece of taxation legislation.

General nice-sounding statements saying that you do not think something should be the case are not good enough when the reality is that discrimination exists and the solution or remedy to that discrimination has been before the Senate since 1995 in the form of legislation tabled by the Democrats. The remedy is here in this legislation. It may be that some other speakers might identify specific components within the legislation that they think are problematic in a legal sense, and I am quite happy for them to do so. But nitpicking about particular problems with this specific piece of legislation should not be used as an excuse for ongoing inaction. Inaction is what we have had in this area.

I feel compelled to emphasise and, indeed, defend the Democrats' record in this area. I noted a list put forward yesterday by the *Sydney Star Observer* of, according to them, some of Australia's most gay-friendly politicians. This is not a competition, I hasten to add, and I am not in any way casting aspersions on others who were mentioned in that list, of which Mr Entsch was one and I think Senator Vanstone was another, but I did take great offence at the failure to note the Democrats' record in this area. What that says to me, quite frankly, is that the *Sydney Star Observer* are not interested in people undertaking action that makes a difference. If you want to get this discrimination changed, making statements in support is not going to change it. Even the Prime Minister has made statements that can be interpreted as supportive. What makes a difference is actually seeking to act to change the laws. There can be absolutely no doubt that the Democrats have done that consistently, year after year after year—far more so than any other party in this federal parliament. To have that not recognised and dismissed is, apart from being personally offensive to me, really quite a dangerous act because it suggests to any other politicians who might be wanting to act in this area that there is not much point in genuine action because that is not valued by people such as those at the *Sydney Star Observer*. It is no wonder you do not get progress when the people who attempt to make changes do not get any recognition.

It should be noted that there have been some positive changes in recent years. They are minor, but I think any advance should be acknowledged. Back in May 2004, at the time I was the leader of the Democrats, we saw the federal government finally agree to some recognition of people in same-sex rela-

tionships being able to access the superannuation of their partners in the same way as can people in de facto opposite-sex relationships. Whilst that was agreed and put in legislation—it was put in the form of recognition of interdependent relationships—I would have to say the actual process of administratively enacting that legislative change has been extremely poor. In a sign of how strongly this federal government was prepared to resist this sort of change, an amendment was made to the superannuation choice legislation and, because the Labor Party did not support superannuation choice legislation, the Democrats were in the position where our vote made the difference in whether the legislation passed or failed.

It took three years, from August 2001, over which the sole area of disagreement between the Democrats and the government was in removing the discrimination on same-sex couples being able to access the superannuation of their partners. The government were prepared to sacrifice all the changes with regard to superannuation choice for three years, solely so they did not have to adopt that principle. It took three years for them to change their position—but change it they did, which is certainly welcome and also something, I might note, that was barely acknowledged in much of the gay and lesbian media around the country. That is another example of where one has to wonder whether actual change is something that people are interested in or whether its being acknowledged is dependent on who is achieving it.

There have been other small steps forward. There is a long history in the *Hansard* of this Senate of the Democrats repeatedly pressuring the government via questions in question time, as well as during Senate estimates, through motions and in legislation through proposed amendments, seeking to remove discrimination for same-sex couples who are veterans or in the Defence Force. We have seen some small improvements in that area just in the last year or two. It is quite extraordinary, when we have a crisis with regard to recruitment and retention in the armed services, that the federal government refused to address something as fundamental as the entitlements of people's partners because of their own philosophical objections to wanting advance in this area. There have been some changes there in recent years—not comprehensive or complete changes but at least there have been some.

I would also note that it was again the Democrats, going as far back as 1991, who were able to get changes made in the immigration area through an interdependency category that allowed some people in same-sex relationships to migrate to Australia. Again, it is not as adequate as complete removal of discrimination altogether, but it did provide a mechanism. We have seen a small step forward in recent times where the skills shortage is so bad in this country that the government are even willing to recognise same-sex partners to try to get people in here on skilled visas. They still will not do it across the board, including and most importantly in the family visa area, but they now recognise same-sex partners in the skilled visa categories because not doing so was a barrier to actually getting skilled people to migrate here. But, again, it took all of those years to get those small and incomplete changes.

If you compare the lack of progress at the federal level with what has been done at the state level, it becomes all the more stark because, at the time the predecessor to this legislation was first presented, back in 1995, many of the states were in as bad, if not a worse, situation. But, whilst things have all but stood still at the federal level, we have seen all of the states and territories significantly improve their situation. All of the

states and territories have introduced laws ensuring same-sex relationships are afforded equality under law. Tasmania has gone so far as to remove all reference to the word 'de facto' in its legislation and replace it with a series of definitions relating to interdependent relationships covering family members, carers and significant personal relationships, which include those in same-sex relationships.

The benefit of that approach is that it recognises that this is about relationships. Removing discrimination on the basis of sexuality highlights the fact that we are talking about human beings, with all of their diversity and all of the different types of relationships that they have—not just getting hung up about sex. It would be good if people could just cope with putting aside their own particular personal moral views about sexual activity and recognise that we are dealing with human relationships here—and dealing with a wide range of human relationships of diverse nature.

Discriminating against people on the basis that you do not happen to like the gender of the person they have fallen in love with or the person they have formed a strong, independent relationship with not only is offensive and unfair but can be extremely hurtful. It leads to completely unnecessary inequities in our society and our economy. Frankly, it simply works against the human reality. A change is long overdue.

As I said, at its core, the legislation simply seeks to remove the areas of discrimination. It simply seeks to ensure that Commonwealth law no longer is able to discriminate against people on the basis of their sexuality or their gender identity. There is a range of different components, different divisions, within the legislation. They are outlined in the original second reading speech by Senator Greig back in 2003. That is on the *Hansard* record, so I will not go through them again now.

But I do need to emphasise the core point: over the last decade throughout Australia we have had significant progress in removing discrimination on the grounds of sexuality in all of the state and territory governments. It has not just been Labor governments and it has not been done solely by Labor; in most cases, even when Labor governments were making these changes, the changes were supported by Liberal oppositions, and in some cases changes were made by Liberal governments. It is solely at the federal level that we have had this total intransigence and this complete refusal to move.

I would have to say that it took a long time for the ALP to move. As many senators would recall, and as is still the practice of the Democrats from time to time, when various pieces of legislation pass through this chamber we move amendments to areas of law—whether it is tax law, Medicare law, Defence Force legislation or veterans legislation, to use some examples—to ensure that at least the act being dealt with no longer includes discriminatory aspects with regard to people's relationships. For the first 10 times we did that, Labor opposed us, for a variety of reasons. It was not until the 11th time—I think on 18 September 2003—that Labor finally supported amendments that we moved. They were to superannuation legislation. For the first time, the amendment to remove discrimination in that particular area passed the Senate. Unfortunately, it did not pass the House of Representatives and it was not insisted on when it got back to the Senate, so we did not have success in that area. But it did take a significant number of times before we could even get the ALP on record and consistently supporting amendments that would remove discrimination at least for particular areas of legislation. The ALP is now

relatively consistent on that, and that is something to be welcomed.

But it does need to be emphasised that this discrimination is continuing. It is very real and it is extremely unfair. As I said previously, it goes to the heart of people's identity. It goes to the heart of people's relationships. To have legislation that quite actively discriminates against people solely on the basis of their sexuality—in some cases very severely—is something that we should be well and truly past. It is most frustrating to have even the Prime Minister saying that he accepts that principle but still refusing to act on it. That is where the pressure needs to be continued.

Whilst this legislation will not come to a vote today and will not in itself change that reality, by bringing it on for debate again today the Democrats seek to continue to put that pressure on all of us here—to not just make some positive statements but follow them up with action. We will persevere, even if it is not recognised by people such as the *Sydney Star Observer*, because it is the right thing to do. It is something that probably loses votes—in fact, I know that it loses votes—especially for parties such as the Democrats, who seek to maintain more of a centrist position. But it is the right thing to do and it is well and truly overdue.

We will continue to test all parties in this area, probably when the next taxation legislation—the tax No. 4 bill—comes through in the next few weeks. The easy thing to do would be to just support this legislation. If we did that, we would address this issue once and for all in its totality. That is what we should be doing.

Senator LUDWIG (Queensland) (4.13 pm)—In rising to speak on the Sexuality and Gender Identity Discrimination Bill 2003 [2004], I can say at the outset that it is Labor's longstanding policy to remove discrimination against the GLBTI community. We did take action when we were in government and we have taken action at a state level. We have made commitments in our platform, and when in government we will deliver change. Labor recognises that we have strong legislation protecting people from discrimination on the basis of race, sex, disability and age, but that under federal law it is still lawful to discriminate on the grounds of sexuality or gender identity. We are committed to removing discrimination in Commonwealth legislation—a process all Labor states have undertaken except, as I recall, South Australia, which is currently undertaking that and which will complete it soon.

This is much needed at the Commonwealth level because some of these items do impact, as I think Senator Bartlett indicated, in areas of social security, tax law, veterans, Medicare and the like. We do acknowledge the strong interest that has been shown by the Democrats, especially former senator Brian Greig, who drafted the bill. So we can happily support the intent and the direction of the bill, even if parts of it we might approach in a different manner, if I can put it that way, in terms of both drafting and a couple of other issues contained within the bill. But it is not really the time to go to that level of detail.

What we can say is that, because Labor has had a longstanding commitment to remove discrimination against same-sex couples, we do feel strongly about this issue—one that this government has totally neglected. It has been in our platform for a long time. We took it to the last election and we will take it to the next election. We are committed to delivering equality between de facto heterosexuals and same-sex couples and are currently conducting consultations on relationship recognition for same-sex couples.

The Democrat bill is basically a good one. We support the intention of removing discrimination to the GLBTI community. Labor would not approach these issues in the same way, but this bill would be a positive change nonetheless. It is one I know that the government would not pick up. I doubt very much that they will express that here today.

It is a matter that Labor has also progressed. The shadow Attorney-General has an exposure draft of her own sexuality discrimination bill open for public comment and feedback. The exposure draft is a private member's bill that has not been introduced into the House of Representatives because Labor wants to ensure that many people in the community have a look at the bill and provide feedback to Labor's shadow Attorney-General on the many issues that are contained within it. It is a detailed exposure draft. The hard work has been done by Labor. It goes through a range of issues covering many different matters, including an audit of all Commonwealth laws and ministerial advisory councils, and, of course, the central plank of the draft bill: the prohibition of sexual orientation and gender identity discrimination. It deals with discrimination in areas including education, goods and services, accommodation and land, how those matters might be looked at and issues that go to harassment and victimisation. It is a very complex exposure draft bill. I congratulate the Labor shadow Attorney-General for the hard work that she has put in in developing that. It does demonstrate Labor's commitment to this important issue. It provides a clear and comprehensive path to removing long overdue discrimination at the Commonwealth level and aims to combat harassment and incitement to violence on sexuality or gender identity.

This exposure draft bill has some similar provisions to the Democrats bill and some different approaches as well, but the general direction is the same. We have learned from the success in some state jurisdictions. Labor supports the intent and aim of the Democrats bill, though, as I said, in government we would probably not take the same path or take every definition or exemption and perhaps depart not only on form but sometimes on technicality as well. But, as I said, it is not the time to go to some of that detail.

It is worth noting that the Human Rights and Equal Opportunity Commission is currently undertaking a national inquiry into discrimination against people in same-sex relationships regarding financial and work related benefits and entitlements. I would encourage people to have a look at that at the HREOC website at www.hreoc.gov.au. It is about providing a thorough list of Commonwealth legislation which discriminates against same-sex couples, so it gives you some measure of the work that this government has not addressed. Already over 80 pieces of legislation needing change have been identified, so there is a great need for government backbenchers to turn their minds to ensuring that the government might one day find its way clear to look at it, but I doubt that very much, quite frankly.

Labor plans to win the next election and will deliver on its promise to change the law in this area for good. Whilst there are some similarities between Labor and the Democrats on GLBTI issues, there are significant differences between Labor and the coalition—most importantly, by Labor refusing to stoop to the government level to use language and rhetoric to alienate and abuse people living in our community who are not heterosexual.

In voting a few months ago for the ACT's right to make its own laws in this area, free from the intervention of the Commonwealth, we made this point clear. But our track record in this area is also strong. We com-

menced these changes under a Keating Labor government, particularly in Defence. Some might recall that the ALP lifted the ban on gay and lesbian people working in the military in 1992. Labor in government in the states has also delivered far-reaching reforms. New South Wales was one of the first to put gay and lesbian couples on an equal footing with heterosexual de factos. Since then, Western Australia, Tasmania, Queensland, Victoria and the ACT have moved forward with significant changes.

Labor has always been committed to removing discrimination against gay and lesbian people. From opposition we have continued to campaign for change. Mr Anthony Albanese and Ms Tanya Plibersek pursued superannuation changes for years before the government finally took some action. We will continue to do that, but the real measure will be when we are next in government, because we know that this government will not be moving on this. We can fix up the legislation that remains unaddressed—those 80 pieces and counting. Our community needs to be respectful, tolerant and engaged. Caring and loving adult relationships should be recognised and supported. Labor will do its bit to ensure that they are.

I understand that there was some arrangement with the times. I have been allowed 10 minutes. The clock has not been adjusted for that, but I will I adjust my speech accordingly to ensure that those who follow me can also have an opportunity to speak. But it is worth reiterating that the shadow Attorney-General, Nicola Roxon, has put out a draft, and for more information you can contact her website and, as well, you can comment on that. It is at www.nicolaroxonmp.com. We note that we are a consultative party, unlike the Howard government.

Senator BRANDIS (Queensland) (4.23 pm)—In Adelaide last Wednesday, the member for Kooyong, Mr Petro Georgiou, delivered a very fine speech on the liberal tradition. The occasion of that speech, which I understand, Madam Acting Deputy President Troeth, you attended, was the Murray Hill lecture. The Murray Hill lecture is named to honour the memory of the late Murray Hill, a member of the South Australian parliament and the father of the former Leader of the Government in this place, Robert Hill. Mr Georgiou noted, in celebrating the late Murray Hill's contribution to liberalism in Australia, that it was in 1972, while the late Mr Hill was a member of the Liberal and Country League, that he introduced into the South Australian parliament a bill to decriminalise homosexuality in that state.

That was the first occasion of substantive what we would today call 'gay law reform' in Australia and it came from a Liberal member of parliament. The following year, on 18 October 1973, Sir John Gorton, then a backbench opposition member of the House of Representatives, moved in that House that 'in the opinion of this House homosexual acts between consenting adults in private should not be subject to the criminal law'. That was the first substantive piece of gay law reform at the federal level, and it was moved by a Liberal member of parliament—indeed, a former Liberal Prime Minister.

Those like Senator Ludwig or Senator Bartlett who chastise my side of politics on this issue do so with a meanness of spirit which ill becomes them. The view of these matters, of which the late Mr Hill and the late Sir John Gorton were pioneers, is a view which today animates the Liberal Party. It is a view that has been embraced by the Prime Minister, who as recently as 8 June this year said:

> I am in favour of removing areas of discrimination and we have and I'm quite happy on a case

by case basis to look at other areas where people believe there's genuine discrimination, but I think they should be looked at on a case by case basis. I don't think it's the sort of thing that can be done in an across the board fashion. We made some changes in relation to entitlements a couple of years ago and if there are other areas of genuine discrimination, then I'm in favour of getting rid of them.

To the extent to which there is any discernible difference between Mr Howard's position and the position of other leading Liberals of the past, the difference is one only of approach, not of philosophy. When the decriminalisation of homosexuality in the ACT came before the House of Representatives during the time of the second Whitlam government in a private member's bill, if my memory serves me correctly, Mr Howard voted in favour of it.

During the course of the Howard government, a number of steps have been made to remove from the statute books discrimination against gay people. The superannuation laws have been changed to include same-sex partners as potential beneficiaries of death benefits in certain circumstances. In 2004 the government amended the Income Tax Assessment Act, the Superannuation Industry (Supervision) Act and the Retirement Savings Accounts Act to expand the range of potential beneficiaries of tax free superannuation death benefits to include what were defined as 'interdependency relationships', which included same-sex partnerships. On 10 October last year the government announced its decision to extend conditions of service for Australian Defence Force employees to interdependent relationships, which would include same-sex partners of ADF members.

So it is not right to say that the Liberal Party and the Howard government have not embraced the principle embodied in Senator Bartlett's bill. They have done so. And that reflects the liberal philosophy. It reflects the philosophy outlined in the federal platform of my party, which condemns, as 'an enemy' of liberalism, 'narrow prejudice' and which commits the Liberal Party to oppose 'discrimination based on irrelevant criteria'. I hardly think that in this day and age any mature or civilised person would regard sexuality as a relevant criterion for discrimination against other Australians.

So the objectives of the Sexuality and Gender Identity Discrimination Bill 2003 [2004], set out in the objects clause, clause 3, are objectives which not only I warmly support but also are supported by the Liberal Party and have historically been not only supported by but pioneered by Liberals, including the late Murray Hill, the late Sir John Gorton and, among contemporary Liberals, people such as the Hon. Warren Entsch and the Hon. Malcolm Turnbull, to name but two, who have agitated on this issue in the public in recent days. It is far too late in the day for anyone sensibly to suggest that in Australia there is a place for discrimination against people on the grounds of their sexuality. That attitude reflected the prejudices of a different time and a different age which are now obsolete and must be seen to be ignorant.

This is an enormous issue for Australia because it affects so many people. I think that, in years gone by, at a time when gay people were socially marginalised and, to use a famous expression, 'in the closet', it was thought to be a marginal issue, a boutique issue, that affected relatively few. But we know today that that is not so. The estimates vary but social scientists tell us that between four and six per cent of people identify as being exclusively or predominantly homosexual. If those estimates are right—and I have chosen the conservative end of the estimates—that means there are about one million Australians so circumstanced.

But each of those people have parents, most of them have siblings and many of them have children, so the number of Australians directly affected by discrimination against gay and lesbian people is many times greater than the five-odd per cent of the population, the approximately one million Australians, who so identify. If one takes into account only the members of their immediate families and disregards their close friends, workmates and colleagues, one is talking about a multiple of that number, several million Australians, directly affected by discrimination which in this day and age we identify to be ignorant, bigoted and, to use the words of the Liberal Party's federal platform, a narrow prejudice which we will not countenance. So this is an important issue and it is an issue of wide significance.

I commend former Senator Brian Greig, who pursued this issue with his customary courteous tenacity in this parliament—

Senator Scullion—Hear, hear!

Senator BRANDIS—thank you, Senator Scullion—during his time here. Nobody who has spoken to this bill so far has questioned the underlying principle, the moral sentiment, behind it—and I hope no-one would. But may I pause to say a word about the false antithesis which some people seek to draw between the advancement of this issue—respect for the rights and dignity of gay people—and so-called family values. There are certain people, some of them occupying the lunar fringe of my party, and certain extreme religious groups who seek to make that antithesis. It is a false antithesis. As if homosexual people are not members of families! As if their sense of commitment to their families and the values of their families, and the value to them and to the community of their families, is not as important to them as to anyone else! It is an ignorant, absurd and offensive notion.

I said before that, to the extent to which there is a difference between the mainstream parties of Australian politics on this issue today, it is a difference not of values—at least, not among those who occupy the mainstreams of their parties—but of approach. Senator Ludwig adverted to this too. The method of this bill is to seek to fold into the Human Rights and Equal Opportunity Commission Act certain generic prohibitions against discrimination. That approach, which has many things to commend it, is at variance with the government's approach, the Prime Minister's approach, of identifying discrimination and dealing with it on a case-by-case basis.

There are good arguments for both approaches, but I must say as a lawyer who values precision in statutory language that I am more impressed by the case-by-case approach than by the generic approach. For that reason, and another which I will mention in a moment, I do not think that this bill, valuable as it is to enable people to make declarations of intent and of values, is the right vehicle to deal with the prosaic, technical field of law reform. That is much better done by fixing up, case by case, the statutes which discriminate.

It is for that reason that, in April 2006, the Human Rights and Equal Opportunity Commission announced the commencement of a significant public inquiry into this matter called 'Same sex, same entitlements'. Its discussion paper was published at that time. That inquiry is still pending. Hearings of the inquiry for later this month and next month in the various Australian states and territories have been announced. It seems to me an unusual and a premature thing, when the Commonwealth agency specifically charged with responsibility for human rights is presently in the middle of an inquiry into this matter—one of whose aims is to seek to identify the particular matters which need to be dealt

with—to pass a bill which deals with the matter in an imprecise and generic way, honourable and laudable though the values and objectives of those who sponsored bill might be, and reflective of the mainstream of public opinion in this country in all respectable political parties though it might be.

One of the most useful things—a very prosaic issue which would only excite lawyers, but one of the most useful things—that the Human Rights and Equal Opportunity Commission's inquiry has done is to trawl through the tens of thousands of pages of Commonwealth statutes to identify each and every specific instance which needs to be reformed in order to achieve the objectives embodied in the objects clause of the bill currently before us. The result of that research was published on 26 September, only two weeks ago.

The preliminary draft of the background paper lists 68 particular Commonwealth statutes which in various ways, many of them quite technical ways, like in the superannuation and taxation field, would require to be amended so as to achieve the goal of eliminating discrimination. And within the 68 statutes that are identified, in many there is a multiplicity of different provisions that would need legislative amendment.

So the way to do this, I think, if I may say so through you, Acting Deputy President, to Senator Bartlett and others who support this bill, is to wait until the Human Rights and Equal Opportunity Commission's inquiry is complete, to wait until its draft list is finalised, and to deal with it in an omnibus bill—one of those dreary bills, like the taxation laws amendment bills which we are so often seized of here, which list in the schedule all of the statutes and all of the particular provisions which need to be fixed up, and then amend or repeal them or amend the definitions to include same-sex relationships in the defined sense. That is the way to go about this. And for that reason I would not encourage honourable senators to vote for this particular bill whilst, as I have said, nevertheless acknowledging the usefulness of having this discussion and enabling all of us—Democrats, Labor, Liberals—to declare our support for the values which it enshrines.

May I finish on this note. Speaking as the chair of the Attorney-General's backbench policy committee within the government, this is an issue which we have been pursuing for some time. It is an issue that, both at the committee level and in private conversation, I have raised with the Attorney-General. And without violating the confidentiality of private discussions or the private proceedings of the government's backbench committee, may I say that I have no doubt whatever that Mr Ruddock, as a Liberal in the mainstream of the liberal tradition, an honourable political figure through his long career, finds himself entirely in sympathy with the objectives that are sought to be prosecuted today.

So I think we are at that stage of the debate in which the issue of values has been fought and won. Society has moved on. People have become more tolerant. People have become more respectful of differences in others. The Liberal Party, which years ago used to have a relatively conservative position on these matters has, led by people like the late Murray Hill and the late Sir John Gorton, now embraced a modern, tolerant, inclusive view. We are at the stage in the debate where we are moving from a debate about the values to a technical debate about statutory drafting. I am glad to say that we have reached that point. It is high time that we got here. Once the Human Rights and Equal Opportunity Commission report is finalised, I hope the government loses no time in implementing its recommendations to the full.

Senator NETTLE (New South Wales) (4.43 pm)—I welcome the opportunity to discuss the Sexuality and Gender Identity Discrimination Bill 2003 [2004] because, as senators will know, the Australian Greens are proud advocates of the need to remove discrimination in many areas of law and for many groups of people, and one of those groups of people is the lesbian, gay, bisexual, transgender and intersex community in Australia. I am not only talking about their status as part of same-sex couples, which the HREOC inquiry is looking at; we need to also be looking at the areas of discrimination that they face as individuals in Commonwealth law. So this bill is an opportunity for us to debate that and we welcome it. As others have said, it is a bill that was introduced, as I understand it, in 1995, so it is long overdue that we have the opportunity here to debate this piece of legislation. There are a range of exemptions in this legislation which allow for religious organisations to continue to discriminate against same-sex people in schools and nursing homes, and the Greens have particular concerns about those. Indeed, I have amendments to legislation we will be debating next week in the Senate that seek to address some of these issues.

As Senator Bartlett said, this is an old bill and many of the exemptions that are in this bill are broad ranging. Since then we have seen legislation introduced in the ACT and in Tasmania which has a far narrower gamut of the exemptions to such legislation. Senator Ludwig mentioned a piece of legislation, a sexuality discrimination bill exposure draft by the shadow Attorney-General, Nicola Roxon, which has also been made available. Unfortunately it has the same wide-ranging exemptions that we see in this piece of legislation. My colleague Michael Organ, who was formerly the member for Cunningham in the House of Representatives, also introduced a piece of legislation which sought, as all these pieces of legislation do, to remove discrimination. Everyone chooses to do it in a different way but, as all of those who have spoken so far in this debate have indicated, there is support for the need to remove this discrimination. I share the optimism that the previous speaker brought to this debate in saying that I and the Australian Greens believe that we will remove the discrimination that exists in this area of law and we are on the path to achieving that. I see this piece of legislation as a stepping stone in taking us in this direction. Indeed, a similar comment was made by Justice Michael Kirby in a recent speech that he was giving. He said:

> But people, and nations, eventually grow up. Once the truth of diverse sexuality is common knowledge, it is impossible to put the genie back in the bottle. It is impossible to put the gay issue back in the closet. Diversity in sexual orientation is simply a fact of life. More and more people recognise and accept this fact. We all have to get used to it.

I share that sentiment. I think it is not just a matter of getting used to it; it is a matter of celebrating the diversity that a whole range of different people bring to our community. In the same way that we accept people from diverse cultures coming to Australia, so too we are made richer as a society by accepting the contributions that a whole range of people bring to our society regardless of their sexual orientation.

We have seen attitudes on these issues change over time. Rodney Croome, a campaigner in this area from Tasmania, was speaking to a group of students in 2004 and he noted that in Tasmania the increased debate that occurred about the legality of homosexuality changed the hearts and minds of ordinary Tasmanians. He put it this way. He said:

> At the start of the debate in 1988, support for gay and lesbian rights was the lowest in the country at 33%. When homosexuality was decriminalised in

1997 it was the highest in the country at almost 60%.

I am proud to say that my colleague Greens Senator Christine Milne was at that time the Leader of the Greens in the Tasmanian parliament and was able to negotiate that gay law reform with the Liberal government of the time to remove that discrimination so that finally Tasmania joined every other state and territory in ensuring that homosexuality was legal.

We have seen a whole range of reforms in the area of discrimination over the years in Australia, whether it has been women getting the vote or Indigenous people getting the vote and being recognised. There have been a range of measures brought in which continue to operate under HREOC—the Human Rights and Equal Opportunity Commission—and the Racial Discrimination Act, the Sex Discrimination Act and the Disability Discrimination Act, which they administer. In my own state of New South Wales homosexuality was only legalised in 1982. The first Mardi Gras occurred in Sydney, my home town, in 1978. At the end of that everyone who was involved was dispersed by the police. It is now a massive celebration that occurs in Sydney. It is a real opportunity for people from across the political spectrum to come together and to celebrate the diversity of people who make up our community. So we do move through social change as we progress as a society and acknowledge the contributions that everybody makes. This is one of those arenas where we still have a way to go in not just accepting the contributions that people have to make to our society but also recognising them in law.

So often we see that attitudes within the community move ahead of the attitudes that are reflected here in our parliament. One example would be the debate that happened in 2004 in this parliament that dealt with the issue of same-sex marriage. As we all know, that was a setting-back of the direction in which we are going in removing discrimination. Unfortunately both of the major parties came together to ban same-sex people from accessing marriage. It was interesting at that time that when polls were carried out amongst the Australian community of the attitudes of people to this issue we saw that the views reflected here in the parliament did not reflect the view within the community. Of course there are growing numbers of people in the community who want to see that discrimination reformed not just in relation to same-sex couples but also in relation to same-sex individuals. Many of these people have had the opportunity to contribute to the public debate, such as through the Senate inquiry that occurred into the same-sex marriage legislation that was dealt with in the parliament. On all of these occasions we heard quite harrowing evidence put forward of circumstances of discrimination faced by people in our community. I want to share with the Senate a couple of those experiences. This evidence was given to the Senate during the inquiry into the government legislation to ban same-sex marriage. One individual wrote:

> I'm a 17 year old gay male and I don't feel safe or comfortable in my own country. I had heard of this act before. Trying to change things so that they can lawfully discriminate against Gay and Lesbian people. It IS discrimination, because if it wasn't, I wouldn't feel like my government hates me for who I am ... In this country I feel like I am not as deserving as a heterosexual person. Like I'm some kind of freak or mutant and that the government wants to get rid of me. It makes me so sad and I can't do anything about it because I don't matter.

It is really unfortunate that people in our community feel that way. What this piece of legislation does is to allow for us to share the contributions that everybody has to make by recognising the contributions that all people have to make. Many other people made simi-

lar comments. There were some comments made by a 17-year-old young woman from Ballarat. She said:

> These new actions have now placed a new fear in me as I am now unsure whether it is ok for me to feel attracted to the same sex. I want to one day get married and adopt a child and now I am unsure whether I want to. Please help me. What can I do now?

Two male persons, in their submission, stated:

> We are male persons in our mid to late 70s. Since 1948 we have lived in a permanent and loving male relationship as partners in Melbourne … It is puzzling to learn of disdain for same-sex couples as somehow unworthy citizens intent on undermining traditional respect for marriage and family, and not even deserving of privileges extended to de facto couples.
>
> It has long been disappointing to same-sex couples such as ours that we have been denied such recognition and rights of "survivor benefits" similar to those of heterosexual partnerships. (Our own partnership has lasted 56 years.)

These contributions all deal with the issue of same-sex marriage that we dealt with in the parliament two years ago. But, as others have said, an inquiry is currently being carried out by the Human Rights and Equal Opportunity Commission, which is looking into the discrimination against same-sex couples regarding access to financial and work related entitlements. I welcome the contribution of Senator Brandis, who spoke before me, who said he would like to see all those recommendations put into place once they come out from HREOC. I also share in that enthusiasm, but I think we need to acknowledge that the HREOC inquiry is limited to looking at just same-sex couples and work related entitlements. Whilst I am sure the report will be comprehensive, as all reports from HREOC are, it may not deal with all of the issues in the arena because of the slightly narrower terms of reference that it has set itself.

I want to share with the Senate some of the submissions that have been received by the HREOC inquiry. One in particular comes from a group called the Coalition of Activist Lesbians. It draws together a number of stories from people in the community. One of those stories reads:

> A librarian at a council run library in south western Sydney, described being asked to remove a small rainbow flag from her desk—

at work—

> for fear of offending other workers. This lesbian said that because the order came from her boss she was not willing to challenge this or make a complaint. She also described how books on gay sexuality were kept out the back and library members had to individually ask the librarian for access to them.

Another lesbian, working in a New South Wales government department, described having obscene emails sent to her and, when she spoke with her supervisor, she received more harassment and ended up leaving her place of work.

A lesbian involved in a motor vehicle accident, where her partner of seven years was killed, was ignored as the next of kin when she went to the hospital. Despite arriving at the hospital in two ambulances from the one accident scene and her telling them over and over again that this was her life partner, workers at the hospital recognised the dead lesbian and contacted her uncle to identify her body. The other woman was discharged and sent back to their shared home three hours later, with no further contact from the hospital, despite having just seen her partner of seven years killed by their own vehicle and having been knocked over by the car herself. This woman needed to access a solicitor to maintain her right as next of kin in order to make funeral arrangements and organise the woman's estate. The police did not accept her claim as next of kin for several days and visited the family home to ask spe-

cifically about their relationship in inappropriate ways.

I give another example where a lesbian mother has spoken about being banned from seeing her two teenage children because their father thought that she was a sinner. She was unprepared to fight this as she thought it would be too humiliating publicly, especially within the church, and she feared it would be destructive for her children and other family members. There have been countless circumstances. A woman was visiting a women's centre in Illawarra and was verbally abused and threatened by a worker in front of the coordinator of the centre, where she was told, 'Get your dirty lezzo friends out of the centre.'

These are not the sorts of circumstances that any of us want to see our fellow citizens having to face, and this piece of legislation does allow us that opportunity to move in the right direction. I have many other examples here, including people who wanted to give birth and felt they needed to move interstate in order to have both of their names on the birth certificate. When a young woman at a school in regional New South Wales told her friend that she thought she may be a lesbian, the rumour circulated in the school and she was held down by students in the car park afterwards and a car was driven over her feet. She was too frightened to tell the school authorities or to seek medical advice or contact the police for fear of further violence or of having to tell her parents. None of us want to see these circumstances happen to people in our community. The government has a capacity, through changing regulation and being involved in public education campaigns, to show leadership on this issue and ensure that people do not face the kind of discrimination that unfortunately so many people currently do.

It is good to see Senator Santoro in the chamber, because I know this has also been an issue for people in the aged care sector, where same-sex couples currently can be discriminated from accessing particular aged care facilities. It is an issue we will be dealing with in legislation next week, where I will be moving some amendments to ensure that people's rights are recognised within the aged care sector.

I do not know whether there has been any discussion to date about the private member's bill proposed by Liberal MP Warren Entsch. Today's front page of the *Melbourne Star* newspaper indicated that Mr Entsch's bill is only about establishing a reporting mechanism on discrimination, rather than actually addressing discrimination. What we need to be doing is dealing with legislation such as this that seeks to remove that discrimination. It is good to have reporting mechanisms on the discrimination that exists. It was indicated earlier that that is part of the inquiry that HREOC is undertaking. But, in terms of moving forward and addressing these issues, we need legislation that deals with discrimination, as this particular piece of legislation does.

I want to deal with one issue concerning the obligation that we as a country have to stand up for human rights and stand up in opposition to discrimination not just within Australia but also overseas. This is an issue that the Australian government has been very involved in. There was a human rights conference in Vienna in 1993, at which the Australian government committed to raising in the international arena issues of discrimination against people with respect to sexual orientation. The Australian government was very active in that. Indeed, when the Howard government was elected in 1996 it continued to play this role in raising issues about sexual orientation within the international arena and involving that in its human rights dialogue,

for example, with countries such as China. But it is my understanding that the Howard government is no longer continuing that level of advocacy. Indeed, I am certainly keen to hear whether there has been a change in policy and, if so, why that has occurred. For me, that has been highlighted in a number of instances that have occurred recently, where we have seen same-sex discrimination in particular countries. I have written to the foreign minister and asked questions in Senate estimates regarding the need to ensure that these issues are raised and what representations the Australian government and the foreign minister have made about these circumstances.

One such issue on which I am yet to receive a reply relates to a situation in Uganda, where a newspaper published a list of names of people they sought to out as being gay or lesbian. Many of these people have subsequently been arrested and many others are in hiding; indeed, a number of them are part of the Uganda Green Party as well. The Ugandan government does not have a good track record on these issues, and I have asked the Minister for Foreign Affairs what representations are being made by the Australian government about these activities happening overseas.

I mention also the criminal sanctions for homosexuality that members of the government raised here when two young boys were hanged in Iran some time ago because of their sexuality. I have raised the issue before with the government about whether representations were made on this issue. My recollection is that the answer I received was that representations were made about opposition to the death penalty, but I did not hear that there were any representations made about these specific instances of the death penalty being imposed because of homosexuality.

I know the government has been active in this area in the past, and I want to encourage the government to continue to speak out in international fora about these issues for all people, whether they are Australian citizens or not. We had an example last year of an Australian tourist and a Fijian who were sentenced to two years jail for engaging in consensual homosexual sex, which was an offence under the Fijian criminal law. It so happens that the Fijian constitution was changed in 1997 so that there cannot be discrimination based on sexual orientation, and so their case was overturned in the Fijian court on constitutional grounds. But there was much activity within the Australian community on this issue, and I was certainly very involved in the activities, campaigns and writing to the foreign minister to ask him to speak out on this. But we did not hear any comment from the Australian government on that issue, so this is one area where I really encourage the federal government to take up the mantle they have held in the past in speaking out against this kind of discrimination when it happens not just in Australia but around the world.

We are seeing fantastic things happen around the world. The rest of the world is moving towards recognising same-sex partnerships. The list of countries that have decided to establish civil unions or civil partnerships is very long: Denmark, Norway, Israel, Sweden, Greenland, Hungary, Ireland, France, South Africa, Germany, Portugal, Finland, Croatia, Luxembourg, New Zealand, the United Kingdom, the Czech Republic, Slovenia, 10 states within the United States, next year Switzerland will establish civil unions, the Netherlands, large parts of Spain, Belgium, and three states in Canada. All these countries have recognised same-sex marriages so it is a direction that internationally we see the community moving in.

I do share the optimism of the speaker prior to me that we will get there in Australia. Because I do share that optimism that we will see change in Australia, I feel disheartened by the experiences of discrimination that people currently face. I am an optimist and I think we will see this discrimination removed, but until it is removed I feel for those people who continue to face that discrimination. I want to sum up with an optimistic comment, which again comes from Mr Justice Michael Kirby, who said:

> The journey to enlightenment in Australia is by no means complete. But on the issue of sexuality, it has certainly commenced. As the United Nations High Commissioner for Human Rights told the recent conference in Montreal it is a matter of fundamental human rights and basic human dignity. In the end, it is not only about gays. It is about all people and the quality of freedom and mutual respect in the society that we want to live in. The momentum is unstoppable.

I agree with Justice Kirby that the momentum is unstoppable. I see this bill as part of that unstoppable momentum; hence, I commit the Australian Greens to supporting it and I commend it to the Senate.

Senator KIRK (South Australia) (5.03 pm)—I rise to speak on the Sexuality and Gender Identity Discrimination Bill 2003 [2004]. Consistent with Labor's longstanding policy of removing discrimination against the gay, lesbian, bisexual, transgender and intersex community, known as the GLBTI community, I support the intent of this bill. As I read it, the bill will provide avenues for redress for GLBTI citizens who have been discriminated against in the public and private sectors, and it will legislate against vilification on these grounds. In essence this bill will prohibit discrimination against sexual minorities, transgender and intersex citizens, and it legally recognises same-sex couples under Commonwealth law.

As I have said previously in this place, we live in a time when most Australians know someone who is in a same-sex relationship. This means that most of us have some understanding and appreciation of the difficulties these Australians face in their everyday lives because the law provides no recognition of their relationship. I firmly believe that the parliament should remove discrimination on the grounds of sexuality, and that we should outlaw harassment and incitement to violence on the basis of sexuality.

To remove discrimination the Australian Labor Party took action when we were in government, and we have continued to take action in government at the state level. In Labor's policy platform we commit to supporting legislative and administrative action by all Australian governments to eliminate discrimination, including systematic discrimination on the grounds of race, colour, sex, religion, sexuality, disability, genetic make-up, political or other opinion, national or social origin, property, birth or other status. Specifically, and in the context of this bill, the Labor Party platform supports the enactment of legislation prohibiting discrimination on the grounds of a person's sexuality. Labor strongly believes that every Australian has the right to be free from unlawful discrimination, vilification and harassment. To that end, homophobic violence and intimidation are regarded by us as totally unacceptable in a peaceful, tolerant society like ours.

My Labor colleagues and I are committed to taking comprehensive steps to address systematic discrimination against gay and lesbian Australians. We are committed to delivering equality between de facto heterosexuals and same-sex couples. Today I think it appropriate to acknowledge the strong interest that has been shown in this issue by the Australian Democrats, particularly former senator Brian Greig, who drafted the bill be-

fore us this afternoon. I would also like to put on the record that, whilst I believe Labor's approach could differ somewhat in its terms and perhaps in its drafting, generally speaking we support the thrust of the bill before the Senate today because it is a step in the right direction. As I have said, Labor have a longstanding commitment to remove discrimination against same-sex couples, just as we oppose discrimination against other groups within our Australian community.

In recognition of the support that the Australian Labor Party has for its commitment in this area, Labor's shadow Attorney-General, Ms Nicola Roxon, has recently publicly released an exposure draft of a bill entitled the Sexuality Discrimination Bill. This bill has very similar provisions to the one that we are looking at here today yet also some different approaches. But generally the thrust of the bill is the same. Currently the shadow Attorney-General and Labor are conducting consultations on relationship recognition for same-sex couples. The essence of what Labor wants to do is to remove discrimination in Commonwealth legislation, a process that the states have followed. It also needs to be done at the Commonwealth level in particular areas, for example social security, taxation, veterans' affairs and Medicare.

Over the years, particularly in recent times, we have seen Labor state governments and those in the Territory take steps to address discrimination against their citizens in same-sex relationships under state and territory laws. But, somewhat disappointingly now, for 10 long years we have seen no attempt at all by this government to confront the legal obstacles that are experienced by gay, lesbian, bisexual, transgender and intersex Australians.

We have seen no attempt at all by this government to actually take seriously the genuine concerns about ongoing discrimination in a range of areas under federal law. As recently as just a few weeks ago, Labor called on the Howard government to address discrimination against same-sex couples in Commonwealth legislation—something that Labor have been doing for some time now. This call came after a recent decision by the Administrative Appeals Tribunal in which the AAT ruled that the definition of 'spouse' in taxation law means a man and a woman. The effect of this decision means that same-sex couples are subject to capital gains tax on property settlements after the relationship breaks up. This is in stark contrast to heterosexual de facto couples, who can access relationship breakdown laws and gain relief from them.

I understand that, whilst the AAT in their reasons did express some sympathy for the applicant's position, they made clear that their hands were tied by the legislation and that they had no alternative but to interpret the legislation in the way I have just described—namely, that 'spouse' in taxation law means a man and a woman. This decision I believe clearly demonstrates the pressing need for this government to take action now to remove discrimination against same-sex couples in Commonwealth law, particularly but not exclusively in areas concerning financial matters. As we all know—and it is a disgrace—time and time again the Prime Minister and the Attorney-General ignore the continuing discrimination faced by same-sex couples in key areas such as superannuation, taxation, health and welfare benefits. And, despite the government's promises in 2004, it has not even fixed superannuation properly for same-sex couples. It is still the case that Commonwealth public servants are not treated equally if they are in a same-sex relationship.

In the time available to me today, I would like also to draw the Senate's attention to a national inquiry that has been referred to by

a few other speakers here this afternoon. The Human Rights and Equal Opportunity Commission, HREOC, is conducting a national inquiry into discrimination against people in same-sex relationships in respect of financial and work related benefits. As other speakers have said here today, HREOC recently released a discussion paper on this topic and a detailed research paper which identifies Commonwealth legislation that discriminates against same-sex couples and their children. This was the second discussion paper released as part of the 'same-sex, same entitlements inquiry'. In releasing the second paper, the President of HREOC, Mr John von Doussa QC said:

> Same sex partners living in a genuine relationship are denied the entitlements most families take for granted, such as: carer's leave when their children are sick; tax rebates for dependents; and a guarantee that their partner will receive their superannuation death benefits.

Human Rights Commissioner, Graeme Innes, said:

> Discrimination occurs in many of the fundamental aspects of family life governed by the Commonwealth, including: employment conditions; health entitlements; social security; tax; superannuation; family law; aged care and migration.

That is virtually the full gamut of the areas of Commonwealth responsibility.

The same-sex, same entitlements inquiry received more than 350 submissions in response to its first discussion paper, and the inquiry is now inviting comments on the second discussion paper by 3 November this year. Already HREOC has identified more than 80 pieces of legislation in Commonwealth law that need to be changed to bring them into line with the rights conferred on heterosexual couples.

Labor's track record in this area is very strong, commencing with the reforms implemented by the Keating government. By way of one example, the ban on gay and lesbian people working in the military was removed in 1992. I am proud to say that Labor state governments have achieved far-reaching reforms. New South Wales, for example, was one of the first to put gay and lesbian couples on an equal footing with those in heterosexual de facto relationships. Since then the other states have followed suit and have also moved forward and introduced significant changes. Labor is resolute in its commitment to removing discrimination against the gay, lesbian, bisexual, transgender and intersex communities; however, sadly for the people of Australia, the Howard government has completely neglected this area. Labor are working hard to gain office at the next election so that we deliver on our commitments.

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.14 pm)—Thank you, Mr Acting Deputy President. As you know, I was not planning to speak on the Sexuality and Gender Identity Discrimination Bill 2003 [2004], but I was very interested in the remarks that the previous speaker had made about the elevation of Labor state governments and the Keating government. Regrettably, in a speech where undoubtedly the senator spoke with a degree of sincerity about matters that she believed in, she was still able to involve, I thought, some fairly cheap political shots, to be quite frank. I think this is unfortunate. This is a debate which the community has had for a considerable period of time, and one which will continue. But the Howard government, I think, has a very strong record in the area of human rights, and I for one would not accept that this government is second to any government in ensuring that respect for human rights and the protection of human rights. We are all aware there are significant challenges in the modern community, but this is a debate in which I think the Labor Party will emphasise issues which perhaps are not issues with

many in this chamber. But there is a variety, and so my comment to you, Senator Kirk, is that you are quite entitled to put a carefully thought out argument which puts your views but it would be a help if you could avoid the odd cheap shot in an area which is a very important debate.

Senator FIERRAVANTI-WELLS (New South Wales) (5.16 pm)—I rise this evening to contribute to the debate on the Sexuality and Gender Identity Discrimination Bill 2003 [2004]. I would at the outset make the general observation that the government is committed to removing discriminatory treatment in federal laws. This commitment intends to remove discrimination against all interdependency relationships. Indeed, both the Prime Minister and the Attorney-General have made public comments on the need for removal of discriminatory treatment at the federal level. The government is currently examining discriminatory treatment against interdependency relationships, but in this complex area it is important and appropriate to deal with the issue on a case-by-case basis.

I would like to just focus on the government's commitment to protecting human rights. The government condemns discrimination as understood in international human rights law. It condemns such discrimination in all its forms. All in our society should have the opportunity to participate in our community and to experience the benefits associated with that participation. On the other hand, I also think that all in society should also accept the responsibilities that flow from such participation without fear of discrimination.

The Australian government is committed to the protection of human rights. Our approach to human rights is a reflection of our liberal democratic ideals. It is also a reflection of our belief that justice and human dignity are basic rights that all in society should enjoy. Human rights in Australia are underpinned by the interaction of important institutions within our legal framework. Australia is one of the oldest democracies in the world, with strong democratic institutions. Our Constitution and our common-law system are also important institutions which protect human rights.

In addition, current legislation, including anti-discrimination legislation at the Commonwealth, state and territory levels, protects and promotes human rights in Australia. Australia has a wide range of programs, services and support mechanisms designed to assist every Australian to achieve their full potential. The government is committed to ensuring that such programs and services target those most in need while encouraging all Australians to contribute in the community to the extent that they are able. At a federal level there is already an extensive framework of legislation protecting human rights and prohibiting discrimination on various grounds. The state and territory governments have also enacted their own anti-discrimination legislation and established various human rights institutions that operate in the various states and territories.

I would now like to now turn to some previous comments that the Prime Minister and the Attorney-General in particular have made in relation to sexuality discrimination. Both the Prime Minister and the Attorney-General have previously indicated, on various occasions, that the Australian government is committed to the elimination of discrimination against same-sex couples. This issue ought properly to be treated, as I said, on a case-by-case basis. I would particularly like to put on the record some comments that the Prime Minister made as far back as 24 August 2001, when he stated:

I think people take the view that individuals make their own preference, you know, choose their own

lifestyle in these things and people shouldn't be the subject of discrimination if they choose a particular lifestyle.

… … …

... I don't think people should be in any way penalised or discriminated against if they are homosexual. I mean I certainly don't practice any kind of discrimination against people on the grounds that they're homosexual, I think that is unfair.

… … …

I mean my view is that we should be completely tolerant and fair minded about people's sexual preference.

When asked about civil unions in December 2005, the Prime Minister stated:

I am strongly in favour—as my Government has demonstrated—strongly in favour of removing any property and other discrimination that exists against people who have same-sex relationships.

Also, in June this year, speaking in Sydney, the Prime Minister stated:

I am in favour of removing areas of discrimination and we have and I'm quite happy on a case by case basis to look at other areas where people believe there's genuine discrimination, but I think they should be looked at on a case by case basis. I don't think it's the sort of thing that can be done in an across the board fashion. We made some changes in relation to entitlements a couple of years ago and if there are other areas of genuine discrimination, then I'm in favour of getting rid of them.

The extent to which sexuality discrimination—particularly differential treatment of same-sex relationships—exists in our society is a very complex question. It is a question which the government is looking at closely. The government believes that a single piece of legislation is not the most effective way to address the differential treatment experienced by persons in same-sex couples or those who identify their sexuality as other than heterosexual, and such legislation is likely to have unintended consequences.

The Democrat member's bill is essentially a replica of existing federal anti-discrimination laws, such as the Sex Discrimination Act 1984 or the Disability Discrimination Act 1992, with terms like 'sexuality' replacing 'sex' or 'disability'. It is a blunt instrument for a complex task. For this reason the government believes that instances of inequitable treatment should be considered on a case-by-case basis with regard to the underlying legal and policy framework in which the discriminatory provisions operate. A good example of the need to give such treatment detailed consideration is superannuation. Changes to large programs, like superannuation, may involve significant future costs, and further work would need to be done to prepare those programs for those changes.

I would now like to look at action that has been taken to address differential treatment and discrimination. The government has a strong record of condemning discrimination in all its forms. The government's practice has been to address discrimination where we find it. Indeed, the government already does much to remove differential treatment of same-sex couples. In the area of interdependency relationships, in particular, the government has already taken significant action to address differential treatment and discrimination.

I would like to look at superannuation, where this has been very evident. Superannuation laws have been changed to include same-sex partners as potential beneficiaries of death benefits in some circumstances. In 2004 the government amended the Income Tax Assessment Act 1936, the Superannuation Industry (Supervision) Act 1993 and the Retirement Savings Accounts Act 1997 to expand the range of potential beneficiaries of tax-free superannuation death benefits to include 'interdependent relationships'. It is very important to note that this would in-

clude, for example, elderly siblings intending to live out their lives together, adult children living with and caring for their parents, as well as same-sex couples, who may not otherwise be recognised as dependants.

Tax-free superannuation death benefits could previously be paid only to spouses, to children under 18 years of age and to those who could establish financial dependency on the deceased. Special provision has also been made to include in the definition of 'interdependency relationships' circumstances in which a close personal relationship does not meet the other elements of the definition because of a disability.

Even after the amendments, it will be the governing rules of the fund which will determine whether or not a trustee can make a payment to a same-sex partner. The government's choice-of-fund legislation will enable same-sex couples to choose a superannuation fund that best serves their needs—that is, one with governing rules that allow payments to same-sex partners.

Another area in which the government has made progress in eliminating discrimination against people in interdependency relationships is in the entitlements for Australian Defence Force employees. The government decided on 10 October 2005 to extend certain conditions of service entitlements to other interdependent relationships of ADF members which will include the same-sex partners of ADF members. Amendments will be made to ADF conditions of service, documents and relative determinations under section 58 of the Defence Act 1903.

Since 1 December 2005, ADF members in recognised interdependent partnerships, including same-sex relationships, have been eligible for the same range of conditions of service provided by Defence to those in recognised de facto relationships. The concept of interdependent relationships allows recognition of a range of relationships where there is a real reliance by the parties on each other and therefore has relevance to the members' ability to balance work and family responsibilities by accessing conditions of service that are available for that purpose.

A wide range of work-family provisions is now available to assist all members of the Australian Defence Force in recognised interdependent partnerships. These include parental leave for all members with parental responsibility for a child, carers leave, compassionate leave and compassionate travel, housing assistance, rent allowance as a member with dependants or service residents, house-hunting trips, reunion travel, removals including for the non-service partner and/or family on breakdown of the relationship, separation allowance and bereavement payment to legal representatives.

Another area where discrimination has been addressed is immigration. In December 2005, the government asked the Minister for Immigration and Multicultural Affairs to bring forward a submission to the government on the scope of providing for the full range of interdependent relationships in applications for temporary and permanent skilled visas. In the area of migration, people who share an interdependent relationship with an Australian citizen or permanent resident are able to apply for interdependency visas to allow them to reside in Australia. This includes people in same-sex relationships.

Interdependency visas were created as a class of visa in 1991 by regulations under the Migration Act 1958. The regulations state that two people are in an interdependent relationship if they live together, are closely interdependent, have a continuing commitment to mutual emotional and financial support and are not related or part of the same family unit. The government, nevertheless, makes

non-discriminatory distinctions in some areas such as in relation to marriage, adoption of overseas children and access to IVF.

Another area is in employment. Federal anti-discrimination laws do not cover discrimination on the ground of sexual preference in general terms. However, federal laws do address such discrimination. Discrimination in employment on the ground of sexual preference is a ground for lodging a complaint under the Human Rights and Equal Opportunity Commission Act 1986. The commission's jurisdiction to inquire into such complaints arises from Australia's obligations under ILO convention 111, the Discrimination (Employment and Occupation) Convention.

When a complaint of discrimination in employment on the ground of sexual preference is received, the commission attempts to resolve it through the process of conciliation. If the complaint cannot be resolved through conciliation and the president is satisfied that discrimination in employment has occurred, the president must report the matter to the Attorney-General. The president can also make recommendations to the Attorney-General to address any damage suffered by the complainant. The Attorney-General is required to present the report to parliament within 15 sitting days of receipt of the report.

Under the Human Rights and Equal Opportunity Commission Act 1986, HREOC also has the power to inquire into any Commonwealth act or practice which may be inconsistent with specified human rights. The same process of attempted conciliation, possibly followed by a report to the Attorney-General, applies. The Workplace Relations Act 1996 contains provisions that prohibit an employer from dismissing an employee on various specified grounds, including sexuality. Complaints of unlawful dismissal on the basis of sexuality can be lodged with the Australian Industrial Relations Commission.

I have looked at some areas where we have already taken considerable action, and the government's commitment continues into the future. Despite the inherent complexity of reviewing such large schemes as superannuation, several key areas for reform are being discussed—superannuation, for example. The government remains committed to examining options to extend interdependency to members of Australian government superannuation schemes. Most Australian superannuation schemes are accumulation schemes which can be readily adapted to extend benefits to people in an interdependency relationship, with no additional cost to the scheme.

The PSSAP, which was opened to new public sector employees from 1 July 2005, is an accumulation scheme. By introducing the PSSAP, the government has enabled death benefits to be available to dependants, which can include a person in an interdependency relationship. PSSAP members can also nominate a dependant, dependants or a legal representative to receive those benefits. However, the closed defined benefits schemes, the CSS and PSS, have very prescriptive rules to determine eligibility for benefits.

Unlike accumulation funds such as the PSSAP, benefits in the CSS and PSS are met from the budget when they become payable rather than from the accumulated contributions and earnings of the individual member as they accrue, such as in accumulation schemes. CSS and PSS benefits are usually provided in pension form to eligible spouses and children and are payable for life in the case of a spouse. Extending eligibility for death benefits from the CSS and PSS to people in an interdependent relationship will increase scheme costs and the government's

unfunded liability because some people would then qualify for pensions, including lifetime pensions, which they would not otherwise receive.

Because of the design of these schemes, a range of technical matters and budgetary considerations need to be fully examined. Early options considered by the government have not proved feasible, and the government is seeking actuarial analysis of a broad range of options to advance interdependency for the CSS and PSS and across other Australian government defined benefit schemes. The government remains committed to making provision for CSS and PSS members in an interdependency relationship.

Australian immigration legislation has long had provision for Australian citizens or permanent residents to sponsor an interdependent partner for migrant entry to Australia. The interdependent partner visa subclasses are part of the family stream of the migration program. Until recently, however, there has been no provision for non-citizen primary applicants in a range of other visa classes to include an interdependent partner in their visa application as their dependant—that is, as a secondary applicant. This is also being looked at, and DIMA is working towards extending provisions in a range of other classes of visas to assist in this area.

Time does not permit me to go into areas in defence where the government is also looking at making changes. Suffice it to say, as I said at the beginning of my speech, that the government does have a commitment to removing discriminatory treatment in federal laws, and this commitment intends to remove discrimination against all interdependency relationships.

Senator MOORE (Queensland) (5.36 pm)—It is really pleasing to be part of a discussion in this place where we have so much mention of the word 'commitment'. I think it is very valuable at this time. It is a bit of a shame, really, that issues that do encourage us to look at what we can do to improve our laws are sometimes debated in this period of business late on a Thursday afternoon. A few of us are interested, but nonetheless we can reinforce the views.

The bill before us, moved by Senator Bartlett this afternoon, has a strong title which refers to sexuality and gender identity. When Senator Greig moved this bill and spoke on it, I remember hearing with interest that one of the first things he said in his contribution was that this bill was an attempt at moving forward a piece of legislation that had been moved—unfortunately at a time when I was not listening—by a previous Democrat senator, Senator Spindler, in 1995. What is most frustrating is that so many of the issues that came into the discussion in this place in 1995 and then again in early 2000 through Senator Greig need to be reconsidered now in 2006. I think there is a bit of a message here for all of us.

I have enjoyed hearing the discussions this afternoon by people around the chamber on the attempts that have been made across a whole range of legislation and also the commitment that is shared by all of us, I hope, to ensure that we do not support any legislation or a society that allows discrimination against anyone. The Sexuality and Gender Identity Discrimination Bill 2003 [2004], in particular, addresses those people who are identified as gay, lesbian, bi-gender, transgender or intersex. One of the more frustrating elements is that whenever we get into these discussions there seems to be great confusion and almost diffidence amongst people when they try to look at what the definition is. In terms of that process, it would probably be better for all of us if we looked at people first and, subsequently in the discussion, looked at the particular reasons that the legislation is applying to them.

In terms of this afternoon's discussion, I want to put on the record my disappointment that now, in 2006, we still need to go through so many pieces of legislation, for which we are responsible at the federal level, that have not effectively provided safety, security and service for people who are from what has become known as the GLBTI community. We can all work together to implement the commitment that seems to be dripping from the various rhetorical statements that we have heard. There has not been in this place, in recent times anyway, any statement that any of these forms of discrimination should be allowed to continue. I think we have moved well past that stage, and that is something positive on which we can build.

We can go through the various realms of federal legislation—and we have heard several senators mention them already this afternoon. There are our social security services and then there are the superannuation debates that have been going on for so many years. Senator Sherry has been taking up the Labor cause in those debates for many years. There are also the areas around defence services, the specialised tax areas and issues of land and issues of title. Those are basic areas which all of us seek to work with, but they still contain elements whereby people who identify with the GLBTI community feel that they are not getting a fair go; they are not receiving the respect that all of us should be able to understand.

It is not good enough that we come here and reinforce our commitment to make it better. What we should be able to do, as Senator Fierravanti-Wells has been able to do in some ways, is point out what has changed. But in 2006 we should not be saying that we are moving towards establishing a result in this area. We should be able to say that we have achieved the result. It has been happening across all our states, although not as quickly as it should be. Discussions similar to those we are having here this afternoon have been taking place in every state and territory in Australia.

At this point in time, the legal system in each of those jurisdictions has moved closer to achieving equity than we have. That is not just my opinion. It has been put through the media; it has been addressed by law councils and, I think to our shame, to an extent by the United Nations. The definition of equity has not been met by our federal legislation, and no-one denies that. That is almost more disappointing: no-one denies that we have not achieved equity. What we discuss is that we are moving towards it. The Prime Minister has stated his commitment to making sure that it will happen. The Attorney-General has also done so. People from the Labor Party have said that they are moving towards it. Our shadow Attorney-General, Nicola Roxon, has moved a bill in her own name in the lower house that aims to remove discrimination. But how long does it take? Will we be sitting here at this time in general business on a Thursday afternoon in 2007 having another go at ticking off the audit of what has been achieved and what has not—once again reinforcing our general and combined and strongly stated commitment?

If we are going to provide the service to constituents across our community for which we have been elected, instead of saying that we are moving towards achieving a result we should be able to say, within a reasonable period of time—and I hesitate to put a date on it; it would be far beyond my ability to do so—that we can point to the fact that, under the social security legislation, all areas of interdependent relationships are acknowledged and that the rules have changed so that people are treated the same way. We should be able to say that the promises that have been made in this place as a result of previous debates on superannuation—where year in, year out the Australian Democrats, sup-

ported at times by the Labor Party, have moved clauses in the midst of the other legislation—will ensure that there is equitable treatment of people in interdependent relationships. In the last round of debates on superannuation, the commitment was made that the changes would occur. We have been told again that the changes will occur, that the commitment exists, but the changes have not been made.

We need to be certain that we will not always be talking about what is going to happen. We need to face our responsibilities under the raft of international law, state law and federal law to ensure that equity will be in place and that we will no longer be talking about other people's responsibilities or how one piece of legislation works this way and then how we can always go to the anti-discrimination commission and implement another piece of legislation in another way. We need to ensure that there will be such a strong underpinning of safety and security in our federal system that there will be no need for fragmentation.

When we have achieved that level of certainty, we will have done our job. We will then be able to say that people from the GLBTI community are being given the rights, the responsibilities and the respect that they each should have as a member of the community and that, under law, they will be seen as the same as other people in terms of the way we impose legislation. Their rights as individuals will be respected and protected across all other forms of law.

I remember when I was working in the Australian Public Service in the 1980s. There were great debates at that time around the superannuation laws and there were particular debates about the human rights treatment of people who were then identifying as gay partners. It was pretty tough in the Australian Public Service in the eighties to identify as being part of a same-sex relationship for the various kinds of conditions of service that applied to partners. At that time, the final decision and delegation as to whether your partner would be able to obtain basic rights, such as travelling when you were moving to a new place of employment or acceptance to attend conferences as a right as a partner, was made at various levels in the Australian Public Service. We would actually try to find ways around the regulations to ensure that delegates would be able to say, 'Yes, you and your partner will be treated as a partnership for these entitlements.' We yearned for the day when we would not have to play those games around the rules and legislation, so that people would be able to identify in their own right and say, 'This is me, this my partner, and this is how we interrelate.' That has improved, but I am not confident that that is the standard right for people across our community in all forms of interaction with their employers and with the various organisations to which they wish to belong.

That is the basis of the legislation which is in front of us this afternoon. It is very detailed legislation, and I believe that was done quite deliberately—in 1995 and, again, two or three years ago when Senator Greig brought it forward. It remains current. If you go through the sections of the bill in front of us, each of those sections needs to be addressed. It is disappointing that, in 2006, I cannot feel confident as a member in this place that the people who put me here would know that this is their right. I do not feel confident that the same people with whom I worked in 1985—some of whom are still surviving in the Australian Public Service, bless them—would have the same rights as we were trying to achieve for them in the early eighties. It should not be a debating point. It should not need to be discussed—but it needs to be, because it needs to be entrenched in law.

It is one of those arguments: should it be in law before it is accepted in our general environment, or is it the other way around? Because in many ways, what we are debating is not just what is going into the legislation; it is the confidence that we have as a community that this is the right thing to do—and that is one of the challenges for those of us who have the privilege of being in this place and having that ability to make an impact through change and to be leaders. If our parliaments can state proudly that we believe that the GLBTI community must have the same protections, rights and responsibilities as every other form of community that we have, that is actually what permeates social conscience. That is how communities think and behave. There is no question. The particularly frightening element of this legislation, which has to look at violence and discrimination against people and their being treated in bad and evil ways—and I use those adjectives directly—is that we should not need to do that, but we do. What we can do as a community and as a parliament is ensure that we say that should not happen and that we will legislate to ensure that it does not happen. More importantly, we should say publicly that it cannot happen.

Senator BERNARDI (South Australia) (5.48 pm)—In commencing my contribution to this debate, I recognise Senator Moore for her smooth, well-reasoned and, I think, very articulate contribution to this debate on the Sexuality and Gender Identity Discrimination Bill 2003 [2004]. There are some points that I disagree with Senator Moore on, but I would have enjoyed listening to her explore more fulsomely some other aspects of the legislation. Indeed, had she taken her full allotted time it would have been of great interest to me and, I am sure, the people of Australia.

Nonetheless, I would like to touch on Senator Moore's closing comments. Senator Moore did mention that this was not just about the legislation; this was about a broader reaffirmation to the Australian community about the intentions of the parliament and the empathy that it has for situations of discrimination. I believe it is specifically about the legislation. We cannot just go into motherhood statements. We need to make sure that all legislation that passes through this place is well drafted and well crafted, that it honours the original intention of the drafting and that there are no unintended consequences of such debate.

But, in opening my contribution to this debate, I would like to quote former Senator Greig, who, in an online opinion piece on Tuesday, 17 January this year, said:

> The Howard Government has done more to legally recognise same-sex relationships in the past 13 months, than previous Labor governments did in 13 years.

He went on:

> Under Howard—

and I would prefer that to read 'Prime Minister Howard'—

> same-sex couples have limited rights to superannuation death benefits, are recognised in passport application processes and beneficial definitions in antiterror laws, while those in the military now have equal rights to relocation and accommodation expenses and access to defence force home loan grants.

I would suggest that former Senator Greig has recognised the immense contribution that this government has made. It is not just about motherhood statements. It is not simply about putting forward a general feeling or allowing people to pick up on the intentions of the Senate. This is about directly addressing discrimination in all its forms across the entire legislative framework on a case-by-case basis.

I would also like to remind the Senate that Senator Nettle, in her address, touched on the

outrage and, I would say, the evil of hanging two young men in Iran for being homosexual. This of course is reprehensible. It is intolerable in a modern day and age to discriminate against people so vehemently as to put them to death for a sexual practice. But in saying so, and in agreeing with Senator Nettle, you could understand my concern when the Greens senators seem so keen to align themselves at various levels with the fundamentalist Islamic movement that is arising through parts of the Middle East. And rather than try to readdress this specific issue, I would like to read another quote from another senator in this place, Senator Mason. During an adjournment speech, Senator Mason said:

> The fundamentalists of Hezbollah make no bones about their belief that sexual relations between consenting male adults should be punishable by death. In fact, only last year the Lebanese Shi'ite movement's Iranian patrons hanged two young men for that crime. There were Hezbollah flags in abundance during recent Australian street protests against Israel's military action in Lebanon, but Australian Greens Senator Kerry Nettle did not let the flamboyant presence of the jihadist lobby deter her from speaking at an anti-Zionist rally in Sydney.

We know, and it has been reconfirmed today, that Senator Nettle is an outspoken supporter of same-sex marriages and legal equality for gay couples, as many senators in this place are. And yet the senator from New South Wales was willing to make a common cause with exponents of a movement that would make homosexuality a capital offence. Senator Mason also said this is a sinister:

> … 'Red-Green' alliance between the Left and Islamic fundamental radicalism … [It] is a particularly bizarre manifestation of the 'politics makes for strange bedfellows' principle.

Senator Mason announced that in an adjournment debate, and I salute him for identifying the ridiculous alliance that has arisen where you can support fundamentalist Islam and same-sex relationships. It is unbecoming of any political party.

I have mentioned that former Senator Greig has already recognised the government's commitment to this cause and the achievements we have made. What I would like to suggest to the Senate tonight is that we really need to redefine this bill. This bill should not be confined to sexuality and issues of sexuality. I really do believe that this issue is about interdependent relationships. They can be sexual relationships, but they can also be relationships based simply on trust and need and requirements. I do not think we should confine our arguments in this regard.

The extent to which sexuality discrimination, particularly the treatment of same-sex relationships, exists in our society is a very complex one. It is a question that this government has looked at and continues to look at. It has reaffirmed its commitment, through the Prime Minister and through a number of our ministers, to ensure that it can answer an increasingly complex issue in the best and most positive possible way. This government does not believe that a single piece of legislation is the most effective way to address the inequity and discrimination that undoubtedly do exist at some levels in our society. My fear is that this bill is essentially a replica of existing federal antidiscrimination laws, like the Sex Discrimination Act 1984 or the Disability Discrimination Act 1992, but simply with terms like 'sexuality' replacing 'sex' or 'disability'.

It is effectively a very blunt instrument. It is akin to trying to peel an orange with a sledgehammer; it is not particularly effective. The result is the casing will ultimately be removed, but not in a productive or effective manner. It is for this reason that the government believes that instances of inequitable treatment need to be considered on a case-

by-case basis with regard to the underlying legal and policy frameworks in which they find themselves. There have been numerous examples given by other senators today, such as superannuation. This government has made major changes in that area. We have talked about Australian Defence Force employees. We have talked about changes in the immigration act and employment. We have recognised these things, and it is right that we recognise the strides that have been made in this area.

This government would be perfectly entitled to rest on its laurels in so many areas. It was announced today that unemployment is at record lows; job growth and participation are at record highs. Interest rates are not only about three full basis points lower than the average achieved under Labor, but a full 10 per cent lower than the mortgage rates that householders had to pay during the Keating, Hawke and Beazley dynasties, that were going on when they were in charge of the Treasury benches. So while this government is entitled to rest on its laurels, it is not going to because it is continuing to make reforms. It is continuing to provide changes to ensure better aged care for the citizens of Australia. It is continuing to provide low-inflation figures and ensuring that the inflation tiger does not take hold. It is continuing to challenge the current thinking with regard to education policy. And it is continuing to talk about issues such as removing discrimination from agendas. So while it is entitled to rest on its laurels, it is not going to.

We are going to propose a range of changes going forward. These changes are already in the pipeline; we have a vision for the next 10, 20, 30 and 100 years for this country. It is a prosperous vision; it is a vision where all Australians can live in harmony and peace and equality. It is a vision that only the coalition government has, I might add. Part of this vision for the future of Australia—a fairer, more equal and happier, more productive Australia—is related to removing discrimination at all levels.

There are further changes to be made with regard to superannuation. There are further changes to be made with regard to immigration. There are further changes that are going to be made with regard to defence. Some of those changes have already been outlined today, but one of the key elements of this change—

Debate interrupted.

DOCUMENTS

The ACTING DEPUTY PRESIDENT (Senator Moore)—Order! It being 6 pm, the Senate will proceed to the consideration of government documents.

Torres Strait Regional Authority

Debate resumed from 7 September, on motion by **Senator Bartlett**:

That the Senate take note of the document.

Senator McLUCAS (Queensland) (6.00 pm)—I rise to speak on the Torres Strait Regional Authority annual report for 2004-05. Last Tuesday night I made a speech in the chamber about climate change and how that will affect the Torres Strait. The reason for me doing that was that on Monday we had the report of a body talking about the impacts of climate change in the South Pacific. I commended that group for bringing those issues to the attention of the Australian public. But my intention last Tuesday night was to bring to the attention of the Australian public the fact that Australian citizens in the Torres Strait and northern peninsula area are at the same risk as the people in the South Pacific.

Following my speech on Tuesday night, the *Courier-Mail* ran a story quoting me. I thank the *Courier-Mail* for giving to the people in the Torres Strait the attention that they deserve. But they also quoted comments

from the member for Leichhardt. Leichhardt also includes the people of the Torres Strait, as you would know. Mr Entsch said that I was scaremongering—he often says that about me; it is not true—but he then said that any talk of Islanders being forced to leave their homes was premature. The evidence does not support that.

I am not saying that people of the Torres Strait are going to have to leave next week or next year. But page 23 of the fourth draft report of the UN based Intergovernmental Panel on Climate Change says:

> Displacement of Torres Strait Islanders to mainland Australia is also likely to occur within this time frame.

The time frame is by 2050. That is in our lifetime. It is likely to happen, according to eminent scientists. They also say, on page 24 of that report, that king tides in 2004-05 and 2006 in the Torres Strait have highlighted the need to revisit short-term coastal protection and long-term relocation plans for up to 2,000 Australians living in the central coral cays and the north-west mud islands. I quoted that evidence on Tuesday night. So Mr Entsch saying that any talk of Islanders being forced to leave is premature is just not true. He is quoted as saying that the government has committed $300,000 'to address the problems caused by erosion'.

In the *Torres News* of 8-14 February, when he announced this $300,000 expenditure, he announced that the federal government would grant funding for an impact study researching the best solution to prevent coastal erosion. So it is not about addressing the problem; it is about a study to try to find out what we can do to address the problems of coastal erosion. I am led to believe and I understand that, as part of that study, scientists have had to bring tide gauges to three islands in the Torres Strait. But Mr Entsch is quoted in that same article saying, 'This nonsense she is talking about, installing local tide gauges, is totally pointless.' As part of the $300,000 that he announced earlier this year, scientists have had to bring in tide gauges.

That is the point I made on Tuesday night. We have no baseline data about the tide levels. We do not know what is happening in the Torres Strait. We do not know what the sea level currently is and we do not know, really, where the landmass is. That is why I am saying we need a full, intensive land and sea survey in the Torres Strait based on independent science. If we do not know what we have, we have no chance of working out how we are going to deal with it. I also urge this government to consult with the people of the Torres Strait. Torres Strait Islanders know their land and their sea better than anyone else, and they are the people who can tell us what we should be doing. I seek leave to continue my remarks.

Leave granted; debate adjourned.

Aboriginal and Torres Strait Islander Social Justice Commissioner

Debate resumed from 7 September, on motion by **Senator Crossin**:

> That the Senate take note of the document.

Senator SIEWERT (Western Australia) (6.05 pm)—I rise to take note of the report of the Aboriginal and Torres Strait Islander Social Justice Commissioner for 2004-05. This report again highlights the very significant health issues facing the Aboriginal and Torres Strait Islander peoples of Australia. I need once again to highlight the statistics that are affecting Aboriginal and Torres Strait Islander people.

I have said many times in this place, as have other people, that the difference in life expectancy between Aboriginal and Torres Strait Islanders and non-Aboriginal people is 17 years. If you then look at infant and child

health, the infant mortality rates for Aboriginal and Torres Strait Islander peoples are three times those of non-Indigenous infants.

Two of the three leading causes of death are chronic diseases of the circulatory system and cancer. Diseases include heart disease, diabetes and cancer. Just the day before yesterday there was a new study released showing that Aboriginal women are 66 per cent more likely to die of cancer than non-Aboriginal Australians. For men I think it was 58 per cent. In 2003, notification rates amongst Aboriginal and Torres Strait Islander Australians for the majority of communicable diseases were higher than amongst other Australians, with rates up to 93 times the rates of other Australians.

The West Australian Aboriginal child health survey reported that 18 per cent of Aboriginal children had a recurring ear infection, 12 per cent had a recurring chest infection, nine per cent had a recurring skin infection and six per cent had a recurring gastrointestinal infection. The rate of oral health and mental health problems is much higher in Aboriginal and Torres Strait Islander communities, and the same goes for disabilities. Australia is one of the healthiest countries in the world, yet our Aboriginal and Torres Strait Islander people have some of the worst health outcomes in the world—substantially worse than indigenous people, for example, in New Zealand, Canada and the US. In the US there is a five- to eight-year difference in life expectancy as opposed to the 17-year difference here. I am not saying that that is appropriate at all, but at least it is better than Australia's rate.

There is apparently nothing unique in the disease pattern or history of Aboriginal people to justify or to explain the differences between non-Aboriginal people and Aboriginal people. Aboriginal people are three times more likely than the general population to be sick, so they need more money. We need to address that in Australia by allocating significantly more resources. In Canada the last two budgets have injected $20 billion into indigenous health.

If you look at the fact that half the Aboriginal people over 15 already have established chronic diseases, it is essential that we start addressing this issue early in people's lives and also right now. Figures from the MBS and PBS systems show that every $1 spent on non-Aboriginal people equates to 40c spent on Aboriginal people. The big issue in our health care system is the lack of access to primary health care. Aboriginal people have much reduced access to primary health care and the programs that do exist—I acknowledge there are some programs—lack a systemic approach and lack funding, as I have just articulated. It is estimated that, in 2004, Aboriginal and Torres Strait Islander peoples enjoyed 40 per cent of the per capita access of the non-Indigenous population to primary health care provided by general practitioners.

There is a huge health challenge, and Tom Calma addresses this huge challenge in the excellent reports that he has consistently been producing. He has very recently articulated a 20-year plan to address Aboriginal health, because if we do not start addressing it now we will never address the 17-year gap in life expectancy rates. That is the point he repeatedly makes. We need to address this issue now or there will be a number of senators in this place continuing to say that Aboriginal health issues in this country are outrageous and are the same as in the so-called Third World nations, which I think, in a supposedly First World nation, should be unacceptable. I believe everybody in this place should find that unacceptable. *(Time expired)*

Senator BARTLETT (Queensland) (6.10 pm)—I would also like to speak to the report

of the Aboriginal and Torres Strait Islander Social Justice Commissioner. If people are going to read only one of the 72 documents listed in the *Notice Paper* today, I would suggest that this would be a good one for them to pick. The report from the Aboriginal and Torres Strait Islander Social Justice Commissioner is very comprehensive and thorough. What is important about it are not just the issues it raises but that it does so in a very fact based way and that it details what needs to be done and what progress has occurred. So it is not just a document bemoaning the state of things with regard to what is faced by Indigenous Australians; it is very specific and it particularly documents what needs to happen from here, including, I might say, actions to be taken by the commissioner and the commission itself.

One particular aspect of the report that I would like to draw attention to, because I think it is indicative of a wider problem at the moment, is the section that refers to Indigenous representation and Indigenous voices in public debate. The approach the government is currently taking with regard to a range of issues affecting Indigenous people is one that we all have varying views on and I think it would depend a bit on which particular issue you are focused on. But the one area of the government's approach which I am definitely critical about is their lack of action with regard to Indigenous representation and, frankly, their lack of action in responding to reports specifically like this one.

This report contains a recommendation identifying as a matter of urgency the need for the development of much clearer and more effective mechanisms to provide representation for Indigenous people on matters that directly affect them. It is a principle that has growing recognition—the need for prior and informed consent with regard to issues that are affecting people. We saw the government fail this quite drastically with regard to the changes with the Northern Territory land rights legislation. Regardless of your views about the plusses or minuses of those changes, there is no doubt that the process itself did not adequately involve the very people that were most affected—that is, the Aboriginal people in the Northern Territory, particularly the traditional owners. Even the Minister for Families, Community Services and Indigenous Affairs himself, Mr Brough, eventually—after the fact, unfortunately—acknowledged that the process was less than ideal. It is one thing for us in this place to complain about the process being less than ideal and not adequate for our needs, but it is a much greater failing when it does not meet the needs and requirements of the people directly affected by legislative changes.

Certainly in many of the consultations I have with Indigenous people, particularly in my own state of Queensland, concern about the lack of representation—the lack of a seat at the table, for want of a better phrase—comes up very regularly. There is no doubt that Indigenous Australians are in a very powerless position when it comes to us having a say in matters that affect them, including legislative changes, the administration of programs and issues to do with funding.

The recommendation regarding Indigenous representation urged a response from the government by the end of June. As far as I know, that has not happened—not even, 'No, we don't think this needs to happen'. I think it is totally unsatisfactory that there is no response at all. Very important proposals are put forward in this report, and the least that can be done by the government is to take them seriously and treat them with some respect.

I would like to take the opportunity to briefly note that Mr Calma and others participated in a forum today highlighting the development and pending adoption globally

of the United Nations convention on the rights of indigenous peoples. To date, the Australian government has not been supportive of that convention, which I think is a shame, but, regardless of whether the government is supportive, the fact is that this convention will be adopted. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Australian Law Reform Commission

Debate resumed from 13 September, on motion by **Senator Sterle**:

That the Senate take note of the document.

Senator CAROL BROWN (Tasmania) (6.17 pm)—Labor welcomes this important report by the Australian Law Reform Commission on Australia's sedition law. Few would disagree with the words of Irene Carr, Secretary General of Amnesty International, when she said in Adelaide on 8 September 2004:

... we live in an unsafe, an unfair and an endangered world.

I do not question the fact that most humans wish for a better world, one that is safe and fair and not endangered. I accept that the threat of terrorism and community violence represents a serious threat to this wonderful, complex society that we in this parliament are fortunate to represent. I do, however, disagree with Mr Ruddock if he thinks that the new sedition laws enacted last year will help to ensure a safe and fair society. Labor supports laws that will help Australia combat the threat of terrorism and community violence. These laws, however, must not compromise the very freedoms they were intended to help protect. This is so fundamental to the democratic ideal. The President of the New South Wales Council for Civil Liberties has said that the new sedition laws are:

... the most dangerous threat to our democratic system in our history.

It is no wonder, then, that the Australian Law Reform Commission has labelled its review of sedition laws in Australia *Fighting words: a review of sedition laws in Australia*. Ruddock's words show what he will do with the words of Australians.

The ACTING DEPUTY PRESIDENT (Senator Moore)—Senator, I draw your attention to the need to use the minister's title.

Senator CAROL BROWN—We must now fight for our right to speak words in freedom. The ALRC sees the very real potential for Mr Ruddock's ill-conceived laws to undermine the freedoms that are at the core of our rich and diverse society. I will take a moment to read from the report:

The ALRC shares the concern that these provisions do not draw a clear enough distinction between legitimate dissent—speech that ought not to be interfered with in a liberal democracy—and expression whose purpose or effect is to cause the use of force or violence within the state.

It is clear that, without important amendments, the sedition laws have the potential to be used in controlling Australia's media, arts and entertainment groups and anyone else who may wish to engage in some good old-fashioned political dissent. The laws create de facto censorship through the threat of prosecution.

What is ironic about the way in which the ALRC report came into being is that the government chose to ignore democratic voices of concern in the first place. The Senate committee chaired by Liberal Senator Marise Payne which reviewed the legislation recommended that the sedition law be removed from the antiterrorism bill of which it was a part. This inquiry was restricted to only three days of hearings, yet over 300 written submissions were received, such was the concern at the provisions. The committee's voice was joined by those of media commentators, the arts community and

members of the Australian legal community. The laws were rushed through parliament on an agreement, cobbled together by the minister and coalition senators, that a review would be conducted by the Law Reform Commission. Announcing the need for a review of laws before those laws had even been passed brings to my mind images of carts and horses—not knowing the natural order of things.

Of course, now that the bill has become law, Mr Ruddock is under no real obligation to follow the recommendations of the ALRC and, indeed, I believe he has indicated that he does not intend to. *Fighting words* makes key recommendations which should not be ignored by Mr Ruddock. The recommendations mirror the concerns initially raised by those voices of reason before the law was passed. They are aimed at ensuring the freedom of expression integral to public debate in our strong and fair democracy, the very thing that poor, reactionary legislation has the capacity to undermine.

Let us make the distinctions clear between what are acts of incitement to violence and threats of force and what are legitimate forms of democratic engagement. If we are to enact laws of this nature, let them at least be scrupulously drafted so that they add to our society's strength rather than detract from it. Let us be certain that laws such as these do not give any Australian government, now or in the future, the capacity to gag public debate. The Howard government has shown its willingness in the past to circumvent the truth for its political benefits—for instance, the 'children overboard' scandal and the weapons of mass destruction in Iraq matter. Let us hope that perhaps they may yet learn to treat the Australian public with the respect it deserves.

Labor voted against the sedition laws. Our position is vindicated by the ALRC's review of these laws. The government should reflect on this important report, accept that they got it wrong and make the changes needed. I seek leave to continue my remarks later.

Leave granted.

Senator WORTLEY (South Australia) (6.22 pm)—I rise to speak on the Australian Law Reform Commission report *Fighting words: a review of sedition laws in Australia*. Labor welcomes this report and, in doing so, reminds those in the chamber of the unfortunate way these laws were rushed through the parliament by this government last November—legislation that could have been reviewed by the Australian Law Reform Commission before it went to a vote in the parliament.

Labor opposes the sedition laws being part of the antiterror laws and the amendments that were made to them. The sedition provisions were opposed, too, by a Senate committee that comprised opposition and government senators. Media organisations, arts organisations, community organisations, lawyer groups and many members of the general public opposed these sedition provisions that formed part of the legislation.

The ALRC report confirms what Labor knew all along: the term 'sedition' should be removed from federal criminal law; these sedition laws are ill conceived and do not do the job of protecting Australia in the way that they should.

The ACTING DEPUTY PRESIDENT (Senator Moore)—Order! The time for this section of the debate has expired.

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

Leave granted.

Consideration

The following orders of the day relating to government documents were considered:

Department of Defence—Report for 2004-05. Motion of Senator Stephens to take note of document agreed to.

Human Rights and Equal Opportunity Commission—Report for 2004-05. Motion of Senator Bartlett to take note of document agreed to.

North Queensland Land Council Aboriginal Corporation—Report for 2004-05. Motion of Senator Bartlett to take note of document agreed to.

Australian Rail Track Corporation Limited (ARTC)—Report for 2004-05. Motion of Senator Webber to take note of document agreed to.

Natural Heritage Trust—Report for 2004-05. Motion of Senator Milne to take note of document agreed to.

National Rural Advisory Council—Report for 2001-02, including a report on the Rural Adjustment Scheme. Motion of Senator Stott Despoja to take note of document agreed to.

National Rural Advisory Council—Report for 2002-03. Motion of Senator Stott Despoja to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman's reports 003/05 to 013/05 and 015/05, 7 February 2006. Motion of Senator Stephens to take note of document agreed to.

National Environment Protection Council and NEPC Service Corporation—Report for 2004-05. Motion of Senator Stephens to take note of document agreed to.

Native Title Act 1993—Native title representative bodies—Cape York Land Council Aboriginal Corporation—Report for 2004-05. Motion of Senator Stephens to take note of document moved called on. Debate adjourned till Thursday at general business, Senator Kirk in continuation.

Commonwealth Grants Commission—Report—State revenue sharing relativities—2006 update. Motion of Senator Watson to take note of document called on. Debate adjourned till Thursday at general business, Senator Kirk in continuation.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Report by the Commonwealth Ombudsman—Personal identifier 014/05, 1 December 2005. Motion of Senator Bartlett to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Report by the Commonwealth Ombudsman—Personal identifier 016/05, 1 December 2005. Motion of Senator Bartlett to take note of document agreed to.

Migration Act 1958—Section 91Y—Protection visa processing taking more than 90 days—Report for the period 1 July to 31 October 2005. Motion of Senator Kirk to take note of document agreed to.

Superannuation (Government Co-contribution for Low Income Earners) Act 2003—Quarterly report on the Government co-contribution scheme for the period 1 October to 31 December 2005. Motion of Senator Kirk to take note of called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Australian Meat and Live-stock Industry Act 1997—Live-stock mortalities for exports by sea—Report for the period 1 July to 31 December 2005. Motion of Senator Kirk to take note of document agreed to.

Queensland Fisheries Joint Authority—Report for 2003-04. Motion of Senator Ian Macdonald to take note of document agreed to.

Indigenous Business Australia—Corporate plan 2006-2008. Motion of Senator Kirk to take note of document called on. Debate adjourned till Thursday at general business, Senator Kirk in continuation.

Multilateral treaty—Text, together with national interest analysis and annexures—Agreement Establishing the Pacific Islands Forum, done at Port Moresby on 27 Octo-

ber 2005. Motion of Senator Ian Macdonald to take note of document agreed to.

Migration Act 1958—Section 440A—Conduct of Refugee Review Tribunal (RRT) reviews not completed within 90 days—Report for the period 1 July to 31 October 2005. Motion of Senator Kirk to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman's reports 017/05 to 019/05 and 020/06 to 048/06. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers 017/05 to 019/05 and 020/06 to 048/06. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

National Rural Advisory Council—Report for 2004-05. Motion of Senator Ian Macdonald to take note of document agreed to.

Wheat Export Authority—Report for 1 October 2004 to 30 September 2005. Motion of Senator Kirk to take note of document agreed to.

Australia-Indonesia Institute—Report for 2004-05. Motion of Senator Stott Despoja to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Australian Agency for International Development (AusAID)—Australian aid: Promoting growth and stability—White paper. Motion of Senator Stott Despoja to take note of document agreed to.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman's reports 049/06 to 055/06, 9 May 2006. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers 049/06 to 055/06. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

Migration Act 1958—Section 91Y—Protection visa processing taking more than 90 days—Report for the period 1 November 2005 to 28 February 2006. Motion of Senator Bartlett to take note of document agreed to.

Australian Livestock Export Corporation Limited (LiveCorp)—Report for 2004-05. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

Superannuation (Government Co-contribution for Low Income Earners) Act 2003—Quarterly report on the Government co-contribution scheme for the period 1 January to 31 March 2006. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

Roads to Recovery Act 2000—Roads to recovery programme—Report for 2004-05 on the operation of the Act. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Northern Territory Fisheries Joint Authority—Report for 2004-05. Motion of Senator Siewert to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Australian National University—Report for 2005. Motion of Senator Kirk to take

note of document called on. Debate adjourned till Thursday at general business, Senator Kirk in continuation.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman's reports—Personal identifiers 056/06 to 066/06. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers 056/06 to 066/06. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

COMMITTEES

Migration Committee

Report

Debate resumed from 14 September, on motion by **Senator Kirk**:

That the Senate take note of the report.

Senator KIRK (South Australia) (6.24 pm)—As deputy chair of the Migration Committee, I was involved in the preparation of the report *Negotiating the maze: review of arrangements for overseas skills recognition, upgrading and licensing*. The report was tabled last month. At that time, I spoke to it. This evening I would like to focus more generally on the question of skills. During the course of our inquiry, we found that there is a substantial skills shortage in this country and there is a pressing need to do something about that in order to overcome the obstacles that are being placed in the way of our growing economy as a consequence of the skills shortage. In fact, the Deputy Leader of the Opposition, Jenny Macklin, said:

> Australia's skills crisis is here, now and growing … Australia will have a shortage of over 130,000 skilled workers over the next five years.

As we discovered during the course of the inquiry, this skills shortage is being filled from two sources—by persons who are coming to Australia from overseas who are skilled workers and, unfortunately to a lesser extent, by young people in Australia who are being trained to be skilled workers and to fill, in particular, the trades, such as plumbing and electrical work, where we have a particular shortage.

Today, the Prime Minister, Mr Howard, released his skills package. It is an attempt to address the skills shortage that we have here in this country, but it really is an example of the Prime Minister and this government trying to play catch-up. As I said, we have a significant skills shortage. As the Deputy Leader of the Opposition said, we will be some 130,000 people short in a very short time. What do we see when we look at what this Howard government has done? In the last 10 years, this government has turned away 300,000 young Australians from training places. When you see those kinds of figures, it is no wonder that in a very short time we will have a skills shortage of some 130,000 people. As I understand the skills package that the Prime Minister has released, he purports to be creating some vouchers. I am not quite sure how that will operate, but, as I read the package—and I have had only a short time to look at it—the vouchers will reach only about 30,000 of the 300,000 young Australians who were turned away from training in the last 10 years. This is just one in 10—just 10 per cent of those who have been turned away.

Another thing that has been identified is that the skills shortage that we have in this country is having a compounding effect within the economy. As we all know, Australians are facing rising interest rates. One of

the reasons for this is the government's failure on skills and trades. The Prime Minister's failure in this area has effectively created bottlenecks in the Australian economy. These bottlenecks have in turn put upward pressure on interest rates. We would say that it is only Labor that can deal with the skills crisis. We are the only ones who understand it. We understand the interest rate reality and the impact that it is having on people.

I suppose that one thing you can say following the release of the skills package is that at least Mr Howard is finally acknowledging the failure that has occurred over the past 10 years. However, as we say, he is not the person to fix it. He has had 10 years to address the skills shortage and it has taken this long for him to release any kind of meaningful package. Yet still we have to see how this package will play itself out.

Labor does have a plan to deal with the skills shortage in this country, and the Leader of the Opposition, Mr Beazley, has laid it out. In the time I have available I can only point to some of the key aspects of our policy. Firstly, we intend to introduce what is known as the 'completion bonus' so that young people do finish their courses. We will also introduce free TAFE studies for traditional trades such as plumbing and electrical and the other traditional trades. In this way we could really ensure that we do get the tradespeople we need so that we do not again face the shortage that we currently have or the impact on the economy that has resulted. Finally, Labor have said that we will introduce into every school district a technical school, which young people will be able to choose to enrol in. As I understand it, the way it will work is that they will leave their studies with perhaps two years of an apprenticeship under their belt, which will give them an enormous advantage when they go on into the workforce.

As I said, the Prime Minister did release his skills package today. It has $837 million worth of incentives and vouchers. We would say that, really, this should have been introduced a long time ago. It really is too little, too late. Labor acknowledge that there is a skills crisis in this country and that it is a very significant factor in pushing up interest rates. It is also a significant factor which in turn is putting Australian families under pressure. Time and time again we are hearing how families are being squeezed from all different angles as a consequence of this government's policies. It is Mr Howard who created this skills crisis. Of course we have to acknowledge that he is attempting to do something about it, but we would say that it has taken him 10 years to do it and already the crisis has done enormous damage to our economy and to the skills of young Australians. It is only by the election of a Labor government that we will be able to address the skills shortage in the way that Mr Beazley has outlined in his earlier announcements. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Rural and Regional Affairs and Transport References Committee

Report

Debate resumed from 14 September, on motion by **Senator Siewert**:

That the Senate take note of the report.

Senator BARTLETT (Queensland) (6.32 pm)—I would like to speak to the interim report of the now defunct Senate Rural and Regional Affairs and Transport References Committee inquiry into water policy initiatives. I should emphasise that the inquiry is still underway with the new, amalgamated, Senate Standing Committee on Rural and Regional Affairs and Transport. The water policy issue, which the committee is still examining, is a critical one. This inquiry fol-

lows on from previous inquiries done by both the rural and regional affairs committee and the Senate Standing Committee on Environment, Communications, Information Technology and the Arts on urban and rural water usage.

This has become a much more pressing debate amongst the Australian community. The current drought is causing immense difficulties in many parts of the country both in the agricultural sector and in regional and rural towns. It is, in combination with other factors, causing growing concern in metropolitan areas about the availability of water for urban usage, for domestic and industrial use.

I will focus particularly on the water issue as it relates to Queensland. I know that the committee has already had some hearings, including one in the fine City of Toowoomba, to examine some of these issues. I asked the Minister for the Environment and Heritage in question time earlier this week about his attitude towards the two megadams that are proposed for south-east Queensland: the Traveston Crossing Dam, on the Mary River just south of Gympie; and the Wyaralong Dam, on a tributary of the Logan River, south of Brisbane.

I want to reiterate that the environment minister does have the power to determine what form the environmental impact assessment will take with regard to both of those dams. Both of them will trigger the federal Environment Protection and Biodiversity Conservation Act, which is clearly the strongest environmental law that our country has had in its history; it certainly provides much greater scope for environmental protection, at least on matters of national environmental significance as defined in the legislation, than any legislation at state level in Queensland.

It is important that the assessments on both of these dams from the environmental perspective are done independently and as transparently and thoroughly as possible. I repeat my view that there is simply no way that the state Labor government should in any way have any role in determining or shaping the nature of the environmental impact assessments, because they have made it absolutely and categorically clear that they are determined to proceed with both of these dams, come what may. So assessments do need to be independent.

The federal environment act can only examine the aspects of the dams that deal with the environmental implications relevant to matters of national and environmental significance, most notably threatened species. There are a number of threatened and endangered species, particularly in respect of the Traveston dam, on the Mary River. The lungfish is the most notable and perhaps the most serious in terms of potential impacts on that most significant of species.

There are wider issues here. I would suggest that, whilst in some ways the environmental arguments against the Traveston Crossing Dam are very strong, the social arguments are in many ways stronger because it will cause immense disruption. It is already causing enormous suffering to the people in the region and not just to those who are at risk of having their houses and properties subsumed; the wider community will be dramatically impacted, and the region is already undergoing enormous stresses and economic loss as a consequence of the threat of this dam hanging over its head. On top of that are the economic and simple water policy arguments against it, and this is where I think the role of Senate inquiries and the federal government becomes more crucial.

If it were actually true that, despite all the environmental and social harm that this dam

will cause, it is absolutely essential to build it to ensure that Brisbane and south-east Queenslanders, such as me, have water to drink, then perhaps you could justify it. It is quite clear that not only will it be an extraordinarily expensive piece of infrastructure—the latest costings mentioned in the *Australian* newspaper today put it at $1.7 billion, which makes it an incredibly expensive dam—but it is not even certain that it will produce anything like the yield that has been suggested. You only have to look at some of the other parts of south-east Queensland. Mr Malcolm Turnbull said in the paper today that it is important to note that Brisbane already has the largest ratio of storage capacity to demand of any major Australian city. So having lots of dam capacity does not necessarily mean the dams will be filled. South-east Queensland is littered with empty or near-empty dams. The other proposed site, the Wyaralong Dam, has two failed or empty or near-empty dams in adjoining catchments, so it seems quite absurd to build a third one in the next catchment across the range when the two in the nearest rainfall zone are already failing.

Whilst a lot of attention has been paid to the Traveston dam in respect of economic and water policy arguments, there are also a lot of reasons why the Wyaralong Dam does not stack up terribly well. I spoke in this place a couple of weeks ago about a report into the water yield estimates from that dam, which was done by professional environmental scientist Mr Brad Witt. He went through the rainfall yields and the water flow statistics, going back decades, and he used that to demonstrate that the Beattie government's suggested yield from that dam is, to put it politely, highly improbable in an average year—and that is before you take into account the potential for reduced future rainfall due to climate change.

The important thing to consider in this context is which is the best way to spend money to address the water issues. We have to look at water supplies for south-east Queensland and for regional areas, including for agricultural purposes. We are not just talking about these two dams—the state government seems to have gone 'dam crazy' and it has announced that it wants to build a few others. There is one in a catchment just inland from Mackay which, apart from other things, will threaten an endangered turtle that has been named after Steve Irwin. That might give a little more reason for people to pay attention to it, but the issue should be considered on its merits—not just because it has a Steve Irwin link and not solely because of its environmental impacts, although they are always important. The fact is that Queensland already has any number of examples of enormous amounts of public money having been spent on water infrastructure—such as dams—that has not delivered. To throw more good money after bad does not make sense.

What I would like to see from the federal government and from Mr Malcolm Turnbull is more direct, overt involvement in these issues. We have a national water policy initiative, and quite significant amounts of federal money will be spent on big-ticket infrastructure items. From the federal level, we should be ensuring that state governments justify in economic terms the money that they are spending on these projects. Certainly there should be no support provided from a federal level for water infrastructure projects in Queensland. If the state government is prepared to waste billions of dollars on highly dubious water infrastructure projects, it should not be seeking subsidies or support from the federal government to help cover some of the cost or to fund other infrastructure projects. That is where we need much more direct federal involvement not

just through the federal environment laws but in a proper context of— *(Time expired)*

Question agreed to.

Electoral Matters Committee

Report

Debate resumed from 14 September, on motion by **Senator Carr**:

That the Senate take note of the report.

Senator CAROL BROWN (Tasmania) (6.42 pm)—I rise to speak on report No. 11, *Funding and disclosure: inquiry into disclosure of donations to political parties and candidates*, by the Joint Standing Committee on Electoral Matters. We have seen the government's amendments in the form of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2006, passed in June. That saw, amongst other things, a lifting of the disclosure threshold for political donations from $1,500 to $10,000—taking a massive leap, which will be indexed to CPI. The disclosure threshold has already risen from the $10,000 level to $10,150.

We know that one of the arguments put forward by the government to support this massive increase was that the original figure of $1,500 had been devalued by inflation. That argument fell flat because, when you use that argument and apply the rate of inflation and calculate the new threshold, it does not come anywhere near $10,000; it comes to around $3½ thousand. This argument that ties the disclosure level to inflation completely misses the point as to why the disclosure level was fixed at the relatively low figure of $1,500. It was because: 'disclosure of political donations does a lot for our democracy. It demonstrates the transparency and the independence of the system that we use to produce our elected governments. We all have the right to know who is donating to whom and how much they are giving. In fact, beginning disclosure at a relatively low level is a real and effective counter to perceptions of influences being bought or traded for political donations. In short, it is in all of our best interests to have it.'

Many on this side of the chamber, including me, highlighted the real reasons for the government's changes as being the government wishing to hide the dollars and deny the vote. We know that this was the basis for these changes; we know that this was for the base political advantage of the Liberal Party and that it was an exercise in boosting Liberal Party coffers. It was all in secret: funds delivered to the Liberal Party without the knowledge of the public. We know these changes will erode the transparency of the electoral system and that, using this system, up to 80 per cent of the receipts disclosed by the major parties in 2004-05 would have disappeared from the public view, and an additional $17 million would have been secretly received by major parties.

While it might be easier to raise funds under the cover of darkness, it is in the interests of neither the Australian people nor our democracy that donations to political parties are hidden from the public eye. The Labor Party has said all along that these changes were part of a plan for the Liberal Party's mates to be able to donate in secret. But do not just take my word for it; let us have a look at what the Liberal Party themselves are saying.

I draw the Senate's attention to a newspaper article in the *Age* which was headed 'Liberals woo new corporate donors: Firms advised of laws that limit scrutiny'. The article exposes a letter from the then Honorary Federal Treasurer of the Liberal Party, a Mr John Calvert-Jones, to corporations, urging them to take advantage of the new laws—laws designed to allow companies to make donations without the need to declare the donations and to allow more political dona-

tions to be made anonymously. Mr Calvert-Jones, as detailed in the *Age* article, urges companies to dig deep. The article goes on to say:

> The letter advises would-be donors of the recent changes to electoral laws which allow more donations to be made secretly.

Of course, this was not the first time the federal Liberal Party and Mr Calvert-Jones had exposed the real intent behind the changes, letting the cat out of the bag. I suppose I should say 'brown paper bag', but I will not. No, the Liberals were extolling the virtues of the changes well ahead of the changes even being passed into law. It was reported back in February that the federal Liberal Party sent out 1,000 pamphlets to leading company directors. The *Sydney Morning Herald* reported:

> The party had made clear to the directors that the Government will loosen electoral rules that required disclosure of donations above $1 500 for corporations and $100 for individuals, and increase tax deductions.

Well, you might be wondering how Mr Calvert-Jones went with his fundraising drive to boost Liberal Party coffers. But I cannot tell you, and unfortunately the Liberal Party have made sure that you and I and the Australian public will never know; but that was the whole point of these changes. While I cannot tell you how well he went, I was very interested to note in a newspaper article—albeit only a very small one—that a Mr John Calvert-Jones was given a lovely appointment for three years to the Council of the National Gallery of Australia by the federal Minister for the Arts and Sport, Senator Rod Kemp, only weeks after stepping down as the Liberal Party federal treasurer. I can only assume he did very well—very well indeed. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Community Affairs References Committee

Report

Debate resumed from 14 September, on motion by **Senator Moore**:

> That the Senate take note of the report.

Senator BARTLETT (Queensland) (6.48 pm)—I would like to speak briefly to document No. 9, which is the report called *Beyond petrol sniffing: renewing hope for Indigenous communities*. This report was tabled some time ago now, and it has been spoken to by a number of people in this chamber, but it is worth taking a final opportunity to draw attention to it. It was done by the also now defunct Senate Community Affairs References Committee, ably chaired by you, Madam Acting Deputy President Moore. It is important to draw attention to it for a couple of reasons: firstly, because there has been progress in the area since the report was tabled. Given the way that at least some in the government ran down the benefit and the effectiveness of the committee process under the old system of separate references committees and suggested that they were inefficient and ineffective, I think it is worth emphasising that in this area there is no doubt that this report has contributed to helping maintain and generate momentum for further positive change.

It is also worth emphasising that it was a unanimous report from people from a range of political parties. The inquiry was actually initiated on a motion of Senator Scullion, from the Country Liberal Party, and then people who participated in the inquiry were from the Democrats, the Liberals, Labor and also the Greens, I think, from memory. So we had wide-ranging political input and a unanimous report. It is also worth noting that the report does not just focus on the need to further roll out Opal fuel, the non-sniffable petrol alternative developed by BP. It does address that issue to some extent in its find-

ings and recommendations and it is an important part of the solution, and it is pleasing to see that there has been further movement in that area. Indeed, Minister Abbot has in recent times been public in promoting it and urging further use of it in Alice Springs, which is a welcome change from his less enthusiastic support for rolling it out some time in the past. So perhaps, indeed, Senate committee reports can even change the attitudes of health ministers, which just shows the impact that they can have.

But I did want to emphasise that it also focuses on the need for a range of other activities. I had a concern when there were some initial suggestions about having an inquiry in this area that it was really just focusing almost totally on Opal as the magic bullet, and I do not think that would have been particularly accurate or necessarily helpful. I also had a concern, I have to say, that it would just be yet another inquiry. And one thing that became clear in the course of this inquiry was that there had already been a lot of inquiries preceding it into petrol sniffing and other related issues. And many witnesses—particularly, I might say, from Indigenous communities—pointed out with a very understandable level of cynicism that there had already been a range of inquiries in this area; there had already been a range of recommendations, and whilst there had been a range of nice-sounding promises and commitments from governments there actually had not been a lot that had happened to implement those promises.

I want to take the opportunity to reinforce the importance of not just saying, 'This is a good report with lots of good stuff in it.' That is certainly the case, but we must do everything we can to make sure that it does not become just another report to add to the pile of reports that had lots of strong recommendations but not a lot happening as a consequence. That is why I thought it was also important to emphasis that on this occasion some things have happened as a consequence since the report was tabled. But there is a lot more that needs to happen.

I should also note that, when we are looking at committee reports, as this period on Thursday evenings always does, whilst it is very easy for government ministers to come in and slag off Senate committees when they do not like what they do and to cast all sorts of very inaccurate negative assertions about them, there is one aspect of the committee process which I very much agree does not work well, and that is the extremely poor speed with which governments respond to committee reports. It is not that the governments have to respond and agree to all of the recommendations—it is always good when they do—but the fact is that the pace of response from government to many reports is extremely slow. Not only does that show a lack of respect for the Senate and its procedures but, at a much more serious level, it shows a lack of respect for the community that takes the trouble to participate in inquiries such as this.

We had significant participation from a number of people from Indigenous communities that are seriously affected by the blight of petrol sniffing, and the government would be betraying those people if they did not respond more promptly to this report than they have to many others. It is a fair bet that it is now past the three-month threshold since this report was tabled, which is when the government is supposed to respond by, so I think it is also worth taking the opportunity to emphasise that the response is overdue. We would like to see it, because, as I said, all members of the committee across all parties, including government members, are very genuine in their concern about this issue. We are very genuine in our desire to see real action occur as a consequence of the report, and I would like to see the same level of

genuine commitment indicated by the government and by the minister in responding to the recommendations within it.

The report takes into account and reflects views presented, most importantly, by people from Indigenous communities in particular. One area where we are not doing as well as we should be is in taking into account the views of Indigenous people about what will work and what will not work—whether it is petrol sniffing and substance abuse or other aspects affecting Indigenous peoples. This report takes into account to a fair degree a lot of the views that were expressed to us about what would work, what will not work, what the problems are, what has failed and what needs to be done from the point of view of Aboriginal people. That is another reason it is a report worth noting, another reason it is important that we continue to press for follow-through and real action as a consequence and another reason to encourage the minister to respond. I seek leave to continue my remarks at a later date.

Leave granted.

Mental Health Committee

Report

Debate resumed from 14 September, on motion by **Senator Allison**:

That the Senate take note of the report.

Senator WEBBER (Western Australia) (6.56 pm)—I rise to take note of report No. 13, the first report of the Senate Select Committee on Mental Health, *A national approach to mental health: from crisis to community*. As I have mentioned in the chamber before, this week is Mental Health Week and therefore an appropriate time to review the recommendations of the report. There have been a number of activities in this building to mark Mental Health Week, and I would like to note that some of those activities actually revolve around the government implementing some of the recommendations from the report.

At the outset I would like to echo the comments Senator Bartlett made about the inquiry into petrol sniffing. The select committee adopted the same non-partisan approach to addressing a very real challenge in our community—that is, the needs of those with a mental illness. All of us obviously brought the ideologies of our different political parties to the table, but we all sought to reach a consensus position and, in that way, put the challenges of mental illness in our community above party politics.

It is with some regret, then, that I note some of the happenings that have taken place in this building. Earlier in the week, with much fanfare, there was the launch of the Medicare rebate packages around access to psychological services and services from allied health professionals—a key recommendation of the Senate select committee. The Senate select committee was most concerned about expanding access for people with mental illness to the appropriate services and not restricting them to the traditional GP arranged services. We wanted people to have timely access to the most appropriate services to meet their needs. We spent quite some time discussing, not just with the Department of Health and Ageing but with a number of the key professional bodies that are around the provision of those services, the most appropriate ways to deliver them. It was a unanimous recommendation, so it was a cause of some regret that the launch of that service—the implementation of that recommendation, which was unanimously supported—was a fairly party political event.

I compare that with the conduct of the Mental Health Council of Australia and the conduct of Senator Helen Coonan, as patron of the Mental Health Council of Australia. As is usual, there was the annual breakfast,

which is always hosted by Senator Coonan as patron. Every member of this chamber and those in the other place who have an interest in mental health were invited to attend. We talked about the challenges, and the parliamentary secretary for health, Mr Pyne, made much of the government's commitment to tackling this challenge. It was held in an appropriate professional manner.

Later on that day the Mental Health Council of Australia, as is fitting for Mental Health Week, launched their report—probably the third phase; last year they launched their reports entitled *Not for service: experiences of injustice and despair in mental health care in Australia* and *Time for service: a critical moment for mental health care in Australia*—entitled *Smart services: innovative models of mental health care in Australia and overseas*. Again, all of us were notified of the event and invited to attend, and the Parliamentary Secretary to the Minister for Health and Ageing was there. Whilst the event was very well organised, I had some concerns about some of the comments that the parliamentary secretary made.

And then we have the event held today, where the Minister for Workforce Participation, Dr Stone—a woman that I have the utmost admiration for and, as a member of the Parliamentary Group on Population and Development, I believe I have a very constructive relationship with—made another announcement. She announced the implementation of yet another recommendation of the Senate select committee's first report, and that is the roll-out of a course called Mental Health First Aid, a course for the workplace. Our committee unanimously recommended that the Mental Health First Aid course be rolled out as far and wide as possible.

Yet again, what would have been a launch that those of us from this side of the chamber who were on the committee would have been happy to turn up to and happy to support was conducted in a very partisan way—not the usual way that Dr Stone conducts herself, so therefore I can only hazard a guess that the government has decided to play partisan politics with the delivery of mental health services in Australia. To my mind, that is a great shame.

As I have said in this place before, the community is crying out for those of us who are supposedly decision makers and opinion leaders to give mental health the priority that the community has for a very long time. Those suffering from mental illness, those in the community trying to deliver services to those with a mental illness and the families and carers that try to support those with a mental illness do not want this turned into a party-political bunfight. They want all of us in this place to work together to come up with a holistic, long-term constructive solution to address this significant challenge. It is therefore deeply upsetting that the parliamentary secretary, who prides himself on having responsibility for delivering the federal government's commitment on mental health, chooses to act in such a partisan way.

I was at the launch of the *Smart services* report from the Mental Health Council of Australia, and the parliamentary secretary talked about the need for step-down facilities—again, a unanimous and key recommendation of the Senate select committee report. I have spoken extensively in this chamber about the need for step-down facilities. But the parliamentary secretary could not help but make the petty political point about the federal government recognising the need but state governments failing to deliver. He was not in any way prepared to acknowledge the commitment of the Premier of New South Wales and the New South Wales government—and in fact the leadership by the Premier of New South Wales—in addressing this challenge. He did not in any way ac-

knowledge the 12 per cent of health funding that goes into the delivery of mental health services in my home state of Western Australia, the only state that has a percentage of funding approaching the disease burden; instead, he had to play the blame game. He played the blame game when he obviously did not understand the complexities of delivering these services.

As I have said in this place on numerous occasions, the state government of Western Australia has extensive commitments to the delivery of step-down services and extensive plans to ensure that those services are available. However, the challenge it faces is not accessing the funding or the other resources; the challenge it faces is getting local government on board to allow those services to be built and operated in a local community.

It is severely disappointing and somewhat petty, I think, for the parliamentary secretary to show his complete lack of understanding of how those services are to be delivered and to choose instead to score cheap political points rather than bring to the table the same constructive approach that the chair of the Senate select committee, Senator Allison, the deputy chair, Senator Humphries, and the rest of us brought to the table in trying to come up with a list of priorities that we thought would address the community's needs—the delivery of services along the lines of those that were talked about yesterday by the Mental Illness Fellowship. They operate extensive services in the town of Shepparton in Victoria—in fact Shepparton is in Dr Stone's own electorate.

Those community based facilities are to be commended. They are world class, and they certainly are a leader in this nation. They are something that we should all be proud of. They are proudly supported by the Victorian state government, and the Victorian state government works very closely and in cooperation with the Mental Illness Fellowship. So perhaps what all of us need to bring to the table are the success stories. Perhaps we need to work out in a decent human way how we can make the most of those successes and encourage other organisations and other governments of all varieties to implement those success stories and extend them to all with mental illness rather than seek to continue to score cheap political points in addressing what is the most significant health challenge faced by our community. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Legal and Constitutional References Committee

Report

Debate resumed from 14 September, on motion by **Senator Crossin**:

That the Senate take note of the report.

Senator BARTLETT (Queensland) (7.06 pm)—This report by the now defunct Legal and Constitutional References Committee is entitled *Administration and operation of the Migration Act 1958*. The inquiry was initiated on a motion of mine, so I have maintained an interest in its progress and followed through on the report. It is an opportune time to emphasise this report, and the first thing to emphasise is that the government is yet to respond to it. The three-month deadline for it to do so has well and truly expired. This is another example of the government's lack of interest in the operations and activities of the Senate, including its committees.

In some respects the report follows on from previous inquiries. The report is particularly apt, given the comments reported today by the Minister for Immigration and Multicultural Affairs that she is considering changes in regard to sponsors for humanitarian overseas entrants and also to the ministerial discretion process. The report touched to some degree on the ministerial discretion

process, but the inquiry did not go into the area of the offshore humanitarian program in much detail. This was a disappointment to me because it is an area that has not had much scrutiny. We put a lot of focus on refugee issues in this chamber but it is usually about people who apply for refugee status onshore. There is not very much examination of how the offshore program works. General statements are made about how good it is and how we take in 13,000 people a year, but there is not much examination of how well or otherwise that program is being administered.

The minister announced in a speech to the Public Service Commission that she was proposing to make changes in two areas. I am not quite sure why the Public Service Commission is the body that gets to hear about proposed changes to the Migration Act rather than them being announced to the general community or—it would be nice once in a while—to the parliament. However, they have been announced and the two changes that the minister mentioned were about tougher requirements for people in Australia who wish to sponsor humanitarian entrants. Currently people in Australia who sponsor a person who wants to come here are required to sponsor them through the humanitarian component of the offshore program. I think it is reasonable to ensure that people who do sponsor someone are capable of sponsoring them and of taking responsibility for them in an economic sense in the early stages of their settlement here.

The other change that the minister foreshadowed was the tightening up of the system of ministerial discretion or ministerial intervention. She suggested that there be only one opportunity to so-called 'apply'. The fact is that you do not actually apply for ministerial discretion in the sense of filling in a form or any other formal process. It is a process that is totally informal and outside any procedural aspects of the law. It is also suggested that people will have to do so straight after they receive a negative decision from the Migration Review Tribunal or the Refugee Review Tribunal rather than after they have been through the process fully.

This is quite a significant change. What it might look like in a legislative sense if and when it actually appears is a different matter, but we can only go on what the minister has said. It is a shame in a way that the changes, if they are to occur, have been developed completely outside any transparent public consultation and it is also a shame that they are being put forward in this way. The irony is that the Senate itself has repeatedly pointed to the flaws and inefficiencies in the ministerial determination or discretion process. This was highlighted particularly back in the year 2000 with a report by this same Senate committee, the Legal and Constitutional References Committee, entitled *Sanctuary under review*, another inquiry that was initiated on a motion of mine. It was also highlighted in a report of a select committee into ministerial discretion. Both reports are worth revisiting, because the fact is that the Senate itself and many others in the wider community have been highlighting to the government and the immigration minister for years how inefficient the process of ministerial discretion is.

In announcing these changes, the minister said that ministerial intervention was intended for exceptional cases but now there are hundreds of applications clogging her office. When the Migration Act was reformed in 1992, ministerial intervention was originally intended for exceptional cases. However, for years it has been the subject of many hundreds of people who have sought to have ministerial discretion exercised under the previous minister, Minister Ruddock, and now under Minister Vanstone. That is the case because of the way the ministers them-

selves have administered the portfolio and because of their refusal to listen to the concerns raised in Senate committee reports. The Senate committee report back in 2000 was unanimous. It featured Senator Coonan and Senator Payne as the Liberal members of the committee. They were part of the unanimous finding of the report, which included suggestions for reform to the ministerial discretion process. If the government had taken those suggestions on board back then, we would not have had the problems that occur now.

Another simple fact about the area of ministerial discretion is that there is a gap in our law, and that particularly applies to humanitarian cases that do not meet the criteria of the refugee convention. It is often not recognised that the refugee convention is quite narrow in its application. Not only do you have to demonstrate that you have a genuine and credible fear of significant persecution but it also has to be persecution that fits into a set number of reasons. It is not enough to demonstrate that there is genuine persecution; it must be for specific reasons as outlined in the convention. Clearly, there can be any number of circumstances where you are at genuine risk of persecution but not for the reasons set out in the convention.

There are other obligations that we have signed up to internationally under the convention against torture, the Convention on the Rights of the Child and the International Convention on Civil and Political Rights, which are much wider than what is in the refugee convention. It was recommended in 2000 that those obligations also be incorporated in our Migration Act so that people's claims for protection could be assessed in a proper, open, transparent and legally accountable way, in the same way as refugee claims are. But that has not been done. I would point the minister to a private senator's bill that I introduced into this place just a few weeks back that proposes the establishment of such a process—what is often called 'complementary protection', which is protection for reasons outside the refugee convention. I suggested some action be done about that because it would significantly reduce the number of requests for intervention that go to the minister and it would ensure that those claims were assessed in an open and transparent way.

Can I also mention with the proposed changes regarding the offshore humanitarian entrants that it is often stated, including by government people when they are wanting to talk about how generous the government is, as the minister does from time to time in dorothy dixers in question time, that we have a refugee intake of 13,000 and that we are amongst the most generous in the world. The simple fact is that statistically we are not amongst the most generous in the world when it comes to having refugees on our soil. We are in amongst the very small number of nations that have an offshore refugee program. But it is often said that we take in 13,000 refugees. However, we actually take in only 6,000 per year. We take, through a humanitarian program, another 7,000 who do not necessarily meet the refugee criteria—although some of them may—and who have to be sponsored.

What the minister's comments highlight is the inaccuracy of the common statement that people who seek asylum here are somehow taking the places of the most needy, because people who come through the humanitarian program are not selected on the basis of the most need. For starters, they do not even get their foot in the door unless they have a sponsor here in Australia. The minister's comments simply reinforce that fact. So we need to at least get some accuracy in this debate as part of making what are still necessary reforms to the Migration Act. This report highlighted some areas where those re-

forms need to occur. I just wish the minister had taken more account of them much earlier in the piece. If she had acted six years ago on a previous report, we would not have to be worrying about these things now.

Question agreed to.

Consideration

The following orders of the day relating to committee reports and government responses were considered:

National Capital and External Territories—Joint Standing Committee—Report—Visit to Norfolk Island: 2-5 August 2006. Motion of the chair of the committee (Senator Lightfoot) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Treaties—Joint Standing Committee—

Report 77—Treaties tabled on 20 June and 8 August 2006

Report 78—Treaty scrutiny: A ten year review—

—Motion of Senator Wortley to take note of reports agreed to.

Migration—Joint Standing Committee—Report—Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing. Motion of Senator Kirk to take note of report debated. Debate adjourned till the next day of sitting, Senator Kirk in continuation.

Rural and Regional Affairs and Transport References Committee—Interim report—Australia's future oil supply and alternative transport fuels. Motion of the chair of the committee (Senator Siewert) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Foreign Affairs, Defence and Trade Legislation Committee—First progress report—Reforms to Australia's military justice system. Motion of the chair of the committee (Senator Johnston) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Community Affairs Legislation Committee—Report—Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005. Motion of the chair of the committee (Senator Humphries) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Rural and Regional Affairs and Transport Legislation Committee—Report—National Animal Welfare Bill 2005. Motion of Senator Bartlett to take note of report called on. Debate adjourned till the next day of sitting, Senator Bartlett in continuation.

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Australia's defence relations with the United States. Motion of the chair of the committee (Senator Ferguson) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Electoral Matters—Joint Standing Committee—Report—Funding and disclosure: Inquiry into disclosure of donations to political parties and candidates. Motion of Senator Carr to take note of report debated. Debate adjourned till the next day of sitting, Senator Carol Brown in continuation.

Foreign Affairs, Defence and Trade References Committee—Report—China's emergence: Implications for Australia. Motion of the chair of the committee (Senator Hutchins) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Community Affairs References Committee—Reports—Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children—Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care—Government responses. Motion of Senator Murray to take note of document called on. On the motion of

Senator Bartlett debate was adjourned till the next day of sitting.

AUDITOR-GENERAL'S REPORTS

Consideration

The following orders of the day relating to reports of the Auditor-General were considered:

Auditor-General—Audit report no. 49 of 2005-06—Performance audit—Job placement and matching services: Department of Employment and Workplace Relations. Motion of Senator Moore to take note of document agreed to.

Auditor-General—Audit report no. 2 of 2006-07—Performance audit—Export certification: Australian Quarantine and Inspection Service. Motion of Senator McEwen to take note of document agreed to.

Auditor-General—Report for 2005-06. Motion of Senator McEwen to take note of document agreed to.

Auditor-General—Audit report no. 3 of 2006-07—Performance audit—Management of Army minor capital equipment procurement projects: Department of Defence; Defence Materiel Organisation. Motion of Senator Bishop to take note of document called. On the motion of Senator Webber debate was adjourned till the next day of sitting.

Auditor-General—Audit report no. 4 of 2006-07—Performance audit—Tax agent and business portals: Australian Taxation Office. Motion of Senator McEwen to take note of document agreed to.

Order of the day no. 6 relating to reports of the Auditor-General was called on but no motion was moved.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Hutchins)—Order! There being no further consideration of committee reports, government responses and Auditor-General's reports, I propose the question:

That the Senate do now adjourn.

AFL Radio Broadcast Rights

Senator McGAURAN (Victoria) (7.17 pm)—I rise this evening on an issue relating to the AFL radio broadcast rights. The AFL are currently in negotiations with the major players and are soon to settle as to who will gain the rights and what rights they will gain. The AFL, flush from their extraordinary success in obtaining a premium price for the TV rights, are attempting to mirror the same commercial success with regard to the radio rights. However, as the AFL would know themselves, the radio market is not the same size or wealth as the TV market and certainly pitches to a different market. It also includes the government's own broadcaster—the ABC, a non-profit organisation which, I add, is a long-time and important player in the broadcasting of football.

So radio broadcasting of football is different in every way to TV and therefore, to state the obvious—and something I am sure the AFL knows—the radio stations should be treated differently when negotiating broadcasting rights. It would be detrimental to the football listener otherwise. History shows that the footy listener has always had the choice of radio stations to listen to for the match of the day and, particularly, on a Saturday afternoon. The choice of radio stations to listen to has also brought with it a choice of style of broadcasting of football. For example, there is a stark difference between Rex Hunt on 3AW and Gerard Waitley on the ABC, but both rate very well and both offer a choice to the football lover. For some, there is only so much of Rex's tomfoolery, as it was once described, that they can take. Alternatively, there is only so much of the Tobin brothers, as they were once described, that you can take on the ABC. But both have an important part to play in spreading the gospel that is football.

Thus, I am concerned that the AFL are proposing at some level to hand over to the commercial stations the broadcasting rights of the match of the day—or the best part of the broadcasting rights, which is Saturday afternoon. Either one or the other is of concern, as it locks out the ABC and its 60 local radio stations throughout Australia that broadcast AFL football to a particular market. I understand that the ABC is still in negotiations with the AFL, but it is obvious that the AFL have the commercial whip hand in this matter of negotiation. In a dollars and cents world, the AFL can squeeze the ABC into second-run broadcasting and, worse, can squeeze them out of broadcasting the traditional match of the day on Saturday afternoon. 3AW, with their many networks and with the dollar, can simply seduce the AFL into giving them the monopoly or near monopoly over the match of the day.

I understand that it can be said that that is commercial reality and that, moreover, the government can have very little effect and influence in the matter, regardless of the ABC being a state owned corporation. That is correct. It is a commercial reality, and the government does perhaps have no influence over the AFL's commercial decision. However, I appeal to the AFL, for the long-term good of the game, which itself is a commercial consideration for them, to maintain the status quo of radio broadcasting or, at the very least, to give ABC radio a fair go.

I give three reasons why I make this appeal. Firstly, as I stated before, footy listeners have always had a choice of stations to listen to the match of the day. This choice breeds competition, and competition creates a better service—and surely that is good for football. Secondly, as I stated before, both stations bring completely different styles and, therefore, are capturing a broader market. One station with all the rights or the best of the rights could conceivably narrow the market and listeners could conceivably drop off, and that is bad for football. Thirdly, the ABC has a greater reach than the commercial stations. Even with the commercial stations' vast syndications, the ABC gets to areas that those stations do not. The ABC's reach goes into country areas where its is the sole radio frequency. If these listeners were given fewer matches, for example, or could not listen to the blockbusters on a Saturday afternoon between, for example, Carlton and Collingwood, then over the long term their enthusiasm for football just may wane.

Look at the grand final players for inspiration in giving the ABC a fair go. I have a list of the Sydney Swans—better known to me as South Melbourne—team. If you look at their list of players, most of them came from country Victoria and would have grown up listening to ABC radio. No less than Adam Goodes himself came from Horsham, which gets ABC radio. There is Adam Schneider from Osborne in New South Wales and Amon Buchanan from Colac, near Geelong. There is that great player Ben Mathews from Corowa, down the road from Rutherglen, and, even better, their team captain, Brett Kirk, is from North Albury. And then there is the champion Leo Barry from Deniliquin. All would have tuned in at some time as a child to listen to the ABC football.

Not to be denied, the other grand finalists this year, the West Coast Eagles—in fact, I believe they won the grand final—also have players from country Victoria. For example, Matthew Rosa is from North Ballarat and Adam Selwood is from the Bendigo Pioneers. They are both from country Victoria. And the same can be said for every single team in the AFL—that is, that a great many of their players come from rural districts and have, at some time, grown up listening to the match of the day on the ABC.

It is also worthy to note that during the footy season—on 12 August to be exact—Ian Cover from the *Coodabeen Champions* show urged listeners to text the ABC so as to prove the point that the ABC got into places that the commercial stations did not, or that they simply chose to listen to the ABC over the commercial choice. I have before me over 2,000 texts that came into the ABC during that show. They are from people saying things such as, 'We chose to listen to the ABC' or 'The ABC is the only station that we can get'.

I have many, many examples of them. For example, there is one from Mallacoota. Someone from Ross in Tasmania heard *ABC Grandstand* on holidays recently; people texted in comments from Far North Queensland and from Aireys Inlet. Someone says, 'Can't pick up any FM stations or any other stations here in Terang,' which is in western Victoria. An Albert Park listener naturally would only listen to the ABC. They came from far and wide: Darwin, Kakadu, Groote Eylandt and Ouyen. There is one here—and time is pressing—sent by someone from a prawn trawler in Far North Queensland. They texted in to say they were listening to the station and that they could not get a commercial station. I have over 2,000 texts to the ABC to prove that point.

So listening to the ABC football on a Saturday afternoon is close to an institution in country Victoria. It has been passed on from family to family; it is something to look forward to on a weekend. This is something the TV stations have not created—and that is not a criticism of the TV stations but a fact. My appeal to the AFL is if they wish to have football always pitched at the highest level in country Australia, which, after all, is the breeding ground of great players, then they should make the judgement for the long term, not the short term, and allow the ABC the match of the day rights.

If they do not, I believe it will severely reduce the service to country people and—not wishing to overstate the matter—may severely damage the culture of football in country Victoria to the point where an Adam Goodes-like character, unable to listen to a great game on the radio, may find something else to do in the afternoon. He may go fishing if he cannot listen to the ABC. I trust common sense and balance between commercial pressures and football culture will prevail.

Mental Health Week

Senator McEWEN (South Australia) (7.28 pm)—Yesterday the Senate agreed to a motion moved by Senator Stephens which acknowledged this week is Mental Health Week in Australia and that 10 October was World Mental Health Day. Mental Health Week is an annual national event that aims to improve community awareness and knowledge regarding mental health issues and illness and to reduce the stigma and discrimination associated with mental health problems.

This year the theme of Mental Health Week was 'Building Awareness—Reducing Risks: Suicide and Mental Illness'. Mental Health Week gives members of parliament and the community the opportunity to participate in a number of activities and forums that highlight the impact of mental illnesses on individuals and on the economic and social wellbeing of our community. Senator Webber, during both of her adjournment speeches this week, mentioned some of those events held here in Parliament House this week—some of which were unfortunately open only to government members, despite a long history of bipartisan support for initiatives in raising mental health awareness and addressing mental health issues.

A comprehensive analysis of the adequacy or otherwise of government responses to

mental health issues was made in the excellent report referred to earlier by Senator Webber entitled *A national approach to mental health—from crisis to community*. That report was published subsequent to the work of the bipartisan Senate Select Committee on Mental Health. I have to say the work of that committee exemplified the value of allowing Senate inquiries to be given the time, resources and government support to really address issues of significance to the Australian community. Unfortunately, it is not an attitude to Senate committee inquiries that we have seen in more recent times, where the government has used its numbers in this place to prevent, truncate or stack Senate committee inquiries.

As we know, the report of the Senate Select Committee on Mental Health generated an increased public awareness of the failure of government to address the crisis in mental health. The committee emphasised the need to spend a lot more money on prevention and early intervention programs that would prevent people with mental illness from ending up needing intensive and acute care.

I note, as Senator Webber did, that the government has subsequently made some announcements about increased funding to mental health. However, those promises go only halfway towards meeting the spending increases recommended by the Senate committee report. There is, for example, still inadequate funding to address the chronic shortage of mental health professionals in rural, regional and remote areas of Australia. I was pleased in this context to see that the South Australian government announced in its recent budget an allocation of additional funding in the order of $19.9 million that will enable 56 new mental health workers to be employed in my state.

I would like to take the opportunity to make a few additional comments about the matter of mental health and to highlight a positive mental health story from my state, South Australia. As we sit here tonight, as I speak, a group of nine South Australians and one former South Australian who now lives in the ACT are encamped at a place called Isurava, on the Kokoda Track in Papua New Guinea. Isurava, of course, was the site of a famous and fierce battle fought during August 1942, where Australian soldiers fought heroically despite being massively outnumbered and despite being poorly equipped and exhausted from an already long campaign in a very difficult area of the world.

The group to whom I refer are in the sixth day of a seven-day trek. They are undertaking this arduous adventure to raise money for a respite facility for children with intellectual disabilities. That facility is called Auricht House. It is in the northern suburbs of Adelaide, and it is one of Centacare's support services. Each year for the last three years Centacare has raised funds—more than $230,000—to supplement the South Australian government funding which enables Centacare to build and run Auricht House. Centacare raises those funds through numerous challenges, including the challenge of walking the Kokoda Track.

For the last two years the Centacare Kokoda trekkers have included amongst their number a gentleman called David Wegmann. He has bipolar disorder, a significant mental illness that used to be known as manic depression. It is a mood disorder characterised by exaggerated mood swings, manifest in extremes of mania and periods of depression. The condition affects a person's thoughts, feelings, physical health, emotional health, behaviour and day-to-day functioning. It can be extremely disruptive to a person's life, to their family and to their friends. If left unmanaged, it can unfortunately result in the tragedy of suicide.

Before his illness, David Wegmann worked as a geologist. He is now on a disability support pension. He has a first-class honours degree from Adelaide University and was awarded the very prestigious Tate Memorial Medal for original work in geology. He earned that accolade with a dissertation on the black norite, a kind of granite, found at Black Hill in South Australia. The same norite was, coincidentally, used to build the Australian government funded monument at Isurava on the Kokoda Track. It was a coincidence that Mr Wegmann did not know about until he undertook the incredible feat of accommodating his mental illness while also having to train for, fundraise for and actually walk the Kokoda Track.

It has been an inspiration to all of us who know him to see how Mr Wegmann has overcome what can be a debilitating mental illness, an illness that changed his life. He speaks openly of his illness and entertains us with jokes about bipolar bears and wry observations about the side effects of his medication and the things that can happen if he neglects to take that medication. His frank assessment of his own disability has meant a greater understanding for those of us who walk with him not only about his personal circumstances but about the everyday difficulties that confront others who suffer from mental illnesses such as bipolar disorder.

Apart from walking the Kokoda Track not once but—nearly—twice, 'Weggers' has recently started a TAFE course to gain the qualifications to work as community services worker and he has commenced work as a volunteer peer support worker for the Richmond Fellowship, a community service organisation that provides a range of rehabilitation services for people with mental health problems. Mr Wegmann's enthusiasm for retrieving his life from the disruption of mental illness and then assisting other people to live with their own illness deserves recognition.

The monument at Isurava to which I earlier referred, and which the Centacare trekkers will be camped next to tonight, acknowledges the qualities that the Australian soldiers drew upon to assist each other during the Kokoda campaign. Those qualities—courage, mateship, endurance and sacrifice—apply equally to people like Mr Wegmann who have a potentially debilitating mental illness and who refuse to let it beat them.

Unfortunately, not all mental health stories have happy endings. During Mental Health Week it is timely to again reflect on the need for governments, both state and federal, to ensure adequate resources are made available to help people with mental illness. As we know, one in five Australians will experience a mental illness at some stage of their lives.

The group to whom I referred earlier, including Mr Wegmann, are doing their bit to assist families whose children have mental disorders. I would like to name those 10 persons and commend them on their efforts to walk the Kokoda Track during Mental Health Week and for their contribution to a good news story about mental health. Those people are Joan Schumacher, Anne McDougall, Bernie Victory, Pauline Victory, Tom Warhurst, Chris Warhurst, Professor John Warhurst, Mark Black, Brenton Williamson and 'Weggers'.

Middle East

Senator BARTLETT (Queensland) (7.36 pm)—At the outset, I seek leave to table a petitioning document which is not in the correct form.

Leave granted.

Senator BARTLETT—The petitioning document was handed to me at a rally in Brisbane some time back with the request

that I table it in the Senate, so I have done so. It does not necessarily mean that I agree with the precise wording within the petitioning document, but I think it is important that people's views are represented. Nonetheless, I would say that I have a lot of sympathy for some of the concerns expressed in that petition. It specifically goes to the situation facing many people in Palestine, and particularly in the Gaza Strip, at the moment. The rally in question at which I received that petition was focused mainly on the conflict in Lebanon, which was getting a lot of media and public attention at the time, but which of course had actually been preceded by a significant escalation in conflict in the Gaza Strip.

The situation in Lebanon has thankfully settled down somewhat. Although there is an enormous amount of reconstruction and repair to be done to fix up the damage, there is at least movement forward. But there has been little progress in Gaza and, unfortunately, there is not much public attention on and media coverage of what is happening there. No doubt that is not unrelated to the fact that there is very little by way of independent media or media in general in Gaza compared to that in Lebanon. It is probably quite appropriate to make that observation, as we have been debating media legislation for the last few days. It reinforces how influential media coverage can be. The very fact of being able to have a steady stream of pictures, television footage, live coverage and interviews with people being directly affected clearly played a great role in the situation in Lebanon being one of major concern to many people. It is much harder to have concern shown about what is happening in Gaza, because the pictures are not there and it is not immediately on people's TV screens each night. But the fact that it is not on the TV screens does not in any way mean that the suffering is not real. In many ways, I think the situation in Gaza is more dire than what was occurring in Lebanon, because the people of the Gaza region were already in a much more dire situation.

I really want to take the opportunity to call on the Australian government to do more to try to resolve this situation. Many of us in the political arena are sometimes reticent to get too heavily engaged in public commentary about issues surrounding Israel and Palestine, because it is such a sensitive area, such a complex area. When any concern is raised, almost immediately there is a counter-concern or an allegation that this other action was done previously and people are not taking that into account. Of course, the history stems back many decades now. The complexity and sensitivity of the issue should not blind us to the fact that there is very real and very serious suffering occurring right now and that it is occurring as a direct consequence of the actions of the Israeli government.

I am one of those people who think it is quite feasible to be supportive of people in Israel and people in Palestine at the same time, but certainly in this case, whilst I am supportive of the people in Israel, I do have grave concerns about the actions of the Israeli government with regard to the Gaza Strip. The action of deliberately disabling power stations is something that I do not think can be justified. I think it is a clear violation of international humanitarian law. I do not think it is an adequate response to simply say that Hamas violates international law in other respects. That may well be the case, but there is no doubt who has the much greater power here, and that is the Israeli government. There is no doubt that the number of civilian people who are suffering directly as a consequence of these actions of the Israeli government is much larger than any counterclaim that may be made.

We do need to move towards a just resolution of the Israeli-Palestinian conflict, as this petition says, and I believe that we do need to have a much clearer recognition of the fact that some of the actions of the Israeli government are in clear violation of international standards. I might say on top of that that it is simply a reality that the actions that are occurring are not moving things towards peace. They are clearly moving things in the other direction. For me, that is perhaps the most important benchmark of all. I am not sure whether it is helpful in this context to speculate what actually is the intent of the actions that are occurring, but the consequence of those actions is entrenching the conflict even further and making further conflict and further violence almost inevitable. That is obviously not in the interests of the people of the region in particular.

In the modern era it is also an unfortunate fact that the ripple effects of these sorts of things reach out much more widely and there is much more prospect of creating a situation where we are much more at risk of being subjected to 'blowback'—to use an American term—as a result of the situation there. I think that makes it much more a matter of direct interest to the Australian people and to the Australian government. So, whilst I do not suggest that I in any way have the solution for resolving the Israel-Palestine conflict—I am not sure anyone has that solution—I do think that the escalation of the suffering in the Gaza region has got to a stage where we need to make stronger statements than would have occurred in the past. We do need to urge more immediate action to start reducing the pressure and the suffering that is being inflicted on the entire Palestinian population in the Gaza area. If that is not done, it will further entrench the probability of ongoing conflict not only in the immediate Israel-Palestine area but much more widely in that region. That is a counterproductive situation and it is one that we need to speak out more strongly against.

Senate adjourned at 7.45 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[*Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number*]

Class Rulings—

Addendum—CR 2006/7.

CR 2006/99-CR 2006/102.

Customs Act—Tariff Concession Orders—

0610181 [F2006L03326]*.

0611804 [F2006L03329]*.

0611860 [F2006L03328]*.

0612053 [F2006L03330]*.

0612229 [F2006L03327]*.

0612429 [F2006L03324]*.

Environment Protection and Biodiversity Conservation Act—Amendment of list of specimens taken to be suitable for live import, dated 25 September 2006 [F2006L03309]*.

Higher Education Support Act—Higher Education Provider Approval (No. 15 of 2006)—Raffles KvB Institute Pty Ltd [F2006L03350]*.

Migration Act—Migration Agents Regulations—MARA Notices—

MN41-06b of 2006—Migration Agents (Continuing Professional Development—Private Study of Audio, Video or Written Material) [F2006L03332]*.

MN41-06c of 2006—Migration Agents (Continuing Professional Development—Attendance at a Seminar, Workshop, Conference or Lecture) [F2006L03333]*.

MN41-06f of 2006—Migration Agents (Continuing Professional Development—Miscellaneous Activities) [F2006L03335]*.

Product Rulings PR 2006/145-PR 2006/147.

* Explanatory statement tabled with legislative instrument.

Indexed Lists of Files

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2006—Statement of compliance—Communications, Information Technology and the Arts portfolio agencies.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Advertising Campaigns
(Question No. 754)

Senator Chris Evans asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 4 May 2005:

For each financial year from 2000-01 to 2002-03 can the following information relating to advertising be provided:

(1) (a) What advertising campaigns were commenced; and (b) for what programs.

(2) In relation to each campaign: (a) what was its total cost, including a breakdown of advertising costs for: (i) television placements, (ii) radio placements, (iii) newspaper placements, (iv) mail outs with brochures, and (v) research on advertising; and (b) what was the commencement and cessation date for each aspect of the campaign placement.

(3) For each campaign: (a) on which television stations did the advertising campaign screen; (b) on which radio stations did the advertising campaign feature; and (c) in which newspapers did the advertising campaign feature.

(4) Which: (a) creative agency or agencies; and (b) research agency or agencies, were engaged for the campaign.

(5) In the event of a mail out, what database was used to select addresses – the Australian Taxation Office database, the electoral database or other.

(6) (a) What appropriations did the department use to authorise any of the payments either committed to be made or proposed to be made as part of this advertising campaign; (b) in which financial year will these appropriations be made; (c) will the appropriations relate to a departmental or administered item or the Advance to the Minister for Finance and Administration; and (d) if an appropriation relates to a departmental or administered item, what is the relevant line item in the relevant Portfolio Budget Statement for that item.

(7) Was a request made of the Minister for Finance and Administration to issue a drawing right to pay out moneys for any part of the advertising campaign; if so: (a) what are the details of that request; and (b) against which particular appropriation is it requested that the money be paid.

(8) Did the Minister for Finance and Administration issue a drawing right as referred to in paragraph (7); if so, what are the details of that drawing right.

(9) Has an official or minister made a payment of public money or debited an amount against an appropriation in accordance with a drawing right issued by the Minister for Finance and Administration for any part of the advertising campaign.

Senator Minchin—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator's question:

(1) to (5) The Department does not generally undertake advertising campaigns as generally defined by the Government Communications Unit. Information on payments made to advertising as well as market research organisations, direct mail organisations, however, is publicly available in the Department's annual reports for 2000-01, 2001-02 and 2002-03.

Invest Australia, a division of the Department, did however, launch a global advertising campaign in May 2003 to promote Australia's strengths as an investment destination. The Wealth of Opportunity campaign was implemented through business magazines (The Economist, Business Week,

Financial Times, Forbes and Business Asia) and online (Economist.com and FT.com). It highlighted key facts about Australia's investment credentials and reasons for investing in Australia. The campaign focused on Australia's key advantages as an investment destination including its strong economic performance, highly skilled and multicultural workforce, and open and efficient regulatory environment. During 2002-03, payments totalling $1.817 million were made for advertising placement. The campaign ran from 9 May to 30 June 03. Further information in relation to this campaign is available in the Department's 2002-03 Annual Report (page 31).

(6) Advertising costs are generally met from departmental funds appropriated through the normal budget process.

(7) No, not separately to existing delegations and Chief Executive Instructions.

(8) Not applicable.

(9) Not applicable.

Post Operational Psychological Screening

(Question No. 1716)

Senator Bob Brown asked the Minister representing the Minister for Defence, upon notice, on 2 May 2006:

With reference to the answer to question on notice no. 1164 (Senate *Hansard*, 29 March 2006, p. 192), in particular question 2(b), which indicates that 'post operational psychological screening' takes place;

(1) In each of the past 5 years, how many personnel have completed operational duty.

(2) How many of these had psychological screening.

(3) Did this screening specifically seek to discover post operational stress related symptoms or signs.

(4) (a) How many post operational personnel were suffering such symptoms or signs; and (b) what does follow-up indicate.

Senator Ian Campbell—The Minister Assisting the Minister for Defence has provided the following answer to the honourable senator's question:

(1) During the period 2001-05, the number of personnel deployed on operational duty totalled 44,922 as detailed below. This number reflects 'cases' of deployment rather than total Australian Defence Force (ADF) personnel who have been deployed. Operational tempo has required some personnel to deploy on multiple occasions.

2001 - 7,234

2002 - 9,961

2003 - 13,966

2004 - 8,073

2005 - 5,688

(2) A database of Return to Australia Psychological Screening (RtAPS) was established in 2003. Psychological screening data prior to 2003 cannot be readily accessed.

The requirement for RtAPS is detailed in Operational Health Support Plans. 27,727 personnel deployed during the period 2003-05 (cases of deployment rather than total ADF personnel who have been deployed), of which 20,821 personnel deployed on operations that required an RtAPS. A total of 15,690 RtAPS are recorded on the database for the period 2003-05. Some variance can be attributed to short duration deployments not identified for RtAPS and RtAPS data not currently available for database entry. Additionally, data for members who deployed in 2005 but redeployed in 2006 is not included in the RtAPS figures.

(3) Yes.

(4) (a) and (b) Of the 15,690 RtAPS recorded, 265 personnel were identified for formal follow-up. Accurate reporting on the number of personnel experiencing post operational stress related symptoms or signs, how many were followed up, and follow-up outcomes would require a comprehensive review of individual psychological and medical files; an activity that Defence does not currently have the resources to undertake. Current studies examining prevalence of mental health problems and disorders (ADF Mental Health and Wellbeing Study) and the Deployed Health Studies program will provide further advice on operational mental health outcomes.

Conclusive Certificates

(Question No. 1946 supplementary)

Senator O'Brien asked the Minister representing the Treasurer, upon notice, on 8 June 2006:

(1) Since October 1996, on how many occasions has a conclusive certificate been issued in relation to departments or agencies within the Minister's portfolio exempting a document or documents from disclosure under the Freedom of Information Act 1982 (FOI).

(2) For each occasion: (a) what was the date; (b) what was the department or agency of which the FOI request was made; (c) what officer made the decision; (d) what was the document or documents excluded from disclosure pursuant to the certificate; and (e) was an appeal made against the decision in the Administrative Appeals Tribunal; if so, what was the case name and its outcome.

Senator Minchin—The Treasurer has provided the following answer to the honourable senator's question:

Australian Bureau of Statistics

(1) No conclusive certificates under the Freedom of Information Act 1982 have been issued in respect of information held by the Australian Bureau of Statistics since October 1996.

(2) Not applicable.

Australian Competition & Consumer Commission

(1) No conclusive certificates under the Freedom of Information Act 1982 have been issued in respect of information held by the Australian Competition & Consumer Commission since October 1996.

(2) Not applicable.

Australian Office of Financial Management

(1) No conclusive certificates under the Freedom of Information Act 1982 have been issued in respect of information held by the Australian Office of Financial Management since October 1996.

(2) Not applicable.

Australian Prudential Regulation Authority

(1) No conclusive certificates under the Freedom of Information Act 1982 have been issued in respect of information held by the Australian Prudential Regulation Authority since October 1996.

(2) Not applicable.

Australian Securities and Investments Commission

(1) No conclusive certificates under the Freedom of Information Act 1982 have been issued in respect of information held by the Australian Office of Financial Management since October 1996.

(2) Not applicable.

Australian Taxation Office

(1) Since October 1996, one Conclusive Certificates under the Freedom of Information Act 1982 has been issued in relation to documents held by the Commissioner of Taxation.

The Acting Secretary, Department of Prime Minister and Cabinet issued the conclusive certificate, in relation to an FOI request made to the Australian Taxation Office, on 11 September 1998.

(2) The documents consisted of Cabinet Submissions, Cabinet Minutes and file notes containing extracts from the Cabinet Submissions and the Cabinet Minutes. At the time the decision to issue the Conclusive Certificate was made, there was an appeal to the Administrative Appeals Tribunal against a decision by the Commissioner of Taxation. The case name was: Corrs Chambers Westgarth and the Commissioner of Taxation No V97/651. The appeal was subsequently withdrawn by the applicant.

Corporations & Markets Advisory Committee

(1) No conclusive certificates under the Freedom of Information Act 1982 have been issued in respect of information held by the Corporations & Markets Advisory Committee since October 1996.

(2) Not applicable.

Inspector-General of Taxation

(1) Since October 1996, no Conclusive Certificates under the Freedom of Information Act 1982 have been issued in relation to any documents held by the Inspector General of Taxation.

(2) Not applicable.

National Competition Council

(1) No conclusive certificates under the Freedom of Information Act 1982 have been issued in respect of information held by the National Competition Council since October 1996.

(2) Not applicable.

Productivity Commission

(1) Since October 1996, no Conclusive Certificates under the Freedom of Information Act 1982 have been issued in relation to any documents held by the Productivity Commission.

(2) Not applicable.

Royal Australian Mint

(1) No conclusive certificates under the Freedom of Information Act 1982 have been issued in respect of information held by the Royal Australian Mint since October 1996.

(2) Not applicable.

Treasury

(1) The Department of the Treasury has issued four conclusive certificates since October 1996.

(2) The Treasurer made the decision to issue two conclusive certificates in relation to an FOI request made to the Department of the Treasury. The certificates were issued on 1 December 2003 and 13 January 2004, respectively.

The documents consisted of Treasury estimates, briefings and question time briefs prepared for the policy formulation or advice on the first home owners scheme or on income tax bracket creep. The decision to issue the conclusive certificates was appealed to the Administrative Appeals Tribunal and the case name is McKinnon and the Secretary, Department of the Treasury No Q2003/689 & 809. The Tribunal decided two documents should be released to the applicant and that the remainder of the documents covered by the conclusive certificates were within section 36(1)(a) of the Freedom of Information Act 1982 and that there existed reasonable grounds for the claim that disclosure of each of those documents would be contrary to the public interest.

McKinnon appealed against the Tribunal's decision to the Federal Court of Australia in 2005, but was unsuccessful and costs were awarded to Treasury. He then appealed to the High Court of Australia. The appeal was heard in Canberra on 18 May 2006 by a bench of 5 justices. On 6 September 2006, the High Court of Australia handed down it decision in McKinnon v Secretary, Department of the Treasury [2006] HCA 45. The High Court decided the McKinnon FOI case in Treasury's favour.

The Secretary issued two conclusive certificates in relation to an FOI request made to the Department of the Treasury on 12 July 2006.

The documents consisted of Treasury estimates, briefings and question time briefs prepared for the policy formulation or advice on tax reform (bracket creep and top tax rate). The decision to withhold documents was appealed to the Administrative Appeals Tribunal and the case name is: The Australian and the Department of the Treasury No V2005/1104.

Air Vice-Marshall Criss AM AFC

(Question No. 2230)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 19 July 2006:

With reference to Air Vice-Marshal Criss AM AFC (AVM Criss), who in August 2005 was paid compensation for defective administration, having submitted his claim in October 2002 at the recommendation of the then Chief of Defence Force, Admiral Barrie, following an earlier denial of his Redress of Grievance (ROG) by the Appointing Officer and Vice Chief of the Defence Force, Lieutenant General Mueller:

(1) (a) Did the department, through its delegate, initially increase its original offer; (b) was that new offer further increased by agreement on a handshake to a third figure closer to that sought by AVM Criss; and (c) was that third agreed amount subsequently reduced to a lesser amount than that agreed at the conclusion of the mediation.

(2) Was the revised lesser amount in (1) (c) above contained in the delegate's `final decision' letter to the claimant dated 20 July 2005.

(3) Prior to issuing the final unilateral decision in the letter of 20 July 2005 was AVM Criss informed by Defence legal staff in May 2005 that mediation was scheduled for one day, Thursday 2 June 2005, with Friday 3 June being set aside for further mediation just in case the matter was not concluded on the first day.

(4) At the commencement of the mediation did the Commonwealth's delegate declare that he attended with the full authority to commit the Commonwealth to a settlement, advising at the same time that any public apology statement would have to be cleared by the Secretary and the Chief of the Defence Force (CDF).

(5) Early on day one, did the Commonwealth's delegate increase the pre-mediation baseline settlement offer to a second amount approximately 8.5 per cent above the first baseline figure.

(6) Did the Commonwealth's delegate request a 4-week adjournment early in the afternoon of the second day after the claimant stated that the salary component of the offered compensation was not correctly calculated.

(7) After the adjournment had been agreed did the Commonwealth's delegate then table his evidence to the Senate Foreign Affairs, Defence and Trade Legislation Committee from three nights earlier, disclosing that he had never intended the two days of mediation to reach a settlement.

(8) When the mediation reconvened in Sydney 4 weeks later in the offices of the mediator, Justice Morling, did the Commonwealth's delegate once again confirm that he attended with the full au-

thority to commit the Commonwealth to a financial settlement with the same constraints involving the CDF and Secretary for any public statement.

(9) Is it the case that, after additional discussion, the claimant put on the table his bottom line figure for compensation which was approximately 44 per cent higher than the second offer from the Commonwealth.

(10) Did the Commonwealth's delegate make a counter offer forming a compromise sum midway between the second offer and the claimant's bid, which the claimant accepted.

(11) Did the Commonwealth's delegate and the claimant shake hands on the accepted offer, and did the Commonwealth's delegate advise that the offer was subject to confirmation by the CDF and the Secretary, despite his earlier assertion that settlement authority rested with him.

(12) In relation to that overruling of the delegate's agreed offer confirmed with a handshake, who directed the delegate not to honour the agreed mediated amount.

(13) Did the incumbent Minister Assisting have any involvement in rejecting the mediated amount.

(14) Why was the amount varied from the mediated agreed amount.

(15) Why did the CDF and the Secretary issue a press release (CPA 209/05) on 22 August 2005 stating that mediation had concluded when no conclusion had been reached because the delegate reneged on the agreed settlement.

(16) Do the Department of Finance and Administration guidelines at Attachment B to Finance Circular 2001/01 relating to compensation for detriment caused by defective administration (CDDA) state, inter alia:

Paragraph 4 – 'Care should be taken to ensure that the principles of natural justice are applied...'

Paragraph 19 – 'Each case must be decided on its own merits'.

Paragraph 36 - 'The overarching principle to be used in determining the level of compensation is to restore the claimant to the position he or she would have been in had defective administration not occurred'.

Paragraph 35 – 'Offers of compensation to claimants should be calculated on the basis of what is fair and reasonable in the circumstances and in consideration of the fact that the Commonwealth should not take advantage of its relative position of strength in an effort to minimise payment';

if so, can the Minister explain or confirm:

(a) why the member was only compensated for a loss of salary component previously determined in an ROG Defence Department rejected report dated 29 June 2001; and

(b) if an incorrect reference was used as the basis for the compensation calculation used and, if so, (i) why, and (ii) was rectification made of any incorrect reference used, and if not, why not.

(17) Was there supporting documentation tabled with the CDDA claim that clearly detailed that the member would have been in contention for the CAF selection process in June 2005; if so, what was the basis for the delegate's unilateral decision of using March 2003 as the selected separation date for the officer from the Royal Australian Air Force (RAAF)

(18) Do the CDDA guidelines, at paragraph 39, relating to the payment of interest, state: '...where the agency's actions and /or notification for defective administration were unreasonably protracted ... interest on damages may be payable...'; if so, given that AVM Criss submitted his ROG in March 2001, and given that the Department of Defence compensated the member in August 2005 an amount recommended for payment in a June 2001 report, and given that the member submitted his CDDA claim in October 2002, can the Minister explain why the member was denied the payment of interest on the money withheld by the department for over 4 years.

(19) In relation to the Investigating Officer's Report into AVM Criss's ROG; (a) was that investigation undertaken by a retired rear admiral and a retired Supreme Court judge; (b) were excerpts quoted in the Blick report into the same matter; and (c) is the Blick report a document now in the public domain through the Sydney Morning Herald website.

(20) (a) Why is the ROG report into the Criss complaint a protected document; (b) what is the legal basis of that protection; (c) what penalties apply to those who release its contents; and (d) if the report is quoted in the Blick report what is the need to continue to protect it from public scrutiny.

(21) Is the purpose of continuing to protect the ROG report on AVM Criss from public scrutiny to protect past senior ADF officers who were found by the inquiry to have been negligent and complicit in a conspiracy to remove AVM Criss from office.

(22) (a) What criticism was made in the ROG report of the actions and behaviour of senior officers involved in removing AVM Criss from office; (b) what recommendations were made about counselling them or disciplining them; and (c) what action, if any, was taken.

(23) (a) What criticism was made in the Blick report of the actions and behaviour of senior officers involved in removing AVM Criss from office and his subsequent handling; and (b) what actions have been taken, if any, regarding their questionable conduct.

(24) (a) In each of the past 5 years, how many ROG reports have been released publicly in full or in part; and (b) what was the reason for release in each case.

(25) Does the Blick report quote the ROG inquiry into the grievance of AVM Criss as follows:

'The investigation officer's findings concerning the precise nature of AVM Criss's grievance were:

i. Air Marshal McCormack removed Air Vice-Marshal Criss from the position of Air Commander, Australia without abiding by any of the provisions of DI(AF)PERS 4-19;

ii. The allegation that Air Marshal McCormack exceeded his authority by advising Air Vice-Marshal Criss he was going to be removed from the Air Force does not arise for determination. An intention was never implemented;

iii. The serious double allegation that Air Marshal McCormack misrepresented his dealings with Air Vice-Marshal Criss subsequent to their 10 March 2000 meeting to protect his position (or stance) has not been distinctly made or, more particularly, clearly proved. The allegations are rejected; and

iv. Air Marshal McCormack failed to provide an annual performance assessment on Air Vice-Marshal Criss in March 2000 in the form required by DI(G)PERS 37-1.'

(26) Does the Vice Chief of the, Defence Force (VCDF) 38/01 letter and attached decisions matrix, dated 16 October 2001, by LTGEN Mueller, also quote from the ROG inquiry into the grievance of AVM Criss as follows:

'1.04 General Findings and Recommendations:

i. DI(AF)PERS 4-19 was wholly relevant to the issues raised in the Redress of Grievance by Air Vice-Marshal Criss

ii. For all members of the RAAF, cases of accordance with DI(AF)PERS 4-19; but that in the case of Air Vice-Marshal Criss, the Chief of Air Force ignored these requirements

iii. The way in which Air Vice-Marshal Criss was removed from the position of Air Commander, Australia denied him procedural fairness in the context of DI(AF)PERS 4-19

iv. Air Marshal McCormack denied Air Vice-Marshal Criss the right to make representations or to be heard by failing to compile a Star Rank Appraisal and Development Report for his period of service as Air Commander, Australia; and by denying Air Vice-Marshal Criss the opportu-

nity to read and make representations about the letter report on Air Vice-Marshal Criss submitted to the Chief of the Defence Force on 27 March 2000,

v. The career prospects of Air Vice-Marshal Criss may have been damaged by the failures of his Program Managers to reader Star Rank Officer Appraisal and Development Reports on him in accordance with DI(G)PERS 37-1.

vi. The necessity to remove Air Vice-Marshal Criss from the position of Air Commander, Australia is not substantiated by the reasons advanced by the Chief of Air Force for his act in so doing.

vii. Air Vice-Marshal Criss has no legal entitlement to apology by way of redress. It is not for this investigation to determine whether an apology should be tendered (either public or private) as this would seem to be a matter that involves questions of policy.

viii. Any remedy of grievance for Air Vice-Marshal Criss and the particular reasons for it should be made public.

ix. The Inquiry was unable to find that the act of removing Air Vice-Marshal Criss from the position of Air Commander, Australia actually denied him the chance of promotion to Three Star Rank

x. An award of compensation is the appropriate means of redressing the wrong done to Air Vice-Marshal Criss. The amount should take account of the considerations in subsections 3.073 and 3.077, of this report.

1.05 Findings and Recommendations concerning Removal from Command

i. Air Marshal McCormack made the decision at a meeting with the Minister for Defence on 3 March 2000 because he had, over time, lost confidence in Air Vice-Marshal Criss as a senior Air Force Commander in the sense explained in this report.

ii. Air Marshal McCormack took the decision on dubious grounds and without taking proper account of his commendable performance as Air Component Commander in the Australian Theatre Command during the successful East Timor operations

iii. Very little of the evidence or other information used in making the decision was disclosed to Air Vice-Marshal Criss and he was not afforded the opportunity to be heard in respect of the decision to remove him

iv. Air Marshal McCormack abused his authority by failing to follow the requirements of DI(AF)PERS 4-19 and Air Vice-Marshal Criss was denied procedural fairness

v. A substantial amount of compensation should be paid to redress this ground for grievance. The award of this compensation and the reasons for its (sic) should be made public.

1.06 Finding concerning Exceeding Authority Removal from Air Force

i. In the terms asked in the question, this matter does not arise. Any alleged intention to remove Air Vice-Marshal Criss from the Air Force under the MIER process or any other process was not implemented.

1.07 Finding concerning Misrepresentation

i. The investigation does not accept that either or both allegations have been established.

1.08 Findings and Recommendations concerning Performance Assessment

i. Air Vice-Marshal Criss has not received any formal performance assessment report in his current rank. Three informal performance assessment reports have been compiled but he received none of these from those who reported on him. He has subsequently been given a copy of one of these informal reports.

ii. Notwithstanding the considerations in sub-section 3.043 and 3.044 of this report, including the entitlement of the complainant to receive a Star Rank Officer Appraisal and Development report for his period of service as an Air Vice-Marshal, no realistic purpose would be served by retrospectively producing a document for this period of service as Air Commander, Australia.

iii. There is no reason why a Star Rank Officer Appraisal and Development Report on Air Vice-Marshal Criss should not be prepared by the Vice Chief of the Defence Force for his period of service since 8 May 2000.

iv. The personal and professional consequences for the complaint (sic) of not receiving formal or informal performance assessment reports are that he has been denied the opportunity of making representations about these reports directly to those who wrote them; and he has been judged 'capable but not competitive' for promotion to Three Star Rank without those making the judgement having available to them valid performance assessment reports on which to make such a judgement.';

if so: (a) were any of the findings of the ROG not referred to in the above mainly supportive of AVM Criss's complaints; and (b) were other recommendations of a procedural nature made in the ROG report.

(27) Did the ROG report recommend the award of substantial compensation to AVM Criss to redress the wrong it obviously concluded that he had suffered.

(28) Did the Blick report recommend that the ROG Inquiry Report be regarded as an annex to the Blick report; if so, why was that not done and who made that decision.

(29) Did the Blick report reveal that a Defence Legal Service officer expressed concern to a colleague regarding the VCDF's intention to rely on second-hand oral evidence from a legal officer when that same lawyer had put in writing that he was not of the view attributed to him in the verbal evidence.

(30) Did that Defence Legal Service officer describe the VCDF's actions as being 'quite shonky'.

(31) Does the Blick report reveal that in April 2002 CDF Barrie informed the Defence Legal Service that he was now of the view that he supported the Doolan/Abadee ROG findings; if so: (a) why did Defence continue to support the VCDF's decision to overturn all the ROG findings that were in AVM Criss's favour; (b) why was the member instructed to submit a claim for defective administration when the department had already conducted a comprehensive investigation and that the CDF had indicated that he now supports AVM Criss's appeal against the incorrect decisions made by the Appointing Officer - VCDF - Lieutenant General Mueller; (c) is it not the case, as revealed by the Blick report, that by 24 April 2002 the department was in a position to admit that the AVM Criss ROG grievances were proven and that the member should have been immediately compensated; and (d) why was the member forced to submit a CDDA claim and wait a further three and half years to receive compensation.

Senator Ian Campbell—The Minister Assisting the Minister for Defence has provided the following answer to the honourable senator's question:

The mediation agreement between Defence and Air Vice-Marshal (AVM) Criss recognised the critical importance of confidentiality, with the only exception being where a party is compelled by law, portfolio or statutory duties to disclose information.

It is a matter of some concern that confidential statements made in a confidential and 'without prejudice' mediation appear to have been disclosed. Defence regards alternative dispute resolution processes such as mediation as an important means of quickly resolving difficult matters. Critical to this is the confidentiality of the process. The undermining of this has the potential to lead to less open discussion in future mediations and hence to compromise an otherwise effective and proven process, which provides an opportunity to avoid litigation. This would be a matter of real regret.

Defence considers that AVM Criss' claims have been concluded. On the basis of independent legal advice, AVM Criss has entered into a deed of release and indemnity undertaking not to pursue any further legal claim against the Commonwealth. In return he has been paid significant compensation.

Further, as he was entitled to do, he has raised concerns with the Compensation for Detriment for Defective Administration (CDDA) decision with the Commonwealth Ombudsman. The Ombudsman's office has concluded that it would be inappropriate to intervene further in the case as "the process undertaken to negotiate a CDDA settlement involved the engagement of appropriately qualified personnel, was a genuine negotiation and [AVM] Criss is a highly intelligent and capable person."

It is also noted that, as this was a decision under the CDDA scheme, there is no delegate, nor is it a decision of Defence. The authorised decision maker acts for and on behalf of the Minister for Defence, and not "independently" in the same way as a delegate. Rather than repeating this in relation to each reference to "delegate", all relevant questions have been answered by reference to the role of the "authorised decision maker".

Having regard to the above, the following responses are offered to the specific questions as is appropriate in the circumstances.

(1) (a) The authorised decision maker did increase the amount of his original proposed CDDA decision as a consequence of the mediation process.

(b) No.

(c) No.

(2) See my response to part (1) (b) and (c).

(3) Defence Legal staff indicated in April 2005 their hope that the mediation may only require one day (2 June 2005), but set aside a further day (3 June 2005) if required.

(4) The authorised decision maker made clear that he had authority to decide this matter in accordance with the CDDA guidelines. AVM Criss had an independent legal adviser to assist him at the mediation, including with advice on the role and status of the authorised decision maker. Further, the authorised decision maker had explicitly advised AVM Criss in a letter dated 11 March 2005 that there was very little room for manoeuvre on the financial offer of settlement given that the decision maker had already sought to take all relevant factors into account in making his proposed CDDA decision.

(5) Yes.

(6) No. There was a question of Defence policy that was relevant to the calculation of the final amount. AVM Criss queried that policy. Given the implications of the policy for the final amount, the decision maker agreed to confirm that policy with the relevant areas within Defence and to meet with AVM Criss again once this had been completed.

(7) No. The evidence to the Senate Committee prudently recognised that final conclusion of the entire matter, as opposed to the mediation itself, might reasonably be expected to take longer than the two days set aside for the mediation.

(8) See my response to part (4).

(9) Yes.

(10) No, there was no counter offer.

(11) (12), (13) and (14) See my response to part (10).

(15) CPA 209/05 was issued because the mediation process had concluded. The final CDDA decision had been made by the CDDA decision maker finding defective administration and offering to pay compensation to AVM Criss, AVM Criss had accepted the payment, and signed a Deed of release and indemnity agreeing not to pursue any legal claims in relation to the matter.

(16) The CDDA Guidelines need to be read in their entirety. The final amount was a global figure determined with the assistance of Professor Dennis Pearce, a former Commonwealth Ombudsman, who considered the amount offered to be fair and reasonable. As he was entitled to do, AVM Criss raised his dissatisfaction about the amount with the Commonwealth Ombudsman. The Ombudsman's office has concluded that it would be inappropriate to intervene further in the case as "the process undertaken to negotiate a CDDA settlement involved the engagement of appropriately qualified personnel, was a genuine negotiation and [AVM] Criss is a highly intelligent and capable person."

(17) A range of claims were made in support of higher compensation. As might be expected, the claims put the case of the claimant at its highest. The decision maker had to take all relevant considerations into account.

(18) See my response to part (16).

(19) (a) Yes.

(b) Yes.

(c) An early version of the Blick report was leaked to the Sydney Morning Herald. It is not the final Blick report.

(20) The report into AVM Criss' Redress of Grievance (ROG) was the report of a formal inquiry by an Inquiry Officer under the Defence (Inquiry) Regulations. Under those regulations it is an offence for a person employed by the Commonwealth, including a member of the Australian Defence Force (ADF), to disclose the report without the authorisation of the Minister. The penalty is $550 or imprisonment for up to three months.

(21) No.

(22) See my response to part (20). The Minister has not authorised general release of the ROG report.

(23) The Blick report concluded, and Defence has publicly acknowledged, that there were shortcomings in the manner in which AVM Criss' removal from command was handled, and in Defence's handling of AVM Criss' complaints in relation to failures of administration in the handling of his removal, and of subsequent investigations and appeals. Defence has paid significant compensation under the CDDA scheme and taken steps to reinforce the appropriate application of the principles of procedural fairness.

(24) None.

On each occasion that a ROG is referred to the Chief of the Defence Force (CDF), a Service Chief or their delegate, a brief is prepared that forms the basis for the ROG decision maker's decision. Under the provisions of Defence Instruction General Personnel 34-1 Redress of Grievance – Tri Service Procedures an ADF member may request access to the brief, together with other documents held on their ROG file. When an ADF member requests access to documents pertaining to his/her ROG, the provisions of the Freedom of Information Act 1982 are used as a guide in deciding whether to release the documents sought.

(25) (26) and (27) See my response to part (20). The Minister has not authorised general release of the ROG report.

(28) The Blick report referred to the ROG report and hence included it as an annexed document. The ROG report is annexed to the complete copy of the Blick report held by Defence.

(29) No.

(30) No. The officer expressed concern that the process would look "quite shonky" if the legal advice, which was to be relied upon for a decision, was not in writing.

(31) (a) In April 2002, CDF indicated that he accepted Doolan/Abadee's findings "in the main". However, CDF's actual findings in May 2002 were more limited. That said, CDF did find that the

process by which AVM Criss was removed from command did not satisfy the requirements of procedural fairness, particularly in its lack of giving AVM Criss adequate opportunities to remedy the lack of confidence the Chief of the Air Force had in his command. Further, that the management of the removal of AVM Criss from his command as Air Commander Australia could have been handled with appropriate regard for due process, as well as the sensitivity and tact associated with the management of senior officers in the ADF. To this extent, CDF found that AVM Criss had ground for complaint.

(b) (c) and (d) AVM Criss did not have a legal claim for compensation. The applicable scheme for potential compensation was the CDDA scheme. The persons conducting the ROG inquiry were not authorised decision makers for the purposes of the CDDA scheme. Accordingly, AVM Criss needed to make a claim addressing the criteria under the CDDA scheme that there had been defective administration for the purposes of the scheme and that he had suffered damage, which could be compensated in accordance with that scheme. This claim was then considered by the CDDA decision maker.

Air Vice-Marshall Criss AM AFC

(Question No. 2304)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 4 August 2006:

With reference to Air Vice-Marshal Criss AM AFC (AVM Criss), who according to Mr Bill Blick had all positive Investigating Officer (IO) 29 June 2001 Redress of Grievance (ROG) report outcomes overturned on 16 October 2001 by the then Vice Chief of the Defence Force (VCDF), Lieutenant General Mueller, acting as the Appointing Officer for the ROG:

(1) Can the Minister confirm that:

(a) the Inspector General of the Australian Defence Force (IGADF) recently made determinations into three areas of on-going concern to AVM Criss on 27 February 2006 and refused to take corrective action on any of the four issues raised by him relating to: (i) advice received regarding access to evidence during the early stages of the investigation into his redress of grievance, (ii) the refusal by the department, and particularly, the Appointing Officer, to amend the term of reference (TOR) during the course of the investigation, (iii) as a consequence of not amending the TOR, the failure to recognise the significance or relevance of additional written submissions made by AVM Criss to the investigating officers, and (iv) the various inappropriate actions and decisions of the VCDF in relation to his administration of the matter as the Appointing Officer for the ROG;

(b) AVM Criss initially appealed aspects of his concern with some aspects of the conduct of his ROG to the then Chief of the Defence Force (CDF) Admiral Barrie on 9 November 2001, 7 December 2001, 15 February 2002, 13 May 2002 and 19 June 2002, all to no avail;

(c) AVM Criss, having had his compensation for detriment caused by defective administration (CDDA) claim rejected by the first delegate (ASPS) and his appeal to the departmental Secretary denied, wrote to the Defence Force Ombudsman (DFO) on 20 May 2005 requesting that the DFO investigate his concerns with those aspects relating to the conduct of his ROG as listed above in sub-paragraph (a) and that the DFO refused to investigate;

(d) AVM Criss in providing comment to the Deputy Secretary Corporate Services, Mr Henderson on 17 February 2005 regarding the Blick report once again listed his concerns with the conduct of some aspects of the conduct of his ROG and that those comments against paragraphs 120, 125, 126, 127 and 130 now form a part of the Blick report as a formal attachment dated 11 May 2005; and

(e) Mr Blick, in responding to AVM Criss's comments on the Blick report, acknowledged on 11 May 2005 that in relation to his concerns regarding some aspects of the conduct of his ROG investigation stated 'Others, however, particularly those relating to AVM Criss's grievances about the ROG inquiry process, would require further examination of departmental documents and, possibly, quite a bit more drafting.

(2) Can the Minister further advise:

(a) in relation to the ROG issues, if Mr Blick estimated that it would only take him 2 to 3 days to research the issues properly and do any necessary redrafting;

(b) if the department re-engaged Mr Blick to complete that work; if not, why not;

(c) whether AVM Criss wrote to the IGADF on 26 May 2005 requesting an investigation of his concerns relating to some aspects of the conduct of the ROG as previously listed;

(d) whether AVM Criss did not receive a response to his May e-mail to the IGADF and so e-mailed the IGADF again on 20 June 2005 and 26 July 2005 requesting a response to his 26 May 2005 request for an investigation and 'an update on progress to date and intent';

(e) whether the IGADF responded to AVM Criss on 27 July 2005;

(f) whether they met in Canberra on 12 August 2005 and, at that meeting, whether AVM Criss provided the IGADF with additional information after their meeting on 12 August 2005;

(g) whether the IGADF wrote to AVM Criss, IG ADF CF/32/05 dated 19 August 2005 and inter alia stated: (i) 'I confirm that I will review those matters that you raised with the DFO, namely access to evidence, error in TOR and additional submissions', and (ii) 'In addition, having regard to the points you raised about Mr Blick's observations as to the legal advice received by the Vice Chief of the Defence Force, I will consider the relationship between that advice and the outcome of his consideration of your application for redress of grievance';

(h) whether AVM Criss, after receiving the 27 February 2006 letter from the IGADF advising that Defence was going to do nothing further and wishing him well with his future life, again wrote to the DFO on 14 March 2006 and inter alia requested Professor McMillan to investigate the decisions of the IGADF, and that the DFO in his letter 2006-104122, dated 4 April 2006, declined to investigate AVM Criss's concerns with the actions and decisions of the IGADF.

(3) Can the Minister further confirm that in his letter to AVM Criss of 27 February 2006 the IGADF inter alia confirmed that:

(a) the advice provided by Defence Legal staff during the conduct of the ROG regarding the complainants access to evidence was correct but in doing so that the IGADF did not acknowledge that initially incorrect advice was provided by Defence Legal staff and the correct advice was only provided after AVM Criss had finished giving his evidence to the investigating officers;

(b) the IGADF acknowledged 'that the TOR for the investigation into your ROG did not allow the IO to address all of the instances of alleged misrepresentation by Air Marshal McCormack that were included in your ROG. I also acknowledge that you attempted to have the TOR amended to include provision for this';

(c) 'I accept that there was a factual error contained in the TOR, which could have been avoided had your request for the TOR to be amended not been overlooked'; and

(d) 'the IO took into account all of the information that was provided in the additional submissions'; if so, given that the IGADF failed to make the connection with his previous admission by not realising that if the TOR prevented the IO from looking at the correct dates for the alleged grievance relating to misrepresentation of facts by the Chief of Air Force (CAF), were not the additional submissions irrelevant to the IO and not appropriate to his investigation, and

therefore should have not been taken into consideration as they would have been had the TOR been amended, as it is now acknowledged they should have been.

(4) Can the Minister also confirm that in the same IG letter to AVM Criss dated 27 February 2006 it was stated:

(a) 'Legal advice is simply that and VCDF was not obliged to accept all, or any, of the legal advice provided to him';

(b) 'he [Lieutenant General Mueller] also drew upon his own considerable experience and knowledge of the dynamics of high command';

(c) 'I might say that it seems to be a commonly held, if erroneous, view that non-compliance with any DI will potentially [be] found an offence under the Defence Force Discipline Act';

(d) advice received from the Australian Government Solicitor was that 'the broad language of the DIs does not make it clear that a failure to comply would make the relevant officer guilty of a Service offence';

(e) 'other factors also influenced the VCDF's position at the time, not the least of which appeared to be the CDF's view that the VCDF's reporting obligation did not pose an impediment to his role as the ROG decision maker because the requirement for a report had otherwise been met informally';

(f) 'there is no indication, for example, of bad faith, negligence or improper motive which otherwise might have enlivened disciplinary liability under any of the military law provisions to which you have referred';

(g) 'I agree that many aspects of the management of your case overall left a lot to be desired and note that this has been acknowledged in settlements reached between you and the Department'; and

(h) 'There may well have been judgements made that were poor or even possibly wrong, but it does not follow that this, without more, will necessarily constitute offences against military law".

(5) If the quotations in paragraph (4) above are confirmed, is it now acknowledged by the department that the TOR relating to the CAF allegedly misrepresenting facts should have been amended during the conduct of the investigation to correctly reflect the complainant's concerns.

(6) Did AVM Criss repeatedly request the amendment of the TOR, and did he question this during or after the conduct of the investigation into his ROG, on multiple occasions with former CDF Barrie, personally face-to-face with VCDF Mueller, in written and telephone conversations with Defence Legal, Commodore Smith, in his original CDDA claim, in his appeals to the Secretary of the department, Mr Smith, in feedback on the Blick report to the department, twice to the DFO and finally successfully (without any corrective action being taken) to the IGADF.

(7) Given that the IGADF now agrees that the TOR should have been amended, will the Minister now correctly address the complainant's original grievance from 28 March 2001.

(8) Given that the DFO has recently refused to investigate the IGADF 27 February 2006 decisions, despite the IGADF now acknowledging that the TOR for the Criss ROG should have been amended during the conduct of the inquiry, can the Minister explain why an independent investigator should not now be appointed, after the TOR has been correctly amended to reflect the member's longstanding and unaddressed grievance, to look at the evidence on file and make a determination in relation to the very serious stated grievance of the CAF misrepresenting the truth to protect his position or stance.

(9) Is the IGADF's recent confidential determination re-validating the actions and decisions of VCDF, now inconsistent with the findings in the independent Blick report; if so, given that the DFO has re-

fused to investigate the matter due to his acceptance of the department's process, which of the IGADF outcome or the Blick outcome is preferred, and which was accepted by the DFO as sufficient for his purposes.

(10) If the IGADF has now determined that the VCDF's decision to overturn the IO's report in areas favourable to AVM Criss was justified and open to him to decide, and given that the department has recently paid compensation to AVM Criss using the same ROG report as the basis to determine the quantum of that compensation paid, can the Minister now confirm if the member has been inappropriately compensated, or has the IGADF incorrectly found that VCDF acted appropriately.

(11) Did the Blick report find that internal Defence Legal staff expressed the written opinion that 'if the Report or its acceptance and implementation is challenged, the process will look quite shonky'; if so, how did the IGADF determine in February 2006 that VCDF's actions in late 2001 were not 'shonky'.

(12) Will the Minister explain how the IGADF can now support the VCDF 2001 assertion that a special bond should exist between two and three star officers and therefore Defence Instructions do not apply at that rank level, when highly specialised legal opinion advised that the Defence Instructions do apply to all rank levels and that everyone is entitled to natural justice as afforded of Air Force personnel by that Defence Instruction.

(13) Did the evidence available to the IOs indicate that that it was CAF's failure or refusal to communicate that caused AVM Criss to be unaware of any concern his superior officer had with his level of performance, and did the IO report find accordingly; if so, why did the IGADF in February 2006 re-validate the decision by VCDF that the fault lay with AVM Criss.

(14) Did Mr Blick estimate that it would only take him 3 days to investigate AVM Criss's ongoing concern with the conduct of his ROG; if so, why did Defence Legal not re-engage Mr Blick as he offered, and was it concerned that it would appear that it took the department and the DFO more than a year and still not finalised the matter.

(15) Why does the department engage highly qualified investigating offices and highly qualified and expensive legal advisers if an Appointing Officer is free to decide whatever he wants, when making his determination into a redress of grievance as is now alleged by the IGADF.

(16) If the IGADF determination is now accepted by the Minister, can the Minister explain how a retired Supreme Court Judge and a retired Rear Admiral can listen to hours of evidence, ask hundreds of questions and observe personal responses and behaviours in the ROG, and yet are effectively overruled by the IGADF.

(17) Does the Minister accept the advice given to AVM Criss by the IGADF that an informal performance report withheld from AVM Criss by both CDF Barrie and VCDF Mueller does not mean that VCDF should have excused himself from being the Appointing Officer for the Criss ROG, particularly given that the IO's report was critical of the VCDF's actions in this regard, and that one of the complainant's grievances related to decisions taken by the CDF before he even received the informal reports.

(18) (a) Did the Solicitor-General provide advice to the IGADF in relation to the enforceability of Defence Instructions; and (b) if the Minister supports that advice, what action does he propose to take regarding the multitude of convictions against past members of the ADF who have been found guilty and fined and or discharged for non-compliance.

(19) Given the IGADF's admission that 'There may well have been judgements made that were poor or even possibly wrong, but it does not follow that this, without more, will necessarily constitute offences against military law', how can the men and women of the ADF obtain protection from similar failings by very senior Defence and civilian bureaucrats inside the department in the future.

(20) In apparently determining that 'he [LTGEN Mueller] also drew upon his own considerable experience and knowledge of the dynamics of high command', can the Minister explain how the IGADF determined this when the Defence Instruction under question was an Air Force specific instruction, and one that did not apply to Army or Navy personnel.

(21) If it is the IGADF's view that 'it seems to be a commonly held, if erroneous, view that non-compliance with any DI will potentially [be] found an offence under the Defence Force Discipline Act', will the Minister advise what steps he proposes to take to remedy this unsatisfactory position.

Senator Ian Campbell—The Minister Assisting the Minister for Defence has provided the following answer to the honourable senator's question:

Air Vice-Marshal (AVM) Criss submitted his application for redress of grievance (ROG) on 28 March 2001 and since then his representations have been the subject of a number of detailed high level inquiries by authorities both within and outside of Defence, including the Defence Force Ombudsman (DFO). It is Defence's view that concerns which formed the subject of the inquiry into AVM Criss's ROG by Rear Admiral Doolan RAN (RET) and the former Justice Abadee and the subsequent review of that inquiry by Mr Blick, were addressed and finalised by the decision of the Compensation for Detriment for Defective Administration (CDDA) decision maker, which was provided to AVM Criss on 20 July 2005.

The CDDA decision maker found that there had been shortcomings in the manner in which AVM Criss's removal from command was handled, and in Defence's handling of AVM Criss's complaints in relation to failures of administration in the handling of his removal, and of subsequent investigations and appeals. The decision maker made an offer to compensate AVM Criss in return for his signing a deed of release and indemnity undertaking not to pursue any further legal claim against the Commonwealth in respect of these matters. On the basis of independent legal advice, AVM Criss signed the deed of release and indemnity and was paid significant compensation on 19 August 2005.

Further, as he was entitled to do, AVM Criss has raised concerns with the CDDA decision with the Commonwealth Ombudsman. The Ombudsman's office has concluded that it would be inappropriate to intervene further in the case as "the process undertaken to negotiate a CDDA settlement involved the engagement of appropriately qualified personnel, was a genuine negotiation and [AVM] Criss is a highly intelligent and capable person."

The further inquiry requested of the Inspector General of the Australian Defence Force (IGADF) by AVM Criss did not cover the same ground as the earlier investigations. AVM Criss believed that certain specific military justice matters required further explanation and IGADF agreed to inquire into the following:

(a) The administration of AVM Criss's ROG, in particular:

  (i) an error in the terms of reference for the investigation;

  (ii) AVM Criss's access to evidence given to the Investigating Officer (IO) during the investigation;

  (iii) AVM Criss's concern that the IO did not take into account additional submissions from AVM Criss during the course of the investigation; and

  (iv) The relationship between legal advice received by the Vice Chief of the Defence Force (VCDF) and VCDF's decision on the ROG.

(b) Military Justice issues raised by AVM Criss with the DFO, and referred by the DFO to IGADF, namely:

  (i) Alleged failure [by senior ADF officers] to comply with Military Law; and

  (ii) Legal implications of VCDF actions.

These matters were addressed in detail by the IGADF inquiry and communicated to AVM Criss by letter on 27 February 2006. The matters addressed by the IGADF inquiries were not the same as those that

AVM Criss claims Mr Blick could have completed in a few days had Mr Blick been given approval to extend his own review. The matters addressed by the IGADF could not have been satisfactorily examined in such a short time.

Many of the questions raised by Senator Bishop compare or contrast the outcomes of the IGADF inquiry with the findings of the Doolan/Abadee investigation and the outcome of Mr Blick's review. These questions impute or assume views by the IGADF, which he did not specifically make in his letter to AVM Criss dated 27 February 2006.

Since AVM Criss had flagged his intention to seek DFO review of the IGADF inquiry before that inquiry was completed, a copy of the IGADF outcome was forwarded to the DFO, with AVM Criss's knowledge, at the time that the response was made to AVM Criss. The DFO later advised AVM Criss that the IGADF had:

(a) considered the matters that he raised thoroughly and seriously;

(b) provided a comprehensive explanation of the action taken to consider the matters raised; and

(c) provided reasons for the decisions made.

The DFO advised AVM Criss that he did not see any significant or substantial reason for the matter to be further investigated in any form.

A great deal of both time and resources have been spent on AVM Criss's concerns over a considerable period. Many of the answers to the 21 questions and 25 sub questions included in Question 2304 are already known to AVM Criss, are apparent from material provided to him or, in any case, are not in dispute. Simply repeating confirmation of what is already known or has been conceded is an inappropriate use of resources. Beyond what I have stated above, I do not intend to respond in any further detail to this question on notice.

In my view, AVM Criss has exhausted the resources of Defence to remedy his continuing concerns.

International Media Visits Program

(Question Nos 2419 and 2420)

Senator O'Brien asked the Minister representing the Minister for Foreign Affairs and the Minister for Trade, upon notice, on 21 August 2006:

With reference to the International Media Visits program managed by the International Media Centre in the department:

(1) When was the program established.

(2) Since its inception, by financial year, what has been the cost of the program.

(3) What services does the program provide to 'senior international journalists and commentators'.

(4) (a) How are the journalists and commentators selected; and (b) what role, if any, does the Minister play in the selection process.

(5) By financial year, which journalists and commentators have made working visits under the program.

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:

(1) The International Media Visits program is long-standing. Various iterations of the program have been managed by several agencies operating under successive governments since at least the 1970s. The Department of Foreign Affairs and Trade (DFAT) inherited the program when the Australian Information Service (Promotion Australia) was amalgamated into the department in 1987 and it has been managed by the International Media Centre since 1995. The program supports a di-

verse range of visitors and plays an important role in generating informed international media coverage on Australia and our key foreign and trade policy objectives.

(2) For the last five financial years, the cost of the IMV program has been:

2001-02: $611 000

2002-03: $394 000

2003-04: $368 000

2004-05: $342 000

2005-06: $381 000

The previous financial years (1999-00: $1 060 000 and 2000-01: $1 190 000) involved substantial additional expenditure to promote Australia during the Sydney Olympics.

Retrieving financial information from before this period would involve accessing archived financial databases that are no longer used. Attempting to access these databases would involve an unreasonable diversion of resources for the department. The associated paper records have been destroyed in line with standard practice under the Archives Act 1983.

(3) For each visit, the International Media Centre organises a program of meetings with a variety of interlocutors (including government officials, opinion-makers and the Australian media) around Australia. Generally, the program manages accommodation, internal transport and flights and, where possible and appropriate, provides an escort officer to assist the visitors. A per diem allowance is also usually provided to visitors.

(4) (a) IMV visitors are selected by the department following a process of nomination and consultation involving overseas posts and geographic and functional divisions. Visits can be themed around specific issues and high-level visitors in a given financial year.

(b) Ministers' offices may be consulted about the selection of visitors and arrangements for programs.

(5)

Visitor(s)	Date	Organisation	Position	Country
2006-07 (to date)				
Mr Toru Igarashi	6-13 Aug 2006	Sankei Shimbun	Senior Editorial Writer	Japan
Mr Keisuke Fukuda	6-13 Aug 2006	Toyo-Keizai	Senior Writer	Japan
Mr Yasuhiko Ota	6-13 Aug 2006	Nihon Keizei Shimbun (Nikkei)	Senior Writer	Japan
Mr Tsuyoshi Nojima	6-13 Aug 2006	Asahi Shimbun	Staff Writer	Japan
Mr Mark Steyn	13-17 Aug 2006	'Steyn Online'	Columnist	USA
Mr Pramit Pal Chaudhuri	14-16 Aug 2006	Hindustan Times	Foreign Editor	India
Dr Tom Mann	23 Aug 2006	W Averell Harriman Senior Fellow	The Brookings Institution	USA
2005-06				
Mr Ali A Hasan	14-19 Aug 2005	Iraq Television	Senior News / Current Affairs Correspondent	Iraq
Mr Ali Mohammed	14-19 Aug 2005	Iraq Television	Senior Assistant	Iraq
Mr Ali Sehel	14-19 Aug 2005	Iraq Television	Cameraman	Iraq
Mr Barney Orere	3-10 Oct 2005	Post Courier Newspaper	Senior Features and Supplements Writer	PNG
Mr Zhang Yijun	16-23 Oct 2005	International Business Daily	Deputy Chief Editor	China
Ms Teng Xiaomen	16-23 Oct 2005	21st Century Business Herald	Correspondent	China
Ms Zhang Fan	16-23 Oct 2005	Caijing Magazine	Correspondent	China
Mr Li Shuzhi	16-23 Oct 2005	China Reform News	Senior Reporter	China

Visitor(s)	Date	Organisation	Position	Country
Mr Zhang Weixun	16-23 Oct 2005	China Trade News	Editor	China
Mr Vu Manh Cuong	27 Nov-4 Dec 2005	Lao Dong Newspaper	Deputy Chief Editor	Vietnam
Mr Veera Manickam	27 Nov-4 Dec 2005	The Star Newspaper	Deputy News Editor	Malaysia
Ms Myrna Ratna	27 Nov-4 Dec 2005	Kompas Newspaper	International Editor	Indonesia
Dr Kumar Ramakrishna	6-10 Feb 2006	Singapore Institute of Defence and Strategic Studies	Professor	Singapore
Mr Klaus-Dieter Frankenberger	20-24 Feb 2006	Frankfurter Allgemeine Zeitung	Foreign Editor	Germany
Mr Marc van den Broek	20-24 Feb 2006	de Volkskrant Newspaper	Australian Correspondent	The Netherlands
Mr K Venugopal	27 Feb-3 Mar 2006	The Hindu Newspaper and Hindu Business Line	Joint Editor	India
Mr George Skaria	27 Feb-3 Mar 2006	The Business Standard	Associate Editor	India
Mr Wiwat Panuwutiyanon	5-6 Apr 2006	Sarakadee Magazine	Senior Journalist	Thailand
Ms Nisha Devi Sabanayagam	5-6 Apr 2006	New Straits Times	Senior Journalist	Malaysia
Mr Wisnu Dewabrata	5-6 Apr 2006	Kompas Newspaper	Senior Journalist	Indonesia
Mr Pen Samitthy	5-6 Apr 2006	Rasmei Kampuchea	Senior Journalist	Cambodia
Dr Michael Brooks	26 April – 3 May 2006	New Scientist Magazine	Senior Features Editor	UK
Mr Vithal Nadkarni	26 April – 3 May 2006	The Economic Times	Science Editor	India
Ms Hasnaa Mokhtar	1-19 May 2006	Arab News Newspaper	Senior Journalist	Saudi Arabia
Mr Saleh Al Hamamy	1-19 May 2006	Arab News Newspaper	Senior Journalist	Saudi Arabia
Ms Kim Kyung Hee	14-26 May 2006	Seoul Broadcasting Service	News Reporter	Korea
Ms Marieton Pacheco	14-26 May 2006	ABS-SBN Broadcasting	Senior Reporter (Host/Anchor)	The Philippines
Mr Balazs Pocs	21-28 May 2006	Nepszabadsag Newspaper	Foreign Desk Editor	Hungary
Mr Jerzy Haszczynski	21-28 May 2006	Rzeczpospolita Daily	Foreign Editor	Poland
Mr Milan Fridrich	21-28 May 2006	Czech TV	Deputy Chief Editor	Czech Republic
Mr Adam Cerny	21-28 May 2006	Hospodarske Noviny Daily	Editor / Noviny Daily	Czech Republic
Mr Pablo Maas	12-20 Jun 2006	The Clarin Newspaper	Chief Editor	Argentina
Mr Sergio Malbergier	12-20 Jun 2006	Folha e Sao Paulo	Business News Editor	Brazil
Mr Tomas Uribe Mosquera	12-20 Jun 2006	Portafolio	Senior Trade Contributor	Colombia
Mr Armando Rivarola	12-20 Jun 2006	ABC Color	Deputy Chief Editor	Paraguay
Ms Marcela Corvalan	12-20 Jun 2006	El Diario Fianciero	Editor	Chile
2004-05				
Ms Alison Ofotalau	22-27 Jul 2004	Solomon Islands Broadcasting Corp.	Senior Journalist	Solomon Islands
Ms Gorethy Kenneth	22-27 Jul 2004	Post Courier Newspaper	Deputy Chief of Staff	PNG
Mr Tipi Fausia	22-27 Jul 2004	Samoa Observer Newspaper	Senior Journalist	Samoa
Mr George Herming	22-27 Jul 2004	Solomon Star Newspaper	Journalist	Solomon Islands
Ms Akanisi Motufaga	22-27 Jul 2004	The Fiji Times	Deputy Editor	Fiji
Ms Linny Folau	22-27 Jul 2004	Vava'u Press	Journalist	Tonga
Mr Abdul Jalil	28 Aug-4 Sep 2004	TVRI	Senior Journalist	Indonesia
Mr Suryadi Supriatna	28 Aug-4 Sep 2004	TVRI	Senior Journalist	Indonesia
Mr Shigeru Kuribayashi	2-10 Oct 2004	Chunichi Shimbun	Deputy Editor	Japan
Ms Mizuho Suzuki	2-10 Oct 2004	CBC-TV	Aichi Expo Reporter	Japan
Mr Atsushi Ojiro	2-10 Oct 2004	CBC-TV	Camera Person	Japan
Mr Danny Gittings	22-27 Nov 2004	Asian Wall Street Journal	Senior Journalist	Hong Kong
Mr Waren Fernandez	22-27 Nov 2004	Strait Times	Senior Journalist	Singapore

Visitor(s)	Date	Organisation	Position	Country
Ms Jeerawat na Thanlang	22-27 Nov 2004	The Nation	Senior Journalist	Thailand
Mr Ho Kay Tat	22-27 Nov 2004	The Edge	Senior Journalist	Malaysia
Ms Sri Hartati	22-27 Nov 2004	Kompas	Senior Journalist	Indonesia
Mrs Rose Ismail	24-30 Nov 2004	New Straits Times	Deputy Group Editor	Malaysia
Mr Can Dundar	14-19 Feb 2005	Milliyet Newspaper	Journalist/Columnist	Turkey
Ms Diaa Hadid	14-18 Mar 2005	Gulf News	Senior Journalist	UAE
Mr Atef Fathy	14-18 Mar 2005	Emirates Media Al Ittihad	Senior Journalist	UAE
Mr Amer Al - Tameemi	14-18 Mar 2005	Al Siyassah Newspaper	Senior Journalist	Kuwait
Mr Emery Kleven	9-16 May 2005	National Association of Farm Broadcasters(NAFB) / Waitt Farm Network	President / Farm Director	USA
Ms Yu Jia	30 May-7 Jun 2005	Oriental Morning Post	Business Journalist	China
Ms Wang Yuehua	30 May-7 Jun 2005	Guangzhou Daily	Economic Reporter	China
Ms Ma Ying	30 May-7 Jun 2005	China Trade News	Executive Editor	China
Mr Baty Sutiyono	19 Jun-1 Jul 2005	SCTV	Anchor and News Reporter	Indonesia
Ms Jomquan Laopet	19 Jun-1 Jul 2005	Nation Broadcasting Corporation	Anchor and News Reporter	Thailand
2003-04				
Mr Kristian Dittmann	6-14 Jul 2003	Frankfurter Allgemeine Zeitung	Senior Journalist	Germany
Mr Gareth Mitchell	6-14 Jul 2003	BBC Radio	Senior Journalist	UK
Mr Enrico Pagliarini	6-14 Jul 2003	Radio 24	Senior Journalist	Italy
Mr Cyrille Vanlerberghe	6-14 Jul 2003	Le Figaro	Senior Journalist	France
Dr Javier Sampedro Pleite	6-14 Jul 2003	El Pais	Senior Journalist	Spain
Dr Norman J Ornstein	10-17 Aug 2003	American Enterprise Institute for Public Policy Research (AEI)	Resident Scholar	USA
Dr Ian Sample	11-20 Aug 2003	The Guardian Newspaper	Senior Correspondent	UK
Mr Graham Lawton	11-20 Aug 2003	New Scientist Magazine	Features Editor	UK
Mr Yun Yeong Geol	22-29 Sep 2003	Maeil Business Newspaper	Senior Journalist	South Korea
Mr Kee Se Jung	22-29 Sep 2003	JoongAng Ilbo	Senior Journalist	South Korea
Mr Huh Seungho	22-29 Sep 2003	Dong-A Ilbo	Senior Journalist	South Korea
Mr Christophe Rabe	10-19 Nov 2003	Handelsblatt	Senior Journalist	Germany
Ms Ilaria Molinari	10-19 Nov 2003	Panorama Economy	Senior Journalist	Italy
Mr Patrick Bonazza	10-19 Nov 2003	Le Point	Senior Journalist	France
Mr Tomio Shida	10-19 Nov 2003	Nikkei	Senior Journalist	Japan
Mr William Lewis	10-19 Nov 2003	The Sunday Times	Senior Journalist	UK
Mr M R Subramani	1 – 8 March 2004	The Hindu Business Line	Assistant Editor	India
Mr Toru Takanarita	1 – 8 March 2004	Asahi Shimbun	Senior Editorial Writer	Japan
Mr Snow Li	1 – 8 March 2004	International Business Daily	Senior Editor	China
Mr Helmut Bunder	1 – 8 March 2004	Frankfurter Allgemeine Zeitung	Senior Correspondent	Germany
Mr Mohamed Sabreen	1 – 8 March 2004	Al Ahram	Chief Editor	Egypt
Mr James Luhulima	12-19 April 2004	Kompas Daily	Senior International Affairs Editor	Indonesia
Mr Nguyen Dai Phuong	12-19 April 2004	The Tie Phuong	International Affairs Editor	Vietnam
Mr Suresh Menon	12-19 April 2004	The Business Times	Dep. Foreign Editor	Singapore
Mr Paul Gabriel	12-19 April 2004	The Star	Diplomatic and International Editor	Malaysia

Visitor(s)	Date	Organisation	Position	Country
Mr Kiatchai Pnogpanich	12-19 April 2004	Khao Sod Daily	Executive Editor	Thailand
Ms Marites Vitug	12-19 April 2004	Newsbreak Magazine	Chief Editor	Philippines
Mr James P Dugan	10-17 May 2004	AgDay Television	Managing Editor	USA
Mr Michael Byers	10-17 May 2004	AgDay TV	Producer	USA
Ms Michelle Rook	10-17 May 2004	Radio WNAX	Farm News Editor	USA
Mr Marcelo Leite	21-28 May 2004	Folha de Sao Paulo	Science Editor and Columnist	Brazil
Ms Nora Bar	21-28 May 2004	La Nacion	Science and Health Editor	Argentina
Mr Javier Cruz Mena	21-28 May 2004	Diario Monitor	Science Editor	Mexico
Ms Patricia Vildosola	21-28 May 2004	El Mercurio	Senior Journalist	Chile
Ms Shbhna Jain	31 May-5 Jun 2004	Univarta (UNI)	Special Correspondent	India
Mr Ashok Malik	31 May-5 Jun 2004	The Indian Express	Senior Editor	India
Mr Kanak Dixit	31 May-5 Jun 2004	Himal Southasian	Editor	Nepal
Mr Harold Hoyte	13-20 Jun 2004	The Nation Publishing Co Limited	President	Barbados
Mr P Gunasegaram	26 Jun-3 Jul 2004	The Edge Malaysia	Group Exec. Editor	Malaysia
2002-03				
Mr Jean-Marie Colombani	23 Feb-1 Mar 2002	Le Monde	President and Chief Editor	France
Mr Masatoshi Murata	24 Feb-2 Mar 2002	Hokkaido Shimbun	Senior Journalist	Japan
Mr Masatoshi Hori	24 Feb-2 Mar 2002	Nishi Nippon Shimbun	Senior Journalist	Japan
Mr Yoshiro Higashi	24 Feb-2 Mar 2002	Chunichi Shimbun	Senior Journalist	Japan
Mr Takao Oshima	24 Feb-2 Mar 2002	Kahoku Shimpo	Senior Journalist	Japan
Mr Mustoffa Ridwan	25-29 Mar 2002	Republica Newspaper	Deputy Chief Editor	Indonesia
Mr Kristanto Hartadi	25-29 Mar 2002	Sinar Harapan	Deputy Chief Editor	Indonesia
Mr Laurens Tato	25-29 Mar 2002	Media Indonesia	Deputy Chief Editor	Indonesia
Mr Idrus Shahab	25-29 Mar 2002	Koran Tempo	Foreign Editor	Indonesia
Ms Ingrid Huisman	22 Apr-1 May 2002	TKMST Magazine	Chief Editor	The Netherlands
Ms Rikst Kemker	22 Apr-1 May 2002	TKMST Magazine	Photographer	The Netherlands
Mr Jeff Tennant	13-17 May 2002	Farm Progress and Rural Press USA	Senior Journalist	USA
Mr Bruce Bartlett	13-17 May 2002	The Creators Syndicate	Senior Journalist	USA
Mr Greg Rushford	13-17 May 2002	The Rushford Report	Senior Journalist	USA
Mr Peter Kasperowicz	13-17 May 2002	Inside US Trade	Senior Journalist	USA
Mr Pesi Fonua	28-31 May 2002	Vava'u Press	Senior journalist	Tonga
Mr Nguyen Tri Dung	17-21 Jun 2002	Investment Review Weekly	Senior Journalist	Vietnam
Ms Hardev Kaur	17-21 Jun 2002	New Straits Times	Senior Journalist	Malaysia
Ms Suriani Garip	17-21 Jun 2002	The Borneo Bulletin	Senior Journalist	Brunei
Mr Tehpchai Sae Yong	17-21 Jun 2002	The Nation	Senior Journalist	Thailand
Mr Lee	17-21 Jun 2002	The Straits Times	Senior Journalist	Singapore
Ms Hamisah Hamid	20-31 Oct 2002	The Business Times (New Straits Times)	Senior Journalist	Malaysia
Mr Abdel-Fattah El Bigali	11-15 Nov 2002	Al Ahram Newspaper	Senior Journalist	Egypt
Mr Ashrok Dasgupta	11-15 Nov 2002	Hindu Business Line	Senior Journalist	India
Mr James Shikwati	11-15 Nov 2002	The Nation Newspaper	Senior Journalist	Kenya
Mr John Fraser	11-15 Nov 2002	Business Day	Senior Journalist	South Africa
Ms Li Ruxue	2-8 Dec 2002	International Business Daily	Senior Journalist	China
Mr Ma Hailiang	2-8 Dec 2002	Economic Daily	Senior Journalist	China
Mr Li Jingwei	2-8 Dec 2002	The People's Daily	Senior Journalist	China
Mr Joseph Dai	2-8 Dec 2002	Guangming Daily	Senior Journalist	China
Mr Yohannes Donbosko	5-11 Dec 2002	Metro TV	Senior Journalist	Indonesia
Mr Erwin Setiawan	5-11 Dec 2002	Metro TV	Senior Journalist	Indonesia
Ms Ria Nurrachman	5-11 Dec 2002	Metro TV	Senior Journalist	Indonesia

Visitor(s)	Date	Organisation	Position	Country
Mr Rajabali Mazrouei	10-19 Feb 2003	Iranian Association of Journalists / No Ruz Daily	Chairman / Foreign and Economic Editor	Iran
Mr Stuart Parker	4-5 Mar 2003	Agra Europe (UK) Ltd	Senior Correspondent	Belgium
Mr Masaru Yamada	4-5 Mar 2003	Nihon Nogyo Shimbun	Director and Writer	Japan
Mr Leo Cendrowicz	4-5 Mar 2003	European Report	Deputy Editor	Belgium
Ms Veronika Meduna	24-28 Mar 2003	Radio New Zealand	Senior Journalist	New Zealand
Mr Kim Minkoo	24-28 Mar 2003	The Maeil Business News	Senior Journalist	South Korea
Ms Mariko Horikawa	24-28 Mar 2003	Yomiuri Shimbun	Senior Journalist	Japan
Mr Alok Mehta	28 Apr-2 May 2003	Outlook Sapthaik News Magazine	Senior Journalist	India
Mr K S Sachidananda	28 Apr-2 May 2003	Malayala Manorama Group	Editor	India
Ms Rasheeda Bhagat	28 Apr-2 May 2003	Hindi Business Line Newspaper	Deputy Editor	India
Mr Yoshifumi Tokosumi	3-11 May 2003	Hokkaido Shimbun	Senior Staff Writer	Japan
Mr Ryoichi Mori	3-11 May 2003	Kahako Shimpo	Editor	Japan
Mr Ataru Fujita	3-11 May 2003	Nishi Nippon Shimbun	Editorial Writer	Japan
Mr Tatao Kunitate	3-11 May 2003	Tokyo Shimbun	Senior Staff Writer	Japan
Ms Sara Fitzgerald	12-16 May 2003	The Heritage Foundation	Trade Policy Analyst	USA
Mr Awangku Haji Baharuddin bin Pg Haji Yaakub	13-22 May 2003	Radio and Television Brunei	Senior News Editor	Brunei
Mr Haji Rosli bin Haji Ismail	13-22 May 2003	Radio and Television Brunei	Cam & Sound Tech	Brunei
2001-02				
Ms Lyn Resurreccion	26 Feb-2 Mar 2001	Today	Senior Journalist	Philippines
Ms Napaporn Pipat	26 Feb-2 Mar 2001	Krungthep Thurakij Newspaper	Senior Journalist	Thailand
Mr Kim Seok-hwan	26 Feb-2 Mar 2001	Joongang Ilbo	Senior Journalist	South Korea
Ms Brigitta Isworo	26 Feb-2 Mar 2001	Kompas Newspaper	Senior Journalist	Indonesia
Mr Nessim Ait-Kacimi	26 Feb-2 Mar 2001	Les Echos	Senior Journalist	France
Mr Yuan Tiecheng	26 Feb-2 Mar 2001	China Youth Daily	Senior Journalist	China
Mr Aaron Manaigo	26 Feb-2 Mar 2001	Political Commentator	Political Commentator	USA
Dr Sanjaya Baru	30 Apr-4 May 2001	Financial Express	Senior Editor	India
Mr Roger Waite	21-25 May 2001	AgraFacts	Senior Journalist	Belgium
Mr Richard Irving	21-25 May 2001	The Times	Senior Journalist	UK
Mr Hubert Beyerle	21-25 May 2001	The Financial Times Deutschland	Senior Journalist	Germany
Mr Frederic Therin	21-25 May 2001	Le Monde	Special Correspondent based in Sydney	France
Mr Mohamed Khairuddin Amin	2-6 Jul 2001	Utusan Malaysia	Senior Journalist	Malaysia
Professor Solita Monsod	2-6 Jul 2001	Business World/ GMA 7	Senior Columnist/ TV Host	Philippines
Mr John Fraser	2-6 Jul 2001	Business Day	Senior Journalist	South Africa
Mr Thanong Khanthong	2-6 Jul 2001	The Nation	Business Editor	Thailand
Mr Vu Manh Cuong	2-6 Jul 2001	Lao Dong Newspaper	Senior Journalist	Vietnam
Dr Narendar Pani	2-6 Jul 2001	Economic Times	Senior Editor	India
Ms Wang Ying	2-6 Jul 2001	China Daily	Senior Journalist	China
Ms Boonlarp Poosuwan	10-14 Sep 2001	Phachachart Thurakij Newspaper	Chief Reporter	Thailand
Mr Indra Sjarifuddin	10-14 Sep 2001	Bisnis Indonesia	Chief Editor	Indonesia
Mr Kang Pan-Ku	10-14 Sep 2001	Maeil Business News	Finance Editor	South Korea

Visitor(s)	Date	Organisation	Position	Country
Ms Yang Yanquing	10-14 Sep 2001	Jiefang's Daily	Chief Editor	China
Mr Takaaki Mizuno	10-14 Sep 2001	Asahi Shimbun	Deputy Foreign Editor	Japan
Mr Asad Latif	10-14 Sep 2001	The Straits Times	Senior Feature Writer	Singapore

Trooper Lawrence
(Question No. 2424)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 22 August 2006:

With reference to the answer to question on notice W1 relating to the Foreign Affairs, Defence and Trade Committee Budget Estimates 2006-07:

(1) (a) Why was the third investigation into the death of Trooper Lawrence conducted by the same person who conducted the original investigation; and (b) what protocols exist, if any, on the need for subsequent inquiries in such matters to be conducted by a different and independent person who is more capable of making an objective assessment.

(2) (a) Does the Minister endorse this approach to subsequent inquiries; (b) can the Minister advise whether such a process is one whereby objectivity and independence are compromised; and (c) do the findings of the inquiry contradict those made by the Northern Territory coroner.

(3) Has the Northern Territory coroner been informed of the outcome of the third inquiry; if so, what was the coroner's response given that his findings were directly contradicted.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator's question:

(1) (a) The officer who conducted the original inquiry into the death of Trooper Lawrence was well placed to conduct any follow-up inquiries. It should be noted that there has been no criticism of Colonel Charles' inquiries and, in fact, the Northern Territory coroner commended Colonel Charles for the quality of his investigation and report.

(b) No protocols exist with regard to who should conduct follow-up inquiries, nor are any required. Each case is considered on its merits.

(2) (a) and (b) Follow-up inquiries to administrative inquiries are required infrequently, and it would not be unusual for those to be conducted by the same inquiry officer, who would be thoroughly familiar with the case. All administrative inquiry reports are subject to legal review to ensure that findings and conclusions are based properly on evidence, and that they have been conducted in accordance with the Defence (Inquiry) Regulations. Final decisions in respect of administrative inquiries are made by appointing officers, not inquiry officers. Those checks and balances ensure objective and fair outcomes.

(c) The third Charles inquiry focused on the evidence given to the Northern Territory coroner by Warrant Officer Wallace. That evidence related to an alleged warning given to Brigadier Anstey, who at the time was a senior officer responsible for the oversight of courses such as the one in which Trooper Lawrence was participating. The warning was allegedly given during a meeting attended by a number of people, including Brigadier Anstey. The coroner accepted Warrant Officer Wallace's testimony without hearing from Brigadier Anstey, or any of the others who attended the meeting. In his third inquiry, Colonel Charles interviewed the meeting participants and, on the basis of that evidence, reached his conclusion. The evidence indicated that, while someone might have made the statement as claimed by Warrant Officer Wallace, it was not explicit or clear enough to have been noted by Brigadier Anstey or the majority of other personnel present at the meeting.

(3) The Chief of Army, Lieutenant General Leahy AO, wrote to the Northern Territory coroner on 29 March 2006 to advise of the outcome of the third Charles inquiry. No response to that letter has been received.

Job Placement Incident

(Question No. 2459)

Senator Chris Evans asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 31 August 2006:

(1) Was the department notified of an incident that took place in Carnavon, Western Australia, in July 2006, where an Indigenous person was lost at sea during a job placement as a deckhand on a local fishing trawler; if so, on what date was the department notified.

(2) Was the department aware that the local Job Network provider required this person to attend the placement as a deckhand despite the person having no previous experience or skill in this particular work at sea and despite the person lacking competency as a swimmer.

(3) Is the department aware that this incident is currently under review by the Worksafe section of the Western Australian Department of Consumer and Employment Protection.

(4) Will the department be making any submissions or participating in any way in this review.

(5) Is the department aware that another Indigenous person has been reported lost at sea, after being placed as a deckhand by the same Job Network provider, in August 2006.

(6) What action has the department taken, or plans to take, in relation to these incidents.

(7) Under Job Network, are providers required to ensure that job placements do not represent a risk to the person being placed.

Senator Abetz—The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

(1) The Department of Employment and Workplace Relations was notified of such an incident on 26 July 2006.

(2) I have been advised that Workcover Western Australia is conducting ongoing investigations into these matters, and on that basis it would be inappropriate for me to comment.

(3) Yes.

(4) (5), (6), (7) Refer to response to question (2) above.

Iran

(Question No. 2489)

Senator Allison asked the Minister representing the Minister for Foreign Affairs, upon notice, on 13 September 2006:

(1) What representation has the Government made to the Iranian Government in relation to Ashraf Kalhori, who has been sentenced to death by stoning for adultery.

(2) Is the Minister aware that according to Amnesty International: (a) a petition, which was signed by more than 4000 people, including more than 100 Iranian women's rights activists, has been submitted to the Head of the Judiciary of Iran, Ayatollah Shahroudi, calling on the Ayatollah to halt the execution; (b) the Head of the Judiciary announced on or about 10 August 2006, that he had temporarily stayed Ashraf Kalhori's execution; and (c) Ashraf Kalhori's case has been sent to the 'Office of Monitoring and Follow Up' for review but Ashraf Kalhori remains under sentence of death.

Senator Coonan—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator's question:

(1) Australia associated itself with an EU demarche on human rights delivered to the Iranian Foreign Ministry on 27 August 2006. The demarche expressed grave concern over reports that a number of women had been sentenced to death by stoning in the Islamic Republic of Iran and specifically requested additional information on the case of Ashraf Kalhori, who they understood to be in immediate risk of execution. Our Embassy in Tehran has advised that it is still unclear whether in August 2006 the Head of the Judiciary, Ayatollah Shahroudi, pardoned Ashraf Kalhori, commuted her sentence or merely suspended its implementation. Our Post will continue to monitor the situation and make representations where appropriate.

(2) (a), (b) and (c) Yes.

Milk Industry

(Question No. 2491)

Senator Siewert asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 14 September 2006:

With reference to the Australian Competition and Consumer Commission report Impact of farmgate deregulation on the Australian milk industry: study of prices, costs and profits (April 2001) which states at page 49: '...Australia imported 3201 tonnes of liquid milk in 1998-99, a rise of 23 percent over the previous year. The overwhelming majority of this milk came from New Zealand with most of this product being UHT milk for the Australian food services and consumer markets.'

(1) What volume of liquid milk has been imported for each of the financial years 1998-99, 1999-2000, 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07 to date.

(2) (a) Which states/territories have received these liquid milk imports; and (b) in what volumes.

Senator Abetz—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

(1) Quantity (kg) 1997-98 to 2006-07 (part FY to 28 September 2006)

Financial year	Quantity in kilograms
Jul 98 - Jun 99	2,958,563.36
Jul 99 - Jun 00	2,553,129.25
Jul 00 - Jun 01	2,635,266.84
Jul 01 - Jun 02	2,054,162.24
Jul 02 - Jun 03	1,674,122.00
Jul 03 - Jun 04	1,827,293.50
Jul 04 - Jun 05	1,390,612.70
Jul 05 - June 06	1,559,477.27
Jul 06 - Aug 06	206,539.16

Source: Customs Data Warehouse-COMPILE & ICS Imports Datamarts as at 28 September 2006

(2) Quantity (kg) 1997-98 to 2006-07 (part FY to 28 September 2006) by region of destination Import entry lines for milk products by financial year

	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07 (to 28 Sept)
NSW	1,098,723.56	956,302.50	1,049,254.34	990,230.24	705,761.00	354,830.00	80,747.00	158,698.00	
Queensland	1,128,280.8	978,643.00	1,002,433.00	550,602.00			2.70		20,508.00
Vic	643,351.00	541,196.75	553,860.00	512,237.00	968,361.00	1,472,019.50	1,309,863.00	1,371,569.27	186,031.16
WA	8,820.0008	76,939.00	29,719.50			444.00		29,210.00	
SA				1,093.00					
Tas		48							
Total	2,958,563.36	2,553,129.25	2,635,266.84	2,054,162.24	1,674,122.00	1,827,293.50	1,390,612.70	1,559,477.27	206,539.16

Source: Customs Data Warehouse - COMPILE & ICS Imports Datamarts as at 28 September 2006